

**MEDICAL DECISIONS OF A PARENT OR
GUARDIAN**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies provisions of Child and Family Services to provide that:
 - a health care decision made by a child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the decision is not reasonable and informed; and
 - a parent or guardian has the right to a second health care opinion;
- ▶ modifies the Licensing Information System portion of Child and Family Services to provide that:
 - a health care decision made by a child's parent or guardian does not constitute severe child abuse or neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the decision is not reasonable and informed; and
 - a parent or guardian retains the right to a second health care opinion;
- ▶ provides that a parent or guardian is not guilty of child abuse for selecting a treatment option for the medical condition of the parent's or guardian's child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child;

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

- ▶ modifies the definition of a neglected child under the Juvenile Court Act of 1996 to provide that a health care decision made by a child's parent or guardian does not constitute neglect unless the state or other party to the proceeding can show, by clear and convincing evidence, that the decision was not reasonable and informed;

- ▶ modifies the Juvenile Court Act of 1996 to provide that a parent or guardian has the right to a second health care opinion;

- ▶ modifies the Termination of Parental Rights Act to provide that:
 - a health care decision made by a child's parent does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the decision is not reasonable and informed; and

- a parent has the right to a second health care opinion;

- ▶ modifies the Judicial Code to provide that a malpractice action may not be brought against a health care provider on the basis of the consequences resulting from the refusal of a child's parent or guardian to consent to health care recommended by the health care provider when the parent or guardian is provided with sufficient information to make an informed decision and the consent of the parent or guardian is required by law;

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

- ▶ enacts an uncodified expression of legislative intent; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

- 78-14-5.5, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

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

62A-4a-101. Definitions.

As used in this chapter:

- (1) "Abuse" means:
 - (a) actual or threatened nonaccidental physical or mental harm;
 - (b) negligent treatment;
 - (c) sexual exploitation; or
 - (d) any sexual abuse.
- (2) "Adoption services" means:
 - (a) placing children for adoption[;];
 - (b) subsidizing adoptions under Section 62A-4a-105[;];
 - (c) supervising adoption placements until the adoption is finalized by the court[;];
 - (d) conducting adoption studies[;];

(e) preparing adoption reports upon request of the court[;]; and
(f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

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

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

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

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

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

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

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

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

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

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

(i) day-care center[;];

(ii) family group home[;]; or

(iii) family child care home.

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

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

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

(14) (a) "Domestic violence services" means:

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

(ii) treatment services for domestic violence perpetrators.

(b) As used in this Subsection (14):

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

(ii) "domestic violence perpetrator" means a person who is alleged to have committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in Subsection 77-36-1(2).

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

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

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

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

(18) (a) "Neglect" means:

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

(ii) subjecting a child to mistreatment or abuse;

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

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

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

(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv), means that, after receiving notice that a child has been frequently absent from school without

good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

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

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

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

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

- (a) the shelter hearing[;]; or
- (b) the child's return home[~~,- whichever occurs earlier~~].

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

- (a) in response to evidence of neglect, abuse, or dependency of a minor;
- (b) to a cohabitant who is neglecting or abusing a child, in order to:
 - (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse[;]; and [to]
 - (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
 - (c) in cases where the child's welfare is endangered:
 - (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
 - (ii) to cause a protective order to be issued for the protection of the minor, when appropriate; and
 - (iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate[;];

- (A) removal from the child's home[;];
- (B) placement in substitute care[;]; and
- (C) petitioning the court for termination of parental rights.

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

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

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

(24) "State" means:

- (a) a state of the United States[;];
- (b) the District of Columbia[;];
- (c) the Commonwealth of Puerto Rico[;];
- (d) the Virgin Islands[;];
- (e) Guam[;];
- (f) the Commonwealth of the Northern Mariana Islands[;]; or
- (g) a territory or possession administered by the United States.

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

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

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

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

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

(30) "Substitute care" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

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

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse; or

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

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

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

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

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

(b) a person's conduct that:

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

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

(c) a health care decision made for a child by the child's parent or guardian, unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(4) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in accordance with risk assessment tools and rules established by the division that focus on:

(i) age[?];

(ii) social factors[?];

(iii) emotional factors[?];

(iv) sexual factors[?];

(v) intellectual factors[?];

(vi) family risk factors[?]; and

(vii) other related considerations.

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

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

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

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

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

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

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

- (i) the department;
 - (ii) a human services licensee;
 - (iii) a child care provider or program; and
 - (iv) a covered health care facility;
- (f) the alleged perpetrator has the rights described in Subsection (6); and
- (g) failure to take either action described in Subsection (6)(a) within one year after

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

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

- (i) file a written request asking the division to review the findings under Subsection (2);
- (ii) immediately petition the juvenile court under Section 78-3a-320; or
- (iii) sign a written consent to the supported finding and entry of the alleged perpetrator's name and other information regarding the supported finding of abuse or neglect into the Licensing Information System.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) those that are supported;

(ii) those that are unsupported;

(iii) those that are without merit;

(iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;

(v) those that are substantiated under the law in effect prior to May 6, 2002; and

(vi) those that are consented-to supported findings under Subsection

62A-4a-116.1(6)(a)[~~(ii)~~](iii).

(b) Only persons with statutory authority have access to information contained in any of

the reports identified in Subsection (2)(a).

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

76-5-109. Child abuse.

(1) As used in this section:

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

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

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

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

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

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

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

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

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

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

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

(ii) "Serious physical injury" includes:

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

[~~(ii)~~] (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

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

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

[~~(v)~~] (E) any combination of two or more physical injuries inflicted by the same person,

either at the same time or on different occasions;

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

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

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

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

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

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

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

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

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

(4) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be ~~[deemed]~~ considered to have committed an offense under this section.

(5) A parent or guardian of a child does not violate this section by selecting a treatment

option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

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

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

(1) As used in this section:

(a) "Abuse" means:

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

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

(iii) unreasonable confinement.

(b) "Caretaker" means:

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

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

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

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

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

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

section.

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

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

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

78-3a-103. Definitions.

(1) As used in this chapter:

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

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

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

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

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

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

(e) "Child placement agency" means:

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

or

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

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

(g) "Court" means the juvenile court.

(h) "Dependent child" includes a minor who is homeless or without proper care through

no fault of ~~his~~ the minor's parent, guardian, or custodian.

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

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

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

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

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

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

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

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

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

(i) has received:

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

(B) eight absences without a legitimate or valid excuse; or ~~who;~~

(ii) in defiance of efforts on the part of school authorities as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

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

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

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

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

medical care;

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

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

(q) (i) "Minor" means a person under the age of 18 years. [†]

(ii) "Minor" includes the term "child" as used in other parts of this chapter.

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

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

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

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

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

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

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

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

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

(iv) Notwithstanding Subsection (1)(s)(i), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the

proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) the shelter hearing~~[-]~~; or
- (ii) the minor's return home~~[-, whichever occurs earlier]~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) a history of violent behavior.

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

(4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.

~~[(3)]~~ (5) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

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

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

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

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

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

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

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

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

- (a) the health care is recommended by the health care provider;
- (b) the parent or guardian is provided with sufficient information to make an informed decision regarding the recommendation of the health care provider; and
- (c) the consent of the parent or guardian is required by law before the health care may be administered.

(2) The sole purpose of this section is to prohibit a malpractice action against a health care provider under the circumstances set forth by this section. This section may not be construed to:

- (a) create a new cause of action;
- (b) expand an existing cause of action;
- (c) impose a new duty on a health care provider; or
- (d) expand an existing duty on a health care provider.

Section 9. **Legislative intent.**

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