

**CHILD AND FAMILY SERVICES AND
RELATED JUDICIAL CODE AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill amends child welfare provisions in Child and Family Services and the Judicial Code.

Highlighted Provisions:

This bill:

- ▶ exempts health care decisions of a mature minor from the definition of medical neglect;
- ▶ requires the Legislative Auditor General to complete an audit of child welfare cases to measure compliance by attorney guardians ad litem with their statutory duties;
- ▶ amends the statement of fundamental rights and duties of a parent;
- ▶ requires the Child Welfare Legislative Oversight Panel to study and make recommendations on:
 - the feasibility of requiring the juvenile court to adjudicate a petition alleging child abuse prior to ordering a child into protective custody;
 - establishing a right to a jury trial in juvenile court proceedings to adjudicate a petition alleging child abuse, neglect, or dependency or to terminate a parent's rights;
 - how to otherwise strengthen procedural due process safeguards for the parents of children that may be taken into protective custody; and
 - how to strengthen defense counsel for parents of children taken into protective



- 28 custody;
- 29 ▶ amends the standard for mandatory reporting of child abuse and neglect;
- 30 ▶ amends the purpose of the juvenile court;
- 31 ▶ requires the juvenile court to recognize the rights of parents and children and the
- 32 limits placed on the Division of Child and Family Services;
- 33 ▶ clarifies how a petition before a juvenile court may be dismissed at any stage of the
- 34 court proceedings;
- 35 ▶ modifies language indicating when an attorney guardian ad litem may be appointed;
- 36 ▶ prohibits a court from removing a minor from the custody of the minor's parents or
- 37 guardian without giving the parents or guardian notice and an opportunity to be
- 38 heard, except in clear and verifiable exigent circumstances;
- 39 ▶ modifies reunification services provisions;
- 40 ▶ amends the evidentiary standard for the reunification services presumption to
- 41 beyond a reasonable doubt;
- 42 ▶ creates a presumption of parent fitness and competence in termination of parental
- 43 rights proceedings;
- 44 ▶ specifies that termination of parental rights proceedings are subject to Utah Rules of
- 45 Evidence;
- 46 ▶ modifies the conduct considered by the court in determining whether a parent is
- 47 negligent or unfit;
- 48 ▶ makes the appointment of an attorney guardian ad litem in child abuse, neglect, and
- 49 dependency cases optional;
- 50 ▶ prohibits a court from appointing an attorney guardian ad litem unless the court
- 51 makes a finding that the best interests of the minor may not reasonably be protected
- 52 without the appointment;
- 53 ▶ modifies the time at which the attorney guardian ad litem may begin representing a
- 54 child;
- 55 ▶ specifies that a parent or guardian has the right to object to the appointment of an
- 56 attorney guardian ad litem;
- 57 ▶ modifies when a parent or guardian is responsible for the costs of an attorney
- 58 guardian ad litem;

- 59 ▶ specifies that a parent or guardian may make specified petitions to the court
- 60 concerning an attorney guardian ad litem;
- 61 ▶ requires an attorney guardian ad litem to report to the parents or guardian of a child
- 62 upon a petition by the parents or guardian to the court;
- 63 ▶ requires an attorney guardian ad litem, if possible, to communicate with the parents
- 64 or guardian of a minor;
- 65 ▶ clarifies the prohibition on the release of attorney guardian ad litem records;
- 66 ▶ specifies that an attorney guardian ad litem is bound by all of the Rules of
- 67 Professional Conduct regarding client representation;
- 68 ▶ prohibits an attorney guardian ad litem from making public statements outside of
- 69 the juvenile court about a child abuse, neglect, or dependency case;
- 70 ▶ requires that each meeting of a child with the child's attorney guardian ad litem be
- 71 recorded as an audio or audio and video recording;
- 72 ▶ repeals the presumption of caretaker responsibility for the occurrence of child abuse
- 73 or neglect;
- 74 ▶ makes conforming changes; and
- 75 ▶ makes technical corrections.

76 **Monies Appropriated in this Bill:**

77 None

78 **Other Special Clauses:**

79 This bill takes effect on July 1, 2004.

80 **Utah Code Sections Affected:**

81 AMENDS:

- 82 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002
- 83 **62A-4a-118**, as last amended by Chapters 94 and 232, Laws of Utah 2003
- 84 **62A-4a-201**, as last amended by Chapter 274, Laws of Utah 2000
- 85 **62A-4a-207**, as last amended by Chapter 93, Laws of Utah 2003
- 86 **62A-4a-403**, as last amended by Chapter 21, Laws of Utah 1999
- 87 **78-3a-102**, as last amended by Chapter 329, Laws of Utah 1997
- 88 **78-3a-103 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 89 **78-3a-109**, as last amended by Chapter 180, Laws of Utah 2001

- 90 **78-3a-112**, as renumbered and amended by Chapter 365, Laws of Utah 1997
- 91 **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 92 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003
- 93 **78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002
- 94 **78-3a-314**, as last amended by Chapter 120, Laws of Utah 2001
- 95 **78-3a-402**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 96 **78-3a-406**, as last amended by Chapter 332, Laws of Utah 2003
- 97 **78-3a-408**, as last amended by Chapter 274, Laws of Utah 1998
- 98 **78-3a-412**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 99 **78-3a-912**, as last amended by Chapter 168, Laws of Utah 2002
- 100 **78-7-45**, as last amended by Chapter 168, Laws of Utah 2002

101 ENACTS:

102 **78-3a-103.5**, Utah Code Annotated 1953

103 REPEALS:

104 **78-3a-305.1**, as enacted by Chapter 274, Laws of Utah 1998

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

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

108 **62A-4a-101. Definitions.**

109 As used in this chapter:

110 (1) "Abuse" means:

111 (a) actual or threatened nonaccidental physical or mental harm;

112 (b) negligent treatment;

113 (c) sexual exploitation; or

114 (d) any sexual abuse.

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

120 (3) "Board" means the Board of Child and Family Services established in accordance

121 with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

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

123 (5) "Consumer" means a person who receives services offered by the division in
124 accordance with this chapter.

125 (6) "Chronic physical abuse" means repeated or patterned physical abuse.

126 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,
127 guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

128 (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

129 (9) "Custody," with regard to the division, means the custody of a child in the division
130 as of the date of disposition.

131 (10) "Day-care services" means care of a child for a portion of the day which is less
132 than 24 hours, in ~~his~~ the child's own home by a responsible person, or outside of ~~his~~ the
133 child's home in a day-care center, family group home, or family child care home.

134 (11) "Dependent child" or "dependency" means a child, or the condition of a child, who
135 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

136 (12) "Director" means the director of the Division of Child and Family Services.

137 (13) "Division" means the Division of Child and Family Services.

138 (14) (a) "Domestic violence services" means temporary shelter, treatment, and related
139 services to persons who are victims of abuse and their dependent children and treatment
140 services for domestic violence perpetrators.

141 (b) As used in this Subsection (14) "abuse" means the same as that term is defined in
142 Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have
143 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined
144 in Subsection 77-36-1(2).

145 (15) "Homemaking service" means the care of individuals in their domiciles, and help
146 given to individual caretaker relatives to achieve improved household and family management
147 through the services of a trained homemaker.

148 (16) "Mature minor" means a person less than 18 years of age who reasonably
149 demonstrates the capacity to make reasonable health care decisions on his or her own behalf.

150 ~~[(16)]~~ (17) "Minor" means a person under 18 years of age. "Minor" may also include a
151 person under 21 years of age for whom the division has been specifically ordered by the

152 juvenile court to provide services.

153 ~~[(17)]~~ (18) "Natural parent" means a minor's biological or adoptive parent, and
154 includes a minor's noncustodial parent.

155 ~~[(18)]~~ (19) (a) "Neglect" means:

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

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

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

161 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
162 subsistence, education, or medical care, including surgery or psychiatric services when
163 required, or any other care necessary for ~~[his]~~ the health, safety, morals, or well-being of the
164 parent's or guardian's child; or

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

167 (b) The aspect of neglect relating to education, described in Subsection ~~[(18)]~~
168 (19)(a)(iv), means that, after receiving notice that a child has been frequently absent from
169 school without good cause, or that the child has failed to cooperate with school authorities in a
170 reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child
171 receives an appropriate education.

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

174 ~~(d)~~ A parent or guardian may not be found guilty of neglect for the medical decisions
175 made by a mature minor.

176 ~~[(19)]~~ (20) "Protective custody," with regard to the division, means the shelter of a
177 child by the division from the time the child is removed from the child's home until the shelter
178 hearing, or the child's return home, whichever occurs earlier.

179 ~~[(20)]~~ (21) "Protective services" means expedited services that are provided:

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

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

182 (c) to a cohabitant who is neglecting or abusing a child, in order to help the cohabitant

183 develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse, and
184 to strengthen the cohabitant's ability to provide safe and acceptable care; and

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

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

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

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

193 [~~(21)~~] (22) "Services to unwed parents" means social, educational, and medical
194 services arranged for or provided to unwed parents to help them plan for themselves and the
195 unborn child.

196 [~~(22)~~] (23) "Severe neglect" means neglect that causes or threatens to cause serious
197 harm to a minor.

198 [~~(23)~~] (24) "Shelter care" means the temporary care of minors in nonsecure facilities.

199 [~~(24)~~] (25) "State" means a state of the United States, the District of Columbia, the
200 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
201 Mariana Islands, or a territory or possession administered by the United States.

202 [~~(25)~~] (26) "Severe emotional abuse" means emotional abuse that causes or threatens to
203 cause serious harm to a minor.

204 [~~(26)~~] (27) "Severe physical abuse" means physical abuse that causes or threatens to
205 cause serious harm to a minor.

206 [~~(27)~~] (28) "State plan" means the written description of the programs for children,
207 youth, and family services administered by the division in accordance with federal law.

208 [~~(28)~~] (29) "Status offense" means a violation of the law that would not be a violation
209 but for the age of the offender.

210 [~~(29)~~] (30) "Substantiated" or "substantiation" means a judicial finding based on a
211 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
212 identified in a given case shall be considered separately in determining whether there should be
213 a finding of substantiated.

214 ~~[(30)]~~ (31) "Substitute care" means:

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

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

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

221 ~~[(31)]~~ (32) "Supported" means a finding by the division based on the evidence
222 available at the completion of an investigation that there is a reasonable basis to conclude that
223 abuse, neglect, or dependency occurred. Each allegation made or identified during the course
224 of the investigation shall be considered separately in determining whether there should be a
225 finding of supported.

226 ~~[(32)]~~ (33) "Temporary custody," with regard to the division, means the custody of a
227 child in the division from the date of the shelter hearing until disposition.

228 ~~[(33)]~~ (34) "Transportation services" means travel assistance given to an individual
229 with escort service, if necessary, to and from community facilities and resources as part of a
230 service plan.

231 ~~[(34)]~~ (35) "Unsubstantiated" means a judicial finding that there is insufficient
232 evidence to conclude that abuse or neglect occurred.

233 ~~[(35)]~~ (36) "Unsupported" means a finding at the completion of an investigation that
234 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
235 However, a finding of unsupported means also that the division worker did not conclude that
236 the allegation was without merit.

237 ~~[(36)]~~ (37) "Without merit" means a finding at the completion of an investigation by
238 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
239 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

240 Section 2. Section **62A-4a-118** is amended to read:

241 **62A-4a-118. Annual review of child welfare referrals and cases by executive**
242 **director -- Accountability to the Legislature -- Review by legislative auditor general.**

243 (1) The division shall use principles of quality management systems, including
244 statistical measures of processes of service, and the routine reporting of performance data to

245 employees.

246 (2) (a) In addition to development of quantifiable outcome measures and performance
247 measures in accordance with Section 62A-4a-117, the executive director, or [~~his~~] the executive
248 director's designee, shall annually review a randomly selected sample of child welfare referrals
249 to and cases handled by the division. The purpose of that review shall be to assess whether the
250 division is adequately protecting children and providing appropriate services to families, in
251 accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title
252 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination
253 of Parental Rights Act. The review shall focus directly on the outcome of cases to children and
254 families, and not simply on procedural compliance with specified criteria.

255 (b) The executive director shall report, regarding [~~his~~] the review of those cases, to the
256 Legislative Auditor General and the Child Welfare Legislative Oversight Panel.

257 (c) Information obtained as a result of the review shall be provided to caseworkers,
258 supervisors, and division personnel involved in the respective cases, for purposes of education,
259 training, and performance evaluation.

260 (3) The executive director's review and report to the Legislature shall include:

261 (a) the criteria used by the executive director, or [~~his~~] the executive director's designee,
262 in making the evaluation;

263 (b) findings regarding whether state statutes, division policy, and legislative policy
264 were followed in each sample case;

265 (c) findings regarding whether, in each sample case, referrals, removals, or cases were
266 appropriately handled by the division and its employees, and whether children were adequately
267 and appropriately protected and appropriate services provided to families, in accordance with
268 the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78, Chapter 3a, Part
269 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights
270 Act, and division policy;

271 (d) an assessment of the division's intake procedures and decisions, including an
272 assessment of the appropriateness of decisions not to accept referrals; and

273 (e) an assessment of the appropriateness of the division's assignment of priority.

274 (4) (a) In addition to the review conducted by the executive director, beginning July 1,
275 2004, the Legislative Auditor General shall audit a sample of child welfare referrals to and

276 cases handled by the division and report his findings to the Child Welfare Legislative Oversight
277 Panel.

278 (b) An audit under Subsection (4)(a) shall be conducted at least once every three years,
279 but may be conducted more frequently pursuant to Subsection (4)(d).

280 (c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor
281 General's report may include:

282 (i) findings regarding whether state statutes, division policy, and legislative policy were
283 followed by the division and its employees;

284 (ii) a determination regarding whether referrals, removals, and cases were appropriately
285 handled by the division and its employees, and whether children were adequately and
286 appropriately protected and appropriate services provided for families, in accordance with the
287 provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78, Chapter 3a, Part 3,
288 Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights Act,
289 and division policy;

290 (iii) an assessment of the division's intake procedures and decisions, including an
291 assessment of the appropriateness of decisions not to accept referrals;

292 (iv) an assessment of the appropriateness of the division's assignment of priority;

293 (v) a determination regarding whether the department's review process is effecting
294 beneficial change within the division and accomplishing the mission established by the
295 Legislature and the department for that review process; and

296 (vi) findings regarding any other issues identified by the auditor or others under
297 Subsection (4)(d).

298 (d) An audit under Subsection (4)(a) may be initiated by:

299 (i) the Audit Subcommittee of the Legislative Management Committee;

300 (ii) the Child Welfare Legislative Oversight Panel; or

301 (iii) the Legislative Auditor General, based on the results of the executive director's
302 review under Subsection (2).

303 (e) (i) Prior to the 2005 Annual General Session of the Legislature, the legislative
304 auditor general shall complete an audit of child welfare cases to measure compliance by
305 attorney guardians ad litem with their statutory duties.

306 (ii) This audit shall be considered one of the periodic audits required by Subsection

307 (4)(b).

308 Section 3. Section **62A-4a-201** is amended to read:

309 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
310 **state.**

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

315 (ii) Additionally, the integrity of the family unit, and the right of parents to conceive
316 and raise their children have found protection in the due process clause of the Fourteenth
317 Amendment to the United States Constitution.

318 (iii) The right of a fit, competent parent to raise [~~his~~] the parent's child has long been
319 protected by the laws and Constitution of this state and of the United States.

320 (b) It is the public policy of this state that parents retain the fundamental right and duty
321 to exercise primary control over the care, custody, control, supervision, upbringing, and
322 education of their children who are in their custody.

323 (2) (a) It is also the public policy of this state that children have the right to protection
324 from abuse and neglect, and that the state retains a compelling interest in investigating,
325 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78,
326 Chapter 3a, Juvenile Court Act of 1996.

327 (b) Therefore, as a counterweight to parental rights, the state, as *parens patriae*, has an
328 interest in and responsibility to protect children whose parents abuse them or do not adequately
329 provide for their welfare. There are circumstances where a parent's conduct or condition is a
330 substantial departure from the norm and the parent is unable or unwilling to render safe and
331 proper parental care and protection. Under those circumstances, the welfare and protection of
332 children is the consideration of paramount importance.

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

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

343 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to
344 the provisions of Section 62A-4a-203 and keeping with the presumptions described in
345 Subsection (1), both the division's and the court's paramount concern shall be the child's health,
346 safety, and welfare.

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

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

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

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

364 Section 4. Section **62A-4a-207** is amended to read:

365 **62A-4a-207. Legislative Oversight Panel -- Responsibilities.**

366 (1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the
367 following members:

368 (i) two members of the Senate, one from the majority party and one from the minority

369 party, appointed by the president of the Senate; and

370 (ii) three members of the House of Representatives, two from the majority party and
371 one from the minority party, appointed by the speaker of the House of Representatives.

372 (b) Members of the panel shall serve for two-year terms, or until their successors are
373 appointed.

374 (c) A vacancy exists whenever a member ceases to be a member of the Legislature, or
375 when a member resigns from the panel. Vacancies shall be filled by the appointing authority,
376 and the replacement shall fill the unexpired term.

377 (2) The president of the Senate shall designate one of the senators appointed to the
378 panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of
379 Representatives shall designate one of the representatives appointed to the panel under
380 Subsection (1) as the House chair of the panel.

381 (3) The panel shall follow the interim committee rules established by the Legislature.

382 (4) The panel shall:

383 (a) examine and observe the process and execution of laws governing the child welfare
384 system by the executive branch and the judicial branch;

385 (b) upon request, receive testimony from the public, the juvenile court, and from all
386 state agencies involved with the child welfare system including, but not limited to, the division,
387 other offices and agencies within the department, the attorney general's office, the Office of the
388 Guardian Ad Litem Director, and school districts;

389 (c) before October 1, 2002, and before October 1 of each year thereafter receive reports
390 from the division, the attorney general, and the judicial branch identifying the cases not in
391 compliance with the time limits established in Section 78-3a-308, regarding pretrial and
392 adjudication hearings, Section 78-3a-311, regarding dispositional hearings and reunification
393 services, and Section 78-3a-312, regarding permanency hearings and petitions for termination,
394 and the reasons for the noncompliance;

395 (d) receive recommendations from, and make recommendations to the governor, the
396 Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director,
397 the juvenile court, and the public;

398 (e) (i) receive reports from the executive branch and the judicial branch on budgetary
399 issues impacting the child welfare system; and

400 (ii) recommend, as it considers advisable, budgetary proposals to the Health and
401 Human Services Joint Appropriations Subcommittee, the Executive Offices and Criminal
402 Justice Appropriations Subcommittee, and the Executive Appropriations Committee, which
403 recommendation should be made before December 1 of each year;

404 (f) study and recommend proposed changes to laws governing the child welfare
405 system;

406 (g) study actions the state can take to preserve, unify, and strengthen the child's family
407 ties whenever possible in the child's best interest, including recognizing the constitutional
408 rights and claims of parents whenever those family ties are severed or infringed;

409 (h) during the 2004 interim, study and make recommendations to the Legislature on:

410 (i) the feasibility of requiring the juvenile court, except in exigent circumstances, to
411 adjudicate a petition alleging child abuse, neglect, or dependency prior to ordering a child into
412 protective custody;

413 (ii) establishing a right to a jury trial in a juvenile court proceeding:

414 (A) to adjudicate a petition alleging child abuse, neglect, or dependency; or

415 (B) to terminate a parent's rights;

416 (iii) how to otherwise strengthen procedural due process safeguards for the parents of
417 children that come under the jurisdiction of the juvenile court for possible child abuse, neglect,
418 or dependency; and

419 (iv) how to strengthen defense counsel for parents of children taken into protective
420 custody;

421 [~~(h)~~] (i) perform such other duties related to the oversight of the child welfare system
422 as the panel considers appropriate; and

423 [~~(i)~~] (j) annually report its findings and recommendations to the president of the
424 Senate, the speaker of the House of Representatives, the Health and Human Services Interim
425 Committee, and the Judiciary Interim Committee.

426 (5) (a) The panel has authority to review and discuss individual cases.

427 (b) When an individual case is discussed, the panel's meeting may be closed pursuant
428 to Title 52, Chapter 4, Open and Public Meetings.

429 (c) When discussing an individual case, the panel shall make reasonable efforts to
430 identify and consider the concerns of all parties to the case.

431 (6) (a) (i) The panel has authority to make recommendations to the Legislature, the
432 governor, the Board of Juvenile Court Judges, the division, and any other statutorily created
433 entity related to the policies and procedures of the child welfare system.

434 (ii) The panel does not have authority to make recommendations to the court, the
435 division, or any other public or private entity regarding the disposition of any individual case.

436 (b) The panel may hold public hearings, as it considers advisable, in various locations
437 within the state in order to afford all interested persons an opportunity to appear and present
438 their views regarding the child welfare system in this state.

439 (7) (a) All records of the panel regarding individual cases shall be classified private,
440 and may be disclosed only in accordance with federal law and the provisions of Title 63,
441 Chapter 2, Government Records Access and Management Act.

442 (b) (i) The panel shall have access to all of the division's records, including those
443 regarding individual cases.

444 (ii) In accordance with Title 63, Chapter 2, Government Records Access Management
445 Act, all documents and information received by the panel shall maintain the same classification
446 that was designated by the division.

447 (8) In order to accomplish its oversight functions, the panel has:

448 (a) all powers granted to legislative interim committees in Section 36-12-11; and

449 (b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena
450 Powers.

451 (9) Members of the panel shall receive salary and expenses in accordance with Section
452 36-2-2.

453 (10) (a) The Office of Legislative Research and General Counsel shall provide staff
454 support to the panel.

455 (b) The panel is authorized to employ additional professional assistance and other staff
456 members as it considers necessary and appropriate.

457 Section 5. Section **62A-4a-403** is amended to read:

458 **62A-4a-403. Reporting requirements.**

459 (1) Except as provided in Subsection (2), when any person including persons licensed
460 under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse Practice
461 Act, has reason to believe, and not merely suspect, that a child has been subjected to incest,

462 molestation, sexual exploitation, sexual abuse, physical abuse, or neglect, or who observes a
463 child being subjected to conditions or circumstances which would reasonably result in sexual
464 abuse, physical abuse, or neglect, ~~he~~ the person shall immediately notify the nearest peace
465 officer, law enforcement agency, or office of the division. On receipt of this notice, the peace
466 officer or law enforcement agency shall immediately notify the nearest office of the division. If
467 an initial report of child abuse or neglect is made to the division, the division shall immediately
468 notify the appropriate local law enforcement agency. The division shall, in addition to its own
469 investigation, comply with and lend support to investigations by law enforcement undertaken
470 pursuant to a report made under this section. The peace officer, law enforcement agency, or
471 division shall also notify the parents or guardian of the child.

472 (2) The notification requirements of Subsection (1) do not apply to a clergyman or
473 priest, without the consent of the person making the confession, with regard to any confession
474 made to him in ~~his~~ the clergyman's or priest's professional character in the course of
475 discipline enjoined by the church to which ~~he~~ the clergyman or priest belongs, if:

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

479 (3) (a) When a clergyman or priest receives information about abuse or neglect from
480 any source other than confession of the perpetrator, ~~he~~ the clergyman or priest is required to
481 give notification on the basis of that information even though ~~he~~ the clergyman or priest may
482 have also received a report of abuse or neglect from the confession of the perpetrator.

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

486 Section 6. Section **78-3a-102** is amended to read:

487 **78-3a-102. Establishment of juvenile court -- Organization and status of court --**

488 **Purpose.**

489 (1) There is established for the state a juvenile court.

490 (2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks,
491 and referees have the power to administer oaths and affirmations.

492 (3) The juvenile court is of equal status with the district courts of the state.

493 (4) The juvenile court is established as a forum for the resolution of all matters
494 properly brought before it, consistent with applicable constitutional and statutory requirements
495 of due process.

496 (5) The purpose of the court under this chapter is to:

497 (a) promote public safety and individual accountability by the imposition of
498 appropriate sanctions on persons who have committed acts in violation of law;

499 (b) order appropriate measures to promote guidance and control, preferably in the
500 minor's own home, as an aid in the prevention of future unlawful conduct and the development
501 of responsible citizenship;

502 (c) where appropriate, order rehabilitation, reeducation, and treatment for persons who
503 have committed acts bringing them within the court's jurisdiction;

504 (d) adjudicate matters that relate to minors who are beyond parental or adult control
505 and to establish appropriate authority over these minors by means of placement and control
506 orders;

507 (e) adjudicate matters that relate to abused, neglected, and dependent minors and to
508 provide care and protection for these minors by placement, protection, and custody orders;

509 (f) remove a minor from parental custody only where the minor's safety or welfare, or
510 the public safety, may not otherwise be adequately safeguarded; and

511 (g) consistent with the ends of justice, [~~strive to~~] act in the best interests of the
512 [~~minor's~~] minor in all cases and [~~attempt to~~] preserve and strengthen family ties [~~where~~
513 possible].

514 Section 7. Section **78-3a-103 (Effective 07/01/04)** is amended to read:

515 **78-3a-103 (Effective 07/01/04). Definitions.**

516 (1) As used in this chapter:

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

518 (i) has suffered or been threatened with nonaccidental physical or mental harm,
519 negligent treatment, or sexual exploitation; or

520 (ii) has been the victim of any sexual abuse.

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

523 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or

524 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall
525 be referred to as minors.

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

527 (e) "Child placement agency" means:

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

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

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

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

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

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

538 (j) "Detention" means home detention and secure detention as defined in Section
539 62A-7-101 for the temporary care of minors who require secure custody in physically
540 restricting facilities:

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

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

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

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

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

549 (n) "Guardianship of the person" includes the authority to consent to marriage, to
550 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
551 custody, if legal custody is not vested in another person, agency, or institution.

552 (o) "Habitual truant" is a school-age minor who has received more than two truancy
553 citations within one school year from the school in which the minor is or should be enrolled
554 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the

555 part of school authorities as required under Section 53A-11-103, refuses to regularly attend
556 school or any scheduled period of the school day.

557 (p) "Legal custody" means a relationship embodying the following rights and duties:

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

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

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

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

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

564 (q) "Mature minor" means a person less than 18 years of age who reasonably
565 demonstrates the capacity to make reasonable health care decisions on their own behalf.

566 [~~(q)~~] (r) "Minor" means a person under the age of 18 years. It includes the term "child"
567 as used in other parts of this chapter.

568 [~~(r)~~] (s) "Natural parent" means a minor's biological or adoptive parent, and includes
569 the minor's noncustodial parent.

570 [~~(s)~~] (t) (i) "Neglected child" means a minor:

571 (A) whose parent, guardian, or custodian has abandoned the minor, except as provided
572 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

573 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or
574 abuse;

575 (C) who lacks proper parental care by reason of the fault or habits of the parent,
576 guardian, or custodian;

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

580 (E) who is at risk of being a neglected or abused child as defined in this chapter
581 because another minor in the same home is a neglected or abused child as defined in this
582 chapter.

583 (ii) The aspect of neglect related to education, described in Subsection (1)[~~(s)~~](t)(i)(D),
584 means that, after receiving notice that a minor has been frequently absent from school without
585 good cause, or that the minor has failed to cooperate with school authorities in a reasonable

586 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
587 an appropriate education.

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

590 (iv) A parent or guardian may not be found guilty of neglect for the medical decisions
591 made by a mature minor.

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

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

600 [~~(v)~~] (w) "Protective supervision" means a legal status created by court order following
601 an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted
602 to remain in [~~his~~] the minor's home, and supervision and assistance to correct the abuse,
603 neglect, or dependency is provided by the probation department or other agency designated by
604 the court.

605 [~~(w)~~] (x) (i) "Residual parental rights and duties" means those rights and duties
606 remaining with the parent after legal custody or guardianship, or both, have been vested in
607 another person or agency, including the responsibility for support, the right to consent to
608 adoption, the right to determine the child's religious affiliation, and the right to reasonable
609 parent-time unless restricted by the court.

610 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
611 the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric
612 treatment.

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

616 [~~(y)~~] (z) "Shelter" means the temporary care of minors in physically unrestricted

617 facilities pending court disposition or transfer to another jurisdiction.

618 [~~(z)~~] (aa) "State supervision" means a disposition which provides a more intensive
619 level of intervention than standard probation but is less intensive or restrictive than a
620 community placement with the Division of Juvenile Justice Services.

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

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

623 [~~(cc)~~] (dd) "Termination of parental rights" means the permanent elimination of all
624 parental rights and duties, including residual parental rights and duties, by court order.

625 [~~(dd)~~] (ee) "Therapist" means a person employed by a state division or agency for the
626 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
627 other person licensed or approved by the state for the purpose of conducting psychological
628 treatment and counseling.

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

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

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

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

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

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

640 Section 8. Section **78-3a-103.5** is enacted to read:

641 **78-3a-103.5. Parents' and children's rights -- Division limits.**

642 In all child abuse, neglect, and dependency proceedings under this chapter, the court
643 shall recognize, as provided in Section 62A-4a-201, the rights of parents and children and the
644 limits placed on the division.

645 Section 9. Section **78-3a-109** is amended to read:

646 **78-3a-109. Title of petition and other court documents -- Form and contents of**
647 **petition -- Order for temporary custody -- Physical or psychological examination of**

648 **minor, parent, or guardian -- Dismissal of petition.**

649 (1) The petition and all subsequent court documents in the proceeding shall be entitled:
650 "State of Utah, in the interest of....., a person under 18 years of age (or a
651 person under 21 years of age)."

652 (2) The petition shall be verified and statements in the petition may be made upon
653 information and belief.

654 (3) The petition shall be written in simple and brief language and include the facts
655 which bring the minor within the jurisdiction of the court, as provided in Section 78-3a-104.

656 (4) The petition shall further state:

657 (a) the name, age, and residence of the minor;

658 (b) the names and residences of the minor's parents;

659 (c) the name and residence of the guardian, if there is one;

660 (d) the name and address of the nearest known relative, if no parent or guardian is
661 known; and

662 (e) the name and residence of the person having physical custody of the minor. If any
663 of the facts required are not known by the petitioner, the petition shall so state.

664 (5) At any time after a petition is filed, the court may make an order providing for
665 temporary custody of the minor.

666 (6) The court may order that a minor concerning whom a petition has been filed shall
667 be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a
668 hospital or other facility for examination. After notice and a hearing set for the specific
669 purpose, the court may order a similar examination of a parent or guardian whose ability to care
670 for a minor is at issue, if the court finds from the evidence presented at the hearing that the
671 parent's or guardian's physical, mental, or emotional condition may be a factor in causing the
672 neglect, dependency, or delinquency of the minor.

673 (7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted
674 pursuant to Subsection (6) are not privileged communications, but are exempt from the general
675 rule of privilege.

676 (8) The court may, upon its own motion or a motion from any party to the proceeding,
677 dismiss a petition at any stage of the proceedings.

678 (9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is

679 referred to the court under Subsection 78-3a-105(3)(b):

680 (a) the court may require the parties to participate in mediation in accordance with Title
681 78, Chapter 31b, Alternative Dispute Resolution; and

682 (b) the division [~~of Child and Family Services~~] or a party to the petition may request
683 and the court may order the parties to participate in a family unity conference under the
684 authority of the division [~~of Child and Family Services~~] in accordance with Subsection (10).

685 (10) (a) A family unity conference may be ordered by the court for any of the following
686 purposes:

687 (i) discussing and reviewing the case history;

688 (ii) designing a service plan for the child and family, including concurrent planning;

689 (iii) discussing a visitation schedule and rules for visitation;

690 (iv) identifying possible kinship placements under the requirements of Subsection

691 78-3a-307(5), and designing services to support the kinship placement;

692 (v) conflict resolution between the family and division [~~of Child and Family Services~~]
693 staff;

694 (vi) discussing child custody issues; or

695 (vii) crisis clinical intervention to reduce trauma to the child and family.

696 (b) The family unity conference may be attended by individuals chosen by the family
697 and the division [~~of Child and Family Services~~], and may include extended family members,
698 friends, clergy, service providers, and others who may support the family in keeping the child
699 safe.

700 (c) A family unity conference may not be held in the following circumstances:

701 (i) when there is a criminal charge pending in the case;

702 (ii) to resolve petition disputes; and

703 (iii) when a family unity conference may pose a threat to the safety of a child or other
704 family member.

705 (d) With regard to a family unity conference ordered by a court under Subsection
706 (9)(b):

707 (i) the requirements of Subsection 78-31b-7(3)(b) apply except all parties to the
708 proceeding:

709 (A) shall be given no less than five days notice of any recommendation made to the

710 court from the family unity conference; and

711 (B) shall be given an opportunity to be heard by the court; and

712 (ii) the confidentiality requirements of Section 78-31b-8 apply, except that admissions
713 by a party to the allegations on the petition are admissible at any proceeding.

714 Section 10. Section **78-3a-112** is amended to read:

715 **78-3a-112. Appearances -- Parents to appear with minor -- Failure to appear --**
716 **Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off --**
717 **Appointment of guardian ad litem.**

718 (1) Any person required to appear who, without reasonable cause, fails to appear may
719 be proceeded against for contempt of court, and the court may cause a bench warrant to issue to
720 produce the person in court.

721 (2) In all cases when a minor is required to appear in court, the parents, guardian, or
722 other person with legal custody of the minor shall appear with the minor unless excused by the
723 judge.

724 (a) An employee may request permission to leave the workplace for the purpose of
725 attending court if the employee has been notified by the juvenile court that his minor is
726 required to appear before the court.

727 (b) An employer must grant permission to leave the workplace with or without pay if
728 the employee has requested permission at least seven days in advance or within 24 hours of the
729 employee receiving notice of the hearing.

730 (3) If a parent or other person who signed a written promise to appear and bring the
731 minor to court under Section 78-3a-113 or 78-3a-114, fails to appear and bring the minor to
732 court on the date set in the promise, or, if the date was to be set, after notification by the court,
733 a warrant may be issued for the apprehension of that person or the minor, or both.

734 (4) Willful failure to perform the promise is a misdemeanor if, at the time of the
735 execution of the promise, the promisor is given a copy of the promise which clearly states that
736 failure to appear and have the minor appear as promised is a misdemeanor. The juvenile court
737 shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 8,
738 Adult Offenses.

739 (5) (a) The court shall endeavor, through use of the warrant of arrest if necessary, as
740 provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or

741 both parents or of the guardian of the minor.

742 (b) If neither a parent nor guardian is present at the court proceedings, the court may
743 appoint a guardian ad litem to protect the interest of the minor. [~~A guardian ad litem may also~~
744 ~~be appointed whenever necessary for the welfare of the minor, whether or not a parent or~~
745 ~~guardian is present.~~]

746 (6) A warrant may be issued for the parent, the guardian, the custodian, or the minor if:

747 (a) a summons is issued but cannot be served;

748 (b) it is made to appear to the court that the person to be served will not obey the
749 summons;

750 (c) serving the summons will be ineffectual; or

751 (d) the welfare of the minor requires that [~~he~~] the minor be brought immediately into
752 the custody of the court.

753 Section 11. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

754 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor**
755 **following petition filing -- Grounds.**

756 (1) (a) After a petition has been filed under Subsection 78-3a-305(1), if the minor who
757 is the subject of the petition is not in the protective custody of the division, a court may order
758 that the minor be removed from the minor's home or otherwise taken into protective custody if
759 the court finds, by a preponderance of the evidence, that any one or more of the following
760 circumstances exist:

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

768 [~~(b)~~] (ii) a parent or guardian engages in or threatens the minor with unreasonable
769 conduct that causes the minor to suffer emotional damage and there are no reasonable means
770 available by which the minor's emotional health may be protected without removing the minor
771 from the custody of the minor's parent or guardian;

772 ~~[(e)(i)]~~ (iii) the minor or another minor residing in the same household has been
773 physically or sexually abused, or is considered to be at substantial risk of being physically or
774 sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or
775 other person known to the parent or guardian[.];

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

780 ~~[(iii) If a parent or guardian has received actual notice that physical or sexual abuse by~~
781 ~~a person known to the parent has occurred, and there is evidence that the parent or guardian~~
782 ~~failed to protect the minor by allowing the minor to be in the physical presence of the alleged~~
783 ~~abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being~~
784 ~~physically or sexually abused;]~~

785 ~~[(d)]~~ (iv) the parent or guardian is unwilling to have physical custody of the minor;

786 ~~[(e)]~~ (v) the minor has been abandoned or left without any provision for the minor's
787 support;

788 ~~[(f)]~~ (vi) a parent or guardian who has been incarcerated or institutionalized has not
789 arranged or cannot arrange for safe and appropriate care for the minor;

790 ~~[(g)]~~ (vii) (A) a relative or other adult custodian with whom the minor has been left by
791 the parent or guardian is unwilling or unable to provide care or support for the minor[.];

792 (B) the whereabouts of the parent or guardian are unknown[.]; and

793 (C) reasonable efforts to locate the parent or guardian have been unsuccessful;

794 ~~[(h)]~~ (viii) the minor is in immediate need of medical care;

795 ~~[(i)(i)]~~ (ix) (A) a parent's or guardian's actions, omissions, or habitual action create an
796 environment that poses a threat to the minor's health or safety; or

797 ~~[(ii)]~~ (B) a parent's or guardian's action in leaving a minor unattended would
798 reasonably pose a threat to the minor's health or safety;

799 ~~[(j)(i)]~~ (x) the minor or another minor residing in the same household has been
800 neglected; [and]

801 ~~[(ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household~~
802 ~~may not be removed unless that minor is considered to be at substantial risk of being~~

803 neglected;]

804 [~~(k)~~] (xi) an infant has been abandoned, as defined in Section 78-3a-313.5;

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

809 [~~(m)~~] (xiii) the minor's welfare is otherwise endangered.

810 (b) (i) For purposes of Subsection (1)(a)(i), if a minor has previously been adjudicated
811 as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
812 has occurred involving the same alleged abuser or under similar circumstance as the previous
813 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the
814 custody of the minor's parent.

815 (ii) For purposes of Subsection (1)(a)(iii):

816 (A) another minor residing in the same household may not be removed from the home
817 unless that minor is considered to be at substantial risk of being physically or sexually abused
818 as described in Subsections (1)(a)(iii) or (1)(b)(ii)(B); and

819 (B) if a parent or guardian has received actual notice that physical or sexual abuse by a
820 person known to the parent has occurred, and there is evidence that the parent or guardian
821 failed to protect the minor by allowing the minor to be in the physical presence of the alleged
822 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being
823 physically or sexually abused.

824 (iii) For purposes of Subsection (1)(a)(x), another minor residing in the same
825 household may not be removed unless that minor is considered to be at substantial risk of being
826 neglected.

827 (2) [~~A~~] In the absence of one of the factors described in Subsection (1), a court may not
828 remove a minor from the parent's or guardian's custody on the basis of:

829 (a) educational neglect[; in the absence of one of the factors described in Subsection
830 (1). (3) A court may not remove a minor from the parent's or guardian's custody on the basis
831 of]; or

832 (b) mental illness or poverty of the parent or guardian[; in the absence of one of the
833 factors described in Subsection (1)].

834 (3) Except in clear and verifiable exigent circumstances, a court may not remove a
835 minor from the custody of the minor's parents or guardian without giving the parent or guardian
836 notice and an opportunity to be heard.

837 (4) A minor removed from the custody of the minor's parent or guardian under this
838 section may not be placed or kept in a secure detention facility pending further court
839 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
840 Juvenile Justice Services.

841 (5) This section does not preclude removal of a minor from the minor's home without a
842 warrant or court order under Section 62A-4a-202.1.

843 Section 12. Section **78-3a-306** is amended to read:

844 **78-3a-306. Shelter hearing.**

845 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
846 after any one or all of the following occur:

847 (a) removal of the child from [~~his~~] the child's home by the division [~~of Child and~~
848 ~~Family Services~~];

849 (b) placement of the child in the protective custody of the division [~~of Child and~~
850 ~~Family Services~~];

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

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

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

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

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

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

859 (d) a concise statement regarding:

860 (i) the reasons for removal or other action of the division under Subsection (1); and

861 (ii) the allegations and code sections under which the proceeding has been [~~instituted~~
862 initiated];

863 (e) a statement that the parent or guardian to whom notice is given, and the minor, are
864 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is

865 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
866 provided; and

867 (f) a statement that the parent or guardian is liable for the cost of support of the minor
868 in the protective custody, temporary custody, and custody of the division, and the cost for legal
869 counsel appointed for the parent or guardian under Subsection (2)(e), according to ~~his~~ the
870 parent's or guardian's financial ability.

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

873 (a) the appropriate guardian ad litem; and

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

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

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

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

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

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

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

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

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

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

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

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

895 (b) any services provided to the child and ~~his~~ the child's family in an effort to prevent

896 removal;

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

898 (d) the available services that could facilitate the return of the minor to the custody of
899 [his] the minor's parent or guardian; and

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

902 (7) The court shall consider all relevant evidence provided by persons or entities
903 authorized to present relevant evidence pursuant to this section.

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

907 (9) (a) If the child is in the protective custody of the division, the court shall order that
908 the minor be released from the protective custody of the division unless it finds, by a
909 preponderance of the evidence, that any one of the following exist:

910 ~~[(a)]~~ (i) there is a substantial danger to the physical health or safety of the minor and
911 the minor's physical health or safety may not be protected without removing ~~[him]~~ the minor
912 from ~~[his parent's]~~ the custody~~[- If a minor has previously been adjudicated as abused,~~
913 ~~neglected, or dependent and a subsequent incident of abuse, neglect, or dependency occurs, that~~
914 ~~fact constitutes prima facie evidence that the child cannot safely remain in the custody of his~~
915 ~~parent]~~ of the minor's parents;

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

921 ~~[(c)]~~ (iii) the minor or another minor residing in the same household has been
922 physically or sexually abused, or is considered to be at substantial risk of being physically or
923 sexually abused, by a parent, a member of the parent's household, or other person known to the
924 parent~~[- If a parent has received actual notice that physical or sexual abuse by a person known~~
925 ~~to the parent has occurred, and there is evidence that the parent has allowed the child to be in~~
926 ~~the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the~~

927 child is at substantial risk of being physically or sexually abused];

928 ~~[(d)]~~ (iv) the parent is unwilling to have physical custody of the child;

929 ~~[(e)]~~ (v) the minor has been left without any provision for his or her support;

930 ~~[(f)]~~ (vi) a parent who has been incarcerated or institutionalized has not or cannot

931 arrange for safe and appropriate care for the minor;

932 ~~[(g)]~~ (vii) a relative or other adult custodian with whom the minor has been left by the

933 parent is unwilling or unable to provide care or support for the minor, the whereabouts of the

934 parent are unknown, and reasonable efforts to locate him have been unsuccessful;

935 ~~[(h)]~~ (viii) the minor is in immediate need of medical care;

936 ~~[(i)]~~ (ix) the physical environment or the fact that the child is left unattended poses a

937 threat to the child's health or safety;

938 ~~[(j)]~~ (x) the minor or another minor residing in the same household has been neglected;

939 ~~[(k)]~~ (xi) the parent, or an adult residing in the same household as the parent, has been

940 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any

941 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence

942 or on the property where the child resided; or

943 ~~[(l)]~~ (xii) the child's welfare is otherwise endangered.

944 (b) (i) For purposes of Subsection (9)(a)(i), if a minor has previously been adjudicated

945 as abused, neglected, or dependent and a subsequent incident of abuse, neglect, or dependency

946 occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the

947 custody of the minor's parent.

948 (ii) For purposes of Subsection (9)(a)(iii), if a parent has received actual notice that

949 physical or sexual abuse by a person known to the parent has occurred, and there is evidence

950 that the parent has allowed the child to be in the physical presence of the alleged abuser, that

951 fact constitutes prima facie evidence that the child is at substantial risk of being physically or

952 sexually abused.

953 (10) (a) The court shall also make a determination on the record as to whether

954 reasonable efforts were made to prevent or eliminate the need for removal of the minor from

955 ~~[his]~~ the minor's home and whether there are available services that would prevent the need for

956 continued removal. If the court finds that the minor can be safely returned to the custody of

957 ~~[his]~~ the minor's parent or guardian through the provision of those services, it shall place the

958 minor with ~~[his]~~ the minor's parent or guardian and order that those services be provided by the
959 division.

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

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

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

970 (13) The court may not order continued removal of a minor solely on the basis of
971 educational neglect as described in Subsection 78-3a-103(1)~~(s)~~(t)(ii).

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

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

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

981 Section 13. Section **78-3a-311** is amended to read:

982 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

987 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
988 and that the minor remain in the custody of the division ~~[of Child and Family Services]~~, it shall

989 first establish a primary permanency goal for the minor and determine whether, in view of the
990 primary permanency goal, reunification services are appropriate for the child and the child's
991 family, pursuant to Subsection (3).

992 (ii) When the court determines that reunification services are appropriate for the child
993 and the child's family, the court shall provide for reasonable parent-time with the parent or
994 parents from whose custody the child was removed, unless parent-time is not in the best
995 interest of the child.

996 (iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or
997 neglect are involved, neither the division nor the court has any duty to make "reasonable
998 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to
999 rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare
1000 shall be the court's paramount concern in determining whether reasonable efforts to reunify
1001 should be made.

1002 (b) (i) In addition to the primary permanency goal, the court shall establish a
1003 concurrent permanency goal. The concurrent permanency goal shall include a representative
1004 list of the conditions under which the primary permanency goal will be abandoned in favor of
1005 the concurrent permanency goal and an explanation of the effect of abandoning or modifying
1006 the primary permanency goal.

1007 (ii) A permanency hearing shall be conducted in accordance with Subsection
1008 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
1009 child's primary permanency goal.

1010 (iii) (A) The court may amend a child's primary permanency goal before the
1011 establishment of a final permanency plan under Section 78-3a-312. The court is not limited to
1012 the terms of the concurrent permanency goal in the event that the primary permanency goal is
1013 abandoned.

1014 (B) If, at anytime, the court determines that reunification is no longer a child's primary
1015 permanency goal, the court shall conduct a permanency hearing in accordance with Section
1016 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the
1017 original removal of the child.

1018 (c) (i) If the court determines that reunification services are appropriate, it shall order
1019 that the division make reasonable efforts to provide services to the child and the child's parent

1020 for the purpose of facilitating reunification of the family, for a specified period of time. In
1021 providing those services, the child's health, safety, and welfare shall be the division's
1022 paramount concern, and the court shall so order.

1023 (ii) The court shall determine whether the services offered or provided by the division
1024 under the treatment plan constitute "reasonable efforts" on the part of the division. The court
1025 shall also determine and define the responsibilities of the parent under the treatment plan.
1026 Those duties and responsibilities shall be identified on the record, for the purpose of assisting
1027 in any future determination regarding the provision of reasonable efforts, in accordance with
1028 state and federal law.

1029 (iii) (A) The time period for reunification services may not exceed 12 months from the
1030 date that the child was initially removed from the child's home.

1031 (B) Nothing in this section may be construed to entitle any parent to an entire 12
1032 months of reunification services.

1033 (iv) If reunification services have been ordered, the court may terminate those services
1034 at any time.

1035 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to
1036 be inconsistent with the final permanency plan for the child established pursuant to Subsection
1037 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance
1038 with the permanency plan, and to complete whatever steps are necessary to finalize the
1039 permanent placement of the child.

1040 (d) Any physical custody of the minor by the parent or a relative during the period
1041 described in Subsection (2)(c) does not interrupt the running of the period.

1042 (e) (i) If reunification services have been ordered, a permanency hearing shall be
1043 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time
1044 period for reunification services. The permanency hearing shall be held no later than 12
1045 months after the original removal of the child.

1046 (ii) If reunification services have not been ordered, a permanency hearing shall be
1047 conducted within 30 days, in accordance with Section 78-3a-312.

1048 (f) With regard to a child who is 36 months of age or younger at the time the child is
1049 initially removed from the home, the court shall:

1050 (i) hold a permanency hearing eight months after the date of the initial removal,

1051 pursuant to Section 78-3a-312; and

1052 (ii) order the discontinuance of those services after eight months from the initial
1053 removal of the child from the home if the parent or parents have not made substantial efforts to
1054 comply with the treatment plan.

1055 (g) With regard to a child in the custody of the division whose parent or parents have
1056 been ordered to receive reunification services but who have abandoned that child for a period
1057 of six months since the date that reunification services were ordered, the court shall terminate
1058 reunification services, and the division shall petition the court for termination of parental
1059 rights.

1060 [~~(3) (a) Because of the state's interest in and responsibility to protect and provide
1061 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
1062 parent's interest in receiving reunification services is limited. The court may determine that
1063 efforts to reunify a child with the child's family are not reasonable or appropriate, based on the
1064 individual circumstances, and that reunification services should not be provided. In
1065 determining "reasonable efforts" to be made with respect to a child, and in making "reasonable
1066 efforts," the child's health, safety, and welfare shall be the paramount concern.]~~

1067 [~~(b)~~] (3) (a) There is a presumption that reunification services should not be provided
1068 to a parent if the court finds [~~by clear and convincing~~] evidence [~~;~~] that establishes beyond a
1069 reasonable doubt that any of the following circumstances exist:

1070 (i) the whereabouts of the parents are unknown, based upon a verified affidavit
1071 indicating that a reasonably diligent search has failed to locate the parent;

1072 (ii) the parent is suffering from a mental illness of such magnitude that it renders [~~him~~]
1073 the parent incapable of utilizing reunification services; [~~that finding shall be based on~~
1074 competent evidence from mental health professionals establishing that, even with the provision
1075 of services, the parent is unlikely to be capable of adequately caring for the child within 12
1076 months;]

1077 (iii) (A) the minor has been previously adjudicated as an abused child due to physical
1078 or sexual abuse [~~, that~~];

1079 (B) following the adjudication the child was removed from the custody of [~~his~~] the
1080 child's parent [~~;~~] and was subsequently returned to the custody of that parent [~~;~~]; and

1081 (C) the minor is being removed due to additional physical or sexual abuse;

1082 (iv) the parent has caused the death of another child through abuse or neglect or has
1083 committed, aided, abetted, attempted, conspired, or solicited to commit murder or
1084 manslaughter of a child or child abuse homicide;

1085 (v) the minor has suffered severe abuse by the parent or by any person known by the
1086 parent, if the parent knew or reasonably should have known that the person was abusing the
1087 minor;

1088 (vi) (A) the minor has been adjudicated an abused child as a result of severe abuse by
1089 the parent[;]; and

1090 (B) the court finds that it would not benefit the child to pursue reunification services
1091 with the offending parent;

1092 (vii) the parent's rights have been terminated with regard to any other child;

1093 (viii) (A) the child has been removed from [his] the child's home on at least two
1094 previous occasions; and

1095 (B) reunification services were offered or provided to the family at those times; [or]

1096 (ix) the parent has abandoned the child for a period of six months or longer; or

1097 (x) any other circumstance that the court determines should preclude reunification
1098 efforts or services.

1099 (b) For purposes of Subsection (3)(a)(ii), the court's finding that a parent is suffering
1100 from a mental illness of such magnitude that it renders the parent incapable of utilizing
1101 reunification services shall be based on competent evidence from mental health professionals
1102 establishing that, even with the provision of services, the parent is unlikely to be capable of
1103 adequately caring for the child within 12 months.

1104 (4) (a) The following shall be considered in determining whether reunification services
1105 are appropriate:

1106 [~~(4)(a) Failure~~] (i) failure of the parent to respond to previous services or comply with
1107 any previous treatment plan[;];

1108 (ii) the fact that the child was abused while the parent was under the influence of drugs
1109 or alcohol[;];

1110 (iii) a past history of violent behavior[;];

1111 (iv) whether a parent continues to live with an individual who abused the child[;];

1112 (v) any patterns of the parent's behavior that have exposed the child to repeated abuse[;

1113 or]; and

1114 (vi) testimony by a competent professional that the parent's behavior is unlikely to be
1115 successful[, shall be considered in determining whether reunification services are appropriate].

1116 (b) The court shall also consider whether the parent has expressed an interest in
1117 reunification with the child, in determining whether reunification services are appropriate.

1118 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
1119 whereabouts of a parent become known within six months of the out-of-home placement of the
1120 minor, the court may order the division to provide reunification services. The time limits
1121 described in Subsection (2), however, are not tolled by the parent's absence.

1122 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
1123 services unless it determines that those services would be detrimental to the minor. In
1124 determining detriment, the court shall consider the age of the child, the degree of parent-child
1125 bonding, the length of the sentence, the nature of the treatment, the nature of the crime or
1126 illness, the degree of detriment to the child if services are not offered and, for minors ten years
1127 of age or older, the minor's attitude toward the implementation of family reunification services,
1128 and any other appropriate factors.

1129 (b) Reunification services for an incarcerated parent are subject to the 12-month
1130 limitation imposed in Subsection (2).

1131 (c) Reunification services for an institutionalized parent are subject to the 12-month
1132 limitation imposed in Subsection (2), unless the court determines that continued reunification
1133 services would be in the child's best interest.

1134 (7) If, pursuant to Subsection [~~(3)(b)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x)~~]
1135 (3)(a), the court does not order reunification services, a permanency hearing shall be conducted
1136 within 30 days, in accordance with Section 78-3a-312.

1137 Section 14. Section **78-3a-314** is amended to read:

1138 **78-3a-314. All proceedings -- Persons entitled to be present.**

1139 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
1140 pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, and any relative providing
1141 care for the child, are entitled to notice, to be present at each hearing held under this part,
1142 including administrative and citizen reviews, and are entitled to an opportunity to be heard.

1143 (2) Because the child's foster parents have the right to notice, pursuant to Section

1144 78-3a-309, they have the right to be present at each and every hearing held under this part
1145 including administrative and citizen reviews, and are entitled to an opportunity to be heard.

1146 (3) ~~[A]~~ (a) If the court has appointed a guardian ad litem for a child, the child shall be
1147 represented at each hearing by the guardian ad litem ~~[appointed to his case by the court].~~

1148 (b) The child has a right to be present at each hearing, subject to the discretion of the
1149 guardian ad litem or the court regarding any possible detriment to the child.

1150 (4) (a) The parent or guardian of a child who is the subject of a petition under this part
1151 has the right to be represented by counsel, and to present evidence, at each hearing.

1152 (b) When it appears to the court that a parent or guardian of the child desires counsel
1153 but is financially unable to afford and cannot for that reason employ counsel, and the child has
1154 been placed in out-of-home care, or the petitioner is recommending that the child be placed in
1155 out-of-home care, the court shall appoint counsel.

1156 (5) In every abuse, neglect, or dependency proceeding under this chapter, the court
1157 ~~[shall]~~ may order that the child be represented by a guardian ad litem, in accordance with
1158 Section 78-3a-912. ~~[The]~~ If appointed, the guardian ad litem, in accordance with Section
1159 78-3a-912, shall represent the best interest of the child~~[, in accordance with the requirements of~~
1160 ~~that section,]~~ at the shelter hearing and at all subsequent court and administrative proceedings,
1161 including any proceeding for termination of parental rights in accordance with Part 4,
1162 Termination of Parental Rights Act.

1163 (6) ~~[Notwithstanding]~~ (a) Except as provided in Subsection (6)(b), notwithstanding
1164 any other provision of law, counsel for all parties to the action shall be given access to all
1165 records, maintained by the division or any other state or local public agency, that are relevant to
1166 the abuse, neglect, or dependency proceeding under this chapter. If the natural parent of a child
1167 is representing himself~~[, he]~~ or herself, the natural parent of the child shall have access to those
1168 records. ~~[The above]~~

1169 (b) The disclosures under Subsection (6)(a) are not required in the following
1170 circumstances:

1171 ~~[(a)]~~ (i) ~~[The]~~ the division or other state or local public agency did not originally create
1172 the record being requested~~[. In those circumstances, the person making the request under this~~
1173 ~~section shall be informed of the following:]; or~~

1174 ~~[(i) the existence of all records in the possession of the division or any other state or~~

1175 local public agency;]

1176 ~~[(ii) the name and address of the person or agency that originally created the record;~~

1177 and]

1178 ~~[(iii) that he must seek access to the record from the person or agency that originally~~

1179 ~~created the record.]~~

1180 ~~[(b) Disclosure of the record would jeopardize the life or physical safety of a child who~~

1181 ~~has been a victim of child abuse or neglect, or any person who provided substitute care for the~~

1182 ~~child.]~~

1183 ~~[(c) Disclosure of the record would jeopardize the anonymity of the person or persons~~

1184 ~~making the initial report of abuse or neglect or any others involved in the subsequent~~

1185 ~~investigation.]~~

1186 ~~[(d) Disclosure]~~ (ii) disclosure of the record would jeopardize:

1187 (A) the life or physical safety of a child who has been a victim of child abuse or

1188 neglect, or any person who provided substitute care for the child;

1189 (B) the anonymity of the person or persons making the initial report of abuse or neglect

1190 or any others involved in the subsequent investigation; or

1191 (C) the life or physical safety of a person who has been a victim of domestic violence.

1192 (c) In circumstances described in Subsection (6)(b)(i), the person making the request

1193 under this section shall be informed of the following:

1194 (i) the existence of all records in the possession of the division or any other state or

1195 local public agency;

1196 (ii) the name and address of the person or agency that originally created the record; and

1197 (iii) that the person must seek access to the record from the person or agency that

1198 originally created the record.

1199 (7) (a) The appropriate foster care citizen review board shall be given access to all

1200 records, maintained by the division or any other state or local public agency, that are relevant to

1201 an abuse, neglect, or dependency proceeding under this chapter.

1202 (b) Representatives of the appropriate foster care citizen review board are entitled to be

1203 present at each hearing held under this part, but notice is not required to be provided.

1204 Section 15. Section **78-3a-402** is amended to read:

1205 **78-3a-402. Judicial process for termination -- Parent unfit or incompetent -- Best**

1206 **interest of child -- Presumption of fitness.**

1207 (1) This part provides a judicial process for voluntary and involuntary severance of the
1208 parent-child relationship, designed to safeguard the rights and interests of all parties concerned
1209 and promote their welfare and that of the state.

1210 (2) Wherever possible family life should be strengthened and preserved, but if a parent
1211 is found, by reason of [~~his~~] the parent's conduct or condition, to be unfit or incompetent based
1212 upon any of the grounds for termination described in this part, the court shall then consider the
1213 welfare and best interest of the child of paramount importance in determining whether
1214 termination of parental rights shall be ordered.

1215 (3) For purposes of this part, parents are presumed to be fit and competent.

1216 Section 16. Section **78-3a-406** is amended to read:

1217 **78-3a-406. Notice -- Nature of proceedings.**

1218 (1) After a petition for termination of parental rights has been filed, notice of that fact
1219 and of the time and place of the hearing shall be provided, in accordance with the Utah Rules
1220 of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of
1221 the child, and to any person acting in loco parentis to the child.

1222 (2) (a) A hearing shall be held specifically on the question of termination of parental
1223 rights no sooner than ten days after service of summons is complete. A verbatim record of the
1224 proceedings shall be taken and the parties shall be advised of their right to counsel.

1225 (b) The summons shall contain a statement to the effect that the rights of the parent or
1226 parents are proposed to be permanently terminated in the proceedings. That statement may be
1227 contained in the summons originally issued in the proceeding or in a separate summons
1228 subsequently issued.

1229 (3) (a) The proceedings are civil in nature and are governed by the Utah Rules of Civil
1230 Procedure and the Utah Rules of Evidence.

1231 (b) The court shall in all cases require the petitioner to establish the facts [~~by clear and~~
1232 ~~convincing evidence]~~ beyond a reasonable doubt, and shall give full and careful consideration
1233 to all of the evidence presented with regard to the constitutional rights and claims of the parent
1234 and, if a parent is found, by reason of [~~his~~] the parent's conduct or condition, to be unfit or
1235 incompetent based upon any of the grounds for termination described in this part, the court
1236 shall then consider the welfare and best interest of the child of paramount importance in

1237 determining whether termination of parental rights shall be ordered.

1238 (4) If a party requests a jury trial, the court shall transfer the case to the district court.

1239 Section 17. Section **78-3a-408** is amended to read:

1240 **78-3a-408. Evidence of grounds for termination.**

1241 (1) In determining whether a parent or parents have abandoned a child, it is prima facie
1242 evidence of abandonment that the parent or parents:

1243 (a) although having legal custody of the child, have surrendered physical custody of the
1244 child, and for a period of six months following the surrender have not manifested to the child
1245 or to the person having the physical custody of the child a firm intention to resume physical
1246 custody or to make arrangements for the care of the child;

1247 (b) have failed to communicate with the child by mail, telephone, or otherwise for six
1248 months;

1249 (c) failed to have shown the normal interest of a natural parent, without just cause; or

1250 (d) have abandoned an infant, as described in Section 78-3a-313.5.

1251 (2) (a) In determining whether a parent or parents are unfit or have neglected a child
1252 the court shall consider, but is not limited to, the following circumstances, conduct, or
1253 conditions:

1254 ~~[(a)]~~ (i) emotional illness, mental illness, or mental deficiency of the parent that renders
1255 him unable to care for the immediate and continuing physical or emotional needs of the child
1256 for extended periods of time;

1257 ~~[(b)]~~ (ii) conduct toward a child of a physically, emotionally, or sexually cruel or
1258 abusive nature;

1259 ~~[(c)]~~ (iii) habitual or excessive use of intoxicating liquors, controlled substances, or
1260 dangerous drugs that render the parent unable to care for the child;

1261 ~~[(d)]~~ (iv) repeated or continuous failure to provide the child with adequate food,
1262 clothing, shelter, education, or other care necessary for ~~his~~ the child's physical, mental, and
1263 emotional health and development by a parent or parents who are capable of providing that
1264 care~~[- However, a parent who, legitimately practicing his religious beliefs, does not provide~~
1265 ~~specified medical treatment for a child is not for that reason alone a negligent or unfit parent];~~

1266 ~~[(e)]~~ (v) with regard to a child who is in the custody of the division, if the parent is
1267 incarcerated as a result of conviction of a felony, and the sentence is of such length that the

1268 child will be deprived of a normal home for more than one year; or

1269 [(f)] (vi) a history of violent behavior.

1270 (b) For purposes of Subsection (2)(a)(iv), a parent who does not provide specified

1271 medical treatment for a child, because the parent is legitimately practicing the parent's religious

1272 beliefs, is not a negligent or unfit parent.

1273 (3) If a child has been placed in the custody of the division and the parent or parents

1274 fail to comply substantially with the terms and conditions of a plan within six months after the

1275 date on which the child was placed or the plan was commenced, whichever occurs later, that

1276 failure to comply is evidence of failure of parental adjustment.

1277 (4) The following circumstances constitute prima facie evidence of unfitness:

1278 (a) sexual abuse, injury, or death of a sibling of the child, or of any child, due to known

1279 or substantiated abuse or neglect by the parent or parents;

1280 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to

1281 indicate the unfitness of the parent to provide adequate care to the extent necessary for the

1282 child's physical, mental, or emotional health and development;

1283 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement

1284 of the child; or

1285 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to

1286 commit murder or manslaughter of a child or child abuse homicide.

1287 Section 18. Section **78-3a-412** is amended to read:

1288 **78-3a-412. Review following termination.**

1289 (1) At the conclusion of the hearing in which the court orders termination of the

1290 parent-child relationship, the court shall order that a review hearing be held within 90 days

1291 following the date of termination if the child has not been permanently placed.

1292 (2) At that review hearing, the agency or individual vested with custody of the child

1293 shall report to the court regarding the plan for permanent placement of the child. ~~[The]~~ If a

1294 guardian ad litem has been appointed, the guardian ad litem shall submit to the court a written

1295 report with recommendations, based on an independent investigation, for disposition meeting

1296 the best interests of the child.

1297 (3) The court may order the agency or individual vested with custody of the child to

1298 report, at appropriate intervals, on the status of the child until the plan for permanent placement

1299 of the child has been accomplished.

1300 Section 19. Section **78-3a-912** is amended to read:

1301 **78-3a-912. Appointment of attorney guardian ad litem -- Duties and**
1302 **responsibilities -- Training -- Trained staff and court-appointed special advocate**
1303 **volunteers -- Costs -- Immunity.**

1304 (1) The court may appoint an attorney guardian ad litem to represent the best interest of
1305 a minor involved in any case before the court and shall consider only the best interest of a
1306 minor in determining whether to appoint a guardian ad litem.

1307 (2) ~~Am~~ (a) Subject to the provisions of Subsection (2)(b), the court may appoint an
1308 attorney guardian ad litem ~~shall~~ to represent the best interest of each minor who may become
1309 the subject of a petition alleging abuse, neglect, or dependency, from the date the minor is
1310 removed from the minor's home by the division ~~[of Child and Family Services]~~, or the date the
1311 petition is ~~[filed]~~ adjudicated, whichever occurs earlier.

1312 (b) The court may appoint an attorney guardian ad litem under Subsection (2)(a) only if
1313 it makes a finding on the record that the best interests of the minor may not reasonably be
1314 protected without the appointment.

1315 (c) The appointment of an attorney guardian ad litem under Subsection (2)(a) shall be
1316 made in a hearing where the parents of the minor:

1317 (i) have been given notice to be present; and

1318 (ii) have the opportunity to express their preferences and any concerns they may have
1319 relating to the appointment of an attorney guardian ad litem.

1320 (d) The minor's parents have the right to object to the appointing of an attorney
1321 guardian ad litem.

1322 (e) An individual is not required to be employed by or under contract with the Office of
1323 the Guardian ad Litem to be appointed as an attorney guardian ad litem in a child abuse,
1324 neglect, or dependency case.

1325 (f) Except as provided in Subsection (7)(b)(ii), if a parent or guardian refuses the
1326 appointment of a guardian ad litem employed by or under contract with the Office of the
1327 Guardian ad Litem, the parent is responsible for all costs incurred from the appointment of a
1328 private attorney guardian ad litem to represent the best interest of the minor.

1329 (g) (i) At any time the minor's parents or guardian may:

1330 (A) petition the court to release an attorney guardian ad litem from a case; and
1331 (B) petition the court for a report of the activities of the attorney guardian ad litem
1332 relating to the minor.

1333 (ii) If a petition is made under Subsection (2)(g)(i)(B), the court shall order the
1334 guardian ad litem to provide the information to the parents or guardian in a timely manner.

1335 (3) ~~[The]~~ If the court appoints a guardian ad litem employed by or under contract with
1336 the Office of the Guardian ad Litem, the Office of the Guardian Ad Litem Director, through
1337 ~~[an]~~ the attorney guardian ad litem, shall:

1338 (a) represent the best interest of the minor in all proceedings;

1339 (b) be trained in applicable statutory, regulatory, and case law, and in accordance with
1340 the United States Department of Justice National Court Appointed Special Advocate
1341 Association guidelines, prior to representing any minor before the court;

1342 (c) conduct or supervise an independent investigation in order to obtain first-hand, a
1343 clear understanding of the situation and needs of the child;

1344 (d) personally meet with the minor, personally interview the minor if the minor is old
1345 enough to communicate, determine the minor's goals and concerns regarding placement, and
1346 personally assess or supervise an assessment of the appropriateness and safety of the minor's
1347 environment in each placement;

1348 (e) file written motions, responses, or objections at all stages of a proceeding when
1349 necessary to protect the best interest of a minor;

1350 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all
1351 administrative and foster care citizen review board hearings pertaining to the minor's case;

1352 (g) participate in all appeals unless excused by order of the court;

1353 (h) be familiar with local experts who can provide consultation and testimony
1354 regarding the reasonableness and appropriateness of efforts made by the division [~~of Child and~~
1355 ~~Family Services~~] to maintain a minor in the minor's home or to reunify a minor with the
1356 minor's parent;

1357 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
1358 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the
1359 status of the minor's case, all court and administrative proceedings, discussions, and proposals
1360 made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic

1361 services that are to be provided to the minor;

1362 (j) review proposed orders for, and as requested by the court, prepare proposed orders
1363 with clear and specific directions regarding services, treatment, and evaluation, assessment, and
1364 protection of the minor and the minor's family; ~~and~~

1365 (k) personally or through a trained volunteer, paralegal, or other trained staff, monitor
1366 implementation of a minor's treatment plan and any dispositional orders;

1367 (i) to determine whether services ordered by the court:

1368 (A) are actually provided[-]; and

1369 (B) are provided in a timely manner[-]; and

1370 (ii) attempt to assess whether they are accomplishing their intended goal[-]; and

1371 (l) if possible, communicate with the parents or guardian of the minor and give
1372 consideration to their concerns and goals for the minor.

1373 (4) If the court appoints an attorney guardian ad litem who is not employed by or under
1374 contract with the Office of the Guardian ad Litem, the attorney guardian ad litem shall meet the
1375 requirements of Subsection (3).

1376 [~~(4)~~] (5) (a) An attorney guardian ad litem may use trained volunteers, in accordance
1377 with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other
1378 trained staff to assist in investigation and preparation of information regarding the cases of
1379 individual minors before the court. An attorney guardian ad litem may not, however, delegate
1380 the attorney's responsibilities described in Subsection (3).

1381 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
1382 in and follow, at a minimum, the guidelines established by the United States Department of
1383 Justice Court Appointed Special Advocate Association.

1384 (c) The court may use volunteers trained in accordance with the requirements of
1385 Subsection [~~(4)~~] (5)(b) to assist in investigation and preparation of information regarding the
1386 cases of individual minors within the jurisdiction.

1387 (d) When possible and appropriate, the court may use a volunteer who is a peer of the
1388 minor appearing before the court, in order to provide assistance to that minor, under the
1389 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or
1390 other trained staff.

1391 [~~(5)~~] (6) The attorney guardian ad litem shall continue to represent the best interest of

1392 the minor until released from duties by the court.

1393 ~~[(6)]~~ (7) (a) ~~[The]~~ Except as provided in Subsection (2)(d), the juvenile court is
1394 responsible for all costs resulting from the appointment of an attorney guardian ad litem and
1395 the costs of volunteer, paralegal, and other staff appointment and training, and shall use funds
1396 appropriated by the Legislature for the guardian ad litem program to cover those costs.

1397 (b) (i) When the court appoints an attorney guardian ad litem under this section, the
1398 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer
1399 expenses against the minor's parents, parent, or legal guardian in a proportion that the court
1400 determines to be just and appropriate.

1401 (ii) The court may not assess those fees or costs against a legal guardian, when that
1402 guardian is the state, or against a parent who is found to be impecunious. If a person claims to
1403 be impecunious, the court shall require of that person an affidavit of impecuniosity as provided
1404 in Section 78-7-36 and the court shall follow the procedures and make the determinations as
1405 provided in Section 78-7-36.

1406 ~~[(7)]~~ (8) An attorney guardian ad litem appointed under this section, when serving in
1407 the scope of ~~[his]~~ the attorney guardian ad litem's duties as guardian ad litem is considered an
1408 employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah
1409 Governmental Immunity Act.

1410 ~~[(8)]~~ (9) (a) An attorney guardian ad litem shall represent the best interest of a minor.

1411 (b) If the minor's wishes differ from the attorney's determination of the minor's best
1412 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
1413 addition to presenting the attorney's determination of the minor's best interest. A difference
1414 between the minor's wishes and the attorney's determination of best interest may not be
1415 considered a conflict of interest for the attorney.

1416 ~~[(b)]~~ (c) The court may appoint one attorney guardian ad litem to represent the best
1417 interests of more than one minor child of a marriage.

1418 ~~[(9)]~~ (10) An attorney guardian ad litem shall be provided access to all division ~~[of~~
1419 ~~Child and Family Services]~~ records regarding the minor at issue and the minor's family.

1420 ~~[(10)]~~ (11) An attorney guardian ad litem shall maintain current and accurate records
1421 regarding the number of times the attorney has had contact with each minor and the actions the
1422 attorney has taken in representation of the minor's best interest.

1423 [~~(H)~~] (12) (a) Except as provided in Subsection [~~(H)~~] (12)(b), all records of an
1424 attorney guardian ad litem are confidential and may not be released or made public upon
1425 subpoena, search warrant, discovery proceedings, by authorization or order of a court, or
1426 otherwise. This Subsection (12)(a) supersedes Title 63, Chapter 2, Government Records
1427 Access and Management Act.

1428 (b) All records of an attorney guardian ad litem are subject to legislative subpoena,
1429 under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the
1430 Legislature.

1431 (c) Records released in accordance with Subsection [~~(H)~~] (12)(b) shall be maintained
1432 as confidential by the Legislature. The Office of the Legislative Auditor General may,
1433 however, include summary data and nonidentifying information in its audits and reports to the
1434 Legislature.

1435 (d) Because of the unique role of an attorney guardian ad litem described in Subsection
1436 [~~(8)~~] (9), and the state's role and responsibility to provide a guardian ad litem program and, as
1437 parens patriae, to protect minors, Subsection [~~(H)~~] (12)(b) constitutes an exception to Rules of
1438 Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client
1439 privilege does not bar access to the records of an attorney guardian ad litem by the Legislature,
1440 through legislative subpoena.

1441 (e) Notwithstanding Subsection (12)(d), an attorney guardian ad litem is bound by all
1442 of the Rules of Professional Conduct regarding client representation.

1443 (13) An attorney guardian ad litem may not, on the attorney guardian ad litem's own
1444 initiative or by authorization or order of a court, make public statements, grant interviews, or
1445 otherwise communicate information that will be disclosed publicly outside of the juvenile court
1446 about a child abuse, neglect, or dependency case, even if the communication does not involve
1447 the disclosure of a record that is private, controlled, or protected under Title 63, Chapter 2,
1448 Government Records Access and Management Act.

1449 (14) Each meeting of a child with the child's attorney guardian ad litem shall be
1450 recorded as an audio or audio and video recording.

1451 Section 20. Section **78-7-45** is amended to read:

1452 **78-7-45. Private attorney guardian ad litem -- Appointment -- Costs and fees --**
1453 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**

1454 **qualifications.**

1455 (1) (a) The court may appoint a private attorney as guardian ad litem to represent the
1456 best interests of the minor in any district court action in which the custody of or visitation with
1457 a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the
1458 Office of the Guardian Ad Litem as having met the minimum qualifications for appointment,
1459 but shall not be employed by or under contract with the Office of the Guardian Ad Litem.

1460 (b) If an attorney guardian ad litem has been appointed for the minor in any prior or
1461 concurrent action and that attorney guardian ad litem is available, the court shall appoint that
1462 attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem
1463 should be appointed.

1464 (c) If, after appointment of the attorney guardian ad litem, an allegation of abuse,
1465 neglect, or dependency of the minor is made the court shall:

1466 (i) determine whether it is in the best interests of the minor to continue the
1467 appointment; or

1468 (ii) order the withdrawal of the private attorney guardian ad litem and ~~appoint~~:

1469 (A) in the manner set forth in Subsection 78-3a-912(2), appoint either:

1470 (I) the Office of the Guardian Ad Litem[-]; or

1471 (II) another attorney guardian ad litem; or

1472 (B) make no further appointment.

1473 (2) (a) The court shall assess all or part of the attorney guardian ad litem fees, courts
1474 costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court
1475 determines to be just.

1476 (b) If the court finds a party to be impecunious, under the provisions of Section
1477 78-7-36, the court may direct the impecunious party's share of the assessment to be covered by
1478 the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

1479 (3) The attorney guardian ad litem appointed under the provisions of this section shall:

1480 (a) represent the best interests of the minor from the date of the appointment until
1481 released by the court;

1482 (b) conduct or supervise an independent investigation in order to obtain a clear
1483 understanding of the situation and needs of the minor;

1484 (c) interview witnesses and review relevant records pertaining to the minor and the

1485 minor's family, including medical, psychological, and school records;

1486 (d) if the minor is old enough to communicate and unless it would be detrimental to the
1487 minor:

1488 (i) meet with and interview the minor;

1489 (ii) determine the minor's goals and concerns regarding custody or visitation; and

1490 (iii) counsel the minor regarding the nature, purpose, status, and implications of the
1491 case, of hearings, of recommendations, and proposals by parties and of court orders;

1492 (e) conduct discovery, file pleadings and other papers, prepare and review orders, and
1493 otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best
1494 interest of the minor;

1495 (f) unless excused by the court, prepare for and attend all mediation hearings and all
1496 court conferences and hearings, and present witnesses and exhibits as necessary to protect the
1497 best interests of the minor;

1498 (g) identify community resources to protect the best interests of the minor and advocate
1499 for those resources; and

1500 (h) participate in all appeals unless excused by the court.

1501 (4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If
1502 the minor's wishes differ from the attorney's determination of the minor's best interests, the
1503 attorney guardian ad litem shall communicate to the court the minor's wishes and the attorney's
1504 determination of the minor's best interests. A difference between the minor's wishes and the
1505 attorney's determination of best interests is not sufficient to create a conflict of interest.

1506 (b) The court may appoint one attorney guardian ad litem to represent the best interests
1507 of more than one minor child of a marriage.

1508 (5) An attorney guardian ad litem appointed under this section is immune from any
1509 civil liability that might result by reason of acts performed within the scope of duties of the
1510 attorney guardian ad litem.

1511 (6) (a) Upon the advice of the Director of the Office of the Guardian Ad Litem, the
1512 Judicial Council shall by rule establish the minimum qualifications and requirements for
1513 appointment by the court as an attorney guardian ad litem.

1514 (b) An attorney guardian ad litem may be required to appear pro bono in one case for
1515 every five cases in which the attorney is appointed with compensation.

1516 (7) This section shall be effective in the Second, Third, and Fourth Judicial Districts on
1517 July 1, 2001, and in the remaining judicial districts of the state on July 1, 2002.

1518 Section 21. **Repealer.**

1519 This bill repeals:

1520 Section **78-3a-305.1, Presumption of responsibility.**

1521 Section 22. **Effective date.**

1522 This bill takes effect on July 1, 2004.

Legislative Review Note
as of 2-13-04 11:01 AM

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

Office of Legislative Research and General Counsel

State Impact

Higher standards of proof in termination trials and the parental option of choosing a jury trial in District Court will require additional resources: The estimated impact on the Court system is \$626,400 (General Funds). To the Attorney General's Office, the impact is estimated at \$157,300 (\$126,000 General Funds) which includes \$3,000 in one-time expenditures. And the Division of Child and Family Services would need one additional staff person estimated at \$58,300 (\$47,800 General Funds), including \$2,500 in one-time costs. Federal revenues would be dependent upon 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	\$800,200	\$795,800	\$0	\$0
Federal Funds	\$38,200	\$37,100	\$38,200	\$37,100
TOTAL	\$838,400	\$832,900	\$38,200	\$37,100

Individual and Business Impact

Parents opting to choose a private Guardian Ad Litem would be responsible for that cost.
