

1 **MEDICAL DECISIONS OF A PARENT OR**
2 **GUARDIAN**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David L. Thomas**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of Child and Family Services, the Utah Criminal Code,
10 and the Judicial Code regarding child abuse and neglect. This bill also modifies the
11 Judicial Code regarding malpractice actions against health care providers.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ modifies provisions of Child and Family Services to provide that:

15 • a health care decision made by a child's parent or guardian does not constitute
16 neglect unless the state or other party to the proceeding shows, by clear and
17 convincing evidence, that the decision is not reasonable and ~~it~~ **→ [prudent] informed ←** ; and

18 • a parent or guardian has the right to a second ~~§~~ **[medical] health care §** opinion;

19 ▶ modifies the Licensing Information System portion of Child and Family Services to
20 provide that:

21 • a health care decision made by a child's parent or guardian does not constitute
22 severe child abuse or neglect unless the state or other party to the proceeding
23 shows, by clear and convincing evidence, that the decision is not reasonable and

24 ~~it~~ **→ [prudent] informed ←** ; and

25 • a parent or guardian retains the right to a second ~~§~~ **[medical] health care §**
25a opinion;

26 ▶ provides that a parent or guardian is not guilty of child abuse for selecting a
27 treatment option for the medical condition of the parent's or guardian's child, if the



28 treatment option is one that a reasonable parent or guardian would believe to be in the best
29 interest of the child;

30 ▶ provides that a parent or guardian is not guilty of abuse or neglect of a disabled
31 child for selecting a treatment option for the medical condition of the parent's or
32 guardian's disabled child, if the treatment option is one that a reasonable parent or
33 guardian would believe to be in the best interest of the child;

34 ▶ modifies the definition of a neglected child under the Juvenile Court Act of 1996 to
35 provide that a health care decision made by a child's parent or guardian does not
36 constitute neglect unless the state or other party to the proceeding can show, by
37 clear and convincing evidence, that the decision was not reasonable and ~~H→~~ [prudent]

37a informed ←H ;

38 ▶ modifies the Juvenile Court Act of 1996 to provide that a parent or guardian has the
39 right to a second § [medical] health care § opinion;

40 ▶ modifies the Termination of Parental Rights Act to provide that:

41 • a health care decision made by a child's parent does not constitute neglect
42 unless the state or other party to the proceeding shows, by clear and convincing
43 evidence, that the decision is not reasonable and ~~H→~~ [prudent] informed ←H ; and

44 • a parent has the right to a second § [medical] health care § opinion;

45 ▶ modifies the Judicial Code to provide that a malpractice action may not be brought
46 against a health care provider on the basis of the consequences resulting from the
47 refusal of a child's parent or guardian to consent to health care recommended by the
48 health care provider when the parent or guardian is provided with sufficient
49 information to make an informed decision and the consent of the parent or guardian
50 is required by law ~~H→~~ [~~unless the health care provider fails to comply with the child~~

51 ~~abuse or neglect reporting requirements~~] ←H ;

52 ▶ clarifies the scope of the malpractice action provision contained in this bill;

53 ▶ enacts an uncodified expression of legislative intent; and

54 ▶ makes technical changes.

55 **Monies Appropriated in this Bill:**

56 None

57 **Other Special Clauses:**

58 None

59 **Utah Code Sections Affected:**

60 AMENDS:

- 61 **62A-4a-101**, as last amended by Chapter 356, Laws of Utah 2004
- 62 **62A-4a-116.1**, as last amended by Chapter 210, Laws of Utah 2003
- 63 **62A-4a-116.4**, as enacted by Chapter 283, Laws of Utah 2002
- 64 **76-5-109**, as last amended by Chapter 125, Laws of Utah 2000
- 65 **76-5-110**, as last amended by Chapter 303, Laws of Utah 1997
- 66 **78-3a-103**, as last amended by Chapter 171, Laws of Utah 2003
- 67 **78-3a-408**, as last amended by Chapter 274, Laws of Utah 1998

68 ENACTS:

69 **78-14-5.5**, Utah Code Annotated 1953

70 **Uncodified Material Affected:**

71 ENACTS UNCODIFIED MATERIAL



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

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

75 **62A-4a-101. Definitions.**

76 As used in this chapter:

77 (1) "Abuse" means:

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

82 (2) "Adoption services" means:

- 83 (a) placing children for adoption[;];
- 84 (b) subsidizing adoptions under Section 62A-4a-105[;];
- 85 (c) supervising adoption placements until the adoption is finalized by the court[;];
- 86 (d) conducting adoption studies[;];
- 87 (e) preparing adoption reports upon request of the court[;]; and
- 88 (f) providing postadoptive placement services, upon request of a family, for the
- 89 purpose of stabilizing a possible disruptive placement.

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

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

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

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

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

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

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

101 (10) "Day-care services" means care of a child for a portion of the day which is less
102 than 24 hours[;];

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

104 (b) outside of ~~[his]~~ the child's home in a:

105 (i) day-care center[;];

106 (ii) family group home[;]; or

107 (iii) family child care home.

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

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

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

112 (14) (a) "Domestic violence services" means;

113 (i) temporary shelter, treatment, and related services to persons who are victims of
114 abuse and their dependent children; and

115 (ii) treatment services for domestic violence perpetrators.

116 (b) As used in this Subsection (14);

117 (i) "abuse" means the same as that term is defined in ~~[Section 30-6-1,]~~ Subsection
118 30-6-1(1); and

119 (ii) "domestic violence perpetrator" means a person who is alleged to have committed,
120 has been convicted of, or has pled guilty to an act of domestic violence as defined in

121 Subsection 77-36-1(2).

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

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

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

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

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

131 (i) abandonment of a child, except as provided in [~~Title 62A, Chapter 4a,~~] Part 8, Safe
132 Relinquishment of a Newborn Child;

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

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

136 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
137 subsistence, education, or medical care, including surgery or psychiatric services when
138 required, or any other care necessary for [~~his~~] the child's health, safety, morals, or well-being;
139 or

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

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

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

149 (d) (i) Notwithstanding Subsection (18)(a), a health care decision made for a child by
150 the child's parent or guardian does not constitute neglect unless the state or other party to the
151 proceeding shows, by clear and convincing evidence, that the health care decision is not

152 reasonable and ~~Ĥ~~→ [prudent] informed ~~←Ĥ~~ .

153 (ii) Nothing in Subsection (18)(d)(i) may prohibit a parent or guardian from exercising
 154 the right to obtain a second § [medical] health care § opinion.

155 (19) "Protective custody," with regard to the division, means the shelter of a child by
 156 the division from the time the child is removed from the child's home until the earlier of:

157 (a) the shelter hearing[;]; or

158 (b) the child's return home[; ~~whichever occurs earlier~~].

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

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

161 (b) to a cohabitant who is neglecting or abusing a child, in order to:

162 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
 163 causes of neglect or abuse[;]; and [τ]

164 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

165 (c) in cases where the child's welfare is endangered:

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

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

170 (iii) to protect the child from the circumstances that endanger the child's welfare
 171 including, when appropriate[;];

172 (A) removal from the child's home[;];

173 (B) placement in substitute care[;]; and

174 (C) petitioning the court for termination of parental rights.

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

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

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

181 (24) "State" means:

182 (a) a state of the United States[;];

183 (b) the District of Columbia[;];

184 (c) the Commonwealth of Puerto Rico[;];

185 (d) the Virgin Islands[;];

186 (e) Guam[;];

187 (f) the Commonwealth of the Northern Mariana Islands[;]; or

188 (g) a territory or possession administered by the United States.

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

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

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

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

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

201 (30) "Substitute care" means:

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

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

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

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

213 (32) "Temporary custody," with regard to the division, means the custody of a child in

214 the division from the date of the shelter hearing until disposition.

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

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

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

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

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

228 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
229 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
230 **Rights of alleged perpetrator -- Juvenile court finding.**

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

233 (a) (i) serve notice of the finding on the alleged perpetrator; and

234 (ii) enter the following information into the Licensing Information System created in
235 Section 62A-4a-116.2:

236 (A) the name and other identifying information of the perpetrator with the supported
237 finding, without identifying the person as a perpetrator or alleged perpetrator[;]; and

238 (B) a notation to the effect that an investigation regarding the person is pending; and

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

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

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

244 (i) severe or chronic physical abuse;

- 245 (ii) sexual abuse;
- 246 (iii) sexual exploitation;
- 247 (iv) abandonment;
- 248 (v) medical neglect resulting in death, disability, or serious illness;
- 249 (vi) chronic or severe neglect; or
- 250 (vii) chronic or severe emotional abuse; or
- 251 (b) if committed by a person under the age of 18:
- 252 (i) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
- 253 which indicates a significant risk to other children; or
- 254 (ii) sexual behavior with or upon another child which indicates a significant risk to
- 255 other children.
- 256 (3) Severe child abuse or neglect in Subsection (2) does not include:
- 257 (a) the use of reasonable and necessary physical restraint or force by an educator in
- 258 accordance with Subsection 53A-11-802(2) or Section 76-2-401; ~~or~~
- 259 (b) a person's conduct that:
- 260 (i) is justified under Section 76-2-401; or
- 261 (ii) constitutes the use of reasonable and necessary physical restraint or force in
- 262 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
- 263 other dangerous object in the possession or under the control of a child or to protect the child or
- 264 another person from physical injury~~[-]; or~~
- 265 (c) a health care decision made for a child by the child's parent or guardian, unless the
- 266 state or other party to the proceeding shows, by clear and convincing evidence, that the health
- 267 care decision is not reasonable and ~~H→~~ [prudent] informed ~~←H~~ .
- 268 (4) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in
- 269 accordance with risk assessment tools and rules established by the division that focus on:
- 270 (i) age~~[-];~~
- 271 (ii) social factors~~[-];~~
- 272 (iii) emotional factors~~[-];~~
- 273 (iv) sexual factors~~[-];~~
- 274 (v) intellectual factors~~[-];~~
- 275 (vi) family risk factors~~[-];~~ and

276 (vii) other related considerations.

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

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

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

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

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

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

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

290 (i) the department;

291 (ii) a human services licensee;

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

293 (iv) a covered health care facility;

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

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

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

299 (i) file a written request asking the division to review the findings under Subsection
300 (2);

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

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

305 (b) If the alleged perpetrator fails to take action as described in Subsection (6)(a)
306 within one year after service of the notice described in Subsection (5), the alleged perpetrator's

307 name and the notation described in Subsection (1)(a) shall remain in the Licensing Information
 308 System. This information shall also remain in the Licensing Information System while the
 309 division awaits a response from the alleged perpetrator pursuant to Subsection (6)(a) and
 310 during the pendency of any proceeding, including an appeal of a finding of unsubstantiated or
 311 without merit, under Section 78-3a-320.

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

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

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

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

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

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

325 (9) Nothing in Subsection (3)(c) may prohibit a parent or guardian from exercising the
 326 right to obtain a second § [medical] health care § opinion.

327 Section 3. Section **62A-4a-116.4** is amended to read:

328 **62A-4a-116.4. Timeframes for deletion of specified information or reports.**

329 (1) Unless the executive director determines that there is good cause for keeping a
 330 report of abuse or neglect in the Management Information System, based on standards
 331 established by rule, the division shall delete any reference to:

332 (a) a report that is without merit, if no subsequent report involving the same alleged
 333 perpetrator has occurred within one year; or

334 (b) a report that has been determined by a court of competent jurisdiction to be
 335 unsubstantiated or without merit, if no subsequent report involving the same alleged
 336 perpetrator has occurred within five years.

337 (2) (a) The division shall maintain a separation of reports as follows:

- 338 (i) those that are supported;
 339 (ii) those that are unsupported;
 340 (iii) those that are without merit;
 341 (iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;
 342 (v) those that are substantiated under the law in effect prior to May 6, 2002; and
 343 (vi) those that are consented-to supported findings under Subsection
 344 62A-4a-116.1(6)(a)[~~(ii)~~](iii).

345 (b) Only persons with statutory authority have access to information contained in any
 346 of the reports identified in Subsection (2)(a).

347 Section 4. Section **76-5-109** is amended to read:

348 **76-5-109. Child abuse.**

349 (1) As used in this section:

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

351 (b) "Child abuse" means any offense described in Subsection (2) or (3), or in Section
 352 76-5-109.1.

353 (c) "Physical injury" means an injury to or condition of a child which impairs the
 354 physical condition of the child, including:

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

356 (ii) a minor laceration or abrasion;

357 (iii) failure to thrive or malnutrition; or

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

360 (d) (i) "Serious physical injury" means any physical injury or set of injuries [~~which~~]
 361 that:

362 (A) seriously impairs the child's health[~~;-or-which~~];

363 (B) involves physical torture [~~or~~];

364 (C) causes serious emotional harm to the child[~~;~~]; or [~~which~~]

365 (D) involves a substantial risk of death to the child[~~;-including-~~].

366 (ii) "Serious physical injury" includes:

367 [~~(i)~~] (A) fracture of any bone or bones;

368 [~~(i)~~] (B) intracranial bleeding, swelling or contusion of the brain, whether caused by

369 blows, shaking, or causing the child's head to impact with an object or surface;

370 ~~[(iii)]~~ (C) any burn, including burns inflicted by hot water, or those caused by placing a
371 hot object upon the skin or body of the child;

372 ~~[(iv)]~~ (D) any injury caused by use of a dangerous weapon as defined in ~~[Section]~~
373 Subsection 76-1-601(5);

374 ~~[(v)]~~ (E) any combination of two or more physical injuries inflicted by the same
375 person, either at the same time or on different occasions;

376 ~~[(vi)]~~ (F) any damage to internal organs of the body;

377 ~~[(vii)]~~ (G) any conduct toward a child ~~[which]~~ that results in severe emotional harm,
378 severe developmental delay or retardation, or severe impairment of the child's ability to
379 function;

380 ~~[(viii)]~~ (H) any injury ~~[which]~~ that creates a permanent disfigurement or protracted loss
381 or impairment of the function of a bodily member, limb, or organ;

382 ~~[(ix)]~~ (I) any conduct ~~[which]~~ that causes a child to cease breathing, even if
383 resuscitation is successful following the conduct; or

384 ~~[(x)]~~ (J) any conduct ~~[which]~~ that results in starvation or failure to thrive or
385 malnutrition that jeopardizes the child's life.

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

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

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

- 395 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
396 (b) if done recklessly, the offense is a class B misdemeanor; or
397 (c) if done with criminal negligence, the offense is a class C misdemeanor.

398 (4) A parent or legal guardian who provides a child with treatment by spiritual means
399 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices

400 of an established church or religious denomination of which the parent or legal guardian is a
401 member or adherent shall not, for that reason alone, be [~~deemed~~] considered to have committed
402 an offense under this section.

403 (5) A parent or guardian of a child does not violate this section by selecting a treatment
404 option for the medical condition of the child, if the treatment option is one that a reasonable
405 parent or guardian would believe to be in the best interest of the child.

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

407 **76-5-110. Abuse or neglect of disabled child.**

408 (1) As used in this section:

409 (a) "Abuse" means:

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

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

413 (iii) unreasonable confinement.

414 (b) "Caretaker" means:

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

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

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

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

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

428 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual
429 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
430 practices of an established church or religious denomination of which the parent or legal

431 guardian is a member or adherent shall not, for that reason alone, be considered to be in
432 violation under this section.

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

436 (c) A caretaker of a disabled child does not violate this section by selecting a treatment
437 option for a disabled child's medical condition, if the treatment option is one that a reasonable
438 caretaker would believe to be in the best interest of the disabled child.

439 Section 6. Section **78-3a-103** is amended to read:

440 **78-3a-103. Definitions.**

441 (1) As used in this chapter:

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

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

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

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

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

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

452 (e) "Child placement agency" means:

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

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

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

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

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

461 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent

462 or the parents or a previous legal custodian to another person, agency, or institution.

463 (j) "Detention" means home detention and secure detention as defined in Section
464 62A-7-101 for the temporary care of minors who require secure custody in physically
465 restricting facilities:

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

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

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

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

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

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

477 (o) "Habitual truant" is a school-age minor who:

478 (i) has received:

479 (A) more than two truancy citations within one school year from the school in which
480 the minor is or should be enrolled; and

481 (B) eight absences without a legitimate or valid excuse; or [who,

482 (ii) in defiance of efforts on the part of school authorities as required under Section
483 53A-11-103, refuses to regularly attend 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) (i) "Minor" means a person under the age of 18 years. [It]

492 (ii) "Minor" includes the term "child" as 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) Notwithstanding Subsection (1)(s)(i), a health care decision made for a child by the
516 child's parent or guardian does not constitute neglect unless the state or other party to the
517 proceeding shows, by clear and convincing evidence, that the health care decision is not
518 reasonable and ~~H~~→ [prudent] informed ←~~H~~ .

519 (v) Nothing in Subsection (1)(s)(iv) may prohibit a parent or guardian from exercising
520 the right to obtain a second § [medical] health care § opinion.

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

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

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

533 (w) (i) "Residual parental rights and duties" means those rights and duties remaining
534 with the parent after legal custody or guardianship, or both, have been vested in another person
535 or agency, including:

536 (A) the responsibility for support~~[-];~~;

537 (B) the right to consent to adoption~~[-];~~;

538 (C) the right to determine the child's religious affiliation~~[-];~~ and

539 (D) the right to reasonable parent-time unless restricted by the court.

540 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
541 the right to consent to:

542 (A) marriage~~[-;to];~~

543 (B) enlistment~~[-];~~ and ~~[to]~~

544 (C) major medical, surgical, or psychiatric treatment.

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

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

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

553 (aa) "Substantiated" has the same meaning as defined in ~~[Section]~~ Subsection
554 62A-4a-101(29).

555 (bb) "Supported" has the same meaning as defined in [Section] Subsection
556 62A-4a-101(31).

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

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

563 (ee) "Unsubstantiated" has the same meaning as defined in [Section] Subsection
564 62A-4a-101(34).

565 (ff) "Without merit" has the same meaning as defined in [Section] Subsection
566 62A-4a-101(36).

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

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

571 (b) "Protective custody" means the shelter of a minor by the Division of Child and
572 Family Services from the time the minor is removed from home until the earlier of:

573 (i) the shelter hearing[;]; or

574 (ii) the minor's return home[~~, whichever occurs earlier~~].

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

577 Section 7. Section **78-3a-408** is amended to read:

578 **78-3a-408. Evidence of grounds for termination.**

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

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

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

586 months;

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

588 (d) have abandoned an infant, as described in ~~[Section]~~ Subsection 78-3a-313.5(1).

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

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

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

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

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

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

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

606 (f) a history of violent behavior.

607 (3) A parent who, legitimately practicing the parent's religious beliefs, does not provide
608 specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

609 (4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or
610 unfit because of a health care decision made for a child by the child's parent unless the state or
611 other party to the proceeding shows, by clear and convincing evidence, that the health care
612 decision is not reasonable and ~~H~~→ **[prudent] informed** ←~~H~~ .

613 (b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to
614 obtain a second ~~§ [medical] health care §~~ opinion.

615 ~~[(3)]~~ (5) If a child has been placed in the custody of the division and the parent or
616 parents fail to comply substantially with the terms and conditions of a plan within six months

617 after the date on which the child was placed or the plan was commenced, whichever occurs
618 later, that failure to comply is evidence of failure of parental adjustment.

619 ~~[(4)]~~ (6) The following circumstances constitute prima facie evidence of unfitness:

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

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

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

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

629 Section 8. Section **78-14-5.5** is enacted to read:

630 **78-14-5.5. Limitation on actions against health care providers when parent or**
631 **guardian refuses to consent to health care of child.**

632 (1) A malpractice action against a health care provider may not be brought on the basis
633 of the consequences resulting from the refusal of a child's parent or guardian to consent to the
634 child's health care, if:

635 (a) the health care is recommended by the health care provider;

636 (b) the parent or guardian is provided with sufficient information to make an informed
637 decision regarding the recommendation of the health care provider; and

638 (c) the consent of the parent or guardian is required by law before the health care may
639 be administered.

640 ~~**H→ (2) The prohibition on bringing a malpractice action against a health care provider in**~~
641 ~~**Subsection (1) does not apply if the health care provider fails to comply with the requirements**~~
642 ~~**of Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements.**~~

643 ~~—— (3)] (2) ←H~~ The sole purpose of this section is to prohibit a malpractice action against a
643a health

644 care provider under the circumstances set forth by this section. This section may not be
645 construed to:

646 (a) create a new cause of action;

647 (b) expand an existing cause of action;

648 (c) impose a new duty on a health care provider; or
649 (d) expand an existing duty on a health care provider.

650 **Section 9. Legislative intent.**

651 The Legislature recognizes that parents have a fundamental liberty interest in the care,
652 custody, and management of their children, as protected by the 14th Amendment.

Legislative Review Note
as of 11-27-04 2:27 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0083

Medical Decisions of a Parent or Guardian

14-Jan-05

3:05 PM

State Impact

Provisions of this bill can be implemented within existing resources.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst