

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

CHILD WELFARE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Brent Haymond

AN ACT RELATING TO CHILDREN; ~~h [INCLUDING COMMISSION OF DOMESTIC~~
~~VIOLENCE IN THE PRESENCE OF A CHILD IN ALL CIVIL DEFINITIONS OF CHILD~~
~~ABUSE;]~~ ~~h~~ AUTHORIZING THE ATTORNEY GENERAL'S OFFICE TO HIRE CHILD
PROTECTIVE SERVICES INVESTIGATORS; CLARIFYING AND MODIFYING
PROCEDURES FOR FOSTER PARENT DUE PROCESS; CLARIFYING PROCESS AND
JURISDICTION OF PROTECTIVE ORDERS FOR MINORS IN JUVENILE AND DISTRICT
COURTS; CLARIFYING THAT SPECIFIC COURT PROCEDURES APPLY ONLY TO
CHILDREN REMOVED BY THE DIVISION OF CHILD AND FAMILY SERVICES AND
CHILDREN WHO ARE IN THE DIVISION'S CUSTODY; CLARIFYING PROVISIONS IN
THE TERMINATION OF PARENTAL RIGHTS ACT; PROVIDING THAT THE JUVENILE
COURT HAS CONCURRENT JURISDICTION TO ESTABLISH PATERNITY AND TO
ORDER TESTING FOR THAT PURPOSE; EXPANDING THE EARLY INTERVENTION
FOR JUVENILES PILOT PROGRAM; PROVIDING RIGHTS AND RESPONSIBILITIES
OF RELATIVES AND NONCUSTODIAL PARENTS WITH REGARD TO A CHILD WHO
HAS BEEN REMOVED FROM HIS HOME BASED ON ABUSE OR NEGLECT;
PROVIDING THAT PETITIONS FOR TERMINATION OF PARENTAL RIGHTS MAY BE
FILED AND HEARINGS HELD PRIOR TO, IN LIEU OF, OR IN COMBINATION WITH
A PERMANENCY HEARING; REQUIRING THE ATTORNEY GENERAL'S OFFICE TO
REPRESENT DCFS IN CASES INVOLVING MINORS IN DCFS CUSTODY ON
GROUNDS OTHER THAN ABUSE OR NEGLECT; REQUIRING PROBATION
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 **62A-4a-412**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 26 **78-3a-103**, as last amended by Chapters 329 and 365, Laws of Utah 1997
- 27 **78-3a-104**, as last amended by Chapters 329 and 365, Laws of Utah 1997
- 28 **78-3a-105**, as last amended by Chapters 329 and 365, Laws of Utah 1997
- 29 **78-3a-116**, as last amended by Chapter 133 and renumbered and amended by Chapter 365,
30 Laws of Utah 1997
- 31 **78-3a-118**, as last amended by Chapters 329, 357, 358 and renumbered and amended by

1 Chapter 365, Laws of Utah 1997

2 **78-3a-301**, as last amended by Chapters 329 and 365, Laws of Utah 1997

3 **78-3a-305**, as last amended by Chapter 318, Laws of Utah 1996

4 **78-3a-306**, as last amended by Chapter 329, Laws of Utah 1997

5 **78-3a-307**, as last amended by Chapters 195 and 329, Laws of Utah 1997

6 **78-3a-311**, as last amended by Chapters 195, 329 and 365, Laws of Utah 1997

7 **78-3a-312**, as last amended by Chapters 133 and 329, Laws of Utah 1997

8 **78-3a-314**, as last amended by Chapter 133, Laws of Utah 1997

9 **78-3a-315**, as last amended by Chapter 318, Laws of Utah 1996

10 **78-3a-350**, as enacted by Chapter 329, Laws of Utah 1997

11 **78-3a-408**, as last amended by Chapter 329, Laws of Utah 1997

12 **78-3a-903**, as last amended by Chapter 365, Laws of Utah 1997

13 **78-3g-103**, as repealed and reenacted by Chapter 133, Laws of Utah 1997

14 **78-45a-5**, as last amended by Chapter 232, Laws of Utah 1997

15 ENACTS:

16 **62A-4a-202.6**, Utah Code Annotated 1953

17 **62A-4a-203.5**, Utah Code Annotated 1953

18 **62A-4a-208**, Utah Code Annotated 1953

19 **67-5-16**, Utah Code Annotated 1953

20 **78-3a-305.1**, Utah Code Annotated 1953

21 **78-3a-313.5**, Utah Code Annotated 1953

22 This act affects uncodified material as follows:

23 AMENDS:

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

25 This act enacts uncodified material.

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

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

28 **62A-4a-101. Definitions.**

29 As used in this chapter:

30 (1) "Abuse" means:

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

- 1 (b) negligent treatment[-];
- 2 (c) sexual exploitation[-or]; ~~h~~ **OR** ~~h~~
- 3 (d) any sexual abuse ~~h~~ [f] . [f] [-or]
- 4 ~~(e) commission of domestic violence in the presence of a child.] h~~

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

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

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

- 14 ~~—— (a) in the physical presence of a child; or~~
- 15 ~~—— (b) having knowledge that a child is present and may see or hear an act of domestic~~
 16 ~~violence.] h~~

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

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

21 [(6)] ~~h [(7)] (6) h~~ "Day-care services" means care of a child for a portion of the day which is
 21a less
 22 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care
 23 center, family group home, or family child care home.

24 [(7)] ~~h [(8)] (7) h~~ "Dependent child" means a child who is homeless or without proper care
 24a through
 25 no fault of his parent, guardian, or custodian.

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

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

28 ~~h [(10)] (11) (a) "Domestic violence" means the same as that term is defined in Section~~
 29 ~~77-36-1.] h~~

30 ~~h [(b)] (a) h~~ "Domestic violence services" means temporary shelter, treatment, and related
 30a services
 31 to persons who are victims of abuse and their dependent children and treatment services for

1 domestic violence perpetrators.

2 ~~[(b)]~~ (c) As used in this subsection "abuse" means the same as that term is defined in
3 Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have
4 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in
5 Subsection 77-36-1(2).

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

9 ~~[(H2)]~~ (13) "Minor" means a person under 18 years of age. "Minor" may also include a
10 person under 21 years of age for whom the division has been specifically ordered by the juvenile
11 court to provide services.

12 ~~[(H3)]~~ (14) "Natural parent" means a child's biological or adoptive parent, and includes a
13 child's noncustodial parent.

14 ~~[(H4)]~~ (15) (a) "Neglect" means:

15 (i) abandonment of a child;

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

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

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

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

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

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

30 ~~[(H5)]~~ (16) "Protective custody," with regard to the division, means the shelter of a child
31 by the division from the time he is removed from his home until the shelter hearing, or his return

1 home, whichever occurs earlier.

2 [~~(16)~~] (17) "Protective services" means expedited services that are provided:

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

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

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

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

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

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

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

16 [~~(17)~~] (18) "Services to unwed parents" means social, educational, and medical services
17 arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

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

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

22 [~~(20)~~] (21) "State plan" means the written description of the programs for children, youth,
23 and family services administered by the division in accordance with federal law.

24 [~~(21)~~] (22) "Status offender" means a minor who has been declared a runaway or
25 ungovernable.

26 [~~(22)~~] (23) "Substitute care" means:

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

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

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

2 [(23)] (24) "Temporary custody," with regard to the division, means the custody of a child
3 in the division from the date of the shelter hearing until disposition.

4 [(24)] (25) "Transportation services" means travel assistance given to an individual with
5 escort service, if necessary, to and from community facilities and resources as part of a service
6 plan.

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

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

13 **62A-4a-105. Division responsibilities.**

14 The division shall:

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

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

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

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

25 (5) prepare and submit to the department, the governor, and the Legislature reports of the
26 operation and administration of the division in accordance with the requirements of Sections
27 62A-4a-117 and 62A-4a-118;

28 (6) promote and enforce state and federal laws enacted for the protection of abused,
29 neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in
30 accordance with the requirements of this chapter, unless administration is expressly vested in
31 another division or department of the state. In carrying out the provisions of this subsection, the

1 division shall cooperate with the juvenile courts, the Division of Youth Corrections, and with all
2 public and private licensed child welfare agencies and institutions to develop and administer a
3 broad range of services and supports. The division shall take the initiative in all matters involving
4 the protection of abused or neglected children if adequate provisions have not been made or are
5 not likely to be made, and shall make expenditures necessary for the care and protection of those
6 children, within the division's budget;

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

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

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

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

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

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

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

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

30 (15) provide social studies and reports for the juvenile court in accordance with Section
31 78-3a-505;

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

3 (17) provide domestic violence services in accordance with the requirements of federal
4 law, and establish standards for all direct or contract providers of domestic violence services.
5 Within appropriations from the Legislature, the division shall provide or contract for a variety of
6 domestic violence services and treatment methods;

7 (18) ensure regular, periodic publication, including electronic publication, regarding the
8 number of children in the custody of the division who have a permanency goal of adoption, or for
9 whom a final plan of termination of parental rights has been approved, pursuant to Section
10 78-3a-312, and promote adoption of those children; ~~h~~ **[and]**

10a **(19) PROVIDE PROTECTIVE SERVICES TO VICTIMS OF DOMESTIC VIOLENCE, AS DEFINED IN**
10b **SECTION 77-36-1, AND THEIR CHILDREN, IN ACCORDANCE WITH THE PROVISIONS OF THIS**
CHAPTER

10c **AND OF TITLE 78, CHAPTER 3a, PART 3; AND ~~h~~**

11 ~~h~~ **(19)** ~~h~~ perform such other duties and functions as required by law.

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

13 **62A-4a-113. Division's enforcement authority -- Responsibility of attorney general**
14 **to represent division.**

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

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

21 ~~(3)~~ (b) It is the responsibility of the attorney general's office to:

22 ~~(a)~~ (i) advise the division regarding decisions to remove a child from his home;

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

27 ~~(c)~~ (iii) be available to and advise caseworkers on an ongoing basis.

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

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1 division statewide.

2 (3) As of July 1, 1998, the attorney general's office shall represent the division with regard
 3 to actions involving minors who have not been adjudicated as abused or neglected, but who are
 4 otherwise committed to the custody of the division by the juvenile court, and who are classified
 5 in the division's management information system as having been placed in custody primarily on
 6 the bases of delinquent behavior or a status offense. Nothing in this section may be construed to
 7 affect the responsibility of the county attorney or district attorney to represent the state in those
 8 matters, in accordance with Section 78-3a-116.

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

10 **62A-4a-116. Management information system -- Requirements.**

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

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

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

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

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

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

21 (iv) all reports of abuse or neglect received by the division with regard to that child's
 22 parent or parents, including documentation regarding whether each report was substantiated § [†] §
 22a or § [†] §
 23 unsubstantiated § [~~or without merit~~] § ;

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

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

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

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

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

3 (4) All information contained in the management information system shall be available
4 to the department, so that divisions may share common databases.

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

6 **62A-4a-117. Performance monitoring system.**

7 (1) As used in this section:

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

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

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

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

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

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

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

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

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

2 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
3 **state.**

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

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

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

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

27 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to the
28 provisions of Section 62A-4a-203 § AND IN KEEPING WITH THE PRESUMPTIONS DESCRIBED IN
28a SUBSECTION (1) § , both the division's and the court's paramount concern shall be
29 the child's health, safety, and welfare § [, in accordance with federal law] § .

30 [(5)] (6) In cases where § [obvious] ACTUAL § sexual abuse [or], abandonment, or serious
30a physical abuse

31 or neglect are involved, the state has no duty to make "reasonable efforts" or to, in any other way,

1 attempt to maintain a child in his home, provide reunification services, or to attempt to rehabilitate
 2 the offending parent or parents. This subsection does not exempt the division from providing
 3 [~~court-ordered~~] court-ordered services.

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

10 (b) If, because of his conduct or condition, a parent is determined to be unfit or
 11 incompetent based on the grounds for termination of parental rights described in Title 78, Chapter
 12 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of the child is [then]
 13 of paramount importance, and shall govern in determining whether that parent's rights should be
 14 terminated.

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

16 **62A-4a-202. Preventive services -- Family preservation services.**

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

21 (b) In determining whether preventive or family preservation services are reasonable and
 22 appropriate, § IN KEEPING WITH THE PROVISIONS OF SUBSECTION 62A-4a-201(1), § the child's
 23a health, safety, and welfare shall be the paramount concern § [, in accordance

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

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

- 28 (i) the method of accessing each service;
- 29 (ii) eligibility requirements for each service; and
- 30 (iii) the geographic areas and the number of families that can be served by each service,
- 31 and information regarding waiting lists for each service.

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

3 (c) The division shall provide a copy of the inventory to the Office of Legislative Research
4 and General Counsel on or before December 1, 1994, and each subsequent year thereafter.

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

7 (a) the safety of children;

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

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

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

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

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

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

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

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

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

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

26 **62A-4a-202.1. Taking a child into protective custody -- Peace officer -- Division of**
27 **Child and Family Services caseworker.**

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

31 (2) (a) A child welfare worker within the Division of Child and Family Services may take

1 and maintain protective custody of a minor, without a warrant, in accordance with the requirements
2 of this section and Section 78-3a-301 when accompanied by a peace officer, or without a peace
3 officer, when a peace officer is not reasonably available.

4 (b) If possible, consistent with the child's safety and welfare, before taking a child into
5 protective custody, the worker shall also determine whether there are services reasonably available
6 to the worker which, if provided to the minor's parent or to the minor, would eliminate the need
7 to remove the minor from the custody of his parent in accordance with the provisions and
8 limitations of Section 78-3a-301. If those services are reasonably available, they shall be utilized.

9 In determining whether services are reasonably available, and in making reasonable efforts to
10 provide those services, the child's health, safety, and welfare shall be the worker's paramount
11 concern.

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

13 **62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective**
14 **custody.**

15 (1) When a child is taken into protective custody in accordance with Sections
16 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately
17 investigate the circumstances of the minor and the facts surrounding his being taken into protective
18 custody.

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

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

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

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

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

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

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

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

4 (3) (a) The division's determination of whether a report is substantiated § [F] § or § [H] §
5 unsubstantiated § [~~or without merit~~] § may be based on the child's statements alone.

6 (b) Inability to identify or locate the perpetrator may not be used by the division as a basis
7 for determining that a report is unsubstantiated § [~~or without merit~~] § , or for closing the case.

8 (c) The division may not determine a case to be unsubstantiated § [~~or without merit,~~] § or
9 identify a case as unsubstantiated § [~~or without merit,~~] § solely because the perpetrator was an
10 out-of-home perpetrator.

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

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

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

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

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

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

23 (5) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends
24 and holidays, the Division of Child and Family Services shall convene a child protection team to
25 review the circumstances regarding removal of the child from his home, and prepare the testimony
26 and evidence that will be required of the division at the shelter hearing, in accordance with Section
27 78-3a-306.

28 (b) Members of that team shall include:

29 (i) the caseworker assigned to the case and the caseworker who made the decision to
30 remove the child;

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

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

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

4 (v) if appropriate, and known to the division, a therapist or counselor who is familiar with
5 the child's circumstances; and

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

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

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

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

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

20 (a) visiting the home at times other than normal work hours;

21 (b) contacting local schools;

22 (c) contacting local, county, and state law enforcement agencies; and

23 (d) checking public assistance records.

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

25 **62A-4a-202.6. Child Protective Services Investigators Within Attorney General's**
26 **Office -- Authority.**

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

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

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

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

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

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

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

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

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

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

23 **62A-4a-203. Removal of a child from his home -- Reasonable efforts to maintain**
24 **child in home -- Exception -- Reasonable efforts for reunification.**

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

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

30 (b) determine whether there is substantial cause to believe that a child has been or is in
31 danger of abuse or neglect, in accordance with the guidelines described in Title 78, Chapter 3a,

1 Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from his home;
2 and

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

6 (2) In determining the reasonableness of efforts needed to maintain a child in his home or
7 to return a child to his home, in accordance with Subsection (1)(a) or (c), the child's health, safety,
8 and welfare shall be the paramount concern. Additionally, the division shall consider whether
9 those services would be effective within a six-month period, and whether they would be likely to
10 prevent reabuse or continued neglect of the child.

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

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

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

20 **62A-4a-203.5. Mandatory petition for termination of parental rights.**

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

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

25 (b) have failed to maintain physical custody, and have failed to exhibit the normal interest
26 of a natural parent without just cause; § OR §

27 (c) are unwilling to have physical custody of the child § [;or] .

28 ~~[(d) have left the child without proper parental care, by reason of the fault or habits of the~~
29 ~~parent.] §~~

30 (2) Except as provided in Subsection (3), notwithstanding any other provision of this
31 chapter or of Title 78, Chapter 3a, the division shall file a petition for termination of parental rights

1 with regard to:

2 (a) an abandoned infant; or

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

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

5 (ii) committed § [voluntary] § manslaughter of another child of that parent;

6 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse

7 homicide, or § [voluntary] § manslaughter against another child of that parent; or

8 (iv) committed a felony assault or abuse that has resulted in serious physical injury to

9 another child of that parent, or to the other parent of that child.

10 (3) The division is not required to file a petition for termination of parental rights under

11 Subsection (2) if:

12 (a) the child is being cared for by a relative;

13 (b) the division has:

14 (i) documented in the child's treatment plan a compelling reason for determining that filing

15 a petition for termination of parental rights is not in the child's best interest; and

16 (ii) made that treatment plan available to the court for its review; or

17 (c) (i) the court has previously determined, in accordance with the provisions and

18 limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable efforts

19 to reunify the child with his parent or parents were required; and

20 (ii) the division has not provided, within the time period specified in the treatment plan,

21 services that had been determined to be necessary for the safe return of the child.

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

23 **62A-4a-205. Treatment plans.**

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

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

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

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

- 1 (b) the child;
- 2 (c) the child's foster parents; and
- 3 (d) where appropriate, the child's step-parent.

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

6 (5) Each treatment plan shall specifically provide for the safety of the child, in accordance
7 with federal law, and clearly define what actions or precautions will, or may be, necessary to
8 provide for the health, safety, protection, and welfare of the child.

9 [(5)] (6) The plan shall set forth, with specificity, at least the following:

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

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

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

17 (d) the specific services needed to reduce the problems that necessitated placement in the
18 division's custody, [~~and to accomplish the reasonable efforts requirements;~~] and who will provide
19 for and be responsible for case management;

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

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

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

27 [(6)] (7) (a) The treatment plan shall be specific to each child and his family, rather than
28 general. The division shall train its workers to develop treatment plans that comply with federal
29 mandates and the specific needs of the particular child and his family;

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

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

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

6 [(7)] (8) With regard to a child who is three years of age or younger, if the goal is not to
7 return the child home, the [division's goal or] permanency plan for that child shall be adoption
8 unless there are extenuating circumstances that justify long-term foster care or guardianship.

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

10 **62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.**

11 (1) With regard to children who have a permanency goal of adoption or for whom a final
12 plan for pursuing termination of parental rights has been approved in accordance with Section
13 78-3a-312, the division shall make intensive efforts to place the child in an adoptive home within
14 30 days after the final plan has been approved.

15 (2) If within the time period described in Subsection (1) the division is unable to locate
16 a suitable adoptive home, it shall contract with licensed child placing agencies to search for an
17 appropriate adoptive home for the child, and to place the child for adoption. The division shall
18 comply with the requirements of Section 62A-4a-607 and contract with a variety of child placing
19 agencies licensed under Part 6. In accordance with federal law, the division shall develop plans
20 for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent
21 placements for waiting children.

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

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

26 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**
27 **process.**

28 (1) (a) The Legislature finds that, except with regard to a child's natural [parents] parent
29 or legal guardian, a foster family has a very limited but recognized interest in its familial
30 relationship with a foster child who has been in the care and custody of that family. In making
31 determinations regarding removal of a child from a foster home, the division may not dismiss the

1 foster family as a mere collection of unrelated individuals.

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

6 (c) For the reasons described in Subsections (a) and (b), the division shall provide
7 procedural due process for a foster family prior to removal of a foster child from their home,
8 regardless of the length of time the child has been in that home, unless removal is for the purpose
9 of returning the child to his natural parent or legal guardian, or for the immediate placement of the
10 child in an approved adoptive home.

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

14 (b) Those procedures shall include requirements for:

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

17 (ii) an opportunity for foster parents to present [~~written and oral testimony~~] their
18 information and concerns to the division and to request a review by a third party neutral fact finder
19 prior to removal of the child.

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

24 (3) If the division removes a child from a foster home based upon the child's statement
25 alone, the division shall initiate and expedite the processes described in Subsection (2). The
26 division may take no formal action with regard to that foster parent's license until after those
27 processes, in addition to any other procedure or hearing required by law, have been completed.

27a **h (4) WHEN A COMPLAINT IS MADE TO THE DIVISION BY A FOSTER CHILD AGAINST A**
27b **FOSTER PARENT, THE DIVISION SHALL, WITHIN § [FIVE] 30 § BUSINESS DAYS, PROVIDE THE FOSTER**
27c **PARENT WITH INFORMATION REGARDING THE SPECIFIC NATURE OF THE COMPLAINT, THE TIME h**

27d **h** AND PLACE OF THE ALLEGED INCIDENT, AND WHO WAS ALLEGED TO HAVE BEEN INVOLVED. **h**

28 [~~(3) As of July 1, 1994, whenever~~] **h** ~~[(4)]~~ **(5)** **h** Whenever the division places a child in a

28a foster

29 home, it shall provide the foster parents with:

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

31 (b) a written description of the procedures enacted by the division pursuant to Subsection

1 (2) and how to access those processes; and

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

5 [~~(4)~~] (5) The requirements of this section do not apply to the removal of a child based on
6 a foster parent's request for that removal.

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

8 **62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**

9 (1) As used in this section:

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

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

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

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

15 (b) The ombudsman shall be:

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

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

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

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

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

25 (i) contrary to statute, rule, or policy;

26 (ii) places a child's health or safety at risk;

27 (iii) made without an adequate statement of reason; or

28 (iv) is based on irrelevant, immaterial or erroneous grounds.

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

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

2 (4) The ombudsman shall:

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

5 (i) receiving and processing complaints;

6 (ii) notifying complainants and the division regarding decision to investigate or to decline
7 to investigate a complaint;

8 (iii) prioritizing workload;

9 (iv) maximum time within which investigations shall be completed;

10 (v) conducting investigations;

11 (vi) notifying complainants and the division regarding the results of investigations; and

12 (vii) making recommendations based on the findings and results of recommendations;

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

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

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

19 (e) annually report to the:

20 (i) Child Welfare Legislative Oversight Panel;

21 (ii) governor;

22 (iii) Board of Child and Family Services;

23 (iv) executive director of the department; and

24 (v) director of the division; and

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

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

29 (b) The ombudsman may advise a complainant to pursue all administrative remedies or
30 channels of complaint before pursuing a complaint with the ombudsman. Subsequent to
31 processing a complaint, the ombudsman may conduct further investigations upon the request of

1 the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes
2 a complainant from making a complaint directly to the ombudsman before pursuing an
3 administrative remedy.

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

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

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

11 (6) (a) Except as provided in Subsection (ii), all records of the ombudsman regarding
12 individual cases shall be classified in accordance with federal law and the provisions of Title 63,
13 Chapter 2, Government Records Access and Management Act. The ombudsman may make public
14 a report prepared pursuant to this section in accordance with the provisions of Title 63, Chapter
15 2, Government Records Access and Management Act.

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

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

23 (b) The ombudsman shall make recommendations to the division if the ombudsman finds
24 that:

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

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

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

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

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

30 **62A-4a-250. Separate programs and procedures for minors committed to the custody**
31 **of the Division of Child and Family Services on grounds other than abuse or neglect --**

1 **Attorney general responsibility.**

2 (1) On or before July 1, 1998, the division shall have established programs designed to
3 meet the needs of minors who have not been adjudicated as abused or neglected, but who are
4 otherwise committed to the custody of the division by the juvenile court pursuant to Section
5 78-3a-118, and who are classified in the division's management information system as having been
6 placed in custody primarily on the basis of delinquent behavior or a status offense.

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

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

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

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

17 **62A-4a-402. Definitions.**

18 As used in this part:

19 (1) "A person responsible for a child's care" means the child's parent, guardian, or other
20 person responsible for the child's care, whether in the same home as the child, a relative's home,
21 a group, family, or center day care facility, a foster care home, or a residential institution.

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

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

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

27 ~~—— (a) in the physical presence of a child; or~~

28 ~~—— (b) having knowledge that a child is present and may see or hear an act of domestic~~
29 ~~violence.~~

30 ~~—— (5) "Domestic violence" means the same as that term is defined in Section 77-36-1.] h~~

31 [(4)] h [(6)] (4) h "Harm or threatened harm" means damage or threatened damage to the
physical

1 or emotional health and welfare of a child through neglect or abuse, and includes but is not limited
2 to:

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

4 (b) incest[;];

5 (c) sexual abuse[;];

6 (d) sexual exploitation[;];

7 (e) molestation[,-or]; **h** OR **h**

8 (f) repeated negligent treatment or maltreatment **h** [f] . [i] [~~;-or~~

9 ~~— (g) commission of domestic violence in the presence of a child. h~~

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

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

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

20 molestation directed towards a child.

21 [(8)] **h** [(10)] (8) **h** "Sexual exploitation of minors" means knowingly employing, using,
persuading,

22 inducing, enticing or coercing any minor to pose in the nude for the purpose of sexual arousal of
23 any person or for profit, or to engage in any sexual or simulated sexual conduct for the purpose
24 of photographing, filming, recording, or displaying in any way the sexual or simulated sexual
25 conduct, and includes displaying, distributing, possessing for the purpose of distribution, or selling
26 material depicting minors in the nude or engaging in sexual or simulated sexual conduct.

27 [(9)] **h** [(11)] (9) **h** "Subject" or "subject of the report" means any person reported under this
part,

28 including, but not limited to, a child, parent, guardian, or other person responsible for a child's
29 care.

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

2nd Sub. (Gray) H.B. 239

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lilac-February 19, 1998

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

2 **62A-4a-409. Investigation by division -- Temporary protective custody.**

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

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

9 (3) The division shall make a written report of its investigation. The written report shall
10 include a determination regarding whether the alleged abuse or neglect was substantiated § [;]

11 **OR § unsubstantiated § [, or [inconclusive] without merit] § .**

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

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

17 (c) A representative of the division shall serve as the team's coordinator and chair.
18 Members of the team shall serve at the coordinator's invitation, and whenever possible, the team
19 shall include representatives of health, mental health, education, law enforcement agencies, and
20 other appropriate agencies or individuals.

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

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

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

30 (8) Division workers or other child protection team members have authority to enter upon
31 public or private premises, using appropriate legal processes, to investigate reports of alleged child

1 abuse or neglect.

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

8 Section 20. Section **62A-4a-412** is amended to read:

9 **62A-4a-412. Reports and information confidential.**

10 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well
11 as any other information in the possession of the division obtained as the result of a report is
12 confidential and may only be made available to:

13 (a) a police or law enforcement agency investigating a report of known or suspected child
14 abuse or neglect;

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

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

19 (d) any subject of the report, the natural parents of the minor, and the guardian ad litem;

20 (e) a court, upon a finding that access to the records may be necessary for the
21 determination of an issue before it;

22 (f) an office of the public prosecutor or its deputies; [and]

23 (g) a person authorized by a Children's Justice Center, for the purposes described in
24 Section 67-5b-102; and

25 [(g)] (h) a person engaged in bona fide research, when approved by the director of the
26 division, if the information does not include names and addresses.

27 (2) The division and law enforcement officials shall ensure the anonymity of the person
28 or persons making the initial report and any others involved in its subsequent investigation.

29 (3) Any person who wilfully permits, or aides and abets the release of data or information
30 obtained as a result of this part, in the possession of the division or contained in the central
31 register, in violation of this part, is guilty of a class C misdemeanor.

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

4 Section 21. Section **67-5-16** is enacted to read:

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

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

14 Section 22. Section **78-3a-103** is amended to read:

15 **78-3a-103. Definitions.**

16 (1) As used in this chapter:

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

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

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

21 ~~h [(iii) has been the victim of "commission of domestic violence in the presence of a child,"~~
22 ~~as defined in this section.] h~~

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

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

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

29 (e) "Child placement agency" means:

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

31 or

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

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

4 ~~h [(g) "Commission of domestic violence in the presence of a child" means committing an~~
5 ~~act of domestic violence, as defined in Section 77-36-1, against a cohabitant, as defined in Section~~
6 ~~30-6-1:~~

7 ~~——(i) in the physical presence of a child; or~~

8 ~~——(ii) having knowledge that a child is present and may see or hear an act of domestic~~
9 ~~violence.] h~~

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

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

13 [(i)] h [(j)] (i) h "Deprivation of custody" means transfer of legal custody by the court from a
parent

14 or the parents or a previous legal custodian to another person, agency, or institution.

15 [(j)] h [(k)] (j) h "Detention" means home detention and secure detention as defined in Section
16 62A-7-101 for the temporary care of minors who require secure custody in physically restricting
17 facilities:

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

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

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

23 [(l)] h [(m)] (l) h "Group rehabilitation therapy" means psychological and social counseling of
one

24 or more persons in the group, depending upon the recommendation of the therapist.

25 [(m)] h [(n)] (m) h "Guardianship of the person" includes the authority to consent to marriage,
to

26 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
27 custody, if legal custody is not vested in another person, agency, or institution.

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

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

- 30 (ii) the right and duty to protect, train, and discipline the minor;
- 31 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary

1 medical care;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 any of the conditions prescribed.

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

6 ~~[(t)]~~ (v) "Residual parental rights and duties" means those rights and duties remaining
7 with the parent after legal custody or guardianship, or both, have been vested in another person or
8 agency, including the responsibility for support, the right to consent to adoption, the right to
9 determine the child's religious affiliation, and the right to reasonable visitation unless restricted
10 by the court. If no guardian has been appointed, "residual parental rights and duties" also include
11 the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric
12 treatment.

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

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

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

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

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

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

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

31 (c) "Temporary custody" means the custody of a minor in the Division of Child and

1 Family Services from the date of the shelter hearing until disposition.

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

5 Section 23. Section **78-3a-104** is amended to read:

6 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

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

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

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

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

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

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

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

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

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

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

1 [(i)] (j) any parent or parents of a minor committed to a secure youth corrections facility,
2 to order, at the discretion of the court and on the recommendation of a secure youth corrections
3 facility, the parent or parents of a minor committed to a secure youth corrections facility for a
4 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth
5 corrections facility therapist, who has supervision of that parent's or parents' minor, or any other
6 therapist the court may direct, for a period directed by the court as recommended by a secure youth
7 corrections facility;

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

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

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

15 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive
16 jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent
17 jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except
18 that the court shall have exclusive jurisdiction over the following traffic offenses committed by
19 a minor under 18 years of age:

20 (a) Section 76-5-207, automobile homicide;

21 (b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

22 (c) Section 41-6-45, reckless driving;

23 (d) Section 41-1a-1311, unauthorized control over a motor vehicle, trailer, or semitrailer;

24 (e) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer
25 for an extended period of time; and

26 (f) Section 41-6-13.5, fleeing a peace officer.

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

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

31 (5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is

1 referred to it by the Division of Child and Family Services or by public or private agencies that
2 contract with the division to provide services to that minor where, despite earnest and persistent
3 efforts by the division or agency, the minor has demonstrated that he:

4 (a) is beyond the control of his parent, guardian, lawful custodian, or school authorities
5 to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

6 (b) has run away from home.

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

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

11 Section 24. Section **78-3a-105** is amended to read:

12 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

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

15 (a) when a person who is 18 years of age or older and who is under the continuing
16 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law
17 or municipal ordinance; [and]

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

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

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

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

31 (3) (a) This section does not deprive the district court of jurisdiction to appoint a guardian

1 for a minor, or to determine the support, custody, and visitation of a minor upon writ of habeas
2 corpus or when the question of support, custody, and visitation is incidental to the determination
3 of a cause in the district court.

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

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

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

15 (b) The juvenile court may, by order, change the custody, support, and visitation rights
16 previously ordered in the district court as necessary to implement the order of the juvenile court
17 for the safety and welfare of the minor. The juvenile court order remains in effect so long as the
18 jurisdiction of the juvenile court continues.

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

22 Section 25. Section **78-3a-116** is amended to read:

23 **78-3a-116. Hearings -- Record -- County attorney or district attorney responsibilities**
24 **-- Attorney general responsibilities -- Admissibility of evidence.**

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

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

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

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

4 (ii) petitions for termination of parental rights.

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

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

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

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

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

1 Section 26. Section **78-3a-118** is amended to read:

2 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
3 **Enumeration of possible court orders -- Considerations of court.**

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

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

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

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

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

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

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

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

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

30 (c) (i) The court may vest legal custody of the minor in the Division of Child and Family
31 Services, Division of Youth Corrections, or the Division of Mental Health, and may order the

1 Department of Human Services to provide dispositional recommendations and services.

2 (ii) Minors who are committed to the custody of the Division of Child and Family Services
3 on grounds other than abuse or neglect are subject to the provisions of Part 3A and Title 62A,
4 Chapter 4a, Part 2A. ~~§ [At least five days prior] PRIOR § to making a recommendation that the~~
4a ~~court place a~~
5 ~~minor in the custody of the Division of Child and Family Services on grounds other than abuse~~
6 ~~or neglect, the probation department shall provide the division with § ADEQUATE § notice § [of~~
6a ~~that recommendation] FOR THE DIVISION TO ATTEND THE HEARING § .~~

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

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

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

15 (f) (i) The court may commit the minor to a place of detention or an alternative to
16 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction
17 over the minor.

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

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

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

30 (i) The court may order that the minor be required to repair, replace, or otherwise make
31 restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as

1 stated in Section 78-3a-318, and may impose fines in limited amounts.

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

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

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

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

17 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
18 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
19 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
20 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no
21 more than 100 hours, of community service. Satisfactory completion of an approved substance
22 abuse prevention or treatment program may be credited by the court as community service hours.

23 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
24 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
25 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
26 minor perform a minimum of 20 hours, but no more than 100 hours of community service, in
27 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
28 abuse prevention or treatment program may be credited by the court as community service hours.

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

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

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

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

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

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

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

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

15 (ii) A minor whose parents or guardians successfully complete a family or other
16 counseling program may be credited by the court for detention, confinement, or probation time.

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

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

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

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

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

3 (v) Before depriving any parent of custody, the court shall give due consideration to the
4 rights of parents concerning their minors. The court may transfer custody of a minor to another
5 person, agency, or institution in accordance with the requirements and procedures of Part 3, Abuse,
6 Neglect, and Dependency Proceedings.

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

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

12 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with
13 a relative or individual of a minor where the court has previously acquired jurisdiction as a result
14 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection
15 78-3a-105(4).

16 (ii) Such orders remain in effect until the minor reaches majority and are not subject to
17 review under Section 78-3a-119, but may be modified by petition or motion as provided in Section
18 78-3a-903.

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

22 Section 27. Section **78-3a-301** is amended to read:

23 **78-3a-301. Removing a child from his home -- Grounds for removal.**

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

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

31 (b) the minor is suffering emotional damage, as may be indicated by, but not limited to,

1 extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,
2 and there are no reasonable means available by which the minor's emotional health may be
3 protected without removing the minor from the custody of his parent;

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

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

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

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

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

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

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

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

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

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

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

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

30a ~~h [h (3) THE DIVISION OF CHILD AND FAMILY SERVICES MAY NOT REMOVE A MINOR~~
30b ~~FROM THE CUSTODY OF A VICTIM OF DOMESTIC VIOLENCE BASED SOLELY ON~~
30c ~~"COMMISSION OF DOMESTIC VIOLENCE IN THE PRESENCE OF A CHILD", AS DEFINED~~
30d ~~IN SECTION 78-3a-103, UNLESS:~~
30e ~~—— (a) THE VICTIM OF DOMESTIC VIOLENCE IS UNABLE OR UNWILLING TO PROTECT~~
30f ~~THE CHILD, OR EXHIBITS FAILURE TO PROTECT THE CHILD; OR~~
30g ~~—— (b) THERE IS SUBSTANTIAL CAUSE TO BELIEVE THAT ANY OF THE CIRCUMSTANCES~~
30h ~~DESCRIBED IN SUBSECTION (1) ALSO EXIST. h] h~~

31 (3) (a) A minor removed from the custody of his natural parent under this section may not

1 be placed or kept in a secure detention facility pending court proceedings unless the minor is
2 detainable based on guidelines promulgated by the Division of Youth Corrections.

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

5 Section 28. Section **78-3a-305** is amended to read:

6 **78-3a-305. Petition filed -- Protective orders.**

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

9 (2) Any interested person may file a petition seeking a protective order on behalf of a
10 minor who is alleged to be an abused child or a neglected child, except as provided in Sections
11 78-3a-104 and 78-3a-105.

12 [~~2~~] (3) If the child who is the subject of a petition was removed from his home by the
13 Division of Child and Family Services that petition shall be filed on or before the date of the initial
14 shelter hearing described in Section 78-3a-306.

15 [~~3~~] (4) The petition shall be verified, and contain all of the following:

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

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

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

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

24 Section 29. Section **78-3a-305.1** is enacted to read:

25 **78-3a-305.1. Presumption of Responsibility.**

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

29 Section 30. Section **78-3a-306** is amended to read:

30 **78-3a-306. Shelter hearing.**

31 (1) [A] With regard to a child who has been removed by the Division of Child and Family

1 Services, or who is in the protective custody of the division, a shelter hearing shall be held within
2 72 hours after removal of [a] the child from his home, excluding weekends and holidays.

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

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

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

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

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

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

14 (f) a statement that the parent or guardian is liable for the cost of support of the minor in
15 the protective custody, temporary custody, and custody of the division, and the cost for legal
16 counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial
17 ability.

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

20 (a) the appropriate guardian ad litem; and

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

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

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

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

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

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

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

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

31 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent

1 or guardian, if present, and any other person having relevant knowledge, to provide relevant
2 testimony. The court may also provide an opportunity for the minor to testify.

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

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

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

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

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

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

15 (e) whether the child has any relatives who may be able and willing to take temporary
16 custody.

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

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

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

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

31 (c) the minor or another minor residing in the same household has been physically or

1 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
2 a parent, a member of the parent's household, or other person known to the parent. If a parent has
3 received actual notice that physical or sexual abuse by a person known to the parent has occurred,
4 and there is evidence that the parent has allowed the child to be in the physical presence of the
5 alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of
6 being physically or sexually abused;

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

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

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

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

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

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

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

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

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

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

30 (b) In making that determination, and in ordering and providing services, the child's health,
31 safety, and welfare shall be the paramount concern, in accordance with federal law.

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

5 (11) In cases where ~~§ [obvious]~~ ACTUAL § sexual abuse or abandonment, or serious physical
 5a abuse or
 6 neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
 7 or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide
 8 reunification services, or attempt to rehabilitate the offending parent or parents. [~~The court may,~~
 9 ~~however, determine that those services or efforts would be reasonable in specific circumstances,~~
 10 ~~and order the division to provide those services.~~]

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

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

15 (b) If no continued removal is ordered and the minor is returned home, the court shall state
 16 the facts on which that decision is based.

17 (14) If the court finds that continued removal and temporary custody is necessary for the
 18 protection of a child because harm may result to the child if he were returned home, it shall order
 19 continued removal regardless of any error in the initial removal of the child, or the failure of a
 20 party to comply with notice provisions, or any other procedural requirement of this chapter or Title
 21 62A, Chapter 4a, Family Services.

22 Section 31. Section ~~78-3a-307~~ is amended to read:

23 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
 24 **DCFS custody.**

25 (1) (a) At the shelter hearing, when the court orders that a child be removed from the
 26 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
 27 first determine whether ~~§ [†] §~~ there is ~~§ [†] reasonable efforts have been made to identify or locate and~~
 28 provide notice to § another natural parent as defined in Subsection (b), with whom the child was not
 29 residing at the time the events or conditions that brought him within the court's jurisdiction
 30 occurred, who desires to assume custody of the child. If that parent requests custody, the court
 31 shall place the minor with that parent unless it finds that the placement would be unsafe or

1 otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the
2 provisions of Subsection (8)(b).

3 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
4 "natural parent" includes only a biological or adoptive [~~parent whose consent for adoption would~~
5 ~~be required pursuant to Section 78-30-4.14]~~ mother, § [or a biological or adoptive father who was]
5a **AN ADOPTIVE FATHER, OR A BIOLOGICAL FATHER WHO WAS** §
6 married to the child's biological mother at the time the child was conceived or born, or who has
7 strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or
8 voluntary surrender of the child by the custodial parent. This definition applies regardless of
9 whether the child has been or will be placed with adoptive parents or whether adoption has been
10 or will be considered as a long term goal for the child.

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

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

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

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

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

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

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

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

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

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

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

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

8 (5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his
9 parent and is not placed in the custody of his other parent, the court shall, at that time, § attempt to §
10 determine whether there is a relative who is able and willing to care for the child. The court may
11 order the Division of Child and Family Services to conduct a reasonable search to determine
12 whether there are relatives of the child who are willing and appropriate, in accordance with the
13 requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement
14 of the child. The child may be placed in the temporary custody of the division pending that
15 determination. This section may not be construed as a guarantee that an identified relative will
16 receive custody of the child. However, preferential consideration may be given to a relative's
17 request for placement of the child, if it is in the best interest of the child, and the provisions of this
18 section are satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 [(7) (a) ~~When the court vests custody of a child with a relative pursuant to Subsection (5),~~
29 ~~the child is not within the temporary custody or custody of the Division of Child and Family~~
30 ~~Services. The child and any relative with whom the child is placed, are under the continuing~~
31 ~~jurisdiction of the court. The court may enter any order that it considers necessary for the~~

1 protection and best interest of the child.]

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

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

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

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

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

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

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

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

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

28 Section 32. Section **78-3a-311** is amended to read:

29 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

30 (1) The court may make any of the dispositions described in Section 78-3a-118, place the
31 child in the custody or guardianship of any individual or public or private entity or agency, order

1 protective supervision, family preservation, medical or mental health treatment, or other services.

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

11 (b) If the court determines that reunification services are appropriate, [however,] it shall
12 order that the division make reasonable efforts to provide services to the minor and his parent for
13 the purpose of facilitating reunification of the family, for a specified period of time. [That] In
14 providing those services, the child's health, safety, and welfare shall be the division's paramount
15 concern, and the court shall so order. The time period for reunification services may not exceed
16 12 months from the date that the child was initially removed from his home. Nothing in this
17 section may be construed to entitle any parent to an entire 12 months of reunification services. If
18 reunification services have been ordered, the court may terminate those services at any time. If,
19 at any time, continuation of reasonable efforts to reunify a child is determined to be inconsistent
20 with the permanency plan for the child, then measures shall be taken, in a timely manner, to place
21 the child in accordance with the permanency plan, and to complete whatever steps are necessary
22 to finalize the permanent placement of the child.

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

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

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

31 [(d)] (e) With regard to a child who is two years of age or younger at the time the court

1 orders reunification services, the court shall order the discontinuance of those services after six
2 months if the parent or parents have not made substantial efforts to comply with the treatment plan.
3 The burden is upon the parents, and the division if it supports continued reunification services, to
4 show that the parents have made substantial efforts to comply with the plan during the first six
5 months of reunification services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable services
25 unless it determines that those services would be detrimental to the minor. In determining
26 detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
27 length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of
28 detriment to the child if services are not offered and, for minors ten years of age or older, the
29 minor's attitude toward the implementation of family reunification services, and any other
30 appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month
31 limitation imposed in Subsection (2). Reunification services for an institutionalized parent are

1 subject to the 12-month limitation imposed in Subsection (2), unless the court determines that
2 continued reunification services would be in the child's best interest.

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

6 Section 33. Section **78-3a-312** is amended to read:

7 **78-3a-312. Permanency hearing -- Final plan -- Petition for termination of parental**
8 **rights filed -- Hearing on termination of parental rights.**

9 (1) [A] (a) When reunification services have been ordered in accordance with Section
10 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family
11 Services, a permanency hearing shall be held by the court no later than 12 months after the original
12 removal of the child.

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

15 (2) (a) If reunification services were ordered by the court in accordance with Section
16 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be
17 returned to the custody of his parent. If the court finds, by a preponderance of the evidence, that
18 return of the child would create a substantial risk of detriment to the child's physical or emotional
19 well-being, the child may not be returned to the custody of his parent. The failure of a parent or
20 guardian to participate in, comply with, in whole or in part, or to meet the goals of a court
21 approved treatment plan constitutes prima facie evidence that return of the child to that parent
22 would create a substantial risk of detriment.

23 (b) In making a determination under this [section] Subsection (2), the court shall review
24 the report prepared by the Division of Child and Family Services, a report prepared by the child's
25 guardian ad litem, any report prepared by a foster care citizen review board pursuant to Section
26 78-3g-103, any evidence regarding the efforts or progress demonstrated by the parent, and the
27 extent to which the parent cooperated and availed himself of services provided.

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

30 (3) (a) [Hf] With regard to a case where reunification services were ordered by the court,
31 if a child is not returned to his parent or guardian at the permanency hearing, the court shall order

1 termination of reunification services to the parent, and make a final determination regarding
 2 whether termination of parental rights, adoption, guardianship, or long-term foster care is the most
 3 appropriate final plan for the child. If the child clearly desires contact with the parent, the court
 4 shall take the child's desire into consideration in determining the final plan. The court may not
 5 extend reunification services beyond 12 months from the date the child was initially removed from
 6 his home, in accordance with the provisions of Section 78-3a-311 § , EXCEPT THAT THE COURT MAY
 6a EXTEND REUNIFICATION SERVICES FOR NO MORE THAN 90 DAYS IF IT FINDS THAT THERE HAS BEEN
 6b SUBSTANTIAL COMPLIANCE WITH THE TREATMENT PLAN, THAT REUNIFICATION IS PROBABLE WITHIN
 6c THAT 90 DAY PERIOD, AND THAT THE EXTENSION IS IN THE BEST INTEREST OF THE CHILD. IN NO
 6d EVENT MAY ANY REUNIFICATION SERVICES EXTEND BEYOND 15 MONTHS FROM THE DATE THE CHILD
 6e WAS INITIALLY REMOVED FROM HIS HOME § . Delay or failure of a parent to
 7 establish paternity or seek custody does not provide a basis for the court to extend services for that
 8 parent beyond that 12 month period.

9 (b) The court may, in its discretion, enter any [other] additional order that it determines
 10 to be in the best interest of the child, so long as that order does not conflict with the requirements
 11 and provisions of Subsection (a). The court may order the division to provide protective
 12 supervision or other services to a child and the child's family after the division's custody of a child
 13 has been terminated.

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

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

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

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

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

26 (c) limit or prohibit the filing of a petition for termination of parental rights by any party,
 27 or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a

28 petition for termination of parental rights is filed prior to the date scheduled for a permanency
29 hearing, the court may schedule the hearing on termination of parental rights in lieu of the
30 permanency hearing; combine the permanency hearing and the hearing on termination of parental
31 rights; or schedule the hearings separately. If the court schedules the hearing on termination of

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1 parental rights in lieu of the permanency hearing, any reunification services shall be terminated
 2 in accordance with the time lines described in Section 78-3a-311, a decision on the petition for
 3 termination of parental rights shall be made within 18 months from the date of the child's removal.

4 Section 34. Section **78-3a-313.5** is enacted to read:

5 **78-3a-313.5. Mandatory petition for termination of parental rights.**

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

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

10 (b) have failed to maintain physical custody, and have failed to exhibit the normal interest
 11 of a natural parent without just cause; § OR §

12 (c) are unwilling to have physical custody of the child § [;or] .

13 ~~[(d) have left the child without proper parental care, by reason of the fault or habits of the~~
 14 ~~parent.] §~~

15 (2) Except as provided in Subsection (3), notwithstanding any other provision of this
 16 chapter or of Title 62A, Chapter 4a, the division shall file a petition for termination of parental
 17 rights with regard to:

18 (a) an abandoned infant; or

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

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

21 (ii) committed § [voluntary] § manslaughter of another child of that parent;

22 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
 23 homicide, or § [voluntary] § manslaughter against another child of that parent; or

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

26 (3) The division is not required to file a petition for termination of parental rights under
 27 Subsection (2) if:

28 (a) the child is being cared for by a relative;

29 (b) the division has:

30 (i) documented in the child's treatment plan a compelling reason for determining that filing
 31 a petition for termination of parental rights is not in the child's best interest; and

1 (ii) made that treatment plan available to the court for its review; or

2 (c) (i) the court has previously determined, in accordance with the provisions and
3 limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable efforts
4 to reunify the child with his parent or parents were required; and

5 (ii) the division has not provided, within the time period specified in the treatment plan,
6 services that had been determined to be necessary for the safe return of the child.

7 Section 35. Section **78-3a-314** is amended to read:

8 **78-3a-314. All proceedings -- Persons entitled to be present.**

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

14 (2) Because the [minor's] child's foster parents have the right to notice, pursuant to Section
15 78-3a-309, they have the right to be present at each and every hearing held under this part
16 including administrative and citizen reviews, and are entitled to an opportunity to be heard.

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

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

22 (b) When it appears to the court that a parent or guardian of the [minor] child desires
23 counsel but is financially unable to afford and cannot for that reason employ counsel, and the
24 [minor] child has been placed in out-of-home care, or the petitioner is recommending that the
25 [minor] child be placed in out-of-home care, the court shall appoint counsel.

26 (5) In every abuse, neglect, or dependency proceeding under this chapter, the court shall
27 order that the [minor] child be represented by a guardian ad litem, in accordance with Section
28 78-3a-912. The guardian ad litem shall represent the best interest of the child, in accordance with
29 the requirements of that section, at the shelter hearing and at all subsequent court and
30 administrative proceedings, including any proceeding for termination of parental rights in
31 accordance with Part 4, Termination of Parental Rights Act.

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

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

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

10 Section 36. Section **78-3a-315** is amended to read:

11 **78-3a-315. Review of foster care removal -- Foster parent's standing.**

12 (1) With regard to a child in the custody of the Division of Child and Family Services who
13 is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed in
14 foster care with a foster family, the Legislature finds that:

15 (a) except with regard to the child's natural parents, a foster family has a very limited but
16 recognized interest in its familial relationship with the child; and

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

20 (2) For the reasons described in Subsection (1), the Legislature finds that, except with
21 regard to the child's natural parents, procedural due process protections must be provided to a
22 foster family prior to removal of a foster child from their home.

23 (3) (a) A foster parent who has had a foster child in his custody for 12 months or longer
24 may petition the juvenile court for a review and determination of the appropriateness of a decision
25 by the Division of Child and Family Services to remove the child from his home, unless the
26 removal was for the purpose of returning the child to his natural parent, or for the immediate
27 placement of the child in an approved adoptive home.

28 (b) The foster parent may petition the court under this section without exhausting
29 administrative remedies within the division.

30 (c) The court may order the division to place the child in a specified home, and shall base
31 its determination on the best interest of the child.

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

3 Section 37. Section **78-3a-350** is amended to read:

4 **78-3a-350. Separate procedures for minors committed to the Division of Child and**
5 **Family Services on grounds other than abuse or neglect -- Attorney general responsibility.**

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

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

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

16 (4) As of July 1, 1998, the attorney general's office shall represent the Division of Child
17 and Family Services with regard to actions involving minors who have not been adjudicated as
18 abused or neglected, but who are otherwise committed to the custody of the division by the
19 juvenile court, and who are classified in the division's management information system as having
20 been placed in custody primarily on the bases of delinquent behavior or a status offense. Nothing
21 in this Subsection (4) may be construed to affect the responsibility of the county attorney or district
22 attorney to represent the state in those matters, in accordance with the provisions of Section
23 78-3a-116.

24 Section 38. Section **78-3a-408** is amended to read:

25 **78-3a-408. Evidence of grounds for termination.**

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

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

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

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

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

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

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

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

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

14 (d) repeated or continuous failure to provide the child with adequate food, clothing,
15 shelter, education, or other care necessary for his physical, mental, and emotional health and
16 development by a parent or parents who are capable of providing that care. However, a parent
17 who, legitimately practicing his religious beliefs, does not provide specified medical treatment for
18 a child is not for that reason alone a negligent or unfit parent;

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

22 (f) a history of violent behavior.

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

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

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

30 (b) conviction of a [felony] crime, if the facts [of] surrounding the crime are of such a
31 nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for

1 the child's physical, mental, or emotional health and development; [or]

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

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

6 Section 39. Section **78-3a-903** is amended to read:

7 **78-3a-903. Modification or termination of custody order or decree -- Grounds --**
8 **Procedure.**

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

14 (2) The court shall make a preliminary investigation. If the court finds that the alleged
15 change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If the
16 court finds that a further examination of the facts is needed, or if the court on its own motion
17 determines that the decree should be reviewed, it shall conduct a hearing. Notice shall be given
18 to all persons concerned. At the hearing, the court may enter an order continuing, modifying, or
19 terminating the decree.

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

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

26 Section 40. Section **78-3g-103** is amended to read:

27 **78-3g-103. Foster care citizen review boards -- Membership -- Responsibilities --**
28 **Periodic reviews.**

29 (1) Foster care citizen review boards shall be established in the First, Second, Third, and
30 Fourth Juvenile Court Districts, to act as the panels described in 42 U.S.C. Sections 675(5) and
31 (6), which are required to conduct periodic reviews unless court reviews are conducted. At least

1 one review board shall be established in the Fifth Juvenile Court District and at least one review
2 board shall be established in the Seventh Juvenile Court District.

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

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

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

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

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

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

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

16 (4) (a) In districts or areas where foster care citizen review boards have been established,
17 periodic reviews either by the court or by a foster care citizen review board, shall be conducted
18 with regard to each child in the division's custody no less frequently than once every six months,
19 in accordance with Section 78-3a-313 and 42 U.S.C. Sections 675(5) and (6). In cases where the
20 court has conducted a six month review hearing, a foster care citizen review board shall also
21 conduct a review within 12 months from the date of the child's removal from his home.

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

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

29 (5) Each board shall prepare a dispositional report regarding the child's case and plan. The
30 periodic review and the dispositional report shall be consistent with the provisions of Title 62A,
31 Chapter 4a, Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency

1 Proceedings, and shall include at least the following considerations:

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

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

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

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

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

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

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

15 (h) a determination regarding whether the statutory time limitations described in Title 78,
16 Chapter 3a, Part 3, have been met, specifically, whether the 12 month limitation on reunification
17 services required by Section 78-3a-311 has been complied with. The board shall also render an
18 opinion regarding when it estimates that the child will achieve permanency.

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

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

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

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

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

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

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

6 Section 41. Section **78-45a-5** is amended to read:

7 **78-45a-5. Remedies.**

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

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

16 (2) (a) The obligee may enforce his right of support against the obligor and the state may
17 proceed on behalf of the obligee or in its own behalf, pursuant to the provisions of Title 62A,
18 Chapter 11, Recovery Services, to enforce that right of support against the obligor.

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

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

25 (3) Upon motion by a party, the district court shall issue a temporary order in a paternity
26 action to require the payment of child support pending a determination of paternity if there is clear
27 and convincing evidence of paternity in the form of genetic test results under Section 78-45a-7 or
28 78-45a-10, or other evidence.

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

31 (5) Rule 55, Default Judgment, Utah Rules of Civil Procedure, applies to paternity actions

1 commenced under this chapter.

2 Section 42. **Uncodified Section 42, Chapter 329, Laws Of Utah 1997** is amended to
3 read:

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

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

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

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

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

17 (c) require continual supervision and intensive therapeutic intervention, but not secure
18 confinement; and

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

21 (2) The pilot program shall provide intensive services and interventions that include, but
22 are not limited to:

23 (a) electronically monitored home detention;

24 (b) psychological assessment provided by or supervised by licensed mental health
25 professionals;

26 (c) individual, family, and group psychotherapy conducted by or supervised by licensed
27 mental health professionals;

28 (d) skills training, including problem solving and conflict resolution skills, parenting and
29 discipline skills, and communication skills;

30 (e) academic assessment and intervention;

31 (f) academic placement, and individual tutoring or alterative education programs when

1 appropriate; and

2 (g) aftercare.

3 (3) The juvenile court shall maintain continuing jurisdiction over minors who are receiving
4 services in accordance with the pilot program described in this section.

5 (4) The court shall order the parent or guardian of the minor to:

6 (a) complete an assessment to determine appropriate treatment interventions;

7 (b) participate in training on problem solving skills, implementation of consequences for
8 inappropriate behavior, and rewarding appropriate behavior; and

9 (c) pay the appropriate division for all or part of the costs associated with the child's
10 involvement in the pilot program in accordance with their ability to pay.

11 (5) The juvenile court may issue any order that it deems appropriate to support a family's
12 successful completion of the pilot program.

13 (6) Payments received by the division under Subsection (3) shall be deposited in the
14 General Fund.

15 (7) In accordance with the provisions of Title 63, Chapter 56, Utah Procurement Code, the
16 division shall:

17 (a) contract for the provision of services necessary to implement the pilot program; and

18 (b) contract for an independent evaluation of the effectiveness of the pilot program.

19 (8) The pilot program is authorized from July 1, [1997] 1998 to June 30, [1998] 1999.

20 [~~9) There is appropriated from the General Fund, for fiscal year 1997-1998, \$320,000 to
21 the Division of Child and Family Services within the Department of Human Services solely for
22 the purpose of implementing the Early Intervention for Juveniles Pilot Program described in this
23 section.]~~

24 **Section 43. 1998 Responsibilities of the Child Welfare Legislative Oversight Panel**

25 (1) During the 1998 interim, the Child Welfare Legislative Oversight Panel established
26 pursuant to Section 62A-4a-207, shall, in addition to any other issues or items the panel determines
27 to be relevant, study and review the issue of whether the child protection ombudsman should
28 continue to be placed within the Department of Human Services, or whether it should be placed
29 outside of that department. The panel shall attempt to determine whether the actions and
30 responsibilities of the ombudsman may be carried out in an objective, unbiased manner, and
31 whether there is an actual or perceived conflict of interest based on an internal, self review.

1 (2) During the 1998 interim, the Child Welfare Legislative Oversight Panel shall also
2 study and review the issues relating to substantiation of child abuse or neglect based on the child's
3 statement alone.

4 (3) The reviews described in this section shall be carried out with all of the authority
5 granted to the Child Welfare Oversight Panel pursuant to Section 62A-4a-207, and in accordance
6 with the procedures described in that section.

7 Section 44. **Effective date.**

8 This act takes effect on July 1, 1998.