

1 **CHILD PROTECTION AND FOSTER CARE**

2 **AMENDMENTS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David H. Steele**

6 AN ACT RELATING TO CHILD ABUSE AND NEGLECT AND THE DIVISION OF CHILD
7 AND FAMILY SERVICES; REQUIRING THAT DIVISION POLICY AND TRAINING
8 REGARDING CHILD PROTECTION AND RELATIVE PREFERENCE REFLECT CURRENT
9 AND ESTABLISHED STATE AND FEDERAL LAW; PROVIDING FOR STREAMLINING,
10 FACILITATION, AND EXPEDITION OF FOSTER AND ADOPTIVE PARENT APPLICATION
11 AND TRAINING; AMENDING MANDATORY PETITION FOR TERMINATION
12 PROVISIONS BASED ON NEW FEDERAL REQUIREMENTS; REQUIRING THE OFFICE
13 OF CHILD PROTECTION OMBUDSMAN TO REPORT TO ADDITIONAL AUTHORITIES;
14 AND PROVIDING THAT CONVICTION OF SPECIFIED DRUG OFFENSES IS GROUNDS
15 FOR REMOVAL AND CONTINUED REMOVAL OF CHILDREN.

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

17 AMENDS:

18 **62A-4a-103**, as last amended by Chapter 318, Laws of Utah 1996

19 **62A-4a-104**, as renumbered and amended by Chapter 260, Laws of Utah 1994

20 **62A-4a-105.5**, as enacted by Chapter 260, Laws of Utah 1994

21 **62A-4a-107**, as enacted by Chapter 260, Laws of Utah 1994

22 **62A-4a-203.5**, as enacted by Chapter 274, Laws of Utah 1998

23 **62A-4a-208**, as enacted by Chapter 274, Laws of Utah 1998

24 **78-3a-301**, as last amended by Chapter 274, Laws of Utah 1998

25 **78-3a-306**, as last amended by Chapters 13 and 274, Laws of Utah 1998

26 **78-3a-307**, as last amended by Chapter 274, Laws of Utah 1998

27 **78-3a-313.5**, as enacted by Chapter 274, Laws of Utah 1998

28 ENACTS:

29 **62A-4a-107.1**, Utah Code Annotated 1953

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

31 Section 1. Section **62A-4a-103** is amended to read:

32 **62A-4a-103. Division -- Creation -- Purpose.**

33 (1) There is created the Division of Child and Family Services within the department,
34 under the administration and general supervision of the executive director, and under the policy
35 direction of the board. The division is the child, youth, and family services authority of the state
36 and has all functions, powers, duties, rights, and responsibilities created in accordance with this
37 chapter, except those assumed by the board and the department.

38 (2) (a) The primary purpose of the division is to [~~provide child welfare services~~] protect
39 children from abuse and neglect.

40 (b) [~~The division shall, when~~] When possible and appropriate, the division shall provide
41 initial preventive [~~services~~] and family preservation services in an effort to protect the child from
42 the trauma of separation from his [~~family~~] parents, protect the integrity of [~~the~~] that specific family
43 unit, and the constitutional rights of parents. In keeping with its ultimate goal and purpose of
44 protecting children, however, when a child's welfare is endangered or reasonable efforts to
45 maintain or reunify a child with his [~~family~~] parents, from whom he has been removed, have failed,
46 the division shall act in a timely fashion to provide protection, permanency, and stability, in
47 accordance with the requirements of this chapter and Title 78, Chapter 3a, Part 3[, ~~to provide the~~
48 ~~child with a stable, permanent environment~~], Abuse, Neglect, and Dependency Proceedings.

49 (3) Further purposes of the division are:

50 (a) to provide domestic violence services in accordance with federal law; and

51 (b) to provide youth services for minors who are dependent, ungovernable, or runaway,
52 in accordance with Sections 62A-4a-105 and 62A-4a-106.

53 (4) The board and the division shall establish and enforce policies that are consistent with:

54 (a) the primary purpose of protecting children from abuse and neglect; and

55 (b) the requirements of providing permanency and stability for children, pursuant to the
56 provisions of this title, Title 78, Chapter 3a, Juvenile Court Act of 1996, and federal law.

57 Section 2. Section **62A-4a-104** is amended to read:

58 **62A-4a-104. Director of division -- Qualifications.**

59 (1) The director of the division shall be appointed by the executive director with the
60 concurrence of the board.

61 (2) The director shall have a bachelor's degree from an accredited university or college,
62 be experienced in administration, and be knowledgeable in the areas of child and family services,
63 including child protective services, family preservation, and foster care.

64 (3) The director is the administrative head of the division, and shall ensure that division
65 policy and practice models are consistent with:

66 (a) the primary purpose of protecting children from abuse and neglect; and

67 (b) legislative policy and the requirements of providing permanency and stability for
68 children, pursuant to the provisions of this title, Title 78, Chapter 3a, Juvenile Court Act of 1996,
69 and federal law.

70 Section 3. Section **62A-4a-105.5** is amended to read:

71 **62A-4a-105.5. Employees -- Failure to comply with policy -- Termination.**

72 (1) (a) The director shall ensure that all employees are fully trained to comply with state
73 and federal law, administrative rules, and division policy in order to effectively carry out their
74 assigned duties and functions.

75 (b) The director shall specifically ensure that all employees are trained that their primary
76 purpose is the protection of children from abuse and neglect, and that the goal of the division is
77 to provide permanency and stability for children who have been abused or neglected.

78 (2) If, after training and supervision, the employee consistently fails to comply with those
79 laws, rules, and policies, his employment with the division shall be terminated.

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

81 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
82 **curriculum.**

83 (1) There is created within the division a full-time position of Child Welfare Training
84 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee
85 in that position shall not be responsible for direct casework services or the supervision of those
86 services, but shall:

87 (a) develop child welfare curriculum that is current and effective, consistent with the
88 division's mission and purpose for child welfare, specifically and primarily the protection of
89 children from abuse and neglect, and the provision of permanency and stability for children who

90 have been abused or neglected;

91 (b) recruit, select, and supervise child welfare trainers in accordance with the purpose
92 described in Subsection (1)(a);

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

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

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

98 (f) monitor staff compliance with:

99 (i) division training requirements, specifically focusing on the primary requirement of
100 providing protection and permanency for children who are abused or neglected; and

101 (ii) individual training plans;

102 (g) expand the collaboration between the division and schools of social work within
103 institutions of higher education in developing child welfare services curriculum, and in providing
104 and evaluating training; and

105 (h) report annually to the board and the Legislature on training activities, compliance with
106 the requirements of this section, the training plan, and achievement of individual training goals.

107 (2) (a) The director shall, with the assistance of the child welfare training coordinator,
108 establish a core curriculum for child welfare services that is [~~substantially equivalent to the Child~~
109 ~~Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum]~~
110 consistent with the provisions of this title, Title 78, Chapter 3a, Juvenile Court Act of 1996,
111 legislative and division policy, and federal law.

112 (b) Any child welfare worker who is employed by the division for the first time after April
113 1, 1995, shall, before assuming significant independent casework responsibilities, and in no case
114 later than six months after initial employment, successfully complete the core curriculum.

115 Section 5. Section **62A-4a-107.1** is enacted to read:

116 **62A-4a-107.1. Foster and adoptive parent application and training process -- Division**
117 **responsibilities.**

118 (1) Based on the division's goal of protecting children, providing safe and stable care for
119 abused and neglected children, and providing real and effective permanency for children who the
120 court determines may not quickly return to the parents from whom they were removed, the division

121 shall streamline and facilitate the application and training process of potential foster and adoptive
122 parents.

123 (2) Each region of the division shall establish a process whereby any potential foster or
124 adoptive parent who resides within that region may obtain all necessary forms, information
125 regarding required training, and training schedules, both electronically, and in person at one
126 geographical location. Each regional office shall ensure that an applicant may comply with all
127 requirements either electronically or at the same physical location. The regional offices of the
128 division shall cooperate with local law enforcement to facilitate any fingerprinting requirements,
129 in order to comply with the provisions of this section.

130 (3) The division and its employees shall expedite and facilitate the processes for
131 application and training of potential foster and adoptive parents. As of May 3, 1999, the effective
132 date of this act, the division is charged with modifying and streamlining existing duplicative and
133 overly burdensome procedures for application, training, and qualification of foster and adoptive
134 parents. On or before December 1, 1999, the division shall provide written evidence of changes
135 consistent with the requirements of this section to the Child Welfare Legislative Oversight Panel
136 and to the Office of Legislative Research and General Counsel.

137 (4) The division may not discriminate against a potential or actual foster or adoptive parent
138 because that parent expresses an interest in a particular child who is in the custody of the division.
139 The division shall facilitate the placement of children who are freed for adoption, or who have a
140 permanency goal of adoption, with qualified adoptive parents who express an interest in that
141 particular child.

142 Section 6. Section **62A-4a-203.5** is amended to read:

143 **62A-4a-203.5. Mandatory petition for termination of parental rights.**

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

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

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

150 (c) are unwilling to have physical custody of the child.

151 (2) Except as provided in Subsection (3), notwithstanding any other provision of this

152 chapter or of Title 78, Chapter 3a, Juvenile Court Act of 1996, the division shall file a petition for
153 termination of parental rights with regard to:

- 154 (a) an abandoned infant; [or]
- 155 (b) a child who has been in the custody of the division for 15 of the most recent 22 months;

156 or

157 [~~(b)~~] (c) a parent, whenever a court has determined that the parent has:

- 158 (i) committed murder or child abuse homicide of another child of that parent;
- 159 (ii) committed manslaughter of another child of that parent;
- 160 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
- 161 homicide, or manslaughter against another child of that parent; or
- 162 (iv) committed a felony assault or abuse that has resulted in serious physical injury to
- 163 another child of that parent, or to the other parent of that child.

164 (3) If any party other than the division files a petition for termination of parental rights
165 based on any of the grounds described in Subsection (2), the division shall seek to be joined as a
166 party to that petition.

167 [~~(3)~~] (4) The division is not required to file a petition for termination of parental rights
168 under Subsection (2), or seek to be joined in a petition filed by another party pursuant to
169 Subsection (3), if:

- 170 (a) the child is being cared for by a relative;
- 171 (b) the division has:
 - 172 (i) documented in the child's treatment plan a compelling reason for determining that filing
 - 173 a petition for termination of parental rights is not in the child's best interest; and
 - 174 (ii) made that treatment plan available to the court for its review; or
- 175 (c) (i) the court has previously determined, in accordance with the provisions and
- 176 limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable efforts
- 177 to reunify the child with his parent or parents were required; and
- 178 (ii) the division has not provided, within the time period specified in the treatment plan,
- 179 services that had been determined to be necessary for the safe return of the child.

180 Section 7. Section **62A-4a-208** is amended to read:

181 **62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**

182 (1) As used in this section:

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

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

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

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

188 (b) The ombudsman shall be:

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

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

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

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

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

198 (i) is contrary to statute, rule, or policy;

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

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

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

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

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

206 (4) The ombudsman shall:

207 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make
208 rules that govern the following:

209 (i) receiving and processing complaints;

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

212 (iii) prioritizing workload;

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

- 214 (v) conducting investigations;
- 215 (vi) notifying complainants and the division regarding the results of investigations; and
- 216 (vii) making recommendations based on the findings and results of recommendations;
- 217 (b) report findings and recommendations in writing to the complainant [~~and~~], the division,
- 218 [~~in accordance with the provisions of~~] the executive director, and other persons or entities as
- 219 required by this section;
- 220 (c) within appropriations from the Legislature, employ staff as may be necessary to carry
- 221 out the ombudsman's duties under this part;
- 222 (d) provide information regarding the role, duties, and functions of the ombudsman to
- 223 public agencies, private entities, and individuals;
- 224 (e) annually report to the:
- 225 (i) Child Welfare Legislative Oversight Panel;
- 226 (ii) governor;
- 227 (iii) Board of Child and Family Services;
- 228 (iv) executive director of the department; and
- 229 (v) director of the division; and
- 230 (f) as appropriate, make recommendations to the division regarding individual cases, and
- 231 the rules, policies, and operations of the division.
- 232 (5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify
- 233 the complainant [~~and~~], the division, the executive director, and the guardian ad litem director
- 234 appointed pursuant to Section 78-3a-911, of that decision.
- 235 (b) The ombudsman may advise a complainant to pursue all administrative remedies or
- 236 channels of complaint before pursuing a complaint with the ombudsman. Subsequent to
- 237 processing a complaint, the ombudsman may conduct further investigations upon the request of
- 238 the complainant or upon the ombudsman's own initiative. Nothing in this Subsection (5) precludes
- 239 a complainant from making a complaint directly to the ombudsman before pursuing an
- 240 administrative remedy.
- 241 (c) If the ombudsman finds that an individual's act or omission violates state or federal
- 242 criminal law, the ombudsman shall immediately report that finding to the appropriate county or
- 243 district attorney or [~~to~~] the attorney general, to the assigned worker within the division, the
- 244 executive director, and to the guardian ad litem director.

245 (d) The ombudsman shall immediately notify the division, the executive director, and the
246 guardian ad litem director if the ombudsman finds that a child needs protective custody, as that
247 term is defined in Section 78-3a-103.

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

250 (6) (a) All records of the ombudsman regarding individual cases shall be classified in
251 accordance with federal law and the provisions of Title 63, Chapter 2, Government Records
252 Access and Management Act. The ombudsman may make public a report prepared pursuant to this
253 section in accordance with the provisions of Title 63, Chapter 2, Government Records Access and
254 Management Act.

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

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

262 (b) The ombudsman shall make recommendations to the division, the executive director,
263 the guardian ad litem director, and the office of the governor if the ombudsman finds that:

- 264 (i) a matter should be further considered by the division;
265 (ii) an administrative act should be addressed, modified, or canceled;
266 (iii) action should be taken by the division with regard to one of its employees; or
267 (iv) any other action should be taken by the division.

268 Section 8. Section **78-3a-301** is amended to read:

269 **78-3a-301. Removing a child from his home -- Grounds for removal.**

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

272 (a) there is a substantial danger to the physical health or safety of the minor and the minor's
273 physical health or safety may not be protected without removing him from his parent's custody.
274 If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent
275 incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the

276 child cannot safely remain in the custody of his parent;

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

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

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

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

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

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

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

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

298 (j) the minor or another minor residing in the same household has been neglected;

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

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

304 (m) the parent has been convicted of violating Subsection 58-37-8(1)(a)(ii) or (iii); or

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

306 (2) The Division of Child and Family Services may not remove a minor from the custody

307 of his natural parent solely on the basis of educational neglect.

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

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

313 Section 9. Section **78-3a-306** is amended to read:

314 **78-3a-306. Shelter hearing.**

315 (1) With regard to a child who has been removed by the Division of Child and Family
316 Services, or who is in the protective custody of the division, a shelter hearing shall be held within
317 72 hours after removal of the child from his home, excluding weekends and holidays.

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

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

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

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

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

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

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

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

335 (a) the appropriate guardian ad litem; and

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

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

- 338 (a) the child, unless it would be detrimental for the child;
- 339 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
340 response to the notice;
- 341 (c) counsel for the parents, if one has been requested;
- 342 (d) the child's guardian ad litem;
- 343 (e) the caseworker from the Division of Child and Family Services who has been assigned
344 to the case; and
- 345 (f) the attorney from the attorney general's office who is representing the division.
- 346 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent
347 or guardian, if present, and any other person having relevant knowledge, to provide relevant
348 testimony. The court may also provide an opportunity for the minor to testify.
- 349 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
350 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or
351 guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
352 evidence to only that which goes to the issues of removal and the child's need for continued
353 protection.
- 354 (6) If the child is in the protective custody of the division, the division shall report to the
355 court:
 - 356 (a) the reasons why the minor was removed from the parent's or guardian's custody;
 - 357 (b) any services provided to the child and his family in an effort to prevent removal;
 - 358 (c) the need, if any, for continued shelter;
 - 359 (d) the available services that could facilitate the return of the minor to the custody of his
360 parent or guardian; and
 - 361 (e) whether the child has any relatives who may be able and willing to take temporary
362 custody.
- 363 (7) If necessary to protect the child, preserve the rights of a party, or for other good cause
364 shown, the court may grant no more than one time-limited continuance, not to exceed five judicial
365 days.
- 366 (8) The court shall order that the minor be released from the protective custody of the
367 division unless it finds, by a preponderance of the evidence, that any one of the following exist:
 - 368 (a) there is a substantial danger to the physical health or safety of the minor and the minor's

369 physical health or safety may not be protected without removing him from his parent's custody.
370 If a minor has previously been adjudicated as abused, neglected, or dependent and a subsequent
371 incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the
372 child cannot safely remain in the custody of his parent;

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

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

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

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

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

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

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

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

394 (j) the minor or another minor residing in the same household has been neglected;

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

399 (l) the parent has been convicted of violating Subsection 58-37-8(1)(a)(ii) or (iii); or

400 [(b)] (m) the child's welfare is otherwise endangered.

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

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

409 (10) Where the division's first contact with the family occurred during an emergency
410 situation in which the child could not safely remain at home, the court shall make a finding that
411 any lack of preplacement preventive efforts was appropriate.

412 (11) In cases where actual sexual abuse or abandonment, or serious physical abuse or
413 neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
414 or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide
415 reunification services, or attempt to rehabilitate the offending parent or parents.

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

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

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

422 (14) If the court finds that continued removal and temporary custody is necessary for the
423 protection of a child because harm may result to the child if he were returned home, it shall order
424 continued removal regardless of any error in the initial removal of the child, or the failure of a
425 party to comply with notice provisions, or any other procedural requirement of this chapter or Title
426 62A, Chapter 4a, Child and Family Services.

427 Section 10. Section **78-3a-307** is amended to read:

428 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
429 **DCFS custody.**

430 (1) (a) At the shelter hearing, when the court orders that a child be removed from the

431 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
432 first determine whether there is another natural parent as defined in Subsection (b), with whom the
433 child was not residing at the time the events or conditions that brought him within the court's
434 jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody,
435 the court shall place the minor with that parent unless it finds that the placement would be unsafe
436 or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the
437 provisions of Subsection (8)(b).

438 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
439 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological
440 father who was married to the child's biological mother at the time the child was conceived or
441 born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of
442 the child or voluntary surrender of the child by the custodial parent. This definition applies
443 regardless of whether the child has been or will be placed with adoptive parents or whether
444 adoption has been or will be considered as a long term goal for the child.

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

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

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

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

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

456 (2) If the court orders placement with a parent under Subsection (1), the child and the
457 parent are under the continuing jurisdiction of the court. The court may order that the parent
458 assume custody subject to the supervision of the court, and order that services be provided to the
459 parent from whose custody the child was removed, the parent who has assumed custody, or both.
460 The court may also provide for reasonable visitation with the parent from whose custody the child
461 was removed, if that is in the best interest of the child. The court's order shall be periodically

462 reviewed to determine whether:

- 463 (a) placement with the parent continues to be in the child's best interest;
- 464 (b) the child should be returned to the original custodial parent;
- 465 (c) the child should be placed with a relative, pursuant to Subsection (5); or
- 466 (d) the child should be placed in the custody of the division.

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

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

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

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

489 (ii) The court shall, at a minimum, order the division to conduct criminal background
490 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the
491 division's management information system for any previous reports of abuse or neglect regarding
492 the relative at issue, report its findings in writing to the court, and provide sufficient information

493 so that the court may determine whether:

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

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

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

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

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

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

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

505 (c) The court may place the child in the temporary custody of the division, pending the
506 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that
507 placement. The court shall ultimately base its determination regarding placement [~~with a relative~~]
508 on the best interest of the child.

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

511 (6) (a) When the court vests physical custody of a child with a relative pursuant to
512 Subsection (5), it shall order that the relative assume custody subject to the continuing supervision
513 of the court, and shall order that any necessary services be provided to the minor and the relative.
514 That child is not within the temporary custody or custody of the Division of Child and Family
515 Services. The child and any relative with whom the child is placed are under the continuing
516 jurisdiction of the court. The court may enter any order that it considers necessary for the
517 protection and best interest of the child.

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

520 (A) placement with the relative continues to be in the child's best interest;

521 (B) the child should be returned home; or

522 (C) the child should be placed in the custody of the division.

523 (ii) No later than 12 months after placement with a relative the court shall schedule a

524 hearing for the purpose of entering a permanent order in accordance with the best interest of the
525 child.

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

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

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

537 (ii) The division may not circumvent this required limitation on preferential consideration
538 for relatives by:

539 (A) asserting that a relative placement should be considered to be in the best interest of
540 the child based solely on a biological or marriage relationship to the child or the child's family; or

541 (B) granting special or unique consideration for the relative based solely on a relationship
542 to the child or the child's biological family by blood or marriage.

543 (b) When a period of 30 days from the date of the shelter hearing has expired, the
544 preferential consideration which may initially be granted to a natural parent in accordance with
545 Subsection (1), is limited. After that time the court shall base its custody decision on the best
546 interest of the child.

547 Section 11. Section **78-3a-313.5** is amended to read:

548 **78-3a-313.5. Mandatory petition for termination of parental rights.**

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

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

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

555 (c) are unwilling to have physical custody of the child.

556 (2) Except as provided in Subsection (3), notwithstanding any other provision of this
557 chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition
558 for termination of parental rights with regard to:

559 (a) an abandoned infant; [or]

560 (b) a child who has been in the custody of the division for 15 of the most recent 22 months;

561 or

562 [~~(b)~~] (c) a parent, whenever a court has determined that the parent has:

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

564 (ii) committed manslaughter of another child of that parent;

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

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

569 (3) If any party other than the division files a petition for termination of parental rights
570 based on any of the grounds described in Subsection (2), the division shall seek to be joined as a
571 party to that petition.

572 [~~(3)~~] (4) The division is not required to file a petition for termination of parental rights
573 under Subsection (2), or seek to be joined in a petition filed by another party pursuant to
574 Subsection (3), if:

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

576 (b) the division has:

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

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

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

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

Legislative Review Note

as of 2-10-99 7:00 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel