

1 **CHILD WELFARE REVISIONS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 Senate Sponsor: Thomas V. Hatch

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Human Services Code and the Judicial Court
10 Act of 1996 related to child welfare.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ describes conduct that does not constitute abuse under the child and family services
14 chapter of the Utah Human Services Code;

15 ▶ removes services to unwed parents from the list of services provided by the
16 Division of Child and Family Services;

17 ▶ describes the training that must be completed by a child welfare caseworker;

18 ▶ removes reporting requirements relating to a repealed pilot program;

19 ▶ defines the rights and responsibilities of a parent;

20 ▶ addresses the provision of family preservation and reunification services by the
21 Division of Child and Family Services;

22 ▶ modifies the content of, and the requirements related to, the notice provided when a
23 child is taken into protective custody;

24 ▶ provides that an investigation by the Division of Child and Family Services shall
25 include an unscheduled visit to the child's home, unless there is a reasonable basis
26 to believe that the abuser is not the child's parent and does not have access to the
27 child;



- 28 ▶ recognizes the impact upon a child when the child is removed from the child's
- 29 home;
- 30 ▶ requires the Division of Child and Family Services to attempt to resolve a
- 31 disagreement with a child's parent regarding a child and family plan and to inform
- 32 the court if the disagreement is not resolved;
- 33 ▶ addresses the contents of a child and family plan;
- 34 ▶ requires documentation of the grounds for:
 - 35 • taking a child into protective custody; and
 - 36 • providing medical care or treatment to a child in protective custody;
- 37 ▶ describes the information that must be given to a parent before interviewing a child
- 38 who has not been removed from the child's home;
- 39 ▶ expands the list of support persons that may attend an interview of a child;
- 40 ▶ provides defenses to the crime of child abuse;
- 41 ▶ deletes provisions relating to family unity conferences;
- 42 ▶ describes the circumstances under which a court may order medical examination,
- 43 treatment, or care of a minor;
- 44 ▶ addresses procedures and standards relating to shelter hearings;
- 45 ▶ modifies provisions relating to the grounds under which a child may be retained in
- 46 protective custody;
- 47 ▶ requires that a finding that a parent is incapable, due to a mental illness, of utilizing
- 48 reunification services, must be based on competent evidence from at least two
- 49 medical or mental health professionals who are not associates; and
- 50 ▶ makes technical changes.

51 Monies Appropriated in this Bill:

52 None

53 Other Special Clauses:

54 None

55 Utah Code Sections Affected:

56 AMENDS:

57 **62A-4a-101**, as last amended by Chapter 95, Laws of Utah 2005

58 **62A-4a-106**, as renumbered and amended by Chapter 260, Laws of Utah 1994

59 **62A-4a-107**, as last amended by Chapter 94, Laws of Utah 2003
60 **62A-4a-117**, as last amended by Chapter 94, Laws of Utah 2003
61 **62A-4a-201**, as last amended by Chapter 304, Laws of Utah 2005
62 **62A-4a-202**, as last amended by Chapter 100, Laws of Utah 2004
63 **62A-4a-202.1**, as last amended by Chapter 180, Laws of Utah 2004
64 **62A-4a-202.2**, as last amended by Chapter 10, Laws of Utah 2001, First Special
65 Session
66 **62A-4a-202.3**, as last amended by Chapter 286, Laws of Utah 2005
67 **62A-4a-203**, as last amended by Chapter 274, Laws of Utah 1998
68 **62A-4a-205**, as last amended by Chapter 286, Laws of Utah 2005
69 **62A-4a-407**, as last amended by Chapter 302, Laws of Utah 1995
70 **62A-4a-409**, as last amended by Chapter 356, Laws of Utah 2004
71 **76-5-109**, as last amended by Chapter 95, Laws of Utah 2005
72 **76-5-110**, as last amended by Chapter 95, Laws of Utah 2005
73 **78-3a-103**, as last amended by Chapter 95, Laws of Utah 2005
74 **78-3a-109**, as last amended by Chapter 156, Laws of Utah 2005
75 **78-3a-110**, as enacted by Chapter 365, Laws of Utah 1997
76 **78-3a-118**, as last amended by Chapters 102 and 267, Laws of Utah 2004
77 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003
78 **78-3a-311**, as last amended by Chapter 286, Laws of Utah 2005

79

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

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

82 **62A-4a-101. Definitions.**

83 As used in this chapter:

84 (1) (a) "Abuse" means:

85 ~~(a)~~ (i) actual or threatened nonaccidental physical or mental harm;

86 ~~(b)~~ (ii) negligent treatment;

87 ~~(c)~~ (iii) sexual exploitation; or

88 ~~(d)~~ (iv) any sexual abuse.

89 (b) "Abuse" does not include:

- 90 (i) reasonable discipline or management of a child, including withholding privileges;
- 91 (ii) conduct described in Section 76-2-401; or
- 92 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 93 (A) in self-defense;
- 94 (B) in defense of others;
- 95 (C) to protect the child; or
- 96 (D) to remove a weapon in the possession of a child for any of the reasons described in

97 Subsections (1)(b)(iii)(A) through (C).

- 98 (2) "Adoption services" means:
- 99 (a) placing children for adoption;
- 100 (b) subsidizing adoptions under Section 62A-4a-105;
- 101 (c) supervising adoption placements until the adoption is finalized by the court;
- 102 (d) conducting adoption studies;
- 103 (e) preparing adoption reports upon request of the court; and
- 104 (f) providing postadoptive placement services, upon request of a family, for the
- 105 purpose of stabilizing a possible disruptive placement.

106 (3) "Board" means the Board of Child and Family Services established in accordance

107 with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

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

109 (5) "Consumer" means a person who receives services offered by the division in

110 accordance with this chapter.

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

112 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,

113 guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

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

115 (9) "Custody," with regard to the division, means the custody of a child in the division

116 as of the date of disposition.

117 (10) "Day-care services" means care of a child for a portion of the day which is less

118 than 24 hours:

- 119 (a) in the child's own home by a responsible person; or
- 120 (b) outside of the child's home in a:

- 121 (i) day-care center;
- 122 (ii) family group home; or
- 123 (iii) family child care home.
- 124 (11) "Dependent child" or "dependency" means a child, or the condition of a child, who
- 125 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.
- 126 (12) "Director" means the director of the Division of Child and Family Services.
- 127 (13) "Division" means the Division of Child and Family Services.
- 128 (14) (a) "Domestic violence services" means:
- 129 (i) temporary shelter, treatment, and related services to persons who are victims of
- 130 abuse and their dependent children; and
- 131 (ii) treatment services for domestic violence perpetrators.
- 132 (b) As used in this Subsection (14):
- 133 (i) "abuse" means the same as that term is defined in [~~Subsection~~] Section 30-6-1[~~(+)~~];
- 134 and
- 135 (ii) "domestic violence perpetrator" means a person who is alleged to have committed,
- 136 has been convicted of, or has pled guilty to an act of domestic violence as defined in
- 137 [~~Subsection~~] Section 77-36-1[~~(2)~~].
- 138 (15) "Homemaking service" means the care of individuals in their domiciles, and help
- 139 given to individual caretaker relatives to achieve improved household and family management
- 140 through the services of a trained homemaker.
- 141 (16) (a) "Minor" means a person under 18 years of age.
- 142 (b) "Minor" may also include a person under 21 years of age for whom the division has
- 143 been specifically ordered by the juvenile court to provide services.
- 144 (17) "Natural parent" means a minor's biological or adoptive parent, and includes a
- 145 minor's noncustodial parent.
- 146 (18) (a) "Neglect" means:
- 147 (i) abandonment of a child, except as provided in Part 8, Safe Relinquishment of a
- 148 Newborn Child;
- 149 (ii) subjecting a child to mistreatment or abuse;
- 150 (iii) lack of proper parental care by reason of the fault or habits of the parent, guardian,
- 151 or custodian;

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

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

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

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

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

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

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

172 (a) the shelter hearing; or

173 (b) the child's return home.

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

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

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

177 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
178 causes of neglect or abuse; and

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

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

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

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

185 (iii) to protect the child from the circumstances that endanger the child's welfare
186 including, when appropriate:

187 (A) removal from the child's home;

188 (B) placement in substitute care; and

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

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

193 [~~(22)~~ (21) "Severe neglect" means neglect that causes or threatens to cause serious
194 harm to a minor.

195 [~~(23)~~ (22) "Shelter care" means the temporary care of minors in nonsecure facilities.

196 [~~(24)~~ (23) "State" means:

197 (a) a state of the United States;

198 (b) the District of Columbia;

199 (c) the Commonwealth of Puerto Rico;

200 (d) the Virgin Islands;

201 (e) Guam;

202 (f) the Commonwealth of the Northern Mariana Islands; or

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

204 [~~(25)~~ (24) "Severe emotional abuse" means emotional abuse that causes or threatens to
205 cause serious harm to a minor.

206 [~~(26)~~ (25) "Severe physical abuse" means physical abuse that causes or threatens to
207 cause serious harm to a minor.

208 [~~(27)~~ (26) "State plan" means the written description of the programs for children,
209 youth, and family services administered by the division in accordance with federal law.

210 [~~(28)~~ (27) "Status offense" means a violation of the law that would not be a violation
211 but for the age of the offender.

212 [~~(29)~~ (28) "Substantiated" or "substantiation" means a judicial finding based on a
213 preponderance of the evidence that abuse or neglect occurred. Each allegation made or

214 identified in a given case shall be considered separately in determining whether there should be
215 a finding of substantiated.

216 [~~30~~] (29) "Substitute care" means:

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

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

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

223 [~~31~~] (30) "Supported" means a finding by the division based on the evidence
224 available at the completion of an investigation that there is a reasonable basis to conclude that
225 abuse, neglect, or dependency occurred. Each allegation made or identified during the course
226 of the investigation shall be considered separately in determining whether there should be a
227 finding of supported.

228 [~~32~~] (31) "Temporary custody," with regard to the division, means the custody of a
229 child in the division from the date of the shelter hearing until disposition.

230 [~~33~~] (32) "Transportation services" means travel assistance given to an individual
231 with escort service, if necessary, to and from community facilities and resources as part of a
232 service plan.

233 [~~34~~] (33) "Unsubstantiated" means a judicial finding that there is insufficient
234 evidence to conclude that abuse or neglect occurred.

235 [~~35~~] (34) "Unsupported" means a finding at the completion of an investigation that
236 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
237 However, a finding of unsupported means also that the division worker did not conclude that
238 the allegation was without merit.

239 [~~36~~] (35) "Without merit" means a finding at the completion of an investigation by
240 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
241 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

242 Section 2. Section **62A-4a-106** is amended to read:

243 **62A-4a-106. Services provided by division.**

244 (1) The division may provide, directly or through contract, services that include~~[-but~~

245 ~~are not limited to;~~ the following:

- 246 (a) adoptions;
- 247 (b) day care for children;
- 248 ~~[(c) services to unwed parents;]~~
- 249 ~~[(d)]~~ (c) out-of-home placements for minors;
- 250 ~~[(e)]~~ (d) health-related services;
- 251 ~~[(f)]~~ (e) homemaking services;
- 252 ~~[(g)]~~ (f) home management services;
- 253 ~~[(h)]~~ (g) protective services for minors;
- 254 ~~[(i)]~~ (h) transportation services; and
- 255 ~~[(j)]~~ (i) domestic violence services.

256 (2) Services provided directly by the division or through contract shall be monitored by
257 the division to insure compliance with applicable:

- 258 (a) state law~~[-];~~ and
- 259 (b) standards and rules of the division.

260 Section 3. Section **62A-4a-107** is amended to read:

261 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
262 **curriculum.**

263 (1) There is created within the division a full-time position of Child Welfare Training
264 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee
265 in that position ~~[shall]~~ is not ~~[be]~~ responsible for direct casework services or the supervision of
266 those services, but ~~[shall]~~ is required to:

- 267 (a) develop child welfare curriculum that:
- 268 (i) is current and effective, consistent with the division's mission and purpose for child
269 welfare; and
- 270 (ii) utilizes curriculum and resources from a variety of sources including those from:
- 271 (A) the public sector;
- 272 (B) the private sector; and
- 273 (C) inside and outside of the state;
- 274 (b) recruit, select, and supervise child welfare trainers;
- 275 (c) develop a statewide training program, including a budget and identification of

276 sources of funding to support that training;

277 (d) evaluate the efficacy of training in improving job performance;

278 (e) assist child protective services and foster care workers in developing and fulfilling
279 their individual training plans;

280 (f) monitor staff compliance with division training requirements and individual training
281 plans; and

282 (g) expand the collaboration between the division and schools of social work within
283 institutions of higher education in developing child welfare services curriculum, and in
284 providing and evaluating training.

285 (2) (a) The director shall, with the assistance of the child welfare training coordinator,
286 establish a core curriculum for child welfare services that is substantially equivalent to the
287 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

288 (b) Any child welfare ~~worker~~ caseworker who is employed by the division for the
289 first time after July 1, 1999, shall, before assuming significant independent casework
290 responsibilities, successfully complete:

291 (i) the core curriculum; and

292 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of
293 observing and accompanying at least two capable and experienced child welfare ~~workers~~
294 caseworkers as they perform work-related functions:

295 (A) for three months if the ~~worker~~ caseworker has less than six months of on-the-job
296 experience as a child welfare ~~worker~~ caseworker; or

297 (B) for two months if the ~~worker~~ caseworker has six months or more but less than 24
298 months of on-the-job experience as a child welfare ~~worker~~ caseworker.

299 (c) A child welfare ~~worker~~ caseworker with at least 24 months of on-the-job
300 experience is not required to receive on-the-job training under Subsection (2)(b)(ii).

301 (3) Child welfare caseworkers shall complete training in:

302 (a) the legal duties of a child welfare caseworker;

303 (b) the responsibility of a child welfare caseworker to protect the safety and legal rights
304 of children, parents, and families at all stages of a case, including:

305 (i) initial contact;

306 (ii) investigation; and

307 (iii) treatment;
308 (c) recognizing situations involving:
309 (i) substance abuse;
310 (ii) domestic violence;
311 (iii) abuse; and
312 (iv) neglect; and
313 (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of
314 the United States to the child welfare caseworker's job, including:

315 (i) search and seizure of evidence;
316 (ii) the warrant requirement;
317 (iii) exceptions to the warrant requirement; and
318 (iv) removing a child from the custody of the child's parent or guardian.
319 (4) The division shall train its child welfare caseworkers to apply the risk assessment
320 tools and rules described in Subsection 62A-4a-116.1(4)(a).

321 (5) When a child welfare caseworker is hired, before assuming significant independent
322 casework responsibilities, the child welfare caseworker shall complete the training described in
323 Subsections (3) and (4).

324 Section 4. Section **62A-4a-117** is amended to read:

325 **62A-4a-117. Performance monitoring system.**

326 (1) As used in this section:

327 (a) "Performance goals" means a target level of performance or an expected level of
328 performance against which actual performance is compared.

329 (b) "Performance indicators" means actual performance information regarding a
330 program or activity.

331 (c) "Performance monitoring system" means a process to regularly collect and analyze
332 performance information including performance indicators and performance goals.

333 (2) On or before May 1, 1996, the director, in cooperation with the board, shall develop
334 a performance monitoring system of each area in the child welfare system, including foster care
335 and other substitute care, child protective services, and adoption.

336 (3) On or before June 1, 1996, the director shall submit a description of that monitoring
337 system to the Child Welfare Legislative Oversight Panel for review.

338 (4) The division shall fully implement a performance monitoring system on or before
339 October 1, 1996.

340 (5) Before January 1 each year the director shall submit a written report describing the
341 difference between actual performance and performance goals for the prior fiscal year to the
342 Child Welfare Legislative Oversight Panel, the Joint Health and Human Services
343 Appropriations Subcommittee, and the Utah Tomorrow Strategic Planning Committee. The
344 report shall include:

345 (a) a summary of the division's efforts during the prior fiscal year to implement the
346 Performance Milestone Plan;

347 (b) a summary of how performance must be improved to achieve full implementation
348 of the Performance Milestone Plan;

349 (c) data on the extent to which new and experienced division employees have received
350 training pursuant to statute and division policy; and

351 (d) an analysis of the use and efficacy of family preservation services, both before and
352 after removal of children from their homes[~~;~~ and].

353 [~~(e) a description of the extent to which the pilot program under Section 62A-4a-202.7
354 has been expanded during the prior fiscal year and an explanation of how the performance of
355 regions that have previously implemented the program has been affected by the program,
356 including data showing the number of referrals to the division:]~~

357 [~~(i) accepted for an investigation;~~]

358 [~~(ii) accepted for a family assessment; or]~~

359 [~~(iii) not accepted.]~~

360 Section 5. Section **62A-4a-201** is amended to read:

361 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
362 **state.**

363 (1) (a) Under both the United States Constitution and the constitution of this state, a
364 parent possesses a fundamental liberty interest in the care, custody, and management of the
365 parent's children. A fundamentally fair process must be provided to parents if the state moves
366 to challenge or interfere with parental rights. A governmental entity must support any actions
367 or allegations made in opposition to the rights and desires of a parent regarding the parent's
368 children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened

369 protection against government interference with the parent's fundamental rights and liberty
370 interests.

371 (b) The fundamental liberty interest of a parent concerning the care, custody, and
372 management of the parent's children is recognized, protected, and does not cease to exist
373 simply because a parent may fail to be a model parent or because the parent's child is placed in
374 the temporary custody of the state. At all times, a parent retains a vital interest in preventing
375 the irretrievable destruction of family life. Prior to an adjudication of unfitness, government
376 action in relation to parents and their children may not exceed the least restrictive means or
377 alternatives available to accomplish a compelling state interest. Until the state proves parental
378 unfitness, the child and the child's parents share a vital interest in preventing erroneous
379 termination of their natural relationship and the state cannot presume that a child and the child's
380 parents are adversaries.

381 (c) It is in the best interest and welfare of a child to be raised under the care and
382 supervision of the child's natural parents. A child's need for a normal family life in a
383 permanent home, and for positive, nurturing family relationships will usually best be met by
384 the child's natural parents. Additionally, the integrity of the family unit, and the right of parents
385 to conceive and raise their children have found protection in the due process clause of the
386 Fourteenth Amendment to the United States Constitution. The right of a fit, competent parent
387 to raise the parent's child without undue government interference is a fundamental liberty
388 interest that has long been protected by the laws and Constitution of this state and of the United
389 States.

390 (d) The state recognizes that:

391 (i) a parent has the right, obligation, responsibility, and authority to raise, manage,
392 train, educate, provide for, and reasonably discipline the parent's children; and

393 (ii) the state's role is secondary and supportive to the primary role of a parent.

394 ~~(d)~~ (e) It is the public policy of this state that parents retain the fundamental right and
395 duty to exercise primary control over the care, supervision, upbringing, and education of their
396 children.

397 ~~(e)~~ (f) Subsections (2) through (7) shall be interpreted and applied consistent with
398 this Subsection (1).

399 (2) It is also the public policy of this state that children have the right to protection

400 from abuse and neglect, and that the state retains a compelling interest in investigating,
401 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78,
402 Chapter 3a, Juvenile Court Act of 1996. Therefore, the state, as *parens patriae*, has an interest
403 in and responsibility to protect children whose parents abuse them or do not adequately provide
404 for their welfare. There may be circumstances where a parent's conduct or condition is a
405 substantial departure from the norm and the parent is unable or unwilling to render safe and
406 proper parental care and protection. Under those circumstances, the state may take action for
407 the welfare and protection of the parent's children.

408 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
409 it shall take into account the child's need for protection from immediate harm. Throughout its
410 involvement, the division shall utilize the least intrusive and least restrictive means available to
411 protect a child, in an effort to ensure that children are brought up in stable, permanent families,
412 rather than in temporary foster placements under the supervision of the state.

413 (4) When circumstances within the family pose a threat to the child's immediate safety
414 or welfare, the division may obtain custody of the child for a planned period and place the child
415 in a safe environment, in accordance with the requirements of Title 78, Chapter 3a, Part 3,
416 Abuse, Neglect, and Dependency Proceedings.

417 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to
418 the provisions of Section 62A-4a-203, both the division's and the court's paramount concern
419 shall be the child's health, safety, and welfare. The desires of a parent for the parent's child
420 shall be given full and serious consideration by the division and the court.

421 (6) In cases where actual sexual abuse, abandonment, or serious physical abuse or
422 neglect are established, the state has no duty to make "reasonable efforts" or to, in any other
423 way, attempt to maintain a child in the child's home, provide reunification services, or to
424 attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the
425 division from providing court-ordered services.

426 (7) (a) It is the division's obligation, under federal law, to achieve permanency for
427 children who are abused, neglected, or dependent. If the use or continuation of "reasonable
428 efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the
429 permanency plan for a child, then measures shall be taken, in a timely manner, to place the
430 child in accordance with the permanency plan, and to complete whatever steps are necessary to

431 finalize the permanent placement of the child.

432 (b) If, because of his conduct or condition, a parent is determined to be unfit or
 433 incompetent based on the grounds for termination of parental rights described in Title 78,
 434 Chapter 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of the
 435 child is of paramount importance, and shall govern in determining whether that parent's rights
 436 should be terminated.

437 (8) The state's right to direct or intervene in the provision of medical or mental health
 438 care for a child is subject to Subsection 78-3a-118(2)(n).

439 Section 6. Section **62A-4a-202** is amended to read:

440 **62A-4a-202. Preventive services -- Family preservation services.**

441 (1) (a) Within appropriations from the Legislature and monies obtained under
 442 Subsection (5), the division shall provide preventive, in-home services and family preservation
 443 services for ~~[families whose children are]~~ any family with a child whose health and safety is
 444 not immediately endangered, when:

445 (i) (A) the child is at [immediate] risk of being removed from the home [and for
 446 families]; or

447 (B) the family is in crisis[; if:]; and

448 ~~[(i) the child's welfare is not immediately endangered; and]~~

449 (ii) the division determines that it is ~~[possible]~~ reasonable and appropriate.

450 (b) In determining whether preventive or family preservation services are reasonable
 451 and appropriate, in keeping with the provisions of Subsection 62A-4a-201(1) the child's health,
 452 safety, and welfare shall be the paramount concern.

453 (c) The division shall consider whether [those] the services described in Subsection
 454 (1)(b):

455 (i) will be effective within a six-month period[;]; and [whether they]

456 (ii) are likely to prevent [reabuse] abuse or continued neglect of the child.

457 (2) (a) The division shall maintain a statewide inventory of early intervention,
 458 preventive, and family preservation services available through public and private agencies or
 459 individuals for use by caseworkers.

460 (b) The inventory described in Subsection (2)(a) shall include:

461 ~~[(a)]~~ (i) the method of accessing each service;

462 ~~[(b)]~~ (ii) eligibility requirements for each service; ~~[and]~~
463 ~~[(c)]~~ (iii) the geographic areas and the number of families that can be served by each
464 service~~[-]; and~~
465 (iv) information regarding waiting lists for each service.
466 (3) As a part of its preventive services, the division shall provide family preservation
467 services that:
468 (a) are short-term, intensive, crisis intervention programs~~[-, and that];~~
469 (b) address:
470 ~~[(a)]~~ (i) the safety of children; and
471 ~~[(b) the physical and emotional needs of parents and children, including evaluating~~
472 ~~specific needs of the family, including depression, addiction, and mental illness;]~~
473 ~~[(c) the child's physical surroundings, including cleaning and repairing physical~~
474 ~~housing, and addressing needs for necessities such as food, heat, and electricity;]~~
475 ~~[(d) personal cleanliness, nutrition, and provision of personal grooming supplies and~~
476 ~~clothing;]~~
477 ~~[(e) budgeting, money management, and employment; and]~~
478 ~~[(f) parenting skills, including nonviolent discipline, nurturing, and structure, and~~
479 ~~teaching responsibility, respect for others, cooperation, and moral values.]~~
480 (ii) the needs of the family; and
481 (c) as practicable, are provided within the region that the family resides, using existing
482 division staff.
483 (4) (a) The division may use ~~[only]~~ specially trained caseworkers ~~[or]~~, private
484 providers, or other persons to provide the family preservation services described in Subsection
485 (3).
486 (b) Family preservation caseworkers may:
487 (i) only be assigned a ~~[minimum]~~ minimal number of families~~[-, but the division shall~~
488 ~~require that they];~~
489 (ii) be available 24 hours for an intensive period of at least six weeks~~[-]; and [that they]~~
490 (iii) respond to an assigned family within 24 hours.
491 (c) The division shall allow family preservation caseworkers to be creative and flexible
492 in responding to the needs of each individual family.

493 (5) To provide, expand, and improve the delivery of in-home services to prevent the
494 removal of children from their homes and promote the preservation of families, the division
495 shall make substantial effort to obtain funding, including:

- 496 (a) federal grants;
- 497 (b) federal waivers; and
- 498 (c) private monies.

499 Section 7. Section **62A-4a-202.1** is amended to read:

500 **62A-4a-202.1. Entering home of a minor -- Taking a minor into protective**
501 **custody -- Caseworker accompanied by peace officer -- Preventive services -- Shelter care**
502 **or emergency kinship.**

503 (1) A state officer, peace officer, or child welfare worker may not enter the home of a
504 minor who is not under the jurisdiction of the court, remove a minor from the minor's home or
505 school, or take a minor into protective custody unless:

- 506 (a) the state officer, peace officer, or child welfare worker has obtained:
 - 507 (i) the consent of the minor's parent or guardian; or
 - 508 (ii) a court order issued under Section 78-3a-106; or
- 509 (b) there exist exigent circumstances.

510 (2) A child welfare worker within the division may take action under Subsection (1)
511 accompanied by a peace officer, or without a peace officer when a peace officer is not
512 reasonably available.

513 (3) (a) If possible, consistent with the minor's safety and welfare, before taking a minor
514 into protective custody, the worker shall also determine whether there are services [~~reasonably~~]
515 available to the worker which, if provided to the minor's parent or to the minor, would
516 eliminate the need to remove the minor from the custody of the minor's parent or guardian.

517 (b) If [~~those~~] the services described in Subsection (3)(a) are reasonably available, they
518 shall be utilized.

519 (c) In determining whether the services described in Subsection (3)(a) are reasonably
520 available, and in making reasonable efforts to provide those services, the minor's health, safety,
521 and welfare shall be the worker's paramount concern.

522 (4) (a) A minor removed or taken into custody under this section may not be placed or
523 kept in a secure detention facility pending court proceedings unless the minor is detainable

524 based on guidelines promulgated by the Division of Juvenile Justice Services.

525 (b) A minor removed from the custody of the minor's parent or guardian but who does
526 not require physical restriction shall be given temporary care in:

527 (i) a shelter facility; or

528 (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

529 Section 8. Section **62A-4a-202.2** is amended to read:

530 **62A-4a-202.2. Notice upon removal of child -- Locating noncustodial parent --**
531 **Written statement of procedural rights and preliminary proceedings.**

532 (1) (a) Any peace officer or caseworker who takes a [~~minor~~] child into protective
533 custody pursuant to Section 62A-4a-202.1 shall immediately use reasonable efforts to locate
534 and inform, through the most efficient means available, the parents, including a noncustodial
535 parent, the guardian, or responsible relative:

536 (i) that the [~~minor~~] child has been taken into protective custody;

537 (ii) the reasons for removal and placement of the child in protective custody;

538 (iii) that a written statement is available that explains:

539 (A) the parent's or guardian's procedural rights; and

540 (B) the preliminary stages of the investigation and shelter hearing; [and]

541 (iv) of a telephone number where the parent or guardian may access further
542 information[-];

543 (v) that the child and the child's parent or guardian are entitled to have an attorney
544 present at the shelter hearing;

545 (vi) that if the child's parent or guardian is impecunious and desires to have an attorney,
546 one will be provided; and

547 (vii) that resources are available to assist the child's parent or guardian, including:

548 (A) a parent advocate;

549 (B) a qualified attorney; or

550 (C) potential expert witnesses to testify on behalf of the:

551 (I) child;

552 (II) child's parent;

553 (III) child's guardian; or

554 (IV) child's family.

555 (b) For purposes of locating and informing the noncustodial parent as required in
556 Subsection (1)(a), the division shall search for the noncustodial parent through the national
557 parent locator database if the division is unable to locate the noncustodial parent through other
558 reasonable efforts.

559 (2) ~~(a) The [attorney general's office]~~ Office of the Attorney General shall adopt, print,
560 and distribute a form for the written statement described in Subsection (1) (a)(iii).

561 (b) The statement described in Subsections (1)(a)(iii) and (2)(a) shall:

562 (i) be made available to the division and for distribution in:

563 (A) schools[;];

564 (B) health care facilities[;];

565 (C) local police and sheriff's offices[;];

566 (D) the division[;]; and

567 (E) any other appropriate office within the Department of Human Services[. The
568 notice shall];

569 (ii) be in simple language; and

570 (iii) include at least the following information:

571 ~~[(a)]~~ (A) the conditions under which a [minor] child may be released[;];

572 (B) hearings that may be required[; and];

573 (C) the means by which the parent or guardian may access further specific information
574 about a [minor's] child's case and conditions of protective and temporary custody; and

575 ~~[(b)]~~ (D) the rights of a [minor] child and of the parent or guardian to legal counsel and
576 to appeal.

577 (3) If ~~[a good faith attempt was]~~ reasonable efforts are made by the peace officer or
578 caseworker to notify the parent or guardian or a responsible relative in accordance with the
579 requirements of Subsection (1), failure to notify:

580 (a) shall be considered to be due to circumstances beyond the control of the peace
581 officer or caseworker; and

582 (b) may not be construed to:

583 (i) permit a new defense to any juvenile or judicial proceeding; or [to]

584 (ii) interfere with any rights, procedures, or investigations provided for by this chapter
585 or Title 78, Chapter 3a, Juvenile [Courts] Court Act of 1996.

586 Section 9. Section **62A-4a-202.3** is amended to read:

587 **62A-4a-202.3. Investigation -- Supported or unsupported reports -- Child in**
588 **protective custody.**

589 (1) When a child is taken into protective custody in accordance with Section
590 62A-4a-202.1, 78-3a-106, or 78-3a-301, or when the division takes any other action which
591 would require a shelter hearing under Subsection 78-3a-306(1), the division shall immediately
592 initiate an investigation of the:

593 (a) circumstances of the minor; and

594 (b) grounds upon which the decision to place the minor into protective custody was
595 made.

596 (2) The division's investigation shall conform to reasonable professional standards, and
597 shall include:

598 (a) a search for and review of any records of past reports of abuse or neglect involving:

599 (i) the same child;

600 (ii) any sibling or other child residing in the same household as the child; and

601 (iii) the alleged perpetrator;

602 (b) with regard to a child who is five years of age or older, a personal interview with
603 the child:

604 (i) outside of the presence of the alleged perpetrator; and

605 (ii) conducted in accordance with the requirements of Subsection (7);

606 (c) if a parent or guardian can be located, an interview with at least one of the child's
607 parents or guardian;

608 (d) an interview with the person who reported the abuse, unless the report was made
609 anonymously;

610 (e) where possible and appropriate, interviews with other third parties who have had
611 direct contact with the child, including:

612 (i) school personnel; and

613 (ii) the child's health care provider;

614 (f) an unscheduled visit to the child's home, unless:

615 (i) ~~[the division has]~~ there is a reasonable ~~[cause]~~ basis to believe that the reported
616 abuse was committed by a person who:

- 617 (A) is not the child's parent; and
618 (B) does not:
619 (I) live in the child's home; or
620 (II) otherwise have access to the child in the child's home; or
621 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
622 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
623 failure to meet the child's medical needs, a medical examination, obtained no later than 24
624 hours after the child is placed in protective custody.
- 625 (3) The division may rely on a written report of a prior interview rather than
626 conducting an additional interview, if:
- 627 (a) law enforcement:
628 (i) previously conducted a timely and thorough investigation regarding the alleged
629 abuse, neglect, or dependency; and
630 (ii) produced a written report;
631 (b) the investigation described in Subsection (3)(a)(i) included one or more of the
632 interviews required by Subsection (2); and
633 (c) the division finds that an additional interview is not in the best interest of the child.
- 634 (4) (a) The division's determination of whether a report is supported or unsupported
635 may be based on the child's statements alone.
636 (b) Inability to identify or locate the perpetrator may not be used by the division as a
637 basis for:
638 (i) determining that a report is unsupported; or
639 (ii) closing the case.
640 (c) The division may not determine a case to be unsupported or identify a case as
641 unsupported solely because the perpetrator was an out-of-home perpetrator.
642 (d) Decisions regarding whether a report is supported, unsupported, or without merit
643 shall be based on the facts of the case at the time the report was made.
- 644 (5) The division should maintain protective custody of the child if it finds that one or
645 more of the following conditions exist:
646 (a) the minor does not have a natural parent, guardian, or responsible relative who is
647 able and willing to provide safe and appropriate care for the minor;

648 (b) (i) shelter of the minor is a matter of necessity for the protection of the minor; and

649 (ii) there are no reasonable means by which the minor can be protected in:

650 (A) the minor's home; or

651 (B) the home of a responsible relative;

652 (c) there is substantial evidence that the parent or guardian is likely to flee the
653 jurisdiction of the court; or

654 (d) the minor has left a previously court ordered placement.

655 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding
656 weekends and holidays, the division shall:

657 (i) convene a child protection team to review the circumstances regarding removal of
658 the child from the child's home or school; and

659 (ii) prepare the testimony and evidence that will be required of the division at the
660 shelter hearing, in accordance with Section 78-3a-306.

661 (b) The child protection team described in Subsection (6)(a)(i) shall include:

662 (i) the caseworker assigned to the case;

663 (ii) the caseworker who made the decision to remove the child;

664 (iii) a representative of the school or school district where the child attends school;

665 (iv) the peace officer who removed the child from the home;

666 (v) a representative of the appropriate Children's Justice Center, if one is established
667 within the county where the child resides;

668 (vi) if appropriate, and known to the division, a therapist or counselor who is familiar
669 with the child's circumstances; and

670 (vii) any other individuals determined appropriate and necessary by the team
671 coordinator and chair.

672 (c) At the 24-hour meeting, the division shall have available for review and
673 consideration the complete child protective services and foster care history of the child and the
674 child's parents and siblings.

675 (7) (a) After receipt of a child into protective custody and prior to the adjudication
676 hearing, all investigative interviews with the child that are initiated by the division shall be:

677 (i) audio or video taped; and

678 (ii) except as provided in Subsection (7)(b), conducted with a support person of the

679 child's choice present.

680 (b) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an
681 interview of a child may not be an alleged perpetrator.

682 (8) The division shall cooperate with law enforcement investigations regarding the
683 alleged perpetrator.

684 (9) The division may not close an investigation solely on the grounds that the division
685 investigator is unable to locate the child until all reasonable efforts have been made to locate
686 the child and family members including:

687 (a) visiting the home at times other than normal work hours;

688 (b) contacting local schools;

689 (c) contacting local, county, and state law enforcement agencies; and

690 (d) checking public assistance records.

691 Section 10. Section **62A-4a-203** is amended to read:

692 **62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain**
693 **child in home -- Exception -- Reasonable efforts for reunification.**

694 (1) Because removal of a child from [~~his~~] the child's home [~~may affect~~] affects
695 protected, constitutional rights of the parent and has a dramatic, long-term impact on a child,
696 the division shall:

697 (a) when possible and appropriate, without danger to the child's welfare, make
698 reasonable efforts to prevent or eliminate the need for removal of a child from [~~his~~] the child's
699 home prior to placement in substitute care;

700 (b) determine whether there is substantial cause to believe that a child has been or is in
701 danger of abuse or neglect, in accordance with the guidelines described in Title 78, Chapter 3a,
702 Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from [~~his~~]
703 the child's home; and

704 (c) when it is possible and appropriate, and in accordance with the limitations and
705 requirements of Sections 78-3a-311 and 78-3a-312, make reasonable efforts to make it possible
706 for a child in substitute care to return to [~~his~~] the child's home.

707 (2) (a) In determining the reasonableness of efforts needed to maintain a child in [~~his~~]
708 the child's home or to return a child to [~~his~~] the child's home, in accordance with Subsection
709 (1)(a) or (c), the child's health, safety, and welfare shall be the paramount concern.

710 [~~Additionally, the~~

711 (b) The division shall consider whether [~~those services would be effective within a~~
712 ~~six-month period, and whether they would be~~] the efforts described in Subsections (1) and (2)
713 are likely to prevent [~~reabuse~~] abuse or continued neglect of the child.

714 (3) When removal and placement in substitute care is necessary to protect a child, the
715 [~~efforts~~] described in Subsections (1) and (2) [~~would not be~~]:

716 (a) are not reasonable or appropriate; and [~~, therefore,~~]

717 (b) should not be utilized.

718 (4) [~~In~~] Subject to Subsection (5), in cases where [~~obvious~~] sexual abuse,
719 abandonment, or serious physical abuse or neglect are involved, the state has no duty to make
720 [~~reasonable efforts~~] to, in any [~~other~~] way, attempt to:

721 (a) maintain a child in [~~his~~] the child's home[;];

722 (b) provide reunification services[;]; or [~~to attempt to~~]

723 (c) rehabilitate the offending parent or parents. [~~This subsection does not exempt~~]

724 (5) Nothing in Subsection (4) exempts the division from providing court ordered
725 services.

726 Section 11. Section **62A-4a-205** is amended to read:

727 **62A-4a-205. Child and family plan -- Parent-time.**

728 (1) No more than 45 days after a child enters the temporary custody of the division, the
729 child's child and family plan shall be finalized.

730 (2) (a) The division shall use an interdisciplinary team approach in developing each
731 child and family plan.

732 (b) The interdisciplinary team described in Subsection (2)(a) shall include, but is not
733 limited to, representatives from the following fields:

734 (i) mental health;

735 (ii) education; and

736 (iii) if appropriate, law enforcement.

737 (3) (a) The division shall involve all of the following in the development of a child's
738 child and family plan:

739 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

740 (ii) the child;

741 (iii) the child's foster parents; and

742 (iv) if appropriate, the child's stepparent.

743 (b) In relation to all information considered by the division in developing a child and
744 family plan, additional weight and attention shall be given to the input of the child's natural and
745 foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

746 (c) (i) The division shall make a substantial effort to develop a child and family plan
747 with which the child's parents agree.

748 (ii) If a parent does not agree with a child and family plan:

749 (A) the division shall strive to resolve the disagreement between the division and the
750 parent; and

751 (B) if the disagreement is not resolved, the division shall inform the court of the
752 disagreement.

753 (4) A copy of the child and family plan shall, immediately upon completion, or as soon
754 as reasonably possible thereafter, be provided to the:

755 (a) guardian ad litem;

756 (b) child's natural parents; and

757 (c) child's foster parents.

758 (5) Each child and family plan shall:

759 (a) specifically provide for the safety of the child, in accordance with federal law; and

760 (b) clearly define what actions or precautions will, or may be, necessary to provide for
761 the health, safety, protection, and welfare of the child.

762 (6) The child and family plan shall set forth, with specificity, at least the following:

763 (a) the reason the child entered into the custody of the division;

764 (b) documentation of the:

765 (i) reasonable efforts made to prevent placement of the child in the custody of the
766 division; or

767 (ii) emergency situation that existed and that prevented the reasonable efforts
768 described in Subsection (6)(b)(i), from being made;

769 (c) the primary permanency goal for the child and the reason for selection of that goal;

770 (d) the concurrent permanency goal for the child and the reason for the selection of that
771 goal;

- 772 (e) if the plan is for the child to return to the child's family:
- 773 (i) specifically what the parents must do in order to enable the child to be returned
- 774 home;
- 775 (ii) specifically how the requirements described in Subsection (6)(e)(i) may be
- 776 accomplished; and
- 777 (iii) how the requirements described in Subsection (6)(e)(i) will be measured;
- 778 (f) the specific services needed to reduce the problems that necessitated placing the
- 779 child in the division's custody;
- 780 (g) the name of the person who will provide for and be responsible for case
- 781 management;
- 782 (h) subject to Subsection [~~(9)~~] (10), a parent-time schedule between the natural parent
- 783 and the child;
- 784 (i) subject to Subsection (7), the health and mental health care to be provided to
- 785 address any known or diagnosed mental health needs of the child;
- 786 (j) if residential treatment rather than a foster home is the proposed placement, a
- 787 requirement for a specialized assessment of the child's health needs including an assessment of
- 788 mental illness and behavior and conduct disorders; and
- 789 (k) social summaries that include case history information pertinent to case planning.
- 790 (7) (a) Subject to Subsection (7)(b), in addition to the information required under
- 791 Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental
- 792 health needs of a child, if the child:
- 793 (i) is placed in residential treatment; and
- 794 (ii) has medical or mental health issues that need to be addressed.
- 795 (b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate
- 796 medical or mental health diagnosis of the parent's child from a licensed practitioner of the
- 797 parent's choice.
- 798 [~~(7)~~] (8) (a) Each child and family plan shall be specific to each child and the child's
- 799 family, rather than general.
- 800 (b) The division shall train its workers to develop child and family plans that comply
- 801 with:
- 802 (i) federal mandates; and

803 (ii) the specific needs of the particular child and the child's family.

804 (c) All child and family plans and expectations shall be individualized and contain
805 specific time frames.

806 (d) Subject to Subsection [~~7~~] (8)(h), child and family plans shall address problems
807 that:

808 (i) keep a child in placement; and

809 (ii) keep a child from achieving permanence in the child's life.

810 (e) Each child and family plan shall be designed to minimize disruption to the normal
811 activities of the child's family, including employment and school.

812 (f) In particular, the time, place, and amount of services, hearings, and other
813 requirements ordered by the court in the child and family plan shall be designed, as much as
814 practicable, to help the child's parents maintain or obtain employment.

815 (g) The child's natural parents, foster parents, and where appropriate, stepparents, shall
816 be kept informed of and supported to participate in important meetings and procedures related
817 to the child's placement.

818 (h) For purposes of Subsection [~~7~~] (8)(d), a child and family plan may only include
819 requirements that:

820 (i) address findings made by the court; or

821 (ii) (A) are requested or consented to by a parent or guardian of the child; and

822 (B) are agreed to by the division and the guardian ad litem.

823 [~~8~~] (9) (a) Except as provided in Subsection [~~8~~] (9)(b), with regard to a child who is
824 three years of age or younger, if the goal is not to return the child home, the permanency plan
825 for that child shall be adoption.

826 (b) Notwithstanding Subsection [~~8~~] (9)(a), if the division documents to the court that
827 there is a compelling reason that adoption, reunification, guardianship, and kinship placement
828 are not in the child's best interest, the court may order another planned permanent living
829 arrangement in accordance with federal law.

830 [~~9~~] (10) (a) Except as provided in Subsection [~~9~~] (10)(b), parent-time may only be
831 denied by a court order issued pursuant to Subsections 78-3a-311(2)(a)(ii) and (b).

832 (b) Notwithstanding Subsection [~~9~~] (10)(a), the person designated by the division or a
833 court to supervise a parent-time session may deny parent-time for that session if the supervising

834 person determines that, based on the parent's condition, it is necessary to deny parent-time in
835 order to:

- 836 (i) protect the physical safety of the child;
- 837 (ii) protect the life of the child; or
- 838 (iii) consistent with Subsection [~~(9)~~] (10)(c), prevent the child from being traumatized
839 by contact with the parent.

840 (c) In determining whether the condition of the parent described in Subsection [~~(9)~~]
841 (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the
842 impact that the parent's condition will have on the child in light of:

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

845 Section 12. Section **62A-4a-407** is amended to read:

846 **62A-4a-407. Protective custody.**

847 (1) A physician examining or treating a child may take the child into protective custody
848 not to exceed 72 hours, without the consent of the child's parent, guardian, or any other person
849 responsible for the child's care or exercising temporary or permanent control over the child,
850 when the physician has reason to believe that the child's life or safety will be in danger unless
851 protective custody is exercised.

852 (2) The person in charge of a hospital or similar medical facility may retain protective
853 custody of a child suspected of being abused or neglected, when he reasonably believes the
854 facts warrant that retention. This action may be taken regardless of whether additional medical
855 treatment is required, and regardless of whether the person responsible for the child's care
856 requests the child's return.

857 (3) The division shall be immediately notified of protective custody exercised under
858 this section. Protective custody under this section may not exceed 72 hours without an order of
859 the district or juvenile court.

860 (4) A person who takes a child into, or retains a child in, protective custody under this
861 section shall document:

- 862 (a) the grounds upon which the child was taken into, or retained in, protective custody;
- 863 and
- 864 (b) the nature of, and necessity for, any medical care or treatment provided to the child.

865 Section 13. Section **62A-4a-409** is amended to read:

866 **62A-4a-409. Investigation by division -- Temporary protective custody --**

867 **Preremoval interviews of children.**

868 (1) (a) The division shall make a thorough preremoval investigation upon receiving
869 either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
870 dependency, when there is reasonable cause to suspect that a situation of abuse, neglect, fetal
871 alcohol syndrome, or fetal drug dependency exists.

872 (b) The primary purpose of [~~that~~] the investigation described in Subsection (1)(a) shall
873 be protection of the child.

874 (2) The preremoval investigation described in Subsection (1)(a) shall include the same
875 investigative requirements described in Section 62A-4a-202.3.

876 (3) The division shall make a written report of its investigation[~~-The written report~~]
877 that shall include a determination regarding whether the alleged abuse or neglect [~~was~~] is
878 supported, unsupported, or without merit.

879 (4) (a) The division shall use an interdisciplinary approach [~~whenever possible~~] when
880 appropriate in dealing with reports made under this part.

881 (b) For this purpose, the division shall convene appropriate interdisciplinary "child
882 protection teams" to assist it in its protective, diagnostic, assessment, treatment, and
883 coordination services.

884 (c) A representative of the division shall serve as the team's coordinator and chair.
885 Members of the team shall serve at the coordinator's invitation. Whenever possible, the team
886 shall include representatives of:

887 (i) health, mental health, education, and law enforcement agencies;

888 (ii) the child;

889 (iii) parent and family support groups unless the parent is alleged to be the perpetrator;
890 and

891 (iv) other appropriate agencies or individuals.

892 (5) In any case where the division supervises, governs, or directs the affairs of any
893 individual, institution, or facility that [~~has been~~] is alleged to be involved in acts or omissions
894 of child abuse or neglect, the investigation of the reported child abuse or neglect shall be
895 conducted by an agency other than the division.

896 (6) If a report of neglect is based upon or includes an allegation of educational neglect,
897 the division shall immediately consult with school authorities to verify the child's status in
898 accordance with Sections 53A-11-101 through 53A-11-103.

899 (7) When the division ~~[has completed]~~ completes its initial investigation under this
900 part, it shall give notice of that completion to the person who made the initial report.

901 (8) Division workers or other child protection team members have authority to enter
902 upon public or private premises, using appropriate legal processes, to investigate reports of
903 alleged child abuse or neglect, upon notice to parents of their rights under the Child Abuse
904 Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

905 (9) With regard to any interview of a child prior to removal of that child from the
906 child's home:

907 (a) except as provided in Subsection (9)(b) or (c), the division shall ~~[notify]~~ inform a
908 parent of the child prior to the interview~~[:]~~ of:

909 (i) the specific allegations concerning the child; and

910 (ii) the time and place of the interview;

911 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
912 alleged perpetrator, the division ~~[need not notify a parent of the child prior to an initial~~
913 ~~interview with the child]~~ is not required to comply with Subsection (9)(a);

914 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
915 is unknown, the division may conduct a minimal interview or conversation, not to exceed 15
916 minutes, with the child prior to ~~[notification of the child's parent]~~ complying with Subsection
917 (9)(a);

918 (d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be
919 notified as soon as practicable after the child has been interviewed, but in no case later than 24
920 hours after the interview has taken place;

921 (e) a child's parents shall be notified of the time and place of all subsequent interviews
922 with the child; and

923 (f) ~~[(+)]~~ the child shall be allowed to have a support person of the child's choice
924 present~~[:and]~~, who:

925 ~~[(ii) the person described in Subsection (9)(f)(i):]~~

926 ~~[(A)]~~ (i) may include:

927 ~~(A)~~ (A) a school teacher;
 928 ~~(B)~~ (B) an administrator;
 929 ~~(C)~~ (C) a guidance counselor;
 930 ~~(D)~~ (D) a child care provider; ~~[or]~~
 931 (E) a family member;
 932 (F) a family advocate; or
 933 ~~(G)~~ (G) clergy; and
 934 ~~(ii)~~ (ii) may not be a person who is alleged to be, or potentially may be, the
 935 perpetrator.

936 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1
 937 through 62A-4a-202.3, a division worker or child protection team member may take a child
 938 into protective custody and deliver the child to a law enforcement officer, or place the child in
 939 an emergency shelter facility approved by the juvenile court, at the earliest opportunity
 940 subsequent to the child's removal from the child's original environment. Control and
 941 jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile
 942 Court Act of 1996, and as otherwise provided by law.

943 (11) With regard to cases in which law enforcement has or is conducting an
 944 investigation of alleged abuse or neglect of a child:

945 (a) the division shall coordinate with law enforcement to ensure that there is an
 946 adequate safety plan to protect the child from further abuse or neglect; and

947 (b) the division is not required to duplicate an aspect of the investigation that, in the
 948 division's determination, has been satisfactorily completed by law enforcement.

949 Section 14. Section **76-5-109** is amended to read:

950 **76-5-109. Child abuse.**

951 (1) As used in this section:

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

953 (b) "Child abuse" means any offense described in Subsection (2) or (3), or in Section
 954 76-5-109.1.

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

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

958 (ii) a minor laceration or abrasion;
959 (iii) failure to thrive or malnutrition; or
960 (iv) any other condition which imperils the child's health or welfare and which is not a
961 serious physical injury as defined in Subsection (1)(d).

962 (d) (i) "Serious physical injury" means any physical injury or set of injuries that:

- 963 (A) seriously impairs the child's health;
- 964 (B) involves physical torture;
- 965 (C) causes serious emotional harm to the child; or
- 966 (D) involves a substantial risk of death to the child.

967 (ii) "Serious physical injury" includes:

- 968 (A) fracture of any bone or bones;
- 969 (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
970 shaking, or causing the child's head to impact with an object or surface;

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

973 (D) any injury caused by use of a dangerous weapon as defined in [~~Subsection~~] Section
974 76-1-601[~~(5)~~];

975 (E) any combination of two or more physical injuries inflicted by the same person,
976 either at the same time or on different occasions;

977 (F) any damage to internal organs of the body;

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

980 (H) any injury that creates a permanent disfigurement or protracted loss or impairment
981 of the function of a bodily member, limb, or organ;

982 (I) any conduct that causes a child to cease breathing, even if resuscitation is successful
983 following the conduct; or

984 (J) any conduct that results in starvation or failure to thrive or malnutrition that
985 jeopardizes the child's life.

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

989 (a) if done intentionally or knowingly, the offense is a felony of the second degree;

990 (b) if done recklessly, the offense is a felony of the third degree; or

991 (c) if done with criminal negligence, the offense is a class A misdemeanor.

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

995 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

996 (b) if done recklessly, the offense is a class B misdemeanor; or

997 (c) if done with criminal negligence, the offense is a class C misdemeanor.

998 (4) A parent or legal guardian who provides a child with treatment by spiritual means
999 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices
1000 of an established church or religious denomination of which the parent or legal guardian is a
1001 member or adherent shall not, for that reason alone, be considered to have committed an
1002 offense under this section.

1003 (5) A parent or guardian of a child does not violate this section by selecting a treatment
1004 option for the medical condition of the child, if the treatment option is one that a reasonable
1005 parent or guardian would believe to be in the best interest of the child.

1006 (6) A person is not guilty of an offense under this section for conduct that constitutes:

1007 (a) reasonable discipline or management of a child, including withholding privileges;

1008 (b) conduct described in Section 76-2-401; or

1009 (c) the use of reasonable and necessary physical restraint or force on a child:

1010 (i) in self-defense;

1011 (ii) in defense of others;

1012 (iii) to protect the child; or

1013 (iv) to remove a weapon in the possession of a child for any of the reasons described in

1014 Subsections (6)(c)(i) through (iii).

1015 Section 15. Section **76-5-110** is amended to read:

1016 **76-5-110. Abuse or neglect of disabled child.**

1017 (1) As used in this section:

1018 (a) "Abuse" means:

1019 (i) inflicting physical injury, as that term is defined in Section 76-5-109;

1020 (ii) having the care or custody of a disabled child, causing or permitting another to
1021 inflict physical injury, as that term is defined in Section 76-5-109; or

1022 (iii) unreasonable confinement.

1023 (b) "Caretaker" means:

1024 (i) any parent, legal guardian, or other person having under that person's care and
1025 custody a disabled child; or

1026 (ii) any person, corporation, or public institution that has assumed by contract or court
1027 order the responsibility to provide food, shelter, clothing, medical, and other necessities to a
1028 disabled child.

1029 (c) "Disabled child" means any person under 18 years of age who is impaired because
1030 of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent
1031 that the person is unable to care for the person's own personal safety or to provide necessities
1032 such as food, shelter, clothing, and medical care.

1033 (d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter,
1034 supervision, or medical care.

1035 (2) Any caretaker who abuses or neglects a disabled child is guilty of a third degree
1036 felony.

1037 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual
1038 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
1039 practices of an established church or religious denomination of which the parent or legal
1040 guardian is a member or adherent shall not, for that reason alone, be considered to be in
1041 violation under this section.

1042 (b) ~~[The]~~ Subject to Subsection 78-3a-118(2)(n)(iii), the exception under Subsection
1043 (3)(a) ~~[shall]~~ does not preclude a court from ordering medical services from a physician
1044 licensed to engage in the practice of medicine to be provided to the child where there is
1045 substantial risk of harm to the child's health or welfare if the treatment is not provided.

1046 (c) A caretaker of a disabled child does not violate this section by selecting a treatment
1047 option for a disabled child's medical condition, if the treatment option is one that a reasonable
1048 caretaker would believe to be in the best interest of the disabled child.

1049 Section 16. Section **78-3a-103** is amended to read:

1050 **78-3a-103. Definitions.**

- 1051 (1) As used in this chapter:
- 1052 (a) "Abused child" includes a minor less than 18 years of age who:
- 1053 (i) has suffered or been threatened with nonaccidental physical or mental harm,
- 1054 negligent treatment, or sexual exploitation; or
- 1055 (ii) has been the victim of any sexual abuse.
- 1056 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 1057 alleged in the petition have been proved.
- 1058 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or
- 1059 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall
- 1060 be referred to as minors.
- 1061 (d) "Board" means the Board of Juvenile Court Judges.
- 1062 (e) "Child placement agency" means:
- 1063 (i) a private agency licensed to receive minors for placement or adoption under this
- 1064 code; or
- 1065 (ii) a private agency receiving minors for placement or adoption in another state, which
- 1066 agency is licensed or approved where such license or approval is required by law.
- 1067 (f) "Commit" means to transfer legal custody.
- 1068 (g) "Court" means the juvenile court.
- 1069 (h) "Dependent child" includes a minor who is homeless or without proper care
- 1070 through no fault of the minor's parent, guardian, or custodian.
- 1071 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent
- 1072 or the parents or a previous legal custodian to another person, agency, or institution.
- 1073 (j) "Detention" means home detention and secure detention as defined in Section
- 1074 62A-7-101 for the temporary care of minors who require secure custody in physically
- 1075 restricting facilities:
- 1076 (i) pending court disposition or transfer to another jurisdiction; or
- 1077 (ii) while under the continuing jurisdiction of the court.
- 1078 (k) "Division" means the Division of Child and Family Services.
- 1079 (l) "Formal referral" means a written report from a peace officer or other person
- 1080 informing the court that a minor is or appears to be within the court's jurisdiction and that a
- 1081 petition may be filed.

1082 (m) "Group rehabilitation therapy" means psychological and social counseling of one
1083 or more persons in the group, depending upon the recommendation of the therapist.

1084 (n) "Guardianship of the person" includes the authority to consent to marriage, to
1085 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
1086 custody, if legal custody is not vested in another person, agency, or institution.

1087 (o) "Habitual truant" is a school-age minor who:

1088 (i) has received:

1089 (A) more than two truancy citations within one school year from the school in which
1090 the minor is or should be enrolled; and

1091 (B) eight absences without a legitimate or valid excuse; or

1092 (ii) in defiance of efforts on the part of school authorities as required under Section
1093 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

1094 (p) "Legal custody" means a relationship embodying the following rights and duties:

1095 (i) the right to physical custody of the minor;

1096 (ii) the right and duty to protect, train, and discipline the minor;

1097 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
1098 medical care;

1099 (iv) the right to determine where and with whom the minor shall live; and

1100 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1101 (q) (i) "Minor" means a person under the age of 18 years.

1102 (ii) "Minor" includes the term "child" as used in other parts of this chapter.

1103 (r) "Natural parent" means a minor's biological or adoptive parent, and includes the
1104 minor's noncustodial parent.

1105 (s) (i) "Neglected child" means a minor:

1106 (A) whose parent, guardian, or custodian has abandoned the minor, except as provided
1107 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

1108 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or
1109 abuse;

1110 (C) who lacks proper parental care by reason of the fault or habits of the parent,
1111 guardian, or custodian;

1112 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary

1113 subsistence, education, or medical care, including surgery or psychiatric services when
1114 required, or any other care necessary for health, safety, morals, or well-being; or

1115 (E) who is at risk of being a neglected or abused child as defined in this chapter
1116 because another minor in the same home is a neglected or abused child as defined in this
1117 chapter.

1118 (ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D),
1119 means that, after receiving notice that a minor has been frequently absent from school without
1120 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
1121 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
1122 an appropriate education.

1123 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that
1124 reason, does not provide specified medical treatment for a minor, is not guilty of neglect.

1125 (iv) Notwithstanding Subsection (1)(s)(i), a health care decision made for a child by the
1126 child's parent or guardian does not constitute neglect unless the state or other party to the
1127 proceeding shows, by clear and convincing evidence, that the health care decision is not
1128 reasonable and informed.

1129 (v) Nothing in Subsection (1)(s)(iv) may prohibit a parent or guardian from exercising
1130 the right to obtain a second health care opinion.

1131 (t) "Nonjudicial adjustment" means closure of the case by the assigned probation
1132 officer without judicial determination upon the consent in writing of the minor, the parent,
1133 legal guardian or custodian, and the assigned probation officer.

1134 (u) "Probation" means a legal status created by court order following an adjudication
1135 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
1136 to remain in the minor's home under prescribed conditions and under supervision by the
1137 probation department or other agency designated by the court, subject to return to the court for
1138 violation of any of the conditions prescribed.

1139 (v) "Protective supervision" means a legal status created by court order following an
1140 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
1141 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
1142 dependency is provided by the probation department or other agency designated by the court.

1143 (w) (i) "Residual parental rights and duties" means those rights and duties remaining

1144 with the parent after legal custody or guardianship, or both, have been vested in another person
1145 or agency, including:

- 1146 (A) the responsibility for support;
- 1147 (B) the right to consent to adoption;
- 1148 (C) the right to determine the child's religious affiliation; and
- 1149 (D) the right to reasonable parent-time unless restricted by the court.

1150 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
1151 the right to consent to:

- 1152 (A) marriage;
- 1153 (B) enlistment; and
- 1154 (C) major medical, surgical, or psychiatric treatment.

1155 (x) "Secure facility" means any facility operated by or under contract with the Division
1156 of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth
1157 offenders committed to the division for custody and rehabilitation.

1158 (y) "Shelter" means the temporary care of minors in physically unrestricted facilities
1159 pending court disposition or transfer to another jurisdiction.

1160 (z) "State supervision" means a disposition that provides a more intensive level of
1161 intervention than standard probation but is less intensive or restrictive than a community
1162 placement with the Division of Juvenile Justice Services.

1163 (aa) "Substantiated" ~~[has the same meaning]~~ is as defined in ~~[Subsection]~~ Section
1164 62A-4a-101~~[(29)]~~.

1165 (bb) "Supported" ~~[has the same meaning]~~ is as defined in ~~[Subsection]~~ Section
1166 62A-4a-101~~[(31)]~~.

1167 (cc) "Termination of parental rights" means the permanent elimination of all parental
1168 rights and duties, including residual parental rights and duties, by court order.

1169 (dd) "Therapist" means a person employed by a state division or agency for the purpose
1170 of conducting psychological treatment and counseling of a minor in its custody, or any other
1171 person licensed or approved by the state for the purpose of conducting psychological treatment
1172 and counseling.

1173 (ee) "Unsubstantiated" ~~[has the same meaning]~~ is as defined in ~~[Subsection]~~ Section
1174 62A-4a-101~~[(34)]~~.

1175 (ff) "Without merit" [~~has the same meaning~~] is as defined in [~~Subsection~~] Section
1176 62A-4a-101[~~(36)~~].

1177 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
1178 Division of Child and Family Services:

1179 (a) "Custody" means the custody of a minor in the Division of Child and Family
1180 Services as of the date of disposition.

1181 (b) "Protective custody" means the shelter of a minor by the Division of Child and
1182 Family Services from the time the minor is removed from home until the earlier of:

- 1183 (i) the shelter hearing; or
- 1184 (ii) the minor's return home.

1185 (c) "Temporary custody" means the custody of a minor in the Division of Child and
1186 Family Services from the date of the shelter hearing until disposition.

1187 Section 17. Section **78-3a-109** is amended to read:

1188 **78-3a-109. Title of petition and other court documents -- Form and contents of**
1189 **petition -- Order for temporary custody -- Physical or psychological examination of**
1190 **minor, parent, or guardian -- Dismissal of petition.**

1191 (1) The petition and all subsequent court documents in the proceeding shall be entitled:
1192 "State of Utah, in the interest of....., a person under 18 years of age (or a
1193 person under 21 years of age)."

1194 (2) The petition shall be verified and statements in the petition may be made upon
1195 information and belief.

1196 (3) The petition shall be written in simple and brief language and include the facts
1197 which bring the minor within the jurisdiction of the court, as provided in Section 78-3a-104.

1198 (4) The petition shall further state:

- 1199 (a) the name, age, and residence of the minor;
- 1200 (b) the names and residences of the minor's parents;
- 1201 (c) the name and residence of the guardian, if there is one;
- 1202 (d) the name and address of the nearest known relative, if no parent or guardian is
1203 known; and

1204 (e) the name and residence of the person having physical custody of the minor. If any
1205 of the facts required are not known by the petitioner, the petition shall so state.

1206 (5) At any time after a petition is filed, the court may make an order:
 1207 (a) providing for temporary custody of the minor[-]; or
 1208 (b) that the Division of Child and Family Services provide protective services to the
 1209 child, if the court determines that:
 1210 (i) the child is at risk of being removed from the child's home due to abuse or neglect;
 1211 and
 1212 (ii) the provision of protective services may make the removal described in Subsection
 1213 (5)(b)(i) unnecessary.

1214 (6) The court may order that a minor concerning whom a petition has been filed shall
 1215 be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a
 1216 hospital or other facility for examination. After notice and a hearing set for the specific
 1217 purpose, the court may order a similar examination of a parent or guardian whose ability to care
 1218 for a minor is at issue, if the court finds from the evidence presented at the hearing that the
 1219 parent's or guardian's physical, mental, or emotional condition may be a factor in causing the
 1220 neglect, dependency, or delinquency of the minor.

1221 (7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted
 1222 pursuant to Subsection (6) are not privileged communications, but are exempt from the general
 1223 rule of privilege.

1224 (8) The court may dismiss a petition at any stage of the proceedings.

1225 (9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is
 1226 referred to the court under Subsection 78-3a-105(5)[~~-(a)~~], the court may require the parties to
 1227 participate in mediation in accordance with Title 78, Chapter 31b, Alternative Dispute
 1228 Resolution[~~; and~~].

1229 [~~(b) the Division of Child and Family Services or a party to the petition may request~~
 1230 ~~and the court may order the parties to participate in a family unity conference under the~~
 1231 ~~authority of the Division of Child and Family Services in accordance with Subsection (10).]~~

1232 [~~(10) (a) A family unity conference may be ordered by the court for any of the~~
 1233 ~~following purposes:]~~

1234 [~~(i) discussing and reviewing the case history;]~~

1235 [~~(ii) designing a service plan for the child and family, including concurrent planning;]~~

1236 [~~(iii) discussing a visitation schedule and rules for visitation;]~~

1237 ~~[(iv) identifying possible kinship placements under the requirements of Subsection~~
1238 ~~78-3a-307(5), and designing services to support the kinship placement;]~~

1239 ~~[(v) conflict resolution between the family and Division of Child and Family Services~~
1240 ~~staff;]~~

1241 ~~[(vi) discussing child custody issues; or]~~

1242 ~~[(vii) crisis clinical intervention to reduce trauma to the child and family.]~~

1243 ~~[(b) The family unity conference may be attended by individuals chosen by the family~~
1244 ~~and the Division of Child and Family Services, and may include extended family members,~~
1245 ~~friends, clergy, service providers, and others who may support the family in keeping the child~~
1246 ~~safe.]~~

1247 ~~[(c) A family unity conference may not be held in the following circumstances:]~~

1248 ~~[(i) when there is a criminal charge pending in the case;]~~

1249 ~~[(ii) to resolve petition disputes; and]~~

1250 ~~[(iii) when a family unity conference may pose a threat to the safety of a child or other~~
1251 ~~family member.]~~

1252 ~~[(d) With regard to a family unity conference ordered by a court under Subsection~~
1253 ~~(9)(b):]~~

1254 ~~[(i) the requirements of Subsection 78-31b-7(3)(b) apply except all parties to the~~
1255 ~~proceeding;]~~

1256 ~~[(A) shall be given no less than five days notice of any recommendation made to the~~
1257 ~~court from the family unity conference; and]~~

1258 ~~[(B) shall be given an opportunity to be heard by the court; and]~~

1259 ~~[(ii) the confidentiality requirements of Section 78-31b-8 apply, except that admissions~~
1260 ~~by a party to the allegations on the petition are admissible at any proceeding;]~~

1261 Section 18. Section **78-3a-110** is amended to read:

1262 **78-3a-110. Summons -- Service and process -- Issuance and contents -- Notice to**
1263 **absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory**
1264 **process for attendance of witnesses when authorized.**

1265 (1) After a petition is filed the court shall promptly issue a summons, unless the judge
1266 directs that a further investigation is needed. No summons is required as to any person who
1267 appears voluntarily or who files a written waiver of service with the clerk of the court at or

1268 prior to the hearing.

1269 (2) The summons shall contain:

1270 (a) the name of the court;

1271 (b) the title of the proceedings; and

1272 (c) except for a published summons, a brief statement of the substance of the
1273 allegations in the petition.

1274 (3) A published summons shall state:

1275 (a) that a proceeding concerning the minor is pending in the court; and

1276 (b) an adjudication will be made.

1277 (4) The summons shall require the person or persons who have physical custody of the
1278 minor to appear personally and bring the minor before the court at a time and place stated. If
1279 the person or persons summoned are not the parent, parents, or guardian of the minor, the
1280 summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying
1281 them of the pendency of the case and of the time and place set for the hearing.

1282 (5) Summons may be issued requiring the appearance of any other person whose
1283 presence the court finds necessary.

1284 (6) If it appears to the court that the welfare of the minor or of the public requires that
1285 the minor be taken into custody, the court may by endorsement upon the summons direct that
1286 the person serving the summons take the minor into custody at once.

1287 (7) ~~Upon~~ Subject to Subsection 78-3a-118(2)(n)(iii), upon the sworn testimony of
1288 one or more reputable physicians, the court may order emergency medical or surgical treatment
1289 that is immediately necessary for a minor concerning whom a petition has been filed pending
1290 the service of summons upon his parents, guardian, or custodian.

1291 (8) A parent or guardian is entitled to the issuance of compulsory process for the
1292 attendance of witnesses on his own behalf or on behalf of the minor. A guardian ad litem or a
1293 probation officer is entitled to compulsory process for the attendance of witnesses on behalf of
1294 the minor.

1295 (9) Service of summons and process and proof of service shall be made in the manner
1296 provided in the Utah Rules of Civil Procedure.

1297 (10) Service of summons or process shall be made by the sheriff of the county where
1298 the service is to be made, or by his deputy; but upon request of the court service shall be made

1299 by any other peace officer, or by another suitable person selected by the court.

1300 (11) Service of summons in the state shall be made personally, by delivering a copy to
1301 the person summoned; provided, however, that parents of a minor living together at their usual
1302 place of abode may both be served by personal delivery to either parent of copies of the
1303 summons, one copy for each parent.

1304 (12) If the judge makes a written finding that he has reason to believe that personal
1305 service of the summons will be unsuccessful, or will not accomplish notification within a
1306 reasonable time after issuance of the summons, he may order service by registered mail, with a
1307 return receipt to be signed by the addressee only, to be addressed to the last-known address of
1308 the person to be served in the state. Service shall be complete upon return to the court of the
1309 signed receipt.

1310 (13) If the parents, parent, or guardian required to be summoned under Subsection (4)
1311 cannot be found within the state, the fact of their minor's presence within the state shall confer
1312 jurisdiction on the court in proceedings in minor's cases under this chapter as to any absent
1313 parent or guardian, provided that due notice has been given in the following manner:

1314 (a) If the address of the parent or guardian is known, due notice is given by sending
1315 him a copy of the summons by registered mail with a return receipt to be signed by the
1316 addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil
1317 Procedure. Service by registered mail shall be complete upon return to the court of the signed
1318 receipt.

1319 (b) If the address or whereabouts of the parent or guardian outside the state cannot after
1320 diligent inquiry be ascertained, due notice is given by publishing a summons in a newspaper
1321 having general circulation in the county in which the proceeding is pending. The summons
1322 shall be published once a week for four successive weeks. Service shall be complete on the
1323 day of the last publication.

1324 (c) Service of summons as provided in this subsection shall vest the court with
1325 jurisdiction over the parent or guardian served in the same manner and to the same extent as if
1326 the person served was served personally within the state.

1327 (14) In the case of service in the state, service completed not less than 48 hours before
1328 the time set in the summons for the appearance of the person served, shall be sufficient to
1329 confer jurisdiction. In the case of service outside the state, service completed not less than five

1330 days before the time set in the summons for appearance of the person served, shall be sufficient
1331 to confer jurisdiction.

1332 (15) Computation of periods of time under this chapter shall be made in accordance
1333 with the Utah Rules of Civil Procedure.

1334 Section 19. Section **78-3a-118** is amended to read:

1335 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
1336 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**
1337 **sample.**

1338 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
1339 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
1340 jurisdiction over the minor. However, in cases within the provisions of Subsection
1341 78-3a-104(1), findings of fact are not necessary.

1342 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
1343 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
1344 to the school superintendent of the district in which the minor resides or attends school. Notice
1345 shall be made to the district superintendent within three days of the adjudication and shall
1346 include:

1347 (i) the specific offenses for which the minor was adjudicated; and

1348 (ii) if available, if the victim:

1349 (A) resides in the same school district as the minor; or

1350 (B) attends the same school as the minor.

1351 (2) Upon adjudication the court may make the following dispositions by court order:

1352 (a) (i) The court may place the minor on probation or under protective supervision in
1353 the minor's own home and upon conditions determined by the court, including compensatory
1354 service as provided in Section 78-11-20.7.

1355 (ii) The court may place the minor in state supervision with the probation department
1356 of the court, under the legal custody of:

1357 (A) his parent or guardian;

1358 (B) the Division of Juvenile Justice Services; or

1359 (C) the Division of Child and Family Services.

1360 (iii) If the court orders probation or state supervision, the court shall direct that notice

1361 of its order be provided to designated persons in the local law enforcement agency and the
1362 school or transferee school, if applicable, which the minor attends. The designated persons
1363 may receive the information for purposes of the minor's supervision and student safety.

1364 (iv) Any employee of the local law enforcement agency and the school which the
1365 minor attends who discloses the court's order of probation is not:

1366 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
1367 provided in Section 63-30d-202; and

1368 (B) civilly or criminally liable except when the disclosure constitutes a knowing
1369 violation of Section 63-2-801.

1370 (b) The court may place the minor in the legal custody of a relative or other suitable
1371 person, with or without probation or protective supervision, but the juvenile court may not
1372 assume the function of developing foster home services.

1373 (c) (i) The court may:

1374 (A) vest legal custody of the minor in the Division of Child and Family Services,
1375 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
1376 and

1377 (B) order the Department of Human Services to provide dispositional
1378 recommendations and services.

1379 (ii) For minors who may qualify for services from two or more divisions within the
1380 Department of Human Services, the court may vest legal custody with the department.

1381 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
1382 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,
1383 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title
1384 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

1385 (B) Prior to the court entering an order to place a minor in the custody of the Division
1386 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
1387 the division with notice of the hearing no later than five days before the time specified for the
1388 hearing so the division may attend the hearing.

1389 (C) Prior to committing a minor to the custody of the Division of Child and Family
1390 Services, the court shall make a finding as to what reasonable efforts have been attempted to
1391 prevent the minor's removal from his home.

1392 (d) (i) The court may commit the minor to the Division of Juvenile Justice Services for
1393 secure confinement.

1394 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
1395 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
1396 Juvenile Justice Services.

1397 (e) The court may commit the minor, subject to the court retaining continuing
1398 jurisdiction over him, to the temporary custody of the Division of Juvenile Justice Services for
1399 observation and evaluation for a period not to exceed 45 days, which period may be extended
1400 up to 15 days at the request of the director of the Division of Juvenile Justice Services.

1401 (f) (i) The court may commit the minor to a place of detention or an alternative to
1402 detention for a period not to exceed 30 days subject to the court retaining continuing
1403 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
1404 ordered by the court.

1405 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

1406 (A) an act which if committed by an adult would be a criminal offense; or

1407 (B) contempt of court under Section 78-3a-901.

1408 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
1409 the Division of Child and Family Services or any other appropriate person in accordance with
1410 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
1411 Dependency Proceedings.

1412 (h) The court may place the minor on a ranch or forestry camp, or similar facility for
1413 care and also for work, if possible, if the person, agency, or association operating the facility
1414 has been approved or has otherwise complied with all applicable state and local laws. A minor
1415 placed in a forestry camp or similar facility may be required to work on fire prevention,
1416 forestation and reforestation, recreational works, forest roads, and on other works on or off the
1417 grounds of the facility and may be paid wages, subject to the approval of and under conditions
1418 set by the court.

1419 (i) (i) The court may order the minor to repair, replace, or otherwise make restitution
1420 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
1421 Section 78-3a-318 and impose fines in limited amounts.

1422 (ii) The court may also require the minor to reimburse an individual, entity, or

1423 governmental agency who offered and paid a reward to a person or persons for providing
1424 information resulting in a court adjudication that the minor is within the jurisdiction of the
1425 juvenile court due to the commission of a criminal offense.

1426 (iii) If a minor has been returned to this state under the Interstate Compact on
1427 Juveniles, the court may order the minor to make restitution for costs expended by any
1428 governmental entity for the return.

1429 (j) The court may issue orders necessary for the collection of restitution and fines
1430 ordered by the court, including garnishments, wage withholdings, and executions.

1431 (k) (i) The court may through its probation department encourage the development of
1432 employment or work programs to enable minors to fulfill their obligations under Subsection
1433 (2)(i) and for other purposes considered desirable by the court.

1434 (ii) Consistent with the order of the court, the probation officer may permit the minor
1435 found to be within the jurisdiction of the court to participate in a program of work restitution or
1436 compensatory service in lieu of paying part or all of the fine imposed by the court.

1437 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
1438 addition to any other disposition authorized by this section:

1439 (A) restrain the minor from driving for periods of time the court considers necessary;
1440 and

1441 (B) take possession of the minor's driver license.

1442 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
1443 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by
1444 Section 78-3a-506.

1445 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
1446 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
1447 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
1448 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
1449 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
1450 completion of an approved substance abuse prevention or treatment program may be credited
1451 by the court as compensatory service hours.

1452 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
1453 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court

1454 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
1455 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
1456 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
1457 approved substance abuse prevention or treatment program may be credited by the court as
1458 compensatory service hours.

1459 (n) ~~[The]~~ (i) Subject to Subsection (2)(n)(iii), the court may order that the minor;

1460 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist;
1461 ~~[that he]~~

1462 (B) receive other special care.

1463 (ii) For ~~[these]~~ purposes of receiving the examination, treatment, or care described in
1464 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

1465 (iii) In determining whether to order the examination, treatment, or care described in
1466 Subsection (2)(n)(i), the court shall consider:

1467 (A) the desires of the minor;

1468 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
1469 minor; and

1470 (C) whether the potential benefits of the examination, treatment, or care outweigh the
1471 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
1472 function impairment, or emotional or physical harm resulting from the compulsory nature of
1473 the examination, treatment, or care.

1474 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
1475 interest of the minor, and may appoint as guardian a public or private institution or agency in
1476 which legal custody of the minor is vested.

1477 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
1478 private agency or institution, the court shall give primary consideration to the welfare of the
1479 minor. When practicable, the court may take into consideration the religious preferences of the
1480 minor and of the minor's parents.

1481 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
1482 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or
1483 any other person who has been made a party to the proceedings. Conditions may include:

1484 (A) parent-time by the parents or one parent;

- 1485 (B) restrictions on the minor's associates;
- 1486 (C) restrictions on the minor's occupation and other activities; and
- 1487 (D) requirements to be observed by the parents or custodian.
- 1488 (ii) A minor whose parents or guardians successfully complete a family or other
- 1489 counseling program may be credited by the court for detention, confinement, or probation time.
- 1490 (q) The court may order the minor to be committed to the physical custody of a local
- 1491 mental health authority, in accordance with the procedures and requirements of Title 62A,
- 1492 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
- 1493 Mental Health.
- 1494 (r) (i) The court may make an order committing a minor within its jurisdiction to the
- 1495 Utah State Developmental Center if the minor has mental retardation in accordance with the
- 1496 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.
- 1497 (ii) The court shall follow the procedure applicable in the district courts with respect to
- 1498 judicial commitments to the Utah State Developmental Center when ordering a commitment
- 1499 under Subsection (2)(r)(i).
- 1500 (s) The court may terminate all parental rights upon a finding of compliance with the
- 1501 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.
- 1502 (t) The court may make any other reasonable orders for the best interest of the minor or
- 1503 as required for the protection of the public, except that a person younger than 18 years of age
- 1504 may not be committed to jail or prison.
- 1505 (u) The court may combine the dispositions listed in this section if they are compatible.
- 1506 (v) Before depriving any parent of custody, the court shall give due consideration to the
- 1507 rights of parents concerning their minor. The court may transfer custody of a minor to another
- 1508 person, agency, or institution in accordance with the requirements and procedures of Title 78,
- 1509 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.
- 1510 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
- 1511 probation or placement of a minor with an individual or an agency shall include a date certain
- 1512 for a review of the case by the court. A new date shall be set upon each review.
- 1513 (x) In reviewing foster home placements, special attention shall be given to making
- 1514 adoptable minors available for adoption without delay.
- 1515 (y) (i) The juvenile court may enter an order of permanent custody and guardianship

1516 with a relative or individual of a minor where the court has previously acquired jurisdiction as
1517 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
1518 order for child support on behalf of the minor child against the natural or adoptive parents of
1519 the child.

1520 (ii) Orders under Subsection (2)(y)(i):

1521 (A) shall remain in effect until the minor reaches majority;

1522 (B) are not subject to review under Section 78-3a-119; and

1523 (C) may be modified by petition or motion as provided in Section 78-3a-903.

1524 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
1525 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
1526 of the juvenile court.

1527 (3) In addition to the dispositions described in Subsection (2), when a minor comes
1528 within the court's jurisdiction he may be given a choice by the court to serve in the National
1529 Guard in lieu of other sanctions, provided:

1530 (a) the minor meets the current entrance qualifications for service in the National
1531 Guard as determined by a recruiter, whose determination is final;

1532 (b) the minor is not under the jurisdiction of the court for any act that:

1533 (i) would be a felony if committed by an adult;

1534 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

1535 (iii) was committed with a weapon; and

1536 (c) the court retains jurisdiction over the minor under conditions set by the court and
1537 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

1538 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
1539 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
1540 designated employees of the court or, if the minor is in the legal custody of the Division of
1541 Juvenile Justice Services, then by designated employees of the division under Subsection
1542 53-10-404(5)(b).

1543 (b) The responsible agency shall ensure that employees designated to collect the saliva
1544 DNA specimens receive appropriate training and that the specimens are obtained in accordance
1545 with accepted protocol.

1546 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA

1547 Specimen Restricted Account created in Section 53-10-407.

1548 (d) Payment of the reimbursement is second in priority to payments the minor is
1549 ordered to make for restitution under this section and treatment under Section 78-3a-318.

1550 Section 20. Section **78-3a-306** is amended to read:

1551 **78-3a-306. Shelter hearing.**

1552 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
1553 after any one or all of the following occur:

1554 (a) removal of the child from [~~his~~] the child's home by the [~~Division of Child and~~
1555 ~~Family Services~~] division;

1556 (b) placement of the child in the protective custody of the [~~Division of Child and~~
1557 ~~Family Services~~] division;

1558 (c) emergency kinship placement under Subsection 62A-4a-202.1(4); or

1559 (d) as an alternative to removal of the child, a parent [~~has entered~~] enters a domestic
1560 violence shelter at the request of the [~~Division of Child and Family Services~~] division.

1561 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
1562 through (1)(d), the division shall issue a notice that contains all of the following:

1563 (a) the name and address of the person to whom the notice is directed;

1564 (b) the date, time, and place of the shelter hearing;

1565 (c) the name of the [~~minor~~] child on whose behalf a petition is being brought;

1566 (d) a concise statement regarding:

1567 (i) the reasons for removal or other action of the division under Subsection (1); and

1568 (ii) the allegations and code sections under which the proceeding has been instituted;

1569 (e) a statement that the parent or guardian to whom notice is given, and the [~~minor~~]

1570 child, are entitled to have an attorney present at the shelter hearing, and that if the parent or

1571 guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney,

1572 one will be provided; and

1573 (f) a statement that the parent or guardian is liable for the cost of support of the [~~minor~~]

1574 child in the protective custody, temporary custody, and custody of the division, and the cost for

1575 legal counsel appointed for the parent or guardian under Subsection (2)(e), according to [~~his~~]

1576 the financial ability of the parent or guardian.

1577 (3) [~~That~~] The notice described in Subsection (2) shall be personally served as soon as

1578 possible, but no later than one business day after removal of a child from ~~[his]~~ the child's home,
1579 on:

1580 (a) the appropriate guardian ad litem; and

1581 (b) both parents and any guardian of the ~~[minor]~~ child, unless they cannot be located.

1582 (4) The following persons shall be present at the shelter hearing:

1583 (a) the child, unless it would be detrimental for the child;

1584 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
1585 response to the notice;

1586 (c) counsel for the parents, if one ~~[has been]~~ is requested;

1587 (d) the child's guardian ad litem;

1588 (e) the caseworker from the ~~[Division of Child and Family Services]~~ division who ~~[has~~
1589 ~~been]~~ is assigned to the case; and

1590 (f) the attorney from the attorney general's office who is representing the division.

1591 (5) (a) At the shelter hearing, the court:

1592 (i) shall provide an opportunity ~~[for the minor's]~~ to provide relevant testimony to:

1593 (A) the child's parent or guardian, if present~~;~~; and

1594 (B) any other person having relevant knowledge~~;~~ ~~to provide relevant testimony. The~~
1595 ~~court]; and~~

1596 (ii) may also provide an opportunity for the ~~[minor]~~ child to testify.

1597 (b) The court:

1598 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
1599 Procedure~~[-The court];~~

1600 (ii) shall hear relevant evidence presented by the ~~[minor, his]~~ child, the child's parent or
1601 guardian, the requesting party, or their counsel~~[-but]; and~~

1602 (iii) may in its discretion limit testimony and evidence to only that which goes to the
1603 issues of removal and the child's need for continued protection.

1604 (6) If the child is in the protective custody of the division, the division shall report to
1605 the court:

1606 (a) the ~~[reasons]~~ reason why the ~~[minor]~~ child was removed from the parent's or
1607 guardian's custody;

1608 (b) any services provided to the child and ~~[his]~~ the child's family in an effort to prevent

1609 removal;

1610 (c) the need, if any, for continued shelter;

1611 (d) the available services that could facilitate the return of the ~~[minor]~~ child to the
1612 custody of ~~[his]~~ the child's parent or guardian; and

1613 (e) whether the child has any relatives who may be able and willing to take temporary
1614 custody.

1615 (7) The court shall consider all relevant evidence provided by persons or entities
1616 authorized to present relevant evidence pursuant to this section.

1617 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
1618 cause shown, the court may grant no more than one ~~[time-limited]~~ continuance, not to exceed
1619 five judicial days.

1620 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
1621 a continuance under Subsection (8)(a).

1622 (9) (a) If the child is in the protective custody of the division, the court shall order that
1623 the ~~[minor]~~ child be released from the protective custody of the division unless it finds, by a
1624 preponderance of the evidence, that any one of the following exist:

1625 ~~[(a)]~~ (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical
1626 health or safety of the minor and the minor's physical health or safety may not be protected
1627 without removing him from his parent's custody~~[- If a minor has previously been adjudicated~~
1628 ~~as abused, neglected, or dependent and a subsequent incident of abuse, neglect, or dependency~~
1629 ~~occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the~~
1630 ~~custody of his parent];~~

1631 ~~[(b)]~~ (ii) the minor is suffering emotional damage~~[- as may be indicated by, but is not~~
1632 ~~limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward~~
1633 ~~self or others,]~~ and there are no reasonable means available by which the minor's emotional
1634 health may be protected without removing the minor from the custody of his parent;

1635 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
1636 not removed from the custody of the child's parents;

1637 ~~[(c)]~~ (iv) subject to Subsection (9)(b)(ii), the minor or another minor residing in the
1638 same household has been physically or sexually abused, or is considered to be at substantial
1639 risk of being physically or sexually abused, by a;

- 1640 (A) parent~~[, a]~~;
- 1641 (B) member of the parent's household~~[-]~~; or ~~[other]~~
- 1642 (C) person known to the parent~~[-~~ If a parent has received actual notice that physical or
1643 sexual abuse by a person known to the parent has occurred, and there is evidence that the
1644 parent has allowed the child to be in the physical presence of the alleged abuser, that fact
1645 constitutes prima facie evidence that the child is at substantial risk of being physically or
1646 sexually abused];
- 1647 ~~[(d)]~~ (v) the parent is unwilling to have physical custody of the child;
- 1648 ~~[(e)]~~ (vi) the minor ~~[has been left]~~ is without any provision for his support;
- 1649 ~~[(f)]~~ (vii) a parent who ~~[has been]~~ is incarcerated or institutionalized has not or cannot
1650 arrange for safe and appropriate care for the minor;
- 1651 ~~[(g)]~~ (viii) (A) a relative or other adult custodian with whom the minor has been left by
1652 the parent is unwilling or unable to provide care or support for the minor~~[-]~~;
- 1653 (B) the whereabouts of the parent are unknown~~[-]~~; and
- 1654 (C) reasonable efforts to locate ~~[him have been]~~ the parent are unsuccessful;
- 1655 ~~[(h)]~~ (ix) the minor is in ~~[immediate]~~ urgent need of medical care;
- 1656 ~~[(i)]~~ (x) the physical environment or the fact that the child is left unattended beyond a
1657 reasonable period of time poses a threat to the child's health or safety;
- 1658 ~~[(j)]~~ (xi) the minor or another minor residing in the same household has been
1659 neglected;
- 1660 ~~[(k)]~~ (xii) the parent, or an adult residing in the same household as the parent, ~~[has~~
1661 ~~been]~~ is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and
1662 any clandestine laboratory operation, as defined in Section 58-37d-3, was located in the
1663 residence or on the property where the child resided; or
- 1664 ~~[(l)]~~ (xiii) the child's welfare is ~~[otherwise]~~ substantially endangered.
- 1665 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is
1666 established if:
- 1667 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
1668 involving the parent; and
- 1669 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.
- 1670 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly

1671 allowed the child to be in the physical care of a person after the parent received actual notice
1672 that the person physically or sexually abused the child, that fact constitutes prima facie
1673 evidence that there is a substantial risk that the child will be physically or sexually abused.

1674 (10) (a) The court shall also make a determination on the record as to whether
1675 reasonable efforts were made to prevent or eliminate the need for removal of the minor from
1676 his home and whether there are available services that would prevent the need for continued
1677 removal. If the court finds that the minor can be safely returned to the custody of his parent or
1678 guardian through the provision of those services, it shall place the minor with his parent or
1679 guardian and order that those services be provided by the division.

1680 (b) In making that determination, and in ordering and providing services, the child's
1681 health, safety, and welfare shall be the paramount concern, in accordance with federal law.

1682 (11) Where the division's first contact with the family occurred during an emergency
1683 situation in which the child could not safely remain at home, the court shall make a finding that
1684 any lack of preplacement preventive efforts was appropriate.

1685 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or
1686 neglect are involved, neither the division nor the court has any duty to make "reasonable
1687 efforts" or to, in any other way, attempt to maintain a child in his home, return a child to his
1688 home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

1689 (13) The court may not order continued removal of a minor solely on the basis of
1690 educational neglect as described in Subsection 78-3a-103(1)(s)(ii).

1691 (14) (a) Whenever a court orders continued removal of a minor under this section, it
1692 shall state the facts on which that decision is based.

1693 (b) If no continued removal is ordered and the minor is returned home, the court shall
1694 state the facts on which that decision is based.

1695 (15) If the court finds that continued removal and temporary custody are necessary for
1696 the protection of a child because harm may result to the child if he were returned home, it shall
1697 order continued removal regardless of any error in the initial removal of the child, or the failure
1698 of a party to comply with notice provisions, or any other procedural requirement of this chapter
1699 or Title 62A, Chapter 4a, Child and Family Services.

1700 Section 21. Section **78-3a-311** is amended to read:

1701 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

- 1702 (1) The court may:
- 1703 (a) make any of the dispositions described in Section 78-3a-118;
- 1704 (b) place the minor in the custody or guardianship of any:
- 1705 (i) individual; or
- 1706 (ii) public or private entity or agency; or
- 1707 (c) order:
- 1708 (i) protective supervision;
- 1709 (ii) family preservation;
- 1710 (iii) subject to Subsection 78-3a-118(2)(n)(iii), medical or mental health treatment; or
- 1711 (iv) other services.
- 1712 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
- 1713 and that the minor remain in the custody of the division, the court shall first:
- 1714 (A) establish a primary permanency goal for the minor; and
- 1715 (B) determine whether, in view of the primary permanency goal, reunification services
- 1716 are appropriate for the minor and the minor's family, pursuant to Subsection (3).
- 1717 (ii) Subject to Subsection (2)(b), if the court determines that reunification services are
- 1718 appropriate for the minor and the minor's family, the court shall provide for reasonable
- 1719 parent-time with the parent or parents from whose custody the minor was removed, unless
- 1720 parent-time is not in the best interest of the minor.
- 1721 (iii) (A) In cases where obvious sexual abuse, abandonment, or serious physical abuse
- 1722 or neglect are involved, neither the division nor the court has any duty to make "reasonable
- 1723 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to
- 1724 rehabilitate the offending parent or parents.
- 1725 (B) In all cases, the minor's health, safety, and welfare shall be the court's paramount
- 1726 concern in determining whether reasonable efforts to reunify should be made.
- 1727 (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a
- 1728 minor unless the court makes a finding that it is necessary to deny parent-time in order to:
- 1729 (A) protect the physical safety of the minor;
- 1730 (B) protect the life of the minor; or
- 1731 (C) prevent the minor from being traumatized by contact with the parent due to the
- 1732 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

- 1733 (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based
1734 solely on a parent's failure to:
- 1735 (A) prove that the parent has not used legal or illegal substances; or
1736 (B) comply with an aspect of the child and family plan that is ordered by the court.
- 1737 (c) (i) In addition to the primary permanency goal, the court shall establish a concurrent
1738 permanency goal that shall include:
- 1739 (A) a representative list of the conditions under which the primary permanency goal
1740 will be abandoned in favor of the concurrent permanency goal; and
1741 (B) an explanation of the effect of abandoning or modifying the primary permanency
1742 goal.
- 1743 (ii) A permanency hearing shall be conducted in accordance with Subsection
1744 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
1745 minor's primary permanency goal.
- 1746 (iii) (A) The court may amend a minor's primary permanency goal before the
1747 establishment of a final permanency plan under Section 78-3a-312.
- 1748 (B) The court is not limited to the terms of the concurrent permanency goal in the event
1749 that the primary permanency goal is abandoned.
- 1750 (C) If, at any time, the court determines that reunification is no longer a minor's
1751 primary permanency goal, the court shall conduct a permanency hearing in accordance with
1752 Section 78-3a-312 on or before the earlier of:
- 1753 (I) 30 days from the day on which the court makes the determination described in this
1754 Subsection (2)(c)(iii)(C); or
1755 (II) 12 months from the day on which the minor was first removed from the minor's
1756 home.
- 1757 (d) (i) (A) If the court determines that reunification services are appropriate, it shall
1758 order that the division make reasonable efforts to provide services to the minor and the minor's
1759 parent for the purpose of facilitating reunification of the family, for a specified period of time.
- 1760 (B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health,
1761 safety, and welfare shall be the division's paramount concern, and the court shall so order.
- 1762 (ii) The court shall:
- 1763 (A) determine whether the services offered or provided by the division under the child

1764 and family plan constitute "reasonable efforts" on the part of the division;

1765 (B) determine and define the responsibilities of the parent under the child and family
1766 plan in accordance with Subsection 62A-4a-205(6)(e); and

1767 (C) identify on the record the responsibilities described in Subsection (2)(d)(ii)(B), for
1768 the purpose of assisting in any future determination regarding the provision of reasonable
1769 efforts, in accordance with state and federal law.

1770 (iii) (A) The time period for reunification services may not exceed 12 months from the
1771 date that the minor was initially removed from the minor's home.

1772 (B) Nothing in this section may be construed to entitle any parent to an entire 12
1773 months of reunification services.

1774 (iv) If reunification services are ordered, the court may terminate those services at any
1775 time.

1776 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined
1777 to be inconsistent with the final permanency plan for the minor established pursuant to
1778 ~~[Subsection]~~ Section 78-3a-312, then measures shall be taken, in a timely manner, to:

1779 (A) place the minor in accordance with the permanency plan; and

1780 (B) complete whatever steps are necessary to finalize the permanent placement of the
1781 minor.

1782 (e) Any physical custody of the minor by the parent or a relative during the period
1783 described in Subsection (2)(d) does not interrupt the running of the period.

1784 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by
1785 the court in accordance with Section 78-3a-312 at the expiration of the time period for
1786 reunification services.

1787 (ii) The permanency hearing shall be held no later than 12 months after the original
1788 removal of the minor.

1789 (iii) If reunification services are not ordered, a permanency hearing shall be conducted
1790 within 30 days, in accordance with Section 78-3a-312.

1791 (g) With regard to a minor who is 36 months of age or younger at the time the minor is
1792 initially removed from the home, the court shall:

1793 (i) hold a permanency hearing eight months after the date of the initial removal,
1794 pursuant to Section 78-3a-312; and

1795 (ii) order the discontinuance of those services after eight months from the initial
1796 removal of the minor from the home if the parent or parents have not made substantial efforts
1797 to comply with the child and family plan.

1798 (h) With regard to a minor in the custody of the division whose parent or parents are
1799 ordered to receive reunification services but who have abandoned that minor for a period of six
1800 months from the date that reunification services were ordered:

1801 (i) the court shall terminate reunification services; and

1802 (ii) the division shall petition the court for termination of parental rights.

1803 (3) (a) Because of the state's interest in and responsibility to protect and provide
1804 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
1805 parent's interest in receiving reunification services is limited.

1806 (b) The court may determine that:

1807 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
1808 based on the individual circumstances; and

1809 (ii) reunification services should not be provided.

1810 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
1811 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
1812 concern.

1813 (d) (i) There is a presumption that reunification services should not be provided to a
1814 parent if the court finds, by clear and convincing evidence, that any of the following
1815 circumstances exist:

1816 (A) the whereabouts of the parents are unknown, based upon a verified affidavit
1817 indicating that a reasonably diligent search has failed to locate the parent;

1818 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such
1819 magnitude that it renders the parent incapable of utilizing reunification services;

1820 (C) the minor was previously adjudicated as an abused child due to physical or sexual
1821 abuse, and following the adjudication the minor:

1822 (I) was removed from the custody of the minor's parent;

1823 (II) was subsequently returned to the custody of the parent; and

1824 (III) is being removed due to additional physical or sexual abuse;

1825 (D) the parent:

- 1826 (I) caused the death of another minor through abuse or neglect; or
- 1827 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 1828 (Aa) murder or manslaughter of a child; or
- 1829 (Bb) child abuse homicide;
- 1830 (E) the minor suffered severe abuse by the parent or by any person known by the
- 1831 parent, if the parent knew or reasonably should have known that the person was abusing the
- 1832 minor;
- 1833 (F) the minor is adjudicated an abused child as a result of severe abuse by the parent,
- 1834 and the court finds that it would not benefit the minor to pursue reunification services with the
- 1835 offending parent;
- 1836 (G) the parent's rights are terminated with regard to any other minor;
- 1837 (H) the minor is removed from the minor's home on at least two previous occasions
- 1838 and reunification services were offered or provided to the family at those times;
- 1839 (I) the parent has abandoned the minor for a period of six months or longer; or
- 1840 (J) any other circumstance that the court determines should preclude reunification
- 1841 efforts or services.
- 1842 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
- 1843 from at least two medical or mental health professionals, who are not associates, establishing
- 1844 that, even with the provision of services, the parent is not likely to be capable of adequately
- 1845 caring for the minor within 12 months from the day on which the court finding is made.
- 1846 (4) In determining whether reunification services are appropriate, the court shall take
- 1847 into consideration:
- 1848 (a) failure of the parent to respond to previous services or comply with a previous child
- 1849 and family plan;
- 1850 (b) the fact that the minor was abused while the parent was under the influence of
- 1851 drugs or alcohol;
- 1852 (c) any history of violent behavior directed at the child or an immediate family
- 1853 member;
- 1854 (d) whether a parent continues to live with an individual who abused the minor;
- 1855 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;
- 1856 (f) testimony by a competent professional that the parent's behavior is unlikely to be

1857 successful; and

1858 (g) whether the parent has expressed an interest in reunification with the minor.

1859 (5) (a) If reunification services are not ordered pursuant to Subsection (3)(a), and the

1860 whereabouts of a parent become known within six months of the out-of-home placement of the

1861 minor, the court may order the division to provide reunification services.

1862 (b) The time limits described in Subsection (2) are not tolled by the parent's absence.

1863 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable

1864 services unless it determines that those services would be detrimental to the minor.

1865 (b) In making the determination described in Subsection (6)(a), the court shall

1866 consider:

1867 (i) the age of the minor;

1868 (ii) the degree of parent-child bonding;

1869 (iii) the length of the sentence;

1870 (iv) the nature of the treatment;

1871 (v) the nature of the crime or illness;

1872 (vi) the degree of detriment to the minor if services are not offered;

1873 (vii) for a minor ten years of age or older, the minor's attitude toward the

1874 implementation of family reunification services; and

1875 (viii) any other appropriate factors.

1876 (c) Reunification services for an incarcerated parent are subject to the 12-month

1877 limitation imposed in Subsection (2).

1878 (d) Reunification services for an institutionalized parent are subject to the 12-month

1879 limitation imposed in Subsection (2), unless the court determines that continued reunification

1880 services would be in the minor's best interest.

1881 (7) If, pursuant to Subsections (3)(d)(i)(B) through (J), the court does not order

1882 reunification services, a permanency hearing shall be conducted within 30 days, in accordance

1883 with Section 78-3a-312.

Legislative Review Note

as of 10-24-05 1:54 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

Interim Committee Note

as of 12-16-05 7:22 AM

The Health and Human Services Interim Committee recommended this bill.

Legislative Committee Note

as of 12-16-05 7:22 AM

The Child Welfare Legislative Oversight Panel recommended this bill.