

Senator David L. Thomas proposes the following substitute bill:

MEDICAL NEGLIGENCE - EXCLUSION

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

LONG TITLE

General Description:

This bill modifies the Child and Family Services provisions regarding severe child abuse or neglect.

Highlighted Provisions:

This bill:

- ▶ establishes that severe child abuse or neglect does not include the medical decision of a competent parent who has no prior history of abuse or neglect; and
- ▶ makes conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on May 3, 2004, except that the amendments in this bill to Section 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

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

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

76-5-110, as last amended by Chapter 303, Laws of Utah 1997

78-3a-103 (Superseded 07/01/04), as last amended by Chapter 283, Laws of Utah 2002



26 78-3a-103 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003

27 78-3a-408, as last amended by Chapter 274, Laws of Utah 1998

28 **Uncodified Material Affected:**

29 ENACTS UNCODIFIED MATERIAL



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

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

33 **62A-4a-101. Definitions.**

34 As used in this chapter:

35 (1) "Abuse" means:

- 36 (a) actual or threatened nonaccidental physical or mental harm;
- 37 (b) negligent treatment;
- 38 (c) sexual exploitation; or
- 39 (d) any sexual abuse.

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

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

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

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

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

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

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

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

56 (10) "Day-care services" means care of a child for a portion of the day which is less

57 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care
58 center, family group home, or family child care home.

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (v) a child at risk of being neglected or abused because another child in the same home

88 is neglected or abused.

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

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

96 (d) The medical decision of a competent parent or guardian does not constitute medical
97 neglect. A competent parent is defined herein as a parent who is a reasonable, prudent, and fit
98 care giver toward their child.

99 (e) All parents are presumed to be competent. This presumption may be rebutted if the
100 state can show that a parent or parents are incompetent beyond a reasonable doubt.

101 (f) Nothing in this Subsection (18) shall prohibit the state from taking medical care
102 measures when a licensed medical professional finds that without a medically necessary
103 procedure a minor child will suffer death or serious permanent disability within 120 hours of
104 diagnosis.

105 (g) Notwithstanding Subsection (18)(f), a parent shall retain the right to a second
106 medical opinion.

107 (h) A licensed medical professional shall not be liable for the consequences resulting
108 from the failure of parents to follow their professional medical opinions.

109 (19) "Protective custody," with regard to the division, means the shelter of a child by
110 the division from the time the child is removed from the child's home until the shelter hearing,
111 or the child's return home, whichever occurs earlier.

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

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

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

115 (c) to a cohabitant who is neglecting or abusing a child, in order to help the cohabitant
116 develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse, and
117 to strengthen the cohabitant's ability to provide safe and acceptable care; and

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

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

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

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

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

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

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

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

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

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

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

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

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

147 (30) "Substitute care" means:

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

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

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

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

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

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

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

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

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

170 (36) "Without merit" means a finding at the completion of an investigation by the
171 division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or
172 that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

173 Section 2. Section **62A-4a-116.1** is amended to read:

174 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
175 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
176 **Rights of alleged perpetrator -- Juvenile court finding.**

177 (1) If the division makes a supported finding of one or more of the severe types of child
178 abuse or neglect described in Subsection (2), the division shall:

179 (a) serve notice of the finding on the alleged perpetrator and enter into the Licensing
180 Information System created in Section 62A-4a-116.2 the name and other identifying

181 information of the perpetrator with the supported finding, without identifying the person as a
182 perpetrator or alleged perpetrator, and a notation to the effect that an investigation regarding
183 the person is pending; and

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

186 (2) Except as otherwise provided in Subsection (3), the severe types of child abuse or
187 neglect referred to in Subsection (1) are as follows:

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

189 (i) severe or chronic physical abuse;

190 (ii) sexual abuse;

191 (iii) sexual exploitation;

192 (iv) abandonment;

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

194 (vi) chronic or severe neglect; or

195 (vii) chronic or severe emotional abuse; or

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

197 (i) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
198 which indicates a significant risk to other children; or

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

201 (3) Severe child abuse or neglect in Subsection (2) does not include:

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

204 (b) a person's conduct that:

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

206 (ii) constitutes the use of reasonable and necessary physical restraint or force in
207 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
208 other dangerous object in the possession or under the control of a child or to protect the child or
209 another person from physical injury[-];

210 (c) the medical decision of a competent parent. A competent parent is defined herein
211 as a parent who is a reasonable, prudent, and fit care giver toward their child.

212 (4) For purposes of this section, all parents are presumed to be competent. This
213 presumption may be rebutted if the state can show that a parent or parents are incompetent
214 beyond a reasonable doubt.

215 (5) Nothing in Subsections (3) and (4) shall prohibit the state from taking medical care
216 measures when a licensed medical professional finds that without a medically necessary
217 procedure a minor child will suffer death or serious permanent disability within 120 hours of
218 diagnosis.

219 (6) Notwithstanding Subsection (5), a parent shall retain the right to a second medical
220 opinion.

221 [~~(4)~~] (7) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in
222 accordance with risk assessment tools and rules established by the division that focus on age,
223 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and
224 other related considerations.

225 (b) The division shall train its child protection workers to apply the risk assessment
226 tools and rules established under Subsection [~~(4)~~] (7)(a).

227 [~~(5)~~] (8) The notice referred to in Subsection (1)(a) shall state that:

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

230 (b) the division has made a supported finding of one of the severe types of child abuse
231 or neglect described in Subsection (2);

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

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

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

238 (i) the department;

239 (ii) a human services licensee;

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

241 (iv) a covered health care facility;

242 (f) the alleged perpetrator has the rights described in Subsection [~~(6)~~] (9); and

243 (g) failure to take either action described in Subsection [~~(6)~~] (9)(a) within one year
244 after service of the notice will result in the action described in Subsection [~~(6)~~] (9)(b).

245 [~~(6)~~] (9) (a) Upon receipt of the notice described in Subsection [~~(5)~~] (8), the alleged
246 perpetrator shall have the right to:

247 (i) file a written request asking the division to review the findings under Subsection
248 (2);

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

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

253 (b) If the alleged perpetrator fails to take action as described in Subsection [~~(6)~~] (9)(a)
254 within one year after service of the notice described in Subsection [~~(5)~~] (8), the alleged
255 perpetrator's name and the notation described in Subsection (1)(a) shall remain in the Licensing
256 Information System. This information shall also remain in the Licensing Information System
257 while the division awaits a response from the alleged perpetrator pursuant to Subsection [~~(6)~~]
258 (9)(a) and during the pendency of any proceeding, including an appeal of a finding of
259 unsubstantiated or without merit, under Section 78-3a-320.

260 (c) The alleged perpetrator shall have no right to petition the juvenile court under
261 Subsection [~~(6)~~] (9)(b) if the court has previously held a hearing on the same alleged incident
262 of abuse or neglect pursuant to the filing of a petition under Section 78-3a-305 by some other
263 party.

264 (d) Consent under Subsection [~~(6)~~] (9)(a)(iii) by a minor shall be given by the minor's
265 parent or guardian.

266 [~~(7)~~] (10) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall
267 make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
268 78-3a-320(1) and (2).

269 [~~(8)~~] (11) Service of the notice under Subsections (1)(a) and [~~(5)~~] (8):

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

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

273 Section 3. Section **76-5-110** is amended to read:

274 **76-5-110. Abuse or neglect of disabled child.**

275 (1) As used in this section:

276 (a) "Abuse" means:

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

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

280 (iii) unreasonable confinement.

281 (b) "Caretaker" means:

282 (i) any parent, legal guardian, or other person having under his care and custody a
283 disabled child; or

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

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

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

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

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

300 (b) The exception under Subsection (3)(a) shall not preclude a court from ordering
301 medical services from a physician licensed to engage in the practice of medicine to be provided
302 to the child where there is substantial risk of harm to the child's health or welfare.

303 (4) This section does not apply to a parent or legal guardian's selection of a care or
304 treatment option which a reasonable parent would believe to be in the best interest of the child.

305 Section 4. Section **78-3a-103 (Superseded 07/01/04)** is amended to read:

306 **78-3a-103 (Superseded 07/01/04). Definitions.**

307 (1) As used in this chapter:

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

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

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

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

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

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

318 (e) "Child placement agency" means:

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

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

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

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

325 (h) "Dependent child" includes a minor who is homeless or without proper care
326 through no fault of his parent, guardian, or custodian.

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

329 (j) "Detention" means home detention and secure detention as defined in Section
330 62A-7-101 for the temporary care of minors who require secure custody in physically
331 restricting facilities:

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

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

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

335 (l) "Formal referral" means a written report from a peace officer or other person

336 informing the court that a minor is or appears to be within the court's jurisdiction and that a
337 petition may be filed.

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

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

343 (o) "Habitual truant" is a school-age minor who has received more than two truancy
344 citations within one school year from the school in which the minor is or should be enrolled
345 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the
346 part of school authorities as required under Section 53A-11-103, refuses to regularly attend
347 school or any scheduled period of the school day.

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

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

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

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

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

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

355 (q) "Minor" means a person under the age of 18 years. It includes the term "child" as
356 used in other parts of this chapter.

357 (r) "Natural parent" means a minor's biological or adoptive parent, and includes the
358 minor's noncustodial parent.

359 (s) (i) "Neglected child" means a minor:

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

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

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

366 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary

367 subsistence, education, or medical care, including surgery or psychiatric services when
368 required, or any other care necessary for health, safety, morals, or well-being; or

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

372 (ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D),
373 means that, after receiving notice that a minor has been frequently absent from school without
374 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
375 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
376 an appropriate education.

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

379 (iv) The medical decision of a competent parent or guardian does not constitute
380 medical neglect. A competent parent is defined herein as a parent who is a reasonable, prudent,
381 and fit care giver toward their child.

382 (v) All parents are presumed to be competent. This presumption may be rebutted if the
383 state can show that a parent or parents are incompetent beyond a reasonable doubt.

384 (vi) Nothing in Subsections (1)(s)(iv) and (v) shall prohibit the state from taking
385 medical care measures when a licensed medical professional finds that without a medically
386 necessary procedure a minor child will suffer death or serious permanent disability within 120
387 hours of diagnosis.

388 (vii) Notwithstanding Subsection (1)(s)(vi), a parent shall retain the right to a second
389 medical opinion.

390 (t) "Nonjudicial adjustment" means closure of the case by the assigned probation
391 officer without judicial determination upon the consent in writing of the minor, the parent,
392 legal guardian or custodian, and the assigned probation officer.

393 (u) "Probation" means a legal status created by court order following an adjudication
394 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
395 to remain in his home under prescribed conditions and under supervision by the probation
396 department or other agency designated by the court, subject to return to the court for violation
397 of any of the conditions prescribed.

398 (v) "Protective supervision" means a legal status created by court order following an
399 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
400 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
401 is provided by the probation department or other agency designated by the court.

402 (w) "Residual parental rights and duties" means those rights and duties remaining with
403 the parent after legal custody or guardianship, or both, have been vested in another person or
404 agency, including the responsibility for support, the right to consent to adoption, the right to
405 determine the child's religious affiliation, and the right to reasonable parent-time unless
406 restricted by the court. If no guardian has been appointed, "residual parental rights and duties"
407 also include the right to consent to marriage, to enlistment, and to major medical, surgical, or
408 psychiatric treatment.

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

412 (y) "Shelter" means the temporary care of minors in physically unrestricted facilities
413 pending court disposition or transfer to another jurisdiction.

414 (z) "State supervision" means a disposition which provides a more intensive level of
415 intervention than standard probation but is less intensive or restrictive than a community
416 placement with the Division of Youth Corrections.

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

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

419 (cc) "Termination of parental rights" means the permanent elimination of all parental
420 rights and duties, including residual parental rights and duties, by court order.

421 (dd) "Therapist" means a person employed by a state division or agency for the purpose
422 of conducting psychological treatment and counseling of a minor in its custody, or any other
423 person licensed or approved by the state for the purpose of conducting psychological treatment
424 and counseling.

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

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

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

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

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

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

436 Section 5. Section **78-3a-103 (Effective 07/01/04)** is amended to read:

437 **78-3a-103 (Effective 07/01/04). Definitions.**

438 (1) As used in this chapter:

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

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

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

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

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

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

449 (e) "Child placement agency" means:

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

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

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

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

456 (h) "Dependent child" includes a minor who is homeless or without proper care
457 through no fault of his parent, guardian, or custodian.

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

460 (j) "Detention" means home detention and secure detention as defined in Section
461 62A-7-101 for the temporary care of minors who require secure custody in physically
462 restricting facilities:

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

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

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

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

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

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

474 (o) "Habitual truant" is a school-age minor who has received more than two truancy
475 citations within one school year from the school in which the minor is or should be enrolled
476 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the
477 part of school authorities as required under Section 53A-11-103, refuses to regularly attend
478 school or any scheduled period of the school day.

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

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

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

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

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

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

486 (q) "Minor" means a person under the age of 18 years. It includes the term "child" as
487 used in other parts of this chapter.

488 (r) "Natural parent" means a minor's biological or adoptive parent, and includes the
489 minor's noncustodial parent.

490 (s) (i) "Neglected child" means a minor:

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

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

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

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

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

503 (ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D),
504 means that, after receiving notice that a minor has been frequently absent from school without
505 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
506 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
507 an appropriate education.

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

510 (iv) The medical decision of a competent parent or guardian does not constitute
511 medical neglect. A competent parent is defined herein as a parent who is a reasonable, prudent,
512 and fit care giver toward their child.

513 (v) All parents are presumed to be competent. This presumption may be rebutted if the
514 state can show that a parent or parents are incompetent beyond a reasonable doubt.

515 (vi) Nothing in Subsections (1)(s)(iv) and (v) shall prohibit the state from taking
516 medical care measures when a licensed medical professional finds that without a medically
517 necessary procedure a minor child will suffer death or serious permanent disability within 120
518 hours of diagnosis.

519 (vii) Notwithstanding Subsection (1)(s)(vi), a parent shall retain the right to a second
520 medical opinion.

521 (t) "Nonjudicial adjustment" means closure of the case by the assigned probation

522 officer without judicial determination upon the consent in writing of the minor, the parent,
523 legal guardian or custodian, and the assigned probation officer.

524 (u) "Probation" means a legal status created by court order following an adjudication
525 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
526 to remain in his home under prescribed conditions and under supervision by the probation
527 department or other agency designated by the court, subject to return to the court for violation
528 of any of the conditions prescribed.

529 (v) "Protective supervision" means a legal status created by court order following an
530 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
531 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
532 is provided by the probation department or other agency designated by the court.

533 (w) "Residual parental rights and duties" means those rights and duties remaining with
534 the parent after legal custody or guardianship, or both, have been vested in another person or
535 agency, including the responsibility for support, the right to consent to adoption, the right to
536 determine the child's religious affiliation, and the right to reasonable parent-time unless
537 restricted by the court. If no guardian has been appointed, "residual parental rights and duties"
538 also include the right to consent to marriage, to enlistment, and to major medical, surgical, or
539 psychiatric treatment.

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

543 (y) "Shelter" means the temporary care of minors in physically unrestricted facilities
544 pending court disposition or transfer to another jurisdiction.

545 (z) "State supervision" means a disposition which provides a more intensive level of
546 intervention than standard probation but is less intensive or restrictive than a community
547 placement with the Division of Juvenile Justice Services.

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

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

550 (cc) "Termination of parental rights" means the permanent elimination of all parental
551 rights and duties, including residual parental rights and duties, by court order.

552 (dd) "Therapist" means a person employed by a state division or agency for the purpose

553 of conducting psychological treatment and counseling of a minor in its custody, or any other
554 person licensed or approved by the state for the purpose of conducting psychological treatment
555 and counseling.

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

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

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

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

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

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

567 Section 6. Section **78-3a-408** is amended to read:

568 **78-3a-408. Evidence of grounds for termination.**

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

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

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

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

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

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

581 (a) emotional illness, mental illness, or mental deficiency of the parent that renders him
582 unable to care for the immediate and continuing physical or emotional needs of the child for
583 extended periods of time;

584 (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive
585 nature;

586 (c) habitual or excessive use of intoxicating liquors, controlled substances, or
587 dangerous drugs that render the parent unable to care for the child;

588 (d) repeated or continuous failure to provide the child with adequate food, clothing,
589 shelter, education, or other care necessary for his physical, mental, and emotional health and
590 development by a competent parent or parents who are capable of providing that care[-];

591 [~~However, a parent who, legitimately practicing his religious beliefs, does not provide specified~~
592 ~~medical treatment for a child is not for that reason alone a negligent or unfit parent;~~]

593 (e) with regard to a child who is in the custody of the division, if the parent is
594 incarcerated as a result of conviction of a felony, and the sentence is of such length that the
595 child will be deprived of a normal home for more than one year; or

596 (f) a history of violent behavior.

597 (3) A parent who, legitimately practicing his religious beliefs, does not provide
598 specified medical treatment for a child is not for that reason alone a negligent or unfit parent.

599 (4) The medical decision of a competent parent or guardian does not constitute neglect.

600 (5) All parents are presumed to be competent. This presumption may be rebutted if the
601 state can show that a parent or parents are incompetent beyond a reasonable doubt. A
602 competent parent is defined herein as a parent who is a reasonable, prudent, and fit care giver
603 toward their child.

604 [~~(3)~~] (6) If a child has been placed in the custody of the division and the parent or
605 parents fail to comply substantially with the terms and conditions of a plan within six months
606 after the date on which the child was placed or the plan was commenced, whichever occurs
607 later, that failure to comply is evidence of failure of parental adjustment.

608 [~~(4)~~] (7) The following circumstances constitute prima facie evidence of unfitness:

609 (a) sexual abuse, injury, or death of a sibling of the child, or of any child, due to known
610 or substantiated abuse or neglect by the parent or parents;

611 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to
612 indicate the unfitness of the parent to provide adequate care to the extent necessary for the
613 child's physical, mental, or emotional health and development;

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

615 of the child; or

616 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to
617 commit murder or manslaughter of a child or child abuse homicide.

618 Section 7. **Legislative intent.**

619 The legislature recognizes that there is a fundamental liberty interest of parents in the
620 care, custody, and management of their child as protected by the 14th Amendment and does not
621 evaporate simply because they have not been model parents or have lost temporary custody of
622 their children to the state. § ~~[A termination of parental rights proceeding interferes with that~~
623 fundamental liberty interest. When the state moves to destroy weakened family bonds, it must
624 provide the parents with fundamentally fair procedures.] §

625 Section 8. **Effective date.**

626 This bill takes effect on May 3, 2004, except that the amendments in this bill to Section
627 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.