

MINUTES OF THE HOUSE
LAW ENFORCEMENT AND CRIMINAL JUSTICE STANDING COMMITTEE
Room WO25, West Office Building, State Capitol Complex
February 8, 2005

Members Present: Rep. DeMar "Bud" Bowman, Chair
Rep. Duane Bourdeaux
Rep. LaVar F. Christensen
Rep. Wayne A. Harper
Rep. Patricia W. Jones
Rep. Todd E. Kiser
Rep. David Litvack
Rep. Curtis Oda
Rep. Paul Ray
Rep. Stephen H. Urquhart

Members Excused: Rep. Michael T. Morley, Vice Chair

Staff Present: Mr. Stewart Smith, Policy Analyst
Ms. Linda Black, Committee Secretary

note: A list of visitors and a copy of handouts are filed with the committee minutes.

Rep. Bowman called the meeting to order at 4:15 p.m.

MOTION: Rep. Bourdeaux moved to approve the minutes of February 2, 2005. The motion passed unanimously with Rep. Christensen, Rep. Harper, Rep. Oda, and Rep. Urquhart absent for the vote.

H.B. 184 Domestic Violence - Change of Locks on Rental Property (*Rep. L. Shurtliff*)

Rep. Shurtliff explained the bill with the assistance of Mr. Ned Searle, Director, Domestic Violence, State of Utah.

MOTION: Rep. Ray moved to delete in title and body **H.B. 184**, and replace it with **1st Substitute H.B. 184**. The motion passed unanimously, with Rep. Harper, and Rep. Urquhart absent for the vote.

MOTION: Rep. Litvack moved to amend the bill as follows:

1. Page 2, Lines 45 through 47:

45 (c) Notwithstanding any rental agreement, an owner who installs a new lock under
46 Subsection (3)(a) {~~may~~} **shall** refuse to provide a copy of the key that opens the
new lock to the
47 perpetrator of the act listed in Subsection (1).

The motion passed unanimously, with Rep. Harper and Rep. Urquhart absent for the vote.

H.B. 228 Removal or Defacement of Political Signs *(Rep. G. Hughes)*

Rep. Hughes presented the bill.

Spoke for the bill: Mr. Wallace McCormick, citizen
 Ms. Laura Lee Adams, citizen and campaign manager

MOTION: Rep. Christensen moved to pass the bill out favorably. The motion passed unanimously, with Rep. Harper and Rep. Urquhart absent for the vote.

S.B. 118 Identity Fraud Amendments *(Sen. C. Walker)*

Sen. Walker presented the bill.

Spoke for the bill: Mr. Scott Simpson, Utah League of Credit Unions

MOTION: Rep. Ray moved to pass the bill out favorably. The motion passed unanimously with Rep. Harper and Rep. Urquhart absent for the vote.

MOTION: Rep. Ray moved to place the bill on the Consent Calendar. The motion passed unanimously with Rep. Harper and Rep. Urquhart absent for the vote.

S.B. 30 Amendments to Search Warrants *(Sen. D. Thomas)*

Sen. Thomas presented the bill.

MOTION: Rep. Christensen moved to pass the bill out favorably. The motion passed unanimously, with Rep. Bourdeaux, Rep. Harper, and Rep. Urquhart absent for the vote.

MOTION: Rep. Christensen moved to place the bill on the Consent Calendar. The motion passed unanimously, with Rep. Bourdeaux, Rep. Harper, and Rep. Urquhart absent for the vote.

1st SUBSTITUTE H.B. 202 Revisions to Child Welfare *(Rep. W. Harper)*

Rep. Harper presented the bill.

MOTION: Rep. Harper moved to amend 1st Substitute H.B. 202 as follows:

1. Page 1, Lines 14 through 18:

14 {~~→ provides that abuse and neglect do not include accidental conduct;~~}
15 ▶ removes the requirement that the Division of Child and Family Services provide
16 services to unwed parents;
17 {~~→ provides that a substantiated finding by a court that abuse or neglect
occurred must
18 be based on clear and convincing evidence;~~}

2. Page 2, Lines 27 through 29:

27 {~~→ provides that in an adjudicative proceeding to challenge a supported
finding by the
28 Division of Child and Family Services, the division has the burden of proving the
29 finding by clear and convincing evidence;~~}

3. Page 3, Lines 81 through 82:

81 {~~→ requires that a petitioner in a proceeding to terminate parental rights
establish the
82 facts beyond a reasonable doubt;~~}

4. Page 5, Lines 141 through 142:

141 {~~ENACTS:
142 — 62A-4a-202.9, Utah Code Annotated 1953~~}

5. Page 6, Line 174 through Page 13, Line 397:

174 Section 2. Section **62A-4a-101** is amended to read:
175 62A-4a-101. Definitions.
176 As used in this chapter:
177 (1) (a) "Abuse" means:
178 (i) causing ∴
(A) nonaccidental physical harm; {~~or~~}
179 {~~(ii) intentionally, knowingly, recklessly, or with criminal negligence;~~}
180 [~~(a) actual or threatened nonaccidental physical or mental harm;~~]
181 [~~(b) negligent treatment;~~]
182 [~~(c) sexual exploitation; or~~]
183 [~~(d) any sexual abuse.~~]
184 {~~(A) causing;~~}

185 ~~{(F)}~~ (B) physical injury, as defined in Section 76-5-109; or
186 ~~{(H)}~~ (C) serious physical injury, as defined in Section 76-5-109;
187 ~~{(B)}~~ (ii) engaging in:
188 ~~{(F)}~~ (A) mental cruelty, as defined in Section 76-5-109;
189 ~~{(H)}~~ (B) sexual exploitation of a child, as defined in Section 62A-4a-402;
 or
190 ~~{(H)}~~ (C) sexual abuse, as defined in Section 62A-4a-402;
191 ~~{(C)}~~ (iii) while having care or custody of a child, causing or permitting
 another to:
192 ~~{(F)}~~ (A) inflict on the child an injury or harm described in Subsection
 (1)(a) ~~{(ii)(A)}~~ (i) ; or
193 ~~{(H)}~~ (B) engage in conduct, described in Subsection (1)(a)(ii) ~~{(B)}~~ ,
 involving the child;
194 ~~{(D)}~~ (iv) engaging in conduct described in Subsection 76-5-109.1(2); or
195 ~~{(E)}~~ (v) subjecting a child to ~~{an imminent risk of a type of abuse~~
 described in Subsections
196 ~~{(1)(a)(ii)(A) through (D)}~~ mistreatment or abuse .
197 (b) "Abuse" does not include:
198 (i) disciplining or managing a child ~~{, including:~~
199 ~~(A) withholding privileges from a child; or~~
200 ~~(B) other discipline}~~ in a manner that does not constitute abuse under
 Subsection (1)(a) , including:
 (A) withholding privileges from a child; or
 (B) other discipline ;
201 (ii) accidental conduct;
202 (iii) conduct described in Subsection 53A-11-802(2);
203 (iv) conduct described in Section 76-2-401; or
204 (v) the use of reasonable and necessary physical restraint or force on a child:
205 (A) in self-defense;
206 (B) in defense of others;
207 (C) to protect the child; or
208 (D) to remove a weapon in the possession of a child for any of the reasons described
 in
209 Subsections (1)(b)(v)(A) through (C).
210 ~~{(2)(a) "Accidental conduct" means conduct by a person:~~
211 ~~(i) when the person is not aware that he is engaging in the conduct; or~~

212 ~~—(ii) when the person is aware that he is engaging in the conduct and:~~
213 ~~—(A) a reasonable person would not expect that there is a reasonable possibility~~
214 ~~that the~~
215 ~~conduct described in this Subsection (2)(a)(ii) would result in:~~
216 ~~—(I) physical injury, as defined in Section 76-5-109; or~~
217 ~~—(H) serious physical injury, as defined in Section 76-5-109; or~~
218 ~~—(B) the person is not aware of the existence of circumstances that made it~~
219 ~~reasonably~~
220 ~~possible that the conduct described in this Subsection (2)(a)(ii) would result in:~~
221 ~~—(I) physical injury, as defined in Section 76-5-109; or~~
222 ~~—(H) serious physical injury, as defined in Section 76-5-109;~~
223 ~~—(b) "Accidental conduct," described in Subsection (2)(a), does not include~~
224 ~~conduct~~
225 ~~committed by a person while the person is under the influence of an intoxicating or~~
226 ~~mind~~
227 ~~altering substance.}~~
228 {+} (2) {+} ~~{-(3)}~~ "Adoption services" means:
229 (a) placing children for adoption[;];
230 (b) subsidizing adoptions under Section 62A-4a-105[;];
231 (c) supervising adoption placements until the adoption is finalized by the court[;];
232 (d) conducting adoption studies[;];
233 (e) preparing adoption reports upon request of the court[;]; and
234 (f) providing postadoptive placement services, upon request of a family, for the
235 purpose of stabilizing a possible disruptive placement.
236 {+} (3) {+} ~~{-(4)}~~ "Board" means the Board of Child and Family
237 Services established in
238 accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.
239 {+} (4) {+} ~~{-(5)}~~ "Child" [has the same meaning as "minor," as
240 defined in this section] means a
241 person under the age of 18.
242 ~~{-(6)}~~ (5) "Chronic [physical] abuse" means [repeated or patterned
243 physical] a pattern of
244 abuse.
245 ~~{-(7)}~~ (6) "Chronic neglect" means a [repeated or patterned failure or
246 refusal by a parent;
247 guardian, or custodian to provide necessary care for a minor's safety, morals, or

well-being]

240 pattern of neglect.

241 [~~(8)~~] "~~Chronic emotional abuse~~" means ~~repeated or patterned emotional abuse.~~]

242 [~~(5)~~] ~~{(8)}~~ (7) "Consumer" means a person who receives services offered
by the division in
243 accordance with this chapter.

244 ~~{(9)}~~ (8) "Criminal negligence" is as defined in Section 76-2-103.

245 ~~{+}~~ (9) ~~{+}~~ ~~{(10)}~~ "Custody," with regard to the division, means the
custody of a ~~[child]~~ minor
246 in the division as of the date of disposition.

247 ~~{+}~~ (10) ~~{+}~~ ~~{(11)}~~ "Day-care services" means care of a child for a
portion of the day which is:

248 (a) less than 24 hours~~;~~];

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

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

251 (i) day-care center~~;~~];

252 (ii) family group home~~;~~]; or

253 (iii) family child care home.

254 ~~{+}~~ (11) ~~{+}~~ ~~{(12)}~~ "Dependent child" or "dependency" means a
child, or the condition of a
255 child, who is homeless or without proper care through no fault of the child's parent,
guardian,
256 or custodian.

257 ~~{+}~~ (12) ~~{+}~~ ~~{(13)}~~ "Director" means the director of the Division of
Child and Family Services.

258 ~~{+}~~ (13) ~~{+}~~ ~~{(14)}~~ "Division" means the Division of Child and
Family Services.

259 ~~{+}~~ (14) ~~{+}~~ ~~{(15)}~~ (a) "Domestic violence services" means
temporary shelter, treatment, and
260 related services to persons who are victims of abuse and their dependent children and
treatment
261 services for domestic violence perpetrators.

262 (b) As used in this Subsection ~~{+}~~ (14) ~~{+}~~ ~~{(15)}~~ :

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

264 (ii) "domestic violence perpetrator" means a person who is alleged to have
committed,

265 has been convicted of, or has pled guilty to an act of domestic violence as defined in
266 Subsection 77-36-1(2).
267 ~~{+}~~ (15) ~~{+}~~ ~~{-16-}~~ "Homemaking service" means the care of
 individuals in their domiciles, and
268 help given to individual caretaker relatives to achieve improved household and family
269 management through the services of a trained homemaker.
270 ~~{-17-}~~ (16) "Intentionally" is as defined in Section 76-2-103.
271 ~~{-18-}~~ (17) "Knowingly" is as defined in Section 76-2-103.
272 ~~{+16}~~ ~~{-19-}~~ (18) (a) "Minor" means a person under 18 years of age.
273 (b) "Minor" may also include a person under 21 years of age for whom the division
 has
274 been specifically ordered by the juvenile court to provide services.
275 ~~{+17}~~ ~~{-20-}~~ (19) "Natural parent" means a minor's biological or adoptive
 parent, and
276 includes a minor's noncustodial parent.
277 ~~{+18}~~ ~~{-21-}~~ (20) (a) "Neglect" means:
278 (i) repeated or substantial failure by a parent, guardian, or person with care or
 custody
279 of a child to provide the child with **proper or** necessary:
280 (A) care;
281 (B) food;
282 (C) shelter;
283 (D) clothing;
284 (E) training;
285 (F) physical safety; or
286 (G) medical care;
287 ~~{+}~~ (ii) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8,
288 Safe Relinquishment of a Newborn Child;
 (iii) that there is a substantial risk that a child will suffer abuse or neglect by a
 caretaker who neglected or abused another child in the child's home; or
289 ~~{(ii) subjecting a child to mistreatment or abuse;}~~
290 ~~{(iii) lack of proper parental care by reason of the fault or habits of the parent,~~
291 ~~guardian, or custodian;}~~
292 ~~{(iv) failure or refusal of a parent, guardian, or custodian to provide proper or~~
 ~~necessary~~
293 ~~subsistence, education, or medical care, including surgery or psychiatric services when~~

294 required, or any other care necessary for his health, safety, morals, or well-being, or]
295 [~~(v)~~ a child at risk of being neglected or abused because another child in the same
296 home is neglected or abused.]
297 [~~(b)~~ The aspect of neglect relating to education, described in Subsection (18)(a)(iv);
298 means that, after receiving notice that a child has been frequently absent from school
without
299 good cause, or that the child has failed to cooperate with school authorities in a
reasonable
300 manner, a parent or guardian fails to make a good faith effort to ensure that the child
receives
301 an appropriate education.]
302 ~~{(iii)}~~ (iv) failure by a parent or guardian to make a good faith effort to
ensure that the child
303 receives an appropriate education after the parent or guardian receives notice that the
child is
304 frequently absent from school without good cause.
305 (b) "Neglect" does not include:
306 [~~(c)~~ ~~A~~] (i) a parent or guardian legitimately practicing religious beliefs [~~and~~] who,
for
307 that reason, does not provide specified medical or mental health treatment for a child[~~is~~
not
308 guilty of neglect.]; or
309 (ii) disciplining or managing a child ~~{; or~~
310 ~~—(iii) accidental conduct }~~ .
311 [~~(19)~~] ~~{(22)}~~ (21) "Protective custody," with regard to the division, means
the shelter of a
312 child by the division from the time the child is removed from the child's home until the
shelter
313 hearing, or the [~~child's return~~] child returns home, whichever occurs earlier.
314 [~~(20)~~] ~~{(23)}~~ (22) "Protective services" means expedited services that are
provided:
315 (a) in response to evidence of neglect, abuse, or dependency of a minor;
316 (b) to a cohabitant who is neglecting or abusing a child, in order to help the
cohabitant
317 develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse,
and

318 to strengthen the cohabitant's ability to provide safe and acceptable care; and
319 (c) in cases where the child's welfare is endangered:
320 (i) to bring the situation to the attention of the appropriate juvenile court and law
321 enforcement agency;
322 (ii) to cause a protective order to be issued for the protection of the minor, when
323 appropriate; and
324 (iii) to protect the child from the circumstances that endanger the child's welfare
325 including, when appropriate, removal from the child's home, placement in substitute care,
and
326 petitioning the court for termination of parental rights.
327 ~~{(24)}~~ (23) "Recklessly" is as defined in Section 76-2-103.
328 ~~[(22) "Severe]~~ ~~{(25)}~~ (24) "Serious neglect" means neglect that causes ~~or~~
~~threatens to cause~~
329 ~~serious harm]~~ serious physical injury, as defined in Section 76-5-109, to a minor.
330 ~~[(21) "Services to unwed parents" means social, educational, and medical services~~
331 ~~arranged for or provided to unwed parents to help them plan for themselves and the~~
~~unborn~~
332 ~~child.]~~
333 ~~{(26)}~~ (25) "Severe child abuse or neglect" means:
334 (a) if committed by a person 18 years of age or older:
335 (i) ~~{intentionally, knowingly, recklessly, or with criminal negligence}~~
causing serious
336 physical injury, as defined in Section 76-5-109; or
337 (ii) committing:
338 (A) chronic abuse;
339 (B) sexual abuse, as defined in Section 62A-4a-402;
340 (C) sexual exploitation of a child, as defined in Section 62A-4a-402;
341 (D) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8,
Safe
342 Relinquishment of a Newborn Child;
343 (E) serious neglect;
344 (F) chronic neglect; or
345 (G) mental cruelty, as defined in Section 76-5-109; or
346 (b) if committed by a person under the age of 18:
347 (i) inflicting serious physical injury, as defined in Section 76-5-109, to another child
348 when that conduct indicates that the person poses an actual risk to other children, as

determined
349 in accordance with risk assessment factors established by the division, by rule, as
provided in
350 Section 62A-4a-102; or
351 (ii) committing sexual behavior with or upon another child when that conduct
352 indicates that the person poses an actual risk to other children, as determined in
accordance
353 with risk assessment factors established by the division, by rule, as provided in Section
354 62A-4a-102.
355 [~~(23)~~] {~~(27)~~} (26) "Shelter care" means the temporary care of [minors] a
minor in a nonsecure
356 [~~facilities~~] facility.
357 [~~(24)~~] {~~(28)~~} (27) "State" means a state of the United States, the District of
Columbia, the
358 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the
Northern
359 Mariana Islands, or a territory or possession administered by the United States.
360 [~~(25)~~] "~~Severe emotional abuse~~" means ~~emotional abuse that causes or threatens to~~
361 ~~cause serious harm to a minor.]~~
362 [~~(26)~~] "~~Severe physical abuse~~" means ~~physical abuse that causes or threatens to cause~~
363 ~~serious harm to a minor.]~~
364 [~~(27)~~] {~~(29)~~} (28) "State plan" means the written description of the
programs for children,
365 youth, and family services administered by the division in accordance with federal law.
366 [~~(28)~~] {~~(30)~~} (29) "Status offense" means a violation of the law that would
not be a violation
367 but for the age of the offender.
368 [~~(29)~~] {~~(31)~~} (30) "Substantiated" or "substantiation" means a judicial
finding based on {+} a
369 preponderance of the {+} {~~clear and convincing~~} evidence that abuse or
neglect occurred. Each
370 allegation made or identified in a given case shall be considered separately in determining
371 whether there should be a finding of substantiated.
372 [~~(30)~~] {~~(32)~~} (31) "Substitute care" means:
373 (a) the placement of a minor in a family home, group care facility, or other
placement

374 outside the minor's own home, either at the request of a parent [~~or other~~], guardian, or
375 responsible relative, or upon court order, when it is determined that continuation of care
in the
376 child's own home would be contrary to the child's welfare;
377 (b) services provided for a child awaiting placement; and
378 (c) the licensing and supervision of a substitute care facility.
379 [~~(31)~~] {~~(33)~~} (32) "Supported" means a finding by the division [~~based on~~
~~the evidence~~
380 ~~available~~] at the completion of an investigation [~~that there is a reasonable basis to~~
~~conclude~~
381 that is more likely than not that abuse, neglect, or dependency occurred. Each allegation
made
382 or identified during the course of the investigation shall be considered separately in
383 determining whether there should be a finding of supported.
384 [~~(32)~~] {~~(34)~~} (33) "Temporary custody," with regard to the division, means
the custody of a
385 child in the division from the date of the shelter hearing until disposition.
386 [~~(33)~~] {~~(35)~~} (34) "Transportation services" means travel assistance given
to an individual
387 with escort service, if necessary, to and from community facilities and resources as part of
a
388 service plan.
389 [~~(34)~~] {~~(36)~~} (35) "Unsubstantiated" means a judicial finding that
~~{there is}~~ [insufficient] it has not
390 ~~{clear and convincing}~~ been established beyond a preponderance of the
evidence [~~to conclude~~] that abuse or neglect occurred.
391 [~~(35)~~] {~~(37)~~} (36) "Unsupported" means a finding at the completion of an
investigation by the
392 division that there is insufficient evidence to [~~conclude~~] show that it is more likely than
not that
393 abuse, neglect, or dependency occurred. However, a finding of unsupported means also
that
394 the division worker did not conclude that the allegation was without merit.
395 [~~(36)~~] {~~(38)~~} (37) "Without merit" means a finding at the completion of an
investigation by
396 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not

occur,

397 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

6. *Page 15, Line 457:*

457 (3) Child welfare caseworkers shall ~~{, on an annual basis,}~~ complete training
in:

7. *Page 16, Lines 475 through 476:*

475 (4) The division shall train its child welfare caseworkers to apply the risk
assessment

476 factors and rules described in Subsection 62A-4a-101 ~~{(26)}~~ (25) (b)(ii).

8. *Page 23, Lines 699 through 702:*

699 (5) (a) In an adjudicative proceeding held pursuant to this section, the division shall
700 have the burden of proving, by ~~{+}~~ **a preponderance of the** ~~{+}~~ ~~{clear and~~
~~convincing}~~ evidence, ~~[that~~

701 ~~there is a reasonable basis to conclude]~~ that child abuse, neglect, or dependency occurred
and

702 that the alleged perpetrator was substantially responsible for the abuse or neglect that
occurred.

9. *Page 28, Lines 846 through 848:*

846 (b) ~~{The}~~ **Subject to Subsection (6)(c), the** fact that a child's home is
dirty or unkempt does not constitute grounds for the

847 division to intervene or to remove a child from the child's home, unless the condition of
the

848 home poses a serious threat to a child's safety.

(c) Nothing in Subsection (6)(b) shall be interpreted to limit the division's:

(i) investigation responsibilities; or

(ii) ability to provide voluntary services to a family.

10. *Page 30, Line 921:*

921 (c) **as practicable,** are provided within the region that the family resides, using
existing division staff.

11. *Page 31, Line 928:*

928 (ii) be available 24 hours ~~{each day}~~ for an intensive period of at least six
weeks[-]; and

12. Page 35, Line 1072 through Page 36, Line 1086:

1072 ~~{Section 16. Section 62A-4a-202.9 is enacted to read:~~
1073 ~~62A-4a-202.9. Protection of child in danger of abuse based on abuse of another~~
1074 ~~person:~~
1075 ~~(1) For purposes of this section, a "child in danger of abuse" means a child:~~
1076 ~~(a) whose parent or guardian causes another person to suffer abuse; and~~
1077 ~~(b) who there is reason to believe is at risk of suffering abuse by the parent or~~
~~guardian~~
1078 ~~described in Subsection (1)(a) based on the abuse described in Subsection (1)(a);~~
1079 ~~(2) Pursuant to the requirements of law:~~
1080 ~~(a) the division or a peace officer may remove a child in danger of abuse from~~
~~the~~
1081 ~~child's home;~~
1082 ~~(b) the division may provide services to a child in danger of abuse, and the~~
~~child's~~
1083 ~~family; or~~
1084 ~~(c) the division may seek the termination of the parental rights of the parent~~
~~described~~
1085 ~~in Subsection (1)(a) with respect to a child in danger of abuse.}~~
1086 Section ~~{17}~~ (16) . Section 62A-4a-203 is amended to read:

13. Page 37, Line 1125:

1125 Section ~~{18}~~ (17) . Section 62A-4a-205 is amended to read:

14. Page 39, Line 1191 through Page 40, Line 1214:

1191 (8) (a) ~~{Subject to}~~ Except as provided in Subsection (8)(b). ~~{the}~~
parent-time ~~{described in Subsection (7)(h) may~~
1192 ~~be denied only by order of a}~~ may only be denied by court order issued
pursuant to Subsections 78-3a-311 (2)(a)(ii) and (b). ~~{:~~
1193 ~~(i) to protect the life or physical safety of a child; or~~
1194 ~~(ii) if the parent caused the child to suffer:~~
1195 ~~(A) physical injury, as defined in Section 76-5-109;~~
1196 ~~(B) serious physical injury, as defined in Section 76-5-109;~~

- 1197 ~~—(C) sexual abuse, as defined in Section 62A-4a-402; or~~
1198 ~~—(D) sexual exploitation of a child, as defined in Section 62A-4a-402.~~
1199 ~~—(b) Notwithstanding Subsection (8)(a), the division may deny parent-time~~
~~without a~~
1200 ~~court order:~~
1201 ~~—(i) subject to Subsection (8)(c)(i), on a specific occasion if the parent is:~~
1202 ~~—(A) under the influence of an intoxicating substance; or~~
1203 ~~—(B) in an emotional or mental state that is likely to:~~
1204 ~~—(F) threaten the child's physical safety; or~~
1205 ~~—(H) cause the child to suffer emotional anguish; or~~
1206 ~~—(ii) subject to Subsection (8)(c)(ii), for any of the reasons listed in Subsection~~
~~(8)(a):~~
1207 ~~—(c) (i) If the division denies parent-time under Subsection (8)(b)(i) on three~~
~~consecutive~~
1208 ~~occasions, the division shall file a motion for a court order to deny or modify~~
~~parent-time;~~
1209 ~~within 24 hours, excluding weekends and holidays, of the second consecutive denial.~~
1210 ~~—(ii) If the division denies parent-time under Subsection (8)(b)(ii), the division~~
~~shall file~~
1211 ~~a motion for an order to deny or modify parent-time, within 24 hours, excluding~~
~~weekends and~~
1212 ~~holidays, from the time that the decision to deny parent-time is made.~~
1213 ~~—(d) Failure to comply with a treatment plan may not be used as grounds to~~
~~deny~~
1214 ~~parent-time.}~~

(b) Notwithstanding Subsection (8)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition , it is necessary to deny parent-time in order to:

- (i) protect the physical safety of the child;
(ii) protect the life of the child; or
(iii) consistent with Subsection (8)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (8)(b) will traumatize a child, the person supervising a parent-time session shall consider the impact that the parent's condition will have on the child in

light of:

- (i) the child's fear of the parent; and
- (ii) the nature of the alleged abuse or neglect.

15. Page 41, Lines 1235 through 1238:

1235 (e) ~~{A}~~ For purposes of Subsection (10)(d), a treatment plan shall:
1236 (i) ~~{be limited to}~~ only include requirements that ;
1237 (A) ~~{addressing court}~~ address findings made by the court ;
~~{and}~~ or
1238 (B) (I) ~~{other items}~~ are requested or ~~{approved}~~ consented
to by a parent or guardian of the child; and
(II) are agreed to by the division and the guardian ad litem; and

16. Page 41, Line 1254:

1254 Section ~~{19}~~ (18) . Section 62A-4a-208 is amended to read:

17. Page 44, Line 1341:

1341 Section ~~{20}~~ (19) . Section 62A-4a-209 is amended to read:

18. Page 46, Line 1409:

1409 Section ~~{21}~~ (20) . Section 62A-4a-302 is amended to read:

19. Page 46, Line 1416:

1416 Section ~~{22}~~ (21) . Section 62A-4a-402 is amended to read:

20. Page 48, Line 1479 through Page 49, Line 1489:

1479 Section ~~{23}~~ (22) . Section 62A-4a-403 is amended to read:
1480 62A-4a-403. Reporting requirements.
1481 (1) For purposes of this section:

- (a) "Child abuse or neglect" means:
 - (i) "abuse" as defined in Section 62A-4a-101;
 - (ii) "neglect" as defined in Section 62A-4a-101; and
 - (iii) conduct that constitutes a violation of:
 - (A) child abuse, as described in Section 76-5-109;
 - (B) enticement of a minor, as described in Section 76-4-401;
 - (C) child kidnapping, as described in Section 76-5-301.1;

(D) custodial interference, as described in Section 76-5-303;
(E) unlawful detention, as described in Section 76-5-304, if the victim
is a person under the age of 18 at the time of the conduct; and
(F) any of the offenses described in Title 76, Chapter 5, Part 4, Sexual
Offenses, if the victim is a person under the age of 18 at the
time of the conduct.

1482 ~~{(a)}~~ (b) "Minister" means a person recognized by a bona fide religious
 organization as a:
1483 (i) minister;
1484 (ii) member of the clergy;
1485 (iii) priest; or
1486 (iv) counselor.
1487 ~~{(b)}~~ (c) "Serious harm" means:
1488 (i) serious physical injury, as defined in Section 76-5-109; or
1489 (ii) mental cruelty, as defined in Section 76-5-109.

21. Page 50, Line 1537:

1537 Section ~~{24}~~ (23) . Section **62A-4a-407** is amended to read:

22. Page 51, Line 1560:

1560 Section ~~{25}~~ (24) . Section **62A-4a-409** is amended to read:

23. Page 54, Line 1646:

1646 Section ~~{26}~~ (25) . Section **62A-4a-414** is amended to read:

24. Page 55, Line 1672:

1672 Section ~~{27}~~ (26) . Section **63-55-262** is amended to read:

25. Page 55, Line 1678:

1678 Section ~~{28}~~ (27) . Section **76-5-109** is amended to read:

26. Page 55, Lines 1696 through 1697:

1696 [~~(iv) any other~~] (D) a condition [~~which~~] that imperils the child's
 ~~{+}~~ health ~~{+}~~ , or ~~{+}~~ welfare ~~{+}~~ [~~and~~
1697 which is not a serious physical injury as defined in Subsection (1)(d)] , or safety.

27. Page 58, Line 1768:

1768 (b) accidental conduct ~~{, as defined in Section 62A-4a-101.}~~ ;

28. Page 58, Lines 1777 through 1784:

1777 Section ~~{29}~~ (28) . Section **76-5-110** is amended to read:

1778 76-5-110. Abuse or neglect of disabled child.

1779 (1) As used in this section:

1780 (a) "Abuse" ~~{+}~~ means: ~~{+}~~ {is as defined in Section 62A-4a-101.}

1781 ~~{+}~~ (i) **inflicting physical injury**, as that term is defined in Section
76-5-109; ~~{+}~~

1782 ~~{+}~~ (ii) **having the care or custody of a disabled child, causing or
permitting another to** ~~{+}~~

1783 ~~{+}~~ **inflict physical injury**, as that term is defined in Section 76-5-109; or ~~{+}~~

1784 ~~{+}~~ (iii) **unreasonable confinement**. ~~{+}~~

29. Page 59, Lines 1796 through 1797:

1796 (d) "Neglect" ~~{+}~~ means **failure by a caretaker to provide care, nutrition,
clothing, shelter,**

1797 **supervision, or medical care** ~~{+}~~ {is as defined in Section 62A-4a-101.}

30. Page 59, Line 1810:

1810 Section ~~{30}~~ (29) . Section **78-3a-103** is amended to read:

31. Page 64, Line 1975:

1975 Section ~~{31}~~ (30) . Section **78-3a-106** is amended to read:

32. Page 67, Line 2043:

2043 Section ~~{32}~~ (31) . Section **78-3a-109** is amended to read:

33. Page 69, Line 2122:

2122 Section ~~{33}~~ (32) . Section **78-3a-110** is amended to read:

34. Page 72, Line 2204:

2204 Section ~~{34}~~ (33) . Section **78-3a-118** is amended to read:

35. Page 76, Line 2333:

2333 (A) be examined or treated by a physician {+} , surgeon, {+} ~~{or}~~
psychiatrist {+} , or psychologist {+}

36. Page 80, Line 2447:

2447 Section ~~{35}~~ (34) . Section 78-3a-301 is amended to read:

37. Page 82, Line 2519:

2519 Section ~~{36}~~ (35) . Section 78-3a-306 is amended to read:

38. Page 86, Lines 2640 through 2642:

2640 (ii) For purposes of Subsection (9)(a)(iv), there is a substantial risk that a child will
be
2641 physically or sexually abused if the court finds, by ~~{clear and convincing}~~ a
preponderance of the evidence, that the
2642 parent:

39. Page 87, Lines 2668 through 2669:

2668 (13) The court may not order continued removal of a ~~[minor]~~ child solely on the
basis
2669 of educational neglect as described in Subsection ~~[78-3a-103(1)(s)(ii)]~~
62A-4a-101 ~~{(21)}~~ (20) (a) ~~{(iii)}~~ (iv) .

40. Page 87, Line 2682:

2682 Section ~~{37}~~ (36) . Section 78-3a-311 is amended to read:

41. Page 88, Lines 2701 through 2710:

2701 (ii) ~~{When}~~ Subject to Subsection (2)(b), if the court determines that
reunification services are appropriate for the child
2702 and the child's family, the court shall provide for reasonable parent-time with the parent
or
2703 parents from whose custody the child was removed, unless ~~{~~
2704 ~~—(A)}~~ parent-time {+} is not in the best interest {+} ~~{would threaten~~
the physical safety or life} of
2705 the child {+} . {+} ~~{; or~~
2706 ~~—(B) the parent subjected the child to:~~
2707 ~~—(1) sexual abuse;~~

- 2708 — ~~(H) sexual exploitation of a child;~~
2709 — ~~(HH) physical injury; or~~
2710 — ~~(IV) serious physical injury. }~~

42. Page 88, Line 2716 through Page 88, Line 2717:

- 2716 concern in determining whether reasonable efforts to reunify should be made.
- (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a child unless the court makes a finding that it is necessary to deny parent-time in order to:
- (A) protect the physical safety of the child;
(B) protect the life of the child; or
(C) prevent the child from being traumatized by contact with the parent due to the child's fear of the parent in light of the nature of the alleged abuse or neglect.
- (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based solely on a parent's failure to:
- (A) prove that the parent has not used legal or illegal substances; or
(B) comply with an aspect of the treatment plan that is ordered by the court.
- 2717 {~~(b)~~} (c) (i) In addition to the primary permanency goal, the court shall establish a

43. Page 93, Line 2874:

- 2874 Section {~~38~~} (37) . Section **78-3a-320** is amended to read:

44. Page 95, Line 2911:

- 2911 Section {~~39~~} (38) . Section **78-3a-402** is amended to read:

45. Page 95, Line 2922:

- 2922 Section {~~40~~} (39) . Section **78-3a-406** is amended to read:

46. Page 96, Lines 2943 through 2945:

- 2943 (b) The court shall in all cases;
2944 (i) require the petitioner to establish the facts {~~+~~} **by clear and convincing evidence, {~~+~~}**

2945 ~~{beyond a reasonable doubt}~~ ; and [shall]

47. Page 96, Line 2952:

2952 Section ~~{41}~~ (40) . Section **78-3a-407** is amended to read:

48. Page 97, Lines 2988 through 2990:

2988 (e) for at least one year the parent ~~{willfully and}~~ without just cause failed to:
2989 (i) communicate with the child by mail, telephone, or any other means; or
2990 (ii) show the normal interest of a natural parent in the child; or

49. Page 98, Line 3012:

3012 Section ~~{42}~~ (41) . Section **78-3a-408** is amended to read:

50. Page 100, Line 3069:

3069 Section ~~{43}~~ (42) . Section **78-3a-414** is amended to read:

51. Page 101, Line 3101:

3101 Section ~~{44}~~ (43) . Repealer.

Spoke to the bill: Mr. Richard Andersen, Director, Division of Child and Family Services
 Mr. Alain Balmanno, Ass't. Attorney General, Division of Litigation

MOTION: Rep. Christensen moved to pass 1st Substitute H.B. 202 as amended favorably.

SUBSTITUTE

MOTION: Rep. Litvack moved to adjourn. The motion failed with Rep. Bourdeaux, Rep. Jones,
 Rep. Litvack, and Rep. Ray voting in favor.

MOTION: Rep. Ray moved to hold the bill and place it first on the agenda for the next scheduled meeting. The motion passed with Rep. Christensen, Rep. Harper, Rep. Kiser, and Rep. Oda voting in opposition.

MOTION: Rep. Bourdeaux moved to adjourn. The motion passed unanimously. Rep. Bowman adjourned the meeting at 5:50 p.m.

Rep. DeMar "Bud" Bowman, Chair