

Representative Wayne A. Harper proposes the following substitute bill:

1 **REVISIONS TO CHILD WELFARE**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Wayne A. Harper**

6 **LONG TITLE**

7 **General Description:**

8 This bill amends child abuse and neglect provisions in the Child and Family Services,
9 Judicial, and Criminal codes.

10 **Highlighted Provisions:**

11 This bill:

12 ► replaces the use of the term "severe" with "serious" in references to child abuse and
13 neglect;

14 ► modifies definitions related to child abuse and neglect in the human services code;
15 ► amends the evidentiary standards for supporting and substantiating an allegation of
16 child abuse or neglect to clear and convincing;

17 ► requires child welfare workers to be trained in their legal duties to protect the rights
18 of children and families;

19 ► amends the evidentiary standard for an adjudicative proceeding by the Division of
20 Child and Family Services in which a supported finding of child abuse, neglect, or
21 dependency is challenged to clear and convincing;

22 ► repeals the pilot program for differentiated responses to child abuse and neglect
23 reports;

24 ► amends the state's recognition of parental rights;
25 ► specifies that a child's health and safety shall be the primary concern rather than the



26 paramount concern;

27 ► limits the right of the state to intervene in cases of potential medical or mental

28 health neglect;

29 ► creates a rebuttable presumption for reasonable discipline by a parent;

30 ► expands the notice that must be given parents when a child is taken into custody due

31 to abuse or neglect;

32 ► requires the Division of Child and Family Services to attempt to develop treatment

33 plans with which parents agree and allows a parent to submit an alternate plan to the

34 court;

35 ► limits the reasons for which parent-time may be denied the parent of a child in the

36 custody of the state;

37 ► limits items that may be included in a treatment plan;

38 ► requires that a treatment plan be designed to minimize disruption to the normal

39 activities of a child's family;

40 ► amends the evidentiary standards for mandatory reporting and investigation of child

41 abuse and neglect;

42 ► specifies conditions under which reporting is not required for a case of potential

43 medical neglect;

44 ► amends the standard under which the Division of Child and Family Services is

45 required to investigate a report of child abuse, neglect, or dependency;

46 ► makes a technical correction by replacing the terms "substantiated" and

47 "unsubstantiated" with "supported" and "unsupported";

48 ► modifies definitions related to child abuse and neglect in the criminal code;

48a **H ► MODIFIES DEFINITIONS RELATED TO CHILD ABUSE AND NEGLECT IN THE JUVENILE**

48b **COURT ACT OF 1996; h**

49 ► amends the conditions under which a court may issue a warrant to take a child into

50 protective custody;

51 ► expands access to and participation in juvenile court proceedings and allows the

52 court to exclude persons in specified circumstances;

53 ► limits the dispositions a juvenile court may make in a case involving potential

54 medical or mental health neglect;

55 ► amends the evidentiary standard for court-ordered custody to clear and convincing;

56 ► amends the conditions under which a court may order that a minor be taken into

57 protective custody;

58 ► amends the conditions and evidentiary standard for continued custody by the

59 Division of Child and Family Services beyond protective custody to clear and

60 convincing;

61 ► amends shelter hearing provisions;

62 ► requires a juvenile court to grant a continuance of a shelter hearing at the request of

63 a parent;

64 ► amends the factors used by a court to determine whether to order reunification

65 services;

66 ► amends the evidentiary standard for termination of parental rights to beyond a

67 reasonable doubt;

68 ► amends the grounds for termination of parental rights;

69 ► repeals the definitions section within the termination of Parental Rights Act;

70 ► makes conforming changes; and

71 ► makes other technical corrections.

72 **Monies Appropriated in this Bill:**

73 None

74 **Other Special Clauses:**

75 This bill takes effect on July 1, ~~H~~ [2004] 2005~~H~~.

76 **Utah Code Sections Affected:**

77 AMENDS:

78 **26-21-9.5**, as last amended by Chapter 283, Laws of Utah 2002

79 **62A-2-121**, as last amended by Chapters 283 and 300, Laws of Utah 2002

80 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002

81 **62A-4a-107**, as last amended by Chapter 94, Laws of Utah 2003

82 **62A-4a-116.1**, as last amended by Chapter 210, Laws of Utah 2003

83 **62A-4a-116.2**, as last amended by Chapter 210, Laws of Utah 2003

84 **62A-4a-116.5**, as last amended by Chapter 210, Laws of Utah 2003

85 **62A-4a-116.6**, as last amended by Chapter 210, Laws of Utah 2003

86 **62A-4a-117**, as last amended by Chapter 94, Laws of Utah 2003

87 **62A-4a-201**, as last amended by Chapter 274, Laws of Utah 2000

88 **62A-4a-202**, as last amended by Chapter 94, Laws of Utah 2003
89 **62A-4a-202.1 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah
90 2003
91 **62A-4a-202.2**, as last amended by Chapter 10, Laws of Utah 2001, First Special
92 Session
93 **62A-4a-203**, as last amended by Chapter 274, Laws of Utah 1998
94 **62A-4a-205**, as last amended by Chapter 306, Laws of Utah 2002
95 **62A-4a-302**, as renumbered and amended by Chapter 260, Laws of Utah 1994
96 **62A-4a-402**, as last amended by Chapter 274, Laws of Utah 1998
97 **62A-4a-403**, as last amended by Chapter 21, Laws of Utah 1999
98 **62A-4a-409**, as last amended by Chapter 265, Laws of Utah 2002
99 **63-55-262**, as last amended by Chapter 134, Laws of Utah 2001
100 **76-5-109**, as last amended by Chapter 125, Laws of Utah 2000
101 **76-5-110**, as last amended by Chapter 303, Laws of Utah 1997
102 **78-3a-103 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
103 **78-3a-106**, as last amended by Chapter 267, Laws of Utah 2003
104 **78-3a-110**, as enacted by Chapter 365, Laws of Utah 1997
105 **78-3a-115**, as last amended by Chapter 332, Laws of Utah 2003
106 **78-3a-118 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
107 **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
108 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003
109 **78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002
110 **78-3a-320**, as last amended by Chapter 210, Laws of Utah 2003
111 **78-3a-402**, as renumbered and amended by Chapter 260, Laws of Utah 1994
112 **78-3a-406**, as last amended by Chapter 332, Laws of Utah 2003
113 **78-3a-407**, as last amended by Chapter 246, Laws of Utah 2002
114 **78-3a-408**, as last amended by Chapter 274, Laws of Utah 1998
115 **78-3a-414**, as last amended by Chapter 101, Laws of Utah 2001
116 REPEALS:
117 **62A-4a-202.7**, as last amended by Chapter 94, Laws of Utah 2003
118 **78-3a-403**, as last amended by Chapter 318, Laws of Utah 1996

119

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

121 Section 1. Section **26-21-9.5** is amended to read:

122 **26-21-9.5. Criminal background check and Licensing Information System check.**

123 (1) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
124 covered health care facility, as defined in Subsection (10), at the time of initial application for a
125 license and license renewal shall:

126 (a) submit the name and other identifying information of each person associated with
127 the facility who:

128 (i) provides direct care to a patient; and

129 (ii) has been the subject of a criminal background check within the preceding
130 three-year period by a public or private entity recognized by the department; and

131 (b) submit the name and other identifying information, which may include fingerprints,
132 of each person associated with the facility who:

133 (i) provides direct care to a patient; and

134 (ii) has not been the subject of a criminal background check in accordance with
135 Subsection (1)(a)(ii).

136 (2) (a) The department shall forward the information received under Subsection (1)(b)
137 to the Criminal Investigations and Technical Services Division of the Department of Public
138 Safety for processing to determine whether an individual has been convicted of any crime.

139 (b) If an individual has not had residency in Utah for the last five years, the individual
140 shall submit fingerprints for an FBI national criminal history record check. The fingerprints
141 shall be submitted to the FBI through the Criminal Investigations and Technical Services
142 Division. The individual or licensee is responsible for the cost of the fingerprinting and
143 national criminal history check.

144 (3) The department may determine whether:

145 (a) an individual whose name and other identifying information has been submitted
146 pursuant to Subsection (1) and who provides direct care to children is listed in the Licensing
147 Information System described in Section 62A-4a-116.2 or has a substantiated finding by a
148 court of [severe] serious child abuse or neglect under Section 78-3a-320, if identification as a
149 possible perpetrator of child abuse or neglect is relevant to the employment activities of that

150 individual; or

151 (b) an individual whose name and other identifying information has been submitted

152 pursuant to Subsection (1) and who provides direct care to disabled or elder adults has a

153 substantiated finding of abuse, neglect, or exploitation of a disabled or elder adult by accessing

154 in accordance with Subsection (4) the database created in Section 62A-3-311.1 if identification

155 as a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to

156 the employment activities of that person.

157 (4) (a) The department shall:

158 (i) designate two persons within the department to access the Licensing Information

159 System described in Section 62A-4a-116.2 and court records under Subsection 78-3a-320(4)

160 and two persons to access the database described in Subsection (3)(b); and

161 (ii) adopt measures to:

162 (A) protect the security of the Licensing Information System, the court records, and the

163 database; and

164 (B) strictly limit access to the Licensing Information System, the court records, and the

165 database to those designated under Subsection (4)(a)(i).

166 (b) Those designated under Subsection (4)(a)(i) shall receive training from the

167 Department of Human Services with respect to:

168 (i) accessing the Licensing Information System, the court records, and the database;

169 (ii) maintaining strict security; and

170 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of

171 information.

172 (c) Those designated under Subsection (4)(a)(i):

173 (i) are the only ones in the department with the authority to access the Licensing

174 Information System, the court records, and database; and

175 (ii) may only access the Licensing Information System, the court records, and the

176 database for the purpose of licensing and in accordance with the provisions of Subsection (3).

177 (5) Within ten days of initially hiring an individual, a covered health care facility shall

178 submit the individual's information to the department in accordance with Subsection (1).

179 (6) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative

180 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person

181 who has been convicted of a criminal offense, or a person described in Subsection (3), may
182 provide direct care to a patient in a covered health care facility, taking into account the nature
183 of the criminal conviction or substantiated finding and its relation to patient care.

184 (7) The department may, in accordance with Section 26-1-6, assess reasonable fees for
185 a criminal background check processed pursuant to this section.

186 (8) The department may inform the covered health care facility of information
187 discovered under Subsection (3) with respect to an individual associated with the facility.

188 (9) A covered health care facility is not civilly liable for submitting information to the
189 department as required by Subsection (1).

190 (10) For purposes of this section, "covered health care facility" only includes:

- 191 (a) home health care agencies;
- 192 (b) hospices;
- 193 (c) nursing care facilities;
- 194 (d) assisted-living facilities;
- 195 (e) small health care facilities; and
- 196 (f) end stage renal disease facilities.

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

198 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

199 (1) With respect to human services licensees, the department may access only the
200 Licensing Information System of the Division of Child and Family Services created by Section
201 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320(4), for the purpose of:

202 (a) determining whether a person associated with a licensee, with direct access to
203 children, is listed in the Licensing Information System or has a substantiated finding by a
204 juvenile court of a [severe] serious type of child abuse or neglect under Subsections
205 78-3a-320(1) and (2); and

206 (b) informing a licensee that a person associated with the licensee is listed in the
207 Licensing Information System or has a substantiated finding by a juvenile court of a [severe]
208 serious type of child abuse or neglect under Subsections 78-3a-320(1) and (2).

209 (2) After receiving identifying information for a person under Subsection
210 62A-2-120(1), the department shall process the information for the purposes described in
211 Subsection (1).

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

217 Section 3. Section **62A-4a-101** is amended to read:

218 **62A-4a-101. Definitions.**

219 As used in this chapter:

220 (1) (a) "Abuse" means:

221 [~~(a)~~ actual or threatened nonaccidental physical or mental harm;]
222 [~~(b)~~ negligent treatment;]
223 (i) physical abuse;
224 (ii) serious physical abuse;
225 (iii) mental cruelty;
226 [~~(c)~~] (iv) sexual exploitation; \hat{H} [~~or~~] \hat{h}
227 [~~(d)~~ any] (v) sexual abuse \hat{H} [:] ; OR
227a (vi) AN INJURY, ACCIDENT, OR OTHER INCIDENT THAT WAS CAUSED INTENTIONALLY,
227b KNOWINGLY, RECKLESSLY, OR WITH CRIMINAL NEGLIGENCE AS DEFINED IN
227c SECTION 76-2-103. \hat{h}

228 (b) "Abuse" does not include:

229 (i) unintentional incidents, including unintentional accidents and unintentional injuries \hat{H} [~~unless the injury, accident, or other incident was caused intentionally, knowingly, recklessly, or with criminal negligence, as defined in Section 76-2-103]~~ \hat{h} ; or

230 (ii) reasonable parental discipline or management of a child with which a child may

231 disagree, including prohibiting the use of an automobile or other possession and the

232 withholding of other privileges.

235 (2) "Adoption services" means:

236 (a) placing children for adoption[:];

237 (b) subsidizing adoptions under Section 62A-4a-105[:];

238 (c) supervising adoption placements until the adoption is finalized by the court[:];

239 (d) conducting adoption studies[:];

240 (e) preparing adoption reports upon request of the court[:]; and

241 (f) providing postadoptive placement services, upon request of a family, for the

242 purpose of stabilizing a possible disruptive placement.

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

245 (4) "Child" has the same meaning as "minor," as defined in this section.

246 [(6)] (5) "Chronic physical abuse" means repeated or patterned:

247 (a) physical abuse[;]; or

248 (b) serious physical abuse.

249 [(7)] (6) "Chronic neglect" means [a ~~repeated or~~] patterned [failure or refusal by a
250 parent, guardian, or custodian to provide necessary care for a minor's safety, morals, or
251 well-being] neglect.

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

253 [(5)] (7) "Consumer" means a person who receives services offered by the division in
254 accordance with this chapter.

255 [(9)] (8) "Custody," with regard to the division, means the custody of a child in the
256 division as of the date of disposition.

257 [(10)] (9) "Day-care services" means care of a child for a portion of the day which is:

258 (a) less than 24 hours[;]; and

259 (b) (i) in [~~his~~] the child's own home by a responsible person[;]; or

260 (ii) outside of [~~his~~] the child's home in a day-care center, family group home, or family
261 child care home.

262 [(11)] (10) "Dependent child" or "dependency" means a child, or the condition of a
263 child, who is homeless or without [proper] adequate care through no fault of the child's parent,
264 guardian, or custodian.

265 [(12)] (11) "Director" means the director of the Division of Child and Family Services.

266 [(13)] (12) "Division" means the Division of Child and Family Services.

267 [(14)] (13) (a) "Domestic violence services" means temporary shelter, treatment, and
268 related services to:

269 (i) (A) persons who are victims of abuse; and

270 (B) their dependent children; and

271 (ii) treatment services for domestic violence perpetrators.

272 (b) As used in this Subsection [(14)] (13):

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

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

277 [(15)] (14) "Homemaking service" means the care of individuals in their domiciles, and
278 help given to individual caretaker relatives to achieve improved household and family
279 management through the services of a trained homemaker.

280 (15) "Mental cruelty" has the same meaning as defined in Section 76-5-109.

281 (16) (a) "Minor" means a person under 18 years of age.

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

284 (17) "Natural parent" means a minor's biological or adoptive parent, and includes a
285 minor's noncustodial parent.

286 (18) (a) "Neglect" means[:] repeated or substantial failure by a parent or guardian to
287 provide adequate food, shelter, clothing, training, or physical safety to a child within the
288 custody or care of the parent or guardian.

289 [(f)] (b) "Neglect" includes:

290 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
291 Relinquishment of a Newborn Child;

292 (ii) lack of adequate care by a parent or guardian; ~~H AND h~~

293 [(ii) subjecting a child to mistreatment or abuse;]

294 ~~H [f] (iii) lack of proper parental care by reason of the fault or habits of the parent,~~
295 ~~guardian, or custodian; [f] h~~

296 ~~[iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary~~
297 ~~subsistence, education, or medical care, including surgery or psychiatric services when~~
298 ~~required, or any other care necessary for his health, safety, morals, or well-being; or]~~

299 ~~H [f(v) a child at] (iii) substantial risk of [being neglected] neglect or [abused] abuse~~
300 ~~because another child in the same home is neglected or abused[.]; and] h~~

301 [(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),
302 means that, after receiving notice that a child has been frequently absent from school without
303 good cause, or that the child has failed to cooperate with school authorities in a reasonable
304 manner;]

305 (iv) failure by a parent or guardian [fails] to make a good faith effort to ensure that
306 [the] a child receives an appropriate education[:] after having received notice that the child has
307 been frequently absent from school without good cause.

308 [(c) A] (c) "Neglect" does not include:

309 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
310 reason, does not provide specified medical or mental health treatment for a child[,is not guilty
311 of neglect.]; or

312 (ii) unintentional incidents, or reasonable parental discipline or management, described
313 in Subsection (1)(b).

314 (19) "Physical abuse" has the same meaning as "physical injury," as defined in Section
315 76-5-109.

316 [(19)] (20) "Protective custody," with regard to the division, means the shelter of a
317 child by the division from the time the child is removed from the child's home until the shelter
318 hearing[;] or the child's return home, whichever occurs earlier.

319 [(20)] (21) "Protective services" means expedited services that are provided:

320 (a) in response to evidence of neglect, abuse, or dependency of a minor;

321 (b) in an effort to substantiate evidence of neglect, abuse, or dependency;

322 (c) to a cohabitant who is neglecting or abusing a child, in order to help the cohabitant
323 develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse, and
324 to strengthen the cohabitant's ability to provide [safe and acceptable] adequate care; and

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

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

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

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

333 [(21)] (22) "Services to unwed parents" means social, educational, and medical
334 services arranged for or provided to unwed parents to help them plan for themselves and the
335 unborn child.

336 [(22) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
337 minor.]

338 [(23) "Shelter care" means the temporary care of minors in nonsecure facilities.]
339 [(24) "State" means a state of the United States, the District of Columbia, the
340 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
341 Mariana Islands, or a territory or possession administered by the United States.]

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

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

346 (23) "Serious neglect" means neglect that causes serious harm to a minor.

347 (24) "Serious physical abuse" has the same meaning as "serious physical injury," as
348 defined in Section 76-5-109.

349 (25) "Sexual abuse" does not include legitimate physical care or contact with a child
350 that is needed to address the hygiene, safety, training, rehabilitation, or medical needs of the
351 child.

352 (26) "Shelter care" means the temporary care of minors in nonsecure facilities.

353 (27) "State" means a state of the United States, the District of Columbia, the
354 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
355 Mariana Islands, or a territory or possession administered by the United States.

356 [(27) (28) "State plan" means the written description of the programs for children,
357 youth, and family services administered by the division in accordance with federal law.

358 [(28) (29) "Status offense" means a violation of the law that would not be a violation
359 but for the age of the offender.

360 [(29) (30) "Substantiated" or "substantiation" means a judicial finding based on [a
361 preponderance of the] clear and convincing evidence that abuse or neglect occurred. Each
362 allegation made or identified in a given case shall be considered separately in determining
363 whether there should be a finding of substantiated.

364 [(30) (31) "Substitute care" means:

365 (a) the placement of a minor in a family home, group care facility, or other placement
366 outside the minor's own home, either at the request of a parent or other responsible relative or

367 guardian, or upon court order, when it is determined that continuation of care in the child's own
368 home would be contrary to the child's welfare;

- 369 (b) services provided for a child awaiting placement; and
370 (c) the licensing and supervision of a substitute care facility.

371 [~~(31)~~] (32) "Supported" means a finding by the division [~~based on the~~] that there is
372 clear and convincing evidence available at the completion of an investigation [~~that there is a~~
373 ~~reasonable basis to conclude~~] that abuse, neglect, or dependency occurred. Each allegation
374 made or identified during the course of the investigation shall be considered separately in
375 determining whether there should be a finding of supported.

376 [~~(32)~~] (33) "Temporary custody," with regard to the division, means the custody of a
377 child in the division from the date of the shelter hearing until disposition.

378 [~~(33)~~] (34) "Transportation services" means travel assistance given to an individual
379 with escort service, if necessary, to and from community facilities and resources as part of a
380 service plan.

381 [~~(34)~~] (35) "Unsubstantiated" means a judicial finding that there is [~~insufficient~~] not
382 clear and convincing evidence [~~to conclude~~] that abuse or neglect occurred.

383 [~~(35)~~] (36) "Unsupported" means a finding at the completion of an investigation that
384 there is [~~insufficient~~] not clear and convincing evidence [~~to conclude~~] that abuse, neglect, or
385 dependency occurred. However, a finding of unsupported means also that the division worker
386 did not conclude that the allegation was without merit.

387 [~~(36)~~] (37) "Without merit" means a finding at the completion of an investigation by
388 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
389 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

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

391 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
392 **curriculum.**

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

- 397 (a) develop child welfare curriculum that is current and effective, consistent with the

398 division's mission and purpose for child welfare;

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

400 (c) develop a statewide training program, including a budget and identification of

401 sources of funding to support that training;

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

403 (e) assist child protective services and foster care workers in developing and fulfilling

404 their individual training plans;

405 (f) monitor staff compliance with division training requirements and individual training

406 plans; and

407 (g) expand the collaboration between the division and schools of social work within

408 institutions of higher education in developing child welfare services curriculum, and in

409 providing and evaluating training.

410 (2) (a) The director shall, with the assistance of the child welfare training coordinator,

411 establish a core curriculum for child welfare services that is substantially equivalent to the

412 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

413 (b) Any child welfare worker who is employed by the division for the first time after

414 July 1, 1999, shall, before assuming significant independent casework responsibilities,

415 successfully complete:

416 (i) the core curriculum; and

417 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of

418 observing and accompanying at least two capable and experienced child welfare workers as

419 they perform work-related functions:

420 (A) for three months if the worker has less than six months of on-the-job experience as

421 a child welfare worker; or

422 (B) for two months if the worker has six months or more but less than 24 months of

423 on-the-job experience as a child welfare worker.

424 (c) A child welfare worker with at least 24 months of on-the-job experience is not

425 required to receive on-the-job training under Subsection (2)(b)(ii).

426 (3) All child welfare workers shall be trained in their legal duties to protect the

427 constitutional and statutory rights of children and families from the initial time of contact

428 during investigation through treatment. The training curriculum shall include instruction in the

429 Fourth Amendment to the United States Constitution and parents' rights.

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

431 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
432 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
433 **Rights of alleged perpetrator -- Juvenile court finding.**

434 (1) If the division makes a supported finding of one or more of the [~~severe~~] serious
435 types of child abuse or neglect described in Subsection (2), the division shall:

436 (a) serve notice of the finding on the alleged perpetrator and enter into the Licensing
437 Information System created in Section 62A-4a-116.2 the name and other identifying
438 information of the perpetrator with the supported finding, without identifying the person as a
439 perpetrator or alleged perpetrator, and a notation to the effect that an investigation regarding
440 the person is pending; and

441 (b) if the division considers it advisable, file a petition for substantiation within one
442 year of the supported finding.

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

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

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

447 (ii) sexual abuse;

448 (iii) sexual exploitation;

449 (iv) abandonment;

450 (v) medical neglect resulting in death, disability, or serious illness;

451 (vi) chronic or [~~severe~~] serious neglect; or

452 (vii) [~~chronic or severe emotional abuse~~] mental cruelty; or

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

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

456 (ii) sexual behavior with or upon another child which indicates a significant risk to
457 other children.

458 (3) [~~Severe~~] The serious types of child abuse or neglect referred to in Subsection [f2)
459 does] (1) do not include:

460 (a) the use of reasonable and necessary physical restraint or force by an educator in
461 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
462 (b) a person's conduct that:
463 (i) is justified under Section 76-2-401; or
464 (ii) constitutes the use of reasonable and necessary physical restraint or force in
465 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
466 other dangerous object in the possession or under the control of a child or to protect the child or
467 another person from physical injury.

468 (4) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in
469 accordance with risk assessment tools and rules established by the division that focus on age,
470 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and
471 other related considerations.

472 (b) The division shall train its child protection workers to apply the risk assessment
473 tools and rules established under Subsection (4)(a).

474 (5) The notice referred to in Subsection (1) (a) shall state that:

475 (a) the division has conducted an investigation regarding alleged child abuse or
476 neglect;

477 (b) the division has made a supported finding of one of the [severe] serious types of
478 child abuse or neglect described in Subsection (2);

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

480 (d) as a result of the supported finding, the alleged perpetrator's name and other
481 identifying information have been listed in the Licensing Information System in accordance
482 with Subsection (1)(a);

483 (e) the alleged perpetrator may be disqualified from adopting a child or being licensed
484 by:
485 (i) the department;
486 (ii) a human services licensee;
487 (iii) a child care provider or program; and
488 (iv) a covered health care facility;
489 (f) the alleged perpetrator has the rights described in Subsection (6); and
490 (g) failure to take either action described in Subsection (6)(a) within one year after

491 service of the notice will result in the action described in Subsection (6)(b).

492 (6) (a) Upon receipt of the notice described in Subsection (5), the alleged perpetrator
493 shall have the right to:

494 (i) file a written request asking the division to review the findings under Subsection
495 (2);

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

497 (iii) sign a written consent to the supported finding and entry of the alleged
498 perpetrator's name and other information regarding the supported finding of abuse or neglect
499 into the Licensing Information System.

500 (b) If the alleged perpetrator fails to take action as described in Subsection (6)(a)
501 within one year after service of the notice described in Subsection (5), the alleged perpetrator's
502 name and the notation described in Subsection (1)(a) shall remain in the Licensing Information
503 System. This information shall also remain in the Licensing Information System while the
504 division awaits a response from the alleged perpetrator pursuant to Subsection (6)(a) and
505 during the pendency of any proceeding, including an appeal of a finding of unsubstantiated or
506 without merit, under Section 78-3a-320.

507 (c) The alleged perpetrator shall have no right to petition the juvenile court under
508 Subsection (6)(b) if the court has previously held a hearing on the same alleged incident of
509 abuse or neglect pursuant to the filing of a petition under Section 78-3a-305 by some other
510 party.

511 (d) Consent under Subsection (6)(a)(iii) by a minor shall be given by the minor's parent
512 or guardian.

513 (7) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall make
514 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
515 78-3a-320(1) and (2).

516 (8) Service of the notice under Subsections (1) (a) and (5):

517 (a) shall be personal service in accordance with Rule 4 of the Utah Rules of Civil
518 Procedure; and

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

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

521 **62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding**

522 -- Protected record -- Access -- Criminal penalty.

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

527 (a) the information described in Subsections 62A-4a-116.1(1)(a) and (6)(b);

528 (b) consented-to supported findings by alleged perpetrators under Subsection
529 62A-4a-116.1(6)(a)(iii); and

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

532 (2) The division shall promptly amend the Licensing Information System, upon receipt
533 of a finding from the juvenile court under Section 78-3a-320, and shall enter the same
534 information in the Management Information System. However, if a finding of unsubstantiated
535 or without merit is appealed, the supported finding shall not be amended until the appeal is
536 concluded.

537 (3) Information contained in the Licensing Information System is classified as a
538 protected record under Title 63, Chapter 2, Government Records Access and Management Act.
539 Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government Records Access
540 and Management Act, the information contained in the Licensing Information System may only
541 be used or disclosed as specifically provided in this chapter and Section 62A-2-121 and is
542 accessible only to:

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

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

545 (i) to screen a person at the request of the Office of the Guardian Ad Litem Director, at
546 the time that person seeks a paid or voluntary position with the Office of the Guardian Ad
547 Litem Director and each year thereafter that the person remains with that office; and

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

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

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

553 (ii) determining whether a person associated with a covered health care facility, as
554 defined by the Department of Health by rule, who provides direct care to a child, has a
555 supported finding of [severe] a serious type of child abuse or neglect, as described in Section
556 62A-4a-116; and

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

558 (4) The two persons designated by the Department of Health under Subsection (3)(c)
559 shall adopt measures to:

560 (a) protect the security of the Licensing Information System; and

561 (b) strictly limit access to the Licensing Information System to those persons
562 designated by statute.

563 (5) All persons designated by statute as having access to information contained in the
564 Licensing Information System shall receive training from the department with respect to:

565 (a) accessing the Licensing Information System;

566 (b) maintaining strict security; and

567 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the
568 improper release of information.

569 (6) No person, except those authorized by this chapter, may request another person to
570 obtain or release any other information in the Licensing Information System to screen for
571 potential perpetrators of child abuse or neglect. A person who requests information knowing
572 that it is a violation of this Subsection (6) to do so is subject to the criminal penalty described
573 in Sections 62A-4a-412 and 63-2-801.

574 Section 7. Section **62A-4a-116.5** is amended to read:

575 **62A-4a-116.5. Notice and opportunity to challenge supported finding in
576 Management Information System -- Right of judicial review.**

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

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

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

584 (b) Nothing in this section may be construed as affecting:
585 (i) the manner in which the division conducts an investigation; or
586 (ii) the use or effect, in any other setting, of a supported finding by the division at the
587 completion of an investigation for any purpose other than for notification under Subsection (1)
588 (a).

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

591 (3) The notice described in Subsection (1) shall state:
592 (a) that the division has conducted an investigation regarding alleged child abuse,
593 neglect, or dependency;

594 (b) that the division has made a supported finding of abuse, neglect, or dependency;
595 (c) that facts gathered by the division support the supported finding;
596 (d) that the person has the right to request:
597 (i) a copy of the report; and
598 (ii) an opportunity to challenge the supported finding by the division; and
599 (e) that failure to request an opportunity to challenge the supported finding within 30
600 days of receiving the notice will result in an unappealable supported finding of child abuse,
601 neglect, or dependency unless the person can show good cause for why compliance within the
602 30-day requirement was virtually impossible or unreasonably burdensome.

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

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

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

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

614 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after

615 receiving notice, fails to challenge a supported finding in accordance with this section, may not
616 further challenge the finding and shall have no right to agency review or to an adjudicative
617 hearing or judicial review of the finding.

618 (7) (a) An alleged perpetrator may not make a request under Subsection (4) to
619 challenge a supported finding if a court of competent jurisdiction has made a determination, in
620 a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is
621 substantially responsible for the abuse, neglect, or dependency which was also the subject of
622 the supported finding.

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

625 (8) An adjudicative proceeding on a supported finding of one of the [nonsevere]
626 nonserious types of abuse or neglect under Section 78-3a-320 may be joined in the juvenile
627 court with an adjudicative proceeding on a supported finding of a [severe] serious type of abuse
628 or neglect.

629 Section 8. Section **62A-4a-116.6** is amended to read:

630 **62A-4a-116.6. Notice and opportunity for court hearing for persons listed in
631 Licensing Information System.**

632 (1) Persons whose names were listed on the Licensing Information System as of May
633 6, 2002 and who have not been the subject of a court determination with respect to the alleged
634 incident of abuse or neglect may at any time:

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

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

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

- 641 (a) conviction;
- 642 (b) adjudication under Title 78, Chapter 3a, Juvenile Courts;
- 643 (c) plea of guilty;
- 644 (d) plea of guilty and mentally ill; or
- 645 (e) no contest.

646 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,
647 2002 requests removal of their name from the Licensing Information System, the division shall,
648 within 30 days:

649 (a) review the case to determine whether the incident of alleged abuse or neglect
650 qualifies as ~~severe~~ serious or chronic under Subsection 62A-4a-116.1(2) and if it does not,
651 remove the name from the Licensing Information System; or

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

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

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

656 (6) If a person whose name appears on the Licensing Information System prior to May
657 6, 2002 files a petition pursuant to Section 78-3a-320 during the time that an alleged
658 perpetrator's application for clearance to work with children or vulnerable adults is pending, the
659 court shall hear the matter on an expedited basis.

660 Section 9. Section **62A-4a-117** is amended to read:

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

662 (1) As used in this section:

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

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

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

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

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

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

676 (5) Before January 1 each year the director shall submit a written report describing the

677 difference between actual performance and performance goals for the prior fiscal year to the
678 Child Welfare Legislative Oversight Panel, the Joint Health and Human Services
679 Appropriations Subcommittee, and the Utah Tomorrow Strategic Planning Committee. The
680 report shall include:

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

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

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

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

689 [(e) a description of the extent to which the pilot program under Section 62A-4a-202.7
690 has been expanded during the prior fiscal year and an explanation of how the performance of
691 regions that have previously implemented the program has been affected by the program;
692 including data showing the number of referrals to the division.]

693 [(i) accepted for an investigation;]

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

695 [(iii) not accepted.]

696 Section 10. Section **62A-4a-201** is amended to read:

697 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.**

699 (1) (a) (i) Courts have recognized a general presumption that it is in the best interest
700 and welfare of a child to be raised under the care and supervision of [his] the child's natural
701 parents. A child's need for a normal family life in a permanent home, and for positive,
702 nurturing family relationships will usually best be met by [his] the child's natural parents.

703 (ii) Additionally, the integrity of the family unit, and the right of parents to conceive
704 and raise their children have found protection in the due process clause of the Fourteenth
705 Amendment to the United States Constitution. The right of a fit, competent parent to raise
706 [his] the parent's child has long been protected by the laws and Constitution of this state and of
707 the United States.

708 (b) (i) The state recognizes that:

709 (A) parents have the right, obligation, responsibility, and authority to manage, train,

710 educate, provide for, and discipline their children; and

711 (B) the state's role is secondary and supportive to that primary role of the parents.

712 [~~(b)~~] (ii) It is the public policy of this state that parents retain the fundamental right and
713 duty to exercise primary control over the care, supervision, upbringing, and education of their
714 children who are in their custody[:], including the right to make decisions regarding the
715 discipline and provision of medical and mental health care to their children.

716 (iii) The state's right to order or intervene in the provision of medical and mental health
717 care for a minor is limited as provided in Subsection 78-3a-118(2)(n).

718 (c) (i) It is the public policy of this state that a parent or guardian has the right to
719 reasonably discipline a child. The appropriate exercise of this right is not grounds for
720 punishment, restriction, disqualification, or surveillance of any kind, including:

721 (A) arrest or criminal liability of any kind;

722 (B) award or change of physical custody of a child;

723 (C) issuance of a protective order;

724 (D) required reporting or investigation by any person; and

725 (E) withholding licensing.

726 (ii) Discipline by a parent is presumed to be reasonable. This presumption may only be
727 rebutted by clear and convincing evidence that:

728 (A) a reasonable person acting under the existing circumstances would expect the
729 discipline to create a ~~H~~ [substantial] SERIOUS ~~H~~ risk of physical abuse of, or mental cruelty to,
729a the child;

730 (B) the discipline was not justified under Section 76-2-401; or

731 (C) the discipline constitutes the use of unreasonable or unnecessary physical restraint
732 or force in self-defense or other circumstances:

733 (I) to obtain possession of a weapon or other dangerous object in the possession or
734 under the control of a child; or

735 (II) to protect the child or another person from physical injury.

736 (2) (a) It is also the public policy of this state that children have the right to protection
737 from abuse and neglect, and that the state retains a compelling interest in investigating,
738 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78,

739 Chapter 3a. Therefore, as a counterweight to parental rights, the state[~~, as parens patriae,~~] has
740 an interest in and responsibility to protect children whose parents abuse them or do not
741 adequately provide for their [welfare] health and safety.

742 (b) There are circumstances where a parent's conduct or condition is a substantial
743 departure from the norm and the parent is unable or unwilling to render safe and [proper]
744 adequate parental care and protection. Under those circumstances, the welfare and protection
745 of children is [the] a consideration of [paramount] primary importance.

746 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
747 it shall take into account the child's need for protection from immediate serious harm.
748 Throughout its involvement, the division shall utilize the least intrusive means available to
749 protect a child, in an effort to ensure that children are brought up in stable, permanent
750 families[;] rather than in temporary foster and other placements under the supervision of the
751 state.

752 (4) When circumstances within the family pose a ~~H~~ substantial **SERIOUS** ~~H~~ threat
752a to the child's health,
753 safety, or welfare, the state's interest in the child's welfare is paramount to the rights of a parent.
754 The division may obtain custody of the child for a planned period and place him in a safe
755 environment, in accordance with the requirements of Title 78, Chapter 3a, Part 3, Abuse,
756 Neglect, and Dependency Proceedings.

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

761 (6) (a) In cases where actual sexual abuse, abandonment, [~~or~~] serious physical abuse, or
762 serious neglect are involved, the state has no duty to make "reasonable efforts" or to, in any
763 other way, attempt to maintain a child in [~~his~~] the child's home, provide reunification services,
764 or to attempt to rehabilitate the offending parent or parents. [~~This~~]

765 (b) Subsection (6)(a) does not exempt the division from providing court-ordered
766 services.

767 (7) (a) It is the division's obligation, under federal law, to achieve permanency for
768 children who are abused, neglected, or dependent. If the use or continuation of "reasonable
769 efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the

770 permanency plan for a child, then measures shall be taken, in a timely manner, to place the
771 child in accordance with the permanency plan, and to complete whatever steps are necessary to
772 finalize the permanent placement of the child.

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

778 Section 11. Section **62A-4a-202** is amended to read:

779 **62A-4a-202. Preventive services -- Family preservation services.**

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

785 (b) In determining whether preventive or family preservation services are reasonable
786 and appropriate, in keeping with the provisions of Subsection 62A-4a-201(1) the child's health,
787 safety, and welfare shall be the [paramount] primary concern. The division shall consider
788 whether those services will be effective within a six-month period[;] and whether they are
789 likely to prevent reabuse or continued neglect of the child.

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

793 (a) the method of accessing each service;
794 (b) eligibility requirements for each service; [and]
795 (c) the geographic areas and the number of families that can be served by each
796 service[;]; and
797 (d) information regarding waiting lists for each service.

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

800 (a) the safety of children;

801 (b) the physical and emotional needs of parents and children; the division shall also
802 evaluate specific needs of the family, including depression, addiction, and mental illness;
803 (c) the child's physical surroundings, including cleaning and repairing physical
804 housing, and addressing needs for necessities such as food, heat, and electricity;
805 (d) personal cleanliness, nutrition, and provision of personal grooming supplies and
806 clothing;
807 (e) budgeting, money management, and employment; and
808 (f) parenting skills, including:
809 (i) nonviolent discipline, nurturing, and structure[;]; and
810 (ii) teaching responsibility, respect for others, cooperation, and moral values.
811 (4) (a) The division may use only specially trained caseworkers or private providers to
812 provide the family preservation services described in Subsection (3).
813 (b) Family preservation caseworkers [may] shall:
814 (i) only be assigned a [minimum] minimal number of families~~[, but the division shall~~
815 ~~require that they]~~;
816 (ii) be available 24 hours each day for an intensive period of at least six weeks~~[,]~~; and
817 ~~[that they]~~
818 (iii) respond to an assigned family within 24 hours.
819 (c) The division shall allow family preservation caseworkers to be creative and flexible
820 in responding to the needs of each individual family.
821 Section 12. Section **62A-4a-202.1 (Effective 07/01/04)** is amended to read:
822 **62A-4a-202.1 (Effective 07/01/04). Taking a minor into protective custody with or**
823 **without warrant or court order -- Peace officer -- Division of Child and Family Services**
824 **caseworker -- Consent or specified circumstances -- Shelter care or emergency kinship.**
825 (1) A state officer, peace officer, or child welfare worker may not, without the consent
826 of the minor's parent or guardian, a warrant, or a court order issued under Section 78-3a-106,
827 remove a minor from the minor's home or school, or take a minor into protective custody
828 unless there exist exigent circumstances.
829 (2) A child welfare worker within the division may take action under Subsection (1)
830 accompanied by a peace officer, or without a peace officer when a peace officer is not
831 reasonably available.

832 (3) (a) If possible, consistent with the minor's safety and welfare, before taking a minor
833 into protective custody, the worker shall also determine whether there are services [reasonably]
834 available to the worker which, if provided to the minor's parent or to the minor, would
835 eliminate the need to remove the minor from the custody of the minor's parent or guardian. If
836 those services are [reasonably] available, they shall be utilized.

837 (b) In determining whether services are [reasonably] available, and in making
838 reasonable efforts to provide those services, the minor's health, safety, and welfare shall be the
839 worker's [paramount] primary concern.

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

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

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

847 Section 13. Section **62A-4a-202.2** is amended to read:

848 **62A-4a-202.2. Notice to parents upon removal of child -- Locating noncustodial
849 parent -- Written statement of procedural rights and preliminary proceedings.**

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

- 854 (i) that the minor has been taken into protective custody;
- 855 (ii) that a written statement is available that explains the reasons for removal and
856 placement in protective custody;

857 (iii) that a written statement is available that explains the parent's procedural rights and
858 the preliminary stages of the investigation and shelter hearing; [and]

859 (iv) that the parent or guardian to whom notice is given, and the minor, are entitled to
860 have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and
861 cannot afford an attorney, and desires to be represented by an attorney, one will be provided;

862 (v) H [of potential] THAT THERE ARE H resources available to assist the parent or guardian
862a in locating:

863 (A) a parent advocate;
864 (B) a qualified attorney; and
865 (C) potential expert witnesses to testify on behalf of the child, the parents, or the
866 family; and
867 [~~(iv)~~] (v) of a telephone number where the parent may access further information.
868 (b) For purposes of locating and informing the noncustodial parent as required in
869 Subsection (1)(a), the division shall search for the noncustodial parent through the national
870 parent locator database if the division is unable to locate the noncustodial parent through other
871 reasonable efforts.
872 (2) (a) The attorney general's office shall adopt, print, and distribute a form for the
873 written statement described in Subsection (1)(a)(iii).
874 (b) The statement shall be made available to the division and for distribution in
875 schools, health care facilities, local police and sheriff's offices, the division, and any other
876 appropriate office within the Department of Human Services.
877 (c) The notice shall be in simple language and include at least the following
878 information:
879 [~~(a)~~] (i) the conditions under which a minor may be released, hearings that may be
880 required, and the means by which the parent may access further specific information about a
881 minor's case and conditions of protective and temporary custody; and
882 [~~(b)~~] (ii) the rights of a minor and of the parent or guardian to legal counsel and to
883 appeal.
884 (3) If a good faith attempt was made by the peace officer or caseworker to notify the
885 parent or guardian in accordance with the requirements of Subsection (1), failure to notify shall
886 be considered to be due to circumstances beyond the control of the peace officer or caseworker
887 and may not be construed to permit a new defense to any juvenile or judicial proceeding or to
888 interfere with any rights, procedures, or investigations provided for by this chapter or Title 78,
889 Chapter 3a, Juvenile Courts.
890 Section 14. Section **62A-4a-203** is amended to read:
891 **62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain**
892 **child in home -- Exception -- Reasonable efforts for reunification.**
893 (1) Because removal of a child from [~~his~~] the child's home may affect protected,

894 constitutional rights of the parent, the division shall:

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

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

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

905 (2) In determining the reasonableness of efforts needed to maintain a child in [his] the
906 child's home or to return a child to [his] the child's home, in accordance with Subsection (1)(a)
907 or (c), the child's health, safety, and welfare shall be the [paramount] primary concern.
908 Additionally, the division shall consider whether those services would be effective within a
909 six-month period, and whether they would be likely to prevent reabuse or continued neglect of
910 the child.

911 (3) When removal and placement in substitute care is necessary to protect a child, the
912 "efforts" described in Subsections (1) and (2) would not be reasonable or appropriate and,
913 therefore, should not be utilized.

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

919 Section 15. Section **62A-4a-205** is amended to read:

920 **62A-4a-205. Treatment plans.**

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

923 (2) The division shall use an interdisciplinary team approach in developing each
924 treatment plan. An interdisciplinary team shall include, but is not limited to, representatives

925 from mental health, education, and, where appropriate, a representative of law enforcement.

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

- 928 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
929 (ii) the child;
930 (iii) the child's foster parents; and
931 (iv) where appropriate, the child's stepparent.

932 (b) In relation to all information considered by the division in developing a treatment
933 plan, additional weight and attention shall be given to the input of the child's natural and foster
934 parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii)[:], including their
935 preference to participate in a particular treatment program or receive services from a particular
936 medical or mental health professional.

937 (4) (a) The division shall attempt to develop a treatment plan with which the parents
938 agree.

939 (b) If a parent does not agree to the treatment plan:
940 (i) the division shall inform the court of the disagreement;
941 (ii) the parent shall be permitted to submit an alternate treatment plan for the court's
942 consideration; and

943 (c) the court shall consider the division's plan and the parent's alternate plan, if
944 submitted, prior to ordering a treatment plan.

945 [(4)] (5) A copy of the treatment plan shall be provided to the guardian ad litem[:] and
946 to the child's natural parents and foster parents immediately upon completion, or as soon as is
947 reasonably possible thereafter.

948 [(5)] (6) Each treatment plan shall specifically provide for the safety of the child, in
949 accordance with federal law, and clearly define what actions or precautions will, or may be,
950 necessary to provide for the health, safety, protection, and welfare of the child.

951 [(6)] (7) The plan shall set forth, with specificity, at least the following:

952 (a) the reason the child entered [Division of Child and Family Services] the division's
953 custody[; and];

954 (b) documentation of the reasonable efforts made to prevent placement[:] or
955 [documentation of] the emergency situation that existed and that prevented reasonable efforts;

956 [b] (c) the primary permanency goal for the child and the reason for selection of that
957 goal;

958 [e] (d) the concurrent permanency goal for the child and the reason for the selection
959 of that goal;

960 [d] (e) if the plan is for the child to return to the child's family, specifically what the
961 parents must do in order to enable the child to be returned home[,-specifically] including how
962 those requirements may be accomplished[;] and how those requirements will be measured;

963 [e] (f) the specific services needed to reduce the problems that necessitated placement
964 in the division's custody, and who will provide for and be responsible for case management;

965 [f] (g) a parent-time schedule between the natural parent and the child;

966 [g] (h) the health care to be provided to the child[;] and the mental health care to be
967 provided to address any known or diagnosed mental health needs of the child[. If residential
968 treatment, rather than a foster home, is the proposed placement, a specialized assessment of the
969 child's health needs shall be conducted, including an assessment of mental illness and behavior
970 and conduct disorders]; and

971 [h] (i) social summaries that include case history information pertinent to case
972 planning.

973 (8) (a) For purposes of Subsection (7)(g), parent-time may be denied only:

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

975 (ii) if the child suffered at the hands of the parent:

976 (A) sexual abuse or sexual exploitation; or

977 (B) physical abuse or mental cruelty; or

978 (iii) if parent-time would cause the child emotional anguish.

979 (b) For purposes of Subsection (7)(h):

980 (i) if residential treatment, rather than a foster home, is the proposed placement, a

981 specialized assessment of the child's health needs shall be conducted, including an assessment
982 of mental illness and behavior and conduct disorders; and

983 (ii) parents retain the right to seek separate medical and mental health diagnoses from
984 licensed or other practitioners of their choice.

985 [7] (9) (a) Each treatment plan shall be specific to each child and the child's family,
986 rather than general. The division shall train its workers to develop treatment plans that comply

987 with federal mandates and the specific needs of the particular child and the child's family.

988 (b) All treatment plans and expectations shall be individualized and contain specific
989 time frames.

990 (c) Treatment plans shall address problems that keep children in placement and keep
991 them from achieving permanence in their lives~~[;]~~, but shall be limited:

992 (i) to addressing findings made by the court; or

993 (ii) to other items requested or approved by the child's parents.

994 (d) Each treatment plan shall be designed to minimize disruption to the normal
995 activities of the child's family, including employment and school.

996 [~~(d)~~] (e) The child's natural parents, foster parents, and where appropriate, stepparents,
997 shall be kept informed of and supported to participate in important meetings and procedures
998 related to the child's placement.

999 [(8)] (10) With regard to a child who is three years of age or younger, if the goal is not
1000 to return the child home, the permanency plan for that child shall be adoption. However, if the
1001 division documents to the court that there is a compelling reason that adoption, reunification,
1002 guardianship, and kinship placement are not in the child's best interest, the court may order
1003 another planned permanent living arrangement in accordance with federal law.

1004 Section 16. Section **62A-4a-302** is amended to read:

1005 **62A-4a-302. Definitions.**

1006 As used in this part~~[(1)]~~, "Council", "council" means the Child Abuse Advisory
1007 Council established under Section 62A-4a-311.

1008 [~~(2)~~] "Child abuse and neglect" means the same as the term "child abuse or neglect,"
1009 defined in Section 62A-4a-402.]

1010 Section 17. Section **62A-4a-402** is amended to read:

1011 **62A-4a-402. Definitions.**

1012 As used in this part:

1013 (1) "A person responsible for a child's care" means the child's parent, guardian, or other
1014 person responsible for the child's care, whether in:

1015 (a) the same home as the child~~[;]~~;

1016 (b) a relative's home~~[;]~~;

1017 (c) a group, family, or center day care facility~~[;]~~;

1018 (d) a foster care home[;]; or
1019 (e) a residential institution.
1020 (2) "Child" means a person under 18 years of age.
1021 (3) "Child abuse" [or neglect] means causing harm or threatened harm to a child's
1022 health or welfare.] has the same meaning as "abuse" defined in Section 62A-4a-101.
1023 (4) "Neglect" has the same meaning as defined in Section 62A-4a-101.
1024 [(4) "Harm or threatened harm" means damage or threatened damage to the physical or
1025 emotional health and welfare of a child through neglect or abuse, and includes but is not
1026 limited to:]
1027 [(a) causing nonaccidental physical or mental injury;]
1028 [(b) incest;]
1029 [(c) sexual abuse;]
1030 [(d) sexual exploitation;]
1031 [(e) molestation; or]
1032 [(f) repeated negligent treatment or maltreatment.]
1033 (5) "Incest" means having sexual intercourse with a person whom the perpetrator
1034 knows to be [his or her] the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
1035 nephew, niece, or first cousin. The relationships referred to in this Subsection (5) include:
1036 (a) blood relationships of the whole or half blood without regard to legitimacy[, and
1037 include];
1038 (b) relationships of parent and child by adoption[;]; and
1039 (c) relationships of stepparent and stepchild while the marriage creating the
1040 relationship of a stepparent and stepchild exists.
1041 (6) "Molestation" means:
1042 (a) touching the anus or any part of the genitals of a child or otherwise taking indecent
1043 liberties with a child[;]; or
1044 (b) causing a child to take indecent liberties with the perpetrator or another with the
1045 intent to arouse or gratify the sexual desire of any person.
1046 (7) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or
1047 molestation directed towards a child.
1048 (8) (a) "Sexual exploitation of minors" means:

1049 (i) knowingly employing, using, persuading, inducing, enticing or coercing any minor
1050 to pose in the nude for the purpose of sexual arousal of any person or for profit[,-~~or to engage~~];

1051 (ii) engaging in any sexual or simulated sexual conduct for the purpose of
1052 photographing, filming, recording, or displaying in any way the sexual or simulated sexual
1053 conduct[,-~~and~~].

1054 (b) "Sexual exploitation of minors" includes displaying, distributing, possessing for the
1055 purpose of distribution, or selling material depicting minors in the nude or engaging in sexual
1056 or simulated sexual conduct.

1057 (9) "Subject" or "subject of the report" means any person reported under this part,
1058 including, but not limited to, a child, parent, guardian, or other person responsible for a child's
1059 care.

1060 Section 18. Section **62A-4a-403** is amended to read:

1061 **62A-4a-403. Reporting requirements.**

1062 (1) Except as provided in [Subsection] Subsections (2) through (4), when any person
1063 including persons licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58,
1064 Chapter 31b, Nurse Practice Act, has reason to believe ~~H~~ [~~, and not merely suspect that the~~
1065 possibility exists,] ~~H~~ that a child has been subjected to incest, molestation, sexual exploitation,
1066 sexual abuse, physical abuse, or neglect, or who observes a child being subjected to conditions
1067 or circumstances which would reasonably result in sexual abuse, physical abuse, or neglect,
1068 [he] that person shall immediately notify the nearest peace officer, law enforcement agency, or
1069 office of the division. On receipt of this notice, the peace officer or law enforcement agency
1070 shall immediately notify the nearest office of the division. If an initial report of child abuse or
1071 neglect is made to the division, the division shall immediately notify the appropriate local law
1072 enforcement agency. The division shall, in addition to its own investigation, comply with and
1073 lend support to investigations by law enforcement undertaken pursuant to a report made under
1074 this section.

1075 (2) The notification requirements of Subsection (1) do not apply to a clergyman or
1076 priest, without the consent of the person making the confession, with regard to any confession
1077 made to [him] the clergyman or priest in [his] the clergyman's or priest's professional character
1078 in the course of discipline enjoined by the church to which [he] the clergyman or priest
1079 belongs, if:

1080 (a) the confession was made directly to the clergyman or priest by the perpetrator; and
1081 (b) the clergyman or priest is, under canon law or church doctrine or practice, bound to
1082 maintain the confidentiality of that confession.

1083 (3) (a) When a clergyman or priest receives information about incest, molestation,
1084 sexual exploitation, sexual abuse, abuse, or neglect from any source other than confession of
1085 the perpetrator, [he] the clergyman or priest is required to give notification under Subsection
1086 (1) on the basis of that information even though [he] the clergyman or priest may have also
1087 received a report of abuse or neglect from the confession of the perpetrator.

1088 (b) Exemption of notification requirements for a clergyman or priest does not exempt a
1089 clergyman or priest from any other efforts required by law to prevent further abuse or neglect
1090 by the perpetrator.

1091 (4) In a case of potential medical neglect, notification under Subsection (1) is not
1092 required if the parents or guardian of the child:

1093 (a) decline counsel or treatment on behalf of the child to seek the counsel or treatment
1094 of one or more other licensed practitioners;

1095 (b) obtain counsel or treatment from a medical, mental health, or other practitioner
1096 other than the child's usual primary care doctor or specialist;

1097 (c) decline treatment on behalf of the child when the treatment poses a substantial risk
1098 of serious harm to the child's immediate or future physical or mental health;

1099 (d) obtain nontraditional treatment from a medical or mental health practitioner; or

1100 (e) otherwise act in a manner consistent with what a reasonable parent or guardian
1101 would do under similar circumstances.

1102 Section 19. Section **62A-4a-409** is amended to read:

1103 **62A-4a-409. Investigation by division -- Temporary protective custody --**

1104 **Preremoval interviews of children.**

1105 (1) The division shall make a thorough pre-removal investigation upon receiving either
1106 an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
1107 dependency, when there is [reasonable cause] reason to [suspect] believe, and not merely a
1108 possibility to suspect, that a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug
1109 dependency exists. The primary purpose of [that] the investigation shall be protection of the
1110 child.

1111 (2) The preremoval investigation shall include the same investigative requirements
1112 described in Section 62A-4a-202.3.

1113 (3) The division shall make a written report of its investigation. The written report
1114 shall include a determination regarding whether the alleged abuse or neglect was
1115 [substantiated, unsubstantiated] supported, unsupported, or without merit.

1116 (4) (a) The division shall use an interdisciplinary approach whenever possible in
1117 dealing with reports made under this part.

1118 (b) For this purpose, the division shall convene appropriate interdisciplinary "child
1119 protection teams" to assist it in its protective, diagnostic, assessment, treatment, and
1120 coordination services.

1121 (c) A representative of the division shall serve as the team's coordinator and chair.
1122 Members of the team shall serve at the coordinator's invitation, and whenever possible, the
1123 team shall include representatives of health, mental health, education, law enforcement
1124 agencies, and other appropriate agencies or individuals.

1125 (5) In any case where the division supervises, governs, or directs the affairs of any
1126 individual, institution, or facility that has been alleged to be involved in acts or omissions of
1127 child abuse or neglect, the investigation of the reported child abuse or neglect shall be
1128 conducted by an agency other than the division.

1129 (6) If a report of neglect is based upon or includes an allegation of educational neglect
1130 the division shall immediately consult with school authorities to verify the child's status in
1131 accordance with Sections 53A-11-101 through 53A-11-103.

1132 (7) When the division has completed its initial investigation under this part, it shall
1133 give notice of that completion to the person who made the initial report.

1134 (8) Division workers or other child protection team members have authority to enter
1135 upon public or private premises, using appropriate legal processes, to investigate reports of
1136 alleged child abuse or neglect.

1137 (9) With regard to any interview of a child prior to removal of that child from the
1138 child's home:

1139 (a) except as provided in Subsection (9)(b) or (c), the division shall [notify] inform a
1140 parent of the child prior to the interview[;] of:

1141 (i) the specific allegations concerning the child; and

1142 (ii) the time and place of the interview;

1143 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
1144 alleged perpetrator, the division need not notify a parent of the child prior to an initial interview
1145 with the child;

1146 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
1147 is unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the
1148 child prior to notification of the child's parent;

1149 (d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be
1150 notified as soon as practicable after the child has been interviewed, but in no case later than 24
1151 hours after the interview has taken place;

1152 (e) a child's parents shall be notified of the time and place of all subsequent interviews
1153 with the child; and

1154 (f) the child shall be allowed to have a support person of the child's choice present[.-
1155 That support person. (i) may include, but is not limited to,]:

1156 (i) including a school teacher [or], administrator, guidance counselor, or child care
1157 provider; and

1158 (ii) [may not be] not including a person who is alleged to be, or potentially may be, the
1159 perpetrator.

1160 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1
1161 through 62A-4a-202.3, a division worker or child protection team member may take a child
1162 into protective custody and deliver the child to a law enforcement officer, or place the child in
1163 an emergency shelter facility approved by the juvenile court, at the earliest opportunity
1164 subsequent to the child's removal from the child's original environment. Control and
1165 jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile
1166 Court Act of 1996, and as otherwise provided by law.

1167 (11) With regard to cases in which law enforcement has or is conducting an
1168 investigation of alleged abuse or neglect of a child:

1169 (a) the division shall coordinate with law enforcement to ensure that there is an
1170 adequate safety plan to protect the child from further abuse or neglect; and

1171 (b) the division is not required to duplicate an aspect of the investigation that, in the
1172 division's determination, has been satisfactorily completed by law enforcement.

1173 Section 20. Section **63-55-262** is amended to read:

1174 **63-55-262. Repeal dates, Title 62A.**

1175 [~~(1) Section 62A-4a-202.7, Pilot Program for Differentiated Responses to Child Abuse~~
1176 ~~and Neglect Reports, is repealed July 1, 2005.~~]

1177 [~~(2)~~] Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child, is
1178 repealed July 1, 2006.

1179 Section 21. Section **76-5-109** is amended to read:

1180 **76-5-109. Child abuse.**

1181 (1) As used in this section:

1182 (a) "Child" means a human being who is under 18 years of age.

1183 (b) "Child abuse" means any offense described in Subsection (2) or (3)[;] or in Section
1184 76-5-109.1[;], but does not include:

1185 (i) unintentional incidents, including unintentional accidents and unintentional injuries,

1186 ~~H [unless the injury, accident, or other incident was caused intentionally, knowingly, recklessly, or~~
1187 ~~with criminal negligence, as defined in Section 76-2-103]~~ ~~h~~ ; and

1188 (ii) reasonable parental discipline or management of a child with which a child may
1189 disagree, including prohibiting the use of an automobile or other possession and the
1190 withholding of other privileges.

1191 (c) "Mental cruelty" means conduct which:

1192 (i) causes serious chronic anguish in a child; ~~H [or]~~ ~~h~~

1193 (ii) impairs the child's social and emotional functioning ~~H ; OR~~

1193a ~~(iii) CAUSES SUBSTANTIAL EMOTIONAL HARM TO A CHILD~~ ~~h~~ .

1194 [~~(e)~~] (d) "Physical injury" means an injury to or health condition of a child which
1195 [impairs] results in actual harm to the physical condition or health of the child and is not a
1196 serious physical injury, including:

1197 (i) a bruise or other contusion of the skin;

1198 (ii) a minor laceration or abrasion;

1199 (iii) failure to thrive or malnutrition; or

1200 (iv) [~~any other~~] a condition which imperils the child's health [~~or welfare~~] and which is
1201 not a serious physical injury as defined in Subsection (1)(d).

1202 [~~(d)~~] (e) "Serious physical injury" means any physical injury or set of injuries which
1203 [seriously impairs the child's] results in serious harm to the physical health[,-or which] of the

1204 child, involves physical torture [or causes serious emotional harm to] of the child, or which
1205 involves a substantial risk of death to the child, including:

1206 (i) fracture of any bone or bones;

1207 (ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
1208 shaking, or causing the child's head to impact with an object or surface;

1209 (iii) any burn, including burns inflicted by hot water, or those caused by placing a hot
1210 object upon the skin or body of the child;

1211 (iv) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

1212 (v) any combination of two or more reportable physical injuries ~~H [, not resulting from~~
1213 ~~spanking]~~ ~~H~~ inflicted by the same person ~~H [f], [t]~~ ~~H~~ either at the same time or on different
1213a occasions

1214 within a two-year period:

1215 (vi) any damage to internal organs of the body;

1216 (vii) any conduct toward a child which results in [~~severe emotional harm, severe~~]
1217 ~~serious~~ developmental delay or retardation[-] or [~~severe~~] ~~serious~~ impairment of the child's
1218 ability to function;

1219 (viii) any injury which creates a permanent disfigurement or protracted loss or
1220 impairment of the function of a bodily member, limb, or organ;

1221 (ix) any conduct which causes a child to cease breathing, even if resuscitation is
1222 successful following the conduct; or

1223 (x) any conduct which results in starvation or failure to thrive or malnutrition that
1224 jeopardizes the child's life.

1225 (2) Any person who inflicts upon a child serious physical injury or mental cruelty or,
1226 having the care or custody of such child, causes or permits another to inflict serious physical
1227 injury or mental cruelty upon a child is guilty of an offense as follows:

1228 (a) if done intentionally or knowingly, the offense is a felony of the second degree;

1229 (b) if done recklessly, the offense is a felony of the third degree; or

1230 (c) if done with criminal negligence, the offense is a class A misdemeanor.

1231 (3) Any person who inflicts upon a child physical injury or, having the care or custody
1232 of such child, causes or permits another to inflict physical injury upon a child is guilty of an
1233 offense as follows:

1234 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

1235 (b) if done recklessly, the offense is a class B misdemeanor; or
1236 (c) if done with criminal negligence, the offense is a class C misdemeanor.

1237 (4) A parent or legal guardian who provides a child with treatment by spiritual means
1238 alone through prayer, in lieu of medical or mental health treatment, in accordance with the
1239 tenets and practices of an established church or religious denomination of which the parent or
1240 legal guardian is a member or adherent shall not, for that reason alone, be [deemed] considered
1241 to have committed an offense under this section.

1242 (5) A parent or legal guardian who refuses traditional medical or mental health
1243 treatment on behalf of a child in order for the child to receive nontraditional medical or mental
1244 health treatment ~~H~~ UNDER THE CARE OF A MEDICAL, MENTAL HEALTH, LICENSED, OR APPROVED
1244a PRACTITIONER ~~H~~ may not, for that reason alone, be considered to have committed an offense
1245 under this section.

1246 Section 22. Section **76-5-110** is amended to read:

1247 **76-5-110. Abuse or neglect of disabled child.**

1248 (1) As used in this section:

1249 (a) "Abuse" means:
1250 (i) inflicting physical injury, as that term is defined in Section 76-5-109;
1251 (ii) having the care or custody of a disabled child, causing or permitting another to
1252 inflict physical injury, as that term is defined in Section 76-5-109; or
1253 (iii) unreasonable confinement.

1254 (b) "Caretaker" means:
1255 (i) any parent, legal guardian, or other person having under [his] the person's care and
1256 custody a disabled child; or
1257 (ii) any person, corporation, or public institution that has assumed by contract or court
1258 order the responsibility to provide food, shelter, clothing, medical or mental health, and other
1259 necessities to a disabled child.

1260 (c) "Disabled child" means any person under 18 years of age who is impaired because
1261 of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent
1262 that [he] the person is unable to care for his own personal safety or to provide necessities such
1263 as food, shelter, clothing, and medical care.

1264 (d) "Neglect" means failure by a caretaker to provide reasonable care, nutrition,
1265 clothing, shelter, supervision, or medical care.

1266 (2) Any caretaker who abuses or neglects a disabled child is guilty of a third degree
1267 felony.

1268 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual
1269 means alone through prayer, in lieu of medical or mental health treatment, in accordance with
1270 the tenets and practices of an established church or religious denomination of which the parent
1271 or legal guardian is a member or adherent shall not, for that reason alone, be considered to be
1272 in violation under this section.

1273 (b) The exception under Subsection (3)(a) shall not preclude a court from ordering,
1274 subject to the limits of Subsection 78-3a-118(2)(n), medical services from a [physician]
1275 licensed [to engage in the practice of medicine] medical practitioner to be provided to the child
1276 where there is substantial risk of harm to the child's physical health or welfare if the treatment
1277 is not provided.

1278 Section 23. Section **78-3a-103 (Effective 07/01/04)** is amended to read:

78-3a-103 (Effective 07/01/04). Definitions.

1280 (1) As used in this chapter:

1281 (a) (i) "Abused child" [includes] means a minor less than 18 years of age who[:(i)] has
1282 suffered [or been threatened with nonaccidental physical or mental harm, negligent treatment,
1283 or sexual exploitation; or (ii) has been the victim of any sexual abuse.];

1284 (A) physical abuse;

1285 (B) serious physical abuse;

1286 (C) mental cruelty;

1287 (D) sexual exploitation; ~~H~~ [or] ~~h~~

1288 (E) sexual abuse ~~H~~ [:] ; OR

1288a (F) ANY INJURY, ACCIDENT, OR OTHER INCIDENT THAT WAS CAUSED INTENTIONALLY,

1288b KNOWINGLY, RECKLESSLY, OR WITH CRIMINAL NEGLIGENCE AS DEFINED IN SECTION 76-2-103. ~~H~~

1289 (ii) "Abused child" does not include a child who has been the subject of:

1290 (A) unintentional incidents, including unintentional accidents and unintentional

1291 injuries ~~H~~ [, unless the injury, accident, or other incident was caused intentionally, knowingly,

1292 recklessly, or with criminal negligence, as defined in Section 76-2-103] ~~H~~ ; and

1293 (B) reasonable parental discipline or management with which the child may disagree,
1294 including prohibiting the use of an automobile or other possession and the withholding of other
1295 privileges.

1296 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts

1297 alleged in the petition have been proved.

1298 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or
1299 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall
1300 be referred to as minors.

1301 (d) "Board" means the Board of Juvenile Court Judges.

1302 (e) "Child placement agency" means:

1303 (i) a private agency licensed to receive minors for placement or adoption under this
1304 code; or

1305 (ii) a private agency receiving minors for placement or adoption in another state, which
1306 agency is licensed or approved where such license or approval is required by law.

1307 (f) "Commit" means to transfer legal custody.

1308 (g) "Court" means the juvenile court.

1309 (h) "Dependent child" includes a minor who is homeless or without [proper] adequate
1310 care through no fault of [~~his~~] the minor's parent, guardian, or custodian.

1311 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent
1312 or the parents or a previous legal custodian to another person, agency, or institution.

1313 (j) "Detention" means home detention and secure detention as defined in Section
1314 62A-7-101 for the temporary care of minors who require secure custody in physically
1315 restricting facilities:

1316 (i) pending court disposition or transfer to another jurisdiction; or

1317 (ii) while under the continuing jurisdiction of the court.

1318 (k) "Division" means the Division of Child and Family Services.

1319 (l) "Formal referral" means a written report from a peace officer or other person
1320 informing the court that a minor is or appears to be within the court's jurisdiction and that a
1321 petition may be filed.

1322 (m) "Group rehabilitation therapy" means psychological and social counseling of one
1323 or more persons in the group, depending upon the recommendation of the therapist.

1324 (n) "Guardianship of the person" includes the authority to consent to:

1325 (i) marriage[,-to];

1326 (ii) enlistment in the armed forces[,-to];

1327 (iii) major medical[; or] surgical[,-or] treatment;

1328 (iv) psychiatric or other mental health treatment[;]; and [to]
1329 (v) legal custody, if legal custody is not vested in another person, agency, or institution.
1330 (o) "Habitual truant" is a school-age minor who has received more than two truancy
1331 citations within one school year from the school in which the minor is or should be enrolled
1332 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the
1333 part of school authorities as required under Section 53A-11-103, refuses to regularly attend
1334 school or any scheduled period of the school day.
1335 (p) "Legal custody" means a relationship embodying the following rights and duties:
1336 (i) the right to physical custody of the minor;
1337 (ii) the right and duty to protect, train, and discipline the minor;
1338 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
1339 medical care;
1340 (iv) the right to determine where and with whom the minor shall live; and
1341 (v) the right, in an emergency, to authorize surgery or other extraordinary care.
1342 (q) "Mental cruelty" has the same meaning as defined in Section 76-5-109.
1343 [(q)] (r) "Minor" means a person under the age of 18 years. It includes the term "child"
1344 as used in other parts of this chapter.
1345 [(r)] (s) "Natural parent" means a minor's biological or adoptive parent, and includes
1346 the minor's noncustodial parent.
1347 [(s)] (t) (i) "Neglected child" means a minor[: (A)] whose parent, guardian, or
1348 custodian has demonstrated repeated or substantial failure to provide adequate food, shelter,
1349 clothing, training, ~~H~~ [or] ~~H~~ physical safety ~~H~~ [to], OR ANY OTHER CARE NECESSARY FOR THE
1349a HEALTH, SAFETY, OR WELL-BEING OF ~~H~~ the minor.
1350 (ii) "Neglected child" includes:
1351 (A) a minor whose parent, guardian, or custodian has:
1352 (I) abandoned the minor, except as provided in Title 62A, Chapter 4a, Part 8, Safe
1353 Relinquishment of a Newborn Child; or
1354 (II) demonstrated a lack of adequate care for the minor; ~~H AND ~~H~~~~
1355 [(B) whose parent, guardian, or custodian has subjected the minor to mistreatment or
1356 abuse;]
1357 [(C) who lacks proper parental care by reason of the fault or habits of the parent,
1358 guardian, or custodian;]

1359 [D] whose parent, guardian, or custodian fails or refuses to provide proper or
1360 necessary subsistence, education, or medical care, including surgery or psychiatric services
1361 when required, or any other care necessary for health, safety, morals, or well-being; or]

1362 **H [f(E)] (B) a minor who is at substantial risk of being a neglected child or an abused**
child [as defined in this chapter] because another minor in the same home is a neglected child
or abused child [as defined in this chapter.]; and] h

1365 [H (ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D),
1366 means that,]

1367 **H [C] (B) h a minor whose parent or guardian, after receiving notice that [a] the minor**
1367a has been
1368 frequently absent from school without good cause[, or that the minor has failed to cooperate
1369 with school authorities in a reasonable manner, a parent or guardian] fails to make a good faith
1370 effort to ensure that the minor receives an appropriate education.

1371 (iii) [A] "Neglected child" does not include:

1372 (A) a minor whose parent [or], guardian, or custodian is legitimately practicing
1373 religious beliefs and who, for that reason, does not provide specified medical or mental health
1374 treatment for [a] the minor[is not guilty of neglect.]; or

1375 (B) a minor who experiences unintentional incidents, or reasonable parental discipline
1376 or management, described in Subsection (1)(a)(ii).

1377 [t] (u) "Nonjudicial adjustment" means closure of the case by the assigned probation
1378 officer without judicial determination upon the consent in writing of the minor, the parent,
1379 legal guardian or custodian, and the assigned probation officer.

1380 (v) "Physical abuse" has the same meaning as "physical injury," as defined in Section
1381 76-5-109.

1382 [t] (w) "Probation" means a legal status created by court order following an
1383 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
1384 minor is permitted to remain in [his] the minor's home under prescribed conditions and under
1385 supervision by the probation department or other agency designated by the court, subject to
1386 return to the court for violation of any of the conditions prescribed.

1387 [t] (x) "Protective supervision" means a legal status created by court order following
1388 an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted
1389 to remain in [his] the minor's home, and supervision and assistance to correct the abuse,

1390 neglect, or dependency is provided by the probation department or other agency designated by
1391 the court.

1392 [w] (y) "Residual parental rights and duties" means those rights and duties remaining
1393 with the parent after legal custody or guardianship, or both, have been vested in another person
1394 or agency, including the responsibility for support, the right to consent to adoption, the right to
1395 determine the child's religious affiliation, and the right to reasonable parent-time unless
1396 restricted by the court. If no guardian has been appointed, "residual parental rights and duties"
1397 also include the right to consent to marriage, to enlistment, and to major medical, surgical, or
1398 psychiatric or other mental health treatment.

1399 [x] (z) "Secure facility" means any facility operated by or under contract with the
1400 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
1401 youth offenders committed to the division for custody and rehabilitation.

1402 (aa) "Serious neglect" has the same meaning as defined in Section 62A-4a-101.

1403 (bb) "Serious physical abuse" has the same meaning as "serious physical injury," as
1404 defined in Section 76-5-109.

1405 [y] (cc) "Shelter" means the temporary care of minors in physically unrestricted
1406 facilities pending court disposition or transfer to another jurisdiction.

1407 [z] (dd) "State supervision" means a disposition which provides a more intensive
1408 level of intervention than standard probation but is less intensive or restrictive than a
1409 community placement with the Division of Juvenile Justice Services.

1410 [aa] (ee) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

1411 [bb] (ff) "Supported" has the same meaning as defined in Section 62A-4a-101.

1412 [cc] (gg) "Termination of parental rights" means the permanent elimination of all
1413 parental rights and duties, including residual parental rights and duties, by court order.

1414 [dd] (hh) "Therapist" means a person employed by a state division or agency for the
1415 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
1416 other person licensed or approved by the state for the purpose of conducting psychological
1417 treatment and counseling.

1418 [ee] (ii) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

1419 [ff] (jj) "Without merit" has the same meaning as defined in Section 62A-4a-101.

1420 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the

1421 division [of Child and Family Services]:

1422 (a) "Custody" means the custody of a minor in the division [of Child and Family
1423 Services] as of the date of disposition.

1424 (b) "Protective custody" means the shelter of a minor by the division [of Child and
1425 Family Services] from the time the minor is removed from home until the shelter hearing, or
1426 the minor's return home, whichever occurs earlier.

1427 (c) "Temporary custody" means the custody of a minor in the division [of Child and
1428 Family Services] from the date of the shelter hearing until disposition.

1429 Section 24. Section **78-3a-106** is amended to read:

1430 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

1431 (1) The court has authority to issue search warrants, subpoenas, or investigative
1432 subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for
1433 the same purposes, in the same manner and pursuant to the same procedures set forth in the
1434 code of criminal procedure for the issuance of search warrants, subpoenas, or investigative
1435 subpoenas in other trial courts in the state.

1436 (2) (a) The court may issue a warrant authorizing a child protective services worker or
1437 peace officer to search for a child and take the child into protective custody if:

1438 (i) it appears to the court upon a verified petition, recorded sworn testimony or an
1439 affidavit sworn to by a peace officer or any other person, and upon the examination of other
1440 witnesses, if required by the judge, that there is probable cause to believe that:

1441 (i) there is an immediate threat to the safety of a child; [and]

1442 (ii) without protective custody the child will be at substantial risk of abuse or neglect;
1443 and

1444 [(ii)] (iii) the applicant certifies to the court in writing or by recorded sworn testimony
1445 as to the efforts, if any, that have been made to give notice to the minor's parent or guardian
1446 and the reasons supporting the claim that notice and an opportunity to be heard should not be
1447 required.

1448 (b) A warrant removing a child from [his] the child's home or school, or having the
1449 effect of depriving a parent or guardian of the care, custody, and control of their minor child,
1450 may not be issued without notice to the minor's parents and opportunity to be heard unless the
1451 requirements of [Subsections] Subsection (2)(a)[(i) and (ii)] have been satisfied.

1452 (c) In a case of potential medical neglect, a warrant may not be issued under this
1453 Subsection (2):
1454 (i) on the basis alone that the parents or guardian have:
1455 (A) declined counsel or treatment on behalf of the child to seek the counsel or
1456 treatment of one or more other licensed practitioners;
1457 (B) obtained counsel or treatment from a medical, mental health, or other practitioner
1458 other than the child's usual primary care doctor or specialist;
1459 (C) declined treatment on behalf of the child when the treatment poses a substantial
1460 risk of serious harm to the child's immediate or future physical or mental health;
1461 (D) obtained nontraditional treatment from a medical or mental health practitioner; or
1462 (E) otherwise acted in a manner consistent with what a reasonable parent or guardian
1463 would do under similar circumstances; and
1464 (ii) unless not practicable, a warrant may not be issued on the basis of medical neglect
1465 until the court examines the parents' or guardian's oral or written responses to the allegation of
1466 medical or mental health neglect.

1467 [(e)] (d) Pursuant to Section 77-23-210, a peace officer making the search may enter a
1468 house or premises by force, if necessary, in order to remove the child.

1469 [(d)] (e) The person executing the warrant shall then take the child to the place of
1470 shelter designated by the court.

1471 (3) The parent or guardian to be notified must be the minor's primary caregiver, or the
1472 person who has custody of the minor, when the order is sought.

1473 Section 25. Section **78-3a-110** is amended to read:

1474 **78-3a-110. Summons -- Service and process -- Issuance and contents -- Notice to**
1475 **absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory**
1476 **process for attendance of witnesses when authorized.**

1477 (1) After a petition is filed the court shall promptly issue a summons, unless the judge
1478 directs that a further investigation is needed. No summons is required as to any person who
1479 appears voluntarily or who files a written waiver of service with the clerk of the court at or
1480 prior to the hearing.

1481 (2) The summons shall contain:
1482 (a) the name of the court;

- 1483 (b) the title of the proceedings; and
1484 (c) except for a published summons, a brief statement of the substance of the
1485 allegations in the petition.
- 1486 (3) A published summons shall state:
1487 (a) that a proceeding concerning the minor is pending in the court; and
1488 (b) an adjudication will be made.
- 1489 (4) The summons shall require the person or persons who have physical custody of the
1490 minor to appear personally and bring the minor before the court at a time and place stated. If
1491 the person or persons summoned are not the parent, parents, or guardian of the minor, the
1492 summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying
1493 them of the pendency of the case and of the time and place set for the hearing.
- 1494 (5) Summons may be issued requiring the appearance of any other person whose
1495 presence the court finds necessary.
- 1496 (6) If it appears to the court that the welfare of the minor or the welfare of the public
1497 requires that the minor be taken into custody, the court may by endorsement upon the summons
1498 direct that the person serving the summons take the minor into custody at once.
- 1499 (7) [Upon] Subject to the provisions of Subsection 78-3a-118(2)(n) and upon the sworn
1500 testimony of one or more reputable physicians, the court may order emergency medical or
1501 surgical treatment that is immediately necessary for a minor concerning whom a petition has
1502 been filed pending the service of summons upon [his] the minor's parents, guardian, or
1503 custodian.
- 1504 (8) (a) A parent or guardian is entitled to the issuance of compulsory process for the
1505 attendance of witnesses on [his] the parent's or guardian's own behalf or on behalf of the minor.
1506 (b) A guardian ad litem or a probation officer is entitled to compulsory process for the
1507 attendance of witnesses on behalf of the minor.
- 1508 (9) Service of summons and process and proof of service shall be made in the manner
1509 provided in the Utah Rules of Civil Procedure.
- 1510 (10) Service of summons or process shall be made by the sheriff of the county where
1511 the service is to be made, or by [his] the sheriff's deputy[; but], except that upon request of the
1512 court, service shall be made by any other peace officer, or by another suitable person selected
1513 by the court.

1514 (11) (a) Service of summons in the state shall be made personally[;] by delivering a
1515 copy to the person summoned[; provided, however, that].

1516 (b) If the parents of a minor are living together at their usual place of abode [may],
1517 both may be served by personal delivery to either parent of copies of the summons, one copy
1518 for each parent.

1519 (12) If [the] a judge makes a written finding that [he] the judge has reason to believe
1520 that personal service of the summons will be unsuccessful, or will not accomplish notification
1521 within a reasonable time after issuance of the summons, [he] the judge may order service by
1522 registered mail, with a return receipt to be signed by the addressee only, to be addressed to the
1523 last-known address of the person to be served in the state. Service shall be complete upon
1524 return to the court of the signed receipt.

1525 (13) (a) If the parents, parent, or guardian required to be summoned under Subsection
1526 (4) cannot be found within the state, the fact of their minor's presence within the state shall
1527 confer jurisdiction on the court in proceedings in minor's cases under this chapter as to any
1528 absent parent or guardian, provided that due notice has been given [in the following manner:]
1529 as provided in Subsection (13)(b).

1530 [(a)] (b) (i) If the address of the parent or guardian is known, due notice is given by
1531 sending him a copy of the summons by registered mail with a return receipt to be signed by the
1532 addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil
1533 Procedure. Service by registered mail shall be complete upon return to the court of the signed
1534 receipt.

1535 [(b)] (ii) If the address or whereabouts of the parent or guardian outside the state
1536 cannot after diligent inquiry be ascertained, due notice is given by publishing a summons in a
1537 newspaper having general circulation in the county in which the proceeding is pending. The
1538 summons shall be published once a week for four successive weeks. Service shall be complete
1539 on the day of the last publication.

1540 (c) Service of summons as provided in this Subsection (13) shall vest the court with
1541 jurisdiction over the parent or guardian served in the same manner and to the same extent as if
1542 the person served was served personally within the state.

1543 (14) (a) In the case of service in the state, service completed not less than 48 hours
1544 before the time set in the summons for the appearance of the person served, shall be sufficient

1545 to confer jurisdiction.

1546 (b) In the case of service outside the state, service completed not less than five days
1547 before the time set in the summons for appearance of the person served, shall be sufficient to
1548 confer jurisdiction.

1549 (15) Computation of periods of time under this chapter shall be made in accordance
1550 with the Utah Rules of Civil Procedure.

1551 Section 26. Section **78-3a-115** is amended to read:

1552 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
1553 **cases heard separately from adult cases -- Minor or parents or custodian heard**
1554 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
1555 **one minor.**

1556 (1) Hearings in minor's cases shall be held before the court without a jury and may be
1557 conducted in an informal manner.

1558 (a) (i) In abuse, neglect, and dependency cases in all districts other than pilot districts
1559 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude [all
1560 persons] the general public from hearings held prior to July 1, 2005 and admit only those
1561 persons who [do not] have a direct interest in the proceedings[:] or who have been requested by
1562 the parent or legal guardian to be present.

1563 (ii) The court may exclude a person from a hearing under Subsection (1)(a)(i), by
1564 motion of a party to the proceeding or its own motion, after making a finding described in
1565 Subsection 78-3a-115.1(2)(a).

1566 (iii) The court shall allow a person requested by the parent or legal guardian to be
1567 present at a proceeding under Subsection (1)(a)(i), and not excluded under Subsection
1568 (1)(a)(ii), to submit testimony to the court.

1569 (b) In delinquency cases the court shall admit all persons who have a direct interest in
1570 the case and may admit persons requested by the parent or legal guardian to be present. The
1571 court shall exclude all other persons except as provided in Subsection (1)(c).

1572 (c) In delinquency cases in which the minor charged is 14 years of age or older, the
1573 court shall admit any person unless the hearing is closed by the court upon findings on the
1574 record for good cause if:

1575 (i) the minor has been charged with an offense which would be a felony if committed

1576 by an adult; or

1577 (ii) (A) the minor is charged with an offense that would be a class A or B misdemeanor
1578 if committed by an adult[;]; and

1579 (B) the minor has been previously charged with an offense which would be a
1580 misdemeanor or felony if committed by an adult.

1581 (d) (i) The victim of any act charged in a petition or information involving an offense
1582 committed by a minor which if committed by an adult would be a felony or a class A or class B
1583 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
1584 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
1585 Chapter 38, Rights of Crime Victims Act.

1586 (ii) The notice provisions in Section 77-38-3 do not apply to important juvenile justice
1587 hearings as defined in Section 77-38-2.

1588 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right
1589 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

1590 (i) the scheduling of any court hearings on the petition;

1591 (ii) any findings made by the court; and

1592 (iii) any sentence or decree imposed by the court.

1593 (2) (a) Minor's cases shall be heard separately from adult cases.

1594 (b) The minor or [his] the minor's parents or custodian may be heard separately when
1595 considered necessary by the court.

1596 (c) The hearing may be continued from time to time to a date specified by court order.

1597 (3) When more than one minor is involved in a home situation which may be found to
1598 constitute neglect or dependency, or when more than one minor is alleged to be involved in the
1599 same law violation, the proceedings may be consolidated, except that separate hearings may be
1600 held with respect to disposition.

1601 Section 27. Section **78-3a-118 (Effective 07/01/04)** is amended to read:

1602 **78-3a-118 (Effective 07/01/04). Adjudication of jurisdiction of juvenile court --**

1603 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**

1604 **Obtaining DNA sample.**

1605 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
1606 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its

1607 jurisdiction over the minor. However, in cases within the provisions of Subsection
1608 78-3a-104(1), findings of fact are not necessary.

1609 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
1610 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
1611 to the school superintendent of the district in which the minor resides or attends school. Notice
1612 shall be made to the district superintendent within three days of the adjudication and shall
1613 include the specific offenses for which the minor was adjudicated.

1614 (2) Upon adjudication the court may make the following dispositions by court order:

1615 (a) (i) The court may place the minor on probation or under protective supervision in
1616 the minor's own home and upon conditions determined by the court, including compensatory
1617 service as provided in Section 78-11-20.7.

1618 (ii) The court may place the minor in state supervision with the probation department
1619 of the court, under the legal custody of:

1620 (A) [his] the minor's parent or guardian;
1621 (B) the Division of Juvenile Justice Services; or
1622 (C) the Division of Child and Family Services.

1623 (iii) If the court orders probation or state supervision, the court shall direct that notice
1624 of its order be provided to designated persons in the local law enforcement agency and the
1625 school or transferee school, if applicable, which the minor attends. The designated persons
1626 may receive the information for purposes of the minor's supervision and student safety.

1627 (iv) Any employee of the local law enforcement agency and the school which the
1628 minor attends who discloses the court's order of probation is not:

1629 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in
1630 Section 63-30-4; and
1631 (B) civilly or criminally liable except when the disclosure constitutes a knowing
1632 violation of Section 63-2-801.

1633 (b) The court may place the minor in the legal custody of a relative or other suitable
1634 person, with or without probation or protective supervision, but the juvenile court may not
1635 assume the function of developing foster home services.

1636 (c) (i) The court may:

1637 (A) vest legal custody of the minor in the Division of Child and Family Services,

1638 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
1639 and

1640 (B) order the Department of Human Services to provide dispositional
1641 recommendations and services.

1642 (ii) For minors who may qualify for services from two or more divisions within the
1643 Department of Human Services, the court may vest legal custody with the department.

1644 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
1645 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,
1646 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title
1647 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

1648 (B) Prior to the court entering an order to place a minor in the custody of the Division
1649 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
1650 the division with notice of the hearing no later than five days before the time specified for the
1651 hearing so the division may attend the hearing.

1652 (C) Prior to committing a minor to the custody of the Division of Child and Family
1653 Services, the court shall make a finding as to what reasonable efforts have been attempted to
1654 prevent the minor's removal from ~~his~~ the minor's home.

1655 (d) (i) The court may commit the minor to the Division of Juvenile Justice Services for
1656 secure confinement.

1657 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
1658 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
1659 Juvenile Justice Services.

1660 (e) The court may commit the minor, subject to the court retaining continuing
1661 jurisdiction over ~~him~~ the minor, to the temporary custody of the Division of Juvenile Justice
1662 Services for observation and evaluation for a period not to exceed 45 days, which period may
1663 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
1664 Services.

1665 (f) (i) The court may commit the minor to a place of detention or an alternative to
1666 detention for a period not to exceed 30 days subject to the court retaining continuing
1667 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
1668 ordered by the court.

- 1669 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:
1670 (A) an act which if committed by an adult would be a criminal offense; or
1671 (B) contempt of court under Section 78-3a-901.
- 1672 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
1673 the Division of Child and Family Services or any other appropriate person in accordance with
1674 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
1675 Dependency Proceedings.
- 1676 (h) (i) The court may place the minor on a ranch or forestry camp, or similar facility for
1677 care and also for work, if possible, if the person, agency, or association operating the facility
1678 has been approved or has otherwise complied with all applicable state and local laws.
1679 (ii) A minor placed in a forestry camp or similar facility may be required to work on
1680 fire prevention, forestation and reforestation, recreational works, forest roads, and on other
1681 works on or off the grounds of the facility and may be paid wages, subject to the approval of
1682 and under conditions set by the court.
- 1683 (i) (A) The court may order the minor to repair, replace, or otherwise make restitution
1684 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
1685 Section 78-3a-318, and impose fines in limited amounts.
1686 (B) The court may also require the minor to reimburse an individual, entity, or
1687 governmental agency who offered and paid a reward to a person or persons for providing
1688 information resulting in a court adjudication that the minor is within the jurisdiction of the
1689 juvenile court due to the commission of a criminal offense.
1690 (C) If a minor has been returned to this state under the Interstate Compact on Juveniles,
1691 the court may order the minor to make restitution for costs expended by any governmental
1692 entity for the return.
1693 (j) The court may issue orders necessary for the collection of restitution and fines
1694 ordered by the court, including garnishments, wage withholdings, and executions.
1695 (k) (i) The court may through its probation department encourage the development of
1696 employment or work programs:
1697 (A) to enable minors to fulfill their obligations under Subsection (2)(i); and
1698 (B) for other purposes considered desirable by the court.
1699 (ii) Consistent with the order of the court, the probation officer may permit the minor

1700 found to be within the jurisdiction of the court to participate in a program of work restitution or
1701 compensatory service in lieu of paying part or all of the fine imposed by the court.

1702 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
1703 addition to any other disposition authorized by this section:

1704 (A) restrain the minor from driving for periods of time the court considers necessary;
1705 and

1706 (B) take possession of the minor's driver license.

1707 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
1708 suspension of driving privileges for an offense under Section 78-3a-506 [~~are~~] is governed only
1709 by Section 78-3a-506.

1710 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
1711 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
1712 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
1713 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
1714 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
1715 completion of an approved substance abuse prevention or treatment program may be credited
1716 by the court as compensatory service hours.

1717 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
1718 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
1719 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
1720 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
1721 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
1722 approved substance abuse prevention or treatment program may be credited by the court as
1723 compensatory service hours.

1724 (n) (i) [The] Except as provided in Subsection (2)(n)(ii), the court may order that the
1725 minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that [he]
1726 the minor receive other special care. For these purposes the court may place the minor in a
1727 hospital or other suitable facility.

1728 (ii) In a case involving potential medical or mental health neglect, the court may not
1729 order an examination, treatment, or special care under Subsection (2)(n)(i) or any other
1730 provision of law unless:

1731 (A) at least one of the minor's parents or guardian consents to the examination,
1732 treatment, or special care;
1733 (B) the examination, treatment, or special care ordered by the court does not pose a
1734 significant risk of producing serious side effects, including:
1735 (I) death;
1736 (II) blindness;
1737 (III) suppression of growth;
1738 ~~H [IV] depression,~~ h
1739 ~~H [V] (IV)~~ h behavior disturbances;
1740 ~~H [VI] (V)~~ h thought disorders;
1741 ~~H [VII] (VI)~~ h tardive dyskenisia;
1742 ~~H [VIII] (VII)~~ h brain function impairment; or
1743 ~~H [IX] (VIII)~~ h emotional or physical harm resulting from the compulsory nature of the
1743a treatment
1744 or special care; or
1745 (C) ~~H CLEAR AND CONVINCING~~ h evidence demonstrates ~~H [beyond a reasonable doubt]~~ h
1745a that the examination, treatment,
1746 or special care provided by the parents or legal guardian, or the lack thereof, will result in an
1747 immediate serious threat to the life or essential physiological functions of the minor.
1748 (o) (i) The court may appoint a guardian for the minor if [it] an appointment appears
1749 necessary in the interest of the minor, and may appoint as guardian a public or private
1750 institution or agency in which legal custody of the minor is vested.
1751 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
1752 private agency or institution, the court shall give primary consideration to the welfare of the
1753 minor. ~~[When practicable, the]~~ The court ~~[may]~~ shall take into consideration the religious
1754 preferences of the minor and of the minor's parents.
1755 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
1756 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or
1757 any other person who has been made a party to the proceedings. Conditions may include:
1758 (A) parent-time by the parents or one parent;
1759 (B) restrictions on the minor's associates;
1760 (C) restrictions on the minor's occupation and other activities; and
1761 (D) requirements to be observed by the parents or custodian.

1762 (ii) A minor whose parents or guardians successfully complete a family or other
1763 counseling program may be credited by the court for detention, confinement, or probation time.

1764 (q) The court may order the minor to be committed to the physical custody of a local
1765 mental health authority, in accordance with the procedures and requirements of Title 62A,
1766 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
1767 Mental Health.

1768 (r) (i) The court may make an order committing a minor within its jurisdiction to the
1769 Utah State Developmental Center if the minor has mental retardation in accordance with the
1770 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

1771 (ii) The court shall follow the procedure applicable in the district courts with respect to
1772 judicial commitments to the Utah State Developmental Center when ordering a commitment
1773 under Subsection (2)(r)(i).

1774 (s) The court may terminate all parental rights upon a finding of compliance with the
1775 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

1776 (t) The court may make any other reasonable orders for the best interest of the minor or
1777 as required for the protection of the public, except that a person younger than 18 years of age
1778 may not be committed to jail or prison.

1779 (u) The court may combine the dispositions listed in this section if they are compatible.

1780 (v) (i) Before depriving any parent of custody, the court shall give due consideration to
1781 the rights of parents concerning their minor.

1782 (ii) The court may transfer custody of a minor to another person, agency, or institution
1783 in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse,
1784 Neglect, and Dependency Proceedings.

1785 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
1786 probation or placement of a minor with an individual or an agency shall include a date certain
1787 for a review of the case by the court. A new date shall be set upon each review.

1788 (x) In reviewing foster home placements, special attention shall be given to making
1789 adoptable minors available for adoption without delay.

1790 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
1791 with a relative or individual of a minor where the court has previously acquired jurisdiction as
1792 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an

1793 order for child support on behalf of the minor child against the natural or adoptive parents of
1794 the child.

1795 (ii) Orders under Subsection (2)(y)(i):

1796 (A) shall remain in effect until the minor reaches majority;

1797 (B) are not subject to review under Section 78-3a-119; and

1798 (C) may be modified by petition or motion as provided in Section 78-3a-903.

1799 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
1800 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
1801 of the juvenile court.

1802 (3) In addition to the dispositions described in Subsection (2), when a minor comes
1803 within the court's jurisdiction [~~he~~, the minor may be given a choice by the court to serve in the
1804 National Guard in lieu of other sanctions, provided:

1805 (a) the minor meets the current entrance qualifications for service in the National
1806 Guard as determined by a recruiter, whose determination is final;

1807 (b) the minor is not under the jurisdiction of the court for any act that:

1808 (i) would be a felony if committed by an adult;

1809 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

1810 (iii) was committed with a weapon; and

1811 (c) the court retains jurisdiction over the minor under conditions set by the court and
1812 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

1813 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
1814 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by:

1815 (i) designated employees of the court; or[;]

1816 (ii) if the minor is in the legal custody of the Division of Juvenile Justice Services,

1817 [then] by designated employees of the division under Subsection 53-10-404(5)(b).

1818 (b) The responsible agency shall ensure that employees designated to collect the saliva
1819 DNA specimens receive appropriate training and that the specimens are obtained in accordance
1820 with accepted protocol.

1821 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
1822 Specimen Restricted Account created in Section 53-10-407.

1823 (d) Payment of the reimbursement is second in priority to payments the minor is

1824 ordered to make for restitution under this section and treatment under Section 78-3a-318.

1825 Section 28. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

1826 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor
1827 following petition filing -- Grounds.**

1828 (1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is
1829 the subject of the petition is not in the protective custody of the division, a court may order that
1830 the minor be removed from the minor's home or otherwise taken into protective custody if the
1831 court finds, by [a preponderance of the] clear and convincing evidence, that any one or more of
1832 the following circumstances exist:

1833 (a) there is an imminent danger to the physical health or safety of the minor and the
1834 minor's physical health or safety may not be protected without removing the minor from the
1835 custody of the minor's parent or guardian[. If a minor has previously been adjudicated as
1836 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
1837 has occurred involving the same alleged abuser or under similar circumstance as the previous
1838 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the
1839 custody of the minor's parent];

1840 (b) a parent or guardian engages in [or threatens the minor with] unreasonable conduct
1841 that ~~H [f] causes the minor [t] h [to suffer]~~ ~~H SERIOUS [f]~~ emotional damage [t] OR ~~h~~
1841a constitutes mental cruelty and there are no
1842 reasonable means available by which the minor's emotional health may be protected without
1843 removing the minor from the custody of the minor's parent or guardian;

1844 (c) [(i)] the minor or another minor residing in the same household has been physically
1845 or sexually abused, or is considered to be at substantial risk of being physically or sexually
1846 abused, by a parent or guardian, a member of the parent's or guardian's household, or other
1847 person known to the parent or guardian[-]:

1848 [(ii)] For purposes of this Subsection (1)(c), another minor residing in the same
1849 household may not be removed from the home unless that minor is considered to be at
1850 substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or
1851 (iii).]

1852 [(iii)] If a parent or guardian has received actual notice that physical or sexual abuse by
1853 a person known to the parent has occurred, and there is evidence that the parent or guardian
1854 failed to protect the minor by allowing the minor to be in the physical presence of the alleged

1855 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being
1856 physically or sexually abused;]

1857 (d) the parent or guardian is unwilling to have physical custody of the minor;
1858 (e) the minor has been abandoned or left without any provision for the minor's support;
1859 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
1860 or cannot arrange for safe and appropriate care for the minor;

1861 (g) a relative or other adult custodian with whom the minor has been left by the parent
1862 or guardian is unwilling or unable to provide care or support for the minor, the whereabouts of
1863 the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian
1864 have been unsuccessful;

1865 (h) the minor is in immediate need of medical care;

1866 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
1867 environment that poses a serious or substantial threat to the minor's health or safety; or

1868 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
1869 a serious or substantial threat to the minor's health or safety;

1870 (j) [†] the minor or another minor residing in the same household has been neglected;

1871 [and]

1872 [(ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household
1873 may not be removed unless that minor is considered to be at substantial risk of being
1874 neglected;]

1875 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

1876 (l) the parent or guardian, or an adult residing in the same household as the parent or
1877 guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
1878 Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in
1879 the residence or on the property where the minor resided; or

1880 (m) the minor's welfare is otherwise endangered.

1881 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as
1882 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
1883 has occurred involving the same alleged abuser or under similar circumstance as the previous
1884 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the
1885 custody of the minor's parent.

1886 (b) For purposes of Subsection (1)(c):

1887 (i) another minor residing in the same household may not be removed from the home

1888 unless that minor is considered to be at substantial risk of being physically or sexually abused

1889 as described in Subsection (1)(c) or (2)(b)(ii); and

1890 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a

1891 person known to the parent has occurred, and there is evidence that the parent or guardian

1892 failed to protect the minor by allowing the minor to be in the physical presence of the alleged

1893 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being

1894 physically or sexually abused.

1895 (c) For purposes of Subsection (1)(j), another minor residing in the same household

1896 may not be removed unless that minor is considered to be at substantial risk of being neglected.

1897 [②] ③ A court may not remove a minor from the parent's or guardian's custody on the

1898 basis of educational neglect, in the absence of one of the factors described in Subsection (1).

1899 [③] ④ A court may not remove a minor from the parent's or guardian's custody on the

1900 basis of mental illness or poverty of the parent or guardian, in the absence of one of the factors

1901 described in Subsection (1).

1902 [④] ⑤ A minor removed from the custody of the minor's parent or guardian under

1903 this section may not be placed or kept in a secure detention facility pending further court

1904 proceedings unless the minor is detainable based on guidelines promulgated by the Division of

1905 Juvenile Justice Services.

1906 [⑤] ⑥ This section does not preclude removal of a minor from the minor's home

1907 without a warrant or court order under Section 62A-4a-202.1.

1908 Section 29. Section **78-3a-306** is amended to read:

1909 **78-3a-306. Shelter hearing.**

1910 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays

1911 after any one or all of the following occur:

1912 (a) removal of the child from [his] the child's home by the division [of Child and

1913 Family Services];

1914 (b) placement of the child in the protective custody of the division [of Child and

1915 Family Services];

1916 (c) emergency kinship placement under Subsection 62A-4a-202.1(4); or

1917 (d) as an alternative to removal of the child, a parent has entered a domestic violence
1918 shelter at the request of the division [of Child and Family Services].

1919 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
1920 through (1)(d), the division shall issue a notice that contains all of the following:

1921 (a) the name and address of the person to whom the notice is directed;
1922 (b) the date, time, and place of the shelter hearing;
1923 (c) the name of the minor on whose behalf a petition is being brought;
1924 (d) a concise statement regarding:

1925 (i) the reasons for removal or other action of the division under Subsection (1); and
1926 (ii) the allegations and code sections under which the proceeding has been instituted;

1927 (e) a statement that the parent or guardian to whom notice is given, and the minor, are
1928 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
1929 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
1930 provided; and

1931 (f) a statement that the parent or guardian is liable for the cost of support of the minor
1932 in the protective custody, temporary custody, and custody of the division, and the cost for legal
1933 counsel appointed for the parent or guardian under Subsection (2)(e), according to [his] the
1934 parent's or guardian's financial ability.

1935 (3) That notice shall be personally served as soon as possible, but no later than one
1936 business day after removal of a child from [his] the child's home, on:

1937 (a) the appropriate guardian ad litem; and
1938 (b) both parents and any guardian of the minor, unless they cannot be located.

1939 (4) The following persons shall be present at the shelter hearing:

1940 (a) the child, unless it would be detrimental for the child;
1941 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
1942 response to the notice;

1943 (c) counsel for the parents, if one has been requested;
1944 (d) the child's guardian ad litem;

1945 (e) the caseworker from the division [of Child and Family Services] who has been
1946 assigned to the case; and

1947 (f) the attorney from the attorney general's office who is representing the division.

- 1948 (5) (a) (i) At the shelter hearing, the court shall provide an opportunity for the minor's
1949 parent or guardian, if present, and any other person having relevant knowledge, including any
1950 person requested by the parent or guardian to be present, to provide relevant testimony.
1951 (ii) The court may also provide an opportunity for the minor to testify.
1952 (b) (i) The court may consider all relevant evidence, in accordance with the Utah Rules
1953 of Juvenile Procedure.
1954 (ii) The court shall hear relevant evidence presented by the minor, [his] the minor's
1955 parent or guardian, the requesting party, or their counsel, but may in its discretion limit
1956 testimony and evidence to only that which goes to the issues of removal and the child's need for
1957 continued protection.
1958 (6) If the child is in the protective custody of the division, the division shall report to
1959 the court:
1960 (a) the reasons why the minor was removed from the parent's or guardian's custody;
1961 (b) any services provided to the child and [his] the child's family in an effort to prevent
1962 removal;
1963 (c) the need, if any, for continued shelter;
1964 (d) the available services that could facilitate the return of the minor to the custody of
1965 [his] the minor's parent or guardian; and
1966 (e) whether the child has any relatives who may be able and willing to take temporary
1967 custody.
1968 (7) The court shall consider all relevant evidence provided by persons or entities
1969 authorized to present relevant evidence pursuant to this section.
1970 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
1971 cause shown, the court may grant no more than one time-limited continuance, not to exceed
1972 five judicial days.
1973 (b) If the child's parent or guardian requests a continuance under Subsection (8)(a), the
1974 court shall honor the request as nearly as practicable.
1975 (9) (a) If the child is in the protective custody of the division, the court shall order that
1976 the minor be released from the protective custody of the division unless it finds, by [a]
1977 preponderance of the clear and convincing evidence, that any one of the following exist:
1978 [(a)] (i) there is a substantial danger to the physical health or safety of the minor and

1979 the minor's physical health or safety may not be protected without removing [him] the minor
1980 from [his parent's] the custody[. If a minor has previously been adjudicated as abused,
1981 neglected, or dependent and a subsequent incident of abuse, neglect, or dependency occurs, that
1982 fact constitutes prima facie evidence that the child cannot safely remain in the custody of his
1983 parent] of the minor's parent;

1984 [b] (ii) the minor is suffering emotional damage[, as may be indicated by, but is not
1985 limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward
1986 self or others], and there are no reasonable means available by which the minor's emotional
1987 health may be protected without removing the minor from the custody of [his] the minor's
1988 parent;

1989 (iii) without continued custody the minor is at substantial risk of abuse;

1990 [e] (iv) the minor or another minor residing in the same household has been
1991 physically or sexually abused, or is considered to be at substantial risk of being physically or
1992 sexually abused, by a parent, a member of the parent's household, or other person known to the
1993 parent[. If a parent has received actual notice that physical or sexual abuse by a person known
1994 to the parent has occurred, and there is evidence that the parent has allowed the child to be in
1995 the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the
1996 child is at substantial risk of being physically or sexually abused];

1997 [d] (v) the parent is unwilling to have physical custody of the child;

1998 [e] (vi) the minor has been left without any provision for [his] the minor's support;

1999 [f] (vii) a parent who has been incarcerated or institutionalized has not or cannot
2000 arrange for safe and appropriate care for the minor;

2001 [g] (viii) a relative or other adult custodian with whom the minor has been left by the
2002 parent is unwilling or unable to provide care or support for the minor, the whereabouts of the
2003 parent are unknown, and reasonable efforts to locate [him] the parent have been unsuccessful;

2004 [h] the minor is in immediate need of medical care;

2005 [i] (ix) the physical environment or the fact that the child is left unattended beyond a
2006 reasonable period of time poses a threat to the child's health or safety;

2007 [j] the minor or another minor residing in the same household has been neglected;

2008 [k] (x) the parent, or an adult residing in the same household as the parent, has been
2009 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any

2010 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence
2011 or on the property where the child resided; or

2012 [¶] (xi) the child's welfare is [otherwise] substantially endangered.

2013 (b) (i) For purposes of Subsection (9)(a)(i), if a minor has previously been adjudicated
2014 as abused, neglected, or dependent and a subsequent incident of abuse or dependency occurs,
2015 that fact constitutes prima facie evidence that the child cannot safely remain in the custody of
2016 the minor's parent.

2017 (ii) For purposes of Subsection (9)(a)(iv), the child is at substantial risk of abuse if the
2018 court finds, by clear and convincing evidence, that the parent:

2019 (A) has received actual notice that abuse by a person known to the parent has occurred;
2020 and

2021 (B) has allowed the child to be in the physical presence of the alleged abuser.

2022 (10) (a) The court shall also make a determination on the record as to whether
2023 reasonable efforts were made to prevent or eliminate the need for removal of the minor from
2024 [his] the minor's home and whether there are available services that would prevent the need for
2025 continued removal. If the court finds that the minor can be safely returned to the custody of
2026 [his] the minor's parent or guardian through the provision of those services, it shall place the
2027 minor with [his] the minor's parent or guardian and order that those services be provided by the
2028 division.

2029 (b) In making that determination, and in ordering and providing services, the child's
2030 health, safety, and welfare shall be the [paramount] primary concern, in accordance with
2031 federal law.

2032 (11) Where the division's first contact with the family occurred during an emergency
2033 situation in which the child could not safely remain at home, the court shall make a finding that
2034 any lack of preplacement preventive efforts was appropriate.

2035 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or
2036 neglect are involved, neither the division nor the court has any duty to make "reasonable
2037 efforts" or to, in any other way, attempt to maintain a child in [his] the child's home, return a
2038 child to [his] the child's home, provide reunification services, or attempt to rehabilitate the
2039 offending parent or parents.

2040 (13) The court may not order continued removal of a minor solely on the basis of

2041 educational neglect [as described in Subsection 78-3a-103(1)(s)(ii)].

2042 (14) (a) Whenever a court orders continued removal of a minor under this section, it
2043 shall state the facts on which that decision is based.

2044 (b) If no continued removal is ordered and the minor is returned home, the court shall
2045 state the facts on which that decision is based.

2046 (15) If the court finds that continued removal and temporary custody are necessary for
2047 the protection of a child [~~because harm may result to the child if he were returned home~~], it
2048 shall order continued removal regardless of any error in the initial removal of the child, or the
2049 failure of a party to comply with notice provisions, or any other procedural requirement of this
2050 chapter or Title 62A, Chapter 4a, Child and Family Services.

2051 Section 30. Section **78-3a-311** is amended to read:

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

2053 (1) The court may make any of the dispositions described in Section 78-3a-118, place
2054 the child in the custody or guardianship of any individual or public or private entity or agency,
2055 or order protective supervision, family preservation, medical or mental health treatment, or
2056 other services.

2057 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
2058 and that the minor remain in the custody of the division [~~of Child and Family Services~~], it shall
2059 first establish a primary permanency goal for the minor and determine whether, in view of the
2060 primary permanency goal, reunification services are appropriate for the child and the child's
2061 family, pursuant to Subsection (3).

2062 (ii) When the court determines that reunification services are appropriate for the child
2063 and the child's family, the court shall provide for reasonable parent-time with the parent or
2064 parents from whose custody the child was removed, unless:

2065 (A) parent-time [~~is not in the best interest~~] would threaten the physical safety or life of
2066 the child[.];

2067 (B) the child suffered at the hands of the parent:

2068 (I) sexual abuse or sexual exploitation; or

2069 (II) physical abuse or mental cruelty; or

2070 (C) parent-time would cause the child emotional anguish.

2071 (iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or

2072 serious neglect are involved, neither the division nor the court has any duty to make
2073 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
2074 attempt to rehabilitate the offending parent or parents. In all cases, the child's health, safety,
2075 and welfare shall be the court's [paramount] primary concern in determining whether
2076 reasonable efforts to reunify should be made.

2077 (b) (i) In addition to the primary permanency goal, the court shall establish a
2078 concurrent permanency goal. The concurrent permanency goal shall include a representative
2079 list of the conditions under which the primary permanency goal will be abandoned in favor of
2080 the concurrent permanency goal and an explanation of the effect of abandoning or modifying
2081 the primary permanency goal.

2082 (ii) A permanency hearing shall be conducted in accordance with Subsection
2083 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
2084 child's primary permanency goal.

2085 (iii) (A) The court may amend a child's primary permanency goal before the
2086 establishment of a final permanency plan under Section 78-3a-312. The court is not limited to
2087 the terms of the concurrent permanency goal in the event that the primary permanency goal is
2088 abandoned.

2089 (B) If, at anytime, the court determines that reunification is no longer a child's primary
2090 permanency goal, the court shall conduct a permanency hearing in accordance with Section
2091 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the
2092 original removal of the child.

2093 (c) (i) If the court determines that reunification services are appropriate, it shall order
2094 that the division make reasonable efforts to provide services to the child and the child's parent
2095 for the purpose of facilitating reunification of the family, for a specified period of time. In
2096 providing those services, the child's health, safety, and welfare shall be the division's
2097 [paramount] primary concern, and the court shall so order.

2098 (ii) The court shall determine whether the services offered or provided by the division
2099 under the treatment plan constitute "reasonable efforts" on the part of the division. The court
2100 shall also determine and define the responsibilities of the parent under the treatment plan.
2101 Those duties and responsibilities shall be identified on the record, for the purpose of assisting
2102 in any future determination regarding the provision of reasonable efforts, in accordance with

2103 state and federal law.

2104 (iii) The time period for reunification services may not exceed 12 months from the date
2105 that the child was initially removed from the child's home. Nothing in this section may be
2106 construed to entitle any parent to an entire 12 months of reunification services.

2107 (iv) If reunification services have been ordered, the court may terminate those services
2108 at any time.

2109 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to
2110 be inconsistent with the final permanency plan for the child established pursuant to Subsection
2111 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance
2112 with the permanency plan, and to complete whatever steps are necessary to finalize the
2113 permanent placement of the child.

2114 (d) Any physical custody of the minor by the parent or a relative during the period
2115 described in Subsection (2)(c) does not interrupt the running of the period.

2116 (e) (i) If reunification services have been ordered, a permanency hearing shall be
2117 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time
2118 period for reunification services. The permanency hearing shall be held no later than 12
2119 months after the original removal of the child.

2120 (ii) If reunification services have not been ordered, a permanency hearing shall be
2121 conducted within 30 days, in accordance with Section 78-3a-312.

2122 (f) With regard to a child who is 36 months of age or younger at the time the child is
2123 initially removed from the home, the court shall:

2124 (i) hold a permanency hearing eight months after the date of the initial removal,
2125 pursuant to Section 78-3a-312; and

2126 (ii) order the discontinuance of those services after eight months from the initial
2127 removal of the child from the home if the parent or parents have not made substantial efforts to
2128 comply with the treatment plan.

2129 (g) With regard to a child in the custody of the division whose parent or parents have
2130 been ordered to receive reunification services but who have abandoned that child for a period
2131 of six months since the date that reunification services were ordered, the court shall terminate
2132 reunification services, and the division shall petition the court for termination of parental
2133 rights.

2134 (3) (a) Because of the state's interest in and responsibility to protect and provide
2135 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
2136 parent's interest in receiving reunification services is limited. The court may determine that
2137 efforts to reunify a child with the child's family are not reasonable or appropriate, based on the
2138 individual circumstances, and that reunification services should not be provided. In
2139 determining "reasonable efforts" to be made with respect to a child, and in making "reasonable
2140 efforts," the child's health, safety, and welfare shall be the [paramount] primary concern.

2141 (b) (i) There is a presumption that reunification services should not be provided to a
2142 parent if the court finds, by clear and convincing evidence, that any of the following
2143 circumstances exist:

2144 [(i)] (A) the whereabouts of the parents are unknown, based upon a verified affidavit
2145 indicating that a reasonably diligent search has failed to locate the parent;

2146 [(ii)] (B) the parent is suffering from a mental illness of such magnitude that it renders
2147 [~~him~~] the parent incapable of utilizing reunification services; [~~that finding shall be based on~~
2148 ~~competent evidence from mental health professionals establishing that, even with the provision~~
2149 ~~of services, the parent is unlikely to be capable of adequately caring for the child within 12~~
2150 ~~months;~~]

2151 [(iii)] (C) the minor has been previously adjudicated as an abused child due to physical
2152 or sexual abuse, that following the adjudication the [~~child~~] minor was removed from the
2153 custody of [~~his~~] the minor's parent, was subsequently returned to the custody of that parent, and
2154 the minor is being removed due to additional physical or sexual abuse;

2155 [(iv)] (D) the parent has caused the death of another child through abuse or neglect or
2156 has committed, aided, abetted, attempted, conspired, or solicited to commit murder or
2157 manslaughter of a child or child abuse homicide;

2158 [(v)] (E) the minor has suffered [~~severe~~] serious abuse by the parent or by any person
2159 known by the parent, if the parent knew or reasonably should have known that the person was
2160 abusing the minor;

2161 [(vi)] (F) the minor has been adjudicated an abused child as a result of [~~severe~~] serious
2162 abuse by the parent, and the court finds that it would not benefit the child to pursue
2163 reunification services with the offending parent;

2164 [(vii)] (G) the parent's rights have been terminated with regard to any other child;

2165 [~~(viii)~~] (H) the child has been removed from [~~his~~] the child's home on at least two
2166 previous occasions and reunification services were offered or provided to the family at those
2167 times; or

2168 [~~(ix)~~] (I) the parent has abandoned the child for a period of six months or longer[;~~or~~].

2169 ~~[any other circumstance that the court determines should preclude reunification
2170 efforts or services.]~~

2171 (ii) The finding under Subsection (3)(b)(i)(B) shall be based on competent evidence
2172 from at least two mental health or medical professionals, who are not associates, establishing
2173 that, even with the provision of services, the parent is unlikely to be capable of adequately
2174 caring for the child within 12 months.

2175 (4) (a) Failure of the parent to [~~respond to previous services or~~] substantially comply
2176 with [~~any~~] a previous treatment plan, the fact that the child was abused while the parent was
2177 under the influence of drugs or alcohol, a past history of violent behavior directed at the child
2178 or an immediate family member, whether a parent continues to live with an individual who
2179 abused the child, or any patterns of the parent's behavior that have exposed the child to
2180 repeated abuse[~~, or testimony by a competent professional that the parent's behavior is unlikely~~
2181 ~~to be successful,~~] shall be considered in determining whether reunification services are
2182 appropriate.

2183 (b) The court shall also consider whether the parent has expressed an interest in
2184 reunification with the child, in determining whether reunification services are appropriate.

2185 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
2186 whereabouts of a parent become known within six months of the out-of-home placement of the
2187 minor, the court may order the division to provide reunification services. The time limits
2188 described in Subsection (2), however, are not tolled by the parent's absence.

2189 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
2190 services unless it determines that those services would be seriously detrimental to the health or
2191 safety of the minor. In determining detriment, the court shall consider:

- 2192 (i) the age of the child[~~;~~];
- 2193 (ii) the degree of parent-child bonding[~~;~~];
- 2194 (iii) the length of the sentence[~~;~~];
- 2195 (iv) the nature of the treatment[~~;~~];

2196 (v) the nature of the crime or [illness,] mental ~~H~~ [incapacity] ILLNESS ~~h~~ ;
2197 (vi) the degree of detriment to the [child] child's health and safety if services are not
2198 offered [and,];
2199 (vii) for minors ten years of age or older, the minor's attitude toward the
2200 implementation of family reunification services[,-and], which shall be given particular
2201 consideration and weight; and
2202 (viii) any other appropriate factors.
2203 (b) (i) Reunification services for an incarcerated parent are subject to the 12-month
2204 limitation imposed in Subsection (2).
2205 (ii) Reunification services for an institutionalized parent are subject to the 12-month
2206 limitation imposed in Subsection (2), unless the court determines that continued reunification
2207 services would be in the child's best interest.
2208 (7) If, pursuant to Subsection (3)(b)[(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x)], the
2209 court does not order reunification services, a permanency hearing shall be conducted within 30
2210 days, in accordance with Section 78-3a-312.
2211 Section 31. Section **78-3a-320** is amended to read:
2212 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**
2213 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division
2214 of Child and Family Services or any interested person informing the court, among other things,
2215 that the division has made a supported finding of one or more of the [severe] serious types of
2216 child abuse or neglect described in Subsection 62A-4a-116.1(2), the court shall:
2217 (a) make a finding of substantiated, unsubstantiated, or without merit;
2218 (b) include the finding described in Subsection (1)(a) in a written order; and
2219 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.
2220 (2) The judicial finding under Subsection (1) shall be made:
2221 (a) as part of or at the conclusion of the adjudication hearing; or
2222 (b) as part of a court order entered pursuant to a written stipulation of the parties.
2223 (3) Any person described in Subsection 62A-4a-116.6(1) may at any time file with the
2224 court a petition for removal of the person's name from the Licensing Information System. At
2225 the conclusion of the hearing on the petition, the court shall:
2226 (a) make a finding of substantiated, unsubstantiated, or without merit;

2227 (b) include the finding described in Subsection (1)(a) in a written order; and
2228 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.
2229 (4) A proceeding for adjudication of a supported finding of a [~~nonsevere~~] nonserious
2230 type of abuse or neglect under this section may be joined in the juvenile court with an
2231 adjudication of a [~~severe~~] serious type of abuse or neglect.

2232 (5) If a person whose name appears on the Licensing Information system prior to May
2233 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to
2234 work with children or vulnerable adults is pending, the court shall hear the matter and enter a
2235 final decision no later than 60 days after the filing of the petition.

2236 (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118,
2237 and 62A-2-121:

2238 (a) the court shall make available records of its findings under Subsections (1) and (2)
2239 for licensing purposes, only to those with statutory authority to access also the Licensing
2240 Information System created under Section 62A-4a-116.2; and

2241 (b) any appellate court shall make available court records of appeals from juvenile
2242 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those
2243 with statutory authority to access also the Licensing Information System.

2244 Section 32. Section **78-3a-402** is amended to read:

2245 **78-3a-402. Judicial process for termination -- Parent unfit or incompetent -- Best
2246 interest of child.**

2247 (1) This part provides a judicial process for voluntary and involuntary severance of the
2248 parent-child relationship, designed to safeguard the rights and interests of all parties concerned
2249 and promote their welfare and that of the state.

2250 (2) Wherever possible family life should be strengthened and preserved, but if a parent
2251 is found, by reason of [~~his~~] the parent's conduct or condition, to be unfit or incompetent based
2252 upon any of the grounds for termination described in this part, the court shall then consider the
2253 welfare and best interest of the child of [~~paramount~~] primary importance in determining
2254 whether termination of parental rights shall be ordered.

2255 Section 33. Section **78-3a-406** is amended to read:

2256 **78-3a-406. Notice -- Nature of proceedings.**

2257 (1) After a petition for termination of parental rights has been filed, notice of that fact

2258 and of the time and place of the hearing shall be provided, in accordance with the Utah Rules
2259 of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of
2260 the child, and to any person acting in loco parentis to the child.

2261 (2) A hearing shall be held specifically on the question of termination of parental rights
2262 no sooner than ten days after service of summons is complete. A verbatim record of the
2263 proceedings shall be taken and the parties shall be advised of their right to counsel. The
2264 summons shall contain a statement to the effect that the rights of the parent or parents are
2265 proposed to be permanently terminated in the proceedings. That statement may be contained in
2266 the summons originally issued in the proceeding or in a separate summons subsequently issued.

2267 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil
2268 Procedure. The court shall in all cases require the petitioner to establish the facts [by clear and
2269 convincing evidence] beyond a reasonable doubt, and shall give full and careful consideration
2270 to all of the evidence presented with regard to the constitutional rights and claims of the parent
2271 and, if a parent is found, by reason of [his] the parent's conduct or condition, to be unfit or
2272 incompetent based upon any of the grounds for termination described in this part, the court
2273 shall then consider the welfare and best interest of the child of [paramount] primary importance
2274 in determining whether termination of parental rights shall be ordered.

2275 Section 34. Section **78-3a-407** is amended to read:

2276 **78-3a-407. Grounds for termination of parental rights -- Findings regarding
2277 reasonable efforts.**

2278 (1) The court may terminate all parental rights with respect to a parent if it finds [any]
2279 one or more of the following:

2280 (a) [that] the parent has abandoned the child;

2281 [(b) ~~that the parent has neglected or abused the child;~~]

2282 [(c) ~~that~~ (b) the parent is:

2283 (i) unfit or incompetent[;] by reason of conduct or condition which is seriously
2284 detrimental to the health and safety of the child; and

2285 [(d) ~~that the child is being cared for in an out-of-home placement under the supervision
2286 of the court or the division and the parent has substantially neglected, wilfully refused, or has
2287 been unable or unwilling to remedy the circumstances that cause the child to be in an
2288 out-of-home placement, and there is a substantial likelihood that the parent will not be capable~~]

2289 of exercising proper and effective parental care in the near future;]
2290 [(e) failure of parental adjustment, as defined in this chapter;]
2291 [(f) that only token efforts have been made by the parent:
2292 [(i) to support or communicate with the child;]
2293 [(ii) to prevent neglect of the child;]
2294 [(iii) to eliminate the risk of serious physical, mental, or emotional abuse of the child;
2295 or]
2296 [(iv) to avoid being an unfit parent;]
2297 (ii) unable or unwilling to correct the unfitness or incompetence;
2298 (c) (i) the parent has committed serious physical or sexual abuse; and
2299 (ii) it is not safe for the child to return home to the parent;
2300 [(g) (d) the parent has voluntarily relinquished the parent's parental rights to the child,
2301 and the court finds that termination is in the child's best interest;
2302 [(h) (e) the parent, after a period of trial during which the child was left in the child's
2303 own home under protective supervision or probation or during which the child was returned to
2304 live in the child's own home, substantially, and continuously or repeatedly, refused or failed to
2305 give the child proper adequate parental care and protection; [or]
2306 (f) the parent has willfully failed to communicate via mail, telephone, or other means
2307 for one year with the child or show the normal interest of a natural parent, without just cause;
2308 or
2309 [(i) (g) the terms and conditions of safe relinquishment of a newborn child have been
2310 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
2311 Child.
2312 (2) For purposes of Subsection (1)(a), it is prima facie evidence of abandonment that a
2313 parent, although having legal custody of the child:
2314 (a) has willfully surrendered physical custody of the child; and
2315 (b) for a period of six months following the surrender, has not manifested to the child
2316 or to the person having the physical custody of the child a firm intention to resume physical
2317 custody or to make arrangements for the care of the child.
2318 [(2) (3) The court may not terminate the parental rights of a parent because the parent
2319 has failed to complete the requirements of a treatment plan.

2320 [§3] (4) (a) In any case in which the court has directed the division to provide
2321 reunification services to a parent, the court must find that the division made reasonable efforts
2322 to provide those services before the court may terminate the parent's rights under Subsection
2323 (1)(b), (1)(c), [(d)] (1)(e), or (1)(f)[, or (h)].

2324 (b) The court is not required to make the finding under Subsection [§3] (4)(a) before
2325 terminating a parent's rights:

2326 (i) under Subsection (1)[(b)] (c) based upon abuse or neglect found by the court to have
2327 occurred subsequent to adjudication; or

2328 (ii) if reasonable efforts are not required under federal law.

2329 Section 35. Section **78-3a-408** is amended to read:

2330 **78-3a-408. Evidence of grounds for termination.**

2331 [(1) In determining whether a parent or parents have abandoned a child, it is prima
2332 facie evidence of abandonment that the parent or parents:]

2333 [(a) although having legal custody of the child, have surrendered physical custody of
2334 the child, and for a period of six months following the surrender have not manifested to the
2335 child or to the person having the physical custody of the child a firm intention to resume
2336 physical custody or to make arrangements for the care of the child,]
2337 [(b) have failed to communicate with the child by mail, telephone, or otherwise for six
2338 months;]
2339 [(c) failed to have shown the normal interest of a natural parent, without just cause; or]
2340 [(d) have abandoned an infant, as described in Section 78-3a-313.5.]

2341 [(2) In determining whether a parent or parents are unfit or have neglected a child the
2342 court shall consider, but is not limited to, the following circumstances, conduct, or conditions:]

2343 [(a) emotional illness, mental illness, or mental deficiency of the parent that renders
2344 him unable to care for the immediate and continuing physical or emotional needs of the child
2345 for extended periods of time;]
2346 (1) When considering evidence for grounds for terminating parental rights, the court
2347 shall consider any of the following circumstances, conduct, or conditions:

2348 [(b)] (a) conduct toward a child of a physically, emotionally, or sexually cruel or
2349 abusive nature;

2350 [(c)] (b) habitual or excessive use of intoxicating liquors, controlled substances, or

2351 dangerous drugs that render the parent unable to care for the child;
2352 [¶] (c) repeated or continuous failure to provide the child with adequate food,
2353 clothing, shelter, education, or other care necessary for [his] the child's physical[;] and mental[;
2354 and emotional] health and development by a parent or parents who are capable of providing
2355 that care[. However, a parent who, legitimately practicing his religious beliefs, does not
2356 provide specified medical treatment for a child is not for that reason alone a negligent or unfit
2357 parent];

2358 [¶] (d) with regard to a child who is in the custody of the division, [if] whether the
2359 parent is incarcerated as a result of conviction of a felony, and the sentence is of such length
2360 that the child will be deprived of a normal home for more than one year; [or]

2361 [¶] (e) a history of violent behavior[:];

2362 [¶] (3) If a child has been placed in the custody of the division and the parent or parents
2363 fail to comply substantially with the terms and conditions of a plan within six months after the
2364 date on which the child was placed or the plan was commenced, whichever occurs later, that
2365 failure to comply is evidence of failure of parental adjustment.]

2366 [¶] (4) The following circumstances constitute prima facie evidence of unfitness:]

2367 [¶] (f) sexual abuse, injury, or death of a sibling of the child, or of any child, due to
2368 known or substantiated abuse or neglect by the parent or parents;

2369 [¶] (g) conviction of a crime, if the facts surrounding the crime are of such a nature as
2370 to indicate the unfitness of the parent to provide adequate care to the extent necessary for the
2371 child's physical, mental, or emotional health and development;

2372 [¶] (h) a single incident of life-threatening or gravely disabling injury to or
2373 disfigurement of the child; or

2374 [¶] (i) the parent has committed, aided, abetted, attempted, conspired, or solicited to
2375 commit murder or manslaughter of a child or child abuse homicide.

2376 [¶] (2) For purposes of Subsection (1)(c), a parent who, legitimately practicing the parent's
2377 religious beliefs, does not provide specified medical treatment for a child is not for that reason
2378 alone a negligent or unfit parent.

2379 [¶] (3) If a child has been placed in the custody of the division and the parent or parents
2380 fail to comply substantially with the terms and conditions of a plan within six months after the
2381 date on which the child was placed or the plan was commenced, whichever occurs later, that

2382 failure to comply is evidence of unfitness.

2383 Section 36. Section **78-3a-414** is amended to read:

2384 **78-3a-414. Voluntary relinquishment -- Irrevocable.**

2385 (1) Voluntary relinquishment or consent for termination of parental rights shall be
2386 signed or confirmed under oath either:

2387 (a) before a judge of any court that has jurisdiction over proceedings for termination of
2388 parental rights in this state or any other state, or a public officer appointed by that court for the
2389 purpose of taking consents or relinquishments; or

2390 (b) except as provided in Subsection (2), any person authorized to take consents or
2391 relinquishments under Subsections 78-30-4.18(1) and (2).

2392 (2) Only the juvenile court is authorized to take consents or relinquishments from a
2393 parent who has any child who is in the custody of a state agency or who has a child who is
2394 otherwise under the jurisdiction of the juvenile court.

2395 (3) The court, appointed officer, or other authorized person shall certify to the best of
2396 that person's information and belief that the person executing the consent or relinquishment has
2397 read and understands the consent or relinquishment and has signed it freely and voluntarily.

2398 (4) A voluntary relinquishment or consent for termination of parental rights is effective
2399 when it is signed and may not be revoked.

2400 (5) The requirements and processes described in Sections 78-3a-402 through 78-3a-410
2401 do not apply to a voluntary relinquishment or consent for termination of parental rights. The
2402 court need only find that the relinquishment or termination is in the child's best interest.

2403 (6) There is a presumption that voluntary relinquishment or consent for termination of
2404 parental rights is not in the child's best interest where it appears to the court that the primary
2405 purpose is to avoid a financial support obligation. The presumption may be rebutted, however,
2406 if the court finds the relinquishment or consent to termination of parental rights will facilitate
2407 the establishment of stability and permanency for the child.

2408 (7) Upon granting a voluntary relinquishment the court may make orders relating to the
2409 child's care, health, and [welfare] safety that the court considers to be in the child's best interest.

2410 Section 37. **Repealer.**

2411 This bill repeals:

2412 Section **62A-4a-202.7, Pilot program for differentiated responses to child abuse**

2413 and neglect reports.

2414 Section 78-3a-403, Definitions.

2415 Section 38. Effective date.

2416 This bill takes effect on ~~July~~ ~~OCTOBER 1, 2004~~ JULY 1, 2005 .

AMENDED BILL**State Impact**

Impacts from provisions of this amended bill will impact the Division of Child and Family Services with a net increase in investigative time in certain cases and court hearings, estimated to cost \$198,600 (\$162,800 General Fund) for 2.8 additional FTEs, including \$7,500 in one-time costs. The Attorney General's Office is expecting increased attorney costs for more serious cases, estimated at \$340,000 (\$309,500 General Fund) for 3.5 additional FTE attorneys, including \$10,500 one time costs. Additional court hearings and additional time and requirements of the court are estimated to cost an additional \$362,400 (General Fund). The bill was amended to reflect an effective date of 1 July, 2005 instead of 1 July 2004. Federal fund revenues would be affected based on expenditures of state funds.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$0	\$834,700	\$0	\$0
Federal Funds	\$0	\$66,300	\$0	\$66,300
TOTAL	\$0	\$901,000	\$0	\$66,300

Individual and Business Impact

No fiscal impact.