

**Representative Steven R. Mascaro** proposes the following substitute bill:

**MEDICAL NEGLIGENCE - EXCLUSION**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: David L. Thomas**

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**LONG TITLE**

**General Description:**

This bill modifies the Child and Family Services provisions regarding medical neglect.

**Highlighted Provisions:**

This bill:

- ▶ establishes that severe the medical decision of a competent parent or guardian does not constitute medical neglect; and
- ▶ makes conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an effective date.

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**78-3a-103 (Superseded 07/01/04)**, as last amended by Chapter 283, Laws of Utah 2002

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

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



26 **Uncodified Material Affected:**  
27 ENACTS UNCODIFIED MATERIAL



28  
29 *Be it enacted by the Legislature of the state of Utah:*

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

31 **62A-4a-101. Definitions.**

32 As used in this chapter:

33 (1) "Abuse" means:

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

35 (b) negligent treatment;

36 (c) sexual exploitation; or

37 (d) any sexual abuse.

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

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

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

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

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

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

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

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

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

57 (11) "Dependent child" or "dependency" means a child, or the condition of a child, who  
58 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 parent, guardian, or custodian to provide proper or necessary  
83 subsistence, education, or medical care, including surgery or psychiatric services when  
84 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 parent or guardian legitimately practicing religious beliefs and who, for that  
93 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

94 (d) The medical decision of a competent parent or guardian does not constitute medical  
95 neglect. A competent parent or guardian is defined herein as a parent or guardian who has  
96 made and implemented a reasonable medical decision for the child.

97 (e) All medical decisions made or implemented by a parent or guardian are presumed  
98 competent. This presumption may be rebutted if the state can prove by clear and convincing  
99 evidence that the medical decision made or implemented by the parent or guardian is  
100 unreasonable and has caused or will cause harm to the child.

101 (f) Notwithstanding Subsection (18)(d) or (e) parent or guardian has the right to obtain  
102 a second medical opinion from a licensed medical professional. Medical opinions obtained by  
103 the parent or guardian shall be taken into account when determining if the parent or guardian's  
104 medical decision or implementation of the medical decision is reasonable.

105 (g) A licensed medical professional is not liable for the consequences resulting from  
106 the failure of a parent or guardian to follow the licensed medical professional's professional  
107 medical opinion.

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

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

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

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

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

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

118 (i) to bring the situation to the attention of the appropriate juvenile court and law

119 enforcement agency;

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

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

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

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

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

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

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

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

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

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

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

146 (30) "Substitute care" means:

147 (a) the placement of a minor in a family home, group care facility, or other placement  
148 outside the minor's own home, either at the request of a parent or other responsible relative, or  
149 upon court order, when it is determined that continuation of care in the child's own home

150 would be contrary to the child's welfare;

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

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

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

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

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

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

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

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

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

173 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**  
174 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**  
175 **Rights of alleged perpetrator -- Juvenile court finding.**

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

178 (a) serve notice of the finding on the alleged perpetrator and enter into the Licensing  
179 Information System created in Section 62A-4a-116.2 the name and other identifying  
180 information of the perpetrator with the supported finding, without identifying the person as a

181 perpetrator or alleged perpetrator, and a notation to the effect that an investigation regarding  
182 the person is pending; and

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

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

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

188 (i) severe or chronic physical abuse;

189 (ii) sexual abuse;

190 (iii) sexual exploitation;

191 (iv) abandonment;

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

193 (vi) chronic or severe neglect; or

194 (vii) chronic or severe emotional abuse; or

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

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

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

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

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

203 (b) a person's conduct that:

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

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

209 (4) The medical decision of a competent parent or guardian does not constitute medical  
210 neglect. A competent parent or guardian is defined herein as a parent or guardian who has  
211 made and implemented a reasonable medical decision for the child.

212 (5) All medical decisions made or implemented by a parent or guardian are presumed  
213 competent. This presumption may be rebutted if the state can prove by clear and convincing  
214 evidence that the medical decision made or implemented by the parent or guardian is  
215 unreasonable and has caused or will cause harm to the child.

216 (6) Notwithstanding Subsection (4), a parent or guardian has the right to obtain a  
217 second medical opinion from a licensed medical professional. Medical opinions obtained by  
218 the parent or guardian shall be taken into account when determining if the parent or guardian's  
219 medical decision or implementation of the medical decision is reasonable.

220 (7) A licensed medical professional is not liable for the consequences resulting from  
221 the failure of a parent or guardian to follow the licensed medical professional's professional  
222 medical opinion.

223 [~~4~~] (8) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in  
224 accordance with risk assessment tools and rules established by the division that focus on age,  
225 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and  
226 other related considerations.

227 (b) The division shall train its child protection workers to apply the risk assessment  
228 tools and rules established under Subsection [~~4~~] (8)(a).

229 [~~5~~] (9) The notice referred to in Subsection (1)(a) shall state that:

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

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

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

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

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

240 (i) the department;

241 (ii) a human services licensee;

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



243 (iv) a covered health care facility;

244 (f) the alleged perpetrator has the rights described in Subsection ~~[(6)]~~ (10); and

245 (g) failure to take either action described in Subsection ~~[(6)]~~ (10)(a) within one year

246 after service of the notice will result in the action described in Subsection ~~[(6)]~~ (10)(b).

247 ~~[(6)]~~ (10) (a) Upon receipt of the notice described in Subsection ~~[(5)]~~ (9), the alleged

248 perpetrator shall have the right to:

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

250 (2);

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

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

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

254 into the Licensing Information System.

255 (b) If the alleged perpetrator fails to take action as described in Subsection ~~[(6)]~~ (10)(a)

256 within one year after service of the notice described in Subsection ~~[(5)]~~ (9), the alleged

257 perpetrator's name and the notation described in Subsection (1)(a) shall remain in the Licensing

258 Information System. This information shall also remain in the Licensing Information System

259 while the division awaits a response from the alleged perpetrator pursuant to Subsection ~~[(6)]~~

260 (10)(a) and during the pendency of any proceeding, including an appeal of a finding of

261 unsubstantiated or without merit, under Section 78-3a-320.

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

263 Subsection ~~[(6)]~~ (10)(b) if the court has previously held a hearing on the same alleged incident

264 of abuse or neglect pursuant to the filing of a petition under Section 78-3a-305 by some other

265 party.

266 (d) Consent under Subsection ~~[(6)]~~ (10)(a)(iii) by a minor shall be given by the minor's

267 parent or guardian.

268 ~~[(7)]~~ (11) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall

269 make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections

270 78-3a-320(1) and (2).

271 ~~[(8)]~~ (12) Service of the notice under Subsections (1)(a) and ~~[(5)]~~ (9):

272 (a) shall be personal service in accordance with Rule 4 of the Utah Rules of Civil

273 Procedure; and

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

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

276 **76-5-110. Abuse or neglect of disabled child.**

277 (1) As used in this section:

278 (a) "Abuse" means:

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

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

282 (iii) unreasonable confinement.

283 (b) "Caretaker" means:

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

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

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

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

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

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

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

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

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

308           **78-3a-103 (Superseded 07/01/04). Definitions.**

309           (1) As used in this chapter:

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

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

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

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

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

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

320           (e) "Child placement agency" means:

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

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

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

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

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

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

331           (j) "Detention" means home detention and secure detention as defined in Section  
332 62A-7-101 for the temporary care of minors who require secure custody in physically  
333 restricting facilities:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

366 (C) who lacks proper parental care by reason of the fault or habits of the parent,

367 guardian, or custodian;

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

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

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

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

381 (iv) The medical decision of a competent parent or guardian does not constitute  
382 medical neglect. A competent parent or guardian is defined herein as a parent or guardian who  
383 has made and implemented a reasonable medical decision for the child.

384 (v) All medical decisions made or implemented by a parent or guardian are presumed  
385 competent. This presumption may be rebutted if the state can prove by clear and convincing  
386 evidence that the medical decision made or implemented by the parent or guardian is  
387 unreasonable and has caused or will cause harm to the child.

388 (vi) Notwithstanding Subsection (1)(s), a parent or guardian has the right to obtain a  
389 second medical opinion from a licensed medical professional. Medical opinions obtained by  
390 the parent or guardian shall be taken into account when determining if the parent or guardian's  
391 medical decision or implementation of the medical decision is reasonable.

392 (vii) A licensed medical professional is not liable for the consequences resulting from  
393 the failure of a parent or guardian to follow the licensed medical professional's professional  
394 medical opinion.

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

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

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

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

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

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

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

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

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

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

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

429 and counseling.

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

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

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

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

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

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

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

442 **78-3a-103 (Effective 07/01/04). Definitions.**

443 (1) As used in this chapter:

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

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

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

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

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

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

454 (e) "Child placement agency" means:

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

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

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

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

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

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

465 (j) "Detention" means home detention and secure detention as defined in Section  
466 62A-7-101 for the temporary care of minors who require secure custody in physically  
467 restricting facilities:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

515 (iv) The medical decision of a competent parent or guardian does not constitute  
516 medical neglect. A competent parent or guardian is defined herein as a parent or guardian who  
517 has made and implemented a reasonable medical decision for the child.

518 (v) All medical decisions made or implemented by a parent or guardian are presumed  
519 competent. This presumption may be rebutted if the state can prove by clear and convincing  
520 evidence that the medical decision made or implemented by the parent or guardian is  
521 unreasonable and has caused or will cause harm to the child.

522 (vi) Notwithstanding Subsection (1)(s)(v), a parent or guardian has the right to obtain a  
523 second medical opinion from a licensed medical professional. Medical opinions obtained by  
524 the parent or guardian shall be taken into account when determining if the parent or guardian's  
525 medical decision or implementation of the medical decision is reasonable.

526 (vii) A licensed medical professional is not liable for the consequences resulting from  
527 the failure of a parent or guardian to follow the licensed medical professional's professional  
528 medical opinion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

576 **78-3a-408. Evidence of grounds for termination.**

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

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

583 (b) have failed to communicate with the child by mail, telephone, or otherwise for six

584 months;

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

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

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

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

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

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

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

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

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

604 (f) a history of violent behavior.

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

607 (4) The medical decision of a competent parent or guardian does not constitute medical  
608 neglect. A competent parent or guardian is defined herein as a parent or guardian who has  
609 made and implemented a reasonable medical decision for the child.

610 (5) All medical decisions made or implemented by a parent or guardian are presumed  
611 competent. This presumption may be rebutted if the state can prove by clear and convincing  
612 evidence that the medical decision made or implemented by the parent or guardian is  
613 unreasonable and has caused or will cause harm to the child.

614 [~~(3)~~] (6) If a child has been placed in the custody of the division and the parent or

615 parents fail to comply substantially with the terms and conditions of a plan within six months  
616 after the date on which the child was placed or the plan was commenced, whichever occurs  
617 later, that failure to comply is evidence of failure of parental adjustment.

618 [~~4~~] (7) The following circumstances constitute prima facie evidence of unfitness:

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

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

624 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement  
625 of the child; or

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

628 **Section 7. Legislative intent.**

629 The Legislature recognizes that there is a fundamental liberty interest of parents in the  
630 care, custody, and management of their child as protected by the 14th Amendment which does  
631 not evaporate simply because they have not been model parents or have lost temporary custody  
632 of their children to the state. A termination of parental rights proceeding interferes with that  
633 fundamental liberty interest. When the state moves to destroy weakened family bonds, it must  
634 provide the parents with fundamentally fair procedures.

635 **Section 8. Effective date.**

636 This bill takes effect on May 3, 2004, except that the amendments in this bill to Section  
637 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.