

1 **MEDICAL NEGLECT - EXCLUSION**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David L. Thomas**

5

LONG TITLE

6 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

- 11
- 12 ▶ establishes that severe child abuse or neglect does not include the medical decision
 - 13 of a competent parent who has no prior history of abuse or neglect; and
 - 14 ▶ makes conforming amendments.

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill takes effect on May 3, 2004, except that the amendments in this bill to Section
19 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002

23 **62A-4a-116.1**, as last amended by Chapter 210, Laws of Utah 2003

24 **76-5-110**, as last amended by Chapter 303, Laws of Utah 1997

25 **78-3a-103 (Superseded 07/01/04)**, as last amended by Chapter 283, Laws of Utah 2002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
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

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

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

62A-4a-101. Definitions.

As used in this chapter:

(1) "Abuse" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),
88 means that, after receiving notice that a child has been frequently absent from school without
89 good cause, or that the child has failed to cooperate with school authorities in a reasonable

90 manner, a parent or guardian fails to make a good faith effort to ensure that the child receives
91 an appropriate education.

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

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

96 (e) All parents are presumed to be competent. This may be rebutted by the state by
97 clear and convincing evidence that the parent is suffering from a mental illness which impairs
98 that parent's cognitive ability to make a reasoned decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

137 (30) "Substitute care" means:

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

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

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

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

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

151 (33) "Transportation services" means travel assistance given to an individual with

152 escort service, if necessary, to and from community facilities and resources as part of a service
153 plan.

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

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

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

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

164 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
165 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
166 **Rights of alleged perpetrator -- Juvenile court finding.**

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

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

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

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

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

179 (i) severe or chronic physical abuse;

180 (ii) sexual abuse;

181 (iii) sexual exploitation;

182 (iv) abandonment;

- 183 (v) medical neglect resulting in death, disability, or serious illness;
- 184 (vi) chronic or severe neglect; or
- 185 (vii) chronic or severe emotional abuse; or
- 186 (b) if committed by a person under the age of 18:
 - 187 (i) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
 - 188 which indicates a significant risk to other children; or
 - 189 (ii) sexual behavior with or upon another child which indicates a significant risk to
 - 190 other children.
- 191 (3) Severe child abuse or neglect in Subsection (2) does not include:
 - 192 (a) the use of reasonable and necessary physical restraint or force by an educator in
 - 193 accordance with Subsection 53A-11-802(2) or Section 76-2-401; [~~or~~]
 - 194 (b) a person's conduct that:
 - 195 (i) is justified under Section 76-2-401; or
 - 196 (ii) constitutes the use of reasonable and necessary physical restraint or force in
 - 197 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
 - 198 other dangerous object in the possession or under the control of a child or to protect the child or
 - 199 another person from physical injury[-];
 - 200 (c) the medical decision of a competent parent; or
 - 201 (d) for purposes of this section, all parents are presumed to be competent. This may be
 - 202 rebutted by the state by clear and convincing evidence that the parent is suffering from a mental
 - 203 illness which impairs that parent's cognitive ability to make reasoned decisions.
- 204 (4) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in
- 205 accordance with risk assessment tools and rules established by the division that focus on age,
- 206 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and
- 207 other related considerations.
- 208 (b) The division shall train its child protection workers to apply the risk assessment
- 209 tools and rules established under Subsection (4)(a).
- 210 (5) The notice referred to in Subsection (1)(a) shall state that:
 - 211 (a) the division has conducted an investigation regarding alleged child abuse or
 - 212 neglect;
 - 213 (b) the division has made a supported finding of one of the severe types of child abuse

214 or neglect described in Subsection (2);

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

216 (d) as a result of the supported finding, the alleged perpetrator's name and other

217 identifying information have been listed in the Licensing Information System in accordance

218 with Subsection (1)(a);

219 (e) the alleged perpetrator may be disqualified from adopting a child or being licensed

220 by:

221 (i) the department;

222 (ii) a human services licensee;

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

224 (iv) a covered health care facility;

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

226 (g) failure to take either action described in Subsection (6)(a) within one year after

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

228 (6) (a) Upon receipt of the notice described in Subsection (5), the alleged perpetrator

229 shall have the right to:

230 (i) file a written request asking the division to review the findings under Subsection

231 (2);

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

233 (iii) sign a written consent to the supported finding and entry of the alleged

234 perpetrator's name and other information regarding the supported finding of abuse or neglect

235 into the Licensing Information System.

236 (b) If the alleged perpetrator fails to take action as described in Subsection (6)(a)

237 within one year after service of the notice described in Subsection (5), the alleged perpetrator's

238 name and the notation described in Subsection (1)(a) shall remain in the Licensing Information

239 System. This information shall also remain in the Licensing Information System while the

240 division awaits a response from the alleged perpetrator pursuant to Subsection (6)(a) and

241 during the pendency of any proceeding, including an appeal of a finding of unsubstantiated or

242 without merit, under Section 78-3a-320.

243 (c) The alleged perpetrator shall have no right to petition the juvenile court under

244 Subsection (6)(b) if the court has previously held a hearing on the same alleged incident of

245 abuse or neglect pursuant to the filing of a petition under Section 78-3a-305 by some other
246 party.

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

249 (7) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall make
250 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
251 78-3a-320(1) and (2).

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

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

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

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

257 **76-5-110. Abuse or neglect of disabled child.**

258 (1) As used in this section:

259 (a) "Abuse" means:

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

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

263 (iii) unreasonable confinement.

264 (b) "Caretaker" means:

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

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

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

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

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

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

283 (b) The medical decision of a competent parent or guardian shall not be considered to
284 be in violation under this section.

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

288 (4) All parents are presumed to be competent. This may be rebutted by the state by
289 clear and convincing evidence that the parent is suffering from a mental illness which impairs
290 that parent's cognitive ability to make a reasoned decision.

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

292 **78-3a-103 (Superseded 07/01/04). Definitions.**

293 (1) As used in this chapter:

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

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

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

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

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

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

304 (e) "Child placement agency" means:

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

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

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

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

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

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

315 (j) "Detention" means home detention and secure detention as defined in Section
316 62A-7-101 for the temporary care of minors who require secure custody in physically
317 restricting facilities:

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

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

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

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

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

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

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

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

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

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

337 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary

338 medical care;

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

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

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

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

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

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

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

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

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

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

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

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

365 (iv) The medical decision of a competent parent or guardian does not constitute
366 neglect.

367 (v) All parents are presumed to be competent. This may be rebutted by the state by
368 clear and convincing evidence that the parent is suffering from a mental illness which impairs

369 that parent's cognitive ability to make a reasoned decision.

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

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

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

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

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

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

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

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

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

399 (cc) "Termination of parental rights" means the permanent elimination of all parental

400 rights and duties, including residual parental rights and duties, by court order.

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

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

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

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

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

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

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

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

417 **78-3a-103 (Effective 07/01/04). Definitions.**

418 (1) As used in this chapter:

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

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

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

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

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

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

429 (e) "Child placement agency" means:

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

431 code; or

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

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

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

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

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

440 (j) "Detention" means home detention and secure detention as defined in Section
441 62A-7-101 for the temporary care of minors who require secure custody in physically
442 restricting facilities:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

490 (iv) The medical decision of a competent parent or guardian does not constitute
491 neglect.

492 (v) All parents are presumed to be competent. This may be rebutted by the state by

493 clear and convincing evidence that the parent is suffering from a mental illness which impairs
494 that parent's cognitive ability to make a reasoned decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

542 **78-3a-408. Evidence of grounds for termination.**

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

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

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

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

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

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

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

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

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

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

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

570 (f) a history of violent behavior.

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

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

575 (5) All parents are presumed to be competent. This may be rebutted by the state by
576 clear and convincing evidence that the parent is suffering from a mental illness which impairs
577 that parent's cognitive ability to make a reasoned decision.

578 [~~(3)~~] (6) If a child has been placed in the custody of the division and the parent or
579 parents fail to comply substantially with the terms and conditions of a plan within six months
580 after the date on which the child was placed or the plan was commenced, whichever occurs
581 later, that failure to comply is evidence of failure of parental adjustment.

582 [~~(4)~~] (7) The following circumstances constitute prima facie evidence of unfitness:

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

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

586 indicate the unfitness of the parent to provide adequate care to the extent necessary for the
587 child's physical, mental, or emotional health and development;
588 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement
589 of the child; or
590 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to
591 commit murder or manslaughter of a child or child abuse homicide.

592 **Section 7. Effective date.**

593 This bill takes effect on May 3, 2004, except that the amendments in this bill to Section
594 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.

Legislative Review Note
as of 12-1-03 7:22 AM

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

Office of Legislative Research and General Counsel

State Impact

It is estimated that requirements of this legislation would generate another 30 psychiatric evaluations at a cost \$2,500 each. The cost would be borne by the Division of Child and Family Services with funding from the General Fund calculated at \$75,000. It is possible that a few cases would not be pursued by DCFS as a result of this legislation, with some potential cost savings. The number of these cases would be very small and with savings difficult to quantify.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$75,000	\$75,000	\$0	\$0
TOTAL	\$75,000	\$75,000	\$0	\$0

Individual and Business Impact

No fiscal impact.