

YOUTH CORRECTIONS - DIVISION NAME

AMENDMENT

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley G. Hellewell

This act modifies the code by changing the name of the Division of Youth Corrections to the Division of Juvenile Justice Services. This act takes effect on July 1, 2004.

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

AMENDS:

23-19-14, as last amended by Chapter 55, Laws of Utah 2001

26-1-30, as last amended by Chapter 55, Laws of Utah 2002

26-6-30, as renumbered and amended by Chapter 201, Laws of Utah 1996

26A-1-114, as last amended by Chapter 249, Laws of Utah 2002

53-10-403, as last amended by Chapter 2, Laws of Utah 2002, Fifth Special Session

53-10-404, as last amended by Chapter 2, Laws of Utah 2002, Fifth Special Session

53-10-407, as enacted by Chapter 140, Laws of Utah 2002

53A-1-403, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-1-105, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-4a-105, as last amended by Chapter 281, Laws of Utah 2002

62A-4a-202.1, as last amended by Chapter 265, Laws of Utah 2002

62A-7-101, as last amended by Chapter 281, Laws of Utah 2002

62A-7-102, as last amended by Chapter 365, Laws of Utah 1997

62A-7-106, as last amended by Chapter 203, Laws of Utah 2000

62A-7-123, as enacted by Chapter 1, Laws of Utah 1988

62A-7-124, as enacted by Chapter 1, Laws of Utah 1988

62A-7-201, as last amended by Chapter 365, Laws of Utah 1997

62A-7-401, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-605, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth

Special Session

62A-15-703, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

63-25a-102, as last amended by Chapter 220, Laws of Utah 2001

63-25a-201, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

63-25a-301, as renumbered and amended by Chapter 242, Laws of Utah 1996

63-38-2, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

63-75-3, as last amended by Chapter 104, Laws of Utah 1999

63-75-5, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

63-92-3, as last amended by Chapter 11, Laws of Utah 2001

63B-3-102, as enacted by Chapter 300, Laws of Utah 1994

63B-3-301, as last amended by Chapter 36, Laws of Utah 1996

63B-4-102, as enacted by Chapter 329, Laws of Utah 1995

63B-7-501, as last amended by Chapter 309, Laws of Utah 1999

63B-11-702, as enacted by Chapter 199, Laws of Utah 2002

67-5b-101, as last amended by Chapter 94, Laws of Utah 1998

76-5-101, as last amended by Chapter 36, Laws of Utah 1994

76-5-413, as enacted by Chapter 280, Laws of Utah 2002

77-38-3, as last amended by Chapter 97, Laws of Utah 2002

78-3a-103, as last amended by Chapter 283, Laws of Utah 2002

78-3a-113, as renumbered and amended by Chapter 365, Laws of Utah 1997

78-3a-114, as renumbered and amended by Chapter 365, Laws of Utah 1997

78-3a-118, as last amended by Chapters 2 and 8, Laws of Utah 2002, Fifth Special Session

78-3a-301, as last amended by Chapter 265, Laws of Utah 2002

78-3a-503, as last amended by Chapter 240, Laws of Utah 1998

78-3a-504, as repealed and reenacted by Chapter 365, Laws of Utah 1997

78-3a-601, as last amended by Chapter 3, Laws of Utah 2002

78-3a-602, as last amended by Chapter 3, Laws of Utah 2002

78-3a-603, as last amended by Chapter 3, Laws of Utah 2002

78-3a-904, as last amended by Chapter 108, Laws of Utah 1998

78-3a-905, as last amended by Chapter 13, Laws of Utah 2002

78-3a-914, as renumbered and amended by Chapter 365, Laws of Utah 1997

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

Section 1. Section **23-19-14** is amended to read:

23-19-14. Persons residing in certain institutions authorized to fish without license.

(1) The Division of Wildlife Resources shall permit a person to fish without a license if:

(a) (i) the person resides in:

(A) the Utah State Developmental Center in American Fork;

(B) the state hospital;

(C) a veteran's hospital;

(D) a veteran's nursing home;

(E) a mental health center;

(F) an intermediate care facility for the mentally retarded;

(G) a group home licensed by the Department of Human Services and operated under contract with the Division of Services for People with Disabilities;

(H) a group home or other community-based placement licensed by the Department of Human Services and operated under contract with the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services;

(I) a private residential facility for at-risk youth licensed by the Department of Human Services; or

(J) another similar institution approved by the division; or

(ii) the person is a youth who participates in a work camp operated by the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services;

(b) the person is properly supervised by a representative of the institution; and

(c) the institution obtains from the division a certificate of registration that specifies:

(i) the date and place where the person will fish; and

(ii) the name of the institution's representative who will supervise the person fishing.

(2) The institution must apply for the certificate of registration at least ten days before the fishing outing.

(3) (a) An institution that receives a certificate of registration authorizing at-risk youth to fish shall provide instruction to the youth on fishing laws and regulations.

(b) The division shall provide educational materials to the institution to assist it in complying with Subsection (3)(a).

Section 2. Section **26-1-30** is amended to read:

26-1-30. Powers and duties of department.

(1) The department shall:

(a) enter into cooperative agreements with the Department of Environmental Quality to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered; and

(b) consult with the Department of Environmental Quality and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups.

(2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:

(a) promote and protect the health and wellness of the people within the state;

(b) establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of this title to promote and protect the public health or to prevent disease and illness;

(c) investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health;

(d) provide for the detection, reporting, prevention, and control of communicable, infectious, acute, chronic, or any other disease or health hazard that the department considers to be dangerous, important, or likely to affect the public health;

(e) collect and report information on causes of injury, sickness, death, and disability and the risk factors that contribute to the causes of injury, sickness, death, and disability within the state;

(f) collect, prepare, publish, and disseminate information to inform the public concerning the health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

(g) establish and operate programs necessary or desirable for the promotion or protection of the public health and the control of disease or which may be necessary to ameliorate the major causes of injury, sickness, death, and disability in the state, except that the programs shall not be established if adequate programs exist in the private sector;

(h) establish, maintain, and enforce isolation and quarantine, and for this purpose only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;

(i) close theaters, schools, and other public places and forbid gatherings of people when necessary to protect the public health;

(j) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;

(k) make necessary sanitary and health investigations and inspections in cooperation with local health departments as to any matters affecting the public health;

(l) establish laboratory services necessary to support public health programs and medical services in the state;

(m) establish and enforce standards for laboratory services which are provided by any laboratory in the state when the purpose of the services is to protect the public health;

(n) cooperate with the Labor Commission to conduct studies of occupational health hazards and occupational diseases arising in and out of employment in industry, and make recommendations for elimination or reduction of the hazards;

(o) cooperate with the local health departments, the Department of Corrections, the

Administrative Office of the Courts, the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, and the Crime Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense;

(p) investigate the cause of maternal and infant mortality;

(q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol;

(r) provide the commissioner of public safety with monthly statistics reflecting the results of the examinations provided for in Subsection (2)(q) and provide safeguards so that information derived from the examinations is not used for a purpose other than the compilation of statistics authorized in this Subsection (2)(r);

(s) establish qualifications for individuals permitted to draw blood pursuant to Section 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

(t) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;

(u) adopt rules and enforce minimum sanitary standards for the operation and maintenance of:

(i) orphanages;

(ii) boarding homes;

(iii) summer camps for children;

(iv) lodging houses;

(v) hotels;

(vi) restaurants and all other places where food is handled for commercial purposes, sold, or served to the public;

(vii) tourist and trailer camps;

- (viii) service stations;
- (ix) public conveyances and stations;
- (x) public and private schools;
- (xi) factories;
- (xii) private sanatoria;
- (xiii) barber shops;
- (xiv) beauty shops;
- (xv) physicians' offices;
- (xvi) dentists' offices;
- (xvii) workshops;
- (xviii) industrial, labor, or construction camps;
- (xix) recreational resorts and camps;
- (xx) swimming pools, public baths, and bathing beaches;
- (xxi) state, county, or municipal institutions, including hospitals and other buildings, centers, and places used for public gatherings; and
- (xxii) of any other facilities in public buildings and on public grounds;
- (v) conduct health planning for the state;
- (w) monitor the costs of health care in the state and foster price competition in the health care delivery system;
- (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;
- (y) license the provision of child care; and
- (z) accept contributions to and administer the funds contained in the Organ Donation Contribution Fund created in Section 26-18b-101.

Section 3. Section **26-6-30** is amended to read:

26-6-30. Exclusions from confidentiality requirements.

- (1) The provisions of this chapter do not apply to:
 - (a) information that relates to an individual who is in the custody of the Department of

Corrections, a county jail, or the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services within the Department of Human Services;

(b) information that relates to an individual who has been in the custody of the Department of Corrections, a county jail, or the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services within the Department of Human Services, if liability of either of those departments, a county, or a division, or of an employee of a department, division, or county, is alleged by that individual in a lawsuit concerning transmission of an infectious or communicable disease; or

(c) any information relating to an individual who willfully or maliciously or with reckless disregard for the welfare of others transmits a communicable or infectious disease.

(2) Nothing in this chapter limits the right of the individual identified in the information described in Subsection 26-6-27(1) to disclose that information.

Section 4. Section **26A-1-114** is amended to read:

26A-1-114. Powers and duties of departments.

(1) A local health department may:

(a) subject to the provisions in Section 26A-1-108, enforce state laws, local ordinances, department rules, and local health department standards and regulations relating to public health and sanitation, including the plumbing code adopted by the Division of Occupational and Professional Licensing under Section 58-56-4 and under Title 26, Chapter 15a, Food Safety Manager Certification Act, in all incorporated and unincorporated areas served by the local health department;

(b) establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;

(c) establish and maintain medical, environmental, occupational, and other laboratory services considered necessary or proper for the protection of the public health;

(d) establish and operate reasonable health programs or measures not in conflict with state law that:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health and bill the owner or other person in charge of the premises upon which this nuisance occurs for the cost of abatement;

(g) make necessary sanitary and health investigations and inspections on its own initiative or in cooperation with the Department of Health or Environmental Quality, or both, as to any matters affecting the public health;

(h) pursuant to county ordinance or interlocal agreement:

(i) establish and collect appropriate fees for the performance of services and operation of authorized or required programs and duties;

(ii) accept, use, and administer all federal, state, or private donations or grants of funds, property, services, or materials for public health purposes; and

(iii) make agreements not in conflict with state law that are conditional to receiving a donation or grant;

(i) prepare, publish, and disseminate information necessary to inform and advise the public concerning:

(i) the health and wellness of the population, specific hazards, and risk factors that may adversely affect the health and wellness of the population; and

(ii) specific activities individuals and institutions can engage in to promote and protect the health and wellness of the population;

(j) investigate the causes of morbidity and mortality;

(k) issue notices and orders necessary to carry out this part;

(l) conduct studies to identify injury problems, establish injury control systems, develop

standards for the correction and prevention of future occurrences, and provide public information and instruction to special high risk groups;

(m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within the jurisdiction of the boards; and

(n) cooperate with the state health department, the Department of Corrections, the Administrative Office of the Courts, the ~~[Division of Youth Corrections]~~ Division of Juvenile Justice Services, and the Crime Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any victims of a sexual offense.

(2) The local health department shall:

(a) establish programs or measures to promote and protect the health and general wellness of the people within the boundaries of the local health department;

(b) investigate infectious and other diseases of public health importance and implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health which may include involuntary testing of convicted sexual offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of sexual offenses for HIV infection pursuant to Section 76-5-503;

(c) cooperate with the department in matters pertaining to the public health and in the administration of state health laws; and

(d) coordinate implementation of environmental programs to maximize efficient use of resources by developing with the Department of Environmental Quality a Comprehensive Environmental Service Delivery Plan that:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in

the plan, and requested by the local health department; and

(iv) is reviewed and updated annually.

(3) The local health department has the following duties regarding public and private schools within its boundaries:

(a) enforce all ordinances, standards, and regulations pertaining to the public health of persons attending public and private schools;

(b) exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, whether acute or chronic, if the person is likely to convey the disease to those in attendance;

(c) (i) make regular inspections of the health-related condition of all school buildings and premises;

(ii) report the inspections on forms furnished by the department to those responsible for the condition and provide instructions for correction of any conditions that impair or endanger the health or life of those attending the schools; and

(iii) provide a copy of the report to the department at the time the report is made.

(4) If those responsible for the health-related condition of the school buildings and premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c), the local health board shall cause the conditions to be corrected at the expense of the persons responsible.

(5) The local health department may exercise incidental authority as necessary to carry out the provisions and purposes of this part.

Section 5. Section **53-10-403** is amended to read:

53-10-403. DNA specimen analysis -- Application to offenders, including minors.

(1) Sections 53-10-404, 53-10-405, and 53-10-406 apply to any person who has pled guilty to or has been convicted of any of the offenses under Subsection (2) and who is on probation, parole, or incarcerated for any offense under Subsection (2) on or after July 1, 2002, or who is a minor under Subsection (3).

(2) Offenses referred to in Subsection (1) are:

(a) any felony under the Utah Code, and any violation of Section 76-5-401.1, sexual abuse of a minor;

(b) an attempt to commit a burglary, or any class A burglary offense; or

(c) any offense under Subsection (2)(a) or (b):

(i) for which the court enters a judgment for conviction to a lower degree of offense under Section 76-3-402; or

(ii) regarding which the court allows the defendant to enter a plea in abeyance as defined in Section 77-2a-1.

(3) A minor under Subsection (1) is a minor 14 years of age or older whom the court has adjudicated to be within the jurisdiction of the juvenile court due to the commission of any offense described in Subsection (2), and who is:

(a) within the jurisdiction of the juvenile court on or after July 1, 2002 for an offense under Subsection (2); or

(b) in the legal custody of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services on or after July 1, 2002 for an offense under Subsection (2).

Section 6. Section **53-10-404** is amended to read:

53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.

(1) As used in this section, "person" refers to any person described under Section 53-10-403.

(2) (a) A person under Section 53-10-403 or any person added to the sex offender register as defined in Section 77-27-21.5 shall provide a DNA specimen and shall reimburse the responsible agency \$75 for the cost of obtaining the DNA specimen unless the agency determines the person lacks the ability to pay.

(b) The responsible agencies shall establish guidelines and procedures for determining if the person is able to pay the fee.

(3) (a) All fees collected under Subsection (2) shall be deposited in the DNA Specimen Restricted Account created in Section 53-10-407, except that sheriffs collecting the fee shall deposit \$60 of the fee in the DNA Specimen Restricted Account and retain the balance of \$15 for

the costs of obtaining the saliva DNA specimen.

(b) The responsible agency shall determine the method of collecting the DNA specimen. Unless the responsible agency determines there are substantial reasons for using a different method of collection or the person refuses to cooperate with the collection, the preferred method of collection shall be obtaining a saliva specimen.

(c) The responsible agencies may use reasonable force, as established by their individual guidelines and procedures, to collect the DNA sample if the person refuses to cooperate with the collection.

(d) If the judgment places the person on probation, the person shall submit to the obtaining of a DNA specimen as a condition of the probation.

(e) Under this section a person is required to provide one DNA specimen. The person shall provide an additional DNA specimen only if the DNA specimen previously provided is not adequate for analysis.

(4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as possible after conviction, plea, or finding of jurisdiction by the juvenile court, and transmitted to the Department of Public Safety.

(b) If notified by the Department of Public Safety that a DNA specimen is not adequate for analysis, the agency shall obtain and transmit an additional DNA specimen.

(5) (a) The Department of Corrections is the responsible agency whenever the person is committed to the custody of or is under the supervision of the Department of Corrections.

(b) The juvenile court is the responsible agency regarding a minor under Subsection 53-10-403(3), but if the minor has been committed to the legal custody of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the minor has not previously been obtained by the juvenile court under Section 78-3a-118.

(c) (i) The sheriff operating a county jail is the responsible agency regarding the collection of DNA specimens from persons incarcerated in the county jail:

(A) as a condition of probation for a felony offense; or

(B) for a class A burglary offense.

(ii) The sheriff shall designate employees to obtain the saliva DNA specimens required under Section 53-10-403. The sheriff shall ensure that employees designated to collect the DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(6) (a) As used in this Subsection (6), "department" means the Department of Corrections.

(b) Priority of obtaining DNA specimens by the department is:

(i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody of or under the supervision of the department before these persons are released from incarceration, parole, or probation, if their release date is prior to that of persons under Subsections (6)(b)(ii), but in no case later than July 1, 2004; and

(ii) second, the department shall obtain DNA specimens from persons who are committed to the custody of the department or who are placed under the supervision of the department after July 1, 2002, within 120 days after the commitment, if possible, but not later than prior to release from incarceration if the person is imprisoned, or prior to the termination of probation if the person is placed on probation.

(c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii) is:

- (i) persons on probation;
- (ii) persons on parole; and
- (iii) incarcerated persons.

(d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA specimens from persons in the custody of or under the supervision of the Department of Corrections as of July 1, 2002, prior to their release.

(7) (a) As used in this Subsection (7), "court" means the juvenile court and "division" means the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(b) Priority of obtaining DNA specimens by the court from minors under Section 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the court's jurisdiction, prior to termination of the court's jurisdiction over these minors; and

(ii) second, to obtain specimens from minors who are found to be within the court's jurisdiction after July 1, 2002, within 120 days of the minor's being found to be within the court's jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction over the minor.

(c) Priority of obtaining DNA specimens by the division from minors under Section 53-10-403 who are committed to the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the division's legal custody and who have not previously provided a DNA specimen under this section, prior to termination of the division's legal custody of these minors; and

(ii) second, to obtain specimens from minors who are placed in the legal custody of the division after July 1, 2002, within 120 days of the minor's being placed in the custody of the division, jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction over the minor.

(8) (a) The Department of Corrections, the juvenile court, and the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services shall by policy establish procedures for obtaining saliva DNA specimens, and shall provide training for employees designated to collect saliva DNA specimens.

(b) The department may designate correctional officers, including those employed by the adult probation and parole section of the Department of Corrections, to obtain the saliva DNA specimens required under this section. The department shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

Section 7. Section **53-10-407** is amended to read:

53-10-407. DNA Specimen Restricted Account.

(1) There is created the DNA Specimen Restricted Account, which is referred to in this section as "the account."

(2) The sources of monies for the account are:

(a) DNA collection fees paid under Section 53-10-404;

(b) any appropriations made to the account by the Legislature; and

(c) all federal monies provided to the state for the purpose of funding the collection or analysis of DNA specimens collected under Section 53-10-403.

(3) The account shall earn interest, and this interest shall be deposited in the account.

(4) The Legislature may appropriate monies from the account solely for the following purposes:

(a) to the Department of Corrections for the costs of collecting DNA specimens as required under Section 53-10-403;

(b) to the juvenile court for the costs of collecting DNA specimens as required under Sections 53-10-403 and 78-3a-118;

(c) to the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services for the costs of collecting DNA specimens as required under Sections 53-10-403 and 62A-7-104; and

(d) to the Department of Public Safety for the costs of storing and analyzing DNA specimens in accordance with the requirements of this part.

(5) Appropriations from the account to the Department of Corrections, the juvenile court, the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, and to the Department of Public Safety are nonlapsing.

Section 8. Section **53A-1-403** is amended to read:

**53A-1-403. Education of persons under 21 in custody of state agency --
Establishment of coordinating council -- Advisory councils.**

(1) The State Board of Education is directly responsible for the education of all persons under the age of 21 who are:

- (a) in the custody of the Department of Human Services;
 - (b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or
 - (c) being held in a juvenile detention facility.
- (2) Subsection (1)(b) does not apply to persons taken into custody for the primary purpose of obtaining access to education programs provided for youth in custody.
- (3) The board shall, where feasible, contract with school districts or other appropriate agencies to provide educational, administrative, and supportive services, but the board shall retain responsibility for the programs.
- (4) The Legislature shall establish and maintain separate education budget categories for youth in custody who are under the jurisdiction of the following state agencies:
- (a) detention centers and the Divisions of [~~Youth Corrections~~] Juvenile Justice Services and Child and Family Services;
 - (b) the Division of Substance Abuse and Mental Health; and
 - (c) the Division of Services for People with Disabilities.
- (5) (a) The Department of Human Services and the State Board of Education shall appoint a coordinating council to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services and the Division of Child and Family Services.
- (b) The department and board may appoint similar councils for those in the custody of the Division of Substance Abuse and Mental Health or the Division of Services for People with Disabilities.
- (6) A school district contracting to provide services under Subsection (3) shall establish an advisory council to plan, coordinate, and review education and treatment programs for persons held in custody in the district.

Section 9. Section **62A-1-105** is amended to read:

62A-1-105. Creation of boards, divisions, and offices.

(1) The following policymaking boards are created within the Department of Human Services:

- (a) the Board of Aging and Adult Services;
- (b) the Board of Child and Family Services;
- (c) the Board of Public Guardian Services;
- (d) the Board of Services for People with Disabilities;
- (e) the Board of Substance Abuse and Mental Health; and
- (f) the [~~Board of Youth Corrections~~] Board of Juvenile Justice Services.

(2) The following divisions are created within the Department of Human Services:

- (a) the Division of Aging and Adult Services;
- (b) the Division of Child and Family Services;
- (c) the Division of Services for People with Disabilities;
- (d) the Division of Substance Abuse and Mental Health; and
- (e) the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(3) The following offices are created within the Department of Human Services:

- (a) the Office of Licensing;
- (b) the Office of Public Guardian; and
- (c) the Office of Recovery Services.

Section 10. Section **62A-4a-105** is amended to read:

62A-4a-105. Division responsibilities.

The division shall:

- (1) administer services to children and families, including child welfare services, domestic violence services, and all other responsibilities that the Legislature or the executive director may assign to the division;
- (2) establish standards for all contract providers of out-of-home care for children and families;
- (3) cooperate with the federal government in the administration of child welfare and

domestic violence programs and other human service activities assigned by the department;

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

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

(6) promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state. In carrying out the provisions of this Subsection (6), the division shall cooperate with the juvenile courts, the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions to develop and administer a broad range of services and supports. The division shall take the initiative in all matters involving the protection of abused or neglected children if adequate provisions have not been made or are not likely to be made, and shall make expenditures necessary for the care and protection of those children, within the division's budget;

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

(8) provide adoption assistance to persons adopting children with special needs under Part 9, Adoption Assistance, of this chapter. The financial support provided under this Subsection (8) may not exceed the amounts the division would provide for the child as a legal ward of the state;

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

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

with the department's fee schedule rate;

(11) provide noncustodial and in-home preventive services, designed to prevent family breakup, family preservation services, and reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile Court Act of 1996;

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

(13) establish programs and provide services to minors who have been placed in the custody of the division for reasons other than abuse or neglect, pursuant to Section 62A-4a-250;

(14) provide shelter care in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile Court Act of 1996;

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

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

(17) provide domestic violence services in accordance with the requirements of federal law, and establish standards for all direct or contract providers of domestic violence services.

Within appropriations from the Legislature, the division shall provide or contract for a variety of domestic violence services and treatment methods;

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

(19) provide protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings;

(20) have authority to contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

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

Section 11. Section **62A-4a-202.1** is amended to read:

62A-4a-202.1. Taking a minor into protective custody without warrant -- Peace officer -- Division of Child and Family Services caseworker -- Consent or specified circumstances -- Shelter care or emergency kinship.

(1) A state officer, peace officer, or child welfare worker may not, without a warrant or court order issued under Section 78-3a-106, remove a minor from the minor's home or school, or take a minor into protective custody unless:

(a) a parent or guardian consents; or

(b) the officer or worker has, at the time, probable cause to believe that one or more of the following circumstances exist:

(i) there is imminent danger to the physical health or safety of the minor, and the minor's physical health or safety may not be protected without removing the minor from the custody of the minor's parent or guardian;

(ii) there is a substantial risk to the minor of being physically or sexually abused by a parent or guardian, a member of the parent's or guardian's household, or another person known to the parent or guardian;

(iii) the parent or guardian is unwilling to have physical custody of the minor;

(iv) the minor has been abandoned without any provision for the minor's support;

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

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

(vii) an infant has been abandoned, as defined in Section 78-3a-313.5.

(2) A state officer, peace officer, or child welfare worker may not remove a minor from the minor's home or school or take a minor into protective custody under Subsection (1) if

motivated solely by an intent to seize or obtain evidence unrelated to the potential abuse or neglect allegation.

(3) In the absence of circumstances that demonstrate a substantial, immediate threat to the health or safety of a minor, a state officer, peace officer, or child welfare worker may not remove a minor from the minor's home or school or take a minor into protective custody under Subsection (1) on the basis of:

- (a) mental illness or poverty of the parent or guardian; or
- (b) educational neglect.

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

(5) If possible, consistent with the minor's safety and welfare, before taking a minor into protective custody, the worker shall also determine whether there are services reasonably available to the worker which, if provided to the minor's parent or to the minor, would eliminate the need to remove the minor from the custody of the minor's parent or guardian. If those services are reasonably available, they shall be utilized. In determining whether services are reasonably available, and in making reasonable efforts to provide those services, the minor's health, safety, and welfare shall be the worker's paramount concern.

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

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

- (i) a shelter facility; or
- (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

Section 12. Section **62A-7-101** is amended to read:

62A-7-101. Definitions.

As used in this chapter:

(1) "Alternatives to secure detention" means a nonsecure, nonresidential, or residential program designated to provide intensive supervision in the community, rehabilitation services, or work programs for youth who are diverted from detention. Designated alternatives include home detention, day/night reporting centers, electronic monitoring, and contempt programs.

(2) "Authority" means the Youth Parole Authority, established in accordance with Section 62A-7-109.

(3) "Board" means the [~~Board of Youth Corrections~~] Board of Juvenile Justice Services established in accordance with Section 62A-1-105.

(4) "Community-based program" means a nonsecure residential or nonresidential program designated to supervise and rehabilitate youth offenders in the least restrictive setting, consistent with public safety, and designated or operated by or under contract with the division.

(5) "Control" means the authority to detain, restrict, and supervise a youth in a manner consistent with public safety and the well being of the youth and division employees.

(6) "Court" means the juvenile court.

(7) "Day/Night Reporting Center" means a nonsecure, nonresidential or residential program designated to provide supervision for youth who may otherwise be held in a more restrictive setting.

(8) "Delinquent act" is an act which would constitute a felony or a misdemeanor if committed by an adult.

(9) "Detention" means secure detention or home detention.

(10) "Detention center" means a facility established in accordance with Title 62A, Chapter 7, Part 2, Detention Facilities.

(11) "Director" means the director of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(12) "Discharge" means a written order of the division that removes a youth offender from its jurisdiction.

(13) "Division" means the [~~Division of Youth Corrections~~] Division of Juvenile Justice

Services.

(14) "Electronic monitoring" means a method of supervision of youth in the community, in nonsecure placements, by way of electronic surveillance that provides 24-hour information and immediate reports of violations.

(15) "Guidelines" means the written statewide rules for admission to secure detention and home detention promulgated by the division in accordance with Sections 63-46a-4 and 63-46a-6.

(16) "Home detention" means predispositional placement of a child in the child's home or a surrogate home with the consent of the child's parent, guardian, or custodian for conduct by a child who is alleged to have committed a delinquent act or postdispositional placement pursuant to Subsection 78-3a-118(2)(f) or 78-3a-901(3).

(17) "Juvenile Receiving Center" means a nonsecure, nonresidential program established by the division that is responsible for juveniles taken into custody by law enforcement for status offenses or delinquent acts, but who do not meet the criteria for admission to secure detention or shelter.

(18) "Observation and assessment program" means a service program operated or purchased by the division, that is responsible for temporary custody of youth offenders for observation.

(19) "Parole" means a conditional release of a youth offender from residency in a secure facility to live outside that facility under the supervision of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services or other person designated by the division.

(20) "Rescission" means a written order of the Youth Parole Authority that rescinds a parole date.

(21) "Revocation of parole" means a written order of the Youth Parole Authority that terminates parole supervision of a youth offender and directs return of the youth offender to the custody of a secure facility because of a violation of the conditions of parole.

(22) "Runaway youth" means a youth who willfully leaves the residence of a parent or guardian without the permission of the parent or guardian.

(23) "Secure detention" means predisposition placement in a facility operated by or under contract with the division, for conduct by a child who is alleged to have committed a delinquent act.

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

(25) "Shelter" means the temporary care of children in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

(26) "Temporary custody" means control and responsibility of nonadjudicated youth until the youth can be released to the parent, guardian, a responsible adult, or to an appropriate agency.

(27) "Termination" means a written order of the Youth Parole Authority that terminates a youth offender from parole.

(28) "Ungovernable" means a youth in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the youth, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the youth, the family, or others; or

(c) results in the situations in both Subsections (28)(a) and (b).

(29) "Work program" means a public or private service work project established and administered by the division for youth offenders for the purpose of rehabilitation, education, and restitution to victims.

(30) "Youth offender" means a person 12 years of age or older, and who has not reached 21 years of age, committed or admitted by the juvenile court to the custody, care, and jurisdiction of the division, for confinement in a secure facility or supervision in the community, following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult.

(31) (a) "Youth services" means services provided in an effort to resolve family conflict:

(i) for families in crisis when a minor is ungovernable or runaway; or

- (ii) involving a minor and the minor's parent or guardian.
- (b) These services include efforts to:
 - (i) resolve family conflict;
 - (ii) maintain or reunite minors with their families; and
 - (iii) divert minors from entering or escalating in the juvenile justice system;
- (c) The services may provide:
 - (i) crisis intervention;
 - (ii) short-term shelter;
 - (iii) time out placement; and
 - (iv) family counseling.

Section 13. Section **62A-7-102** is amended to read:

62A-7-102. Creation of division -- Jurisdiction.

There is created the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services within the department, under the administration and supervision of the executive director, and under the policy direction of the board. The division has jurisdiction over all youth committed to it pursuant to Section 78-3a-118.

Section 14. Section **62A-7-106** is amended to read:

62A-7-106. Aiding or concealing youth offender -- Trespass -- Criminal penalties.

(1) A person who commits any of the following offenses is guilty of a class A misdemeanor:

- (a) entering, or attempting to enter, a building or enclosure appropriated to the use of youth offenders, without permission;
- (b) entering any premises belonging to a secure facility and committing or attempting to commit a trespass or depredation on those premises; or
- (c) willfully annoying or disturbing the peace and quiet of a secure facility or of a youth offender in a secure facility.

(2) A person is guilty of a third degree felony who:

- (a) knowingly harbors or conceals a youth offender who has:

(i) escaped from a secure facility; or

(ii) absconded from:

(A) a facility or supervision, as these offenses are defined in Subsections 76-8-309.5(1) and (2); or

(B) supervision of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services; or

(b) willfully aided or assisted a youth offender who has been lawfully committed to a secure facility in escaping or attempting to escape from that facility.

Section 15. Section **62A-7-123** is amended to read:

62A-7-123. Juvenile Justice Services Victim Restitution Account.

(1) There is created within the General Fund a nonlapsing restricted account known as the "[~~Youth Corrections~~] Juvenile Justice Services Victim Restitution Account," which shall be administered by the division.

(2) The [~~Youth Corrections~~] Juvenile Justice Services Victim Restitution Account shall be used exclusively for establishing work programs, as defined in Section 62A-7-101.

Section 16. Section **62A-7-124** is amended to read:

62A-7-124. Cost of support and maintenance of youth offender -- Responsibility.

(1) On commitment of a youth offender to the division, and on recommendation of the division to the juvenile court, the juvenile court may order the youth offender or his parent, guardian, or custodian, to share in the costs of support and maintenance for the youth offender during his term of commitment.

(2) After payment of collection expenses, any remaining balance collected under the provisions of Subsection (1) may be deposited in the "[~~Youth Corrections~~] Juvenile Justice Services Victim Restitution Account," at the discretion of the director.

Section 17. Section **62A-7-201** is amended to read:

62A-7-201. Confinement -- Facilities -- Restrictions.

(1) Children under 18 years of age, who are apprehended by any officer or brought before any court for examination under any provision of state law, may not be confined in jails, lockups,

or cells used for ordinary criminals or persons charged with crime, or in secure postadjudication correctional facilities operated by the division, except as provided by specific statute and in conformance with approved standards.

(2) (a) Children charged by information or indictment with crimes as a serious youth offender under Section 78-3a-602 or certified to stand trial as an adult pursuant to Section 78-3a-603 may be detained in a jail or other place of detention used for adults.

(b) Children detained in adult facilities under Section 78-3a-602 or 78-3a-603 prior to a hearing before a magistrate, or under Subsection 78-3a-114(3), may only be held in certified juvenile detention accommodations in accordance with rules promulgated by the division. Those rules shall include standards for acceptable sight and sound separation from adult inmates. The division certifies facilities that are in compliance with the division's standards.

(3) In areas of low density population, the division may, by rule, approve juvenile holding accommodations within adult facilities that have acceptable sight and sound separation. Those facilities shall be used only for short-term holding purposes, with a maximum confinement of six hours, for children alleged to have committed an act which would be a criminal offense if committed by an adult. Acceptable short-term holding purposes are: identification, notification of juvenile court officials, processing, and allowance of adequate time for evaluation of needs and circumstances regarding release or transfer to a shelter or detention facility.

(4) Children who are alleged to have committed an act which would be a criminal offense if committed by an adult, may be detained in holding rooms in local law enforcement agency facilities for a maximum of two hours, for identification or interrogation, or while awaiting release to a parent or other responsible adult. Those rooms shall be certified by the division, according to the division's rules. Those rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with any of the provisions of this section is a class B misdemeanor.

(6) The division is responsible for the custody and detention of children under 18 years of age who require detention care prior to trial or examination, or while awaiting assignment to a

home or facility, as a dispositional placement under Subsection 78-3a-118(2)(f)(i) or 78-3a-901(3)(a), and of youth offenders under Subsection 62A-7-112(8). The division shall provide standards for custody or detention under Subsections (2)(b), (3), and (4), and shall determine and set standards for conditions of care and confinement of children in detention facilities. All other custody or detention shall be provided by the division, or by contract with a public or private agency willing to undertake temporary custody or detention upon agreed terms, or in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems.

(7) A child who willfully and intentionally damages a jail or other place of confinement as provided in Section 76-8-418, including a detention, shelter, or secure confinement facility, operated by the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, commits an act which would be a third degree felony if committed by an adult.

Section 18. Section **62A-7-401** is amended to read:

62A-7-401. Juvenile Sex Offender Authority -- Purpose -- Duties -- Members -- Staff specialists.

(1) There is established the Utah State Juvenile Sex Offender Authority within the Department of Human Services, [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(2) The purpose of the authority is to supervise and coordinate the efforts of law enforcement, the [~~Divisions of Youth Corrections~~] Divisions of Juvenile Justice Services, Substance Abuse and Mental Health, Child and Family Services, and Services for People with Disabilities, the State Office of Education, the Juvenile Court, prosecution, and juvenile sex offender intervention and treatment specialists.

(3) The authority shall:

(a) coordinate and develop effective and cost-effective programs for the treatment of juveniles who sexually offend;

(b) administer the development of a comprehensive continuum of juvenile sex offender services;

(c) administer the development of programs to protect the communities from juvenile sex offending and offenders; and

(d) by June 30, 2000, implement fully the comprehensive and detailed plan which shall include provisions for the type of services by levels of intensity, agency responsibility for services, and professional qualifications for persons delivering the services. The plan shall also include detailed outcome measures to determine program effectiveness.

(4) The authority shall be comprised of:

(a) the director of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services or a designee;

(b) the director of the Division of Substance Abuse and Mental Health or a designee;

(c) the director of the Division of Child and Family Services or a designee;

(d) the director of the Division of Services for People with Disabilities or a designee;

(e) the State Superintendent of Public Instruction;

(f) the juvenile court administrator or a designee;

(g) a representative of the Statewide Association of Public Attorneys as designated by its director;

(h) a representative of the Utah Sheriffs Association as designated by its president;

(i) a representative of the Utah Police Chiefs Association as designated by its president;

(j) a citizen appointed by the governor;

(k) a representative of the Utah Network on Juveniles Offending Sexually (NOJOS) as designated by its director; and

(l) the attorney general or a designee.

(5) Staff to the authority shall be the staff specialists of the statewide juvenile sex offender supervision and treatment unit.

Section 19. Section **62A-15-605** is amended to read:

62A-15-605. Forensic Mental Health Coordinating Council -- Establishment and purpose.

(1) There is established the Forensic Mental Health Coordinating Council composed of

the following members:

- (a) the director or the director's appointee;
 - (b) the superintendent of the state hospital or the superintendent's appointee;
 - (c) the executive director of the Department of Corrections or the executive director's appointee;
 - (d) a member of the Board of Pardons and Parole or its appointee;
 - (e) the attorney general or the attorney general's appointee;
 - (f) the director of the Division of Services for People with Disabilities or the director's appointee;
 - (g) the director of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services or the director's appointee;
 - (h) the director of the Commission on Criminal and Juvenile Justice or the director's appointee;
 - (i) the state court administrator or the administrator's appointee;
 - (j) the state juvenile court administrator or the administrator's appointee;
 - (k) a representative from a local mental health authority or an organization, excluding the state hospital that provides mental health services under contract with the Division of Substance Abuse and Mental Health or a local mental health authority, as appointed by the director of the division;
 - (l) the executive director of the Governor's Council for People with Disabilities or the director's appointee; and
 - (m) other persons as appointed by the members described in Subsections (1)(a) through (l).
- (2) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(3) The purpose of the Forensic Mental Health Coordinating Council is to:

(a) advise the director regarding admissions to the state hospital of persons in the custody of the Department of Corrections;

(b) develop policies for coordination between the division and the Department of Corrections;

(c) advise the executive director of the Department of Corrections regarding issues of care for persons in the custody of the Department of Corrections who are mentally ill;

(d) promote communication between and coordination among all agencies dealing with persons with mental retardation, as defined in Section 62A-5-101, or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;

(e) study, evaluate, and recommend changes to laws and procedures relating to persons with mental retardation or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;

(f) identify and promote the implementation of specific policies and programs to deal fairly and efficiently with persons with mental retardation or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system; and

(g) promote judicial education relating to persons with mental retardation or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system.

Section 20. Section **62A-15-703** is amended to read:

62A-15-703. Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

(a) shall be a designated examiner, as defined in Subsection 62A-15-602(3); and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by the fact finder that the following circumstances clearly exist, he may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in Subsection 62A-15-602(8);

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from care and treatment by the local mental health authority;

and

(e) there is no appropriate less-restrictive alternative.

(5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible, and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the person who submitted the petition for commitment, and a representative of the appropriate local mental health authority shall all receive informal notice of the date and time of the proceeding. Those parties shall also be afforded an opportunity to appear and to address the petition for commitment.

(c) The neutral and detached fact finder may, in his discretion, receive the testimony of any other person.

(d) The fact finder may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

- (i) the petition for commitment;
- (ii) the admission notes;
- (iii) the child's diagnosis;
- (iv) physicians' orders;
- (v) progress notes;
- (vi) nursing notes; and
- (vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) When a decision for commitment is made, the neutral and detached fact finder shall inform the child and his parent or legal guardian of that decision, and of the reasons for ordering commitment at the conclusion of the hearing, and also in writing.

(iii) The neutral and detached fact finder shall state in writing the basis of his decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) Absent the procedures and findings required by this section, a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-15-629(1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied.

(7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10) (a) Each child committed pursuant to this section is entitled to an appeal within 30

days after any order for commitment. The appeal may be brought on the child's own petition, or that of his parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

- (i) the original petition for commitment;
- (ii) admission notes;
- (iii) diagnosis;
- (iv) physicians' orders;
- (v) progress notes;
- (vi) nursing notes; and
- (vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, his parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded

an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive his right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to his parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the

child into physical custody and transport him to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, his parent or legal guardian, the administrator of the more restrictive environment, or his designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or his representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:

(i) the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating his mental illness, or increasing the risk of harm to himself or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.

(e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.

(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78-3a-121. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.

(14) Even though a child has been committed to the physical custody of a local mental health authority pursuant to this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment which may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include,

but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

Section 21. Section **63-25a-102** is amended to read:

63-25a-102. Composition -- Ex officio members -- Appointees of governor -- Terms -- U.S. Attorney as nonvoting member.

(1) The commission on criminal and juvenile justice shall be composed of 20 voting members as follows:

(a) the chief justice of the supreme court, as the presiding officer of the judicial council, or a judge designated by the chief justice;

(b) the state court administrator;

(c) the executive director of the Department of Corrections;

(d) the director of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services;

(e) the commissioner of the Department of Public Safety;

(f) the attorney general;

(g) the president of the chiefs of police association or a chief of police designated by the association's president;

(h) the president of the sheriffs' association or a sheriff designated by the association's president;

(i) the chair of the Board of Pardons and Parole or a member designated by the chair;

(j) the chair of the Utah Sentencing Commission;

(k) the chair of the Utah Substance Abuse and Anti-Violence Coordinating Council;

(l) the chair of the Utah Board of Juvenile Justice;

(m) the chair of the Utah Council on Victims of Crime or the chair's designee; and

(n) the following members designated to serve four-year terms:

(i) a juvenile court judge, appointed by the chief justice, as presiding officer of the Judicial Council; and

(ii) a representative of the statewide association of public attorneys designated by the association's officers.

(2) The governor shall appoint the remaining five members to four-year staggered terms as follows:

(a) one criminal defense attorney appointed from a list of three nominees submitted by the Utah State Bar Association;

(b) one state senator;

(c) one state representative;

(d) one representative of public education; and

(e) one citizen representative.

(3) In addition to the members designated under Subsections (1) and (2), the United States Attorney for the district of Utah may serve as a nonvoting member.

(4) In appointing the members under Subsection (2), the governor shall take into account the geographical makeup of the commission.

Section 22. Section **63-25a-201** is amended to read:

63-25a-201. Creation of council -- Membership -- Terms.

(1) There is created within the governor's office the Utah Substance Abuse and Anti-Violence Coordinating Council.

(2) The Utah Substance Abuse and Anti-Violence Coordinating Council comprises 25 voting members as follows:

(a) the attorney general or the attorney general's designee;

(b) a county commissioner designated by the Utah Association of Counties;

(c) the commissioner of public safety or the commissioner's designee;

(d) the director of the Division of Substance Abuse and Mental Health or the director's designee;

(e) the state superintendent of public instruction or the superintendent's designee;

(f) the director of the Department of Health or the director's designee;

(g) the executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee;

(h) the governor or the governor's designee;

- (i) the executive director of the Department of Corrections or the executive director's designee;
- (j) the director of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services or the director's designee;
- (k) the chair of the Domestic Violence Advisory Council or the chair's designee;
- (l) the following members designated to serve four-year terms:
 - (i) a member of the House of Representatives designated by the speaker;
 - (ii) a member of the Senate designated by the president;
 - (iii) a member of the judiciary designated by the chief justice of the Utah Supreme Court;
 - (iv) a representative designated by the Utah League of Cities and Towns; and
 - (v) a representative from the offices of minority affairs designated by the directors of those offices or a designee;
- (m) the following members appointed by the governor to serve four-year terms:
 - (i) a representative of the Utah National Guard, appointed by the governor;
 - (ii) one resident of the state who has been personally affected by domestic violence;
 - (iii) one resident of the state who has been personally affected by gang violence;
 - (iv) one resident of the state who has been personally affected by alcohol or other drug abuse; and
 - (v) one citizen representative; and
- (n) the following members appointed by the members in Subsections (2)(a) through (2)(m) to serve four-year terms:
 - (i) a person knowledgeable in criminal justice issues;
 - (ii) a person knowledgeable in substance abuse treatment issues;
 - (iii) a person knowledgeable in substance abuse prevention issues; and
 - (iv) a person knowledgeable in judiciary issues.

Section 23. Section **63-25a-301** is amended to read:

63-25a-301. Creation -- Members -- Appointment -- Qualifications.

- (1) There is created a state commission to be known as the Sentencing Commission

composed of 27 members. The commission shall develop by-laws and rules in compliance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and elect its officers.

(2) The commission's members shall be:

(a) two members of the House of Representatives, appointed by the speaker of the House and not of the same political party;

(b) two members of the Senate, appointed by the president of the Senate and not of the same political party;

(c) the executive director of the Department of Corrections or a designee appointed by the executive director;

(d) the director of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services or a designee appointed by the director;

(e) the executive director of the Commission on Criminal and Juvenile Justice or a designee appointed by the executive director;

(f) the chair of the Board of Pardons and Parole or a designee appointed by the chair;

(g) the chair of the Youth Parole Authority or a designee appointed by the chair;

(h) two trial judges and an appellate judge appointed by the chair of the Judicial Council;

(i) two juvenile court judges designated by the chair of the Judicial Council;

(j) an attorney in private practice who is a member of the Utah State Bar, experienced in criminal defense, and appointed by the Utah Bar Commission;

(k) an attorney who is a member of the Utah State Bar, experienced in the defense of minors in juvenile court, and appointed by the Utah Bar Commission;

(l) the director of Salt Lake Legal Defenders or a designee appointed by the director;

(m) the attorney general or a designee appointed by the attorney general;

(n) a criminal prosecutor appointed by the Statewide Association of Public Attorneys;

(o) a juvenile court prosecutor appointed by the Statewide Association of Public Attorneys;

(p) a representative of the Utah Sheriff's Association appointed by the governor;

(q) a chief of police appointed by the governor;

(r) a licensed professional appointed by the governor who assists in the rehabilitation of adult offenders;

(s) a licensed professional appointed by the governor who assists in the rehabilitation of juvenile offenders;

(t) two members from the public appointed by the governor who exhibit sensitivity to the concerns of victims of crime and the ethnic composition of the population; and

(u) one member from the public at large appointed by the governor.

Section 24. Section **63-38-2** is amended to read:

63-38-2. Governor to submit budget to Legislature -- Contents -- Preparation -- Appropriations based on current tax laws and not to exceed estimated revenues.

(1) (a) The governor shall, within three days after the convening of the Legislature in the annual general session, submit a budget for the ensuing fiscal year by delivering it to the presiding officer of each house of the Legislature together with a schedule for all of the proposed appropriations of the budget, clearly itemized and classified.

(b) The budget message shall include a projection of estimated revenues and expenditures for the next fiscal year.

(2) At least 34 days before the submission of any budget, the governor shall deliver a confidential draft copy of his proposed budget recommendations to the Office of the Legislative Fiscal Analyst.

(3) (a) The budget shall contain a complete plan of proposed expenditures and estimated revenues for the next fiscal year based upon the current fiscal year state tax laws and rates.

(b) The budget may be accompanied by a separate document showing proposed expenditures and estimated revenues based on changes in state tax laws or rates.

(4) The budget shall be accompanied by a statement showing:

(a) the revenues and expenditures for the last fiscal year;

(b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and funds of the state;

(c) an estimate of the state's financial condition as of the beginning and the end of the

period covered by the budget;

(d) a complete analysis of lease with an option to purchase arrangements entered into by state agencies;

(e) the recommendations for each state agency for new full-time employees for the next fiscal year; which recommendation should be provided also to the State Building Board under Subsection 63A-5-103(2);

(f) any explanation the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue; and

(g) the information detailing certain regulatory fee increases required by Section 63-38-3.2.

(5) The budget shall include an itemized estimate of the appropriations for:

(a) the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House;

(b) the Executive Department;

(c) the Judicial Department as certified to the governor by the state court administrator;

(d) payment and discharge of the principal and interest of the indebtedness of the state;

(e) the salaries payable by the state under the Utah Constitution or under law for the lease agreements planned for the next fiscal year;

(f) other purposes that are set forth in the Utah Constitution or under law; and

(g) all other appropriations.

(6) Deficits or anticipated deficits shall be included in the budget.

(7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall require from the proper state officials, including public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state moneys, and all institutions applying for state moneys and appropriations, itemized estimates of revenues and expenditures. The entities required by this Subsection (7)(a)(i) to submit itemized estimates of revenues and

expenditures to the governor, shall also report to the Utah Information Technology Commission created in Title 63D, Chapter 1, Information Technology Act, before October 30 of each year. The report to the Information Technology Commission shall include the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures and an analysis of:

- (A) the entity's need for appropriations for information technology;
- (B) how the entity's development of information technology coordinates with other state or local government entities;
- (C) any performance measures used by the entity for implementing information technology goals; and
- (D) any efforts to develop public/private partnerships to accomplish information technology goals.

(ii) (A) The governor may also require other information under these guidelines and at times as the governor may direct.

(B) These guidelines may include a requirement for program productivity and performance measures, where appropriate, with emphasis on outcome indicators.

(b) The estimate for the Legislative Department as certified by the presiding officers of both houses shall be included in the budget without revision by the governor. Before preparing the estimates for the Legislative Department, the Legislature shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

- (i) the Legislature's implementation of information technology goals;
- (ii) any coordination of information technology with other departments of state and local government;
- (iii) any efforts to develop public/private partnerships to accomplish information technology goals; and
- (iv) any performance measures used by the entity for implementing information

technology goals.

(c) The estimate for the Judicial Department, as certified by the state court administrator, shall also be included in the budget without revision, but the governor may make separate recommendations on it. Before preparing the estimates for the Judicial Department, the state court administrator shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

- (i) the Judicial Department's information technology goals;
- (ii) coordination of information technology statewide between all courts;
- (iii) any efforts to develop public/private partnerships to accomplish information technology goals; and
- (iv) any performance measures used by the entity for implementing information technology goals.

(d) Before preparing the estimates for the State Office of Education, the state superintendent shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

- (i) the Office of Education's information technology goals;
- (ii) coordination of information technology statewide between all public schools;
- (iii) any efforts to develop public/private partnerships to accomplish information technology goals; and
- (iv) any performance measures used by the Office of Education for implementing information technology goals.

(e) Before preparing the estimates for the state system of Higher Education, the commissioner shall report to the Information Technology Commission the proposed information technology expenditures and objectives, the proposed appropriation requests and other sources of revenue necessary to fund the proposed expenditures, including an analysis of:

- (i) Higher Education's information technology goals;

(ii) coordination of information technology statewide within the state system of higher education;

(iii) any efforts to develop public/private partnerships to accomplish information technology goals; and

(iv) any performance measures used by the state system of higher education for implementing information technology goals.

(f) The governor may require the attendance at budget meetings of representatives of public and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations.

(g) The governor may revise all estimates, except those relating to the Legislative Department, the Judicial Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(8) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year.

(9) If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

(10) (a) In submitting the budgets for the Departments of Health and Human Services and the Office of the Attorney General, the governor shall consider a separate recommendation in his budget for funds to be contracted to:

(i) local mental health authorities under Section 62A-15-110;

(ii) local substance abuse authorities under Section 62A-15-110;

(iii) area agencies under Section 62A-3-104.2;

(iv) programs administered directly by and for operation of the Divisions of Substance Abuse and Mental Health and Aging and Adult Services;

(v) local health departments under Title 26A, Chapter 1, Local Health Departments; and

(vi) counties for the operation of Children's Justice Centers under Section 67-5b-102.

(b) In his budget recommendations under Subsections (10)(a)(i), (ii), and (iii), the governor shall consider an amount sufficient to grant local health departments, local mental health authorities, local substance abuse authorities, and area agencies the same percentage increase for wages and benefits that he includes in his budget for persons employed by the state.

(c) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (10)(b), he shall include a message to the Legislature regarding his reason for not including that amount.

(11) (a) In submitting the budget for the Division of Services for People with Disabilities, the Division of Child and Family Services, and the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services within the Department of Human Services, the governor shall consider an amount sufficient to grant employees of corporations that provide direct services under contract with those divisions, the same percentage increase for cost-of-living that he includes in his budget for persons employed by the state.

(b) If the governor does not include in his budget an amount sufficient to grant the increase described in Subsection (11)(a), he shall include a message to the Legislature regarding his reason for not including that amount.

(12) (a) The Families, Agencies, and Communities Together Council may propose to the governor under Subsection 63-75-4(4)(e) a budget recommendation for collaborative service delivery systems operated under Section 63-75-6.5.

(b) The Legislature may, through a specific program schedule, designate funds appropriated for collaborative service delivery systems operated under Section 63-75-6.5.

(13) The governor shall include in his budget the state's portion of the budget for the Utah Communications Agency Network established in Title 63C, Chapter 7, Utah Communications Agency Network Act.

Section 25. Section **63-75-3** is amended to read:

63-75-3. Definitions.

As used in this chapter:

(1) "Children and youth at risk" means:

- (a) disabled persons age 18 to 22; or
- (b) persons in the custody of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services within the Department of Human Services age 18 to 21; and
- (c) minors who may at times require appropriate and uniquely designed intervention to:
 - (i) achieve literacy;
 - (ii) advance through the schools;
 - (iii) achieve commensurate with their ability; and
 - (iv) participate in society in a meaningful way as competent, productive, caring, and responsible citizens.

(2) "Council" means the Families, Agencies, and Communities Together Council established under Section 63-75-4.

(3) "Local interagency council" means a council established under Section 63-75-5.7.

(4) "Steering committee" means the Families, Agencies, and Communities Together Steering Committee established under Section 63-75-5.

(5) (a) "Child and family centered service delivery system" means services provided to children and youth at risk and their families that may be delivered by teams and within a supportive community environment.

(b) "Community" includes, when available, parents of children and youth at risk; directors of geographical service delivery areas designated by state agencies; local government elected officials; appointed county officials who are responsible for providing substance abuse, mental health, or public health services; educators; school districts; parent-teacher organizations; child and family advocacy groups; religious and community-based service organizations; individuals; and private sector entities who come together to develop, adopt, and administer a plan for a collaborative service delivery system for children and youth at risk.

(c) "Community resources" means time, money, services, and other contributions provided by individuals, private sector entities, religious organizations, community-based service organizations, school districts, municipal governments, and county governments.

(d) "Individualized and coordinated service plan" means a plan for services and supports

that is comprehensive in its scope, is the product of a collaborative process between public and private service providers, and is specifically tailored to the unique needs of each child or youth served under this chapter.

(e) "Performance monitoring system" means a process to regularly collect and analyze performance information including performance indicators and performance goals:

(i) "performance indicators" means actual performance information regarding a program or activity; and

(ii) "performance goals" means a target level of performance or an expected level of performance against which actual performance is measured.

(f) "Plan for a collaborative service delivery system," "plan," or "plans" means a written document describing how a community proposes to deliver services and supports to children and youth at risk that effectively bring to bear all needed resources, including community resources, to enable them to achieve the outcomes described in [~~Subsections 63-75-3(1)(a) through (d)~~] Subsection (1)(c).

Section 26. Section **63-75-5** is amended to read:

63-75-5. Steering committee -- Membership -- Duties.

(1) As used in this section, "Council of Mental Health Programs" means a council consisting of all of the directors of Utah public mental health centers.

(2) There is established a Families, Agencies, and Communities Together Steering Committee.

(3) The steering committee shall include at least 18 voting members as follows:

(a) the director of the Division of Health Care Financing within the Department of Health;

(b) a representative annually designated by the Council of Mental Health Programs;

(c) the director of the Division of Substance Abuse and Mental Health within the Department of Human Services;

(d) the director of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services within the Department of Human Services;

- (e) the state director of special education;
 - (f) the person responsible for programs for at risk students within the Utah State Office of Education, if that person is not the state director of special education;
 - (g) the Juvenile Court Administrator;
 - (h) a representative annually designated by substance abuse directors;
 - (i) the director of the Division of Child and Family Services within the Department of Human Services;
 - (j) the director of family health services programs;
 - (k) a representative annually designated by the Utah School Superintendents Association;
 - (l) a juvenile court judge designated by the presiding officer of the state Judicial Council;
 - (m) a representative annually designated by the local health officers;
 - (n) a representative annually designated by the executive director of the Department of Workforce Services;
 - (o) three at-large members appointed by a majority of the committee to four-year terms, who represent a statewide perspective on children and youth issues; and
 - (p) parent representatives appointed by members specified in Subsections (3)(a) through (o).
- (4) Additional members may be selected by a majority of the committee to serve as voting members for four-year terms.
- (5) (a) Except as required by Subsection (5)(b), as terms of current at-large committee members expire, the committee shall appoint each new member or reappointed member to a four-year term.
- (b) Notwithstanding the requirements of Subsection (5)(a), the committee shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of at-large committee members are staggered so that approximately half of the at-large committee members are appointed every two years.
- (6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(7) The members shall annually elect a chair and vice chair.

(8) A majority of committee members are necessary to constitute a quorum and to transact the business of the committee.

(9) (a) (i) Members who are not government employees may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

(10) The committee shall:

(a) assist the council in fulfilling its duties set out in Section 63-75-4;

(b) monitor, solicit input for policy changes, and provide technical assistance to local collaborative programs; and

(c) report any formal recommendations to the council.

Section 27. Section **63-92-3** is amended to read:

63-92-3. Establishment of local oversight committees -- Interagency information sharing.

(1) The Commission on Criminal and Juvenile Justice shall administer the statewide SHOCAP oversight committee and provide periodic review of the programs.

(2) Counties or municipalities implementing SHOCAP shall form a local oversight committee composed of the following persons, or their designees:

- (a) the district juvenile court administrator;
- (b) the superintendent of the local school district;
- (c) the local county attorney;
- (d) a member of the local county or municipal legislative body;
- (e) the local county sheriff;
- (f) a local chief of police;
- (g) the local chief of probation for the Juvenile Court;
- (h) the regional director of the [~~Division of Youth Corrections~~] Division of Juvenile

Justice Services;

- (i) the regional director of the Division of Child and Family Services;
- (j) a representative of a local public mental health provider; and
- (k) any additional members considered appropriate by the local oversight committee.

(3) The local oversight committee shall develop, implement, and periodically review the following:

(a) standardized criteria as developed by the statewide SHOCAP oversight committee for determining who is a serious habitual offender (SHO);

- (b) what information is needed on each offender for inclusion in the program;
- (c) who will have access to the database;
- (d) who will maintain the database and manage the information in the program;
- (e) what the information in the database is to be used for; and
- (f) penalties for improper use of the information in the database.

(4) The local oversight committee shall develop a written interagency information sharing agreement to be signed by the chief executive officer of each of the agencies represented on the oversight committee. The sharing agreement shall include the provisions requiring that:

- (a) all records pertaining to a SHO be kept confidential;
 - (b) when a SHO is included in the SHOCAP program for the purposes of tracking and providing coordinated services, the local law enforcement agency or an agency designated by the interagency agreement shall as soon as reasonably possible notify the SHO and the parent or guardian of the SHO;
 - (c) the disclosure of information to other staff members of signatory agencies be made only to those staff members who provide direct services or supervision to the SHO; and
 - (d) all staff members of signatory agencies receiving confidential information concerning a SHO be subject to the confidentiality requirements of this chapter.
- (5) Notwithstanding any other statutory provision, staff members of signatory agencies who provide direct services or supervision to SHOCAP youth may distribute photographs of SHOCAP youth to other staff members of signatory agencies who provide direct services or supervision to SHOCAP youth.
- (6) The local oversight committee shall develop a program capable of maintaining the information determined to be necessary under Subsection (3).

Section 28. Section **63B-3-102** is amended to read:

63B-3-102. Maximum amount -- Projects authorized.

- (1) The total amount of bonds issued under this part may not exceed \$64,600,000.
- (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).
- (b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period and all related engineering, architectural, and legal fees.
- (c) For the division, proceeds shall be provided for the following:

CAPITAL IMPROVEMENTS

1	Alterations, Repairs, and Improvements	\$5,000,000
TOTAL IMPROVEMENTS		\$5,000,000

CAPITAL AND ECONOMIC DEVELOPMENT

			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	
1	University of Utah Marriott Library Phase III (Final)	\$13,811,500	\$881,600
2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000	\$0
3	Weber State University - Heat Plant	\$2,332,100	\$9,600
4	Department of Human Services - Division of Youth Corrections <u>renamed</u> <u>in 2003 to the Division of Juvenile Justice Services</u>	\$4,180,000	\$400,000
5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
8	Utah State University - Old Main Phase III Design	\$550,000	\$0

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9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
11	Anasazi Museum	\$760,200	\$8,500
12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
13	Signetics Building Remodel	\$2,000,000	\$0
14	Antelope Island Visitors Center	\$750,000	\$30,000
15	State Fair Park - Master Study	\$150,000	\$0
16	Utah National Guard - Draper Land	\$380,800	\$0
17	Davis Applied Technology Center - Design	\$325,000	\$0
18	Palisade State Park - Land and Park Development	\$800,000	\$0
19	Department of Human Services - Cedar City Land	\$80,000	\$0
20	Department of Human Services - Clearfield Land	\$163,400	\$0
21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$58,885,600	
TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$63,885,600	

(d) For purposes of this section, operations and maintenance costs:

(i) are estimates only;

(ii) may include any operations and maintenance costs already funded in existing agency

budgets; and

(iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section 63-56-40.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 29. Section **63B-3-301** is amended to read:

63B-3-301. Legislative intent -- Additional projects.

(1) It is the intent of the Legislature that, for any lease purchase agreement that the Legislature may authorize the Division of Facilities Construction and Management to enter into during its 1994 Annual General Session, the State Building Ownership Authority, at the reasonable rates and amounts it may determine, and with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Office of Planning and Budget, may seek out the most cost effective and prudent lease purchase plans available to the state and may, pursuant to Title 63, Chapter 9a, State Building Ownership Act, certificate out interests in, or obligations of the authority pertaining to:

- (a) the lease purchase obligation; or
- (b) lease rental payments under the lease purchase obligation.

(2) It is the intent of the Legislature that the Department of Transportation dispose of surplus real properties and use the proceeds from those properties to acquire or construct through the Division of Facilities Construction and Management a new District Two Complex.

(3) It is the intent of the Legislature that the State Building Board allocate funds from the Capital Improvement appropriation and donations to cover costs associated with the upgrade of the Governor's Residence that go beyond the restoration costs which can be covered by insurance proceeds.

(4) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63, Chapter 9a, State Building Ownership Act, to issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to \$10,600,000 for the construction of a Natural Resources Building in Salt Lake City, together with additional amounts necessary to:

- (i) pay costs of issuance;
- (ii) pay capitalized interest; and
- (iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and

prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Office of Planning and Budget.

(c) It is the intent of the Legislature that the operating budget for the Department of Natural Resources not be increased to fund these lease payments.

(5) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63, Chapter 9a, State Building Ownership Act, to issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to \$8,300,000 for the acquisition of the office buildings currently occupied by the Department of Environmental Quality and approximately 19 acres of additional vacant land at the Airport East Business Park in Salt Lake City, together with additional amounts necessary to:

- (i) pay costs of issuance;
- (ii) pay capitalized interest; and
- (iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Office of Planning and Budget.

(6) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63, Chapter 9a, State Building Ownership Act, to issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to \$9,000,000 for the acquisition or construction of up to two field offices for the Department of Human Services in the southwestern portion of Salt Lake County, together with additional amounts necessary to:

- (i) pay costs of issuance;
- (ii) pay capitalized interest; and
- (iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the

director of the Division of Finance, and the director of the Office of Planning and Budget.

(7) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63, Chapter 9a, State Building Ownership Act, to issue or execute obligations or enter into or arrange for lease purchase agreements in which participation interests may be created, to provide up to \$5,000,000 for the acquisition or construction of up to 13 stores for the Department of Alcoholic Beverage Control, together with additional amounts necessary to:

- (i) pay costs of issuance;
- (ii) pay capitalized interest; and
- (iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Office of Planning and Budget.

(c) It is the intent of the Legislature that the operating budget for the Department of Alcoholic Beverage Control not be increased to fund these lease payments.

(8) (a) It is the intent of the Legislature to authorize the State Building Ownership Authority under authority of Title 63, Chapter 9a, State Building Ownership Act, to issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to \$6,800,000 for the construction of a Prerelease and Parole Center for the Department of Corrections, containing a minimum of 300 beds, together with additional amounts necessary to:

- (i) pay costs of issuance;
- (ii) pay capitalized interest; and
- (iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the director of the Office of Planning and Budget.

(9) If S.B. 275, 1994 General Session, which authorizes funding for a Courts Complex

in Salt Lake City, becomes law, it is the intent of the Legislature that:

(a) the Legislative Management Committee, the Interim Appropriation Subcommittees for General Government and Capital Facilities and Executive Offices, Courts, and Corrections, the Office of the Legislative Fiscal Analyst, the Office of Planning and Budget, and the State Building Board participate in a review of the proposed facility design for the Courts Complex no later than December 1994; and

(b) although this review will not affect the funding authorization issued by the 1994 Legislature, it is expected that Division of Facilities Construction and Management will give proper attention to concerns raised in these reviews and make appropriate design changes pursuant to the review.

(10) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management, in cooperation with the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services, develop a flexible use prototype facility for the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services;

(b) the development process use existing prototype proposals unless it can be quantifiably demonstrated that the proposals cannot be used;

(c) the facility is designed so that with minor modifications, it can accommodate detention, observation and assessment, transition, and secure programs as needed at specific geographical locations;

(d) (i) funding as provided in the fiscal year 1995 bond authorization for the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services is used to design and construct one facility and design the other;

(ii) the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services shall:

(A) determine the location for the facility for which design and construction are fully funded; and

(B) in conjunction with the Division of Facilities Construction and Management,

determine the best methodology for design and construction of the fully funded facility;

(e) the Division of Facilities Construction and Management submit the prototype as soon as possible to the Capital Facilities and Administrative Services Appropriation Subcommittee and Executive Offices, Criminal Justice, and Legislature Appropriation Subcommittee for review;

(f) the Division of Facilities Construction and Management issue a Request for Proposal for one of the facilities, with that facility designed and constructed entirely by the winning firm;

(g) the other facility be designed and constructed under the existing Division of Facilities Construction and Management process;

(h) that both facilities follow the program needs and specifications as identified by Division of Facilities Construction and Management and the Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services in the prototype; and

(i) the fully funded facility should be ready for occupancy by September 1, 1995.

(11) It is the intent of the Legislature that the fiscal year 1995 funding for the State Fair Park Master Study be used by the Division of Facilities Construction and Management to develop a master plan for the State Fair Park that:

(a) identifies capital facilities needs, capital improvement needs, building configuration, and other long term needs and uses of the State Fair Park and its buildings; and

(b) establishes priorities for development, estimated costs, and projected timetables.

(12) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management, in cooperation with the Division of Parks and Recreation and surrounding counties, develop a master plan and general program for the phased development of Antelope Island;

(b) the master plan:

(i) establish priorities for development;

(ii) include estimated costs and projected time tables; and

(iii) include recommendations for funding methods and the allocation of responsibilities between the parties; and

(c) the results of the effort be reported to the Natural Resources Appropriations Subcommittee and Capital Facilities and Administrative Services Appropriation Subcommittee.

(13) It is the intent of the Legislature to authorize the University of Utah to use:

(a) bond reserves to plan, design, and construct the Kingsbury Hall renovation under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(b) donated and other nonappropriated funds to plan, design, and construct the Biology Research Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(14) It is the intent of the Legislature to authorize Utah State University to use:

(a) federal and other funds to plan, design, and construct the Bee Lab under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(b) donated and other nonappropriated funds to plan, design, and construct an Athletic Facility addition and renovation under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(c) donated and other nonappropriated funds to plan, design, and construct a renovation to the Nutrition and Food Science Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(d) federal and private funds to plan, design, and construct the Millville Research Facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(15) It is the intent of the Legislature to authorize Salt Lake Community College to use:

(a) institutional funds to plan, design, and construct a remodel to the Auto Trades Office and Learning Center under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(b) institutional funds to plan, design, and construct the relocation and expansion of a

temporary maintenance compound under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(c) institutional funds to plan, design, and construct the Alder Amphitheater under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(16) It is the intent of the Legislature to authorize Southern Utah University to use:

(a) federal funds to plan, design, and construct a Community Services Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(b) donated and other nonappropriated funds to plan, design, and construct a stadium expansion under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(17) It is the intent of the Legislature to authorize the Department of Corrections to use donated funds to plan, design, and construct a Prison Chapel at the Central Utah Correctional Facility in Gunnison under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(18) If the Utah National Guard does not relocate in the Signetics Building, it is the intent of the Legislature to authorize the Guard to use federal funds and funds from Provo City to plan and design an Armory in Provo, Utah, under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(19) It is the intent of the Legislature that the Utah Department of Transportation use \$250,000 of the fiscal year 1995 highway appropriation to fund an environmental study in Ogden, Utah of the 2600 North Corridor between Washington Boulevard and I-15.

(20) It is the intent of the Legislature that the Ogden-Weber Applied Technology Center use the monies appropriated for fiscal year 1995 to design the Metal Trades Building and purchase equipment for use in that building that could be used in metal trades or other programs

in other Applied Technology Centers.

(21) It is the intent of the Legislature that the Bridgerland Applied Technology Center and the Ogden-Weber Applied Technology Center projects as designed in fiscal year 1995 be considered as the highest priority projects for construction funding in fiscal year 1996.

(22) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management complete physical space utilization standards by June 30, 1995, for the use of technology education activities;

(b) these standards are to be developed with and approved by the State Office of Education, the Board of Regents, and the Utah State Building Board;

(c) these physical standards be used as the basis for:

(i) determining utilization of any technology space based on number of stations capable and occupied for any given hour of operation; and

(ii) requests for any new space or remodeling;

(d) the fiscal year 1995 projects at the Bridgerland Applied Technology Center and the Ogden-Weber Applied Technology Center are exempt from this process; and

(e) the design of the Davis Applied Technology Center take into account the utilization formulas established by the Division of Facilities Construction and Management.

(23) It is the intent of the Legislature that Utah Valley State College may use the monies from the bond allocated to the remodel of the Signetics building to relocate its technical education programs at other designated sites or facilities under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(24) It is the intent of the Legislature that the monies provided for the fiscal year 1995 project for the Bridgerland Applied Technology Center be used to design and construct the space associated with Utah State University and design the technology center portion of the project.

(25) It is the intent of the Legislature that the governor provide periodic reports on the expenditure of the funds provided for electronic technology, equipment, and hardware to the Information Technology Commission, the Capital Facilities and Administrative Services

Appropriation Subcommittee, and the Legislative Management Committee.

Section 30. Section **63B-4-102** is amended to read:

63B-4-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$45,300,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

CAPITAL IMPROVEMENTS

Alterations, Repairs, and Improvements	\$7,200,000
TOTAL IMPROVEMENTS	\$7,200,000

CAPITAL AND ECONOMIC DEVELOPMENT

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE COSTS
Corrections - Uinta IVA	\$11,300,000	\$212,800
Utah County Youth Correctional Facility	\$6,650,000	\$245,000
Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
Project Reserve Fund	\$3,500,000	None
Weber State University - Browning Center	\$3,300,000	None

Remodel		
Heber Wells Building Remodel	\$2,000,000	None
Higher Education Davis County - Land Purchase	\$1,600,000	None
National Guard -- Provo Armory	\$1,500,000	\$128,000
Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
Higher Education Design Projects	\$800,000	Varies depending upon projects selected
Salt Lake Community College - South Valley Planning	\$300,000	None
Division of Youth Corrections <u>renamed in 2003 to the Division of Juvenile Justice Services</u> - Logan Land Purchase	\$120,000	None
TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

- (d) For purposes of this section, operations and maintenance costs:
- (i) are estimates only;
 - (ii) may include any operations and maintenance costs already funded in existing agency budgets; and
 - (iii) are not commitments by this Legislature or future Legislatures to fund those operations and maintenance costs.

(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not constitute a limitation on the amount that may be expended for any project.

(b) The board may revise these estimates and redistribute the amount estimated for a project among the projects authorized.

(c) The commission, by resolution and in consultation with the board, may delete one or more projects from this list if the inclusion of that project or those projects in the list could be construed to violate state law or federal law or regulation.

(4) (a) The division may enter into agreements related to these projects before the receipt of proceeds of bonds issued under this chapter.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund.

(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The commission may, by resolution, make any statement of intent relating to that reimbursement that is necessary or desirable to comply with federal tax law.

(5) (a) For those projects for which only partial funding is provided in Subsection (2), it is the intent of the Legislature that the balance necessary to complete the projects be addressed by future Legislatures, either through appropriations or through the issuance or sale of bonds.

(b) For those phased projects, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(c) Those contracts shall contain a provision for termination of the contract for the convenience of the state as required by Section 63-56-40.

(d) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund projects initiated from this authorization.

Section 31. Section **63B-7-501** is amended to read:

63B-7-501. Revenue bond authorizations.

(1) (a) It is the intent of the Legislature that the State Building Ownership Authority, under the authority of Title 63, Chapter 9a, State Building Ownership Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation

interests may be created, to provide up to \$1,568,600 for the construction of a Utah Correctional Industries Facility at the Central Utah Correctional Facility at Gunnison, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Department of Corrections to seek out the most cost effective and prudent lease purchase plan available.

(c) It is the intent of the Legislature that program revenues be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (1).

(2) It is the intent of the Legislature that:

(a) the State Board of Regents, on behalf of the University of Utah, issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, income, and revenues of the University of Utah, other than appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping student housing;

(b) University funds and housing rental revenues be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (2); and

(c) the bonds or other evidences of indebtedness authorized by this Subsection (2) may provide up to \$86,000,000 together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(3) It is the intent of the Legislature that:

(a) the State Board of Regents on behalf of the University of Utah issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, income, and revenues of the University of Utah, other than appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping a Health Sciences Parking Structure;

(b) University funds and parking revenues be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (3); and

(c) the bonds or other evidences of indebtedness authorized by this Subsection (3) may

provide up to \$12,000,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(4) It is the intent of the Legislature that:

(a) the State Board of Regents, on behalf of the University of Utah, issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit and income and revenues of the University of Utah, other than appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping a Southwest Campus Parking Structure;

(b) University funds and parking revenues be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (4); and

(c) the bonds or other evidences of indebtedness authorized by this Subsection (4) may provide up to \$7,200,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(5) It is the intent of the Legislature that:

(a) the State Board of Regents, on behalf of the University of Utah, issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit and income and revenues of the University of Utah, other than appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping an expansion of the Eccles Broadcast Center;

(b) University funds and service revenues be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (5); and

(c) the bonds or other evidences of indebtedness authorized by this Subsection (5) may provide up to \$5,100,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(6) It is the intent of the Legislature that:

(a) the State Board of Regents, on behalf of the University of Utah, issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit and income and revenues of the University of Utah, other than

appropriations of the Legislature, to finance the cost of constructing, furnishing, equipping, and remodeling facilities for perinatal services, adult critical care services, clinical training and support, and upgrade of the University Hospital Rehabilitation Unit, and for purchase of the University Neuropsychiatric Institute and Summit Health Center in Park West;

(b) University Hospital revenues be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (6); and

(c) the bonds or other evidences of indebtedness authorized by this Subsection (6) may provide up to \$23,300,000 together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(7) It is the intent of the Legislature that:

(a) the State Board of Regents, on behalf of Weber State University, issue, sell, and deliver revenue bonds or other evidences of indebtedness of Weber State University to borrow money on the credit and income and revenues of Weber State University, other than appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping student housing;

(b) University funds and housing rental revenues be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (7); and

(c) the bonds or other evidences of indebtedness authorized by this Subsection (7) may provide up to \$19,000,000 together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(8) (a) It is the intent of the Legislature that the State Building Ownership Authority, under the authority of Title 63, Chapter 9a, State Building Ownership Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to \$1,100,000 for the construction of surplus property facilities for the Division of Fleet Operations, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

(b) The State Building Ownership Authority shall work cooperatively with the Department of Administrative Services to seek out the most cost effective and prudent lease

purchase plan available.

(c) It is the intent of the Legislature that Internal Service Fund revenues be used as the primary revenue source for repayment of any obligation created under authority of this Subsection (8).

(9) (a) Contingent upon the state of Utah receiving a perfected security interest in accordance with Senate Joint Resolution 14, 1998 Annual General Session, the State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership Authority Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to \$25,000,000 for the cost of constructing, furnishing, and equipping housing facilities at the University of Utah, together with additional amounts necessary to:

- (i) pay costs of issuance;
- (ii) pay capitalized interest; and
- (iii) fund any debt service reserve requirements.

(b) The State Building Ownership Authority and the University of Utah may enter into real estate arrangements and security arrangements that are:

- (i) necessary to accomplish the purposes of this Subsection (9); and
- (ii) not inconsistent with the requirements of Senate Joint Resolution 14, 1998 Annual General Session.

(10) In order to achieve a debt service savings, it is the intent of the Legislature that the State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership Authority Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide sufficient funding to exercise the state's option to purchase the Youth Corrections Facility in Salt Lake County currently financed by Salt Lake County.

Section 32. Section **63B-11-702** is amended to read:

63B-11-702. Other capital facility authorizations and intent language.

(1) It is the intent of the Legislature that:

(a) Salt Lake Community College use donations and other institutional funds to plan, design, and construct a renovation of and addition to the Grand Theater under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the college may request state funds for operations and maintenance to the extent that the college is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(2) It is the intent of the Legislature that:

(a) the University of Utah use donations, grants, and other institutional funds to plan, design, and construct a Department of Chemistry Gauss House under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(3) It is the intent of the Legislature that:

(a) the University of Utah use donations and other institutional funds to plan, design, and construct an expansion of the Eccles Health Science Library and the associated parking structure under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(4) It is the intent of the Legislature that:

(a) the University of Utah use donations and other institutional funds to plan, design, and

construct a Phase II Addition to the Moran Eye Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

- (b) no state funds be used for any portion of this project; and
 - (c) the university may not request state funds for operations and maintenance.
- (5) It is the intent of the Legislature that:

(a) the University of Utah use donations and other institutional funds to plan, design, and construct a Children's Dance Theatre under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

- (b) no state funds be used for any portion of this project; and
 - (c) the university may not request state funds for operations and maintenance.
- (6) It is the intent of the Legislature that:

(a) Utah State University use donations and other institutional funds to plan, design, and construct a Teaching Pavilion at its Animal Science Farm under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(7) It is the intent of the Legislature that:

(a) the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services use donations to plan, design, and construct a chapel at the Slate Canyon Youth Corrections Facility under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

- (b) no state funds be used for any portion of this project; and
 - (c) the division may not request additional state funding for operations and maintenance.
- (8) It is the intent of the Legislature that the Utah National Guard use federal funds and

proceeds from the sale of property to acquire a site for new facilities in Salt Lake or Davis County.

(9) It is the intent of the Legislature that:

(a) the Utah National Guard use donations and grants to plan, design, and construct the renovation and expansion of the Fort Douglas Military Museum under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the National Guard may not request additional state funding for operations and maintenance.

(10) It is the intent of the Legislature that:

(a) the Division of Facilities Construction and Management pursue the exchange of public safety facilities in Orem if:

(i) the land and newly constructed replacement facilities meet the needs of the Driver License Division and the Utah Highway Patrol; and

(ii) the replacement property and facilities can be obtained at a cost that is not less than the market value of the existing property and facilities; and

(b) the division confirms the value of the properties to be exchanged.

Section 33. Section **67-5b-101** is amended to read:

67-5b-101. Definitions.

As used in this part:

(1) "Abused child" means a child who is a victim of sexual abuse or serious physical abuse and who is 17 years of age or younger.

(2) "Agreement" means a written contract between two or more public agencies and other persons to provide for multidisciplinary intergovernmental operation of a center established in accordance with Section 67-5b-104.

(3) "Center" means a Children's Justice Center established in accordance with Section 67-5b-102.

(4) "Officers and employees" means any person performing services for two or more public agencies as agreed in intergovernmental contracts in accordance with Section 67-5b-104.

(5) "Public agency" means a municipality, a county, the attorney general, the Division of Child and Family Services, the ~~[Division of Youth Corrections]~~ Division of Juvenile Justice Services, the Department of Corrections, the juvenile court, and the Administrative Office of the Courts.

(6) "Volunteer" means any person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency. Volunteer does not include any person participating in human subjects research and court-ordered compensatory service workers as defined in Section 67-20-2.

Section 34. Section **76-5-101** is amended to read:

76-5-101. "Prisoner" defined.

For purposes of this part "prisoner" means any person who is in custody of a peace officer pursuant to a lawful arrest or who is confined in a jail or other penal institution or a facility used for confinement of delinquent juveniles operated by the ~~[Division of Youth Corrections]~~ Division of Juvenile Justice Services regardless of whether the confinement is legal.

Section 35. Section **76-5-413** is amended to read:

76-5-413. Custodial sexual relations or misconduct with youth receiving state services -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Actor" means:

(i) a person employed by the Department of Human Services, as created in Section ~~[62A-1-105]~~ 62A-1-102, or an employee of a private provider or contractor; or

(ii) a person employed by the juvenile court of the state, or an employee of a private provider or contractor.

(b) "Department" means the Department of Human Services created in Section 62A-1-102.

(c) "Juvenile court" means the juvenile court of the state created in Section 78-3a-102.

(d) "Private provider or contractor" means any person or entity that contracts with the:

(i) department to provide services or functions that are part of the operation of the department; or

(ii) juvenile court to provide services or functions that are part of the operation of the juvenile court.

(e) "Youth receiving state services" means a person:

(i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

(A) in the custody of the department under Subsection 78-3a-118(2)(c)(ii); or

(B) receiving services from any division of the department if any portion of the costs of these services is covered by public monies as defined in Section 76-8-401; or

(ii) younger than 21 years of age who is:

(A) in the custody of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, or the Division of Child and Family Services; or

(B) under the jurisdiction of the juvenile court.

(2) (a) An actor commits custodial sexual relations with a youth receiving state services if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection(2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a youth receiving state services;

(b) engaging in any sexual act with a youth receiving state services involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant;
or

(c) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct with a youth receiving state services if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a youth receiving state services;

(b) touching the breast of a female youth receiving state services;

(c) otherwise taking indecent liberties with a youth receiving state services; or
(d) causing a youth receiving state services to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

- (a) Section 76-5-401, unlawful sexual activity with a minor;
- (b) Section 76-5-402, rape;
- (c) Section 76-5-402.1, rape of a child;
- (d) Section 76-5-402.2, object rape;
- (e) Section 76-5-402.3, object rape of a child;
- (f) Section 76-5-403, forcible sodomy;
- (g) Section 76-5-403.1, sodomy on a child;
- (h) Section 76-5-404, forcible sexual abuse;
- (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
- (j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

- (i) mistakenly believed the youth receiving state services to be 18 years of age or older at the time of the alleged offense; or
 - (ii) was unaware of the true age of the youth receiving state services.
- (b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 36. Section **77-38-3** is amended to read:

77-38-3. Notification to victims -- Initial notice, election to receive subsequent notices -- Form of notice -- Protected victim information.

(1) Within seven days of the filing of felony criminal charges against a defendant, the prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims of the crime contained in the charges, except as otherwise provided in this chapter.

(2) The initial notice to the victim of a crime shall provide information about electing to receive notice of subsequent important criminal justice hearings listed in Subsections 77-38-2(5)(a) through (f) and rights under this chapter.

(3) The prosecuting agency shall provide notice to a victim of a crime for the important criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f) which the victim has requested.

(4) (a) The responsible prosecuting agency may provide initial and subsequent notices in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(b) In the event of an unforeseen important criminal justice hearing, listed in Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith attempt to contact the victim by telephone shall be considered sufficient notice, provided that the prosecuting agency subsequently notifies the victim of the result of the proceeding.

(5) (a) The court shall take reasonable measures to ensure that its scheduling practices for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for victims of crimes to be notified.

(b) The court shall also consider whether any notification system that it might use to provide notice of judicial proceedings to defendants could be used to provide notice of those same proceedings to victims of crimes.

(6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give notice to the responsible prosecuting agency of any motion for modification of any determination made at any of the important criminal justice hearings provided in Subsections 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the prosecuting agency may comply with its notification obligation.

(7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and

Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

(b) The board may provide notice in any reasonable manner, including telephonically, electronically, orally, or by means of a letter or form prepared for this purpose.

(8) Prosecuting agencies and the Board of Pardons and Parole are required to give notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through (f) only where the victim has responded to the initial notice, requested notice of subsequent proceedings, and provided a current address and telephone number if applicable.

(9) (a) Law enforcement and criminal justice agencies shall refer any requests for notice or information about crime victim rights from victims to the responsible prosecuting agency.

(b) In a case in which the Board of Pardons and Parole is involved, the responsible prosecuting agency shall forward any request for notice that it has received from a victim to the Board of Pardons and Parole.

(10) In all cases where the number of victims exceeds ten, the responsible prosecuting agency may send any notices required under this chapter in its discretion to a representative sample of the victims.

(11) (a) A victim's address, telephone number, and victim impact statement maintained by a peace officer, prosecuting agency, Youth Parole Authority, [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, Department of Corrections, and Board of Pardons and Parole, for purposes of providing notice under this section, is classified as protected as provided in Subsection 63-2-304(10).

(b) The victim's address, telephone number, and victim impact statement is available only to the following persons or entities in the performance of their duties:

- (i) a law enforcement agency, including the prosecuting agency;
- (ii) a victims' right committee as provided in Section 77-37-5;
- (iii) a governmentally sponsored victim or witness program;
- (iv) the Department of Corrections;
- (v) Office of Crime Victims' Reparations;
- (vi) Commission on Criminal and Juvenile Justice; and

(vii) the Board of Pardons and Parole.

(12) The notice provisions as provided in this section do not apply to misdemeanors as provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section 77-38-2.

Section 37. Section **78-3a-103** is amended to read:

78-3a-103. Definitions.

(1) As used in this chapter:

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

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

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

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

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

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

(e) "Child placement agency" means:

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

or

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

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

(g) "Court" means the juvenile court.

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

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

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

- (i) pending court disposition or transfer to another jurisdiction; or
- (ii) while under the continuing jurisdiction of the court.

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

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

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

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

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

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

- (i) the right to physical custody of the minor;
- (ii) the right and duty to protect, train, and discipline the minor;
- (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

any of the conditions prescribed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 38. Section **78-3a-113** is amended to read:

78-3a-113. Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.

(1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;

(b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony;

(c) the minor is seriously endangered in his surroundings or if the minor seriously endangers others, and immediate removal appears to be necessary for his protection or the protection of others;

(d) there are reasonable grounds to believe the minor has run away or escaped from his parents, guardian, or custodian; or

(e) there is reason to believe the minor is subject to the state's compulsory education law and that the minor is absent from school without legitimate or valid excuse, subject to Section 53A-11-105.

(2) (a) A private citizen or a probation officer may take a minor into custody if under the circumstances he could make a citizen's arrest if the minor was an adult.

(b) A probation officer may also take a minor into custody under Subsection (1) or if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile court or in emergency situations in which a peace officer is not immediately available.

(3) (a) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be released to the care of his parent or other responsible adult, unless his immediate welfare or the protection of the community requires his detention.

(b) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A minor may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), he shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating the details of the presently alleged offense, the facts which bring the minor within the jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement.

(b) (i) The designated youth corrections facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services under Sections 62A-7-104 and 62A-7-205, whether to admit the minor to secure detention, admit the minor to home detention, place the minor in a placement other than detention, or return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

(ii) If the designated youth corrections facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the notification of home detention is not:

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

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

(c) A minor may not be admitted to detention unless the minor is detainable based on the guidelines or the minor has been brought to detention pursuant to a judicial order or division warrant pursuant to Subsection 62A-7-112(8).

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall arrange appropriate placement.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and shall promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) A person may be taken into custody by a peace officer without a court order if the person is in apparent violation of a protective order or if there is reason to believe that a minor is

being abused by the person and any of the situations outlined in Section 77-7-2 exist.

Section 39. Section **78-3a-114** is amended to read:

78-3a-114. Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement of minors for criminal proceedings -- Bail laws inapplicable, exception.

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(b) A minor who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.

(c) A minor may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe for the minor to leave him with his parents, guardian, or custodian.

(2) After admission to a detention facility pursuant to the guidelines established by the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the minor to his parents, guardian, or custodian if it is found he can be safely returned to their care, either upon written promise to bring the minor to the court at a time set or without restriction.

(a) If the minor's parent, guardian, or custodian fails to retrieve the minor from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the minor remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services to recover the cost of care for the time the minor remains in the facility.

(3) (a) When a minor is detained in a detention or shelter facility, the parents or guardian

shall be informed by the person in charge of the facility that they have the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(b) Detention hearings shall be held by the judge or by a commissioner.

(c) The court may, at any time, order the release of the minor, whether a detention hearing is held or not.

(d) If the minor is released, and the minor remains in the facility, because the parents, guardian, or custodian fails to retrieve the minor, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A minor may not be held in a shelter facility longer than 48 hours prior to a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section 78-3a-306.

(c) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

(d) If the court finds at a detention hearing that it is not safe to release the minor, the judge or commissioner may order the minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court.

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

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

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

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

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

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101 for longer than 72 hours, excluding weekends and holidays. The period of detention may be extended by the court for one period of seven calendar days if:

(a) the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(b) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(6) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(7) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

(8) (a) A minor under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding confinement facilities apply to this Subsection (8).

(b) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for minors may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure youth corrections facility is not an appropriate place of confinement for detention purposes under this section.

(9) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a minor who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the minor to a detention facility, unless otherwise ordered by the juvenile court.

(10) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal proceedings in the district court under Section 78-3a-603.

(11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may be detained in a jail or other place of detention used for adults charged with crime.

(12) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in Subsection 78-3a-503(11).

(13) Section 76-8-418 is applicable to a minor who willfully and intentionally commits an act against a jail or other place of confinement, including a [~~Division of Youth Corrections~~] Division of Juvenile Justice Services detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

Section 40. Section **78-3a-118** is amended to read:

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

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

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to

the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include the specific offenses for which the minor was adjudicated.

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

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

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

(A) his parent or guardian;

(B) the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services; or

(C) the Division of Child and Family Services.

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

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

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

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

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

(c) (i) The court may:

(A) vest legal custody of the minor in the Division of Child and Family Services, [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, or the Division of

Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) Minors who are committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect are subject to the provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

(B) Prior to the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Prior to committing a minor to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the minor's removal from his home.

(d) (i) The court may commit the minor to the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78-3a-104(1)(c) may not be committed to the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

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

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

over the minor. This commitment may be stayed or suspended upon conditions ordered by the court.

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

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

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

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

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

(i) The court may order the minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78-3a-318 and impose fines in limited amounts. If a minor has been returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

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

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

(ii) Consistent with the order of the court, the probation officer may permit the minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

- (A) restrain the minor from driving for periods of time the court considers necessary; and
- (B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the suspension of driving privileges for an offense under Section 78-3a-506 are governed only by Section 78-3a-506.

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

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

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

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

(ii) In placing a minor under the guardianship or legal custody of an individual or of a

private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of the minor's parents.

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

- (A) parent-time by the parents or one parent;
- (B) restrictions on the minor's associates;
- (C) restrictions on the minor's occupation and other activities; and
- (D) requirements to be observed by the parents or custodian.

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

(q) The court may order the minor to be placed in the legal custody of the Division of Substance Abuse and Mental Health or committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within its jurisdiction to the Utah State Developmental Center if the minor has mental retardation in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a person younger than 18 years of age may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their minor. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

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

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

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

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the minor reaches majority;

(B) are not subject to review under Section 78-3a-119; and

(C) may be modified by petition or motion as provided in Section 78-3a-903.

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

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction he may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78-3a-318.

Section 41. Section **78-3a-301** is amended to read:

78-3a-301. Court-ordered protective custody of a minor following petition filing -- Grounds.

(1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is the subject of the petition is not in the protective custody of the division, a court may order that the minor be removed from the minor's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

(a) there is an imminent danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing the minor from the custody of the minor's parent or guardian. If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency has occurred

involving the same alleged abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the custody of the minor's parent;

(b) a parent or guardian engages in or threatens the minor with unreasonable conduct that causes the minor to suffer emotional damage and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of the minor's parent or guardian;

(c) (i) the minor or another minor residing in the same household has been physically or sexually abused, or is [~~deemed~~] considered to be at substantial risk of being physically or sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian.

(ii) For purposes of this Subsection (1)(c), another minor residing in the same household may not be removed from the home unless that minor is considered to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or (iii).

(iii) If a parent or guardian has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the minor by allowing the minor to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being physically or sexually abused;

(d) the parent or guardian is unwilling to have physical custody of the minor;

(e) the minor has been abandoned or left without any provision for the minor's support;

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

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

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

- (i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the minor's health or safety; or
- (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose a threat to the minor's health or safety;
- (j) (i) the minor or another minor residing in the same household has been neglected; and
- (ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household may not be removed unless that minor is [~~deemed~~] considered to be at substantial risk of being neglected;
- (k) an infant has been abandoned, as defined in Section 78-3a-313.5;
- (l) the parent or guardian, or an adult residing in the same household as the parent or guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the property where the minor resided; or
- (m) the minor's welfare is otherwise endangered.

(2) A court may not remove a minor from the parent's or guardian's custody on the basis of educational neglect, in the absence of one of the factors described in Subsection (1).

(3) A court may not remove a minor from the parent's or guardian's custody on the basis of mental illness or poverty of the parent or guardian, in the absence of one of the factors described in Subsection (1).

(4) A minor removed from the custody of the minor's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the minor is detainable based on guidelines promulgated by the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(5) This section does not preclude removal of a minor from the minor's home without a warrant or court order under Section 62A-4a-202.1.

Section 42. Section **78-3a-503** is amended to read:

78-3a-503. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to appear.

(1) As used in this section, "citation" means an abbreviated referral and is sufficient to invoke the jurisdiction of the court in lieu of a petition.

(2) A citation shall be submitted to the court within five days of its issuance.

(3) Each copy of the citation shall contain:

(a) the name and address of the juvenile court before which the minor is to appear;

(b) the name of the minor cited;

(c) the statute or local ordinance that is alleged to have been violated;

(d) a brief description of the offense charged;

(e) the date, time, and location at which the offense is alleged to have occurred;

(f) the date the citation was issued;

(g) the name and badge or identification number of the peace officer or public official who issued the citation;

(h) the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested minor into custody as provided in Section 78-3a-113;

(i) the date and time when the minor is to appear, or a statement that the minor and parent or legal guardian are to appear when notified by the juvenile court; and

(j) the signature of the minor and the parent or legal guardian, if present, agreeing to appear at the juvenile court as designated on the citation.

(4) Each copy of the citation shall contain space for the following information to be entered if known:

(a) the minor's address;

(b) the minor's date of birth;

(c) the name and address of the minor's custodial parent or legal guardian, if different from the minor; and

(d) if there is a victim, the victim's name, address, and an estimate of loss, except that this information shall be removed from the documents the minor receives.

(5) A citation received by the court beyond the time designated in Subsection (2) shall

include a written explanation for the delay.

(6) The following offenses may be sent to the juvenile court as a citation:

(a) violations of fish and game laws;

(b) violations of boating laws;

(c) violations of curfew laws;

(d) any class B misdemeanor or less traffic violations where the person is under the age of 16;

(e) any class B or class C misdemeanor or infraction;

(f) any other infraction or misdemeanor as designated by general order of the Board of Juvenile Court Judges; and

(g) violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court.

(7) A preliminary inquiry is not required unless requested by the court.

(8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or habitually truant minor.

(9) In the case of Section 76-10-105 violations committed on school property when a citation is issued under this section, the peace officer, public official, or compliance officer shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and file a duplicate with the juvenile court specified in the citation within five days.

(10) (a) A minor receiving a citation described in this section shall appear at the juvenile court designated in the citation on the time and date specified in the citation or when notified by the juvenile court.

(b) A citation may not require a minor to appear sooner than five days following its issuance.

(11) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation is subject to arrest and may be found in contempt of court. The court may proceed against the minor as provided in Section 78-3a-901 regardless of the disposition of the offense upon which the minor was originally cited.

(12) When a citation is issued under this section, bail may be posted and forfeited under

Subsection 78-3a-114~~[(10)]~~ (12) with the consent of the court and parent or legal guardian of the minor cited.

Section 43. Section **78-3a-504** is amended to read:

78-3a-504. Minor held in detention -- Credit for good behavior.

(1) A minor held in detention under Subsection 78-3a-118(2)(f) or 78-3a-901(3) shall receive credit for good behavior against the period of detention ordered by the court at the rate of one day for every three days served under guidelines established by the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(2) Any disposition including detention under Subsection 78-3a-118(2)(f) or 78-3a-901(3) shall be concurrent with any other order of detention.

Section 44. Section **78-3a-601** is amended to read:

78-3a-601. Jurisdiction of district court.

(1) The district court shall have exclusive original jurisdiction over all persons 16 years of age or older charged by information or indictment with:

- (a) an offense which would be murder or aggravated murder if committed by an adult; or
- (b) an offense which would be a felony if committed by an adult if the minor has been previously committed to a secure facility as defined in Section 62A-7-101. This Subsection (1)(b) shall not apply if the offense is committed in a secure facility.

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3) (a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section

78-3a-104 and the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor.

Section 45. Section **78-3a-602** is amended to read:

78-3a-602. Serious youth offender -- Procedure.

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

(i) Section 76-6-103, aggravated arson;

(ii) Subsection 76-5-103(1)(a), aggravated assault, involving intentionally causing serious bodily injury to another;

(iii) Section 76-5-302, aggravated kidnaping;

(iv) Section 76-6-203, aggravated burglary;

(v) Section 76-6-302, aggravated robbery;

(vi) Section 76-5-405, aggravated sexual assault;

(vii) Section 76-10-508, discharge of a firearm from a vehicle;

(viii) Section 76-5-202, attempted aggravated murder; or

(ix) Section 76-5-203, attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3) (a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the

additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that all of the following conditions exist:

(i) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

(ii) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants; and

(iii) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner.

(c) Once the state has met its burden under this Subsection (3) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions.

(d) If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable

cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(7) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(8) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury, is not entitled to a preliminary examination in the district court.

(9) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(10) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(11) The juvenile court under Section 78-3a-104 and the ~~[Division of Youth Corrections]~~ Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the juvenile when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 46. Section **78-3a-603** is amended to read:

78-3a-603. Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

(1) If a criminal information filed in accordance with Subsection 78-3a-502(3) alleges

the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5) (a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) If the court finds the state has met its burden under Subsection (2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(8) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(9) The provisions of Section 78-3a-116, Section 78-3a-913, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section 78-3a-602, the jurisdiction of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section 78-3a-104 and the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 47. Section **78-3a-904** is amended to read:

78-3a-904. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- Expungement.

(1) Photographs may be taken of a minor 14 years of age or older who:

(a) is taken into custody for the alleged commission of an offense under Sections 78-3a-104, 78-3a-601, and 78-3a-602 that would also be an offense if the minor were 18 years of age or older; or

(b) has been determined to be a serious habitual offender for tracking under Section 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

(i) is taken into custody for the alleged commission of an offense that would be a felony if the minor were 18 years of age or older; or

(ii) has been determined to be a serious habitual offender for tracking under Section

63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be stored by electronic medium.

(3) HIV testing may be conducted on a minor who is taken into custody after having been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a minor victim.

(4) HIV tests, photographs, and fingerprints may not be taken of a minor younger than 14 years of age without the consent of the court.

(5) (a) Photographs may be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies only when a minor 14 years of age or older is charged with an offense which would be a felony if committed by an adult.

(b) Fingerprints may be distributed or disbursed to individuals or agencies other than state or local law enforcement agencies.

(6) When a minor's juvenile record is expunged, all photographs and other records as ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records may not be destroyed.

Section 48. Section **78-3a-905** is amended to read:

78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.

(1) (a) A person who has been adjudicated under this chapter may petition the court for the expungement of his record in the juvenile court if:

(i) he has reached 18 years of age; and

(ii) one year has elapsed from the date of termination of the continuing jurisdiction of the juvenile court or, in case he was committed to a secure youth corrections facility, one year from the date of his unconditional release from the custody of the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services.

(b) The court may waive the requirements in Subsection (1)(a), if the court finds, and states on the record, the reason why the waiver is appropriate.

(c) The petitioner shall include with his petition the original criminal history report obtained from the Bureau of Criminal Identification in accordance with the provisions of Subsection 53-10-108(8).

(d) The petitioner shall send a copy of the petition to the county attorney or, if within a prosecution district, the district attorney.

(e) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the county attorney or district attorney, and the agency with custody of the records of the pendency of the petition and of the date of the hearing. Notice shall be given at least 30 days prior to the hearing.

(ii) The court shall provide a victim with the opportunity to request notice of a petition for expungement. A victim shall receive notice of a petition for expungement at least 30 days prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a minor or a person who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the court in the judicial district in which the crime occurred or judgment was entered. The notice shall include a copy of the petition and statutes and rules applicable to the petition.

(2) (a) At the hearing, the county attorney or district attorney, a victim, and any other person who may have relevant information about the petitioner may testify.

(b) In deciding whether to grant a petition for expungement, the court shall consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, taking into consideration the petitioner's response to programs and treatment, his behavior subsequent to adjudication, and the nature and seriousness of the conduct.

(c) The court may order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases if the court finds that:

(i) the petitioner has not, since the termination of the court's jurisdiction or his unconditional release from the [~~Division of Youth Corrections~~] Division of Juvenile Justice Services, been convicted of a:

- (A) felony; or
- (B) misdemeanor involving moral turpitude; and
- (ii) no proceeding involving a felony or misdemeanor is pending or being instituted

against him.

(3) The petitioner shall be responsible for service of the order of expungement to all affected state, county, and local entities, agencies, and officials. To avoid destruction or sealing of the records in whole or in part, the agency or entity receiving the expungement order shall only expunge all references to the petitioner's name in the records pertaining to the petitioner's adjudicated juvenile court cases.

(4) Upon the entry of the order, the proceedings in the petitioner's case shall be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of the records, and only to persons named in the petition.

(5) The court may not expunge a juvenile court record if the record contains an adjudication of:

- (a) Section 76-5-202, aggravated murder; or
- (b) Section 76-5-203, murder.

(6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments as provided in Section 78-3a-502 may petition the court for expungement of his record if the person:

- (i) has reached 18 years of age; and
- (ii) has completed the conditions of the nonjudicial adjustments.

(b) The court shall, without a hearing, order sealed all petitioner's records under the control of the juvenile court and any of petitioner's records under the control of any other agency or official pertaining to the petitioner's nonjudicial adjustments.

Section 49. Section **78-3a-914** is amended to read:

78-3a-914. Exchange of information with agency or institution having legal custody

-- Transfer of minor to state prison or other adult facility prohibited.

(1) Whenever legal custody of a minor is vested in an institution or agency, the court shall transmit with the court order copies of the social study, any clinical reports, and other information pertinent to the care and treatment of the minor. The institution or agency shall give the court any information concerning the minor that the court may at any time require.

(2) The [~~Division of Youth Corrections~~] Division of Juvenile Justice Services or any other institution or agency to whom a minor is committed under Section 78-3a-118 may not transfer custody of the minor to the state prison or any other institution for the correction of adult offenders.

Section 50. **Effective date.**

This act takes effect on July 1, 2004.