

Senator Bill Wright proposes the following substitute bill:

CHILD WELFARE PROCESSES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Thompson

LONG TITLE

General Description:

This bill amends Child and Family Services and the Judicial Code and creates the Division of Child Welfare Parental Defense.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "protective services";
- ▶ requires notice to parents of their statutory and constitutional rights before conducting a child abuse, neglect, or dependency investigation;
- ▶ sets forth definitions;
- ▶ creates within the Department of Administrative Services the Division of Child Welfare Parental Defense;
- ▶ appoints a director to have supervision, direction, and control over the division;
- ▶ sets forth the duties, functions, and responsibilities of the division;
- ▶ outlines the qualifications, responsibilities, and standards for a parental defense attorney;
- ▶ requires the division to develop a list of qualified experts and to set aside funds for the fees associated with the use of experts;
- ▶ classifies records of a contracted parental defense attorney as protected and indicates that the records may not be released or made public upon subpoena, search warrant,



- 26 discovery proceedings, or otherwise;
- 27 ▶ requires the county in which the trial court proceedings are held to cover the costs
- 28 associated with the appointment of counsel;
- 29 ▶ creates the Child Welfare Parental Defense Trust Fund;
- 30 ▶ makes technical corrections to the terms "unsubstantiated" and "substantiated";
- 31 ▶ prohibits a juvenile court from using disability of a parent as a basis for removing a
- 32 child from the custody of the parent;
- 33 ▶ imposes district court limits on any juvenile court using a parent's disability as a
- 34 basis for changing a custody award made in district court;
- 35 ▶ expands interdisciplinary child protection team membership;
- 36 ▶ amends preferential placement provisions for children removed from their homes
- 37 due to abuse, neglect, or dependency;
- 38 ▶ requires the Division of Child and Family Services to accommodate and honor the
- 39 moral and religious beliefs of those it serves;
- 40 ▶ requires the Division of Child and Family Services to design treatment plans in a
- 41 manner that minimizes disruption to the normal activities of the child's family;
- 42 ▶ modifies access to juvenile court proceedings;
- 43 ▶ limits the types of identifying information that may be stricken from a record
- 44 released by the Division of Child and Family Services to specified individuals;
- 45 ▶ requires the Office of the Guardian Ad Litem to make an annual report to the Child
- 46 Welfare Legislative Oversight Panel;
- 47 ▶ requires recording of unauthorized ex parte communications concerning an ongoing
- 48 case between a judge and other parties to an abuse, neglect, or dependency
- 49 proceeding; and
- 50 ▶ makes conforming changes and technical corrections.

51 **Monies Appropriated in this Bill:**

- 52 This bill appropriates:
- 53 ▶ (\$239,000), as an ongoing appropriation, for fiscal year 2004-05 from the General
- 54 Fund in the Department of Human Services Executive Director Operations --
- 55 Services Review; and
- 56 ▶ \$239,000, as an ongoing appropriation for fiscal year 2004-05 from the General

57 Fund to the Child Welfare Parental Defense Trust Fund.

58 **Other Special Clauses:**

59 This bill takes effect on July 1, 2004.

60 **Utah Code Sections Affected:**

61 AMENDS:

62 **30-3-10**, as last amended by Chapter 269, Laws of Utah 2003

63 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002

64 **62A-4a-205**, as last amended by Chapter 306, Laws of Utah 2002

65 **62A-4a-409**, as last amended by Chapter 265, Laws of Utah 2002

66 **62A-4a-412**, as last amended by Chapter 68, Laws of Utah 2003

67 **63A-1-109**, as last amended by Chapter 5, Laws of Utah 2003

68 **78-3a-105**, as last amended by Chapter 68, Laws of Utah 2003

69 **78-3a-115**, as last amended by Chapter 332, Laws of Utah 2003

70 **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003

71 **78-3a-304.5**, as enacted by Chapter 302, Laws of Utah 1995

72 **78-3a-307**, as last amended by Chapters 153 and 255, Laws of Utah 2001

73 **78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002

74 **78-3a-412**, as renumbered and amended by Chapter 260, Laws of Utah 1994

75 **78-3a-912**, as last amended by Chapter 168, Laws of Utah 2002

76 **78-3a-913**, as last amended by Chapter 256, Laws of Utah 1999

77 ENACTS:

78 **62A-4a-120**, Utah Code Annotated 1953

79 **63A-11-101**, Utah Code Annotated 1953

80 **63A-11-102**, Utah Code Annotated 1953

81 **63A-11-103**, Utah Code Annotated 1953

82 **63A-11-104**, Utah Code Annotated 1953

83 **63A-11-105**, Utah Code Annotated 1953

84 **63A-11-106**, Utah Code Annotated 1953

85 **63A-11-107**, Utah Code Annotated 1953

86 **63A-11-108**, Utah Code Annotated 1953

87 **63A-11-109**, Utah Code Annotated 1953

- 88 **63A-11-110**, Utah Code Annotated 1953
- 89 **63A-11-201**, Utah Code Annotated 1953
- 90 **63A-11-202**, Utah Code Annotated 1953
- 91 **63A-11-203**, Utah Code Annotated 1953



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

94 Section 1. Section **30-3-10** is amended to read:

95 **30-3-10. Custody of children in case of separation or divorce -- Custody**
96 **consideration.**

97 (1) If a husband and wife having minor children are separated, or their marriage is
98 declared void or dissolved, the court shall make an order for the future care and custody of the
99 minor children as it considers appropriate.

100 (a) In determining any form of custody, the court shall consider the best interests of the
101 child and, among other factors the court finds relevant, the following:

102 (i) the past conduct and demonstrated moral standards of each of the parties;

103 (ii) which parent is most likely to act in the best interest of the child, including
104 allowing the child frequent and continuing contact with the noncustodial parent; and

105 (iii) those factors outlined in Section 30-3-10.2.

106 (b) The court shall, in every case, consider joint custody but may award any form of
107 custody which is determined to be in the best interest of the child.

108 (c) The children may not be required by either party to testify unless the trier of fact
109 determines that extenuating circumstances exist that would necessitate the testimony of the
110 children be heard and there is no other reasonable method to present their testimony.

111 (d) The court may inquire of the children and take into consideration the children's
112 desires regarding future custody or parent-time schedules, but the expressed desires are not
113 controlling and the court may determine the children's custody or parent-time otherwise. The
114 desires of a child 16 years of age or older shall be given added weight, but is not the single
115 controlling factor.

116 (e) If interviews with the children are conducted by the court pursuant to Subsection
117 (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be
118 obtained but is not necessary if the court finds that an interview with the children is the only

119 method to ascertain the child's desires regarding custody.

120 (2) In awarding custody, the court shall consider, among other factors the court finds
121 relevant, which parent is most likely to act in the best interests of the child, including allowing
122 the child frequent and continuing contact with the noncustodial parent as the court finds
123 appropriate.

124 (3) If the court finds that one parent does not desire custody of the child, or has
125 attempted to permanently relinquish custody to a third party, it shall take that evidence into
126 consideration in determining whether to award custody to the other parent.

127 (4) (a) ~~[A] Except as provided in Subsection (4)(b),~~ a court may not discriminate
128 against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or
129 determining whether a substantial change has occurred for the purpose of modifying an award
130 of custody.

131 (b) If a court takes a parent's disability into account in awarding custody or determining
132 whether a substantial change has occurred for the purpose of modifying an award of custody,
133 the parent with a disability may rebut any evidence, presumption, or inference arising
134 ~~[therefrom] from the disability~~ by showing that:

135 (i) the disability does not significantly or substantially inhibit the parent's ability to
136 provide for the physical and emotional needs of the child at issue; or

137 (ii) the parent with a disability has sufficient human, monetary, or other resources
138 available to supplement the parent's ability to provide for the physical and emotional needs of
139 the child at issue.

140 (c) Nothing in this section may be construed to apply to ~~[(i) abuse, neglect, or
141 dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78,
142 Chapter 3a, Juvenile Court Act of 1996; or (ii)]~~ adoption proceedings under Title 78, Chapter
143 30, Adoption.

144 (5) This section establishes neither a preference nor a presumption for or against joint
145 legal custody, joint physical custody, or sole custody, but allows the court and the family the
146 widest discretion to choose a parenting plan that is in the best interest of the child.

147 Section 2. Section **62A-4a-101** is amended to read:

148 **62A-4a-101. Definitions.**

149 As used in this chapter:

- 150 (1) "Abuse" means:
- 151 (a) actual or threatened nonaccidental physical or mental harm;
- 152 (b) negligent treatment;
- 153 (c) sexual exploitation; or
- 154 (d) any sexual abuse.
- 155 (2) "Adoption services" means placing children for adoption, subsidizing adoptions
- 156 under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by
- 157 the court, conducting adoption studies, preparing adoption reports upon request of the court,
- 158 and providing postadoptive placement services, upon request of a family, for the purpose of
- 159 stabilizing a possible disruptive placement.
- 160 (3) "Board" means the Board of Child and Family Services established in accordance
- 161 with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.
- 162 (4) "Child" has the same meaning as "minor," as defined in this section.
- 163 (5) "Consumer" means a person who receives services offered by the division in
- 164 accordance with this chapter.
- 165 (6) "Chronic physical abuse" means repeated or patterned physical abuse.
- 166 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,
- 167 guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.
- 168 (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.
- 169 (9) "Custody," with regard to the division, means the custody of a child in the division
- 170 as of the date of disposition.
- 171 (10) "Day-care services" means care of a child for a portion of the day which is less
- 172 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care
- 173 center, family group home, or family child care home.
- 174 (11) "Dependent child" or "dependency" means a child, or the condition of a child, who
- 175 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.
- 176 (12) "Director" means the director of the Division of Child and Family Services.
- 177 (13) "Division" means the Division of Child and Family Services.
- 178 (14) (a) "Domestic violence services" means temporary shelter, treatment, and related
- 179 services to persons who are victims of abuse and their dependent children and treatment
- 180 services for domestic violence perpetrators.

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

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

188 (16) "Minor" means a person under 18 years of age. "Minor" may also include a
189 person under 21 years of age for whom the division has been specifically ordered by the
190 juvenile court to provide services.

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

193 (18) (a) "Neglect" means:

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

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

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

199 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
200 subsistence, education, or medical care, including surgery or psychiatric services when
201 required, or any other care necessary for his health, safety, morals, or well-being; or

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

204 (b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),
205 means that, after receiving notice that a child has been frequently absent from school without
206 good cause, or that the child has failed to cooperate with school authorities in a reasonable
207 manner, a parent or guardian fails to make a good faith effort to ensure that the child receives
208 an appropriate education.

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

211 (19) "Protective custody," with regard to the division, means the shelter of a child by

212 the division from the time the child is removed from the child's home until the shelter hearing,
213 or the child's return home, whichever occurs earlier.

214 (20) "Protective services" means expedited services that are provided:

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

216 [~~(b) in an effort to substantiate evidence of neglect, abuse, or dependency;~~]

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

220 [~~(d)~~] (c) in cases where the child's welfare is endangered:

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

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

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

228 (21) "Services to unwed parents" means social, educational, and medical services
229 arranged for or provided to unwed parents to help them plan for themselves and the unborn
230 child.

231 (22) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
232 minor.

233 (23) "Shelter care" means the temporary care of minors in nonsecure facilities.

234 (24) "State" means a state of the United States, the District of Columbia, the
235 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
236 Mariana Islands, or a territory or possession administered by the United States.

237 (25) "Severe emotional abuse" means emotional abuse that causes or threatens to cause
238 serious harm to a minor.

239 (26) "Severe physical abuse" means physical abuse that causes or threatens to cause
240 serious harm to a minor.

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

243 (28) "Status offense" means a violation of the law that would not be a violation but for
244 the age of the offender.

245 (29) "Substantiated" or "substantiation" means a judicial finding based on a
246 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
247 identified in a given case shall be considered separately in determining whether there should be
248 a finding of substantiated.

249 (30) "Substitute care" means:

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

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

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

256 (31) "Supported" means a finding by the division based on the evidence available at the
257 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,
258 or dependency occurred. Each allegation made or identified during the course of the
259 investigation shall be considered separately in determining whether there should be a finding of
260 supported.

261 (32) "Temporary custody," with regard to the division, means the custody of a child in
262 the division from the date of the shelter hearing until disposition.

263 (33) "Transportation services" means travel assistance given to an individual with
264 escort service, if necessary, to and from community facilities and resources as part of a service
265 plan.

266 (34) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
267 conclude that abuse or neglect occurred.

268 (35) "Unsupported" means a finding at the completion of an investigation that there is
269 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a
270 finding of unsupported means also that the division worker did not conclude that the allegation
271 was without merit.

272 (36) "Without merit" means a finding at the completion of an investigation by the
273 division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or

274 that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

275 Section 3. Section **62A-4a-120** is enacted to read:

276 **62A-4a-120. Accommodation of moral and religious beliefs.**

277 (1) The division shall adopt rules in accordance with Title 63, Chapter 46a, Utah
278 Administrative Rulemaking Act, and establish procedures to accommodate the moral and
279 religious beliefs, and culture, of the children and families it serves, including:

280 (a) the immediate family and other relatives of a child in any type of custody or
281 otherwise under the jurisdiction of the court;

282 (b) foster and other out-of-home placement families; and

283 (c) adoptive families.

284 (2) The accommodation under Subsection (1) applies to placements, treatment plans,
285 services, and other activities of the division.

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

287 **62A-4a-205. Treatment plans.**

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

290 (2) The division shall use an interdisciplinary team approach in developing each
291 treatment plan. An interdisciplinary team shall include, but is not limited to, representatives
292 from mental health, education, and, where appropriate, a representative of law enforcement.

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

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

296 (ii) the child;

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

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

299 (b) In relation to all information considered by the division in developing a treatment
300 plan, additional weight and attention shall be given to the input of the child's natural and foster
301 parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

302 (4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the
303 child's natural parents and foster parents immediately upon completion, or as soon as is
304 reasonably possible thereafter.

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

308 (6) The plan shall set forth, with specificity, at least the following:

309 (a) the reason the child entered Division of Child and Family Services custody, and
310 documentation of the reasonable efforts made to prevent placement, or documentation of the
311 emergency situation that existed and that prevented reasonable efforts;

312 (b) the primary permanency goal for the child and the reason for selection of that goal;

313 (c) the concurrent permanency goal for the child and the reason for the selection of that
314 goal;

315 (d) if the plan is for the child to return to the child's family, specifically what the
316 parents must do in order to enable the child to be returned home, specifically how those
317 requirements may be accomplished, and how those requirements will be measured;

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

320 (f) a parent-time schedule between the natural parent and the child;

321 (g) the health [~~care to be provided to the child,~~] and [~~the~~] mental health care to be
322 provided to address any known or diagnosed mental health needs of the child[~~-If~~] and, if
323 residential treatment[;] rather than a foster home[;] is the proposed placement, a requirement
324 for a specialized assessment of the child's health needs [shall be conducted,] including an
325 assessment of mental illness and behavior and conduct disorders; and

326 (h) social summaries that include case history information pertinent to case planning.

327 (7) (a) Each treatment plan shall be specific to each child and the child's family, rather
328 than general. The division shall train its workers to develop treatment plans that comply with
329 federal mandates and the specific needs of the particular child and the child's family.

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

332 (c) Treatment plans shall address problems that keep children in placement and keep
333 them from achieving permanence in their lives.

334 (d) Each treatment plan shall be designed to minimize disruption to the normal
335 activities of the child's family, including employment and school. In particular, the time, place,

336 and amount of services, hearings, and other requirements ordered by the court shall be
337 designed, as much as practicable, to help the child's parents maintain or obtain employment.

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

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

346 Section 5. Section **62A-4a-409** is amended to read:

347 **62A-4a-409. Investigation by division -- Temporary protective custody --**
348 **Preremoval interviews of children.**

349 (1) The division shall make a thorough preremoval investigation upon receiving either
350 an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
351 dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal
352 alcohol syndrome, or fetal drug dependency. The primary purpose of that investigation shall be
353 protection of the child.

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

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

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

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

364 (c) A representative of the division shall serve as the team's coordinator and chair.
365 Members of the team shall serve at the coordinator's invitation[~~, and whenever~~]. Whenever
366 possible, the team shall include representatives of:

- 367 (i) health, mental health, education, and law enforcement agencies[-];
- 368 (ii) the child;
- 369 (iii) parent and family support groups unless the parent is alleged to be the perpetrator;
- 370 and
- 371 (iv) other appropriate agencies or individuals.

372 (5) In any case where the division supervises, governs, or directs the affairs of any

373 individual, institution, or facility that has been alleged to be involved in acts or omissions of

374 child abuse or neglect, the investigation of the reported child abuse or neglect shall be

375 conducted by an agency other than the division.

376 (6) If a report of neglect is based upon or includes an allegation of educational neglect,

377 the division shall immediately consult with school authorities to verify the child's status in

378 accordance with Sections 53A-11-101 through 53A-11-103.

379 (7) When the division has completed its initial investigation under this part, it shall

380 give notice of that completion to the person who made the initial report.

381 (8) Division workers or other child protection team members have authority to enter

382 upon public or private premises, using appropriate legal processes, to investigate reports of

383 alleged child abuse or neglect, upon notice to parents of their rights under the Child Abuse

384 Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

385 (9) With regard to any interview of a child prior to removal of that child from the

386 child's home:

387 (a) except as provided in Subsection (9)(b) or (c), the division shall notify a parent of

388 the child prior to the interview;

389 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the

390 alleged perpetrator, the division need not notify a parent of the child prior to an initial interview

391 with the child;

392 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family

393 is unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the

394 child prior to notification of the child's parent;

395 (d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be

396 notified as soon as practicable after the child has been interviewed, but in no case later than 24

397 hours after the interview has taken place;

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

400 (f) (i) the child shall be allowed to have a support person of the child's choice present[-

401 ~~That support person: (i); and~~

402 (ii) the person described in Subsection (9)(f)(i):

403 (A) may include[-but is not limited to;];

404 (I) a school teacher [or];

405 (II) an administrator[-];

406 (III) a guidance counselor[-or];

407 (IV) a child care provider[-and]; or

408 (V) clergy; and

409 ~~[(ii)]~~ (B) may not be a person who is alleged to be, or potentially may be, the

410 perpetrator.

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

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

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

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

424 Section 6. Section **62A-4a-412** is amended to read:

425 **62A-4a-412. Reports and information confidential.**

426 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as
427 well as any other information in the possession of the division obtained as the result of a report
428 are private, protected, or controlled records under Title 63, Chapter 2, Government Records

429 Access and Management Act, and may only be made available to:

430 (a) a police or law enforcement agency investigating a report of known or suspected
431 child abuse or neglect;

432 (b) a physician who reasonably believes that a child may be the subject of abuse or
433 neglect;

434 (c) an agency that has responsibility or authority to care for, treat, or supervise a child
435 who is the subject of a report;

436 (d) a contract provider that has a written contract with the division to render services to
437 a child who is the subject of a report;

438 (e) any subject of the report, the natural parents of the minor, and the guardian ad
439 litem;

440 (f) a court, upon a finding that access to the records may be necessary for the
441 determination of an issue before ~~[it]~~ the court, provided that in a divorce, custody, or related
442 proceeding between private parties, the record alone is:

443 (i) limited to objective or undisputed facts that were verified at the time of the
444 investigation; and

445 (ii) devoid of conclusions drawn by the division or any of ~~[its]~~ the division's workers
446 on the ultimate issue of whether or not a person's acts or omissions constituted any level of
447 abuse or neglect of another person;

448 (g) an office of the public prosecutor or its deputies in performing an official duty;

449 (h) a person authorized by a Children's Justice Center, for the purposes described in
450 Section 67-5b-102;

451 (i) a person engaged in bona fide research, when approved by the director of the
452 division, if the information does not include names and addresses;

453 (j) the State Office of Education, acting on behalf of itself or on behalf of a school
454 district, for the purpose of evaluating whether an individual should be permitted to obtain or
455 retain a license as an educator or serve as an employee or volunteer in a school, limited to
456 information with substantiated findings involving an alleged sexual offense, an alleged felony
457 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
458 Chapter 5, Offenses Against the Person, and with the understanding that the office must
459 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond

460 to the report before making a decision concerning licensure or employment;

461 (k) any person identified in the report as a perpetrator or possible perpetrator of child
462 abuse or neglect, after being advised of the screening prohibition in Subsection (2); and

463 (l) a person filing a petition for a child protective order on behalf of a minor who is the
464 subject of the report.

465 (2) (a) ~~[No]~~ A person, unless listed in Subsection (1), may not request another person
466 to obtain or release a report or any other information in the possession of the division obtained
467 as a result of the report that is available under Subsection (1)(k) to screen for potential
468 perpetrators of child abuse or neglect.

469 (b) A person who requests information knowing that it is a violation of Subsection
470 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

471 (3) (a) Except as provided in Section 62A-4a-116.3 and Subsection (3)(b), the division
472 and law enforcement officials shall ensure the anonymity of the person or persons making the
473 initial report and any others involved in its subsequent investigation.

474 (b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but
475 including this chapter and Title 63, Chapter 2, Government Records Access and Management
476 Act, when the division makes a report or other information in its possession available under
477 Subsection (1)(e) to a subject of the report or a parent of a minor, the division shall remove
478 from the report or other information only the names, addresses, and telephone numbers of
479 individuals or specific information that could identify the referent.

480 (4) Any person who wilfully permits, or aides and abets the release of data or
481 information obtained as a result of this part, in the possession of the division or contained on
482 any part of the Management Information System, in violation of this part or Sections
483 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

484 (5) The physician-patient privilege is not a ground for excluding evidence regarding a
485 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in
486 good faith pursuant to this part.

487 Section 7. Section **63A-1-109** is amended to read:

488 **63A-1-109. Divisions of department -- Administration.**

489 (1) The department shall be composed of the following divisions:

490 (a) administrative rules;

- 491 (b) archives and records;
- 492 (c) facilities construction and management;
- 493 (d) finance;
- 494 (e) fleet operations;
- 495 (f) information technology services;
- 496 (g) office of state debt collection;
- 497 (h) state purchasing and general services; ~~and~~
- 498 (i) risk management[-]; and
- 499 (j) child welfare parental defense.

500 (2) Each division shall be administered and managed by a division director.

501 Section 8. Section **63A-11-101** is enacted to read:

502 **CHAPTER 11. DIVISION OF CHILD WELFARE PARENTAL DEFENSE**

503 **63A-11-101. Title.**

504 This chapter is known as the "Division of Child Welfare Parental Defense."

505 Section 9. Section **63A-11-102** is enacted to read:

506 **63A-11-102. Definitions.**

507 For purposes of this chapter:

508 (1) "Child welfare case" means a proceeding under Title 78, Chapter 3a, Juvenile
509 Courts, Part 3 or 4.

510 (2) "Contracted parental defense attorney" means an attorney authorized to practice law
511 in Utah who is under contract with the division to provide parental defense in child welfare
512 cases.

513 (3) "Director" means the director of the division.

514 (4) "Division" means the Division of Child Welfare Parental Defense created in
515 Section 63A-11-103.

516 (5) "Fund" means the Child Welfare Parental Defense Trust Fund established in
517 Section 63A-11-202.

518 Section 10. Section **63A-11-103** is enacted to read:

519 **63A-11-103. Creation of division.**

520 There is created within the Department of Administrative Services, the Division of
521 Child Welfare Parental Defense.

522 Section 11. Section **63A-11-104** is enacted to read:

523 **63A-11-104. Division director -- Appointment -- Duties.**

524 (1) (a) The executive director of the department shall appoint the director of the
525 division with the approval of the governor.

526 (b) The director shall be an attorney licensed to practice law in the state with
527 experience representing parents in child welfare cases.

528 (2) The director shall administer and enforce this chapter.

529 Section 12. Section **63A-11-105** is enacted to read:

530 **63A-11-105. Employment of staff.**

531 The director may employ, as staff, one assistant.

532 Section 13. Section **63A-11-106** is enacted to read:

533 **63A-11-106. Division -- Duties, functions, and responsibilities.**

534 The duties, functions, and responsibilities of the division include the following:

535 (1) to develop policies and procedures for the transfer and management of existing
536 contracts with parental defense attorneys from the counties to the state;

537 (2) to develop and enter into contracts with attorneys authorized to practice law in the
538 state, as independent contractors, to serve as parental defense attorneys;

539 (3) to provide assistance and advice to contracted parental defense attorneys;

540 (4) to develop and provide educational and training programs and a library of materials
541 for contracted parental defense attorneys;

542 (5) to provide information and advice to assist contracted parental defense attorneys to
543 comply with their professional, contractual, and ethical duties; and

544 (6) to maintain lists of parental defense attorneys who represent that they have
545 experience in child welfare cases and make the lists available to the public at cost upon request.

546 Section 14. Section **63A-11-107** is enacted to read:

547 **63A-11-107. Annual report -- Budget.**

548 (1) On or before the 1st day of October each year, the director shall report to the
549 governor and the Child Welfare Legislative Oversight Panel of the Legislature regarding the
550 preceding fiscal year on the operations, activities, and goals of the division.

551 (2) The director shall prepare and submit to the executive director a budget of:

552 (a) the administrative expenses for the division; and

553 (b) the amount to fund needed contracted parental defense attorneys.
554 Section 15. Section **63A-11-108** is enacted to read:
555 **63A-11-108. Parental defense attorney.**
556 (1) With respect to child welfare cases, a contracted parental defense attorney shall:
557 (a) adequately prepare for and attend all court hearings, including initial and continued
558 shelter hearings;
559 (b) fully advise the client of the nature of the proceedings and of the client's rights,
560 communicate to the client any offers of settlement or compromise, and advise the client
561 regarding the reasonably foreseeable consequences of any course of action in the proceedings;
562 (c) be reasonably available to consult with the client outside of court proceedings;
563 (d) where attendance of a parental defense attorney is reasonably needed, attend
564 meetings regarding the client's case with representatives of one or more of the Division of
565 Child and Family Services, the Office of the Attorney General, and the Office of the Guardian
566 Ad Litem Director;
567 (e) zealously represent the interest of the client at all stages of the proceedings before
568 the trial court;
569 (f) pursue and perfect appeals from final orders of the trial court, when the client
570 requests an appeal and an appeal would not be frivolous; and
571 (g) participate in the training courses and otherwise maintain the standards described in
572 Subsection (3).
573 (2) If the division enters into a contract with a law firm under Section 63A-11-106, the
574 contract shall require that each attorney in the firm who will provide representation of parents
575 in child welfare cases under the contract perform the duties described in Subsection (1).
576 (3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense
577 attorney shall meet the following standards as a condition to being allowed to provide
578 representation under a contract:
579 (i) the attorney shall have completed a basic training course provided by the division;
580 (ii) the attorney shall have experience in child welfare cases; and
581 (iii) the attorney shall participate each calendar year in continuing legal education
582 courses providing no fewer than eight hours of instruction in child welfare law.
583 (b) In accordance with Title 62, Chapter 46a, Utah Administrative Rulemaking Act, the

584 director may, by rule, exempt from the requirement of Subsection (3)(a)(i) an attorney who has
585 equivalent training or adequate experience.

586 (4) Payment for the representation, costs, and expenses of the contracted parental
587 defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in
588 Section 63A-11-202.

589 Section 16. Section **63A-11-109** is enacted to read:

590 **63A-11-109. Qualified experts -- Funding.**

591 (1) The division shall develop a list of qualified experts to serve as a defense resource
592 to contracted parental defense attorneys. The division shall negotiate with one or more experts
593 to be included on the list in child welfare cases to be handled by contracted parental defense
594 attorneys, whose fees are discounted from the current market billing rates of the expert.

595 (2) When a contracted parental defense attorney requires an expert witness in a child
596 welfare case, the persons named in the list described in Subsection (1) are the exclusive source
597 from which expert witness defense resources may be provided, unless the court finds a
598 compelling reason for an expert witness not on the list to be used, in which case the court shall
599 state the compelling reason on the record.

600 (3) The division has discretion to include or exclude in a contract awarded to a
601 contracted parental defense attorney the funding to cover expert witness fees and other costs.

602 (4) The division shall:

603 (a) establish a reserve fund from funds appropriated by the Legislature, for the purpose
604 of assisting a contracted parental defense attorney with expert witness fees and costs not
605 covered under the attorney's contract;

606 (b) determine reimbursements and payments to be made from the fund described in
607 Subsection (4)(a); and

608 (c) establish a child welfare parental defense trust fund to encourage participation by
609 counties throughout the state.

610 Section 17. Section **63A-11-110** is enacted to read:

611 **63A-11-110. Records access.**

612 (1) (a) Notwithstanding Title 63, Chapter 2, Government Records Access and
613 Management Act, and except as provided in Subsection (1)(b), all records of a contracted
614 parental defense attorney are protected and may not be released or made public upon subpoena,

615 search warrant, discovery proceedings, or otherwise.

616 (b) All records of a contracted parental defense attorney are subject to legislative
617 subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.

618 (2) Records released in accordance with Subsection (1)(b) shall be maintained as
619 confidential by the Legislature. The professional legislative staff may, however, include
620 summary data and nonidentifying information in its audits and reports to the Legislature.

621 Section 18. Section **63A-11-201** is enacted to read:

622 **63A-11-201. Child welfare parental defense contracts -- Qualifications -- Duties.**

623 (1) The division shall enter into contracts with qualified parental defense attorneys
624 counsel to provide services for a parent or parents who are the subject of a petition alleging
625 abuse, neglect, or dependency, and will require parental defense attorney.

626 (2) Payment for the representation, costs, and expenses of legal defense counsel shall
627 be made from the Child Welfare Parental Defense Trust Fund as provided in Section
628 63a-11-202.

629 (3) The parental defense attorney shall maintain the minimum qualifications as
630 provided in Section 63A-11-106.

631 Section 19. Section **63A-11-202** is enacted to read:

632 **63A-11-202. Child Welfare Parental Defense Trust Fund -- Creation.**

633 (1) There is created a trust fund known as the "Child Welfare Parental Defense Trust
634 Fund" to be disbursed by the Division of Finance at the direction of the director and in
635 accordance with contracts made under Section 63A-11-106.

636 (2) Monies deposited in this fund shall be used:

637 (a) to pay for the representation, costs, and expenses of contracted parental defense
638 attorneys who are under contract with the division to provide parental defense in child welfare
639 cases for the parent or parents that are the subject of a petition alleging abuse, neglect, or
640 dependency; and

641 (b) for administrative costs pursuant to Section 63A-11-104.

642 (3) The fund consists of:

643 (a) appropriations made to the fund by the Legislature;

644 (b) interest and earnings from the investment of fund monies;

645 (c) proceeds deposited by participating counties pursuant to Section 63A-11-203; and

646 (d) private contributions to the Child Welfare Parental Defense Trust Fund.

647 (4) The state treasurer shall invest the money in the fund by following the procedures
648 and requirements of Title 51, Chapter 7, State Money Management Act.

649 (5) In any calendar year in which the fund runs a deficit, or is projected to run a deficit,
650 the division shall request a supplemental appropriation from the Legislature in the following
651 general session to pay for the deficit. The legislature may appropriate subject to future budget
652 constraints, any or all of the reasonable and necessary monies for the deficit into the Child
653 Welfare Parental Defense Trust Fund.

654 Section 20. Section **63A-11-203** is enacted to read:

655 **63A-11-203. Agreements for coverage by the Child Welfare Parental Defense**
656 **Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.**

657 (1) (a) A county legislative body may annually enter into a written agreement to
658 provide for payment of parental defense attorney costs in excess of the county's parental
659 defense budget out of the Child Welfare Parental Defense Fund.

660 (b) The services of contracted parental defense attorneys who are under contract with
661 the Division of Administrative Services to provide parental defense in child welfare cases for
662 parents that are the subject of a petition alleging abuse, neglect, or dependency are eligible for
663 coverage by the Child Welfare Parental Defense Fund.

664 (2) An agreement for payment of parental defense costs from the Child Welfare
665 Parental Defense Fund shall provide that the county shall pay into the fund an amount equal to
666 the parental defense costs determined to be normal by the division in accordance with the
667 formula specified by rule.

668 (3) (a) Except as provided in Subsection (3)(d), after the first year of operation of the
669 fund, any county that elects to initiate participation in the fund, or reestablish participation in
670 the fund after participation was terminated, shall be required to make an equity payment, in
671 addition to the assessment provided in Subsection (2)(a).

672 (b) The equity payment shall represent what the county's equity in the fund would be if
673 the county had made assessments into the fund for each of the previous three years.

674 (c) The equity payment shall be determined by the division in accordance with division
675 rules.

676 (d) The equity payment requirement is waived for any county that initiates participation

677 in the fund, or reestablishes participation in the fund, during the period beginning on April 1,
678 2005 and ending on May 31, 2005.

679 (4) The agreement shall provide that:

680 (a) the state shall pay into the fund an amount equal to the county's payment, including
681 any equity payment required under Subsection (3); and

682 (b) if monies in the fund are insufficient to pay for all eligible parental defense costs,
683 the state shall pay for 1/2 of the county's remaining costs.

684 (5) The agreement shall provide for revocation of the agreement for failure to pay
685 assessments when due.

686 (6) Any county that elects to withdraw from participation in the fund, or whose
687 participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit
688 any right to any previously paid assessments by the county.

689 Section 21. Section **78-3a-105** is amended to read:

690 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

691 (1) The district court or other court has concurrent jurisdiction with the juvenile court
692 as follows:

693 (a) when a person who is 18 years of age or older and who is under the continuing
694 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local
695 law or municipal ordinance; and

696 (b) in establishing paternity and ordering testing for the purposes of establishing
697 paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to
698 proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4,
699 Termination of Parental Rights Act.

700 (2) The juvenile court has jurisdiction over petitions to modify a minor's birth
701 certificate if the court otherwise has jurisdiction over the minor.

702 (3) This section does not deprive the district court of jurisdiction to appoint a guardian
703 for a minor, or to determine the support, custody, and parent-time of a minor upon writ of
704 habeas corpus or when the question of support, custody, and parent-time is incidental to the
705 determination of a cause in the district court.

706 (4) (a) Where a support, custody, or parent-time award has been made by a district
707 court in a divorce action or other proceeding, and the jurisdiction of the district court in the

708 case is continuing, the juvenile court may acquire jurisdiction in a case involving the same
709 minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction
710 of the juvenile court under Section 78-3a-104.

711 (b) The juvenile court may, by order, change the custody, subject to Subsection
712 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as
713 necessary to implement the order of the juvenile court for the safety and welfare of the minor.
714 The juvenile court order remains in effect so long as the jurisdiction of the juvenile court
715 continues.

716 (c) When a copy of the findings and order of the juvenile court has been filed with the
717 district court, the findings and order of the juvenile court are binding on the parties to the
718 divorce action as though entered in the district court.

719 (5) The juvenile court has jurisdiction over questions of custody, support, and
720 parent-time, of a minor who comes within the court's jurisdiction under this section or Section
721 78-3a-104.

722 Section 22. Section **78-3a-115** is amended to read:

723 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
724 **cases heard separately from adult cases -- Minor or parents or custodian heard**
725 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
726 **one minor.**

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

729 (a) In abuse, neglect, and dependency cases in all districts other than pilot districts
730 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude [~~all~~
731 ~~persons~~] the general public from hearings held prior to July 1, [~~2005 who do not have a direct~~
732 ~~interest in the proceedings~~] 2004.

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

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

739 (i) the minor has been charged with an offense which would be a felony if committed
740 by an adult; or

741 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if
742 committed by an adult, and the minor has been previously charged with an offense which
743 would be a misdemeanor or felony if committed by an adult.

744 (d) The victim of any act charged in a petition or information involving an offense
745 committed by a minor which if committed by an adult would be a felony or a class A or class B
746 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
747 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
748 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not
749 apply to important juvenile justice hearings as defined in Section 77-38-2.

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

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

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

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

755 (2) Minor's cases shall be heard separately from adult cases. The minor or ~~his~~ the
756 minor's parents or custodian may be heard separately when considered necessary by the court.

757 The hearing may be continued from time to time to a date specified by court order.

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

762 Section 23. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

763 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor**
764 **following petition filing -- Grounds.**

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

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

777 (b) a parent or guardian engages in or threatens the minor with unreasonable conduct
778 that causes the minor to suffer emotional damage and there are no reasonable means available
779 by which the minor's emotional health may be protected without removing the minor from the
780 custody of the minor's parent or guardian;

781 (c) ~~[(†)]~~ the minor or another minor residing in the same household has been physically
782 or sexually abused, or is considered to be at substantial risk of being physically or sexually
783 abused, by a parent or guardian, a member of the parent's or guardian's household, or other
784 person known to the parent or guardian~~[-];~~

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

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

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

795 (e) the minor has been abandoned or left without any provision for the minor's support;

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

798 (g) a relative or other adult custodian with whom the minor has been left by the parent
799 or guardian is unwilling or unable to provide care or support for the minor, the whereabouts of
800 the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian

801 have been unsuccessful;

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

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

805 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
806 a threat to the minor's health or safety;

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

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

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

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

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

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

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

824 (i) another minor residing in the same household may not be removed from the home
825 unless that minor is considered to be at substantial risk of being physically or sexually abused
826 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

827 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
828 person known to the parent has occurred, and there is evidence that the parent or guardian
829 failed to protect the minor, after having received the notice, by allowing the minor to be in the
830 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the
831 minor is at substantial risk of being physically or sexually abused.

832 ~~[(2) A]~~ (3) In the absence of one of the factors described in Subsection (1), a court
833 may not remove a minor from the parent's or guardian's custody on the basis of:

834 (a) educational neglect~~[-, in the absence of one of the factors described in Subsection~~
835 ~~(1). (3) A court may not remove a minor from the parent's or guardian's custody on the basis~~
836 ~~of];~~

837 (b) mental illness or poverty of the parent or guardian~~[-, in the absence of one of the~~
838 ~~factors described in Subsection (1).]; or~~

839 (c) disability of the parent or guardian, as defined in Subsection 57-21-3(9).

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

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

846 Section 24. Section **78-3a-304.5** is amended to read:

847 **78-3a-304.5. Rules of procedure -- Ex parte communications.**

848 (1) The Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure apply
849 to abuse, neglect, and dependency proceedings unless the provisions of this part specify
850 otherwise.

851 (2) Any unauthorized ex parte communication concerning a pending case between a
852 judge and a party to an abuse, neglect, or dependency proceeding shall be recorded for
853 subsequent review, if necessary, by the Judicial Conduct Commission.

854 Section 25. Section **78-3a-307** is amended to read:

855 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
856 **DCFS custody.**

857 (1) (a) At the shelter hearing, when the court orders that a child be removed from the
858 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
859 first determine whether there is another natural parent as defined in Subsection (1)(b), with
860 whom the child was not residing at the time the events or conditions that brought him within
861 the court's jurisdiction occurred, who desires to assume custody of the child. If that parent
862 requests custody, the court shall place the minor with that parent unless it finds that the

863 placement would be unsafe or otherwise detrimental to the child. The provisions of this
864 Subsection (1) are limited by the provisions of Subsection (8)(b).

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

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

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

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

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

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

883 (2) If the court orders placement with a parent under Subsection (1), the child and the
884 parent are under the continuing jurisdiction of the court. The court may order that the parent
885 assume custody subject to the supervision of the court, and order that services be provided to
886 the parent from whose custody the child was removed, the parent who has assumed custody, or
887 both. The court shall also provide for reasonable parent-time with the parent from whose
888 custody the child was removed, unless parent-time is not in the best interest of the child. The
889 court's order shall be periodically reviewed to determine whether:

890 (a) placement with the parent continues to be in the child's best interest;

891 (b) the child should be returned to the original custodial parent;

892 (c) the child should be placed with a relative, pursuant to Subsection (5); or

893 (d) the child should be placed in the custody of the division.

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

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

900 (5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of
901 his parent and is not placed in the custody of his other parent, the court shall, at that time,
902 determine whether there is a relative who is able and willing to care for the child.

903 (ii) The court may order the Division of Child and Family Services to conduct a
904 reasonable search to determine whether there are relatives of the child who are willing and
905 appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2,
906 Child Welfare Services, for placement of the child. The court shall order the parents to
907 cooperate with the division, within five working days, to provide information regarding
908 relatives who may be able and willing to care for the child.

909 (iii) The child may be placed in the temporary custody of the division pending [~~that~~]
910 the determination under Subsection (5)(a)(ii).

911 (iv) This section may not be construed as a guarantee that an identified relative will
912 receive custody of the child. However, preferential consideration [~~may~~] shall be given to a
913 relative's request for placement of the child, if it is in the best interest of the child, and the
914 provisions of this section are satisfied.

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

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

925 information so that the court may determine whether:

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

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

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

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

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

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

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

937 (iv) The division shall complete and file its assessment regarding placement with a
938 relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

939 (c) The court may place the child in the temporary custody of the division, pending the
940 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding
941 that placement. The court shall ultimately base its determination regarding placement with a
942 relative on the best interest of the child.

943 (d) For purposes of this section, "relative" means an adult who is a grandparent, great
944 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first
945 cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under
946 the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended
947 family member" as defined by that statute.

948 (6) (a) When the court vests physical custody of a child with a relative pursuant to
949 Subsection (5), it shall order that the relative assume custody subject to the continuing
950 supervision of the court, and shall order that any necessary services be provided to the minor
951 and the relative. That child is not within the temporary custody or custody of the Division of
952 Child and Family Services. The child and any relative with whom the child is placed are under
953 the continuing jurisdiction of the court. The court may enter any order that it considers
954 necessary for the protection and best interest of the child. The court shall provide for
955 reasonable parent-time with the parent or parents from whose custody the child was removed

956 unless parent-time is not in the best interest of the child.

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

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

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

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

962 (ii) No later than 12 months after placement with a relative the court shall schedule a
963 hearing for the purpose of entering a permanent order in accordance with the best interest of the
964 child.

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

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

972 (8) (a) Any preferential consideration that a relative [~~may be~~] is initially granted
973 pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that
974 time period has expired, a relative who has not obtained custody or asserted an interest in a
975 child, may not be granted preferential consideration by the division or the court.

976 (b) When the time period described in Subsection (8)(a) has expired, the preferential
977 consideration which [~~may~~] is initially [~~be~~] granted to a natural parent in accordance with
978 Subsection (1), is limited. After that time the court shall base its custody decision on the best
979 interest of the child.

980 Section 26. Section **78-3a-311** is amended to read:

981 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

986 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,

987 and that the minor remain in the custody of the Division of Child and Family Services, it shall
988 first establish a primary permanency goal for the minor and determine whether, in view of the
989 primary permanency goal, reunification services are appropriate for the child and the child's
990 family, pursuant to Subsection (3).

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

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

1001 (b) (i) In addition to the primary permanency goal, the court shall establish a
1002 concurrent permanency goal. The concurrent permanency goal shall include a representative
1003 list of the conditions under which the primary permanency goal will be abandoned in favor of
1004 the concurrent permanency goal and an explanation of the effect of abandoning or modifying
1005 the primary permanency goal.

1006 (ii) A permanency hearing shall be conducted in accordance with Subsection
1007 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
1008 child's primary permanency goal.

1009 (iii) The court may amend a child's primary permanency goal before the establishment
1010 of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of
1011 the concurrent permanency goal in the event that the primary permanency goal is abandoned.
1012 If, at anytime, the court determines that reunification is no longer a child's primary permanency
1013 goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312
1014 within the earlier of 30 days of the court's determination or 12 months from the original
1015 removal of the child.

1016 (c) (i) If the court determines that reunification services are appropriate, it shall order
1017 that the division make reasonable efforts to provide services to the child and the child's parent

1018 for the purpose of facilitating reunification of the family, for a specified period of time. In
1019 providing those services, the child's health, safety, and welfare shall be the division's
1020 paramount concern, and the court shall so order.

1021 (ii) The court shall determine whether the services offered or provided by the division
1022 under the treatment plan constitute "reasonable efforts" on the part of the division. The court
1023 shall also determine and define the responsibilities of the parent under the treatment plan in
1024 accordance with Section 62A-4a-205. Those duties and responsibilities shall be identified on
1025 the record, for the purpose of assisting in any future determination regarding the provision of
1026 reasonable efforts, in accordance with state and federal law.

1027 (iii) The time period for reunification services may not exceed 12 months from the date
1028 that the child was initially removed from the child's home. Nothing in this section may be
1029 construed to entitle any parent to an entire 12 months of reunification services.

1030 (iv) If reunification services have been ordered, the court may terminate those services
1031 at any time.

1032 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to
1033 be inconsistent with the final permanency plan for the child established pursuant to Subsection
1034 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance
1035 with the permanency plan, and to complete whatever steps are necessary to finalize the
1036 permanent placement of the child.

1037 (d) Any physical custody of the minor by the parent or a relative during the period
1038 described in Subsection (2)(c) does not interrupt the running of the period.

1039 (e) (i) If reunification services have been ordered, a permanency hearing shall be
1040 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time
1041 period for reunification services. The permanency hearing shall be held no later than 12
1042 months after the original removal of the child.

1043 (ii) If reunification services have not been ordered, a permanency hearing shall be
1044 conducted within 30 days, in accordance with Section 78-3a-312.

1045 (f) With regard to a child who is 36 months of age or younger at the time the child is
1046 initially removed from the home, the court shall:

1047 (i) hold a permanency hearing eight months after the date of the initial removal,
1048 pursuant to Section 78-3a-312; and

1049 (ii) order the discontinuance of those services after eight months from the initial
1050 removal of the child from the home if the parent or parents have not made substantial efforts to
1051 comply with the treatment plan.

1052 (g) With regard to a child in the custody of the division whose parent or parents have
1053 been ordered to receive reunification services but who have abandoned that child for a period
1054 of six months since the date that reunification services were ordered, the court shall terminate
1055 reunification services, and the division shall petition the court for termination of parental
1056 rights.

1057 (3) (a) Because of the state's interest in and responsibility to protect and provide
1058 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
1059 parent's interest in receiving reunification services is limited. The court may determine that
1060 efforts to reunify a child with the child's family are not reasonable or appropriate, based on the
1061 individual circumstances, and that reunification services should not be provided. In
1062 determining "reasonable efforts" to be made with respect to a child, and in making "reasonable
1063 efforts," the child's health, safety, and welfare shall be the paramount concern.

1064 (b) There is a presumption that reunification services should not be provided to a
1065 parent if the court finds, by clear and convincing evidence, that any of the following
1066 circumstances exist:

1067 (i) the whereabouts of the parents are unknown, based upon a verified affidavit
1068 indicating that a reasonably diligent search has failed to locate the parent;

1069 (ii) the parent is suffering from a mental illness of such magnitude that it renders him
1070 incapable of utilizing reunification services; that finding shall be based on competent evidence
1071 from mental health professionals establishing that, even with the provision of services, the
1072 parent is unlikely to be capable of adequately caring for the child within 12 months;

1073 (iii) the minor has been previously adjudicated as an abused child due to physical or
1074 sexual abuse, that following the adjudication the child was removed from the custody of his
1075 parent, was subsequently returned to the custody of that parent, and the minor is being removed
1076 due to additional physical or sexual abuse;

1077 (iv) the parent has caused the death of another child through abuse or neglect or has
1078 committed, aided, abetted, attempted, conspired, or solicited to commit murder or
1079 manslaughter of a child or child abuse homicide;

1080 (v) the minor has suffered severe abuse by the parent or by any person known by the
1081 parent, if the parent knew or reasonably should have known that the person was abusing the
1082 minor;

1083 (vi) the minor has been adjudicated an abused child as a result of severe abuse by the
1084 parent, and the court finds that it would not benefit the child to pursue reunification services
1085 with the offending parent;

1086 (vii) the parent's rights have been terminated with regard to any other child;

1087 (viii) the child has been removed from his home on at least two previous occasions and
1088 reunification services were offered or provided to the family at those times; [or]

1089 (ix) the parent has abandoned the child for a period of six months or longer; or

1090 (x) any other circumstance that the court determines should preclude reunification
1091 efforts or services.

1092 (4) (a) Failure of the parent to respond to previous services or comply with any
1093 previous treatment plan, the fact that the child was abused while the parent was under the
1094 influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to
1095 live with an individual who abused the child, any patterns of the parent's behavior that have
1096 exposed the child to repeated abuse, or testimony by a competent professional that the parent's
1097 behavior is unlikely to be successful, shall be considered in determining whether reunification
1098 services are appropriate.

1099 (b) The court shall also consider whether the parent has expressed an interest in
1100 reunification with the child, in determining whether reunification services are appropriate.

1101 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
1102 whereabouts of a parent become known within six months of the out-of-home placement of the
1103 minor, the court may order the division to provide reunification services. The time limits
1104 described in Subsection (2), however, are not tolled by the parent's absence.

1105 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable
1106 services unless it determines that those services would be detrimental to the minor. In
1107 determining detriment, the court shall consider the age of the child, the degree of parent-child
1108 bonding, the length of the sentence, the nature of the treatment, the nature of the crime or
1109 illness, the degree of detriment to the child if services are not offered and, for minors ten years
1110 of age or older, the minor's attitude toward the implementation of family reunification services,

1111 and any other appropriate factors. Reunification services for an incarcerated parent are subject
1112 to the 12-month limitation imposed in Subsection (2). Reunification services for an
1113 institutionalized parent are subject to the 12-month limitation imposed in Subsection (2),
1114 unless the court determines that continued reunification services would be in the child's best
1115 interest.

1116 (7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x), the
1117 court does not order reunification services, a permanency hearing shall be conducted within 30
1118 days, in accordance with Section 78-3a-312.

1119 Section 27. Section **78-3a-412** is amended to read:

1120 **78-3a-412. Review following termination.**

1121 (1) At the conclusion of the hearing in which the court orders termination of the
1122 parent-child relationship, the court shall order that a review hearing be held within 90 days
1123 following the date of termination if the child has not been permanently placed.

1124 (2) At that review hearing, the agency or individual vested with custody of the child
1125 shall report to the court regarding the plan for permanent placement of the child. The guardian
1126 ad litem shall submit to the court a written report with recommendations, based on an
1127 independent investigation, for disposition meeting the best interests of the child.

1128 (3) The court may order the agency or individual vested with custody of the child to
1129 report, at appropriate intervals, on the status of the child until the plan for permanent placement
1130 of the child has been accomplished.

1131 Section 28. Section **78-3a-912** is amended to read:

1132 **78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal --**
1133 **Duties and responsibilities -- Training -- Trained staff and court-appointed special**
1134 **advocate volunteers -- Costs -- Immunity.**

1135 (1) The court may appoint an attorney guardian ad litem to represent the best interest of
1136 a minor involved in any case before the court and shall consider only the best interest of a
1137 minor in determining whether to appoint a guardian ad litem.

1138 (2) An attorney guardian ad litem shall represent the best interest of each minor who
1139 may become the subject of a petition alleging abuse, neglect, or dependency, from the date the
1140 minor is removed from the minor's home by the [~~Division of Child and Family Services~~]
1141 division, or the date the petition is filed, whichever occurs earlier.

- 1142 (3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad
1143 litem, shall:
- 1144 (a) represent the best interest of the minor in all proceedings;
 - 1145 (b) be trained in applicable statutory, regulatory, and case law, and in accordance with
1146 the United States Department of Justice National Court Appointed Special Advocate
1147 Association guidelines, prior to representing any minor before the court;
 - 1148 (c) conduct or supervise an independent investigation in order to obtain first-hand, a
1149 clear understanding of the situation and needs of the child;
 - 1150 (d) (i) personally meet with the minor[;];
1151 (ii) personally interview the minor if the minor is old enough to communicate[;];
1152 (iii) determine the minor's goals and concerns regarding placement[;]; and
1153 (iv) personally assess or supervise an assessment of the appropriateness and safety of
1154 the minor's environment in each placement;
 - 1155 (e) file written motions, responses, or objections at all stages of a proceeding when
1156 necessary to protect the best interest of a minor;
 - 1157 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all
1158 administrative and foster care citizen review board hearings pertaining to the minor's case;
 - 1159 (g) participate in all appeals unless excused by order of the court;
 - 1160 (h) be familiar with local experts who can provide consultation and testimony
1161 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
1162 Family Services to maintain a minor in the minor's home or to reunify a minor with the minor's
1163 parent;
 - 1164 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
1165 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the
1166 status of the minor's case, all court and administrative proceedings, discussions, and proposals
1167 made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic
1168 services that are to be provided to the minor;
 - 1169 (j) review proposed orders for, and as requested by the court, prepare proposed orders
1170 with clear and specific directions regarding services, treatment, and evaluation, assessment, and
1171 protection of the minor and the minor's family; and
 - 1172 (k) personally or through a trained volunteer, paralegal, or other trained staff, monitor

1173 implementation of a minor's treatment plan and any dispositional orders to determine whether
1174 services ordered by the court are actually provided, are provided in a timely manner, and
1175 attempt to assess whether they are accomplishing their intended goal.

1176 (4) (a) An attorney guardian ad litem may use trained volunteers, in accordance with
1177 Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained
1178 staff to assist in investigation and preparation of information regarding the cases of individual
1179 minors before the court. An attorney guardian ad litem may not, however, delegate the
1180 attorney's responsibilities described in Subsection (3).

1181 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
1182 in and follow, at a minimum, the guidelines established by the United States Department of
1183 Justice Court Appointed Special Advocate Association.

1184 (c) The court may use volunteers trained in accordance with the requirements of
1185 Subsection (4)(b) to assist in investigation and preparation of information regarding the cases
1186 of individual minors within the jurisdiction.

1187 (d) When possible and appropriate, the court may use a volunteer who is a peer of the
1188 minor appearing before the court, in order to provide assistance to that minor, under the
1189 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or
1190 other trained staff.

1191 (5) The attorney guardian ad litem shall continue to represent the best interest of the
1192 minor until released from duties by the court.

1193 (6) (a) The juvenile court is responsible for all costs resulting from the appointment of
1194 an attorney guardian ad litem and the costs of volunteer, paralegal, and other staff appointment
1195 and training, and shall use funds appropriated by the Legislature for the guardian ad litem
1196 program to cover those costs.

1197 (b) (i) When the court appoints an attorney guardian ad litem under this section, the
1198 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer
1199 expenses against the minor's parents, parent, or legal guardian in a proportion that the court
1200 determines to be just and appropriate.

1201 (ii) The court may not assess those fees or costs against a legal guardian, when that
1202 guardian is the state, or against a parent who is found to be impecunious. If a person claims to
1203 be impecunious, the court shall require of that person an affidavit of impecuniosity as provided

1204 in Section 78-7-36 and the court shall follow the procedures and make the determinations as
1205 provided in Section 78-7-36.

1206 (7) An attorney guardian ad litem appointed under this section, when serving in the
1207 scope of ~~[his]~~ the attorney guardian ad litem's duties as guardian ad litem is considered an
1208 employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah
1209 Governmental Immunity Act.

1210 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the
1211 minor's wishes differ from the attorney's determination of the minor's best interest, the attorney
1212 guardian ad litem shall communicate the minor's wishes to the court in addition to presenting
1213 the attorney's determination of the minor's best interest. A difference between the minor's
1214 wishes and the attorney's determination of best interest may not be considered a conflict of
1215 interest for the attorney.

1216 (b) The court may appoint one attorney guardian ad litem to represent the best interests
1217 of more than one minor child of a marriage.

1218 (9) An attorney guardian ad litem shall be provided access to all Division of Child and
1219 Family Services records regarding the minor at issue and the minor's family.

1220 (10) An attorney guardian ad litem shall maintain current and accurate records
1221 regarding the number of times the attorney has had contact with each minor and the actions the
1222 attorney has taken in representation of the minor's best interest.

1223 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian
1224 ad litem are confidential and may not be released or made public upon subpoena, search
1225 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2,
1226 Government Records Access and Management Act.

1227 (b) All records of an attorney guardian ad litem are subject to legislative subpoena,
1228 under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the
1229 Legislature.

1230 (c) Records released in accordance with Subsection (11)(b) shall be maintained as
1231 confidential by the Legislature. The Office of the Legislative Auditor General may, however,
1232 include summary data and nonidentifying information in its audits and reports to the
1233 Legislature.

1234 (d) Because of the unique role of an attorney guardian ad litem described in Subsection

1235 (8), and the state's role and responsibility to provide a guardian ad litem program and, as parens
 1236 patriae, to protect minors, Subsection (11)(b) constitutes an exception to Rules of Professional
 1237 Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client privilege does not
 1238 bar access to the records of an attorney guardian ad litem by the Legislature, through legislative
 1239 subpoena.

1240 (e) The Office of the Guardian Ad Litem shall present an annual report to the Child
 1241 Welfare Legislative Oversight Panel detailing:

1242 (i) the development, policy, and management of the statewide guardian ad litem
 1243 program;

1244 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

1245 (iii) the number of children served by the Office of the Guardian Ad Litem.

1246 Section 29. Section **78-3a-913** is amended to read:

1247 **78-3a-913. Right to counsel -- Appointment of counsel for indigent -- Cost --**
 1248 **Court hearing to determine compelling reason to appoint a noncontracting attorney --**
 1249 **Rate of pay.**

1250 (1) (a) ~~[The]~~ In any action initiated by the state under this chapter and in any action
 1251 initiated by any person for termination of parental rights, the parents, guardian, custodian, and
 1252 the minor, if competent, shall be informed that they have the right to be represented by counsel
 1253 at every stage of the proceedings. They have the right to employ counsel of their own choice
 1254 and if any of them requests an attorney and is found by the court to be indigent, counsel shall
 1255 be appointed by the court as provided in Subsection (3). The court may appoint counsel
 1256 without a request if it considers representation by counsel necessary to protect the interest of
 1257 the minor or of other parties.

1258 (b) ~~[The]~~ In any action initiated by the state under this chapter and in any action
 1259 initiated by any person for termination of parental rights, the cost of appointed counsel for an
 1260 indigent minor or other indigent party, including the cost of counsel and expense of appeal,
 1261 shall be paid by the county in which the ~~[hearing is]~~ trial court proceedings are held. Counties
 1262 may levy and collect taxes for these purposes.

1263 (c) The court shall take into account the income and financial ability to retain counsel
 1264 of the parents or guardian of a minor in determining the indigency of the minor.

1265 (2) If the state or county responsible to provide legal counsel for an indigent under

1266 Subsection (1)(b) has arranged by contract to provide services under Section 63A-11-109, the
1267 court if it has received notice or a copy of such contract shall appoint the contracting attorney
1268 as legal counsel to represent that indigent.

1269 (3) ~~[The]~~ In the absence of contrary contractual provisions regarding the selection and
1270 appointment of parental defense counsel, the court shall select and appoint the attorney or
1271 attorneys if:

1272 (a) the contract for indigent legal services is with multiple attorneys; or

1273 (b) the contract is with an additional attorney or attorneys in the event of a conflict of
1274 interest.

1275 (4) If the court considers the appointment of a noncontracting attorney to provide legal
1276 services to an indigent despite the existence of an indigent legal services contract and the court
1277 has a copy or notice of such contract, before the court may make the appointment, it shall:

1278 (a) set the matter for a hearing;

1279 (b) give proper notice to the attorney general ~~[or county attorney of the responsible~~
1280 ~~county of the hearing]~~ and the Division of Child Welfare Parental Defense created in Section
1281 62A-11-103; and

1282 (c) make findings that there is a compelling reason to appoint a noncontracting attorney
1283 before it may make such appointment.

1284 (5) The indigent's mere preference for other counsel shall not be considered a
1285 compelling reason justifying the appointment of a noncontracting attorney.

1286 (6) The court may order a minor, parent, guardian, or custodian for whom counsel is
1287 appointed and the parents or guardian of any minor for whom counsel is appointed to
1288 reimburse the county for the cost of appointed counsel.

1289 (7) If the minor and other parties were not represented by counsel, the court shall
1290 inform them at the conclusion of the proceedings that they have the right to appeal.

1291 **Section 30. Appropriation.**

1292 (1) There is appropriated (\$239,000), as an ongoing appropriation from the General
1293 Fund for fiscal year 2004-05 to the Department of Human Services - Executive Director
1294 Operations -- Services Review Program.

1295 (2) There is appropriated \$239,000, as an ongoing appropriation from the General Fund
1296 for fiscal year 2004-05 to the Child Welfare Parental Defense Trust Fund created in this bill.

1297 Section 31. **Effective date.**
1298 This bill takes effect on July 1, 2004.