

REVISIONS TO CHILD WELFARE

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies definitions related to child abuse and neglect;
- ▶ specifies that a child's health and safety shall be the primary concern rather than the paramount concern;
- ▶ replaces the use of the term "severe" with "serious" in references to child abuse and neglect;
- ▶ amends the evidentiary standards for mandatory reporting and investigation of abuse and neglect to probable cause;
- ▶ amends the evidentiary standards for supporting and substantiating an allegation of child abuse or neglect to clear and convincing;
- ▶ requires child welfare workers to be trained in their legal duties to protect the rights of children and families;
- ▶ repeals the pilot program for differentiated responses to child abuse and neglect reports;
- ▶ amends the state's recognition of parental rights;
- ▶ creates a rebuttable presumption for reasonable discipline by a parent;
- ▶ limits the right of the state to intervene in cases of potential medical or mental



- 28 health neglect;
- 29 ▶ eliminates the term "welfare" as a basis for the state's intervention;
- 30 ▶ modifies the definitions related to child abuse and neglect in the judicial code;
- 31 ▶ expands the notice that must be given parents when a child is taken into custody due
- 32 to abuse or neglect;
- 33 ▶ requires a juvenile court to grant a continuance of a shelter hearing at the request of
- 34 a parent;
- 35 ▶ requires the Division of Child and Family Services to attempt to develop treatment
- 36 plans with which parents agree and allows a parent to submit an alternate plan to the
- 37 court;
- 38 ▶ limits the reasons for which parent-time may be denied the parent of a child in the
- 39 custody of the state;
- 40 ▶ specifies that parents retain the right to obtain medical and mental health diagnoses
- 41 for a child in the custody of the state from practitioners of their choice;
- 42 ▶ requires that a treatment plan be reasonable and not create undue hardship;
- 43 ▶ adds provisions governing potential medical neglect;
- 44 ▶ makes a technical correction by replacing the terms "substantiated" and
- 45 "unsubstantiated" with "supported" and "unsupported";
- 46 ▶ limits the types of child abuse and neglect for which mandatory reporting is required
- 47 and for which a child may be taken into or remain in custody of the state;
- 48 ▶ modifies definitions related to child abuse and neglect in the criminal code;
- 49 ▶ amends the conditions under which a court may issue a warrant to take a child into
- 50 protective custody;
- 51 ▶ amends the evidentiary standard for court-ordered custody to clear and convincing;
- 52 ▶ expands access to and participation in juvenile court proceedings and allows the
- 53 court to exclude persons in specified circumstances;
- 54 ▶ addresses medical and mental health neglect;
- 55 ▶ amends the evidentiary standard for continued custody by the Division of Child and
- 56 Family Services beyond protective custody to beyond a reasonable doubt;
- 57 ▶ modifies the evidentiary standard for the reunification services presumption to
- 58 beyond a reasonable doubt;

- 59 ▶ amends the grounds for termination of parental rights;
- 60 ▶ amends the evidentiary standard for termination of parental rights to beyond a
- 61 reasonable doubt;
- 62 ▶ amends the factors used by a court to determine whether to order reunification
- 63 services;
- 64 ▶ specifies that a hearing on the termination of parental rights is governed by the Utah
- 65 Rules of Evidence;
- 66 ▶ repeals the definitions section within the termination of Parental Rights Act;
- 67 ▶ makes conforming changes; and
- 68 ▶ makes other technical corrections.

69 **Monies Appropriated in this Bill:**

70 None

71 **Other Special Clauses:**

72 This bill provides an effective date.

73 **Utah Code Sections Affected:**

74 AMENDS:

- 75 **26-21-9.5**, as last amended by Chapter 283, Laws of Utah 2002
- 76 **62A-2-121**, as last amended by Chapters 283 and 300, Laws of Utah 2002
- 77 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002
- 78 **62A-4a-103**, as last amended by Chapter 281, Laws of Utah 2002
- 79 **62A-4a-107**, as last amended by Chapter 94, Laws of Utah 2003
- 80 **62A-4a-116.1**, as last amended by Chapter 210, Laws of Utah 2003
- 81 **62A-4a-116.2**, as last amended by Chapter 210, Laws of Utah 2003
- 82 **62A-4a-116.5**, as last amended by Chapter 210, Laws of Utah 2003
- 83 **62A-4a-116.6**, as last amended by Chapter 210, Laws of Utah 2003
- 84 **62A-4a-117**, as last amended by Chapter 94, Laws of Utah 2003
- 85 **62A-4a-201**, as last amended by Chapter 274, Laws of Utah 2000
- 86 **62A-4a-202**, as last amended by Chapter 94, Laws of Utah 2003
- 87 **62A-4a-202.1 (Superseded 07/01/04)**, as last amended by Chapter 267, Laws of Utah
- 88 2003
- 89 **62A-4a-202.1 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah

- 90 2003
- 91 **62A-4a-202.2**, as last amended by Chapter 10, Laws of Utah 2001, First Special
- 92 Session
- 93 **62A-4a-203**, as last amended by Chapter 274, Laws of Utah 1998
- 94 **62A-4a-205**, as last amended by Chapter 306, Laws of Utah 2002
- 95 **62A-4a-206**, as last amended by Chapter 306, Laws of Utah 2002
- 96 **62A-4a-209**, as last amended by Chapters 265 and 306, Laws of Utah 2002
- 97 **62A-4a-302**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 98 **62A-4a-402**, as last amended by Chapter 274, Laws of Utah 1998
- 99 **62A-4a-403**, as last amended by Chapter 21, Laws of Utah 1999
- 100 **62A-4a-409**, as last amended by Chapter 265, Laws of Utah 2002
- 101 **63-55-262**, as last amended by Chapter 134, Laws of Utah 2001
- 102 **76-5-109**, as last amended by Chapter 125, Laws of Utah 2000
- 103 **76-5-110**, as last amended by Chapter 303, Laws of Utah 1997
- 104 **78-3a-102**, as last amended by Chapter 329, Laws of Utah 1997
- 105 **78-3a-103 (Superseded 07/01/04)**, as last amended by Chapter 283, Laws of Utah 2002
- 106 **78-3a-103 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 107 **78-3a-106**, as last amended by Chapter 267, Laws of Utah 2003
- 108 **78-3a-110**, as enacted by Chapter 365, Laws of Utah 1997
- 109 **78-3a-112**, as renumbered and amended by Chapter 365, Laws of Utah 1997
- 110 **78-3a-113 (Superseded 07/01/04)**, as renumbered and amended by Chapter 365, Laws
- 111 of Utah 1997
- 112 **78-3a-113 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 113 **78-3a-115**, as last amended by Chapter 332, Laws of Utah 2003
- 114 **78-3a-118 (Superseded 07/01/04)**, as last amended by Chapters 68, 176, 195 and 278,
- 115 Laws of Utah 2003
- 116 **78-3a-118 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 117 **78-3a-119**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session
- 118 **78-3a-301 (Superseded 07/01/04)**, as last amended by Chapter 265, Laws of Utah 2002
- 119 **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 120 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003

- 121 **78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002
- 122 **78-3a-313.5**, as enacted by Chapter 274, Laws of Utah 1998
- 123 **78-3a-320**, as last amended by Chapter 210, Laws of Utah 2003
- 124 **78-3a-402**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 125 **78-3a-406**, as last amended by Chapter 332, Laws of Utah 2003
- 126 **78-3a-407**, as last amended by Chapter 246, Laws of Utah 2002
- 127 **78-3a-408**, as last amended by Chapter 274, Laws of Utah 1998
- 128 **78-3a-414**, as last amended by Chapter 101, Laws of Utah 2001
- 129 **78-3g-101**, as last amended by Chapter 133, Laws of Utah 1997

130 REPEALS:

- 131 **62A-4a-202.7**, as last amended by Chapter 94, Laws of Utah 2003
- 132 **78-3a-403**, as last amended by Chapter 318, Laws of Utah 1996

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

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

136 **26-21-9.5. Criminal background check and Licensing Information System check.**

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

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

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

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

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

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

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

150 (2) (a) The department shall forward the information received under Subsection (1)(b)
151 to the Criminal Investigations and Technical Services Division of the Department of Public

152 Safety for processing to determine whether an individual has been convicted of any crime.

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

158 (3) The department may determine whether:

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

165 (b) an individual whose name and other identifying information has been submitted
166 pursuant to Subsection (1) and who provides direct care to disabled or elder adults has a
167 substantiated finding of abuse, neglect, or exploitation of a disabled or elder adult by accessing
168 in accordance with Subsection (4) the database created in Section 62A-3-311.1 if identification
169 as a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to
170 the employment activities of that person.

171 (4) (a) The department shall:

172 (i) designate two persons within the department to access the Licensing Information
173 System described in Section 62A-4a-116.2 and court records under Subsection 78-3a-320(4)
174 and two persons to access the database described in Subsection (3)(b); and

175 (ii) adopt measures to:

176 (A) protect the security of the Licensing Information System, the court records, and the
177 database; and

178 (B) strictly limit access to the Licensing Information System, the court records, and the
179 database to those designated under Subsection (4)(a)(i).

180 (b) Those designated under Subsection (4)(a)(i) shall receive training from the
181 Department of Human Services with respect to:

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

- 183 (ii) maintaining strict security; and
184 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of
185 information.
- 186 (c) Those designated under Subsection (4)(a)(i):
187 (i) are the only ones in the department with the authority to access the Licensing
188 Information System, the court records, and database; and
189 (ii) may only access the Licensing Information System, the court records, and the
190 database for the purpose of licensing and in accordance with the provisions of Subsection (3).
- 191 (5) Within ten days of initially hiring an individual, a covered health care facility shall
192 submit the individual's information to the department in accordance with Subsection (1).
- 193 (6) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
194 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
195 who has been convicted of a criminal offense, or a person described in Subsection (3), may
196 provide direct care to a patient in a covered health care facility, taking into account the nature
197 of the criminal conviction or substantiated finding and its relation to patient care.
- 198 (7) The department may, in accordance with Section 26-1-6, assess reasonable fees for
199 a criminal background check processed pursuant to this section.
- 200 (8) The department may inform the covered health care facility of information
201 discovered under Subsection (3) with respect to an individual associated with the facility.
- 202 (9) A covered health care facility is not civilly liable for submitting information to the
203 department as required by Subsection (1).
- 204 (10) For purposes of this section, "covered health care facility" only includes:
205 (a) home health care agencies;
206 (b) hospices;
207 (c) nursing care facilities;
208 (d) assisted-living facilities;
209 (e) small health care facilities; and
210 (f) end stage renal disease facilities.

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

212 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

213 (1) With respect to human services licensees, the department may access only the

214 Licensing Information System of the Division of Child and Family Services created by Section
215 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320(4), for the purpose of:

216 (a) determining whether a person associated with a licensee, with direct access to
217 children, is listed in the Licensing Information System or has a substantiated finding by a
218 juvenile court of a [~~severe~~] serious type of child abuse or neglect under Subsections
219 78-3a-320(1) and (2); and

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

223 (2) After receiving identifying information for a person under Subsection
224 62A-2-120(1), the department shall process the information for the purposes described in
225 Subsection (1).

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

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

232 **62A-4a-101. Definitions.**

233 As used in this chapter:

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

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

236 [~~(b) negligent treatment;~~]

237 (i) physical abuse;

238 (ii) serious physical abuse;

239 (iii) mental cruelty;

240 [~~(c)~~] (iv) sexual exploitation; or

241 [~~(d) any~~] (v) sexual abuse.

242 (b) "Abuse" does not include:

243 (i) unintentional incidents resulting from ordinary human error, including unintentional
244 accidents and unintentional injuries, unless the injury, accident, or other incident was caused

245 intentionally, knowingly, recklessly, or with criminal negligence, as defined in Section
 246 76-2-103; and

247 (ii) reasonable parental discipline or management of a child with which a child may
 248 disagree, including prohibiting the use of an automobile or other possession and the
 249 withholding of other privileges, if the prohibiting or withholding does not constitute serious
 250 physical abuse, serious neglect, sexual abuse or exploitation, or mental cruelty.

251 (2) "Adoption services" means:

252 (a) placing children for adoption[;];

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

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

255 (d) conducting adoption studies[;];

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

257 (f) providing postadoptive placement services, upon request of a family, for the
 258 purpose of stabilizing a possible disruptive placement.

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

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

262 ~~[(6)]~~ (5) "Chronic physical abuse" means repeated or patterned:

263 (a) physical abuse[;]; or

264 (b) serious physical abuse.

265 ~~[(7)]~~ (6) "Chronic neglect" means [a] repeated or patterned [~~failure or refusal by a~~
 266 ~~parent, guardian, or custodian to provide necessary care for a minor's safety, morals, or~~
 267 ~~well-being]~~ neglect.

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

269 ~~[(5)]~~ (7) "Consumer" means a person who receives services offered by the division in
 270 accordance with this chapter.

271 ~~[(9)]~~ (8) "Custody," with regard to the division, means the custody of a child in the
 272 division as of the date of disposition.

273 ~~[(10)]~~ (9) "Day-care services" means care of a child for a portion of the day which is:

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

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

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

278 ~~[(11)]~~ (10) "Dependent child" or "dependency" means a child, or the condition of a
279 child, who is homeless or without ~~[proper]~~ adequate care through no fault of the child's parent,
280 guardian, or custodian.

281 ~~[(12)]~~ (11) "Director" means the director of the Division of Child and Family Services.

282 ~~[(13)]~~ (12) "Division" means the Division of Child and Family Services.

283 ~~[(14)]~~ (13) (a) "Domestic violence services" means temporary shelter, treatment, and
284 related services to:

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

286 (B) their dependent children; and

287 (ii) treatment services for domestic violence perpetrators.

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

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

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

293 ~~[(15)]~~ (14) "Homemaking service" means the care of individuals in their domiciles, and
294 help given to individual caretaker relatives to achieve improved household and family
295 management through the services of a trained homemaker.

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

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

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

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

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

305 ~~[(19)]~~ (b) "Neglect" includes:

306 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe

307 Relinquishment of a Newborn Child; and

308 (ii) lack of adequate care by a parent or guardian.

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

310 [~~(iii) lack of proper parental care by reason of the fault or habits of the parent,~~

311 ~~guardian, or custodian;~~]

312 [~~(iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary~~

313 ~~subsistence, education, or medical care, including surgery or psychiatric services when~~

314 ~~required, or any other care necessary for his health, safety, morals, or well-being; or]~~

315 [~~(v) a child at risk of being neglected or abused because another child in the same~~

316 ~~home is neglected or abused.]~~

317 [~~(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),~~

318 ~~means that, after receiving notice that a child has been frequently absent from school without~~

319 ~~good cause, or that the child has failed to cooperate with school authorities in a reasonable~~

320 ~~manner, a parent or guardian fails to make a good faith effort to ensure that the child receives~~

321 ~~an appropriate education.]~~

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

323 (i) a parent or guardian legitimately practicing religious beliefs and who, for that

324 reason, does not provide specified medical or mental health treatment for a child[~~, is not guilty~~

325 ~~of neglect.]; and~~

326 (ii) unintentional incidents, or reasonable parental discipline or management, described

327 in Subsection (1)(b).

328 (19) "Physical abuse" has the same meaning as "physical injury," as defined in Section

329 76-5-109.

330 [~~(19)~~] (20) "Protective custody," with regard to the division, means the shelter of a

331 child by the division from the time the child is removed from the child's home until the shelter

332 hearing[;] or the child's return home, whichever occurs earlier.

333 [~~(20)~~] (21) "Protective services" means expedited services that are provided:

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

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

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

337 develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse, and

338 to strengthen the cohabitant's ability to provide [~~safe and acceptable~~] adequate care; and

339 (d) in cases where the child's [~~welfare~~] health or safety is endangered:

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

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

344 (iii) to protect the child from the circumstances that endanger the child's [~~welfare~~]
345 health or safety including, when appropriate, removal from the child's home, placement in
346 substitute care, and petitioning the court for termination of parental rights.

347 [~~(21)~~] (22) "Services to unwed parents" means social, educational, and medical
348 services arranged for or provided to unwed parents to help them plan for themselves and the
349 unborn child.

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

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

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

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

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

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

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

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

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

367 (27) "State" means a state of the United States, the District of Columbia, the
368 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern

369 Mariana Islands, or a territory or possession administered by the United States.

370 ~~[(27)]~~ (28) "State plan" means the written description of the programs for children,
371 youth, and family services administered by the division in accordance with federal law.

372 ~~[(28)]~~ (29) "Status offense" means a violation of the law that would not be a violation
373 but for the age of the offender.

374 ~~[(29)]~~ (30) "Substantiated" or "substantiation" means a judicial finding based on [~~a~~
375 ~~preponderance of the~~] clear and convincing evidence that abuse or neglect occurred. Each
376 allegation made or identified in a given case shall be considered separately in determining
377 whether there should be a finding of substantiated.

378 ~~[(30)]~~ (31) "Substitute care" means:

379 (a) the placement of a minor in a family home, group care facility, or other placement
380 outside the minor's own home, either at the request of a parent or other responsible relative or
381 guardian, or upon court order, when it is determined that continuation of care in the child's own
382 home would be contrary to the child's [~~welfare~~] health or safety;

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

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

385 ~~[(31)]~~ (32) "Supported" means a finding by the division [~~based on the~~] that there is
386 clear and convincing evidence available at the completion of an investigation [~~that there is a~~
387 ~~reasonable basis to conclude~~] that abuse, neglect, or dependency occurred. Each allegation
388 made or identified during the course of the investigation shall be considered separately in
389 determining whether there should be a finding of supported.

390 ~~[(32)]~~ (33) "Temporary custody," with regard to the division, means the custody of a
391 child in the division from the date of the shelter hearing until disposition.

392 ~~[(33)]~~ (34) "Transportation services" means travel assistance given to an individual
393 with escort service, if necessary, to and from community facilities and resources as part of a
394 service plan.

395 ~~[(34)]~~ (35) "Unsubstantiated" means a judicial finding that there is [~~insufficient~~] not
396 clear and convincing evidence [~~to conclude~~] that abuse or neglect occurred.

397 ~~[(35)]~~ (36) "Unsupported" means a finding at the completion of an investigation that
398 there is [~~insufficient~~] not clear and convincing evidence [~~to conclude~~] that abuse, neglect, or
399 dependency occurred. However, a finding of unsupported means also that the division worker

400 did not conclude that the allegation was without merit.

401 ~~[(36)]~~ (37) "Without merit" means a finding at the completion of an investigation by
402 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
403 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

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

405 **62A-4a-103. Division -- Creation -- Purpose.**

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

411 (2) (a) The primary purpose of the division is to provide child welfare services.

412 (b) (i) The division shall, when possible and appropriate, provide preventive services
413 and family preservation services in an effort to protect the child from the trauma of separation
414 from ~~[his]~~ the child's family, protect the integrity of the family, and protect the constitutional
415 rights of parents.

416 (ii) In keeping with its ultimate goal and purpose of protecting children, however,
417 when a child's ~~[welfare]~~ health or safety is endangered or reasonable efforts to maintain or
418 reunify a child with ~~[his]~~ the child's family have failed, the division shall act in a timely fashion
419 in accordance with the requirements of this chapter and Title 78, Chapter 3a, Part 3, Abuse,
420 Neglect, and Dependency Proceedings, to provide the child with a stable, permanent
421 environment.

422 (3) The division shall also provide domestic violence services in accordance with
423 federal law.

424 Section 5. Section **62A-4a-107** is amended to read:

425 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
426 **curriculum.**

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

- 431 (a) develop child welfare curriculum that is current and effective, consistent with the
432 division's mission and purpose for child welfare;
- 433 (b) recruit, select, and supervise child welfare trainers;
- 434 (c) develop a statewide training program, including a budget and identification of
435 sources of funding to support that training;
- 436 (d) evaluate the efficacy of training in improving job performance;
- 437 (e) assist child protective services and foster care workers in developing and fulfilling
438 their individual training plans;
- 439 (f) monitor staff compliance with division training requirements and individual training
440 plans; and
- 441 (g) expand the collaboration between the division and schools of social work within
442 institutions of higher education in developing child welfare services curriculum, and in
443 providing and evaluating training.
- 444 (2) (a) The director shall, with the assistance of the child welfare training coordinator,
445 establish a core curriculum for child welfare services that is substantially equivalent to the
446 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.
- 447 (b) Any child welfare worker who is employed by the division for the first time after
448 July 1, 1999, shall, before assuming significant independent casework responsibilities,
449 successfully complete:
- 450 (i) the core curriculum; and
- 451 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of
452 observing and accompanying at least two capable and experienced child welfare workers as
453 they perform work-related functions:
- 454 (A) for three months if the worker has less than six months of on-the-job experience as
455 a child welfare worker; or
- 456 (B) for two months if the worker has six months or more but less than 24 months of
457 on-the-job experience as a child welfare worker.
- 458 (c) A child welfare worker with at least 24 months of on-the-job experience is not
459 required to receive on-the-job training under Subsection (2)(b)(ii).
- 460 (3) All child welfare workers shall be trained in their legal duties to protect the
461 constitutional and statutory rights of children and families from the initial time of contact

462 during investigation through treatment. The training curriculum shall include instruction in the
463 Fourth Amendment to the United States Constitution and parents' rights.

464 Section 6. Section **62A-4a-116.1** is amended to read:

465 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
466 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
467 **Rights of alleged perpetrator -- Juvenile court finding.**

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

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

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

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

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

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

481 (ii) sexual abuse;

482 (iii) sexual exploitation;

483 (iv) abandonment;

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

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

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

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

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

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

492 (3) [~~Severe~~] The serious types of child abuse or neglect referred to in Subsection [(2)

493 ~~does]~~ (1) do not include:

494 (a) the use of reasonable and necessary physical restraint or force by an educator in
495 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or

496 (b) a person's conduct that:

497 (i) is justified under Section 76-2-401; or

498 (ii) constitutes the use of reasonable and necessary physical restraint or force in
499 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
500 other dangerous object in the possession or under the control of a child or to protect the child or
501 another person from physical injury.

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

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

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

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

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

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

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

517 (e) the alleged perpetrator may be disqualified from adopting a child or being licensed
518 by:

519 (i) the department;

520 (ii) a human services licensee;

521 (iii) a child care provider or program; and

522 (iv) a covered health care facility;

523 (f) the alleged perpetrator has the rights described in Subsection (6); and

524 (g) failure to take either action described in Subsection (6)(a) within one year after
525 service of the notice will result in the action described in Subsection (6)(b).

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

528 (i) file a written request asking the division to review the findings under Subsection
529 (2);

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

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

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

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

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

547 (7) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall make
548 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
549 78-3a-320(1) and (2).

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

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

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

554 Section 7. Section **62A-4a-116.2** is amended to read:

555 **62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding**
556 **-- Protected record -- Access -- Criminal penalty.**

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

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

562 (b) consented-to supported findings by alleged perpetrators under Subsection
563 62A-4a-116.1(6)(a)(iii); and

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

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

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

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

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

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

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

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

586 (i) licensing a child care program or provider; or
587 (ii) determining whether a person associated with a covered health care facility, as
588 defined by the Department of Health by rule, who provides direct care to a child, has a
589 supported finding of [~~severe~~] a serious type of child abuse or neglect, as described in Section
590 62A-4a-116; and

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

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

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

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

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

599 (a) accessing the Licensing Information System;

600 (b) maintaining strict security; and

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

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

608 Section 8. Section **62A-4a-116.5** is amended to read:

609 **62A-4a-116.5. Notice and opportunity to challenge supported finding in**

610 **Management Information System -- Right of judicial review.**

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

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

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

617 notice to a parent or guardian.

618 (b) Nothing in this section may be construed as affecting:

619 (i) the manner in which the division conducts an investigation; or

620 (ii) the use or effect, in any other setting, of a supported finding by the division at the
621 completion of an investigation for any purpose other than for notification under Subsection (1)
622 (a).

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

625 (3) The notice described in Subsection (1) shall state:

626 (a) that the division has conducted an investigation regarding alleged child abuse,
627 neglect, or dependency;

628 (b) that the division has made a supported finding of abuse, neglect, or dependency;

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

630 (d) that the person has the right to request:

631 (i) a copy of the report; and

632 (ii) an opportunity to challenge the supported finding by the division; and

633 (e) that failure to request an opportunity to challenge the supported finding within 30
634 days of receiving the notice will result in an unappealable supported finding of child abuse,
635 neglect, or dependency unless the person can show good cause for why compliance within the
636 30-day requirement was virtually impossible or unreasonably burdensome.

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

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

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

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

648 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after
649 receiving notice, fails to challenge a supported finding in accordance with this section, may not
650 further challenge the finding and shall have no right to agency review or to an adjudicative
651 hearing or judicial review of the finding.

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

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

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

663 Section 9. Section **62A-4a-116.6** is amended to read:

664 **62A-4a-116.6. Notice and opportunity for court hearing for persons listed in**
665 **Licensing Information System.**

666 (1) Persons whose names were listed on the Licensing Information System as of May
667 6, 2002 and who have not been the subject of a court determination with respect to the alleged
668 incident of abuse or neglect may at any time:

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

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

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

675 (a) conviction;

676 (b) adjudication under Title 78, Chapter 3a, Juvenile Courts;

677 (c) plea of guilty;

678 (d) plea of guilty and mentally ill; or

679 (e) no contest.

680 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,
681 2002 requests removal of their name from the Licensing Information System, the division shall,
682 within 30 days:

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

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

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

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

690 (6) If a person whose name appears on the Licensing Information System prior to May
691 6, 2002 files a petition pursuant to Section 78-3a-320 during the time that an alleged
692 perpetrator's application for clearance to work with children or vulnerable adults is pending, the
693 court shall hear the matter on an expedited basis.

694 Section 10. Section **62A-4a-117** is amended to read:

695 **62A-4a-117. Performance monitoring system.**

696 (1) As used in this section:

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

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

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

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

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

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

710 (5) Before January 1 each year the director shall submit a written report describing the
711 difference between actual performance and performance goals for the prior fiscal year to the
712 Child Welfare Legislative Oversight Panel, the Joint Health and Human Services
713 Appropriations Subcommittee, and the Utah Tomorrow Strategic Planning Committee. The
714 report shall include:

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

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

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

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

723 [~~(e) a description of the extent to which the pilot program under Section 62A-4a-202.7~~
724 ~~has been expanded during the prior fiscal year and an explanation of how the performance of~~
725 ~~regions that have previously implemented the program has been affected by the program,~~
726 ~~including data showing the number of referrals to the division:]~~

727 [~~(i) accepted for an investigation;]~~

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

729 [~~(iii) not accepted.]~~

730 Section 11. Section **62A-4a-201** is amended to read:

731 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
732 **state.**

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

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

741 the United States.

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

743 (A) parents have the right, obligation, responsibility, and authority to manage, train,
744 educate, provide for, and discipline their children; and

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

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

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

752 (c) (i) It is the public policy of this state that a parent or guardian has the right to
753 reasonably discipline a child, which includes the use of physical and emotional discipline.
754 Notwithstanding any other provision of law, the appropriate exercise of this right is not
755 grounds for punishment, restriction, disqualification, or surveillance of any kind, including:

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

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

758 (C) issuance of a protective order;

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

760 (E) withholding licensing.

761 (ii) Discipline by a parent is presumed to be reasonable if it does not constitute serious
762 physical abuse or mental cruelty. This presumption may only be rebutted by evidence
763 establishing beyond a reasonable doubt that:

764 (A) a reasonable person acting under the existing circumstances would expect the
765 discipline to create a substantial risk of physical abuse of, or mental cruelty to, the child;

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

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

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

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

772 (2) (a) It is also the public policy of this state that children have the right to protection
773 from abuse and neglect, and that the state retains a compelling interest in investigating,
774 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78,
775 Chapter 3a. Therefore, as a counterweight to parental rights, the state~~[, as parens patriae,]~~ has
776 an interest in and responsibility to protect children whose parents abuse them or do not
777 adequately provide for their ~~[welfare]~~ health and safety.

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

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

788 (4) When circumstances within the family pose ~~[a]~~ an immediate serious threat to the
789 child's health or safety ~~[or welfare]~~, the state's interest in the child's welfare is paramount to the
790 rights of a parent. The division may obtain custody of the child for a planned period and place
791 him in a safe environment, in accordance with the requirements of Title 78, Chapter 3a, Part 3,
792 Abuse, Neglect, and Dependency Proceedings.

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

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

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

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

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

814 Section 12. Section **62A-4a-202** is amended to read:

815 **62A-4a-202. Preventive services -- Family preservation services.**

816 (1) (a) Within appropriations from the Legislature, the division shall provide
817 preventive, in-home services and family preservation services for families whose children are
818 at immediate risk of being removed from the home and for families in crisis, if the child's
819 [~~welfare~~] health or safety is not immediately endangered and the division determines that it is
820 possible and appropriate.

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

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

829 (a) the method of accessing each service;

830 (b) eligibility requirements for each service; [~~and~~]

831 (c) the geographic areas and the number of families that can be served by each
832 service[;]; and

833 (d) information regarding waiting lists for each service.

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

836 (a) the safety of children;

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

839 (c) the child's physical surroundings, including cleaning and repairing physical
840 housing, and addressing needs for necessities such as food, heat, and electricity;

841 (d) personal cleanliness, nutrition, and provision of personal grooming supplies and
842 clothing;

843 (e) budgeting, money management, and employment; and

844 (f) parenting skills, including:

845 (i) nonviolent discipline, nurturing, and structure~~[;]~~; and

846 (ii) teaching responsibility, respect for others, cooperation, and moral values.

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

849 (b) Family preservation caseworkers ~~[may]~~ shall:

850 (i) only be assigned a ~~[minimum]~~ minimal number of families~~[, but the division shall~~
851 ~~require that they]~~;

852 (ii) be available 24 hours each day for an intensive period of at least six weeks~~[;]~~; and
853 ~~[that they]~~

854 (iii) respond to an assigned family within 24 hours.

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

857 Section 13. Section **62A-4a-202.1 (Superseded 07/01/04)** is amended to read:

858 **62A-4a-202.1 (Superseded 07/01/04). Taking a minor into protective custody with**
859 **or without warrant or court order -- Peace officer -- Division of Child and Family**
860 **Services caseworker -- Consent or specified circumstances -- Shelter care or emergency**
861 **kinship.**

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

865 unless there exist exigent circumstances.

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

869 (3) (a) If possible, consistent with the minor's health and safety [~~and welfare~~], before
870 taking a minor into protective custody, the worker shall also determine whether there are
871 services [~~reasonably~~] available to the worker which, if provided to the minor's parent or to the
872 minor, would [~~eliminate~~] sufficiently reduce the need to remove the minor from the custody of
873 the minor's parent or guardian. If those services are [~~reasonably~~] available, they shall be
874 utilized.

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

878 (4) (a) A minor removed or taken into custody under this section may not be placed or
879 kept in a secure detention facility pending court proceedings unless the minor is detainable
880 based on guidelines promulgated by the Division of Youth Corrections.

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

883 (i) a shelter facility; or

884 (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

885 Section 14. Section **62A-4a-202.1 (Effective 07/01/04)** is amended to read:

886 **62A-4a-202.1 (Effective 07/01/04). Taking a minor into protective custody with or**
887 **without warrant or court order -- Peace officer -- Division of Child and Family Services**
888 **caseworker -- Consent or specified circumstances -- Shelter care or emergency kinship.**

889 (1) A state officer, peace officer, or child welfare worker may not, without the consent
890 of the minor's parent or guardian, a warrant, or a court order issued under Section 78-3a-106,
891 remove a minor from the minor's home or school, or take a minor into protective custody
892 unless there exist exigent circumstances.

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

896 (3) (a) If possible, consistent with the minor's health and safety [~~and welfare~~], before
 897 taking a minor into protective custody, the worker shall also determine whether there are
 898 services [~~reasonably~~] available to the worker which, if provided to the minor's parent or to the
 899 minor, would [~~eliminate~~] sufficiently reduce the need to remove the minor from the custody of
 900 the minor's parent or guardian. If those services are [~~reasonably~~] available, they shall be
 901 utilized.

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

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

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

910 (i) a shelter facility; or

911 (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

912 Section 15. Section **62A-4a-202.2** is amended to read:

913 **62A-4a-202.2. Notice to parents upon removal of child -- Locating noncustodial**
 914 **parent -- Written statement of procedural rights and preliminary proceedings.**

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

919 (i) that the minor has been taken into protective custody;

920 (ii) of the reasons for removal and placement in protective custody;

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

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

926 (v) of resources available to assist the parent or guardian in locating;

927 (A) a parent advocate;

928 (B) a qualified attorney; and

929 (C) potential expert witnesses to testify on behalf of the child, the parents, or the
930 family; and

931 ~~[(iv)]~~ (v) of a telephone number where the parent may access further information.

932 (b) For purposes of locating and informing the noncustodial parent as required in
933 Subsection (1)(a), the division shall search for the noncustodial parent through the national
934 parent locator database if the division is unable to locate the noncustodial parent through other
935 reasonable efforts.

936 (2) (a) The attorney general's office shall adopt, print, and distribute a form for the
937 written statement described in Subsection (1)(a)(iii).

938 (b) The statement shall be made available to the division and for distribution in
939 schools, health care facilities, local police and sheriff's offices, the division, and any other
940 appropriate office within the Department of Human Services.

941 (c) The notice shall be in simple language and include at least the following
942 information:

943 ~~[(a)]~~ (i) the conditions under which a minor may be released, hearings that may be
944 required, and the means by which the parent may access further specific information about a
945 minor's case and conditions of protective and temporary custody; and

946 ~~[(b)]~~ (ii) the rights of a minor and of the parent or guardian to legal counsel and to
947 appeal.

948 (3) If a good faith attempt was made by the peace officer or caseworker to notify the
949 parent or guardian in accordance with the requirements of Subsection (1), failure to notify shall
950 be considered to be due to circumstances beyond the control of the peace officer or caseworker
951 and may not be construed to permit a new defense to any juvenile or judicial proceeding or to
952 interfere with any rights, procedures, or investigations provided for by this chapter or Title 78,
953 Chapter 3a, Juvenile Courts.

954 Section 16. Section **62A-4a-203** is amended to read:

955 **62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain**
956 **child in home -- Exception -- Reasonable efforts for reunification.**

957 (1) Because removal of a child from ~~[his]~~ the child's home may affect protected,

958 constitutional rights of the parent, the division shall:

959 (a) when possible and appropriate, without danger to the child's ~~welfare~~ health and
960 safety, make reasonable efforts to prevent or eliminate the need for removal of a child from
961 ~~his~~ the child's home prior to placement in substitute care;

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

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

969 (2) In determining the reasonableness of efforts needed to maintain a child in ~~his~~ the
970 child's home or to return a child to ~~his~~ the child's home, in accordance with Subsection (1)(a)
971 or (c), the child's health~~;~~ and safety~~;~~ ~~and welfare~~ shall be the ~~paramount~~ primary concern.
972 Additionally, the division shall consider whether those services would be effective within a
973 six-month period, and whether they would be likely to prevent reabuse or continued neglect of
974 the child.

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

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

983 Section 17. Section **62A-4a-205** is amended to read:

984 **62A-4a-205. Treatment plans.**

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

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

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

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

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

993 (ii) the child;

994 (iii) the child's foster parents; and

995 (iv) where appropriate, the child's stepparent.

996 (b) In relation to all information considered by the division in developing a treatment
997 plan, additional weight and attention shall be given to the input of the child's natural and foster
998 parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii)[-], including their
999 preference to participate in a particular treatment program or receive services from a particular
1000 medical or mental health professional.

1001 (4) (a) The division shall attempt to develop a treatment plan with which the parents
1002 agree.

1003 (b) If a parent does not agree to the treatment plan, the division shall inform the court
1004 of the disagreement and the parent shall be permitted to submit an alternate treatment plan for
1005 the court's consideration.

1006 (c) The court shall give equal consideration to the division's and the parent's proposals.

1007 [~~(4)~~] (5) A copy of the treatment plan shall be provided to the guardian ad litem[-] and
1008 to the child's natural parents and foster parents immediately upon completion, or as soon as is
1009 reasonably possible thereafter.

1010 [~~(5)~~] (6) Each treatment plan shall specifically provide for the safety of the child, in
1011 accordance with federal law, and clearly define what actions or precautions will, or may be,
1012 necessary to provide for the health, safety, and protection[-, ~~and welfare~~] of the child.

1013 [~~(6)~~] (7) The plan shall set forth, with specificity, at least the following:

1014 (a) the reason the child entered [~~Division of Child and Family Services~~] the division's
1015 custody[-, and];

1016 (b) documentation of the reasonable efforts made to prevent placement[-] or
1017 [~~documentation of~~] the emergency situation that existed and that prevented reasonable efforts;

1018 [~~(b)~~] (c) the primary permanency goal for the child and the reason for selection of that
1019 goal;

1020 ~~[(e)]~~ (d) the concurrent permanency goal for the child and the reason for the selection
1021 of that goal;

1022 ~~[(d)]~~ (e) if the plan is for the child to return to the child's family, specifically what the
1023 parents must do in order to enable the child to be returned home~~[-specifically]~~ including how
1024 those requirements may be accomplished~~[-]~~ and how those requirements will be measured;

1025 ~~[(e)]~~ (f) the specific services needed to reduce the problems that necessitated placement
1026 in the division's custody, and who will provide for and be responsible for case management;

1027 ~~[(f)]~~ (g) a parent-time schedule between the natural parent and the child;

1028 ~~[(g)]~~ (h) the health care to be provided to the child~~[-]~~ and the mental health care to be
1029 provided to address any known or diagnosed mental health needs of the child~~[- If residential~~
1030 ~~treatment, rather than a foster home, is the proposed placement, a specialized assessment of the~~
1031 ~~child's health needs shall be conducted, including an assessment of mental illness and behavior~~
1032 ~~and conduct disorders]~~; and

1033 ~~[(h)]~~ (i) social summaries that include case history information pertinent to case
1034 planning.

1035 (8) (a) For purposes of Subsection (7)(g), parent-time may be denied only:

1036 (i) to protect the physical safety or life of the child; or

1037 (ii) if the child suffered at the hands of the parent:

1038 (A) sexual abuse or sexual exploitation; or

1039 (B) serious physical abuse or mental cruelty, and parent-time would cause the child
1040 serious emotional anguish.

1041 (b) For purposes of Subsection (7)(h):

1042 (i) if residential treatment, rather than a foster home, is the proposed placement, a
1043 specialized assessment of the child's health needs shall be conducted, including an assessment
1044 of mental illness and behavior and conduct disorders; and

1045 (ii) parents retain the right to seek separate medical and mental health diagnoses from
1046 licensed or other practitioners of their choice.

1047 ~~[(7)]~~ (9) (a) Each treatment plan shall be specific to each child and the child's family,
1048 rather than general. The division shall train its workers to develop treatment plans that comply
1049 with federal mandates and the specific needs of the particular child and the child's family.

1050 (b) All treatment plans and expectations shall be individualized and contain specific

1051 time frames.

1052 (c) Treatment plans shall address problems that keep children in placement and keep
1053 them from achieving permanence in their lives[;], but shall be limited:

1054 (i) to addressing findings made by the court; and

1055 (ii) to other items requested or approved by the child's parents.

1056 (d) Treatment plans shall be reasonable and may not cause undue hardship to the
1057 parents or child.

1058 [~~(d)~~] (e) The child's natural parents, foster parents, and where appropriate, stepparents,
1059 shall be kept informed of and supported to participate in important meetings and procedures
1060 related to the child's placement.

1061 [~~(8)~~] (10) With regard to a child who is three years of age or younger, if the goal is not
1062 to return the child home, the permanency plan for that child shall be adoption. However, if the
1063 division documents to the court that there is a compelling reason that adoption, reunification,
1064 guardianship, and kinship placement are not in the child's best interest, the court may order
1065 another planned permanent living arrangement in accordance with federal law.

1066 Section 18. Section **62A-4a-206** is amended to read:

1067 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**
1068 **process.**

1069 (1) (a) The Legislature finds that, except with regard to a child's natural parent or legal
1070 guardian, a foster family has a very limited but recognized interest in its familial relationship
1071 with a foster child who has been in the care and custody of that family. In making
1072 determinations regarding removal of a child from a foster home, the division may not dismiss
1073 the foster family as a mere collection of unrelated individuals.

1074 (b) The Legislature finds that children in the temporary custody and custody of the
1075 division are experiencing multiple changes in foster care placements with little or no
1076 documentation, and that numerous studies of child growth and development emphasize the
1077 importance of stability in foster care living arrangements.

1078 (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide
1079 procedural due process for a foster family prior to removal of a foster child from their home,
1080 regardless of the length of time the child has been in that home, unless removal is for the
1081 purpose of:

- 1082 (i) returning the child to the child's natural parent or legal guardian;
- 1083 (ii) immediately placing the child in an approved adoptive home;
- 1084 (iii) placing the child with a relative, as defined in Subsection 78-3a-307(5)(d), who
- 1085 obtained custody or asserted an interest in the child within the preference period described in
- 1086 Subsection 78-3a-307(8); or
- 1087 (iv) placing an Indian child in accordance with preplacement preferences and other
- 1088 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

1089 (2) (a) The division shall maintain and utilize due process procedures for removal of a
1090 foster child from a foster home, in accordance with the procedures and requirements of Title
1091 63, Chapter 46b, Administrative Procedures Act.

- 1092 (b) Those procedures shall include requirements for:
 - 1093 (i) personal communication with and explanation to foster parents prior to removal of
 - 1094 the child; and
 - 1095 (ii) an opportunity for foster parents to present their information and concerns to the
 - 1096 division and to request a review by a third party neutral fact finder prior to removal of the
 - 1097 child.

1098 (c) If the division determines that there is a reasonable basis to believe that the child is
1099 in danger or that there is a substantial threat of danger to the health or ~~welfare~~ physical safety
1100 of the child, it shall place the child in emergency foster care during the pendency of the
1101 procedures described in this subsection, instead of making another foster care placement.

1102 (3) If the division removes a child from a foster home based upon the child's statement
1103 alone, the division shall initiate and expedite the processes described in Subsection (2). The
1104 division may take no formal action with regard to that foster parent's license until after those
1105 processes, in addition to any other procedure or hearing required by law, have been completed.

1106 (4) When a complaint is made to the division by a foster child against a foster parent,
1107 the division shall, within 30 business days, provide the foster parent with information
1108 regarding:

- 1109 (a) the specific nature of the complaint[;];
- 1110 (b) the time and place of the alleged incident[;]; and
- 1111 (c) who was alleged to have been involved.

1112 (5) Whenever the division places a child in a foster home, it shall provide the foster

1113 parents with:

1114 (a) notification of the requirements of this section;

1115 (b) a written description of the procedures enacted by the division pursuant to
1116 Subsection (2) and how to access those processes; and

1117 (c) written notification of the foster parents' ability to petition the juvenile court
1118 directly for review of a decision to remove a foster child who has been in their custody for 12
1119 months or longer, in accordance with the limitations and requirements of Section 78-3a-315.

1120 (6) The requirements of this section do not apply to the removal of a child based on a
1121 foster parent's request for that removal.

1122 Section 19. Section **62A-4a-209** is amended to read:

1123 **62A-4a-209. Emergency kinship placement.**

1124 (1) The division may use an emergency kinship placement under Subsection
1125 62A-4a-202.1[~~(6)~~] (4) when:

1126 (a) the case worker has made the determination that:

1127 (i) the child's home is unsafe;

1128 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

1129 (iii) the child's custodial parent or guardian will agree to not remove the child from the
1130 relative's home who serves as the kinship placement and not have any contact with the child
1131 until after the shelter hearing required by Section 78-3a-306;

1132 (b) a relative, with preference being given to a noncustodial parent in accordance with
1133 Section 78-3a-307, can be identified who has the ability and is willing to provide care for the
1134 child who would otherwise be placed in shelter care, including:

1135 (i) taking the child to medical, mental health, dental, and educational appointments at
1136 the request of the division; and

1137 (ii) the relative has the ability to make the child available to division services and the
1138 guardian ad litem; and

1139 (c) the relative agrees to care for the child on an emergency basis under the following
1140 conditions:

1141 (i) the relative meets the criteria for an emergency kinship placement under Subsection
1142 (2);

1143 (ii) the relative agrees to not allow the custodial parent or guardian to have any contact

- 1144 with the child until after the shelter hearing unless authorized by the division in writing;
- 1145 (iii) the relative agrees to contact law enforcement and the division if the custodial
1146 parent or guardian attempts to make unauthorized contact with the child;
- 1147 (iv) the relative agrees to allow the division and the child's guardian ad litem to have
1148 access to the child;
- 1149 (v) the relative has been informed and understands that the division may continue to
1150 search for other possible kinship placements for long-term care, if needed;
- 1151 (vi) the relative is willing to assist the custodial parent or guardian in reunification
1152 efforts at the request of the division, and to follow all court orders; and
- 1153 (vii) the child is comfortable with the relative.
- 1154 (2) Before the division places a child in an emergency kinship placement, the division
1155 must:
- 1156 (a) request the name of a reference and when possible, contact the reference and
1157 determine the answer to the following questions:
- 1158 (i) would the person identified as a reference place a child in the home of the
1159 emergency kinship placement; and
- 1160 (ii) are there any other relatives to consider as a possible emergency or long-term
1161 placement for the child;
- 1162 (b) have the custodial parent or guardian sign an emergency kinship placement
1163 agreement form during the investigation;
- 1164 (c) complete a criminal background check described in Sections 62A-4a-202.4 and
1165 78-3a-307.1 on all persons living in the relative's household;
- 1166 (d) complete a home inspection of the relative's home; and
- 1167 (e) have the emergency kinship placement approved by a family service specialist.
- 1168 (3) As soon as possible after the emergency placement and prior to the shelter hearing
1169 required by Section 78-3a-306, the division shall convene a family unity meeting.
- 1170 (4) After an emergency kinship placement, the division caseworker must:
- 1171 (a) respond to the emergency kinship placement's calls within one hour if the custodial
1172 parents or guardians attempt to make unauthorized contact with the child or attempt to remove
1173 the child;
- 1174 (b) complete all removal paperwork, including the notice provided to the custodial

1175 parents and guardians under Section 78-3a-306;

1176 (c) contact the attorney general to schedule a shelter hearing;

1177 (d) complete the kinship procedures required in Section 78-3a-307, including, within
1178 five days after placement, the criminal history record check described in Subsection (5); and

1179 (e) continue to search for other relatives as a possible long-term placement, if needed.

1180 (5) (a) In order to determine the suitability of the kinship placement and to conduct a
1181 background screening and investigation of individuals living in the household in which a child
1182 is placed, each individual living in the household in which the child is placed who has not lived
1183 in the state substantially year round for the most recent five consecutive years ending on the
1184 date the investigation is commenced shall be fingerprinted. If no disqualifying record is
1185 identified at the state level, the fingerprints shall be forwarded by the division to the Federal
1186 Bureau of Investigation for a national criminal history record check.

1187 (b) The cost of those investigations shall be borne by whomever received placement of
1188 the child, except that the division may pay all or part of the cost of those investigations if the
1189 person with whom the child is placed is unable to pay.

1190 Section 20. Section **62A-4a-302** is amended to read:

1191 **62A-4a-302. Definitions.**

1192 As used in this part[:(1) "~~Council~~", "council" means the Child Abuse Advisory
1193 Council established under Section 62A-4a-311.

1194 [~~(2) "Child abuse and neglect" means the same as the term "child abuse or neglect,"~~
1195 ~~defined in Section 62A-4a-402.~~]

1196 Section 21. Section **62A-4a-402** is amended to read:

1197 **62A-4a-402. Definitions.**

1198 As used in this part:

1199 (1) "A person responsible for a child's care" means the child's parent, guardian, or other
1200 person responsible for the child's care, whether in:

1201 (a) the same home as the child[;];

1202 (b) a relative's home[;];

1203 (c) a group, family, or center day care facility[;];

1204 (d) a foster care home[;]; or

1205 (e) a residential institution.

- 1206 (2) "Child" means a person under 18 years of age.
- 1207 (3) "Child abuse" ~~[or neglect" means causing harm or threatened harm to a child's~~
1208 ~~health or welfare.]~~ has the same meaning as "abuse" defined in Section 62A-4a-101.
- 1209 (4) "Neglect" has the same meaning as defined in Section 62A-4a-101.
- 1210 ~~[(4) "Harm or threatened harm" means damage or threatened damage to the physical or~~
1211 ~~emotional health and welfare of a child through neglect or abuse, and includes but is not~~
1212 ~~limited to:]~~
- 1213 ~~[(a) causing nonaccidental physical or mental injury;]~~
- 1214 ~~[(b) incest;]~~
- 1215 ~~[(c) sexual abuse;]~~
- 1216 ~~[(d) sexual exploitation;]~~
- 1217 ~~[(e) molestation; or]~~
- 1218 ~~[(f) repeated negligent treatment or maltreatment.]~~
- 1219 (5) "Incest" means having sexual intercourse with a person whom the perpetrator
1220 knows to be ~~[his or her]~~ the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
1221 nephew, niece, or first cousin. The relationships referred to in this Subsection (5) include:
1222 (a) blood relationships of the whole or half blood without regard to legitimacy~~[-and~~
1223 ~~include];~~
- 1224 (b) relationships of parent and child by adoption~~[-];~~ and
1225 (c) relationships of stepparent and stepchild while the marriage creating the
1226 relationship of a stepparent and stepchild exists.
- 1227 (6) "Molestation" means:
- 1228 (a) touching the anus or any part of the genitals of a child or otherwise taking indecent
1229 liberties with a child~~[-];~~ or
- 1230 (b) causing a child to take indecent liberties with the perpetrator or another with the
1231 intent to arouse or gratify the sexual desire of any person.
- 1232 (7) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or
1233 molestation directed towards a child.
- 1234 (8) (a) "Sexual exploitation of minors" means:
- 1235 (i) knowingly employing, using, persuading, inducing, enticing or coercing any minor
1236 to pose in the nude for the purpose of sexual arousal of any person or for profit~~[-or to engage];~~

1237 (ii) engaging in any sexual or simulated sexual conduct for the purpose of
1238 photographing, filming, recording, or displaying in any way the sexual or simulated sexual
1239 conduct~~[, and]~~.

1240 (b) "Sexual exploitation of minors" includes displaying, distributing, possessing for the
1241 purpose of distribution, or selling material depicting minors in the nude or engaging in sexual
1242 or simulated sexual conduct.

1243 (9) "Subject" or "subject of the report" means any person reported under this part,
1244 including, but not limited to, a child, parent, guardian, or other person responsible for a child's
1245 care.

1246 Section 22. Section **62A-4a-403** is amended to read:

1247 **62A-4a-403. Reporting requirements.**

1248 (1) Except as provided in [~~Subsection~~] Subsections (2) through (4), when any person
1249 including persons licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58,
1250 Chapter 31b, Nurse Practice Act, has [~~reason~~] probable cause to believe, and not merely
1251 suspect that the possibility exists, that a child has been subjected to incest, molestation, sexual
1252 exploitation, sexual abuse, [~~physical abuse, or neglect,~~] or a serious type of abuse or neglect
1253 described in Subsection 62A-4a-116.1(2), or who observes a child being subjected to
1254 conditions or circumstances which would reasonably result in sexual abuse, physical abuse, or
1255 neglect, [~~he~~] that person shall immediately notify the nearest peace officer, law enforcement
1256 agency, or office of the division. On receipt of this notice, the peace officer or law
1257 enforcement agency shall immediately notify the nearest office of the division. If an initial
1258 report of child abuse or neglect is made to the division, the division shall immediately notify
1259 the appropriate local law enforcement agency. The division shall, in addition to its own
1260 investigation, comply with and lend support to investigations by law enforcement undertaken
1261 pursuant to a report made under this section.

1262 (2) The notification requirements of Subsection (1) do not apply to a clergyman or
1263 priest, without the consent of the person making the confession, with regard to any confession
1264 made to [~~him~~] the clergyman or priest in [~~his~~] the clergyman's or priest's professional character
1265 in the course of discipline enjoined by the church to which [~~he~~] the clergyman or priest
1266 belongs, if:

1267 (a) the confession was made directly to the clergyman or priest by the perpetrator; and

1268 (b) the clergyman or priest is, under canon law or church doctrine or practice, bound to
1269 maintain the confidentiality of that confession.

1270 (3) (a) When a clergyman or priest receives information about incest, molestation,
1271 sexual exploitation, sexual abuse, or a serious type of abuse or neglect described in Subsection
1272 62A-4a-116.1(2) from any source other than confession of the perpetrator, [~~he~~] the clergyman
1273 or priest is required to give notification under Subsection (1) on the basis of that information
1274 even though [~~he~~] the clergyman or priest may have also received a report of abuse or neglect
1275 from the confession of the perpetrator.

1276 (b) Exemption of notification requirements for a clergyman or priest does not exempt a
1277 clergyman or priest from any other efforts required by law to prevent further abuse or neglect
1278 by the perpetrator.

1279 (4) In a case of potential medical neglect, notification under Subsection (1) is not
1280 required if the parents or guardian of the child:

1281 (a) decline treatment on behalf of the child to seek the counsel of one or more other
1282 licensed practitioners;

1283 (b) obtain counsel or treatment from a medical, mental health, or other practitioner
1284 other than the child's usual primary care doctor or specialist;

1285 (c) decline treatment on behalf of the child when the treatment poses a substantial risk
1286 of serious harm to the child's immediate or future physical or mental health;

1287 (d) obtain nontraditional treatment from a medical or mental health practitioner; or

1288 (e) otherwise act in a manner consistent with what a reasonable parent or guardian
1289 would do under similar circumstances.

1290 Section 23. Section **62A-4a-409** is amended to read:

1291 **62A-4a-409. Investigation by division -- Temporary protective custody --**

1292 **Preremoval interviews of children.**

1293 (1) The division shall make a thorough pre-removal investigation upon receiving either
1294 an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
1295 dependency, when there is [~~reasonable~~] probable cause to [suspect] believe, and not merely a
1296 possibility to suspect, that a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug
1297 dependency exists. The primary purpose of [~~that~~] the investigation shall be protection of the
1298 child.

1299 (2) The preremoval investigation shall include the same investigative requirements
1300 described in Section 62A-4a-202.3.

1301 (3) The division shall make a written report of its investigation. The written report
1302 shall include a determination regarding whether the alleged abuse or neglect was
1303 [~~substantiated, unsubstantiated~~] supported, unsupported, or without merit.

1304 (4) (a) The division shall use an interdisciplinary approach whenever possible in
1305 dealing with reports made under this part.

1306 (b) For this purpose, the division shall convene appropriate interdisciplinary "child
1307 protection teams" to assist it in its protective, diagnostic, assessment, treatment, and
1308 coordination services.

1309 (c) A representative of the division shall serve as the team's coordinator and chair.
1310 Members of the team shall serve at the coordinator's invitation, and whenever possible, the
1311 team shall include representatives of health, mental health, education, law enforcement
1312 agencies, and other appropriate agencies or individuals.

1313 (5) In any case where the division supervises, governs, or directs the affairs of any
1314 individual, institution, or facility that has been alleged to be involved in acts or omissions of
1315 child abuse or neglect, the investigation of the reported child abuse or neglect shall be
1316 conducted by an agency other than the division.

1317 (6) If a report of neglect is based upon or includes an allegation of educational neglect
1318 the division shall immediately consult with school authorities to verify the child's status in
1319 accordance with Sections 53A-11-101 through 53A-11-103.

1320 (7) When the division has completed its initial investigation under this part, it shall
1321 give notice of that completion to the person who made the initial report.

1322 (8) Division workers or other child protection team members have authority to enter
1323 upon public or private premises, using appropriate legal processes, to investigate reports of
1324 alleged child abuse or neglect.

1325 (9) With regard to any interview of a child prior to removal of that child from the
1326 child's home:

1327 (a) except as provided in Subsection (9)(b) or (c), the division shall [~~notify~~] inform a
1328 parent of the child prior to the interview[;] of:

1329 (i) the specific allegations concerning the child; and

1330 (ii) the time and place of the interview;

1331 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
1332 alleged perpetrator, the division need not notify a parent of the child prior to an initial interview
1333 with the child;

1334 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
1335 is unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the
1336 child prior to notification of the child's parent;

1337 (d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be
1338 notified as soon as practicable after the child has been interviewed, but in no case later than 24
1339 hours after the interview has taken place;

1340 (e) a child's parents shall be notified of the time and place of all subsequent interviews
1341 with the child; and

1342 (f) the child shall be allowed to have a support person of the child's choice present[-
1343 That support person: (i) may include, but is not limited to,];

1344 (i) including a school teacher [~~or~~], administrator, guidance counselor, or child care
1345 provider; and

1346 (ii) [~~may not be~~] not including a person who is alleged to be, or potentially may be, the
1347 perpetrator.

1348 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1
1349 through 62A-4a-202.3, a division worker or child protection team member may take a child
1350 into protective custody and deliver the child to a law enforcement officer, or place the child in
1351 an emergency shelter facility approved by the juvenile court, at the earliest opportunity
1352 subsequent to the child's removal from the child's original environment. Control and
1353 jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile
1354 Court Act of 1996, and as otherwise provided by law.

1355 (11) With regard to cases in which law enforcement has or is conducting an
1356 investigation of alleged abuse or neglect of a child:

1357 (a) the division shall coordinate with law enforcement to ensure that there is an
1358 adequate safety plan to protect the child from further abuse or neglect; and

1359 (b) the division is not required to duplicate an aspect of the investigation that, in the
1360 division's determination, has been satisfactorily completed by law enforcement.

1361 Section 24. Section **63-55-262** is amended to read:

1362 **63-55-262. Repeal dates, Title 62A.**

1363 [~~(1) Section 62A-4a-202.7, Pilot Program for Differentiated Responses to Child Abuse~~
1364 ~~and Neglect Reports, is repealed July 1, 2005.]~~

1365 [~~(2) Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child, is~~
1366 ~~repealed July 1, 2006.]~~

1367 Section 25. Section **76-5-109** is amended to read:

1368 **76-5-109. Child abuse.**

1369 (1) As used in this section:

1370 (a) "Child" means a human being who is under 18 years of age.

1371 (b) "Child abuse" means any offense described in Subsection (2) or (3)[;] or in Section
1372 76-5-109.1[;], but does not include:

1373 (i) unintentional incidents resulting from ordinary human error, including unintentional
1374 accidents and unintentional injuries, unless the injury, accident, or other incident was caused
1375 intentionally, knowingly, recklessly, or with criminal negligence, as defined in Section
1376 76-2-103; and

1377 (ii) reasonable parental discipline or management of a child with which a child may
1378 disagree, including prohibiting the use of an automobile or other possession and the
1379 withholding of other privileges, if the prohibiting or withholding does not constitute serious
1380 physical abuse, serious neglect, sexual abuse or exploitation, or mental cruelty.

1381 (c) "Mental cruelty" means conduct which:

1382 (i) causes serious chronic anguish in a child; and

1383 (ii) impairs the child's social and emotional functioning.

1384 [~~(c)~~] (d) "Physical injury" means an injury to or health condition of a child which
1385 [~~impairs~~] results in actual harm to the physical [condition] health of the child and is not a
1386 serious physical injury, including:

1387 (i) a bruise or other contusion of the skin;

1388 (ii) a minor laceration or abrasion; and

1389 (iii) failure to thrive or malnutrition[; ~~or~~].

1390 [~~(iv) any other condition which imperils the child's health or welfare and which is not a~~
1391 ~~serious physical injury as defined in Subsection (1)(d).]~~

1392 ~~[(d)]~~ (e) "Serious physical injury" means any physical injury or set of injuries which
1393 ~~[seriously impairs the child's]~~ results in serious harm to the physical health~~[-, or which]~~ of the
1394 child, involves physical torture ~~[or causes serious emotional harm to]~~ of the child, or which
1395 involves a substantial risk of death to the child, including:

- 1396 (i) fracture of any bone or bones;
- 1397 (ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
1398 shaking, or causing the child's head to impact with an object or surface;
- 1399 (iii) any burn, including burns inflicted by hot water, or those caused by placing a hot
1400 object upon the skin or body of the child;
- 1401 (iv) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
- 1402 (v) any combination of two or more physical injuries inflicted by the same person,
1403 either at the same time or on different occasions;
- 1404 (vi) any damage to internal organs of the body;
- 1405 (vii) any conduct toward a child which results in ~~[severe emotional harm, severe]~~
1406 serious developmental delay or retardation[;] or ~~[severe]~~ serious impairment of the child's
1407 ability to function;
- 1408 (viii) any injury which creates a permanent disfigurement or protracted loss or
1409 impairment of the function of a bodily member, limb, or organ;
- 1410 (ix) any conduct which causes a child to cease breathing, even if resuscitation is
1411 successful following the conduct; or
- 1412 (x) any conduct which results in starvation or failure to thrive or malnutrition that
1413 jeopardizes the child's life.

1414 (2) Any person who inflicts upon a child serious physical injury or mental cruelty or,
1415 having the care or custody of such child, causes or permits another to inflict serious physical
1416 injury or mental cruelty upon a child is guilty of an offense as follows:

- 1417 (a) if done intentionally or knowingly, the offense is a felony of the second degree;
- 1418 (b) if done recklessly, the offense is a felony of the third degree; or
- 1419 (c) if done with criminal negligence, the offense is a class A misdemeanor.

1420 (3) Any person who inflicts upon a child physical injury or, having the care or custody
1421 of such child, causes or permits another to inflict physical injury upon a child is guilty of an
1422 offense as follows:

- 1423 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
1424 (b) if done recklessly, the offense is a class B misdemeanor; or
1425 (c) if done with criminal negligence, the offense is a class C misdemeanor.
1426 (4) A parent or legal guardian who provides a child with treatment by spiritual means
1427 alone through prayer, in lieu of medical or mental health treatment, in accordance with the
1428 tenets and practices of an established church or religious denomination of which the parent or
1429 legal guardian is a member or adherent shall not, for that reason alone, be [~~deemed~~] considered
1430 to have committed an offense under this section.

1431 (5) A parent or legal guardian who refuses traditional medical or mental health
1432 treatment on behalf of a child in order for the child to receive nontraditional medical or mental
1433 health treatment under the care of a medical, mental health, or other practitioner may not, for
1434 that reason alone, be considered to have committed an offense under this section.

1435 Section 26. Section **76-5-110** is amended to read:

1436 **76-5-110. Abuse or neglect of disabled child.**

1437 (1) As used in this section:

1438 (a) "Abuse" means:

1439 (i) inflicting physical injury, as that term is defined in Section 76-5-109;

1440 (ii) having the care or custody of a disabled child, causing or permitting another to
1441 inflict physical injury, as that term is defined in Section 76-5-109; or

1442 (iii) unreasonable confinement.

1443 (b) "Caretaker" means:

1444 (i) any parent, legal guardian, or other person having under [~~his~~] the person's care and
1445 custody a disabled child; or

1446 (ii) any person, corporation, or public institution that has assumed by contract or court
1447 order the responsibility to provide food, shelter, clothing, medical or mental health, and other
1448 necessities to a disabled child.

1449 (c) "Disabled child" means any person under 18 years of age who is impaired because
1450 of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent
1451 that [~~he~~] the person is unable to care for his own personal safety or to provide necessities such
1452 as food, shelter, clothing, and medical care.

1453 (d) "Neglect" means failure by a caretaker to provide reasonable care, nutrition,

1454 clothing, shelter, supervision, or medical care.

1455 (2) Any caretaker who abuses or neglects a disabled child is guilty of a third degree
1456 felony.

1457 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual
1458 means alone through prayer, in lieu of medical or mental health treatment, in accordance with
1459 the tenets and practices of an established church or religious denomination of which the parent
1460 or legal guardian is a member or adherent shall not, for that reason alone, be considered to be
1461 in violation under this section.

1462 (b) The exception under Subsection (3)(a) shall not preclude a court from ordering,
1463 subject to the limits of Subsection 78-3a-118(2)(n), medical services from a [~~physician~~]
1464 licensed [~~to engage in the practice of medicine~~] medical practitioner to be provided to the child
1465 where there is substantial risk of harm to the child's physical health [~~or welfare~~] if the treatment
1466 is not provided.

1467 Section 27. Section **78-3a-102** is amended to read:

1468 **78-3a-102. Establishment of juvenile court -- Organization and status of court --**
1469 **Purpose.**

1470 (1) There is established for the state a juvenile court.

1471 (2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks,
1472 and referees have the power to administer oaths and affirmations.

1473 (3) The juvenile court is of equal status with the district courts of the state.

1474 (4) The juvenile court is established as a forum for the resolution of all matters
1475 properly brought before it, consistent with applicable constitutional and statutory requirements
1476 of due process.

1477 (5) The purpose of the court under this chapter is to:

1478 (a) promote public safety and individual accountability by the imposition of
1479 appropriate sanctions on persons who have committed acts in violation of law;

1480 (b) order appropriate measures to promote guidance and control, preferably in the
1481 minor's own home, as an aid in the prevention of future unlawful conduct and the development
1482 of responsible citizenship;

1483 (c) where appropriate, order rehabilitation, reeducation, and treatment for persons who
1484 have committed acts bringing them within the court's jurisdiction;

1485 (d) adjudicate matters that relate to minors who are beyond parental or adult control
 1486 and to establish appropriate authority over these minors by means of placement and control
 1487 orders;

1488 (e) adjudicate matters that relate to abused, neglected, and dependent minors and to
 1489 provide care and protection for these minors by placement, protection, and custody orders;

1490 (f) remove a minor from parental custody only where the minor's health or safety [~~or~~
 1491 ~~welfare~~], or the public safety, may not otherwise be adequately safeguarded; and

1492 (g) consistent with the ends of justice, strive to act in the best interests of [~~the minor's~~
 1493 minors] in all cases and attempt to preserve and strengthen family ties where possible.

1494 Section 28. Section **78-3a-103 (Superseded 07/01/04)** is amended to read:

1495 **78-3a-103 (Superseded 07/01/04). Definitions.**

1496 (1) As used in this chapter:

1497 (a) (i) "Abused child" [~~includes~~] means a minor less than 18 years of age who [~~:(i)~~] has
 1498 suffered [~~or been threatened with nonaccidental physical or mental harm, negligent treatment,~~
 1499 ~~or sexual exploitation; or (ii) has been the victim of any sexual abuse.:~~];

1500 (A) physical abuse;

1501 (B) serious physical abuse;

1502 (C) mental cruelty;

1503 (D) sexual exploitation; or

1504 (E) sexual abuse.

1505 (ii) "Abused child" does not include a child who has been the subject of:

1506 (A) unintentional incidents resulting from ordinary human error, including
 1507 unintentional accidents and unintentional injuries; and

1508 (B) reasonable parental discipline or management with which the child may disagree,
 1509 including prohibiting the use of an automobile or other possession and the withholding of other
 1510 privileges, if the prohibiting or withholding does not constitute serious physical abuse, serious
 1511 neglect, sexual abuse or exploitation, or mental cruelty.

1512 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
 1513 alleged in the petition have been proved.

1514 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or
 1515 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall

1516 be referred to as minors.

1517 (d) "Board" means the Board of Juvenile Court Judges.

1518 (e) "Child placement agency" means:

1519 (i) a private agency licensed to receive minors for placement or adoption under this

1520 code; or

1521 (ii) a private agency receiving minors for placement or adoption in another state, which
1522 agency is licensed or approved where such license or approval is required by law.

1523 (f) "Commit" means to transfer legal custody.

1524 (g) "Court" means the juvenile court.

1525 (h) "Dependent child" includes a minor who is homeless or without ~~proper~~ adequate
1526 care through no fault of ~~his~~ the minor's parent, guardian, or custodian.

1527 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent
1528 or the parents or a previous legal custodian to another person, agency, or institution.

1529 (j) "Detention" means home detention and secure detention as defined in Section
1530 62A-7-101 for the temporary care of minors who require secure custody in physically
1531 restricting facilities:

1532 (i) pending court disposition or transfer to another jurisdiction; or

1533 (ii) while under the continuing jurisdiction of the court.

1534 (k) "Division" means the Division of Child and Family Services.

1535 (l) "Formal referral" means a written report from a peace officer or other person
1536 informing the court that a minor is or appears to be within the court's jurisdiction and that a
1537 petition may be filed.

1538 (m) "Group rehabilitation therapy" means psychological and social counseling of one
1539 or more persons in the group, depending upon the recommendation of the therapist.

1540 (n) "Guardianship of the person" includes the authority to consent to:

1541 (i) marriage~~[-to]~~;

1542 (ii) enlistment in the armed forces~~[-to]~~;

1543 (iii) major medical~~[-]~~ or surgical~~[-or]~~ treatment;

1544 (iv) psychiatric or other mental health treatment~~[-]~~; and ~~[to]~~

1545 (v) legal custody, if legal custody is not vested in another person, agency, or institution.

1546 (o) "Habitual truant" is a school-age minor who has received more than two truancy

1547 citations within one school year from the school in which the minor is or should be enrolled
 1548 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the
 1549 part of school authorities as required under Section 53A-11-103, refuses to regularly attend
 1550 school or any scheduled period of the school day.

1551 (p) "Legal custody" means a relationship embodying the following rights and duties:

1552 (i) the right to physical custody of the minor;

1553 (ii) the right and duty to protect, train, and discipline the minor;

1554 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
 1555 medical care;

1556 (iv) the right to determine where and with whom the minor shall live; and

1557 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1558 (q) "Mental cruelty" has the same meaning as defined in Section 76-5-109.

1559 ~~[(q)]~~ (r) "Minor" means a person under the age of 18 years. It includes the term "child"
 1560 as used in other parts of this chapter.

1561 ~~[(r)]~~ (s) "Natural parent" means a minor's biological or adoptive parent, and includes
 1562 the minor's noncustodial parent.

1563 ~~[(s)]~~ (t) (i) "Neglected child" means a minor~~[:-(A)]~~ whose parent, guardian, or
 1564 custodian has demonstrated repeated failure to provide adequate food, shelter, clothing,
 1565 training, or physical safety to the minor.

1566 (ii) "Neglected child" includes a minor whose parent, guardian, or custodian has:

1567 (A) abandoned the minor, except as provided in Title 62A, Chapter 4a, Part 8, Safe
 1568 Relinquishment of a Newborn Child; and

1569 (B) demonstrated a lack of adequate care for the minor.

1570 ~~[(B) whose parent, guardian, or custodian has subjected the minor to mistreatment or~~
 1571 ~~abuse;]~~

1572 ~~[(C) who lacks proper parental care by reason of the fault or habits of the parent,~~
 1573 ~~guardian, or custodian;]~~

1574 ~~[(D) whose parent, guardian, or custodian fails or refuses to provide proper or~~
 1575 ~~necessary subsistence, education, or medical care, including surgery or psychiatric services~~
 1576 ~~when required, or any other care necessary for health, safety, morals, or well-being; or]~~

1577 ~~[(E) who is at risk of being a neglected or abused child as defined in this chapter~~

1578 because another minor in the same home is a neglected or abused child as defined in this
1579 chapter.]

1580 ~~[(ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D);~~
1581 ~~means that, after receiving notice that a minor has been frequently absent from school without~~
1582 ~~good cause, or that the minor has failed to cooperate with school authorities in a reasonable~~
1583 ~~manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives~~
1584 ~~an appropriate education.]~~

1585 (iii) ~~[A] "Neglected child" does not include a minor whose parent [or], guardian, or~~
1586 ~~custodian:~~

1587 ~~(A) is legitimately practicing religious beliefs and who, for that reason, does not~~
1588 ~~provide specified medical or mental health treatment for [a] the minor[; ~~is not guilty of~~~~
1589 ~~neglect.]; and~~

1590 ~~(B) who experiences unintentional incidents, or reasonable parental discipline or~~
1591 ~~management, described in Subsection (1)(a)(ii).~~

1592 ~~[(t)] (u) "Nonjudicial adjustment" means closure of the case by the assigned probation~~
1593 ~~officer without judicial determination upon the consent in writing of the minor, the parent,~~
1594 ~~legal guardian or custodian, and the assigned probation officer.~~

1595 ~~(v) "Physical abuse" has the same meaning as "physical injury," as defined in Section~~
1596 ~~76-5-109.~~

1597 ~~[(t)] (w) "Probation" means a legal status created by court order following an~~
1598 ~~adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the~~
1599 ~~minor is permitted to remain in [his] the minor's home under prescribed conditions and under~~
1600 ~~supervision by the probation department or other agency designated by the court, subject to~~
1601 ~~return to the court for violation of any of the conditions prescribed.~~

1602 ~~[(v)] (x) "Protective supervision" means a legal status created by court order following~~
1603 ~~an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted~~
1604 ~~to remain in [his] the minor's home, and supervision and assistance to correct the abuse,~~
1605 ~~neglect, or dependency is provided by the probation department or other agency designated by~~
1606 ~~the court.~~

1607 ~~[(w)] (y) "Residual parental rights and duties" means those rights and duties remaining~~
1608 ~~with the parent after legal custody or guardianship, or both, have been vested in another person~~

1609 or agency, including the responsibility for support, the right to consent to adoption, the right to
 1610 determine the child's religious affiliation, and the right to reasonable parent-time unless
 1611 restricted by the court. If no guardian has been appointed, "residual parental rights and duties"
 1612 also include the right to consent to marriage, to enlistment, and to major medical, surgical, or
 1613 psychiatric or other mental health treatment.

1614 ~~[(x)]~~ (z) "Secure facility" means any facility operated by or under contract with the
 1615 Division of Youth Corrections, that provides 24-hour supervision and confinement for youth
 1616 offenders committed to the division for custody and rehabilitation.

1617 (aa) "Serious neglect" has the same meaning as defined in Section 62A-4a-101.

1618 (bb) "Serious physical abuse" has the same meaning as "serious physical injury"
 1619 defined in Section 76-5-109.

1620 ~~[(y)]~~ (cc) "Shelter" means the temporary care of minors in physically unrestricted
 1621 facilities pending court disposition or transfer to another jurisdiction.

1622 ~~[(z)]~~ (dd) "State supervision" means a disposition which provides a more intensive
 1623 level of intervention than standard probation but is less intensive or restrictive than a
 1624 community placement with the Division of Youth Corrections.

1625 ~~[(aa)]~~ (ee) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

1626 ~~[(bb)]~~ (ff) "Supported" has the same meaning as defined in Section 62A-4a-101.

1627 ~~[(cc)]~~ (gg) "Termination of parental rights" means the permanent elimination of all
 1628 parental rights and duties, including residual parental rights and duties, by court order.

1629 ~~[(dd)]~~ (hh) "Therapist" means a person employed by a state division or agency for the
 1630 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
 1631 other person licensed or approved by the state for the purpose of conducting psychological
 1632 treatment and counseling.

1633 ~~[(ee)]~~ (ii) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

1634 ~~[(ff)]~~ (jj) "Without merit" has the same meaning as defined in Section 62A-4a-101.

1635 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
 1636 division ~~[of Child and Family Services]~~:

1637 (a) "Custody" means the custody of a minor in the division ~~[of Child and Family~~
 1638 ~~Services]~~ as of the date of disposition.

1639 (b) "Protective custody" means the shelter of a minor by the division ~~[of Child and~~

1640 Family Services] from the time the minor is removed from home until the shelter hearing, or
1641 the minor's return home, whichever occurs earlier.

1642 (c) "Temporary custody" means the custody of a minor in the division [~~of Child and~~
1643 Family Services] from the date of the shelter hearing until disposition.

1644 Section 29. Section **78-3a-103 (Effective 07/01/04)** is amended to read:

1645 **78-3a-103 (Effective 07/01/04). Definitions.**

1646 (1) As used in this chapter:

1647 (a) (i) "Abused child" [~~includes~~] means a minor less than 18 years of age who [~~:(i)~~] has
1648 suffered [~~or been threatened with nonaccidental physical or mental harm, negligent treatment,~~
1649 ~~or sexual exploitation; or (ii) has been the victim of any sexual abuse.];~~

1650 (A) physical abuse;

1651 (B) serious physical abuse;

1652 (C) mental cruelty;

1653 (D) sexual exploitation; or

1654 (E) sexual abuse.

1655 (ii) "Abused child" does not include a child who has been the subject of:

1656 (A) unintentional incidents resulting from ordinary human error, including
1657 unintentional accidents and unintentional injuries, unless the injury, accident, or other incident
1658 was caused intentionally, knowingly, recklessly, or with criminal negligence, as defined in
1659 Section 76-2-103; and

1660 (B) reasonable parental discipline or management with which the child may disagree,
1661 including prohibiting the use of an automobile or other possession and the withholding of other
1662 privileges, if the prohibiting or withholding does not constitute serious physical abuse, serious
1663 neglect, sexual abuse or exploitation, or mental cruelty.

1664 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
1665 alleged in the petition have been proved.

1666 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or
1667 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall
1668 be referred to as minors.

1669 (d) "Board" means the Board of Juvenile Court Judges.

1670 (e) "Child placement agency" means:

- 1671 (i) a private agency licensed to receive minors for placement or adoption under this
1672 code; or
- 1673 (ii) a private agency receiving minors for placement or adoption in another state, which
1674 agency is licensed or approved where such license or approval is required by law.
- 1675 (f) "Commit" means to transfer legal custody.
- 1676 (g) "Court" means the juvenile court.
- 1677 (h) "Dependent child" includes a minor who is homeless or without ~~[proper]~~ adequate
1678 care through no fault of ~~[his]~~ the minor's parent, guardian, or custodian.
- 1679 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent
1680 or the parents or a previous legal custodian to another person, agency, or institution.
- 1681 (j) "Detention" means home detention and secure detention as defined in Section
1682 62A-7-101 for the temporary care of minors who require secure custody in physically
1683 restricting facilities:
- 1684 (i) pending court disposition or transfer to another jurisdiction; or
- 1685 (ii) while under the continuing jurisdiction of the court.
- 1686 (k) "Division" means the Division of Child and Family Services.
- 1687 (l) "Formal referral" means a written report from a peace officer or other person
1688 informing the court that a minor is or appears to be within the court's jurisdiction and that a
1689 petition may be filed.
- 1690 (m) "Group rehabilitation therapy" means psychological and social counseling of one
1691 or more persons in the group, depending upon the recommendation of the therapist.
- 1692 (n) "Guardianship of the person" includes the authority to consent to:
- 1693 (i) marriage~~[-, to]~~;
- 1694 (ii) enlistment in the armed forces~~[-, to]~~;
- 1695 (iii) major medical~~[-]~~ or surgical~~[-, or]~~ treatment;
- 1696 (iv) psychiatric or other mental health treatment~~[-]~~; and ~~[to]~~
- 1697 (v) legal custody, if legal custody is not vested in another person, agency, or institution.
- 1698 (o) "Habitual truant" is a school-age minor who has received more than two truancy
1699 citations within one school year from the school in which the minor is or should be enrolled
1700 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the
1701 part of school authorities as required under Section 53A-11-103, refuses to regularly attend

1702 school or any scheduled period of the school day.

1703 (p) "Legal custody" means a relationship embodying the following rights and duties:

1704 (i) the right to physical custody of the minor;

1705 (ii) the right and duty to protect, train, and discipline the minor;

1706 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
1707 medical care;

1708 (iv) the right to determine where and with whom the minor shall live; and

1709 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1710 (q) "Mental cruelty" has the same meaning as defined in Section 76-5-109.

1711 ~~(r)~~ (r) "Minor" means a person under the age of 18 years. It includes the term "child"
1712 as used in other parts of this chapter.

1713 ~~(s)~~ (s) "Natural parent" means a minor's biological or adoptive parent, and includes
1714 the minor's noncustodial parent.

1715 ~~(t)~~ (t) (i) "Neglected child" means a minor~~[(A)]~~ whose parent, guardian, or
1716 custodian has demonstrated repeated failure to provide adequate food, shelter, clothing,
1717 training, or physical safety to the minor.

1718 (ii) "Neglected child" includes a minor whose parent, guardian, or custodian has:

1719 (A) abandoned the minor, except as provided in Title 62A, Chapter 4a, Part 8, Safe
1720 Relinquishment of a Newborn Child; and

1721 (B) demonstrated a lack of adequate care for the minor.

1722 ~~(B) whose parent, guardian, or custodian has subjected the minor to mistreatment or~~
1723 ~~abuse;]~~

1724 ~~(C) who lacks proper parental care by reason of the fault or habits of the parent,~~
1725 ~~guardian, or custodian;]~~

1726 ~~(D) whose parent, guardian, or custodian fails or refuses to provide proper or~~
1727 ~~necessary subsistence, education, or medical care, including surgery or psychiatric services~~
1728 ~~when required, or any other care necessary for health, safety, morals, or well-being; or]~~

1729 ~~(E) who is at risk of being a neglected or abused child as defined in this chapter~~
1730 ~~because another minor in the same home is a neglected or abused child as defined in this~~
1731 ~~chapter.]~~

1732 (ii) ~~The aspect of neglect related to education, described in Subsection (1)(s)(i)(D);~~

1733 ~~means that, after receiving notice that a minor has been frequently absent from school without~~
1734 ~~good cause, or that the minor has failed to cooperate with school authorities in a reasonable~~
1735 ~~manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives~~
1736 ~~an appropriate education.]~~

1737 (iii) ~~[A]~~ "Neglected child" does not include a minor whose parent ~~[or], guardian, or~~
1738 custodian:

1739 (A) is legitimately practicing religious beliefs and who, for that reason, does not
1740 provide specified medical or mental health treatment for [a] the minor~~[-is not guilty of~~
1741 ~~neglect.]; and~~

1742 (B) who experiences unintentional incidents, or reasonable parental discipline or
1743 management, described in Subsection (1)(a)(ii).

1744 ~~[(t)]~~ (u) "Nonjudicial adjustment" means closure of the case by the assigned probation
1745 officer without judicial determination upon the consent in writing of the minor, the parent,
1746 legal guardian or custodian, and the assigned probation officer.

1747 (v) "Physical abuse" has the same meaning as "physical injury," as defined in Section
1748 76-5-109.

1749 ~~[(tt)]~~ (w) "Probation" means a legal status created by court order following an
1750 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
1751 minor is permitted to remain in ~~[his]~~ the minor's home under prescribed conditions and under
1752 supervision by the probation department or other agency designated by the court, subject to
1753 return to the court for violation of any of the conditions prescribed.

1754 ~~[(tv)]~~ (x) "Protective supervision" means a legal status created by court order following
1755 an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted
1756 to remain in ~~[his]~~ the minor's home, and supervision and assistance to correct the abuse,
1757 neglect, or dependency is provided by the probation department or other agency designated by
1758 the court.

1759 ~~[(tw)]~~ (y) "Residual parental rights and duties" means those rights and duties remaining
1760 with the parent after legal custody or guardianship, or both, have been vested in another person
1761 or agency, including the responsibility for support, the right to consent to adoption, the right to
1762 determine the child's religious affiliation, and the right to reasonable parent-time unless
1763 restricted by the court. If no guardian has been appointed, "residual parental rights and duties"

1764 also include the right to consent to marriage, to enlistment, and to major medical, surgical, or
1765 psychiatric or other mental health treatment.

1766 [~~(x)~~] (z) "Secure facility" means any facility operated by or under contract with the
1767 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
1768 youth offenders committed to the division for custody and rehabilitation.

1769 (aa) "Serious neglect" has the same meaning as defined in Section 62A-4a-101.

1770 (bb) "Serious physical abuse" has the same meaning as "serious physical injury," as
1771 defined in Section 76-5-109.

1772 [~~(y)~~] (cc) "Shelter" means the temporary care of minors in physically unrestricted
1773 facilities pending court disposition or transfer to another jurisdiction.

1774 [~~(z)~~] (dd) "State supervision" means a disposition which provides a more intensive
1775 level of intervention than standard probation but is less intensive or restrictive than a
1776 community placement with the Division of Juvenile Justice Services.

1777 [~~(aa)~~] (ee) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

1778 [~~(bb)~~] (ff) "Supported" has the same meaning as defined in Section 62A-4a-101.

1779 [~~(cc)~~] (gg) "Termination of parental rights" means the permanent elimination of all
1780 parental rights and duties, including residual parental rights and duties, by court order.

1781 [~~(dd)~~] (hh) "Therapist" means a person employed by a state division or agency for the
1782 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
1783 other person licensed or approved by the state for the purpose of conducting psychological
1784 treatment and counseling.

1785 [~~(ee)~~] (ii) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

1786 [~~(ff)~~] (jj) "Without merit" has the same meaning as defined in Section 62A-4a-101.

1787 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
1788 division [~~of Child and Family Services~~]:

1789 (a) "Custody" means the custody of a minor in the division [~~of Child and Family~~
1790 ~~Services~~] as of the date of disposition.

1791 (b) "Protective custody" means the shelter of a minor by the division [~~of Child and~~
1792 ~~Family Services~~] from the time the minor is removed from home until the shelter hearing, or
1793 the minor's return home, whichever occurs earlier.

1794 (c) "Temporary custody" means the custody of a minor in the division [~~of Child and~~

1795 Family Services] from the date of the shelter hearing until disposition.

1796 Section 30. Section **78-3a-106** is amended to read:

1797 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

1798 (1) The court has authority to issue search warrants, subpoenas, or investigative
1799 subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for
1800 the same purposes, in the same manner and pursuant to the same procedures set forth in the
1801 code of criminal procedure for the issuance of search warrants, subpoenas, or investigative
1802 subpoenas in other trial courts in the state.

1803 (2) (a) The court may issue a warrant authorizing a child protective services worker or
1804 peace officer to search for a child and take the child into protective custody if:

1805 (i) it appears to the court upon a verified petition, recorded sworn testimony or an
1806 affidavit sworn to by a peace officer or any other person, and upon the examination of other
1807 witnesses, if required by the judge, that there is probable cause to believe that ~~[(i) there is an~~
1808 ~~immediate threat to the safety of a child]~~ without protective custody the child will be at
1809 substantial imminent risk of a serious type of abuse or neglect described in Subsection
1810 62A-4a-116.1(2); and

1811 (ii) the applicant certifies to the court in writing or by recorded sworn testimony as to
1812 the efforts, if any, that have been made to give notice to the minor's parent or guardian and the
1813 reasons supporting the claim that notice and an opportunity to be heard should not be required.

1814 (b) A warrant removing a child from ~~[his]~~ the child's home or school, or having the
1815 effect of depriving a parent or guardian of the care, custody, and control of their minor child,
1816 may not be issued without notice to the minor's parents and opportunity to be heard unless the
1817 requirements of ~~[Subsections]~~ Subsection (2)(a)[(i) and (ii)] have been satisfied.

1818 (c) In a case of potential medical neglect, a warrant may not be issued under this
1819 Subsection (2):

1820 (i) on the basis alone that the parents or guardian have:

1821 (A) declined treatment on behalf of the child to seek the counsel of one or more other
1822 licensed practitioners;

1823 (B) obtained counsel or treatment from a medical, mental health, or other practitioner
1824 other than the child's usual primary care doctor or specialist;

1825 (C) declined treatment on behalf of the child when the treatment poses a substantial

1826 risk of serious harm to the child's immediate or future physical or mental health;

1827 (D) obtained nontraditional treatment from a medical or mental health practitioner; or

1828 (E) otherwise acted in a manner consistent with what a reasonable parent or guardian

1829 would do under similar circumstances; and

1830 (ii) unless not practicable, a warrant may not be issued on the basis of medical neglect

1831 until the court examines the parents' or guardian's oral or written responses to the allegation of

1832 medical or mental health neglect.

1833 [~~(e)~~] (d) Pursuant to Section 77-23-210, a peace officer making the search may enter a

1834 house or premises by force, if necessary, in order to remove the child.

1835 [~~(d)~~] (e) The person executing the warrant shall then take the child to the place of

1836 shelter designated by the court.

1837 (3) The parent or guardian to be notified must be the minor's primary caregiver, or the

1838 person who has custody of the minor, when the order is sought.

1839 Section 31. Section **78-3a-110** is amended to read:

1840 **78-3a-110. Summons -- Service and process -- Issuance and contents -- Notice to**

1841 **absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory**

1842 **process for attendance of witnesses when authorized.**

1843 (1) After a petition is filed the court shall promptly issue a summons, unless the judge

1844 directs that a further investigation is needed. No summons is required as to any person who

1845 appears voluntarily or who files a written waiver of service with the clerk of the court at or

1846 prior to the hearing.

1847 (2) The summons shall contain:

1848 (a) the name of the court;

1849 (b) the title of the proceedings; and

1850 (c) except for a published summons, a brief statement of the substance of the

1851 allegations in the petition.

1852 (3) A published summons shall state:

1853 (a) that a proceeding concerning the minor is pending in the court; and

1854 (b) an adjudication will be made.

1855 (4) The summons shall require the person or persons who have physical custody of the

1856 minor to appear personally and bring the minor before the court at a time and place stated. If

1857 the person or persons summoned are not the parent, parents, or guardian of the minor, the
1858 summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying
1859 them of the pendency of the case and of the time and place set for the hearing.

1860 (5) Summons may be issued requiring the appearance of any other person whose
1861 presence the court finds necessary.

1862 (6) If it appears to the court that the [~~welfare~~] health or safety of the minor or the
1863 welfare of the public requires that the minor be taken into custody, the court may by
1864 endorsement upon the summons direct that the person serving the summons take the minor into
1865 custody at once.

1866 (7) [~~Upon~~] Subject to the provisions of Subsection 78-3a-118(2)(n) and upon the sworn
1867 testimony of one or more reputable physicians, the court may order emergency medical or
1868 surgical treatment that is immediately necessary for a minor concerning whom a petition has
1869 been filed pending the service of summons upon [~~his~~] the minor's parents, guardian, or
1870 custodian.

1871 (8) (a) A parent or guardian is entitled to the issuance of compulsory process for the
1872 attendance of witnesses on [~~his~~] the parent's or guardian's own behalf or on behalf of the minor.

1873 (b) A guardian ad litem or a probation officer is entitled to compulsory process for the
1874 attendance of witnesses on behalf of the minor.

1875 (9) Service of summons and process and proof of service shall be made in the manner
1876 provided in the Utah Rules of Civil Procedure.

1877 (10) Service of summons or process shall be made by the sheriff of the county where
1878 the service is to be made, or by [~~his~~] the sheriff's deputy[~~;~~~~but~~], except that upon request of the
1879 court, service shall be made by any other peace officer, or by another suitable person selected
1880 by the court.

1881 (11) (a) Service of summons in the state shall be made personally[~~;~~] by delivering a
1882 copy to the person summoned[~~;~~~~provided, however, that~~].

1883 (b) If the parents of a minor are living together at their usual place of abode [~~may~~],
1884 both may be served by personal delivery to either parent of copies of the summons, one copy
1885 for each parent.

1886 (12) If [~~the~~] a judge makes a written finding that [~~he~~] the judge has reason to believe
1887 that personal service of the summons will be unsuccessful, or will not accomplish notification

1888 within a reasonable time after issuance of the summons, [~~he~~] the judge may order service by
1889 registered mail, with a return receipt to be signed by the addressee only, to be addressed to the
1890 last-known address of the person to be served in the state. Service shall be complete upon
1891 return to the court of the signed receipt.

1892 (13) (a) If the parents, parent, or guardian required to be summoned under Subsection
1893 (4) cannot be found within the state, the fact of their minor's presence within the state shall
1894 confer jurisdiction on the court in proceedings in minor's cases under this chapter as to any
1895 absent parent or guardian, provided that due notice has been given [~~in the following manner:~~]
1896 as provided in Subsection (13)(b).

1897 [~~(a)~~] (b) (i) If the address of the parent or guardian is known, due notice is given by
1898 sending him a copy of the summons by registered mail with a return receipt to be signed by the
1899 addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil
1900 Procedure. Service by registered mail shall be complete upon return to the court of the signed
1901 receipt.

1902 [~~(b)~~] (ii) If the address or whereabouts of the parent or guardian outside the state
1903 cannot after diligent inquiry be ascertained, due notice is given by publishing a summons in a
1904 newspaper having general circulation in the county in which the proceeding is pending. The
1905 summons shall be published once a week for four successive weeks. Service shall be complete
1906 on the day of the last publication.

1907 (c) Service of summons as provided in this Subsection (13) shall vest the court with
1908 jurisdiction over the parent or guardian served in the same manner and to the same extent as if
1909 the person served was served personally within the state.

1910 (14) (a) In the case of service in the state, service completed not less than 48 hours
1911 before the time set in the summons for the appearance of the person served, shall be sufficient
1912 to confer jurisdiction.

1913 (b) In the case of service outside the state, service completed not less than five days
1914 before the time set in the summons for appearance of the person served, shall be sufficient to
1915 confer jurisdiction.

1916 (15) Computation of periods of time under this chapter shall be made in accordance
1917 with the Utah Rules of Civil Procedure.

1918 Section 32. Section **78-3a-112** is amended to read:

1919 **78-3a-112. Appearances -- Parents to appear with minor -- Failure to appear --**
1920 **Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off --**
1921 **Appointment of guardian ad litem.**

1922 (1) Any person required to appear who, without reasonable cause, fails to appear may
1923 be proceeded against for contempt of court, and the court may cause a bench warrant to issue to
1924 produce the person in court.

1925 (2) In all cases when a minor is required to appear in court, the parents, guardian, or
1926 other person with legal custody of the minor shall appear with the minor unless excused by the
1927 judge.

1928 (a) An employee may request permission to leave the workplace for the purpose of
1929 attending court if the employee has been notified by the juvenile court that [~~his~~] the minor of
1930 the employee is required to appear before the court.

1931 (b) An employer must grant permission to leave the workplace with or without pay if
1932 the employee has requested permission at least seven days in advance or within 24 hours of the
1933 employee receiving notice of the hearing.

1934 (3) If a parent or other person who signed a written promise to appear and bring the
1935 minor to court under Section 78-3a-113 or 78-3a-114, fails to appear and bring the minor to
1936 court on the date set in the promise, or, if the date was to be set, after notification by the court,
1937 a warrant may be issued for the apprehension of that person [~~or~~], the minor, or both.

1938 (4) Willful failure to perform the promise is a misdemeanor if, at the time of the
1939 execution of the promise, the promisor is given a copy of the promise which clearly states that
1940 failure to appear and have the minor appear as promised is a misdemeanor. The juvenile court
1941 shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 8,
1942 Adult Offenses.

1943 (5) The court shall endeavor, through use of the warrant of arrest if necessary, as
1944 provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or
1945 both parents or of the guardian of the minor. If neither a parent nor guardian is present at the
1946 court proceedings, the court may appoint a guardian ad litem to protect the interest of the
1947 minor. A guardian ad litem may also be appointed whenever necessary for the welfare of the
1948 minor, whether or not a parent or guardian is present.

1949 (6) A warrant may be issued for the parent, the guardian, the custodian, or the minor if:

- 1950 (a) a summons is issued but cannot be served;
- 1951 (b) it [~~is made to appear~~] appears to the court that the person to be served will not obey
- 1952 the summons;
- 1953 (c) serving the summons will be ineffectual; or
- 1954 (d) the [~~welfare~~] health or safety of the minor requires that [~~he~~] the minor be brought
- 1955 immediately into the custody of the court.

1956 Section 33. Section **78-3a-113 (Superseded 07/01/04)** is amended to read:

1957 **78-3a-113 (Superseded 07/01/04). Minor taken into custody by peace officer,**

1958 **private citizen, or probation officer -- Grounds -- Notice requirements -- Release or**

1959 **detention -- Grounds for peace officer to take adult into custody.**

1960 (1) A [~~minor may be taken into custody by a~~] peace officer may take a minor into

1961 custody without order of the court if:

1962 (a) in the presence of the officer the minor has violated a state law, federal law, local

1963 law, or municipal ordinance;

1964 (b) there are reasonable grounds to believe the minor has committed an act which if

1965 committed by an adult would be a felony;

1966 (c) the minor is seriously endangered in [~~his~~] the minor's surroundings or if the minor

1967 seriously endangers others, and immediate removal appears to be necessary for [~~his~~] the

1968 minor's protection or the protection of others;

1969 (d) there are reasonable grounds to believe the minor has run away or escaped from

1970 [~~his~~] the minor's parents, guardian, or custodian; or

1971 (e) there is reason to believe the minor is subject to the state's compulsory education

1972 law and that the minor is absent from school without legitimate or valid excuse, subject to

1973 Section 53A-11-105.

1974 (2) (a) A private citizen or a probation officer may take a minor into custody if under

1975 the circumstances [~~he~~] the person could make a citizen's arrest if the minor [~~was~~] were an adult.

1976 (b) A probation officer may also take a minor into custody under Subsection (1) or if

1977 the minor has violated the conditions of probation, if the minor is under the continuing

1978 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not

1979 immediately available.

1980 (3) (a) If an officer or other person takes a minor into temporary custody, [~~he~~] the

1981 officer or other person shall without unnecessary delay notify the parents, guardian, or
1982 custodian. The minor shall then be released to the care of [~~his~~] the minor's parent or other
1983 responsible adult, unless [~~his~~] the minor's immediate [~~welfare~~] health or safety or the protection
1984 of the community requires [~~his~~] the minor's detention.

1985 (b) Before the minor is released, the parent or other person to whom the minor is
1986 released shall be required to sign a written promise on forms supplied by the court to bring the
1987 minor to the court at a time set or to be set by the court.

1988 (4) (a) A minor may not be held in temporary custody by law enforcement any longer
1989 than is reasonably necessary to obtain [~~his~~] the minor's name, age, residence, and other
1990 necessary information and to contact [~~his~~] the minor's parents, guardian, or custodian.

1991 (b) If the minor is not released under Subsection (3), [~~he~~] the minor shall be taken to a
1992 place of detention or shelter without unnecessary delay.

1993 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly
1994 file with the detention or shelter facility a written report on a form provided by the division
1995 stating the details of the presently alleged offense, the facts which bring the minor within the
1996 jurisdiction of the juvenile court, and the reason the minor was not released by law
1997 enforcement.

1998 (b) (i) The designated youth corrections facility staff person shall immediately review
1999 the form and determine, based on the guidelines for detention admissions established by the
2000 Division of Youth Corrections under Sections 62A-7-104 and 62A-7-205, whether:

2001 (A) to admit the minor to secure detention[;];

2002 (B) to admit the minor to home detention[;];

2003 (C) to place the minor in a placement other than detention[;]; or

2004 (D) to return the minor home;

2005 (I) upon written promise to bring the minor to the court at a time set[;]; or

2006 (II) without restriction.

2007 (ii) If the designated youth corrections facility staff person determines to admit the
2008 minor to home detention, that staff person shall notify the juvenile court of that determination.
2009 The court shall order that notice be provided to the designated persons in the local law
2010 enforcement agency and the school or transferee school, if applicable, which the minor attends
2011 of the home detention. The designated persons may receive the information for purposes of the

2012 minor's supervision and student safety.

2013 (iii) Any employee of the local law enforcement agency and the school which the
2014 minor attends who discloses the notification of home detention is not:

2015 (A) civilly liable except when disclosure constitutes fraud or malice as provided in
2016 Section 63-30-4; and

2017 (B) civilly or criminally liable except when disclosure constitutes a knowing violation
2018 of Section 63-2-801.

2019 (c) A minor may not be admitted to detention unless the minor is detainable based on
2020 the guidelines or the minor has been brought to detention pursuant to a judicial order or
2021 division warrant pursuant to Subsection 62A-7-112(8).

2022 (d) If a minor taken to detention does not qualify for admission under the guidelines
2023 established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall
2024 arrange appropriate placement.

2025 (e) If a minor is taken into custody and admitted to a secure detention or shelter
2026 facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and
2027 shall promptly notify the court of the placement.

2028 (f) If the minor is admitted to a secure detention or shelter facility outside the county of
2029 ~~his~~ the minor's residence and it is determined in the hearing held under Subsection
2030 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of
2031 the county of the minor's residence to transport the minor to a detention or shelter facility as
2032 provided in this section.

2033 (6) A person may be taken into custody by a peace officer without a court order if:

2034 (a) the person is in apparent violation of a protective order; or ~~if~~

2035 (b) there is reason to believe that a minor is being abused by the person and any of the
2036 situations outlined in Section 77-7-2 exist.

2037 Section 34. Section **78-3a-113 (Effective 07/01/04)** is amended to read:

2038 **78-3a-113 (Effective 07/01/04). Minor taken into custody by peace officer, private**
2039 **citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention --**
2040 **Grounds for peace officer to take adult into custody.**

2041 (1) A ~~minor may be taken into custody by a~~ peace officer may take a minor into
2042 custody without order of the court if:

2043 (a) in the presence of the officer the minor has violated a state law, federal law, local
2044 law, or municipal ordinance;

2045 (b) there are reasonable grounds to believe the minor has committed an act which if
2046 committed by an adult would be a felony;

2047 (c) the minor is seriously endangered in [~~his~~] the minor's surroundings or if the minor
2048 seriously endangers others, and immediate removal appears to be necessary for [~~his~~] the
2049 minor's protection or the protection of others;

2050 (d) there are reasonable grounds to believe the minor has run away or escaped from
2051 [~~his~~] the minor's parents, guardian, or custodian; or

2052 (e) there is reason to believe the minor is subject to the state's compulsory education
2053 law and that the minor is absent from school without legitimate or valid excuse, subject to
2054 Section 53A-11-105.

2055 (2) (a) A private citizen or a probation officer may take a minor into custody if under
2056 the circumstances [~~he~~] the person could make a citizen's arrest if the minor [~~was~~] were an adult.

2057 (b) A probation officer may also take a minor into custody under Subsection (1) or if
2058 the minor has violated the conditions of probation, if the minor is under the continuing
2059 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not
2060 immediately available.

2061 (3) (a) If an officer or other person takes a minor into temporary custody, [~~he~~] the
2062 officer or other person shall without unnecessary delay notify the parents, guardian, or
2063 custodian. The minor shall then be released to the care of [~~his~~] the minor's parent or other
2064 responsible adult, unless [~~his~~] the minor's immediate [~~welfare~~] health or safety or the protection
2065 of the community requires [~~his~~] the minor's detention.

2066 (b) Before the minor is released, the parent or other person to whom the minor is
2067 released shall be required to sign a written promise on forms supplied by the court to bring the
2068 minor to the court at a time set or to be set by the court.

2069 (4) (a) A minor may not be held in temporary custody by law enforcement any longer
2070 than is reasonably necessary to obtain [~~his~~] the minor's name, age, residence, and other
2071 necessary information and to contact [~~his~~] the minor's parents, guardian, or custodian.

2072 (b) If the minor is not released under Subsection (3), [~~he~~] the minor shall be taken to a
2073 place of detention or shelter without unnecessary delay.

2074 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly
2075 file with the detention or shelter facility a written report on a form provided by the division
2076 stating the details of the presently alleged offense, the facts which bring the minor within the
2077 jurisdiction of the juvenile court, and the reason the minor was not released by law
2078 enforcement.

2079 (b) (i) The designated youth corrections facility staff person shall immediately review
2080 the form and determine, based on the guidelines for detention admissions established by the
2081 Division of Juvenile Justice Services under Sections 62A-7-104 and 62A-7-205, whether to:

2082 (A) admit the minor to secure detention[;];

2083 (B) admit the minor to home detention[;];

2084 (C) place the minor in a placement other than detention[;]; or

2085 (D) return the minor home upon:

2086 (I) written promise to bring the minor to the court at a time set[;]; or

2087 (II) without restriction.

2088 (ii) If the designated youth corrections facility staff person determines to admit the
2089 minor to home detention, that staff person shall notify the juvenile court of that determination.
2090 The court shall order that notice be provided to the designated persons in the local law
2091 enforcement agency and the school or transferee school, if applicable, which the minor attends
2092 of the home detention. The designated persons may receive the information for purposes of the
2093 minor's supervision and student safety.

2094 (iii) Any employee of the local law enforcement agency and the school which the
2095 minor attends who discloses the notification of home detention is not:

2096 (A) civilly liable except when disclosure constitutes fraud or malice as provided in
2097 Section 63-30-4; and

2098 (B) civilly or criminally liable except when disclosure constitutes a knowing violation
2099 of Section 63-2-801.

2100 (c) A minor may not be admitted to detention unless the minor is detainable based on
2101 the guidelines or the minor has been brought to detention pursuant to a judicial order or
2102 division warrant pursuant to Subsection 62A-7-112(8).

2103 (d) If a minor taken to detention does not qualify for admission under the guidelines
2104 established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall

2105 arrange appropriate placement.

2106 (e) If a minor is taken into custody and admitted to a secure detention or shelter
2107 facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and
2108 shall promptly notify the court of the placement.

2109 (f) If the minor is admitted to a secure detention or shelter facility outside the county of
2110 ~~his~~ the minor's residence and it is determined in the hearing held under Subsection
2111 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of
2112 the county of the minor's residence to transport the minor to a detention or shelter facility as
2113 provided in this section.

2114 (6) A person may be taken into custody by a peace officer without a court order if:

2115 (a) the person is in apparent violation of a protective order; or ~~if~~

2116 (b) there is reason to believe that a minor is being abused by the person and any of the
2117 situations outlined in Section 77-7-2 exist.

2118 Section 35. Section **78-3a-115** is amended to read:

2119 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
2120 **cases heard separately from adult cases -- Minor or parents or custodian heard**
2121 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
2122 **one minor.**

2123 (1) Hearings in minor's cases shall be held before the court without a jury and may be
2124 conducted in an informal manner.

2125 (a) (i) In abuse, neglect, and dependency cases in all districts other than pilot districts
2126 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude ~~all~~
2127 persons] the general public from hearings held prior to July 1, 2005 and admit only those
2128 persons who ~~do not~~ have a direct interest in the proceedings[-] or who have been requested by
2129 the parent or legal guardian to be present.

2130 (ii) The court may exclude a person from a hearing under Subsection (1)(a)(i), by
2131 motion of a party to the proceeding or its own motion, after making a finding described in
2132 Subsection 78-3a-115.1(2)(a).

2133 (iii) The court shall allow a person requested by the parent or legal guardian to be
2134 present at a proceeding under Subsection (1)(a)(i), and not excluded under Subsection
2135 (1)(a)(ii), to submit testimony to the court.

2136 (b) In delinquency cases the court shall admit all persons who have a direct interest in
2137 the case and may admit persons requested by the parent or legal guardian to be present. The
2138 court shall exclude all other persons except as provided in Subsection (1)(c).

2139 (c) In delinquency cases in which the minor charged is 14 years of age or older, the
2140 court shall admit any person unless the hearing is closed by the court upon findings on the
2141 record for good cause if:

2142 (i) the minor has been charged with an offense which would be a felony if committed
2143 by an adult; or

2144 (ii) (A) the minor is charged with an offense that would be a class A or B misdemeanor
2145 if committed by an adult[;]; and

2146 (B) the minor has been previously charged with an offense which would be a
2147 misdemeanor or felony if committed by an adult.

2148 (d) (i) The victim of any act charged in a petition or information involving an offense
2149 committed by a minor which if committed by an adult would be a felony or a class A or class B
2150 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
2151 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
2152 Chapter 38, Rights of Crime Victims Act.

2153 (ii) The notice provisions in Section 77-38-3 do not apply to important juvenile justice
2154 hearings as defined in Section 77-38-2.

2155 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right
2156 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

2157 (i) the scheduling of any court hearings on the petition;

2158 (ii) any findings made by the court; and

2159 (iii) any sentence or decree imposed by the court.

2160 (2) (a) Minor's cases shall be heard separately from adult cases.

2161 (b) The minor or ~~[his]~~ the minor's parents or custodian may be heard separately when
2162 considered necessary by the court.

2163 (c) The hearing may be continued from time to time to a date specified by court order.

2164 (3) When more than one minor is involved in a home situation which may be found to
2165 constitute neglect or dependency, or when more than one minor is alleged to be involved in the
2166 same law violation, the proceedings may be consolidated, except that separate hearings may be

2167 held with respect to disposition.

2168 Section 36. Section **78-3a-118 (Superseded 07/01/04)** is amended to read:

2169 **78-3a-118 (Superseded 07/01/04). Adjudication of jurisdiction of juvenile court --**
2170 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
2171 **Obtaining DNA sample.**

2172 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
2173 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
2174 jurisdiction over the minor. However, in cases within the provisions of Subsection
2175 78-3a-104(1), findings of fact are not necessary.

2176 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
2177 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
2178 to the school superintendent of the district in which the minor resides or attends school. Notice
2179 shall be made to the district superintendent within three days of the adjudication and shall
2180 include the specific offenses for which the minor was adjudicated.

2181 (2) Upon adjudication the court may make the following dispositions by court order:

2182 (a) (i) The court may place the minor on probation or under protective supervision in
2183 the minor's own home and upon conditions determined by the court, including compensatory
2184 service as provided in Section 78-11-20.7.

2185 (ii) The court may place the minor in state supervision with the probation department
2186 of the court, under the legal custody of:

- 2187 (A) ~~his~~ the minor's parent or guardian;
2188 (B) the Division of Youth Corrections; or
2189 (C) the Division of Child and Family Services.

2190 (iii) If the court orders probation or state supervision, the court shall direct that notice
2191 of its order be provided to designated persons in the local law enforcement agency and the
2192 school or transferee school, if applicable, which the minor attends. The designated persons
2193 may receive the information for purposes of the minor's supervision and student safety.

2194 (iv) Any employee of the local law enforcement agency and the school which the
2195 minor attends who discloses the court's order of probation is not:

2196 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in
2197 Section 63-30-4; and

2198 (B) civilly or criminally liable except when the disclosure constitutes a knowing
2199 violation of Section 63-2-801.

2200 (b) The court may place the minor in the legal custody of a relative or other suitable
2201 person, with or without probation or protective supervision, but the juvenile court may not
2202 assume the function of developing foster home services.

2203 (c) (i) The court may:

2204 (A) vest legal custody of the minor in the Division of Child and Family Services,
2205 Division of Youth Corrections, or the Division of Substance Abuse and Mental Health; and

2206 (B) order the Department of Human Services to provide dispositional
2207 recommendations and services.

2208 (ii) For minors who may qualify for services from two or more divisions within the
2209 Department of Human Services, the court may vest legal custody with the department.

2210 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
2211 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,
2212 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title
2213 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

2214 (B) Prior to the court entering an order to place a minor in the custody of the Division
2215 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
2216 the division with notice of the hearing no later than five days before the time specified for the
2217 hearing so the division may attend the hearing.

2218 (C) Prior to committing a minor to the custody of the Division of Child and Family
2219 Services, the court shall make a finding as to what reasonable efforts have been attempted to
2220 prevent the minor's removal from ~~[his]~~ the minor's home.

2221 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure
2222 confinement.

2223 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
2224 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
2225 Youth Corrections.

2226 (e) The court may commit the minor, subject to the court retaining continuing
2227 jurisdiction over ~~[him]~~ the minor, to the temporary custody of the Division of Youth
2228 Corrections for observation and evaluation for a period not to exceed 45 days, which period

2229 may be extended up to 15 days at the request of the director of the Division of Youth
2230 Corrections.

2231 (f) (i) The court may commit the minor to a place of detention or an alternative to
2232 detention for a period not to exceed 30 days subject to the court retaining continuing
2233 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
2234 ordered by the court.

2235 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

2236 (A) an act which if committed by an adult would be a criminal offense; or

2237 (B) contempt of court under Section 78-3a-901.

2238 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
2239 the Division of Child and Family Services or any other appropriate person in accordance with
2240 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
2241 Dependency Proceedings.

2242 (h) (i) The court may place the minor on a ranch or forestry camp, or similar facility for
2243 care and also for work, if possible, if the person, agency, or association operating the facility
2244 has been approved or has otherwise complied with all applicable state and local laws.

2245 (ii) A minor placed in a forestry camp or similar facility may be required to work on
2246 fire prevention, forestation and reforestation, recreational works, forest roads, and on other
2247 works on or off the grounds of the facility and may be paid wages, subject to the approval of
2248 and under conditions set by the court.

2249 (i) (A) The court may order the minor to repair, replace, or otherwise make restitution
2250 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
2251 Section 78-3a-318, and impose fines in limited amounts.

2252 (B) The court may also require the minor to reimburse an individual, entity, or
2253 governmental agency who offered and paid a reward to a person or persons for providing
2254 information resulting in a court adjudication that the minor is within the jurisdiction of the
2255 juvenile court due to the commission of a criminal offense.

2256 (C) If a minor has been returned to this state under the Interstate Compact on Juveniles,
2257 the court may order the minor to make restitution for costs expended by any governmental
2258 entity for the return.

2259 (j) The court may issue orders necessary for the collection of restitution and fines

2260 ordered by the court, including garnishments, wage withholdings, and executions.

2261 (k) (i) The court may through its probation department encourage the development of
2262 employment or work programs;

2263 (A) to enable minors to fulfill their obligations under Subsection (2)(i); and

2264 (B) for other purposes considered desirable by the court.

2265 (ii) Consistent with the order of the court, the probation officer may permit the minor
2266 found to be within the jurisdiction of the court to participate in a program of work restitution or
2267 compensatory service in lieu of paying part or all of the fine imposed by the court.

2268 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
2269 addition to any other disposition authorized by this section:

2270 (A) restrain the minor from driving for periods of time the court considers necessary;
2271 and

2272 (B) take possession of the minor's driver license.

2273 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
2274 suspension of driving privileges for an offense under Section 78-3a-506 [are] is governed only
2275 by Section 78-3a-506.

2276 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
2277 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
2278 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
2279 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
2280 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
2281 completion of an approved substance abuse prevention or treatment program may be credited
2282 by the court as compensatory service hours.

2283 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
2284 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
2285 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
2286 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
2287 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
2288 approved substance abuse prevention or treatment program may be credited by the court as
2289 compensatory service hours.

2290 (n) (i) [The] Except as provided in Subsection (2)(n)(ii), the court may order that the

2291 minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that ~~he~~
2292 the minor receive other special care. For these purposes the court may place the minor in a
2293 hospital or other suitable facility.

2294 (ii) In a case involving potential medical or mental health neglect, the court may not
2295 order an examination, treatment, or special care under Subsection (2)(n)(i) or any other
2296 provision of law unless:

2297 (A) the examination, treatment, or special care ordered by the court does not pose a
2298 significant risk of producing serious side effects, including:

2299 (I) death;

2300 (II) blindness;

2301 (III) suppression of growth;

2302 (IV) depression;

2303 (V) behavior disturbances;

2304 (VI) thought disorders;

2305 (VII) tardive dyskinesia;

2306 (VIII) brain function impairment; or

2307 (IX) emotional harm resulting from the compulsory nature of the examination,
2308 treatment, or special care; and

2309 (B) (I) at least one of the minor's parents or guardian consents to the examination,
2310 treatment, or special care; or

2311 (II) evidence demonstrates beyond a reasonable doubt that the examination, treatment,
2312 or special care provided by the parents or legal guardian, or the lack thereof, will result in an
2313 immediate serious threat to the life or essential physiological functions of the minor.

2314 (o) (i) The court may appoint a guardian for the minor if ~~it~~ an appointment appears
2315 necessary in the interest of the minor, and may appoint as guardian a public or private
2316 institution or agency in which legal custody of the minor is vested.

2317 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
2318 private agency or institution, the court shall give primary consideration to the welfare of the
2319 minor. ~~When practicable, the~~ The court ~~may~~ shall take into consideration the religious
2320 preferences of the minor and of the minor's parents.

2321 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable

2322 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or
2323 any other person who has been made a party to the proceedings. Conditions may include:

2324 (A) parent-time by the parents or one parent;

2325 (B) restrictions on the minor's associates;

2326 (C) restrictions on the minor's occupation and other activities; and

2327 (D) requirements to be observed by the parents or custodian.

2328 (ii) A minor whose parents or guardians successfully complete a family or other
2329 counseling program may be credited by the court for detention, confinement, or probation time.

2330 (q) The court may order the minor to be committed to the physical custody of a local
2331 mental health authority, in accordance with the procedures and requirements of Title 62A,
2332 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
2333 Mental Health.

2334 (r) (i) The court may make an order committing a minor within its jurisdiction to the
2335 Utah State Developmental Center if the minor has mental retardation in accordance with the
2336 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

2337 (ii) The court shall follow the procedure applicable in the district courts with respect to
2338 judicial commitments to the Utah State Developmental Center when ordering a commitment
2339 under Subsection (2)(r)(i).

2340 (s) The court may terminate all parental rights upon a finding of compliance with the
2341 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

2342 (t) The court may make any other reasonable orders for the best interest of the minor or
2343 as required for the protection of the public, except that a person younger than 18 years of age
2344 may not be committed to jail or prison.

2345 (u) The court may combine the dispositions listed in this section if they are compatible.

2346 (v) (i) Before depriving any parent of custody, the court shall give due consideration to
2347 the rights of parents concerning their minor.

2348 (ii) The court may transfer custody of a minor to another person, agency, or institution
2349 in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse,
2350 Neglect, and Dependency Proceedings.

2351 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
2352 probation or placement of a minor with an individual or an agency shall include a date certain

2353 for a review of the case by the court. A new date shall be set upon each review.

2354 (x) In reviewing foster home placements, special attention shall be given to making
2355 adoptable minors available for adoption without delay.

2356 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
2357 with a relative or individual of a minor where the court has previously acquired jurisdiction as
2358 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
2359 order for child support on behalf of the minor child against the natural or adoptive parents of
2360 the child.

2361 (ii) Orders under Subsection (2)(y)(i):

2362 (A) shall remain in effect until the minor reaches majority;

2363 (B) are not subject to review under Section 78-3a-119; and

2364 (C) may be modified by petition or motion as provided in Section 78-3a-903.

2365 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
2366 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
2367 of the juvenile court.

2368 (3) In addition to the dispositions described in Subsection (2), when a minor comes
2369 within the court's jurisdiction [~~he~~] the minor may be given a choice by the court to serve in the
2370 National Guard in lieu of other sanctions, provided:

2371 (a) the minor meets the current entrance qualifications for service in the National
2372 Guard as determined by a recruiter, whose determination is final;

2373 (b) the minor is not under the jurisdiction of the court for any act that:

2374 (i) would be a felony if committed by an adult;

2375 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

2376 (iii) was committed with a weapon; and

2377 (c) the court retains jurisdiction over the minor under conditions set by the court and
2378 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

2379 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
2380 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by:

2381 (i) designated employees of the court; or[;]

2382 (ii) if the minor is in the legal custody of the Division of Youth Corrections, [~~then~~] by
2383 designated employees of the division under Subsection 53-10-404(5)(b).

2384 (b) The responsible agency shall ensure that employees designated to collect [the]
2385 saliva DNA specimens under Subsection (4)(a) receive appropriate training and that the
2386 specimens are obtained in accordance with accepted protocol.

2387 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
2388 Specimen Restricted Account created in Section 53-10-407.

2389 (d) Payment of the reimbursement is second in priority to payments the minor is
2390 ordered to make for restitution under this section and treatment under Section 78-3a-318.

2391 Section 37. Section **78-3a-118 (Effective 07/01/04)** is amended to read:

2392 **78-3a-118 (Effective 07/01/04). Adjudication of jurisdiction of juvenile court --**
2393 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
2394 **Obtaining DNA sample.**

2395 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
2396 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
2397 jurisdiction over the minor. However, in cases within the provisions of Subsection
2398 78-3a-104(1), findings of fact are not necessary.

2399 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
2400 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
2401 to the school superintendent of the district in which the minor resides or attends school. Notice
2402 shall be made to the district superintendent within three days of the adjudication and shall
2403 include the specific offenses for which the minor was adjudicated.

2404 (2) Upon adjudication the court may make the following dispositions by court order:

2405 (a) (i) The court may place the minor on probation or under protective supervision in
2406 the minor's own home and upon conditions determined by the court, including compensatory
2407 service as provided in Section 78-11-20.7.

2408 (ii) The court may place the minor in state supervision with the probation department
2409 of the court, under the legal custody of:

2410 (A) [his] the minor's parent or guardian;

2411 (B) the Division of Juvenile Justice Services; or

2412 (C) the Division of Child and Family Services.

2413 (iii) If the court orders probation or state supervision, the court shall direct that notice
2414 of its order be provided to designated persons in the local law enforcement agency and the

2415 school or transferee school, if applicable, which the minor attends. The designated persons
2416 may receive the information for purposes of the minor's supervision and student safety.

2417 (iv) Any employee of the local law enforcement agency and the school which the
2418 minor attends who discloses the court's order of probation is not:

2419 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in
2420 Section 63-30-4; and

2421 (B) civilly or criminally liable except when the disclosure constitutes a knowing
2422 violation of Section 63-2-801.

2423 (b) The court may place the minor in the legal custody of a relative or other suitable
2424 person, with or without probation or protective supervision, but the juvenile court may not
2425 assume the function of developing foster home services.

2426 (c) (i) The court may:

2427 (A) vest legal custody of the minor in the Division of Child and Family Services,
2428 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
2429 and

2430 (B) order the Department of Human Services to provide dispositional
2431 recommendations and services.

2432 (ii) For minors who may qualify for services from two or more divisions within the
2433 Department of Human Services, the court may vest legal custody with the department.

2434 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
2435 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,
2436 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title
2437 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

2438 (B) Prior to the court entering an order to place a minor in the custody of the Division
2439 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
2440 the division with notice of the hearing no later than five days before the time specified for the
2441 hearing so the division may attend the hearing.

2442 (C) Prior to committing a minor to the custody of the Division of Child and Family
2443 Services, the court shall make a finding as to what reasonable efforts have been attempted to
2444 prevent the minor's removal from ~~his~~ the minor's home.

2445 (d) (i) The court may commit the minor to the Division of Juvenile Justice Services for

2446 secure confinement.

2447 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
2448 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
2449 Juvenile Justice Services.

2450 (e) The court may commit the minor, subject to the court retaining continuing
2451 jurisdiction over ~~[him]~~ the minor, to the temporary custody of the Division of Juvenile Justice
2452 Services for observation and evaluation for a period not to exceed 45 days, which period may
2453 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
2454 Services.

2455 (f) (i) The court may commit the minor to a place of detention or an alternative to
2456 detention for a period not to exceed 30 days subject to the court retaining continuing
2457 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
2458 ordered by the court.

2459 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

2460 (A) an act which if committed by an adult would be a criminal offense; or

2461 (B) contempt of court under Section 78-3a-901.

2462 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
2463 the Division of Child and Family Services or any other appropriate person in accordance with
2464 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
2465 Dependency Proceedings.

2466 (h) (i) The court may place the minor on a ranch or forestry camp, or similar facility for
2467 care and also for work, if possible, if the person, agency, or association operating the facility
2468 has been approved or has otherwise complied with all applicable state and local laws.

2469 (ii) A minor placed in a forestry camp or similar facility may be required to work on
2470 fire prevention, forestation and reforestation, recreational works, forest roads, and on other
2471 works on or off the grounds of the facility and may be paid wages, subject to the approval of
2472 and under conditions set by the court.

2473 (i) (A) The court may order the minor to repair, replace, or otherwise make restitution
2474 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
2475 Section 78-3a-318, and impose fines in limited amounts.

2476 (B) The court may also require the minor to reimburse an individual, entity, or

2477 governmental agency who offered and paid a reward to a person or persons for providing
2478 information resulting in a court adjudication that the minor is within the jurisdiction of the
2479 juvenile court due to the commission of a criminal offense.

2480 (C) If a minor has been returned to this state under the Interstate Compact on Juveniles,
2481 the court may order the minor to make restitution for costs expended by any governmental
2482 entity for the return.

2483 (j) The court may issue orders necessary for the collection of restitution and fines
2484 ordered by the court, including garnishments, wage withholdings, and executions.

2485 (k) (i) The court may through its probation department encourage the development of
2486 employment or work programs:

2487 (A) to enable minors to fulfill their obligations under Subsection (2)(i); and

2488 (B) for other purposes considered desirable by the court.

2489 (ii) Consistent with the order of the court, the probation officer may permit the minor
2490 found to be within the jurisdiction of the court to participate in a program of work restitution or
2491 compensatory service in lieu of paying part or all of the fine imposed by the court.

2492 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
2493 addition to any other disposition authorized by this section:

2494 (A) restrain the minor from driving for periods of time the court considers necessary;
2495 and

2496 (B) take possession of the minor's driver license.

2497 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
2498 suspension of driving privileges for an offense under Section 78-3a-506 [are] is governed only
2499 by Section 78-3a-506.

2500 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
2501 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
2502 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
2503 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
2504 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
2505 completion of an approved substance abuse prevention or treatment program may be credited
2506 by the court as compensatory service hours.

2507 (ii) When a minor is found within the jurisdiction of the juvenile court under Section

2508 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
2509 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
2510 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
2511 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
2512 approved substance abuse prevention or treatment program may be credited by the court as
2513 compensatory service hours.

2514 (n) (i) ~~[The]~~ Except as provided in Subsection (2)(n)(ii), the court may order that the
2515 minor be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that ~~[he]~~
2516 the minor receive other special care. For these purposes the court may place the minor in a
2517 hospital or other suitable facility.

2518 (ii) In a case involving potential medical or mental health neglect, the court may not
2519 order an examination, treatment, or special care under Subsection (2)(n)(i) or any other
2520 provision of law unless:

2521 (A) the examination, treatment, or special care ordered by the court does not pose a
2522 significant risk of producing serious side effects, including:

2523 (I) death;

2524 (II) blindness;

2525 (III) suppression of growth;

2526 (IV) depression;

2527 (V) behavior disturbances;

2528 (VI) thought disorders;

2529 (VII) tardive dyskinesia;

2530 (VIII) brain function impairment; or

2531 (IX) emotional harm resulting from the compulsory nature of the examination,

2532 treatment, or special care; and

2533 (B) (I) at least one of the minor's parents or guardian consents to the examination,
2534 treatment, or special care; or

2535 (II) evidence demonstrates beyond a reasonable doubt that the examination, treatment,
2536 or special care provided by the parents or legal guardian, or the lack thereof, will result in an
2537 immediate serious threat to the life or essential physiological functions of the minor.

2538 (o) (i) The court may appoint a guardian for the minor if ~~[it]~~ an appointment appears

2539 necessary in the interest of the minor, and may appoint as guardian a public or private
2540 institution or agency in which legal custody of the minor is vested.

2541 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
2542 private agency or institution, the court shall give primary consideration to the welfare of the
2543 minor. ~~[When practicable, the]~~ The court ~~[may]~~ shall take into consideration the religious
2544 preferences of the minor and of the minor's parents.

2545 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
2546 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or
2547 any other person who has been made a party to the proceedings. Conditions may include:

2548 (A) parent-time by the parents or one parent;

2549 (B) restrictions on the minor's associates;

2550 (C) restrictions on the minor's occupation and other activities; and

2551 (D) requirements to be observed by the parents or custodian.

2552 (ii) A minor whose parents or guardians successfully complete a family or other
2553 counseling program may be credited by the court for detention, confinement, or probation time.

2554 (q) The court may order the minor to be committed to the physical custody of a local
2555 mental health authority, in accordance with the procedures and requirements of Title 62A,
2556 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
2557 Mental Health.

2558 (r) (i) The court may make an order committing a minor within its jurisdiction to the
2559 Utah State Developmental Center if the minor has mental retardation in accordance with the
2560 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

2561 (ii) The court shall follow the procedure applicable in the district courts with respect to
2562 judicial commitments to the Utah State Developmental Center when ordering a commitment
2563 under Subsection (2)(r)(i).

2564 (s) The court may terminate all parental rights upon a finding of compliance with the
2565 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

2566 (t) The court may make any other reasonable orders for the best interest of the minor or
2567 as required for the protection of the public, except that a person younger than 18 years of age
2568 may not be committed to jail or prison.

2569 (u) The court may combine the dispositions listed in this section if they are compatible.

2570 (v) (i) Before depriving any parent of custody, the court shall give due consideration to
2571 the rights of parents concerning their minor.

2572 (ii) The court may transfer custody of a minor to another person, agency, or institution
2573 in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse,
2574 Neglect, and Dependency Proceedings.

2575 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
2576 probation or placement of a minor with an individual or an agency shall include a date certain
2577 for a review of the case by the court. A new date shall be set upon each review.

2578 (x) In reviewing foster home placements, special attention shall be given to making
2579 adoptable minors available for adoption without delay.

2580 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
2581 with a relative or individual of a minor where the court has previously acquired jurisdiction as
2582 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
2583 order for child support on behalf of the minor child against the natural or adoptive parents of
2584 the child.

2585 (ii) Orders under Subsection (2)(y)(i):

2586 (A) shall remain in effect until the minor reaches majority;

2587 (B) are not subject to review under Section 78-3a-119; and

2588 (C) may be modified by petition or motion as provided in Section 78-3a-903.

2589 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
2590 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
2591 of the juvenile court.

2592 (3) In addition to the dispositions described in Subsection (2), when a minor comes
2593 within the court's jurisdiction [~~he~~], the minor may be given a choice by the court to serve in the
2594 National Guard in lieu of other sanctions, provided:

2595 (a) the minor meets the current entrance qualifications for service in the National
2596 Guard as determined by a recruiter, whose determination is final;

2597 (b) the minor is not under the jurisdiction of the court for any act that:

2598 (i) would be a felony if committed by an adult;

2599 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

2600 (iii) was committed with a weapon; and

2601 (c) the court retains jurisdiction over the minor under conditions set by the court and
2602 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

2603 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
2604 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by:

2605 (i) designated employees of the court; or[;]

2606 (ii) if the minor is in the legal custody of the Division of Juvenile Justice Services,
2607 [then] by designated employees of the division under Subsection 53-10-404(5)(b).

2608 (b) The responsible agency shall ensure that employees designated to collect the saliva
2609 DNA specimens receive appropriate training and that the specimens are obtained in accordance
2610 with accepted protocol.

2611 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
2612 Specimen Restricted Account created in Section 53-10-407.

2613 (d) Payment of the reimbursement is second in priority to payments the minor is
2614 ordered to make for restitution under this section and treatment under Section 78-3a-318.

2615 Section 38. Section **78-3a-119** is amended to read:

2616 **78-3a-119. Period of operation of judgment, decree, or order -- Rights and**
2617 **responsibilities of agency or individual granted legal custody.**

2618 (1) A judgment, order, or decree of the juvenile court does not operate after the minor
2619 becomes 21 years of age, except for:

2620 (a) orders of commitment to the Utah State Developmental Center or to the custody of
2621 the Division of Substance Abuse and Mental Health;

2622 (b) adoption orders under Subsection 78-3a-104(1)(o);

2623 (c) orders permanently terminating the rights of a parent, guardian, or custodian, and
2624 permanent orders of custody and guardianships; and

2625 (d) unless terminated by the court, orders to pay any fine or restitution.

2626 (2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an
2627 order vesting legal custody or guardianship of a minor in an individual, agency, or institution
2628 may be for an indeterminate period. A review hearing shall be held, however, upon the
2629 expiration of 12 months, and, with regard to petitions filed by the division [~~of Child and Family~~
2630 ~~Services~~], no less than once every six months thereafter. The individual, agency, or institution
2631 involved shall file the petition for that review hearing. The court may terminate the order, or

2632 after notice and hearing, continue the order if it finds continuation of the order necessary to
2633 safeguard the [~~welfare~~] health or safety of the minor or the public interest. The findings of the
2634 court and its reasons shall be entered with the continuation order or with the order denying
2635 continuation.

2636 (b) Subsection (2)(a) does not apply to minors who are in the custody of the division
2637 [~~of Child and Family Services~~], and who are placed in foster care, a secure youth corrections
2638 facility, the Division of Substance Abuse and Mental Health, the Utah State Developmental
2639 Center, or any agency licensed for child placements and adoptions, in cases where all parental
2640 rights of the natural parents have been terminated by the court under Part 4, Termination of
2641 Parental Rights Act, and custody of the minor has been granted to the agency for adoption or
2642 other permanent placement.

2643 (3) (a) An agency granted legal custody may determine where and with whom the
2644 minor will live, provided that placement of the minor does not remove [~~him~~] the minor from
2645 the state without court approval.

2646 (b) An individual granted legal custody shall personally exercise the rights and
2647 responsibilities involved in legal custody[;] unless otherwise authorized by the court.

2648 Section 39. Section **78-3a-301 (Superseded 07/01/04)** is amended to read:

2649 **78-3a-301 (Superseded 07/01/04). Court-ordered protective custody of a minor**
2650 **following petition filing -- Grounds.**

2651 (1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is
2652 the subject of the petition is not in the protective custody of the division, a court may order that
2653 the minor be removed from the minor's home or otherwise taken into protective custody if the
2654 court finds, by [~~a preponderance of the~~] clear and convincing evidence, that any one or more of
2655 the following circumstances exist:

2656 (a) there is an imminent danger to the physical health or safety of the minor and the
2657 minor's physical health or safety may not be protected without removing the minor from the
2658 custody of the minor's parent or guardian[~~. If a minor has previously been adjudicated as~~
2659 ~~abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency~~
2660 ~~has occurred involving the same alleged abuser or under similar circumstance as the previous~~
2661 ~~abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the~~
2662 ~~custody of the minor's parent~~];

2663 (b) a parent or guardian engages in [~~or threatens the minor with~~] unreasonable conduct
2664 that [~~causes the minor to suffer emotional damage~~] constitutes mental cruelty and there are no
2665 reasonable means available by which the minor's emotional health may be protected without
2666 removing the minor from the custody of the minor's parent or guardian;

2667 (c) [(†)] the minor or another minor residing in the same household has been physically
2668 or sexually abused, or is [~~deemed~~] considered to be at substantial imminent risk of being
2669 physically or sexually abused, by a parent or guardian, a member of the parent's or guardian's
2670 household, or other person known to the parent or guardian[-];

2671 [~~(ii) For purposes of this Subsection (1)(c), another minor residing in the same~~
2672 ~~household may not be removed from the home unless that minor is considered to be at~~
2673 ~~substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or~~
2674 ~~(iii).]~~

2675 [~~(iii) If a parent or guardian has received actual notice that physical or sexual abuse by~~
2676 ~~a person known to the parent has occurred, and there is evidence that the parent or guardian~~
2677 ~~failed to protect the minor by allowing the minor to be in the physical presence of the alleged~~
2678 ~~abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being~~
2679 ~~physically or sexually abused;]~~

2680 (d) the parent or guardian is unwilling to have physical custody of the minor;

2681 (e) the minor has been abandoned or left without any provision for the minor's support;

2682 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
2683 or cannot arrange for safe and appropriate care for the minor;

2684 (g) a relative or other adult custodian with whom the minor has been left by the parent
2685 or guardian is unwilling or unable to provide care or support for the minor, the whereabouts of
2686 the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian
2687 have been unsuccessful;

2688 (h) the minor is in immediate need of medical care;

2689 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
2690 environment that poses [~~a~~] an immediate serious threat to the minor's health or safety; or

2691 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
2692 [~~a~~] an immediate serious threat to the minor's health or safety;

2693 (j) [(†)] the minor or another minor residing in the same household has been neglected;

2694 [and]

2695 ~~[(ii) for purposes of Subsection (j)(i), another minor residing in the same household~~
2696 ~~may not be removed unless that minor is deemed to be at substantial risk of being neglected;]~~

2697 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

2698 (l) the parent or guardian, or an adult residing in the same household as the parent or
2699 guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
2700 Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in
2701 the residence or on the property where the minor resided; or

2702 (m) the minor's ~~[welfare]~~ health or safety is otherwise endangered.

2703 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as
2704 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
2705 has occurred involving the same alleged abuser or under similar circumstance as the previous
2706 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the
2707 custody of the minor's parent.

2708 (b) For purposes of Subsection (1)(c):

2709 (i) another minor residing in the same household may not be removed from the home
2710 unless that minor is considered to be at substantial imminent risk of being physically or
2711 sexually abused as described in Subsection (1)(c) or (2)(b)(ii); and

2712 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
2713 person known to the parent has occurred, and there is evidence that the parent or guardian
2714 failed to protect the minor by allowing the minor to be in the physical presence of the alleged
2715 abuser, that fact constitutes prima facie evidence that the minor is at substantial imminent risk
2716 of being physically or sexually abused.

2717 (c) For purposes of Subsection (1)(j), another minor residing in the same household
2718 may not be removed unless that minor is considered to be at substantial imminent risk of being
2719 neglected.

2720 ~~[(2)]~~ (3) A court may not remove a minor from the parent's or guardian's custody on the
2721 basis of educational neglect, in the absence of one of the factors described in Subsection (1).

2722 ~~[(3)]~~ (4) A court may not remove a minor from the parent's or guardian's custody on the
2723 basis of mental illness or poverty of the parent or guardian, in the absence of one of the factors
2724 described in Subsection (1).

2725 ~~[(4)]~~ (5) A minor removed from the custody of the minor's parent or guardian under
2726 this section may not be placed or kept in a secure detention facility pending further court
2727 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
2728 Youth Corrections.

2729 ~~[(5)]~~ (6) This section does not preclude removal of a minor from the minor's home
2730 without a warrant or court order under Section 62A-4a-202.1.

2731 Section 40. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

2732 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor**
2733 **following petition filing -- Grounds.**

2734 (1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is
2735 the subject of the petition is not in the protective custody of the division, a court may order that
2736 the minor be removed from the minor's home or otherwise taken into protective custody if the
2737 court finds, by ~~[a preponderance of the]~~ clear and convincing evidence, that any one or more of
2738 the following circumstances exist:

2739 (a) there is an imminent danger to the physical health or safety of the minor and the
2740 minor's physical health or safety may not be protected without removing the minor from the
2741 custody of the minor's parent or guardian~~[- If a minor has previously been adjudicated as~~
2742 ~~abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency~~
2743 ~~has occurred involving the same alleged abuser or under similar circumstance as the previous~~
2744 ~~abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the~~
2745 ~~custody of the minor's parent];~~

2746 (b) a parent or guardian engages in ~~[or threatens the minor with]~~ unreasonable conduct
2747 that ~~[causes the minor to suffer emotional damage]~~ constitutes mental cruelty and there are no
2748 reasonable means available by which the minor's emotional health may be protected without
2749 removing the minor from the custody of the minor's parent or guardian;

2750 (c) ~~[(i)]~~ the minor or another minor residing in the same household has been physically
2751 or sexually abused, or is considered to be at substantial risk of being physically or sexually
2752 abused, by a parent or guardian, a member of the parent's or guardian's household, or other
2753 person known to the parent or guardian~~[-];~~

2754 ~~[(ii) For purposes of this Subsection (1)(c), another minor residing in the same~~
2755 ~~household may not be removed from the home unless that minor is considered to be at~~

2756 ~~substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or~~
2757 ~~(iii).]~~

2758 ~~[(iii) If a parent or guardian has received actual notice that physical or sexual abuse by~~
2759 ~~a person known to the parent has occurred, and there is evidence that the parent or guardian~~
2760 ~~failed to protect the minor by allowing the minor to be in the physical presence of the alleged~~
2761 ~~abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being~~
2762 ~~physically or sexually abused;]~~

2763 (d) the parent or guardian is unwilling to have physical custody of the minor;

2764 (e) the minor has been abandoned or left without any provision for the minor's support;

2765 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
2766 or cannot arrange for safe and appropriate care for the minor;

2767 (g) a relative or other adult custodian with whom the minor has been left by the parent
2768 or guardian is unwilling or unable to provide care or support for the minor, the whereabouts of
2769 the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian
2770 have been unsuccessful;

2771 (h) the minor is in immediate need of medical care;

2772 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
2773 environment that poses [a] an immediate serious threat to the minor's health or safety; or

2774 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
2775 [a] an immediate serious threat to the minor's health or safety;

2776 (j) [(†)] the minor or another minor residing in the same household has been neglected;
2777 [and]

2778 ~~[(ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household~~
2779 ~~may not be removed unless that minor is considered to be at substantial risk of being~~
2780 ~~neglected;]~~

2781 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

2782 (l) the parent or guardian, or an adult residing in the same household as the parent or
2783 guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
2784 Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in
2785 the residence or on the property where the minor resided; or

2786 (m) the minor's [~~welfare~~] health or safety is otherwise endangered.

2787 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as
2788 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
2789 has occurred involving the same alleged abuser or under similar circumstance as the previous
2790 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the
2791 custody of the minor's parent.

2792 (b) For purposes of Subsection (1)(c):

2793 (i) another minor residing in the same household may not be removed from the home
2794 unless that minor is considered to be at substantial risk of being physically or sexually abused
2795 as described in Subsection (1)(c) or (2)(b)(ii); and

2796 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
2797 person known to the parent has occurred, and there is evidence that the parent or guardian
2798 failed to protect the minor by allowing the minor to be in the physical presence of the alleged
2799 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being
2800 physically or sexually abused.

2801 (c) For purposes of Subsection (1)(j), another minor residing in the same household
2802 may not be removed unless that minor is considered to be at substantial imminent risk of being
2803 neglected.

2804 [~~2~~] (3) A court may not remove a minor from the parent's or guardian's custody on the
2805 basis of educational neglect, in the absence of one of the factors described in Subsection (1).

2806 [~~3~~] (4) A court may not remove a minor from the parent's or guardian's custody on the
2807 basis of mental illness or poverty of the parent or guardian, in the absence of one of the factors
2808 described in Subsection (1).

2809 [~~4~~] (5) A minor removed from the custody of the minor's parent or guardian under
2810 this section may not be placed or kept in a secure detention facility pending further court
2811 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
2812 Juvenile Justice Services.

2813 [~~5~~] (6) This section does not preclude removal of a minor from the minor's home
2814 without a warrant or court order under Section 62A-4a-202.1.

2815 Section 41. Section **78-3a-306** is amended to read:

2816 **78-3a-306. Shelter hearing.**

2817 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays

2818 after any one or all of the following occur:

2819 (a) removal of the child from [~~his~~] the child's home by the division [~~of Child and~~
2820 ~~Family Services~~];

2821 (b) placement of the child in the protective custody of the division [~~of Child and~~
2822 ~~Family Services~~];

2823 (c) emergency kinship placement under Subsection 62A-4a-202.1(4); or

2824 (d) as an alternative to removal of the child, a parent has entered a domestic violence
2825 shelter at the request of the division [~~of Child and Family Services~~].

2826 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
2827 through (1)(d), the division shall issue a notice that contains all of the following:

2828 (a) the name and address of the person to whom the notice is directed;

2829 (b) the date, time, and place of the shelter hearing;

2830 (c) the name of the minor on whose behalf a petition is being brought;

2831 (d) a concise statement regarding:

2832 (i) the reasons for removal or other action of the division under Subsection (1); and

2833 (ii) the allegations and code sections under which the proceeding has been instituted;

2834 (e) a statement that the parent or guardian to whom notice is given, and the minor, are
2835 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
2836 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
2837 provided; and

2838 (f) a statement that the parent or guardian is liable for the cost of support of the minor
2839 in the protective custody, temporary custody, and custody of the division, and the cost for legal
2840 counsel appointed for the parent or guardian under Subsection (2)(e), according to [~~his~~] the
2841 parent's or guardian's financial ability.

2842 (3) That notice shall be personally served as soon as possible, but no later than one
2843 business day after removal of a child from [~~his~~] the child's home, on:

2844 (a) the appropriate guardian ad litem; and

2845 (b) both parents and any guardian of the minor, unless they cannot be located.

2846 (4) The following persons shall be present at the shelter hearing:

2847 (a) the child, unless it would be detrimental for the child;

2848 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in

2849 response to the notice;

2850 (c) counsel for the parents, if one has been requested;

2851 (d) the child's guardian ad litem;

2852 (e) the caseworker from the division [~~of Child and Family Services~~] who has been
2853 assigned to the case; and

2854 (f) the attorney from the attorney general's office who is representing the division.

2855 (5) (a) (i) At the shelter hearing, the court shall provide an opportunity for the minor's
2856 parent or guardian, if present, and any other person having relevant knowledge, including any
2857 person requested by the parent or guardian to be present, to provide relevant testimony.

2858 (ii) The court may also provide an opportunity for the minor to testify.

2859 (b) (i) The court may consider all relevant evidence, in accordance with the Utah Rules
2860 of Juvenile Procedure.

2861 (ii) The court shall hear relevant evidence presented by the minor, [~~his~~] the minor's
2862 parent or guardian, the requesting party, or their counsel, but may in its discretion limit
2863 testimony and evidence to only that which goes to the issues of removal and the child's need for
2864 continued protection.

2865 (6) If the child is in the protective custody of the division, the division shall report to
2866 the court:

2867 (a) the reasons why the minor was removed from the parent's or guardian's custody;

2868 (b) any services provided to the child and [~~his~~] the child's family in an effort to prevent
2869 removal;

2870 (c) the need, if any, for continued shelter;

2871 (d) the available services that could facilitate the return of the minor to the custody of
2872 [~~his~~] the minor's parent or guardian; and

2873 (e) whether the child has any relatives who may be able and willing to take temporary
2874 custody.

2875 (7) The court shall consider all relevant evidence provided by persons or entities
2876 authorized to present relevant evidence pursuant to this section.

2877 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
2878 cause shown, the court may grant no more than one time-limited continuance, not to exceed
2879 five judicial days.

2880 (b) If the child's parent or guardian requests a continuance under Subsection (8)(a), the
2881 court shall honor the request as nearly as practicable.

2882 (9) (a) For purposes of this Subsection (9), "serious abuse" means a serious type of
2883 abuse or neglect described in Subsection 62A-4a-116.1(2).

2884 ~~[(9)]~~ (b) If the child is in the protective custody of the division, the court shall order
2885 that the minor be released from the protective custody of the division unless it [finds, by a
2886 preponderance of the evidence] can be established, beyond a reasonable doubt, that any one of
2887 the following exist:

2888 ~~[(a) there is a substantial danger to the physical health or safety of the minor and the~~
2889 ~~minor's physical health or safety may not be protected without removing him from his parent's~~
2890 ~~custody. If a minor has previously been adjudicated as abused, neglected, or dependent and a~~
2891 ~~subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie~~
2892 ~~evidence that the child cannot safely remain in the custody of his parent;]~~

2893 ~~[(b) the minor is suffering emotional damage, as may be indicated by, but is not limited~~
2894 ~~to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or~~
2895 ~~others, and there are no reasonable means available by which the minor's emotional health may~~
2896 ~~be protected without removing the minor from the custody of his parent;]~~

2897 (i) without continued custody the child is at immediate substantial risk of serious
2898 abuse;

2899 ~~[(c)]~~ (ii) the minor or another minor residing in the same household has been
2900 [physically or sexually abused] the subject of serious abuse, or is considered to be at substantial
2901 imminent risk of [being physically or sexually abused] serious abuse, by a parent, a member of
2902 the parent's household, or other person known to the parent[. If a parent has received actual
2903 notice that physical or sexual abuse by a person known to the parent has occurred, and there is
2904 evidence that the parent has allowed the child to be in the physical presence of the alleged
2905 abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being
2906 physically or sexually abused];

2907 ~~[(d)]~~ (iii) the parent is unwilling to have physical custody of the child;

2908 ~~[(e)]~~ (iv) the minor has been left without any provision for [his] the minor's support;

2909 ~~[(f)]~~ (v) a parent who has been incarcerated or institutionalized has not or cannot
2910 arrange for safe and appropriate care for the minor;

2911 ~~[(g)]~~ (vi) a relative or other adult custodian with whom the minor has been left by the
2912 parent is unwilling or unable to provide care or support for the minor, the whereabouts of the
2913 parent are unknown, and reasonable efforts to locate ~~[him]~~ the parent have been unsuccessful;
2914 or

2915 ~~[(h) the minor is in immediate need of medical care;]~~

2916 ~~[(i) the physical environment or the fact that the child is left unattended poses a threat~~
2917 ~~to the child's health or safety;]~~

2918 ~~[(j) the minor or another minor residing in the same household has been neglected;]~~

2919 ~~[(k)]~~ (vii) the parent, or an adult residing in the same household as the parent, has been
2920 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any
2921 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence
2922 or on the property where the child resided~~[-or]~~.

2923 ~~[(l) the child's welfare is otherwise endangered;]~~

2924 (c) (i) For purposes of Subsection (9)(b)(i), if a minor has previously been adjudicated
2925 as abused, neglected, or dependent and a subsequent incident of abuse or dependency occurs,
2926 that fact constitutes prima facie evidence that the child cannot safely remain in the custody of
2927 the minor's parent.

2928 (ii) For purposes of Subsection (9)(b)(ii), strong evidence exists that the child is at
2929 substantial imminent risk of serious abuse if:

2930 (A) the parent has received actual notice that serious abuse by a person known to the
2931 parent has occurred; and

2932 (B) there is clear and convincing evidence that the parent has allowed the child to be in
2933 the physical presence of the alleged abuser;

2934 (10) (a) The court shall also make a determination on the record as to whether
2935 reasonable efforts were made to prevent or eliminate the need for removal of the minor from
2936 ~~[his]~~ the minor's home and whether there are available services that would prevent the need for
2937 continued removal. If the court finds that the minor can be safely returned to the custody of
2938 ~~[his]~~ the minor's parent or guardian through the provision of those services, it shall place the
2939 minor with ~~[his]~~ the minor's parent or guardian and order that those services be provided by the
2940 division.

2941 (b) In making that determination, and in ordering and providing services, the child's

2942 health[;] and safety[, ~~and welfare~~] shall be the [~~paramount~~] primary concern, in accordance
2943 with federal law.

2944 (11) Where the division's first contact with the family occurred during an emergency
2945 situation in which the child could not safely remain at home, the court shall make a finding that
2946 any lack of preplacement preventive efforts was appropriate.

2947 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or
2948 neglect are involved, neither the division nor the court has any duty to make "reasonable
2949 efforts" or to, in any other way, attempt to maintain a child in [~~his~~] the child's home, return a
2950 child to [~~his~~] the child's home, provide reunification services, or attempt to rehabilitate the
2951 offending parent or parents.

2952 (13) The court may not order continued removal of a minor solely on the basis of
2953 educational neglect [~~as described in Subsection 78-3a-103(1)(s)(ii)~~].

2954 (14) (a) Whenever a court orders continued removal of a minor under this section, it
2955 shall state the facts on which that decision is based.

2956 (b) If no continued removal is ordered and the minor is returned home, the court shall
2957 state the facts on which that decision is based.

2958 (15) If the court finds that continued removal and temporary custody are necessary for
2959 the protection of a child [~~because harm may result to the child if he were returned home~~], it
2960 shall order continued removal regardless of any error in the initial removal of the child, or the
2961 failure of a party to comply with notice provisions, or any other procedural requirement of this
2962 chapter or Title 62A, Chapter 4a, Child and Family Services.

2963 Section 42. Section **78-3a-311** is amended to read:

2964 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

2965 (1) The court may make any of the dispositions described in Section 78-3a-118, place
2966 the child in the custody or guardianship of any individual or public or private entity or agency,
2967 or order protective supervision, family preservation, medical or mental health treatment, or
2968 other services.

2969 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
2970 and that the minor remain in the custody of the division [~~of Child and Family Services~~], it shall
2971 first establish a primary permanency goal for the minor and determine whether, in view of the
2972 primary permanency goal, reunification services are appropriate for the child and the child's

2973 family, pursuant to Subsection (3).

2974 (ii) When the court determines that reunification services are appropriate for the child
2975 and the child's family, the court shall provide for reasonable parent-time with the parent or
2976 parents from whose custody the child was removed, unless:

2977 (A) parent-time [~~is not in the best interest~~] would threaten the physical safety or life of
2978 the child[-];

2979 (B) the child suffered at the hands of the parent:

2980 (I) sexual abuse or sexual exploitation; or

2981 (II) serious physical abuse or mental cruelty, and parent-time would cause the child
2982 serious emotional anguish.

2983 (iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or
2984 serious neglect are involved, neither the division nor the court has any duty to make
2985 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
2986 attempt to rehabilitate the offending parent or parents. In all cases, the child's health[-] and
2987 safety[~~, and welfare~~] shall be the court's [~~paramount~~] primary concern in determining whether
2988 reasonable efforts to reunify should be made.

2989 (b) (i) In addition to the primary permanency goal, the court shall establish a
2990 concurrent permanency goal. The concurrent permanency goal shall include a representative
2991 list of the conditions under which the primary permanency goal will be abandoned in favor of
2992 the concurrent permanency goal and an explanation of the effect of abandoning or modifying
2993 the primary permanency goal.

2994 (ii) A permanency hearing shall be conducted in accordance with Subsection
2995 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
2996 child's primary permanency goal.

2997 (iii) (A) The court may amend a child's primary permanency goal before the
2998 establishment of a final permanency plan under Section 78-3a-312. The court is not limited to
2999 the terms of the concurrent permanency goal in the event that the primary permanency goal is
3000 abandoned.

3001 (B) If, at anytime, the court determines that reunification is no longer a child's primary
3002 permanency goal, the court shall conduct a permanency hearing in accordance with Section
3003 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the

3004 original removal of the child.

3005 (c) (i) If the court determines that reunification services are appropriate, it shall order
3006 that the division make reasonable efforts to provide services to the child and the child's parent
3007 for the purpose of facilitating reunification of the family, for a specified period of time. In
3008 providing those services, the child's health[;] and safety[~~;~~ ~~and welfare~~] shall be the division's
3009 [~~paramount~~] primary concern, and the court shall so order.

3010 (ii) The court shall determine whether the services offered or provided by the division
3011 under the treatment plan constitute "reasonable efforts" on the part of the division. The court
3012 shall also determine and define the responsibilities of the parent under the treatment plan.
3013 Those duties and responsibilities shall be identified on the record, for the purpose of assisting
3014 in any future determination regarding the provision of reasonable efforts, in accordance with
3015 state and federal law.

3016 (iii) The time period for reunification services may not exceed 12 months from the date
3017 that the child was initially removed from the child's home. Nothing in this section may be
3018 construed to entitle any parent to an entire 12 months of reunification services.

3019 (iv) If reunification services have been ordered, the court may terminate those services
3020 at any time.

3021 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to
3022 be inconsistent with the final permanency plan for the child established pursuant to Subsection
3023 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance
3024 with the permanency plan, and to complete whatever steps are necessary to finalize the
3025 permanent placement of the child.

3026 (d) Any physical custody of the minor by the parent or a relative during the period
3027 described in Subsection (2)(c) does not interrupt the running of the period.

3028 (e) (i) If reunification services have been ordered, a permanency hearing shall be
3029 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time
3030 period for reunification services. The permanency hearing shall be held no later than 12
3031 months after the original removal of the child.

3032 (ii) If reunification services have not been ordered, a permanency hearing shall be
3033 conducted within 30 days, in accordance with Section 78-3a-312.

3034 (f) With regard to a child who is 36 months of age or younger at the time the child is

3035 initially removed from the home, the court shall:

3036 (i) hold a permanency hearing eight months after the date of the initial removal,
3037 pursuant to Section 78-3a-312; and

3038 (ii) order the discontinuance of those services after eight months from the initial
3039 removal of the child from the home if the parent or parents have not made substantial efforts to
3040 comply with the treatment plan.

3041 (g) With regard to a child in the custody of the division whose parent or parents have
3042 been ordered to receive reunification services but who have abandoned that child for a period
3043 of six months since the date that reunification services were ordered, the court shall terminate
3044 reunification services, and the division shall petition the court for termination of parental
3045 rights.

3046 (3) (a) Because of the state's interest in and responsibility to protect and provide
3047 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
3048 parent's interest in receiving reunification services is limited. The court may determine that
3049 efforts to reunify a child with the child's family are not reasonable or appropriate, based on the
3050 individual circumstances, and that reunification services should not be provided. In
3051 determining "reasonable efforts" to be made with respect to a child, and in making "reasonable
3052 efforts," the child's health[;] and safety[; ~~and welfare~~] shall be the [~~paramount~~] primary
3053 concern.

3054 (b) There is a presumption that reunification services should not be provided to a
3055 parent if the court finds[; ~~by clear and convincing~~] evidence that establishes beyond a
3056 reasonable doubt, that any of the following circumstances exist:

3057 (i) the whereabouts of the parents are unknown, based upon a verified affidavit
3058 indicating that a reasonably diligent search has failed to locate the parent;

3059 (ii) the parent is suffering from a mental [~~illness~~] incapacity of such magnitude that it
3060 renders [~~him~~] the parent incapable of utilizing reunification services; that finding shall be based
3061 on competent evidence from at least two mental health or medical professionals, who are not
3062 associates, establishing that, even with the provision of services, the parent [~~is unlikely to be~~
3063 capable] will be incapable of adequately caring for the child within 12 months;

3064 (iii) the minor has been previously adjudicated as an abused child due to physical or
3065 sexual abuse, that following the adjudication the [~~child~~] minor was removed from the custody

3066 of ~~his~~ the minor's parent, was subsequently returned to the custody of that parent, and the
3067 minor is being removed due to additional physical or sexual abuse;

3068 (iv) the parent has caused the death of another child through abuse or neglect or has
3069 committed, aided, abetted, attempted, conspired, or solicited to commit murder or
3070 manslaughter of a child or child abuse homicide;

3071 (v) the minor has suffered ~~severe~~ serious abuse by the parent or by any person known
3072 by the parent, if the parent knew or reasonably should have known that the person was abusing
3073 the minor;

3074 (vi) the minor has been adjudicated an abused child as a result of ~~severe~~ serious abuse
3075 by the parent, and the court finds that it would not benefit the child to pursue reunification
3076 services with the offending parent;

3077 (vii) the parent's rights have been terminated with regard to any other child;

3078 (viii) the child has been removed from ~~his~~ the child's home on at least two previous
3079 occasions and reunification services were offered or provided to the family at those times; or

3080 (ix) the parent has abandoned the child for a period of six months or longer~~;~~;

3081 ~~[(x) any other circumstance that the court determines should preclude reunification
3082 efforts or services.]~~

3083 (4) (a) Failure of the parent to ~~respond to previous services or~~ comply with ~~[any]~~
3084 essential components of a previous treatment plan, the fact that the child was abused while the
3085 parent was under the influence of drugs or alcohol, a past history of violent behavior directed at
3086 the child, whether a parent continues to live with an individual who seriously abused the child,
3087 or any patterns of the parent's behavior that have exposed the child to repeated serious abuse~~;~~
3088 ~~or testimony by a competent professional that the parent's behavior is unlikely to be~~
3089 ~~successful,]~~ shall be considered in determining whether reunification services are appropriate.

3090 (b) The court shall also consider whether the parent has expressed an interest in
3091 reunification with the child, in determining whether reunification services are appropriate.

3092 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
3093 whereabouts of a parent become known within six months of the out-of-home placement of the
3094 minor, the court may order the division to provide reunification services. The time limits
3095 described in Subsection (2), however, are not tolled by the parent's absence.

3096 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable

3097 services unless it determines that those services would be seriously detrimental to the health or
 3098 safety of the minor. In determining detriment, the court shall consider:

3099 (i) the age of the child[;];

3100 (ii) the degree of parent-child bonding[;];

3101 (iii) the length of the sentence[;];

3102 (iv) the nature of the treatment[;];

3103 (v) the nature of the crime or [~~illness;~~] mental incapacity;

3104 (vi) the degree of detriment to the [~~child~~] child's health and safety if services are not
 3105 offered [~~and~~];

3106 (vii) for minors ten years of age or older, the minor's attitude toward the
 3107 implementation of family reunification services[~~, and~~], which shall be given particular
 3108 consideration and weight; and

3109 (viii) any other appropriate factors.

3110 (b) (i) Reunification services for an incarcerated parent are subject to the 12-month
 3111 limitation imposed in Subsection (2).

3112 (ii) Reunification services for an institutionalized parent are subject to the 12-month
 3113 limitation imposed in Subsection (2), unless the court determines that continued reunification
 3114 services would be in the child's best interest.

3115 (7) If, pursuant to Subsection (3)(b)[~~(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x)~~], the
 3116 court does not order reunification services, a permanency hearing shall be conducted within 30
 3117 days, in accordance with Section 78-3a-312.

3118 Section 43. Section **78-3a-313.5** is amended to read:

3119 **78-3a-313.5. Mandatory petition for termination of parental rights.**

3120 (1) For purposes of this section, "abandoned infant" means a child who is 12 months of
 3121 age or younger whose parent or parents:

3122 (a) although having legal custody of the child, fail to maintain physical custody of the
 3123 child without making arrangements for the care of the child;

3124 (b) have failed to maintain physical custody, and have failed to exhibit the normal
 3125 interest of a natural parent without just cause; or

3126 (c) are unwilling to have physical custody of the child.

3127 (2) Except as provided in Subsection (3), notwithstanding any other provision of this

3128 chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition
3129 for termination of parental rights with regard to:

3130 (a) an abandoned infant; or

3131 (b) a parent, whenever a court has determined that the parent has:

3132 (i) committed murder or child abuse homicide of another child of that parent;

3133 (ii) committed manslaughter of another child of that parent;

3134 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
3135 homicide, or manslaughter against another child of that parent; or

3136 (iv) committed a felony assault or abuse that has resulted in serious physical injury, as
3137 defined in Section 76-5-109, to another child of that parent, or to the other parent of that child.

3138 (3) The division is not required to file a petition for termination of parental rights under
3139 Subsection (2) if:

3140 (a) the child is being cared for by a relative;

3141 (b) the division has:

3142 (i) documented in the child's treatment plan a compelling reason for determining that
3143 filing a petition for termination of parental rights is not in the child's best interest; and

3144 (ii) made that treatment plan available to the court for its review; or

3145 (c) (i) the court has previously determined, in accordance with the provisions and
3146 limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable
3147 efforts to reunify the child with [~~his~~] the child's parent or parents were required; and

3148 (ii) the division has not provided, within the time period specified in the treatment
3149 plan, services that had been determined to be necessary for the safe return of the child.

3150 Section 44. Section **78-3a-320** is amended to read:

3151 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

3152 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division
3153 of Child and Family Services or any interested person informing the court, among other things,
3154 that the division has made a supported finding of one or more of the [~~severe~~] serious types of
3155 child abuse or neglect described in Subsection 62A-4a-116.1(2), the court shall:

3156 (a) make a finding of substantiated, unsubstantiated, or without merit;

3157 (b) include the finding described in Subsection (1)(a) in a written order; and

3158 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

- 3159 (2) The judicial finding under Subsection (1) shall be made:
- 3160 (a) as part of or at the conclusion of the adjudication hearing; or
- 3161 (b) as part of a court order entered pursuant to a written stipulation of the parties.
- 3162 (3) Any person described in Subsection 62A-4a-116.6(1) may at any time file with the
- 3163 court a petition for removal of the person's name from the Licensing Information System. At
- 3164 the conclusion of the hearing on the petition, the court shall:
- 3165 (a) make a finding of substantiated, unsubstantiated, or without merit;
- 3166 (b) include the finding described in Subsection (1)(a) in a written order; and
- 3167 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.
- 3168 (4) A proceeding for adjudication of a supported finding of a [~~nonsevere~~] nonserious
- 3169 type of abuse or neglect under this section may be joined in the juvenile court with an
- 3170 adjudication of a [~~severe~~] serious type of abuse or neglect.
- 3171 (5) If a person whose name appears on the Licensing Information system prior to May
- 3172 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to
- 3173 work with children or vulnerable adults is pending, the court shall hear the matter and enter a
- 3174 final decision no later than 60 days after the filing of the petition.
- 3175 (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118,
- 3176 and 62A-2-121:
- 3177 (a) the court shall make available records of its findings under Subsections (1) and (2)
- 3178 for licensing purposes, only to those with statutory authority to access also the Licensing
- 3179 Information System created under Section 62A-4a-116.2; and
- 3180 (b) any appellate court shall make available court records of appeals from juvenile
- 3181 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those
- 3182 with statutory authority to access also the Licensing Information System.
- 3183 Section 45. Section **78-3a-402** is amended to read:
- 3184 **78-3a-402. Judicial process for termination -- Parent unfit or incompetent -- Best**
- 3185 **interest of child.**
- 3186 (1) This part provides a judicial process for voluntary and involuntary severance of the
- 3187 parent-child relationship, designed to safeguard the rights and interests of all parties concerned
- 3188 and promote their welfare and that of the state.
- 3189 (2) Wherever possible family life should be strengthened and preserved, but if a parent

3190 is found, by reason of [~~his~~] the parent's conduct or condition, to be unfit or incompetent based
3191 upon any of the grounds for termination described in this part, the court shall then consider the
3192 [~~welfare~~] health, safety, and best interest of the child of [~~paramount~~] primary importance in
3193 determining whether termination of parental rights shall be ordered.

3194 Section 46. Section **78-3a-406** is amended to read:

3195 **78-3a-406. Notice -- Nature of proceedings.**

3196 (1) After a petition for termination of parental rights has been filed, notice of that fact
3197 and of the time and place of the hearing shall be provided, in accordance with the Utah Rules
3198 of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of
3199 the child, and to any person acting in loco parentis to the child.

3200 (2) A hearing shall be held specifically on the question of termination of parental rights
3201 no sooner than ten days after service of summons is complete. A verbatim record of the
3202 proceedings shall be taken and the parties shall be advised of their right to counsel. The
3203 summons shall contain a statement to the effect that the rights of the parent or parents are
3204 proposed to be permanently terminated in the proceedings. That statement may be contained in
3205 the summons originally issued in the proceeding or in a separate summons subsequently issued.

3206 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil
3207 Procedure and the Utah Rules of Evidence. The court shall in all cases require the petitioner to
3208 establish the facts [~~by clear and convincing evidence~~] beyond a reasonable doubt, and shall
3209 give full and careful consideration to all of the evidence presented with regard to the
3210 constitutional rights and claims of the parent and, if a parent is found, by reason of [~~his~~] the
3211 parent's conduct or condition, to be unfit or incompetent based upon any of the grounds for
3212 termination described in this part, the court shall then consider the [~~welfare~~] health, safety, and
3213 best interest of the child of [~~paramount~~] primary importance in determining whether
3214 termination of parental rights shall be ordered.

3215 Section 47. Section **78-3a-407** is amended to read:

3216 **78-3a-407. Grounds for termination of parental rights -- Findings regarding**
3217 **reasonable efforts.**

3218 (1) The court may terminate all parental rights with respect to a parent if it finds [~~any~~]
3219 one or more of the following:

3220 (a) [~~that~~] the parent has willfully abandoned the child;

3221 ~~[(b) that the parent has neglected or abused the child;]~~
3222 ~~[(e) that]~~ (b) the parent is:
3223 (i) unfit or incompetent[;] by reason of conduct or condition which is seriously
3224 detrimental to the health and safety of the child; and
3225 ~~[(d) that the child is being cared for in an out-of-home placement under the supervision~~
3226 ~~of the court or the division and the parent has substantially neglected, wilfully refused, or has~~
3227 ~~been unable or unwilling to remedy the circumstances that cause the child to be in an~~
3228 ~~out-of-home placement, and there is a substantial likelihood that the parent will not be capable~~
3229 ~~of exercising proper and effective parental care in the near future;]~~
3230 ~~[(e) failure of parental adjustment, as defined in this chapter;]~~
3231 ~~[(f) that only token efforts have been made by the parent:]~~
3232 ~~[(i) to support or communicate with the child;]~~
3233 ~~[(ii) to prevent neglect of the child;]~~
3234 ~~[(iii) to eliminate the risk of serious physical, mental, or emotional abuse of the child;~~
3235 ~~or]~~
3236 ~~[(iv) to avoid being an unfit parent;]~~
3237 (ii) unable or unwilling to correct the unfitness or incompetence within a reasonable
3238 period of time;
3239 (c) (i) the parent has committed serious physical or sexual abuse;
3240 (ii) it is not safe for the child to return home to the parent; and
3241 (iii) there is no change in parental behavior;
3242 ~~[(g)]~~ (d) the parent has voluntarily relinquished the parent's parental rights to the child,
3243 and the court finds that termination is in the child's best interest;
3244 ~~[(h)]~~ (e) the parent, after a period of trial during which the child was left in the child's
3245 own home under protective supervision or probation or during which the child was returned to
3246 live in the child's own home, substantially, and continuously or repeatedly, refused or failed to
3247 give the child [~~proper~~] adequate parental care and protection; [~~or~~]
3248 (f) the parent has willfully failed to communicate via mail, telephone, or other means
3249 for one year with the child or show the normal interest of a natural parent, without just cause;
3250 or
3251 ~~[(i)]~~ (g) the terms and conditions of safe relinquishment of a newborn child have been

3252 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
3253 Child.

3254 (2) For purposes of Subsection (1)(a), it is prima facie evidence of abandonment that a
3255 parent, although having legal custody of the child:

3256 (a) has willfully surrendered physical custody of the child; and

3257 (b) for a period of six months following the surrender, has not manifested to the child
3258 or to the person having the physical custody of the child a firm intention to resume physical
3259 custody or to make arrangements for the care of the child.

3260 [~~2~~] (3) The court may not terminate the parental rights of a parent because the parent
3261 has failed to complete the requirements of a treatment plan.

3262 [~~3~~] (4) (a) In any case in which the court has directed the division to provide
3263 reunification services to a parent, the court must find that the division made reasonable efforts
3264 to provide those services before the court may terminate the parent's rights under Subsection
3265 (1)(b), (1)(c), [~~(d)~~], (1)(e), or (1)(f)[~~; or (h)~~].

3266 (b) The court is not required to make the finding under Subsection [~~3~~] (4)(a) before
3267 terminating a parent's rights:

3268 (i) under Subsection (1)[~~(b)~~] (c) based upon abuse or neglect found by the court to have
3269 occurred subsequent to adjudication; or

3270 (ii) if reasonable efforts are not required under federal law.

3271 Section 48. Section **78-3a-408** is amended to read:

3272 **78-3a-408. Evidence of grounds for termination.**

3273 [~~(1) In determining whether a parent or parents have abandoned a child, it is prima~~
3274 ~~facie evidence of abandonment that the parent or parents:]~~

3275 [~~(a) although having legal custody of the child, have surrendered physical custody of~~
3276 ~~the child, and for a period of six months following the surrender have not manifested to the~~
3277 ~~child or to the person having the physical custody of the child a firm intention to resume~~
3278 ~~physical custody or to make arrangements for the care of the child;]~~

3279 [~~(b) have failed to communicate with the child by mail, telephone, or otherwise for six~~
3280 ~~months;]~~

3281 [~~(c) failed to have shown the normal interest of a natural parent, without just cause; o]r~~

3282 [~~(d) have abandoned an infant, as described in Section 78-3a-313.5.]~~

3283 ~~[(2) In determining whether a parent or parents are unfit or have neglected a child the~~
3284 ~~court shall consider, but is not limited to, the following circumstances, conduct, or conditions:]~~

3285 ~~[(a) emotional illness, mental illness, or mental deficiency of the parent that renders~~
3286 ~~him unable to care for the immediate and continuing physical or emotional needs of the child~~
3287 ~~for extended periods of time;]~~

3288 (1) When considering evidence for grounds for terminating parental rights, the court
3289 shall consider the following circumstances, conduct, or conditions:

3290 ~~[(b)]~~ (a) conduct toward a child of a physically, emotionally, or sexually cruel or
3291 abusive nature;

3292 ~~[(c)]~~ (b) habitual or excessive use of intoxicating liquors, controlled substances, or
3293 dangerous drugs that render the parent unable to care for the child;

3294 ~~[(d)]~~ (c) repeated or continuous failure to provide the child with adequate food,
3295 clothing, shelter, education, or other care necessary for ~~[his]~~ the child's physical~~[-];~~ and mental~~[-;~~
3296 ~~and emotional]~~ health and development by a parent or parents who are capable of providing
3297 that care~~[-. However, a parent who, legitimately practicing his religious beliefs, does not~~
3298 ~~provide specified medical treatment for a child is not for that reason alone a negligent or unfit~~
3299 ~~parent];~~

3300 ~~[(e)]~~ (d) with regard to a child who is in the custody of the division, ~~[if]~~ whether the
3301 parent is incarcerated as a result of conviction of a felony, and the sentence is of such length
3302 that the child will be deprived of a normal home for more than one year; ~~[or]~~

3303 ~~[(f)]~~ (e) a history of violent behavior~~[-];~~

3304 ~~[(3) If a child has been placed in the custody of the division and the parent or parents~~
3305 ~~fail to comply substantially with the terms and conditions of a plan within six months after the~~
3306 ~~date on which the child was placed or the plan was commenced, whichever occurs later, that~~
3307 ~~failure to comply is evidence of failure of parental adjustment.]~~

3308 ~~[(4) The following circumstances constitute prima facie evidence of unfitness:]~~

3309 ~~[(a)]~~ (f) sexual abuse, injury, or death of a sibling of the child, or of any child, due to
3310 known or substantiated abuse or neglect by the parent or parents;

3311 ~~[(b)]~~ (g) conviction of a crime, if the facts surrounding the crime are of such a nature as
3312 to indicate the unfitness of the parent to provide adequate care to the extent necessary for the
3313 child's physical, mental, or emotional health and development;

3314 [~~(e)~~] (h) a single incident of life-threatening or gravely disabling injury to or
3315 disfigurement of the child; [~~or~~] and

3316 [~~(d)~~] (i) the parent has committed, aided, abetted, attempted, conspired, or solicited to
3317 commit murder or manslaughter of a child or child abuse homicide.

3318 (2) For purposes of Subsection (1)(c), a parent who, legitimately practicing the parent's
3319 religious beliefs, does not provide specified medical treatment for a child is not for that reason
3320 alone a negligent or unfit parent.

3321 Section 49. Section **78-3a-414** is amended to read:

3322 **78-3a-414. Voluntary relinquishment -- Irrevocable.**

3323 (1) Voluntary relinquishment or consent for termination of parental rights shall be
3324 signed or confirmed under oath either:

3325 (a) before a judge of any court that has jurisdiction over proceedings for termination of
3326 parental rights in this state or any other state, or a public officer appointed by that court for the
3327 purpose of taking consents or relinquishments; or

3328 (b) except as provided in Subsection (2), any person authorized to take consents or
3329 relinquishments under Subsections 78-30-4.18(1) and (2).

3330 (2) Only the juvenile court is authorized to take consents or relinquishments from a
3331 parent who has any child who is in the custody of a state agency or who has a child who is
3332 otherwise under the jurisdiction of the juvenile court.

3333 (3) The court, appointed officer, or other authorized person shall certify to the best of
3334 that person's information and belief that the person executing the consent or relinquishment has
3335 read and understands the consent or relinquishment and has signed it freely and voluntarily.

3336 (4) A voluntary relinquishment or consent for termination of parental rights is effective
3337 when it is signed and may not be revoked.

3338 (5) The requirements and processes described in Sections 78-3a-402 through 78-3a-410
3339 do not apply to a voluntary relinquishment or consent for termination of parental rights. The
3340 court need only find that the relinquishment or termination is in the child's best interest.

3341 (6) There is a presumption that voluntary relinquishment or consent for termination of
3342 parental rights is not in the child's best interest where it appears to the court that the primary
3343 purpose is to avoid a financial support obligation. The presumption may be rebutted, however,
3344 if the court finds the relinquishment or consent to termination of parental rights will facilitate

3345 the establishment of stability and permanency for the child.

3346 (7) Upon granting a voluntary relinquishment the court may make orders relating to the
3347 child's care, health, and [~~welfare~~] safety that the court considers to be in the child's best interest.

3348 Section 50. Section **78-3g-101** is amended to read:

3349 **78-3g-101. Definitions.**

3350 As used in this chapter:

3351 (1) "Board" means a foster care citizen review board created in accordance with
3352 Section 78-3g-103.

3353 (2) "Committee" means the Foster Care Citizen Review Board Steering Committee
3354 created in accordance with Section 78-3g-102.

3355 (3) "Division" means the Division of Child and Family Services within the Department
3356 of Human Services.

3357 (4) "Plan" means [~~the same as that term is defined in Subsection 78-3a-403(3)] a
3358 treatment plan required under Section 62A-4a-205 or a permanency plan.~~

3359 Section 51. **Repealer.**

3360 This bill repeals:

3361 Section **62A-4a-202.7, Pilot program for differentiated responses to child abuse
3362 and neglect reports.**

3363 Section **78-3a-403, Definitions.**

3364 Section 52. **Effective date.**

3365 This bill takes effect on May 3, 2004, except that the amendments to Sections
3366 62A-4a-202.1 (Effective 07/01/04), 78-3a-103 (Effective 07/01/04), 78-3a-113 (Effective
3367 07/01/04), 78-3a-118 (Effective 07/01/04), and 78-3a-301 (Effective 07/01/04) take effect on
3368 July 1, 2004.

Legislative Review Note
as of 2-4-04 4:53 PM

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

Office of Legislative Research and General Counsel

State Impact

The Division of Child and Family Services will see a decrease in caseload with budget savings estimated at \$269,100 the first year (\$168,700 G.F.). These savings would increase in FY 2006. The Attorney General's Office is expecting increased attorney costs for more serious cases, with increased costs estimated at \$746,000 (\$611,700 G.F.) the first year. There may be significant increases in costs to the Court system, but these cannot be quantified at this time. The federal fund revenue would be generated as state funds are expended.

	<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	\$443,000	(\$137,100)	\$0	\$0
Federal Funds	\$33,900	(\$30,100)	\$33,900	\$30,100
TOTAL	\$476,900	(\$167,200)	\$33,900	\$30,100

Individual and Business Impact

No significant fiscal impact.
