

**CHANGES TO DEFINITIONS OF A CHILD  
AND A MINOR**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

Senate Sponsor: David L. Thomas

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Juvenile Court Act of 1996 and the Child and Family Services chapter of the Utah Human Services Code.

**Highlighted Provisions:**

This bill:

- ▶ defines the terms "minor" and "child";
- ▶ amends the Juvenile Court Act of 1996 and the Child and Family Services chapter of the Utah Human Services Code to ensure that:
  - the terms "minor" and "child" are used consistently and correctly; and
  - the code provisions specify whether the provisions relate to children or to minors; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-37-6**, as last amended by Chapter 248, Laws of Utah 2005



- 28           **62A-4a-101**, as last amended by Chapter 95, Laws of Utah 2005
- 29           **62A-4a-105**, as last amended by Chapter 81, Laws of Utah 2005
- 30           **62A-4a-110**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 31           **62A-4a-116.1**, as last amended by Chapter 95, Laws of Utah 2005
- 32           **62A-4a-120**, as enacted by Chapter 356, Laws of Utah 2004
- 33           **62A-4a-202.1**, as last amended by Chapter 180, Laws of Utah 2004
- 34           **62A-4a-202.2**, as last amended by Chapter 10, Laws of Utah 2001, First Special
- 35   Session
- 36           **62A-4a-202.3**, as last amended by Chapter 286, Laws of Utah 2005
- 37           **62A-4a-402**, as last amended by Chapter 274, Laws of Utah 1998
- 38           **62A-4a-412**, as last amended by Chapters 122 and 356, Laws of Utah 2004
- 39           **62A-4a-601**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 40           **78-3a-102**, as last amended by Chapter 304, Laws of Utah 2005
- 41           **78-3a-103**, as last amended by Chapter 95, Laws of Utah 2005
- 42           **78-3a-104**, as last amended by Chapter 2, Laws of Utah 2005
- 43           **78-3a-105**, as last amended by Chapter 356, Laws of Utah 2004
- 44           **78-3a-106**, as last amended by Chapter 267, Laws of Utah 2003
- 45           **78-3a-109**, as last amended by Chapter 156, Laws of Utah 2005
- 46           **78-3a-110**, as enacted by Chapter 365, Laws of Utah 1997
- 47           **78-3a-112**, as renumbered and amended by Chapter 365, Laws of Utah 1997
- 48           **78-3a-113**, as last amended by Chapter 13, Laws of Utah 2005
- 49           **78-3a-114**, as last amended by Chapters 102 and 267, Laws of Utah 2004
- 50           **78-3a-115**, as last amended by Chapters 324 and 356, Laws of Utah 2004
- 51           **78-3a-116**, as last amended by Chapters 190 and 324, Laws of Utah 2004
- 52           **78-3a-117**, as last amended by Chapter 113, Laws of Utah 2000
- 53           **78-3a-118**, as last amended by Chapters 102 and 267, Laws of Utah 2004
- 54           **78-3a-120**, as renumbered and amended by Chapter 365, Laws of Utah 1997
- 55           **78-3a-206**, as last amended by Chapter 120, Laws of Utah 2001
- 56           **78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004
- 57           **78-3a-305**, as last amended by Chapters 68 and 326, Laws of Utah 2003
- 58           **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003

59           **78-3a-307**, as last amended by Chapter 356, Laws of Utah 2004  
60           **78-3a-309**, as last amended by Chapter 318, Laws of Utah 1996  
61           **78-3a-311**, as last amended by Chapter 286, Laws of Utah 2005  
62           **78-3a-311.5**, as last amended by Chapter 286, Laws of Utah 2005  
63           **78-3a-312**, as last amended by Chapter 286, Laws of Utah 2005  
64           **78-3a-313.5**, as last amended by Chapter 286, Laws of Utah 2005  
65           **78-3a-316.1**, as enacted by Chapter 329, Laws of Utah 1997  
66           **78-3a-321**, as enacted by Chapter 189, Laws of Utah 2004  
67           **78-3a-350**, as last amended by Chapter 168, Laws of Utah 2002  
68           **78-3a-407**, as last amended by Chapter 286, Laws of Utah 2005  
69           **78-3a-415**, as last amended by Chapter 76, Laws of Utah 2004  
70           **78-3a-502**, as last amended by Chapter 212, Laws of Utah 2002  
71           **78-3a-503**, as last amended by Chapter 90, Laws of Utah 2004  
72           **78-3a-602**, as last amended by Chapter 171, Laws of Utah 2003  
73           **78-3a-903**, as last amended by Chapter 274, Laws of Utah 1998  
74           **78-3a-904**, as last amended by Chapter 171, Laws of Utah 2003  
75           **78-3a-905**, as last amended by Chapter 171, Laws of Utah 2003  
76           **78-3a-906**, as last amended by Chapter 176, Laws of Utah 2003  
77           **78-3a-908**, as enacted by Chapter 1, Laws of Utah 1996  
78           **78-3a-909**, as last amended by Chapter 93, Laws of Utah 2004  
79           **78-3a-911**, as last amended by Chapter 94, Laws of Utah 2003  
80           **78-3a-912**, as last amended by Chapters 102, 286 and 304, Laws of Utah 2005  
81           **78-3a-913**, as last amended by Chapters 93 and 356, Laws of Utah 2004

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

84           Section 1. Section **58-37-6** is amended to read:

85           **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**  
86 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**  
87 **required -- Prescriptions.**

88           (1) (a) The division may adopt rules relating to the licensing and control of the  
89 manufacture, distribution, production, prescription, administration, dispensing, conducting of

90 research with, and performing of laboratory analysis upon controlled substances within this  
91 state.

92 (b) The division may assess reasonable fees to defray the cost of issuing original and  
93 renewal licenses under this chapter pursuant to Section 63-38-3.2.

94 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,  
95 administers, conducts research with, or performs laboratory analysis upon any controlled  
96 substance in Schedules II through V within this state, or who proposes to engage in  
97 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting  
98 research with, or performing laboratory analysis upon controlled substances included in  
99 Schedules II through V within this state shall obtain a license issued by the division.

100 (ii) The division shall issue each license under this chapter in accordance with a  
101 two-year renewal cycle established by rule. The division may by rule extend or shorten a  
102 renewal period by as much as one year to stagger the renewal cycles it administers.

103 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,  
104 administer, conduct research with, or perform laboratory analysis upon controlled substances in  
105 Schedules II through V within this state may possess, manufacture, produce, distribute,  
106 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon  
107 those substances to the extent authorized by their license and in conformity with this chapter.

108 (c) The following persons are not required to obtain a license and may lawfully possess  
109 controlled substances under this section:

110 (i) an agent or employee, except a sales representative, of any registered manufacturer,  
111 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the  
112 usual course of his business or employment; however, nothing in this subsection shall be  
113 interpreted to permit an agent, employee, sales representative, or detail man to maintain an  
114 inventory of controlled substances separate from the location of his employer's registered and  
115 licensed place of business;

116 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or  
117 warehouseman, who possesses any controlled substance in the usual course of his business or  
118 employment; and

119 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to  
120 a lawful order of a practitioner.

121 (d) The division may enact rules waiving the license requirement for certain  
122 manufacturers, producers, distributors, prescribers, dispensers, administrators, research  
123 practitioners, or laboratories performing analysis if consistent with the public health and safety.

124 (e) A separate license is required at each principal place of business or professional  
125 practice where the applicant manufactures, produces, distributes, dispenses, conducts research  
126 with, or performs laboratory analysis upon controlled substances.

127 (f) The division may enact rules providing for the inspection of a licensee or applicant's  
128 establishment, and may inspect the establishment according to those rules.

129 (3) (a) Upon proper application, the division shall license a qualified applicant to  
130 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon  
131 controlled substances included in Schedules I through V, unless it determines that issuance of a  
132 license is inconsistent with the public interest. The division shall not issue a license to any  
133 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining  
134 public interest, the division shall consider whether or not the applicant has:

135 (i) maintained effective controls against diversion of controlled substances and any  
136 Schedule I or II substance compounded from any controlled substance into other than  
137 legitimate medical, scientific, or industrial channels;

138 (ii) complied with applicable state and local law;

139 (iii) been convicted under federal or state laws relating to the manufacture, distribution,  
140 or dispensing of substances;

141 (iv) past experience in the manufacture of controlled dangerous substances;

142 (v) established effective controls against diversion; and

143 (vi) complied with any other factors that the division establishes that promote the  
144 public health and safety.

145 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,  
146 produce, distribute, conduct research with, or perform laboratory analysis upon controlled  
147 substances in Schedule I other than those specified in the license.

148 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with  
149 substances in Schedules II through V if they are authorized to administer, dispense, or conduct  
150 research under the laws of this state.

151 (ii) The division need not require a separate license for practitioners engaging in

152 research with nonnarcotic controlled substances in Schedules II through V where the licensee is  
153 already licensed under this act in another capacity.

154 (iii) With respect to research involving narcotic substances in Schedules II through V,  
155 or where the division by rule requires a separate license for research of nonnarcotic substances  
156 in Schedules II through V, a practitioner shall apply to the division prior to conducting  
157 research.

158 (iv) Licensing for purposes of bona fide research with controlled substances by a  
159 practitioner considered qualified may be denied only on a ground specified in Subsection (4),  
160 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard  
161 adequately his supply of substances against diversion from medical or scientific use.

162 (v) Practitioners registered under federal law to conduct research in Schedule I  
163 substances may conduct research in Schedule I substances within this state upon furnishing the  
164 division evidence of federal registration.

165 (d) Compliance by manufacturers, producers, and distributors with the provisions of  
166 federal law respecting registration, excluding fees, entitles them to be licensed under this  
167 chapter.

168 (e) The division shall initially license those persons who own or operate an  
169 establishment engaged in the manufacture, production, distribution, dispensation, or  
170 administration of controlled substances prior to April 3, 1980, and who are licensed by the  
171 state.

172 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed  
173 on probation, or revoked by the division upon finding that the applicant or licensee has:

174 (i) materially falsified any application filed or required pursuant to this chapter;

175 (ii) been convicted of an offense under this chapter or any law of the United States, or  
176 any state, relating to any substance defined as a controlled substance;

177 (iii) been convicted of a felony under any other law of the United States or any state  
178 within five years of the date of the issuance of the license;

179 (iv) had a federal license denied, suspended, or revoked by competent federal authority  
180 and is no longer authorized to engage in the manufacturing, distribution, or dispensing of  
181 controlled substances;

182 (v) had his license suspended or revoked by competent authority of another state for

183 violation of laws or regulations comparable to those of this state relating to the manufacture,  
184 distribution, or dispensing of controlled substances;

185 (vi) violated any division rule that reflects adversely on the licensee's reliability and  
186 integrity with respect to controlled substances;

187 (vii) refused inspection of records required to be maintained under this chapter by a  
188 person authorized to inspect them; or

189 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the  
190 purpose of manipulating human hormonal structure so as to:

191 (A) increase muscle mass, strength, or weight without medical necessity and without a  
192 written prescription by any practitioner in the course of his professional practice; or

193 (B) improve performance in any form of human exercise, sport, or game.

194 (b) The division may limit revocation or suspension of a license to a particular  
195 controlled substance with respect to which grounds for revocation or suspension exist.

196 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to  
197 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of  
198 Occupational and Professional Licensing Act, and conducted in conjunction with the  
199 appropriate representative committee designated by the director of the department.

200 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and  
201 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,  
202 except where the division is designated by law to perform those functions, or, when not  
203 designated by law, is designated by the executive director of the Department of Commerce to  
204 conduct the proceedings.

205 (d) (i) The division may suspend any license simultaneously with the institution of  
206 proceedings under this section if it finds there is an imminent danger to the public health or  
207 safety.

208 (ii) Suspension shall continue in effect until the conclusion of proceedings, including  
209 judicial review, unless withdrawn by the division or dissolved by a court of competent  
210 jurisdiction.

211 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled  
212 substances owned or possessed by the licensee may be placed under seal in the discretion of the  
213 division.

214 (ii) Disposition may not be made of substances under seal until the time for taking an  
215 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,  
216 orders the sale of perishable substances and the proceeds deposited with the court.

217 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

218 (f) The division shall notify promptly the Drug Enforcement Administration of all  
219 orders suspending or revoking a license and all forfeitures of controlled substances.

220 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and  
221 inventories in conformance with the record keeping and inventory requirements of federal and  
222 state law and any additional rules issued by the division.

223 (b) (i) Every physician, dentist, veterinarian, practitioner, or other person who is  
224 authorized to administer or professionally use a controlled substance shall keep a record of the  
225 drugs received by him and a record of all drugs administered, dispensed, or professionally used  
226 by him otherwise than by a prescription.

227 (ii) A person using small quantities or solutions or other preparations of those drugs for  
228 local application has complied with this Subsection (5)(b) if he keeps a record of the quantity,  
229 character, and potency of those solutions or preparations purchased or prepared by him, and of  
230 the dates when purchased or prepared.

231 (6) Controlled substances in Schedules I through V may be distributed only by a  
232 licensee and pursuant to an order form prepared in compliance with division rules or a lawful  
233 order under the rules and regulations of the United States.

234 (7) (a) A person may not write or authorize a prescription for a controlled substance  
235 unless he is:

236 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state  
237 or under the laws of another state having similar standards; and

238 (ii) licensed under this chapter or under the laws of another state having similar  
239 standards.

240 (b) A person other than a pharmacist licensed under the laws of this state, or his  
241 licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a  
242 controlled substance.

243 (c) (i) A controlled substance may not be dispensed without the written prescription of  
244 a practitioner, if the written prescription is required by the federal Controlled Substances Act.



245 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in  
246 conformity with Subsection (7)(d).

247 (iii) In emergency situations, as defined by division rule, controlled substances may be  
248 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms  
249 designated by the division and filed by the pharmacy.

250 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with  
251 Subsection (7)(d).

252 (d) Except for emergency situations designated by the division, a person may not issue,  
253 fill, compound, or dispense a prescription for a controlled substance unless the prescription is  
254 signed by the prescriber in ink or indelible pencil or is signed with an electronic or digital  
255 signature of the prescriber as authorized by division rule, and contains the following  
256 information:

257 (i) the name, address, and registry number of the prescriber;

258 (ii) the name, address, and age of the person to whom or for whom the prescription is  
259 issued;

260 (iii) the date of issuance of the prescription; and

261 (iv) the name, quantity, and specific directions for use by the ultimate user of the  
262 controlled substance.

263 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I  
264 controlled substance.

265 (f) Except when administered directly to an ultimate user by a licensed practitioner,  
266 controlled substances are subject to the following restrictions:

267 (i) (A) A prescription for a Schedule II substance may not be refilled.

268 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a  
269 one-month's supply, as directed on the daily dosage rate of the prescriptions.

270 (ii) A Schedule III or IV controlled substance may be filled only within six months of  
271 issuance, and may not be refilled more than six months after the date of its original issuance or  
272 be refilled more than five times after the date of the prescription unless renewed by the  
273 practitioner.

274 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's  
275 prescription directs, but they may not be refilled one year after the date the prescription was

276 issued unless renewed by the practitioner.

277 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not  
278 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days  
279 after the date the prescription was issued, or 30 days after the dispensing date, if that date is  
280 specified separately from the date of issue.

281 (v) A practitioner may issue more than one prescription at the same time for the same  
282 Schedule II controlled substance, but only under the following conditions:

283 (A) no more than three prescriptions for the same Schedule II controlled substance may  
284 be issued at the same time;

285 (B) no one prescription may exceed a 30-day supply;

286 (C) a second or third prescription shall include the date of issuance and the date for  
287 dispensing; and

288 (D) unless the practitioner determines there is a valid medical reason to the contrary,  
289 the date for dispensing a second or third prescription may not be fewer than 30 days from the  
290 dispensing date of the previous prescription.

291 (vi) Each prescription for a controlled substance may contain only one controlled  
292 substance per prescription form and may not contain any other legend drug or prescription  
293 item.

294 (g) An order for a controlled substance in Schedules II through V for use by an  
295 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this  
296 Subsection (7) if the order is:

297 (i) issued or made by a prescribing practitioner who holds an unrestricted registration  
298 with the federal Drug Enforcement Administration, and an active Utah controlled substance  
299 license in good standing issued by the division under this section, or a medical resident who is  
300 exempted from licensure under Subsection 58-1-307(1)(c);

301 (ii) authorized by the prescribing practitioner treating the patient and the prescribing  
302 practitioner designates the quantity ordered;

303 (iii) entered upon the record of the patient, the record is signed by the prescriber  
304 affirming his authorization of the order within 48 hours after filling or administering the order,  
305 and the patient's record reflects the quantity actually administered; and

306 (iv) filled and dispensed by a pharmacist practicing his profession within the physical

307 structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital  
308 and the amount taken from the supply is administered directly to the patient authorized to  
309 receive it.

310 (h) A practitioner licensed under this chapter may not prescribe, administer, or  
311 dispense a controlled substance to a [~~minor~~] child, without first obtaining the consent required  
312 in Section 78-14-5 of a parent, guardian, or person standing in loco parentis of the [~~minor~~]  
313 child except in cases of an emergency. For purposes of this Subsection (7)(h), [~~minor~~]  
314 "child" has the same meaning as defined in Section 78-3a-103, and "emergency" means any  
315 physical condition requiring the administration of a controlled substance for immediate relief  
316 of pain or suffering.

317 (i) A practitioner licensed under this chapter may not prescribe or administer dosages  
318 of a controlled substance in excess of medically recognized quantities necessary to treat the  
319 ailment, malady, or condition of the ultimate user.

320 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense  
321 any controlled substance to another person knowing that the other person is using a false name,  
322 address, or other personal information for the purpose of securing the controlled substance.

323 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense  
324 a controlled substance may not manufacture, distribute, or dispense a controlled substance to  
325 another licensee or any other authorized person not authorized by this license.

326 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a  
327 symbol required by this chapter or by a rule issued under this chapter.

328 (m) A person licensed under this chapter may not refuse or fail to make, keep, or  
329 furnish any record notification, order form, statement, invoice, or information required under  
330 this chapter.

331 (n) A person licensed under this chapter may not refuse entry into any premises for  
332 inspection as authorized by this chapter.

333 (o) A person licensed under this chapter may not furnish false or fraudulent material  
334 information in any application, report, or other document required to be kept by this chapter or  
335 willfully make any false statement in any prescription, order, report, or record required by this  
336 chapter.

337 (8) (a) (i) Any person licensed under this chapter who is found by the division to have

338 violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a penalty not to  
339 exceed \$5,000. The division shall determine the procedure for adjudication of any violations in  
340 accordance with Sections 58-1-106 and 58-1-108.

341 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the  
342 General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

343 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through  
344 (7)(j) is:

345 (i) upon first conviction, guilty of a class B misdemeanor;

346 (ii) upon second conviction, guilty of a class A misdemeanor; and

347 (iii) on third or subsequent conviction, guilty of a third degree felony.

348 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through  
349 (7)(o) shall upon conviction be guilty of a third degree felony.

350 (9) Any information communicated to any licensed practitioner in an attempt to  
351 unlawfully procure, or to procure the administration of, a controlled substance is not considered  
352 to be a privileged communication.

353 Section 2. Section **62A-4a-101** is amended to read:

354 **62A-4a-101. Definitions.**

355 As used in this chapter:

356 (1) "Abuse" means:

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

358 (b) negligent treatment;

359 (c) sexual exploitation; or

360 (d) any sexual abuse.

361 (2) "Adoption services" means:

362 (a) placing children for adoption;

363 (b) subsidizing adoptions under Section 62A-4a-105;

364 (c) supervising adoption placements until the adoption is finalized by the court;

365 (d) conducting adoption studies;

366 (e) preparing adoption reports upon request of the court; and

367 (f) providing postadoptive placement services, upon request of a family, for the  
368 purpose of stabilizing a possible disruptive placement.

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

371 (4) "Child" [~~has the same meaning as "minor," as defined in this section~~] means, except  
372 as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of  
373 age.

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

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

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

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

381 (9) "Custody," with regard to the division, means the custody of a [~~child~~] minor in the  
382 division as of the date of disposition.

383 (10) "Day-care services" means care of a child for a portion of the day which is less  
384 than 24 hours:

385 (a) in the child's own home by a responsible person; or

386 (b) outside of the child's home in a:

387 (i) day-care center;

388 (ii) family group home; or

389 (iii) family child care home.

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

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

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

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

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

397 (ii) treatment services for domestic violence perpetrators.

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

399 (i) "abuse" means the same as that term is defined in Subsection 30-6-1(1); and

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

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

406 (16) ~~[(a)] "Minor" means [a person under 18 years of age. (b) "Minor" may also~~  
407 ~~include a person under 21 years of age], except as provided in Part 7, Interstate Compact on~~  
408 Placement of Children:

409 (a) a child; or

410 (b) a person:

411 (i) who is at least 18 years of age and younger than 21 years of age; and

412 (ii) for whom the division has been specifically ordered by the juvenile court to provide  
413 services.

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

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

417 (i) abandonment of a child, except as provided in Part 8, Safe Relinquishment of a  
418 Newborn Child;

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

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

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

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

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

431 an appropriate education.

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

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

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

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

442 (a) the shelter hearing; or

443 (b) the child's return home.

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

445 (a) in response to evidence of neglect, abuse, or dependency of a [~~minor~~] child;

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

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

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

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

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

453 (ii) to cause a protective order to be issued for the protection of the [~~minor~~] child, when  
454 appropriate; and

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

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

458 (B) placement in substitute care; and

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

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

462 child.

463 (22) "Severe neglect" means neglect that causes or threatens to cause serious harm to a  
464 [minor] child.

465 (23) "Shelter care" means the temporary care of ~~[minors in nonsecure facilities]~~ a  
466 minor in a nonsecure facility.

467 (24) "State" means:

468 (a) a state of the United States;

469 (b) the District of Columbia;

470 (c) the Commonwealth of Puerto Rico;

471 (d) the Virgin Islands;

472 (e) Guam;

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

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

475 (25) "Severe emotional abuse" means emotional abuse that causes or threatens to cause  
476 serious harm to a [minor] child.

477 (26) "Severe physical abuse" means physical abuse that causes or threatens to cause  
478 serious harm to a [minor] child.

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

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

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

487 (30) "Substitute care" means:

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

492 (b) services provided for a ~~[child]~~ minor awaiting placement; and



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

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

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

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

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

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

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

513 Section 3. Section **62A-4a-105** is amended to read:

514 **62A-4a-105. Division responsibilities.**

515 The division shall:

516 (1) administer services to [~~children~~] minors and families, including child welfare  
517 services, domestic violence services, and all other responsibilities that the Legislature or the  
518 executive director may assign to the division;

519 (2) establish standards for all contract providers of out-of-home care for [~~children~~]  
520 minors and families;

521 (3) cooperate with the federal government in the administration of child welfare and  
522 domestic violence programs and other human service activities assigned by the department;

523 (4) provide for the compilation of relevant information, statistics, and reports on child

524 and family service matters in the state;

525 (5) prepare and submit to the department, the governor, and the Legislature reports of  
526 the operation and administration of the division in accordance with the requirements of  
527 Sections 62A-4a-117 and 62A-4a-118;

528 (6) promote and enforce state and federal laws enacted for the protection of abused,  
529 neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in  
530 accordance with the requirements of this chapter, unless administration is expressly vested in  
531 another division or department of the state. In carrying out the provisions of this Subsection  
532 (6), the division shall cooperate with the juvenile courts, the Division of Juvenile Justice  
533 Services, and with all public and private licensed child welfare agencies and institutions to  
534 develop and administer a broad range of services and supports. The division shall take the  
535 initiative in all matters involving the protection of abused or neglected children if adequate  
536 provisions have not been made or are not likely to be made, and shall make expenditures  
537 necessary for the care and protection of those children, within the division's budget;

538 (7) provide substitute care for dependent, abused, neglected, and delinquent children,  
539 establish standards for substitute care facilities, and approve those facilities;

540 (8) provide adoption assistance to persons adopting children with special needs under  
541 Part 9, Adoption Assistance, of this chapter. The financial support provided under this  
542 Subsection (8) may not exceed the amounts the division would provide for the child as a legal  
543 ward of the state;

544 (9) cooperate with the Employment Development Division in the Department of  
545 Workforce Services in meeting social and economic needs of individuals eligible for public  
546 assistance;

547 (10) conduct court-ordered home evaluations for the district and juvenile courts with  
548 regard to child custody issues. The court shall order either or both parties to reimburse the  
549 division for the cost of that evaluation, in accordance with the community rate for that service  
550 or with the department's fee schedule rate;

551 (11) provide noncustodial and in-home preventive services, designed to prevent family  
552 breakup, family preservation services, and reunification services to families whose children are  
553 in substitute care in accordance with the requirements of this chapter and Title 78, Chapter 3a,  
554 Juvenile Court Act of 1996;

- 555 (12) provide protective supervision of a family, upon court order, in an effort to  
556 eliminate abuse or neglect of a child in that family;
- 557 (13) establish programs and provide services to minors who have been placed in the  
558 custody of the division for reasons other than abuse or neglect, pursuant to Section  
559 62A-4a-250;
- 560 (14) provide shelter care in accordance with the requirements of this chapter and Title  
561 78, Chapter 3a, Juvenile Court Act of 1996;
- 562 (15) provide social studies and reports for the juvenile court in accordance with Section  
563 78-3a-505;
- 564 (16) arrange for and provide training for staff and providers involved in the  
565 administration and delivery of services offered by the division in accordance with this chapter;
- 566 (17) provide domestic violence services in accordance with the requirements of federal  
567 law, and establish standards for all direct or contract providers of domestic violence services.  
568 Within appropriations from the Legislature, the division shall provide or contract for a variety  
569 of domestic violence services and treatment methods;
- 570 (18) ensure regular, periodic publication, including electronic publication, regarding  
571 the number of children in the custody of the division who have a permanency goal of adoption,  
572 or for whom a final plan of termination of parental rights has been approved, pursuant to  
573 Section 78-3a-312, and promote adoption of those children;
- 574 (19) provide protective services to victims of domestic violence, as defined in Section  
575 77-36-1, and their children, in accordance with the provisions of this chapter and of Title 78,  
576 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings;
- 577 (20) refer an individual receiving services from the division to the local substance  
578 abuse authority or other private or public resource for court-ordered drug screening test. The  
579 court shall order the individual to pay all costs of the tests unless:
- 580 (a) the cost of the drug screening is specifically funded or provided for by other federal  
581 or state programs;
- 582 (b) the individual is a participant in a drug court; or
- 583 (c) the court finds that the individual is impecunious;
- 584 (21) have authority to contract with a private, nonprofit organization to recruit and train  
585 foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

586 (22) perform such other duties and functions as required by law.

587 Section 4. Section **62A-4a-110** is amended to read:

588 **62A-4a-110. Receipt of gifts -- Volunteer services.**

589 (1) The division may receive gifts, grants, devises, and donations. These gifts, grants,  
590 devises, donations, or their proceeds shall be credited to the program which the donor  
591 designates and may be used for the purposes requested by the donor, if the request conforms to  
592 state and federal policy. If a donor makes no specific request, the division may use the gift,  
593 grant, devise, or donation for the best interest of the division.

594 (2) The division may:

595 (a) accept and use volunteer labor or services of applicants, recipients, and other  
596 members of the community. The division may reimburse volunteers for necessary expenses,  
597 including transportation, and provide recognition awards and recognition meals for services  
598 rendered. The division may cooperate with volunteer organizations in collecting funds to be  
599 used in the volunteer program. Those donated funds shall be considered as private, nonlapsing  
600 funds until used by the division, and may be invested under guidelines established by the state  
601 treasurer;

602 (b) encourage merchants and providers of services to donate goods and services or to  
603 provide them at a nominal price or below cost;

604 (c) distribute goods to applicants or consumers free or for a nominal charge and tax  
605 free; and

606 (d) appeal to the public for funds to meet applicants' and consumers' needs which are  
607 not otherwise provided for by law. Those appeals may include Sub-for-Santa Programs,  
608 recreational programs for [~~children~~] minors, and requests for household appliances and home  
609 repairs, under policies established by the board.

610 Section 5. Section **62A-4a-116.1** is amended to read:

611 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**  
612 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**  
613 **Rights of alleged perpetrator -- Juvenile court finding.**

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

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

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

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

621 (B) a notation to the effect that an investigation regarding the person is pending; and  
622 (b) if the division considers it advisable, file a petition for substantiation within one  
623 year of the supported finding.

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

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

627 (i) severe or chronic physical abuse;

628 (ii) sexual abuse;

629 (iii) sexual exploitation;

630 (iv) abandonment;

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

632 (vi) chronic or severe neglect; or

633 (vii) chronic or severe emotional abuse; or

634 (b) if committed by a ~~[person under the age of 18]~~ child:

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

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

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

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

642 (b) a person's conduct that:

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

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

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

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

- 653 (i) age;
- 654 (ii) social factors;
- 655 (iii) emotional factors;
- 656 (iv) sexual factors;
- 657 (v) intellectual factors;
- 658 (vi) family risk factors; and
- 659 (vii) other related considerations.

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

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

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

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

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

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

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

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

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

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

682 (i) file a written request asking the division to review the findings under Subsection  
683 (2);

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

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

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

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

699 (d) Consent under Subsection (6)(a)(iii) by a [~~minor~~] child shall be given by the  
700 [~~minor's~~] child's parent or guardian.

701 (7) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall make  
702 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections  
703 78-3a-320(1) and (2).

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

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

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

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

710 Section 6. Section **62A-4a-120** is amended to read:

711 **62A-4a-120. Accommodation of moral and religious beliefs and culture.**

712 (1) The division shall adopt rules in accordance with Title 63, Chapter 46a, Utah  
713 Administrative Rulemaking Act, and establish procedures to accommodate the moral and  
714 religious beliefs, and culture, of the [~~children~~] minors and families it serves, including:

715 (a) the immediate family and other relatives of a [~~child~~] minor in any type of custody or  
716 otherwise under the jurisdiction of the court;

717 (b) foster and other out-of-home placement families; and

718 (c) adoptive families.

719 (2) The accommodation under Subsection (1) applies to placements, treatment plans,  
720 services, and other activities of the division.

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

722 **62A-4a-202.1. Entering home of a child -- Taking a child into protective custody**  
723 **-- Caseworker accompanied by peace officer -- Preventive services -- Shelter care or**  
724 **emergency kinship.**

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

728 (a) the state officer, peace officer, or child welfare worker has obtained:

729 (i) the consent of the [~~minor's~~] child's parent or guardian; or

730 (ii) a court order issued under Section 78-3a-106; or

731 (b) there exist exigent circumstances.

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

735 (3) If possible, consistent with the [~~minor's~~] child's safety and welfare, before taking a  
736 [~~minor~~] child into protective custody, the worker shall also determine whether there are  
737 services reasonably available to the worker which, if provided to the [~~minor's~~] child's parent or  
738 to the [~~minor~~] child, would eliminate the need to remove the [~~minor~~] child from the custody of  
739 the [~~minor's~~] child's parent or guardian. If those services are reasonably available, they shall be  
740 utilized. In determining whether services are reasonably available, and in making reasonable



741 efforts to provide those services, the [minor's] child's health, safety, and welfare shall be the  
742 worker's paramount concern.

743 (4) (a) A [minor] child removed or taken into custody under this section may not be  
744 placed or kept in a secure detention facility pending court proceedings unless the [minor] child  
745 is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

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

748 (i) a shelter facility; or

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

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

751 **62A-4a-202.2. Notice to parents upon removal of child -- Locating noncustodial**  
752 **parent -- Written statement of procedural rights and preliminary proceedings.**

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

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

758 (ii) the reasons for removal and placement in protective custody;

759 (iii) that a written statement is available that explains the parent's procedural rights and  
760 the preliminary stages of the investigation and shelter hearing; and

761 (iv) of a telephone number where the parent may access further information.

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

766 (2) The attorney general's office shall adopt, print, and distribute a form for the written  
767 statement described in Subsection (1)(a)(iii). The statement shall be made available to the  
768 division and for distribution in schools, health care facilities, local police and sheriff's offices,  
769 the division, and any other appropriate office within the Department of Human Services. The  
770 notice shall be in simple language and include at least the following information:

771 (a) the conditions under which a [minor] child may be released, hearings that may be

772 required, and the means by which the parent may access further specific information about a  
773 [minor's] child's case and conditions of protective and temporary custody; and

774 (b) the rights of a [minor] child and of the parent or guardian to legal counsel and to  
775 appeal.

776 (3) If a good faith attempt was made by the peace officer or caseworker to notify the  
777 parent or guardian in accordance with the requirements of Subsection (1), failure to notify shall  
778 be considered to be due to circumstances beyond the control of the peace officer or caseworker  
779 and may not be construed to permit a new defense to any juvenile or judicial proceeding or to  
780 interfere with any rights, procedures, or investigations provided for by this chapter or Title 78,  
781 Chapter 3a, Juvenile [Courts] Court Act of 1996.

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

783 **62A-4a-202.3. Investigation -- Supported or unsupported reports -- Child in**  
784 **protective custody.**

785 (1) When a child is taken into protective custody in accordance with Section  
786 62A-4a-202.1, 78-3a-106, or 78-3a-301, or when the division takes any other action which  
787 would require a shelter hearing under Subsection 78-3a-306(1), the division shall immediately  
788 initiate an investigation of the:

789 (a) circumstances of the [minor] child; and

790 (b) grounds upon which the decision to place the [minor] child into protective custody  
791 was made.

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

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

795 (i) the same child;

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

797 (iii) the alleged perpetrator;

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

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

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

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

803 parents or guardian;

804 (d) an interview with the person who reported the abuse, unless the report was made

805 anonymously;

806 (e) where possible and appropriate, interviews with other third parties who have had

807 direct contact with the child, including:

808 (i) school personnel; and

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

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

811 (i) the division has reasonable cause to believe that the reported abuse was committed

812 by a person who:

813 (A) is not the child's parent; and

814 (B) does not:

815 (I) live in the child's home; or

816 (II) otherwise have access to the child in the child's home; or

817 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and

818 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or

819 failure to meet the child's medical needs, a medical examination, obtained no later than 24

820 hours after the child is placed in protective custody.

821 (3) The division may rely on a written report of a prior interview rather than

822 conducting an additional interview, if:

823 (a) law enforcement:

824 (i) previously conducted a timely and thorough investigation regarding the alleged

825 abuse, neglect, or dependency; and

826 (ii) produced a written report;

827 (b) the investigation described in Subsection (3)(a)(i) included one or more of the

828 interviews required by Subsection (2); and

829 (c) the division finds that an additional interview is not in the best interest of the child.

830 (4) (a) The division's determination of whether a report is supported or unsupported

831 may be based on the child's statements alone.

832 (b) Inability to identify or locate the perpetrator may not be used by the division as a

833 basis for:

- 834 (i) determining that a report is unsupported; or
- 835 (ii) closing the case.
- 836 (c) The division may not determine a case to be unsupported or identify a case as
- 837 unsupported solely because the perpetrator was an out-of-home perpetrator.
- 838 (d) Decisions regarding whether a report is supported, unsupported, or without merit
- 839 shall be based on the facts of the case at the time the report was made.
- 840 (5) The division should maintain protective custody of the child if it finds that one or
- 841 more of the following conditions exist:
  - 842 (a) the [minor] child does not have a natural parent, guardian, or responsible relative
  - 843 who is able and willing to provide safe and appropriate care for the [minor] child;
  - 844 (b) (i) shelter of the [minor] child is a matter of necessity for the protection of the
  - 845 [minor] child; and
  - 846 (ii) there are no reasonable means by which the [minor] child can be protected in:
    - 847 (A) the [minor's] child's home; or
    - 848 (B) the home of a responsible relative;
    - 849 (c) there is substantial evidence that the parent or guardian is likely to flee the
    - 850 jurisdiction of the court; or
    - 851 (d) the [minor] child has left a previously court ordered placement.
    - 852 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding
    - 853 weekends and holidays, the division shall:
      - 854 (i) convene a child protection team to review the circumstances regarding removal of
      - 855 the child from the child's home or school; and
      - 856 (ii) prepare the testimony and evidence that will be required of the division at the
      - 857 shelter hearing, in accordance with Section 78-3a-306.
      - 858 (b) The child protection team described in Subsection (6)(a)(i) shall include:
        - 859 (i) the caseworker assigned to the case;
        - 860 (ii) the caseworker who made the decision to remove the child;
        - 861 (iii) a representative of the school or school district where the child attends school;
        - 862 (iv) the peace officer who removed the child from the home;
        - 863 (v) a representative of the appropriate Children's Justice Center, if one is established
        - 864 within the county where the child resides;

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

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

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

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

874 (i) audio or video taped; and

875 (ii) except as provided in Subsection (7)(b), conducted with a support person of the  
876 child's choice present.

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

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

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

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

885 (b) contacting local schools;

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

887 (d) checking public assistance records.

888 Section 10. Section **62A-4a-402** is amended to read:

889 **62A-4a-402. Definitions.**

890 As used in this part:

891 (1) "A person responsible for a child's care" means the child's parent, guardian, or other  
892 person responsible for the child's care, whether in the same home as the child, a relative's  
893 home, a group, family, or center day care facility, a foster care home, or a residential  
894 institution.

895 [~~(2) "Child" means a person under 18 years of age.~~]

896            [~~(3)~~] (2) "Child abuse or neglect" means causing harm or threatened harm to a child's  
897 health or welfare.

898            [~~(4)~~] (3) "Harm or threatened harm" means damage or threatened damage to the  
899 physical or emotional health and welfare of a child through neglect or abuse, and includes but  
900 is not limited to:

901            (a) causing nonaccidental physical or mental injury;

902            (b) incest;

903            (c) sexual abuse;

904            (d) sexual exploitation;

905            (e) molestation; or

906            (f) repeated negligent treatment or maltreatment.

907            [~~(5)~~] (4) "Incest" means having sexual intercourse with a person whom the perpetrator  
908 knows to be his or her ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first  
909 cousin. The relationships referred to in this subsection include blood relationships of the whole  
910 or half blood without regard to legitimacy, and include relationships of parent and child by  
911 adoption, and relationships of stepparent and stepchild while the marriage creating the  
912 relationship of a stepparent and stepchild exists.

913            [~~(6)~~] (5) "Molestation" means touching the anus or any part of the genitals of a child or  
914 otherwise taking indecent liberties with a child, or causing a child to take indecent liberties  
915 with the perpetrator or another with the intent to arouse or gratify the sexual desire of any  
916 person.

917            [~~(7)~~] (6) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or  
918 molestation directed towards a child.

919            [~~(8)~~] (7) "Sexual exploitation of [~~minors~~] a child" means knowingly employing, using,  
920 persuading, inducing, enticing or coercing any [~~minor~~] child to pose in the nude for the purpose  
921 of sexual arousal of any person or for profit, or to engage in any sexual or simulated sexual  
922 conduct for the purpose of photographing, filming, recording, or displaying in any way the  
923 sexual or simulated sexual conduct, and includes displaying, distributing, possessing for the  
924 purpose of distribution, or selling material depicting [~~minors~~] a child in the nude or engaging in  
925 sexual or simulated sexual conduct.

926            [~~(9)~~] (8) "Subject" or "subject of the report" means any person reported under this part,

927 including, but not limited to, a child, parent, guardian, or other person responsible for a child's  
928 care.

929 Section 11. Section **62A-4a-412** is amended to read:

930 **62A-4a-412. Reports and information confidential.**

931 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as  
932 well as any other information in the possession of the division obtained as the result of a report  
933 are private, protected, or controlled records under Title 63, Chapter 2, Government Records  
934 Access and Management Act, and may only be made available to:

935 (a) a police or law enforcement agency investigating a report of known or suspected  
936 child abuse or neglect;

937 (b) a physician who reasonably believes that a child may be the subject of abuse or  
938 neglect;

939 (c) an agency that has responsibility or authority to care for, treat, or supervise a [~~child~~]  
940 minor who is the subject of a report;

941 (d) a contract provider that has a written contract with the division to render services to  
942 a [~~child~~] minor who is the subject of a report;

943 (e) any subject of the report, the natural parents of the [~~minor~~] child, and the guardian  
944 ad litem;

945 (f) a court, upon a finding that access to the records may be necessary for the  
946 determination of an issue before the court, provided that in a divorce, custody, or related  
947 proceeding between private parties, the record alone is:

948 (i) limited to objective or undisputed facts that were verified at the time of the  
949 investigation; and

950 (ii) devoid of conclusions drawn by the division or any of the division's workers on the  
951 ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or  
952 neglect of another person;

953 (g) an office of the public prosecutor or its deputies in performing an official duty;

954 (h) a person authorized by a Children's Justice Center, for the purposes described in  
955 Section 67-5b-102;

956 (i) a person engaged in bona fide research, when approved by the director of the  
957 division, if the information does not include names and addresses;

958 (j) the State Office of Education, acting on behalf of itself or on behalf of a school  
959 district, for the purpose of evaluating whether an individual should be permitted to obtain or  
960 retain a license as an educator or serve as an employee or volunteer in a school, limited to  
961 information with substantiated findings involving an alleged sexual offense, an alleged felony  
962 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,  
963 Chapter 5, Offenses Against the Person, and with the understanding that the office must  
964 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond  
965 to the report before making a decision concerning licensure or employment;

966 (k) any person identified in the report as a perpetrator or possible perpetrator of child  
967 abuse or neglect, after being advised of the screening prohibition in Subsection (2);

968 (l) a person filing a petition for a child protective order on behalf of a [~~minor~~] child  
969 who is the subject of the report; and

970 (m) a licensed child-placing agency or person who is performing a preplacement  
971 adoptive evaluation in accordance with the requirements of Section 78-30-3.5.

972 (2) (a) A person, unless listed in Subsection (1), may not request another person to  
973 obtain or release a report or any other information in the possession of the division obtained as  
974 a result of the report that is available under Subsection (1)(k) to screen for potential  
975 perpetrators of child abuse or neglect.

976 (b) A person who requests information knowing that it is a violation of Subsection  
977 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

978 (3) (a) Except as provided in Section 62A-4a-116.3 and Subsection (3)(b), the division  
979 and law enforcement officials shall ensure the anonymity of the person or persons making the  
980 initial report and any others involved in its subsequent investigation.

981 (b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but  
982 including this chapter and Title 63, Chapter 2, Government Records Access and Management  
983 Act, when the division makes a report or other information in its possession available under  
984 Subsection (1)(e) to a subject of the report or a parent of a [~~minor~~] child, the division shall  
985 remove from the report or other information only the names, addresses, and telephone numbers  
986 of individuals or specific information that could:

987 (i) identify the referent;

988 (ii) impede a criminal investigation; or



989 (iii) endanger a person's safety.

990 (4) Any person who wilfully permits, or aides and abets the release of data or  
991 information obtained as a result of this part, in the possession of the division or contained on  
992 any part of the Management Information System, in violation of this part or Sections  
993 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

994 (5) The physician-patient privilege is not a ground for excluding evidence regarding a  
995 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in  
996 good faith pursuant to this part.

997 (6) A child-placing agency or person who receives a report in connection with a  
998 preplacement adoptive evaluation pursuant to Section 78-30-3.5:

999 (a) may provide this report to the person who is the subject of the report; and

1000 (b) may provide this report to a person who is performing a preplacement adoptive  
1001 evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed  
1002 child-placing agency or to an attorney seeking to facilitate an adoption.

1003 Section 12. Section **62A-4a-601** is amended to read:

1004 **62A-4a-601. Definitions.**

1005 For purposes of this part:

1006 [~~(1) "Child" means a person under 18 years of age.~~]

1007 [~~(2)~~] (1) "Child placing" means:

1008 (a) receiving, accepting, or providing custody or care for a child, temporarily or  
1009 permanently, for the purpose of finding a person to adopt the child; or

1010 (b) placing a child, temporarily or permanently, in a home for adoption or substitute  
1011 care.

1012 [~~(3)~~] (2) "Child placing agency" means an individual, agency, firm, corporation,  
1013 association, or group children's home that engages in child placing.

1014 Section 13. Section **78-3a-102** is amended to read:

1015 **78-3a-102. Establishment of juvenile court -- Organization and status of court --**  
1016 **Purpose.**

1017 (1) There is established for the state a juvenile court.

1018 (2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks,  
1019 and referees have the power to administer oaths and affirmations.

- 1020 (3) The juvenile court is of equal status with the district courts of the state.
- 1021 (4) The juvenile court is established as a forum for the resolution of all matters
- 1022 properly brought before it, consistent with applicable constitutional and statutory requirements
- 1023 of due process.
- 1024 (5) The purpose of the court under this chapter is to:
- 1025 (a) promote public safety and individual accountability by the imposition of
- 1026 appropriate sanctions on persons who have committed acts in violation of law;
- 1027 (b) order appropriate measures to promote guidance and control, preferably in the
- 1028 minor's own home, as an aid in the prevention of future unlawful conduct and the development
- 1029 of responsible citizenship;
- 1030 (c) where appropriate, order rehabilitation, reeducation, and treatment for persons who
- 1031 have committed acts bringing them within the court's jurisdiction;
- 1032 (d) adjudicate matters that relate to minors who are beyond parental or adult control
- 1033 and to establish appropriate authority over these minors by means of placement and control
- 1034 orders;
- 1035 (e) adjudicate matters that relate to abused, neglected, and dependent [~~minors~~] children
- 1036 and to provide care and protection for [~~these~~] minors by placement, protection, and custody
- 1037 orders;
- 1038 (f) remove a minor from parental custody only where the minor's safety or welfare, or
- 1039 the public safety, may not otherwise be adequately safeguarded; and
- 1040 (g) consistent with the ends of justice, act in the best interests of the minor in all cases
- 1041 and preserve and strengthen family ties.
- 1042 Section 14. Section **78-3a-103** is amended to read:
- 1043 **78-3a-103. Definitions.**
- 1044 (1) As used in this chapter:
- 1045 (a) "Abused child" includes a [~~minor less than 18 years of age~~] child who:
- 1046 (i) has suffered or been threatened with nonaccidental physical or mental harm,
- 1047 negligent treatment, or sexual exploitation; or
- 1048 (ii) has been the victim of any sexual abuse.
- 1049 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
- 1050 alleged in the petition have been proved.

1051 (c) "Adult" means a person 18 years of age or over, except that ~~[persons]~~ a person 18  
1052 years or over under the continuing jurisdiction of the juvenile court pursuant to Section  
1053 78-3a-121 shall be referred to as ~~[minors]~~ a minor.

1054 (d) "Board" means the Board of Juvenile Court Judges.

1055 (e) "Child" means a person under 18 years of age.

1056 ~~(e)~~ (f) "Child placement agency" means:

1057 (i) a private agency licensed to receive ~~[minors]~~ a child for placement or adoption  
1058 under this code; or

1059 (ii) a private agency ~~[receiving minors]~~ that receives a child for placement or adoption  
1060 in another state, which agency is licensed or approved where such license or approval is  
1061 required by law.

1062 ~~(f)~~ (g) "Commit" means, unless specified otherwise:

1063 (i) with respect to a child, to transfer legal custody[-]; and

1064 (ii) with respect to a minor who is at least 18 years of age, to transfer custody.

1065 ~~(g)~~ (h) "Court" means the juvenile court.

1066 ~~(h)~~ (i) "Dependent child" includes a ~~[minor]~~ child who is homeless or without proper  
1067 care through no fault of the ~~[minor's]~~ child's parent, guardian, or custodian.

1068 ~~(i)~~ (j) "Deprivation of custody" means transfer of legal custody by the court from a  
1069 parent or the parents or a previous legal custodian to another person, agency, or institution.

1070 ~~(j)~~ (k) "Detention" means home detention and secure detention as defined in Section  
1071 62A-7-101 for the temporary care of ~~[minors who require]~~ a minor who requires secure custody  
1072 in a physically restricting ~~[facilities]~~ facility:

1073 (i) pending court disposition or transfer to another jurisdiction; or

1074 (ii) while under the continuing jurisdiction of the court.

1075 ~~(k)~~ (l) "Division" means the Division of Child and Family Services.

1076 ~~(l)~~ (m) "Formal referral" means a written report from a peace officer or other person  
1077 informing the court that a minor is or appears to be within the court's jurisdiction and that a  
1078 petition may be filed.

1079 ~~(m)~~ (n) "Group rehabilitation therapy" means psychological and social counseling of  
1080 one or more persons in the group, depending upon the recommendation of the therapist.

1081 ~~(n)~~ (o) "Guardianship of the person" includes the authority to consent to marriage, to

1082 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal  
1083 custody, if legal custody is not vested in another person, agency, or institution.

1084 ~~[(o)]~~ (p) "Habitual truant" is ~~[a school-age minor who:]~~ as defined in Section  
1085 53A-11-101.

1086 ~~[(i) has received:]~~

1087 ~~[(A) more than two truancy citations within one school year from the school in which~~  
1088 ~~the minor is or should be enrolled; and]~~

1089 ~~[(B) eight absences without a legitimate or valid excuse; or]~~

1090 ~~[(ii) in defiance of efforts on the part of school authorities as required under Section~~  
1091 ~~53A-11-103, refuses to regularly attend school or any scheduled period of the school day.]~~

1092 ~~[(p)]~~ (q) "Legal custody" means a relationship embodying the following rights and  
1093 duties:

1094 (i) the right to physical custody of the minor;

1095 (ii) the right and duty to protect, train, and discipline the minor;

1096 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary  
1097 medical care;

1098 (iv) the right to determine where and with whom the minor shall live; and

1099 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1100 ~~[(q)-(i)]~~ (r) "Minor" means ~~[a person under the age of 18 years:]~~

1101 ~~[(ii) "Minor" includes the term "child" as used in other parts of this chapter.]~~

1102 (i) a child; or

1103 (ii) a person who is:

1104 (A) at least 18 years of age and younger than 21 years of age; and

1105 (B) under the jurisdiction of the juvenile court.

1106 ~~[(r)]~~ (s) "Natural parent" means a minor's biological or adoptive parent, and includes  
1107 the minor's noncustodial parent.

1108 ~~[(s)]~~ (t) (i) "Neglected child" means a ~~[minor]~~ child:

1109 (A) whose parent, guardian, or custodian has abandoned the ~~[minor]~~ child, except as  
1110 provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

1111 (B) whose parent, guardian, or custodian has subjected the ~~[minor]~~ child to  
1112 mistreatment or abuse;

1113 (C) who lacks proper parental care by reason of the fault or habits of the parent,  
1114 guardian, or custodian;

1115 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary  
1116 subsistence, education, or medical care, including surgery or psychiatric services when  
1117 required, or any other care necessary for health, safety, morals, or well-being; or

1118 (E) who is at risk of being a neglected or abused child as defined in this chapter  
1119 because another ~~[minor]~~ child in the same home is a neglected or abused child as defined in  
1120 this chapter.

1121 (ii) The aspect of neglect related to education, described in Subsection ~~[(1)(s)(i)(D)]~~  
1122 (1)(t)(i)(D), means that, after receiving notice that a ~~[minor]~~ child has been frequently absent  
1123 from school without good cause, or that the ~~[minor]~~ child has failed to cooperate with school  
1124 authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to  
1125 ensure that the ~~[minor]~~ child receives an appropriate education.

1126 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that  
1127 reason, does not provide specified medical treatment for a ~~[minor]~~ child, is not guilty of  
1128 neglect.

1129 (iv) Notwithstanding Subsection ~~[(1)(s)(i)]~~ (1)(t)(i), a health care decision made for a  
1130 child by the child's parent or guardian does not constitute neglect unless the state or other party  
1131 to the proceeding shows, by clear and convincing evidence, that the health care decision is not  
1132 reasonable and informed.

1133 (v) Nothing in Subsection ~~[(1)(s)(iv)]~~ (1)(t)(iv) may prohibit a parent or guardian from  
1134 exercising the right to obtain a second health care opinion.

1135 ~~[(1)]~~ (u) "Nonjudicial adjustment" means closure of the case by the assigned probation  
1136 officer without judicial determination upon the consent in writing of:

1137 (i) the assigned probation officer; and

1138 (ii) (A) the minor; or

1139 (B) the minor~~[, the]~~ and the minor's parent, legal guardian, or custodian~~[, and the~~  
1140 assigned probation officer].

1141 ~~[(1)]~~ (v) "Probation" means a legal status created by court order following an  
1142 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the  
1143 minor is permitted to remain in the minor's home under prescribed conditions and under

1144 supervision by the probation department or other agency designated by the court, subject to  
1145 return to the court for violation of any of the conditions prescribed.

1146 ~~[(v)]~~ (w) "Protective supervision" means a legal status created by court order following  
1147 an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted  
1148 to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or  
1149 dependency is provided by the probation department or other agency designated by the court.

1150 ~~[(w)]~~ (x) (i) "Residual parental rights and duties" means those rights and duties  
1151 remaining with the parent after legal custody or guardianship, or both, have been vested in  
1152 another person or agency, including:

1153 (A) the responsibility for support;

1154 (B) the right to consent to adoption;

1155 (C) the right to determine the child's religious affiliation; and

1156 (D) the right to reasonable parent-time unless restricted by the court.

1157 (ii) If no guardian has been appointed, "residual parental rights and duties" also include  
1158 the right to consent to:

1159 (A) marriage;

1160 (B) enlistment; and

1161 (C) major medical, surgical, or psychiatric treatment.

1162 ~~[(x)]~~ (y) "Secure facility" means any facility operated by or under contract with the  
1163 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for  
1164 youth offenders committed to the division for custody and rehabilitation.

1165 ~~[(y)]~~ (z) "Shelter" means the temporary care of ~~[minors in]~~ a child in a physically  
1166 unrestricted [facilities] facility pending court disposition or transfer to another jurisdiction.

1167 ~~[(z)]~~ (aa) "State supervision" means a disposition that provides a more intensive level  
1168 of intervention than standard probation but is less intensive or restrictive than a community  
1169 placement with the Division of Juvenile Justice Services.

1170 ~~[(aa)]~~ (bb) "Substantiated" has the same meaning as defined in Subsection  
1171 62A-4a-101(29).

1172 ~~[(bb)]~~ (cc) "Supported" has the same meaning as defined in Subsection  
1173 62A-4a-101(31).

1174 ~~[(cc)]~~ (dd) "Termination of parental rights" means the permanent elimination of all

1175 parental rights and duties, including residual parental rights and duties, by court order.

1176 [~~dd~~] (ee) "Therapist" means a person employed by a state division or agency for the  
1177 purpose of conducting psychological treatment and counseling of a minor in its custody, or any  
1178 other person licensed or approved by the state for the purpose of conducting psychological  
1179 treatment and counseling.

1180 [~~ee~~] (ff) "Unsubstantiated" has the same meaning as defined in Subsection  
1181 62A-4a-101(34).

1182 [~~ff~~] (gg) "Without merit" has the same meaning as defined in Subsection  
1183 62A-4a-101(36).

1184 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the  
1185 Division of Child and Family Services:

1186 (a) "Custody" means the custody of a minor in the Division of Child and Family  
1187 Services as of the date of disposition.

1188 (b) "Protective custody" means the shelter of a [~~minor~~] child by the Division of Child  
1189 and Family Services from the time the [~~minor~~] child is removed from home until the earlier of:

1190 (i) the shelter hearing; or

1191 (ii) the [~~minor's~~] child's return home.

1192 (c) "Temporary custody" means the custody of a [~~minor~~] child in the Division of Child  
1193 and Family Services from the date of the shelter hearing until disposition.

1194 Section 15. Section **78-3a-104** is amended to read:

1195 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

1196 (1) Except as otherwise provided by law, the juvenile court has exclusive original  
1197 jurisdiction in proceedings concerning:

1198 (a) a minor who has violated any federal, state, or local law or municipal ordinance or a  
1199 person younger than 21 years of age who has violated any law or ordinance before becoming  
1200 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating  
1201 and ordinances;

1202 (b) a person 21 years of age or older who has failed or refused to comply with an order  
1203 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's  
1204 21st birthday; however, the continuing jurisdiction is limited to causing compliance with  
1205 existing orders;

1206 (c) a [~~minor~~] child who is an abused child, neglected child, or dependent child, as those  
1207 terms are defined in Section 78-3a-103;

1208 (d) a protective order for a [~~minor~~] child pursuant to the provisions of Title 78, Chapter  
1209 3h, Child Protective Orders, which the juvenile court may transfer to the district court if the  
1210 juvenile court has entered an ex parte protective order and finds that:

1211 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step  
1212 parent of the child who is the object of the petition;

1213 (ii) the district court has a petition pending or an order related to custody or parent-time  
1214 entered under Title 30, Chapter 3, Divorce, Title 30, Chapter 6, Cohabitant Abuse Act, or Title  
1215 78, Chapter [~~45a~~] 45g, Uniform Parentage Act [~~on Paternity~~], in which the petitioner and the  
1216 respondent are parties; and

1217 (iii) the best interests of the child will be better served in the district court;

1218 (e) appointment of a guardian of the person or other guardian of a minor who comes  
1219 within the court's jurisdiction under other provisions of this section;

1220 (f) the termination of the legal parent-child relationship in accordance with Part 4,  
1221 Termination of Parental Rights Act, including termination of residual parental rights and  
1222 duties;

1223 (g) the treatment or commitment of a mentally retarded minor;

1224 (h) a minor who is a habitual truant from school;

1225 (i) the judicial consent to the marriage of a [~~minor~~] child under age 16 upon a  
1226 determination of voluntariness or where otherwise required by law, employment, or enlistment  
1227 of a [~~minor~~] child when consent is required by law;

1228 (j) any parent or parents of a minor committed to a secure youth corrections facility, to  
1229 order, at the discretion of the court and on the recommendation of a secure [~~youth corrections~~]  
1230 facility, the parent or parents of a minor committed to a secure [~~youth corrections~~] facility for a  
1231 custodial term, to undergo group rehabilitation therapy under the direction of a secure [~~youth~~  
1232 ~~corrections~~] facility therapist, who has supervision of that parent's or parents' minor, or any  
1233 other therapist the court may direct, for a period directed by the court as recommended by a  
1234 secure [~~youth corrections~~] facility;

1235 (k) a minor under Title 55, Chapter 12, Interstate Compact [~~on~~] for Juveniles;

1236 (l) the treatment or commitment of a mentally ill child. The court may commit a child



1237 to the physical custody of a local mental health authority in accordance with the procedures and  
1238 requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to  
1239 Division of Substance Abuse and Mental Health. The court may not commit a child directly to  
1240 the Utah State Hospital;

1241 (m) the commitment of a [~~minor~~] child in accordance with Section 62A-15-301;

1242 (n) de novo review of final agency actions resulting from an informal adjudicative  
1243 proceeding as provided in Section 63-46b-15; and

1244 (o) adoptions conducted in accordance with the procedures described in Title 78,  
1245 Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the  
1246 rights of a parent and finds that adoption is in the best interest of the [~~minor~~] child.

1247 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive  
1248 jurisdiction over any traffic or boating offense committed by a [~~minor~~] person under 16 years  
1249 of age and concurrent jurisdiction over all other traffic or boating offenses committed by a  
1250 [~~minor~~] person 16 years of age or older, except that the court shall have exclusive jurisdiction  
1251 over the following offenses committed by a [~~minor under 18 years of age~~] child:

1252 (a) Section 76-5-207, automobile homicide;

1253 (b) Section 41-6a-502, operating a vehicle while under the influence of alcohol or  
1254 drugs;

1255 (c) Section 41-6a-528, reckless driving or Section 73-18-12, reckless operation;

1256 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or  
1257 semitrailer for an extended period of time; and

1258 (e) Section 41-6a-206 or 73-18-20, fleeing a peace officer.

1259 (3) The court also has jurisdiction over traffic and boating offenses that are part of a  
1260 single criminal episode filed in a petition that contains an offense over which the court has  
1261 jurisdiction.

1262 (4) The juvenile court has jurisdiction over an ungovernable or runaway [~~minor~~] child  
1263 who is referred to it by the Division of Child and Family Services or by public or private  
1264 agencies that contract with the division to provide services to that [~~minor~~] child where, despite  
1265 earnest and persistent efforts by the division or agency, the [~~minor~~] child has demonstrated that  
1266 [~~he~~] the child:

1267 (a) is beyond the control of [~~his~~] the child's parent, guardian, lawful custodian, or

1268 school authorities to the extent that [his] the child's behavior or condition endangers [his] the  
1269 child's own welfare or the welfare of others; or

1270 (b) has run away from home.

1271 (5) This section does not restrict the right of access to the juvenile court by private  
1272 agencies or other persons.

1273 (6) The juvenile court has jurisdiction of all magistrate functions relative to cases  
1274 arising under Section 78-3a-602.

1275 (7) The juvenile court has jurisdiction to make a finding of substantiated,  
1276 unsubstantiated, or without merit, in accordance with Section 78-3a-320.

1277 Section 16. Section **78-3a-105** is amended to read:

1278 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

1279 (1) The district court or other court has concurrent jurisdiction with the juvenile court  
1280 as follows:

1281 (a) when a person who is 18 years of age or older and who is under the continuing  
1282 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local  
1283 law or municipal ordinance; and

1284 (b) in establishing paternity and ordering testing for the purposes of establishing  
1285 paternity, in accordance with Title 78, Chapter ~~[45a]~~ 45g, Uniform Parentage Act ~~[on~~  
1286 Paternity], with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency  
1287 Proceedings, or Part 4, Termination of Parental Rights Act.

1288 (2) The juvenile court has jurisdiction over petitions to modify a minor's birth  
1289 certificate if the court otherwise has jurisdiction over the minor.

1290 (3) This section does not deprive the district court of jurisdiction to appoint a guardian  
1291 for a ~~[minor]~~ child, or to determine the support, custody, and parent-time of a ~~[minor]~~ child  
1292 upon writ of habeas corpus or when the question of support, custody, and parent-time is  
1293 incidental to the determination of a cause in the district court.

1294 (4) (a) Where a support, custody, or parent-time award has been made by a district  
1295 court in a divorce action or other proceeding, and the jurisdiction of the district court in the  
1296 case is continuing, the juvenile court may acquire jurisdiction in a case involving the same  
1297 ~~[minor]~~ child if the ~~[minor]~~ child is dependent, abused, neglected, or otherwise comes within  
1298 the jurisdiction of the juvenile court under Section 78-3a-104.

1299 (b) The juvenile court may, by order, change the custody, subject to Subsection  
1300 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as  
1301 necessary to implement the order of the juvenile court for the safety and welfare of the [minor]  
1302 child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court  
1303 continues.

1304 (c) When a copy of the findings and order of the juvenile court has been filed with the  
1305 district court, the findings and order of the juvenile court are binding on the parties to the  
1306 divorce action as though entered in the district court.

1307 (5) The juvenile court has jurisdiction over questions of custody, support, and  
1308 parent-time, of a minor who comes within the court's jurisdiction under this section or Section  
1309 78-3a-104.

1310 Section 17. Section **78-3a-106** is amended to read:

1311 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

1312 (1) The court has authority to issue search warrants, subpoenas, or investigative  
1313 subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for  
1314 the same purposes, in the same manner and pursuant to the same procedures set forth in the  
1315 code of criminal procedure for the issuance of search warrants, subpoenas, or investigative  
1316 subpoenas in other trial courts in the state.

1317 (2) (a) The court may issue a warrant authorizing a child protective services worker or  
1318 peace officer to search for a child and take the child into protective custody if it appears to the  
1319 court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace  
1320 officer or any other person, and upon the examination of other witnesses, if required by the  
1321 judge, that there is probable cause to believe that:

1322 (i) there is an immediate threat to the safety of a child; and

1323 (ii) the applicant certifies to the court in writing or by recorded sworn testimony as to  
1324 the efforts, if any, that have been made to give notice to the [minor's] child's parent or guardian  
1325 and the reasons supporting the claim that notice and an opportunity to be heard should not be  
1326 required.

1327 (b) A warrant removing a child from [his] the child's home or school, or having the  
1328 effect of depriving a parent or guardian of the care, custody, and control of their [minor] child,  
1329 may not be issued without notice to the [minor's] child's parents and opportunity to be heard

1330 unless the requirements of Subsections (2)(a)(i) and (ii) have been satisfied.

1331 (c) Pursuant to Section 77-23-210, a peace officer making the search may enter a house  
1332 or premises by force, if necessary, in order to remove the child.

1333 (d) The person executing the warrant shall then take the child to the place of shelter  
1334 designated by the court.

1335 (3) The parent or guardian to be notified must be the [minor's] child's primary  
1336 caregiver, or the person who has custody of the [minor] child, when the order is sought.

1337 Section 18. Section 78-3a-109 is amended to read:

1338 **78-3a-109. Title of petition and other court documents -- Form and contents of**  
1339 **petition -- Order for temporary custody -- Physical or psychological examination of**  
1340 **minor, parent, or guardian -- Dismissal of petition.**

1341 (1) The petition and all subsequent court documents in the proceeding shall be entitled:  
1342 "State of Utah, in the interest of....., a person under 18 years of age (or a  
1343 person under 21 years of age)."

1344 (2) The petition shall be verified and statements in the petition may be made upon  
1345 information and belief.

1346 (3) The petition shall be written in simple and brief language and include the facts  
1347 which bring the minor within the jurisdiction of the court, as provided in Section 78-3a-104.

1348 (4) The petition shall further state:

1349 (a) the name, age, and residence of the minor;

1350 (b) the names and residences of the minor's parents;

1351 (c) the name and residence of the guardian, if there is one;

1352 (d) the name and address of the nearest known relative, if no parent or guardian of a  
1353 minor is known; and

1354 (e) the name and residence of the person having physical custody of the minor. If any  
1355 of the facts required are not known by the petitioner, the petition shall so state.

1356 (5) At any time after a petition is filed, the court may make an order providing for  
1357 temporary custody of the minor.

1358 (6) The court may order that a minor concerning whom a petition has been filed shall  
1359 be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a  
1360 hospital or other facility for examination. After notice and a hearing set for the specific

1361 purpose, the court may order a similar examination of a parent or guardian whose ability to care  
1362 for a minor is at issue, if the court finds from the evidence presented at the hearing that the  
1363 parent's or guardian's physical, mental, or emotional condition may be a factor in causing the  
1364 neglect, dependency, or delinquency of the minor.

1365 (7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted  
1366 pursuant to Subsection (6) are not privileged communications, but are exempt from the general  
1367 rule of privilege.

1368 (8) The court may dismiss a petition at any stage of the proceedings.

1369 (9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is  
1370 referred to the court under Subsection 78-3a-105(5):

1371 (a) the court may require the parties to participate in mediation in accordance with Title  
1372 78, Chapter 31b, Alternative Dispute Resolution; and

1373 (b) the Division of Child and Family Services or a party to the petition may request and  
1374 the court may order the parties to participate in a family unity conference under the authority of  
1375 the Division of Child and Family Services in accordance with Subsection (10).

1376 (10) (a) A family unity conference may be ordered by the court for any of the following  
1377 purposes:

1378 (i) discussing and reviewing the case history;

1379 (ii) designing a service plan for the child and family, including concurrent planning;

1380 (iii) discussing a visitation schedule and rules for visitation;

1381 (iv) identifying possible kinship placements under the requirements of Subsection  
1382 78-3a-307(5), and designing services to support the kinship placement;

1383 (v) conflict resolution between the family and Division of Child and Family Services  
1384 staff;

1385 (vi) discussing child custody issues; or

1386 (vii) crisis clinical intervention to reduce trauma to the child and family.

1387 (b) The family unity conference may be attended by individuals chosen by the family  
1388 and the Division of Child and Family Services, and may include extended family members,  
1389 friends, clergy, service providers, and others who may support the family in keeping the child  
1390 safe.

1391 (c) A family unity conference may not be held in the following circumstances:

1392 (i) when there is a criminal charge pending in the case;  
1393 (ii) to resolve petition disputes; and  
1394 (iii) when a family unity conference may pose a threat to the safety of a child or other  
1395 family member.

1396 (d) With regard to a family unity conference ordered by a court under Subsection  
1397 (9)(b):

1398 (i) the requirements of Subsection 78-31b-7(3)(b) apply except all parties to the  
1399 proceeding:

1400 (A) shall be given no less than five days notice of any recommendation made to the  
1401 court from the family unity conference; and

1402 (B) shall be given an opportunity to be heard by the court; and

1403 (ii) the confidentiality requirements of Section 78-31b-8 apply, except that admissions  
1404 by a party to the allegations on the petition are admissible at any proceeding.

1405 Section 19. Section **78-3a-110** is amended to read:

1406 **78-3a-110. Summons -- Service and process -- Issuance and contents -- Notice to**  
1407 **absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory**  
1408 **process for attendance of witnesses when authorized.**

1409 (1) After a petition is filed the court shall promptly issue a summons, unless the judge  
1410 directs that a further investigation is needed. No summons is required as to any person who  
1411 appears voluntarily or who files a written waiver of service with the clerk of the court at or  
1412 prior to the hearing.

1413 (2) The summons shall contain:

1414 (a) the name of the court;

1415 (b) the title of the proceedings; and

1416 (c) except for a published summons, a brief statement of the substance of the  
1417 allegations in the petition.

1418 (3) A published summons shall state:

1419 (a) that a proceeding concerning the minor is pending in the court; and

1420 (b) an adjudication will be made.

1421 (4) The summons shall require the person or persons who have physical custody of the  
1422 minor to appear personally and bring the minor before the court at a time and place stated. If

1423 the person or persons summoned are not the parent, parents, or guardian of the minor, the  
1424 summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying  
1425 them of the pendency of the case and of the time and place set for the hearing.

1426 (5) Summons may be issued requiring the appearance of any other person whose  
1427 presence the court finds necessary.

1428 (6) If it appears to the court that the welfare of the minor or of the public requires that  
1429 the minor be taken into custody, the court may by endorsement upon the summons direct that  
1430 the person serving the summons take the minor into custody at once.

1431 (7) Upon the sworn testimony of one or more reputable physicians, the court may order  
1432 emergency medical or surgical treatment that is immediately necessary for a minor concerning  
1433 whom a petition has been filed pending the service of summons upon ~~his~~ the minor's parents,  
1434 guardian, or custodian.

1435 (8) A parent or guardian is entitled to the issuance of compulsory process for the  
1436 attendance of witnesses on ~~his~~ the parent's or guardian's own behalf or on behalf of the minor.  
1437 A guardian ad litem or a probation officer is entitled to compulsory process for the attendance  
1438 of witnesses on behalf of the minor.

1439 (9) Service of summons and process and proof of service shall be made in the manner  
1440 provided in the Utah Rules of Civil Procedure.

1441 (10) Service of summons or process shall be made by the sheriff of the county where  
1442 the service is to be made, or by his deputy; but upon request of the court service shall be made  
1443 by any other peace officer, or by another suitable person selected by the court.

1444 (11) Service of summons in the state shall be made personally, by delivering a copy to  
1445 the person summoned; provided, however, that parents of a minor living together at their usual  
1446 place of abode may both be served by personal delivery to either parent of copies of the  
1447 summons, one copy for each parent.

1448 (12) If the judge makes a written finding that he has reason to believe that personal  
1449 service of the summons will be unsuccessful, or will not accomplish notification within a  
1450 reasonable time after issuance of the summons, he may order service by registered mail, with a  
1451 return receipt to be signed by the addressee only, to be addressed to the last-known address of  
1452 the person to be served in the state. Service shall be complete upon return to the court of the  
1453 signed receipt.

1454 (13) If the parents, parent, or guardian required to be summoned under Subsection (4)  
1455 cannot be found within the state, the fact of their minor's presence within the state shall confer  
1456 jurisdiction on the court in proceedings in a minor's [cases] case under this chapter as to any  
1457 absent parent or guardian, provided that due notice has been given in the following manner:

1458 (a) If the address of the parent or guardian is known, due notice is given by sending  
1459 him a copy of the summons by registered mail with a return receipt to be signed by the  
1460 addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil  
1461 Procedure. Service by registered mail shall be complete upon return to the court of the signed  
1462 receipt.

1463 (b) If the address or whereabouts of the parent or guardian outside the state cannot after  
1464 diligent inquiry be ascertained, due notice is given by publishing a summons in a newspaper  
1465 having general circulation in the county in which the proceeding is pending. The summons  
1466 shall be published once a week for four successive weeks. Service shall be complete on the  
1467 day of the last publication.

1468 (c) Service of summons as provided in this subsection shall vest the court with  
1469 jurisdiction over the parent or guardian served in the same manner and to the same extent as if  
1470 the person served was served personally within the state.

1471 (14) In the case of service in the state, service completed not less than 48 hours before  
1472 the time set in the summons for the appearance of the person served, shall be sufficient to  
1473 confer jurisdiction. In the case of service outside the state, service completed not less than five  
1474 days before the time set in the summons for appearance of the person served, shall be sufficient  
1475 to confer jurisdiction.

1476 (15) Computation of periods of time under this chapter shall be made in accordance  
1477 with the Utah Rules of Civil Procedure.

1478 Section 20. Section **78-3a-112** is amended to read:

1479 **78-3a-112. Appearances -- Parents to appear with child -- Failure to appear --**  
1480 **Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off --**  
1481 **Appointment of guardian ad litem.**

1482 (1) Any person required to appear who, without reasonable cause, fails to appear may  
1483 be proceeded against for contempt of court, and the court may cause a bench warrant to issue to  
1484 produce the person in court.



1485 (2) In all cases when a minor is required to appear in court, the parents, guardian, or  
1486 other person with legal custody of the minor shall appear with the minor unless excused by the  
1487 judge.

1488 (a) An employee may request permission to leave the workplace for the purpose of  
1489 attending court if the employee has been notified by the juvenile court that his minor is  
1490 required to appear before the court.

1491 (b) An employer must grant permission to leave the workplace with or without pay if  
1492 the employee has requested permission at least seven days in advance or within 24 hours of the  
1493 employee receiving notice of the hearing.

1494 (3) If a parent or other person who signed a written promise to appear and bring the  
1495 ~~[minor]~~ child to court under Section 78-3a-113 or 78-3a-114, fails to appear and bring the  
1496 ~~[minor]~~ child to court on the date set in the promise, or, if the date was to be set, after  
1497 notification by the court, a warrant may be issued for the apprehension of that person or the  
1498 ~~[minor]~~ child, or both.

1499 (4) Willful failure to perform the promise is a misdemeanor if, at the time of the  
1500 execution of the promise, the promisor is given a copy of the promise which clearly states that  
1501 failure to appear and have the ~~[minor]~~ child appear as promised is a misdemeanor. The  
1502 juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings  
1503 pursuant to Part 8, Adult Offenses.

1504 (5) The court shall endeavor, through use of the warrant of arrest if necessary, as  
1505 provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or  
1506 both parents or of the guardian of ~~[the minor]~~ a child. If neither a parent nor guardian is  
1507 present at the court proceedings, the court may appoint a guardian ad litem to protect the  
1508 interest of ~~[the]~~ a minor. A guardian ad litem may also be appointed whenever necessary for  
1509 the welfare of ~~[the]~~ a minor, whether or not a parent or guardian is present.

1510 (6) A warrant may be issued for ~~[the]~~ a parent, ~~[the]~~ a guardian, ~~[the]~~ a custodian, or  
1511 ~~[the]~~ a minor if:

1512 (a) a summons is issued but cannot be served;

1513 (b) it is made to appear to the court that the person to be served will not obey the  
1514 summons;

1515 (c) serving the summons will be ineffectual; or

1516 (d) the welfare of the minor requires that he be brought immediately into the custody of  
1517 the court.

1518 Section 21. Section **78-3a-113** is amended to read:

1519 **78-3a-113. Minor taken into custody by peace officer, private citizen, or**  
1520 **probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds**  
1521 **for peace officer to take adult into custody.**

1522 (1) A minor may be taken into custody by a peace officer without order of the court if:

1523 (a) in the presence of the officer the minor has violated a state law, federal law, local  
1524 law, or municipal ordinance;

1525 (b) there are reasonable grounds to believe the minor has committed an act which if  
1526 committed by an adult would be a felony;

1527 (c) the minor;

1528 (i) (A) is seriously endangered in [~~his~~] the minor's surroundings; or [~~if the minor~~]

1529 (B) seriously endangers others[;]; and

1530 (ii) immediate removal appears to be necessary for [~~his~~] the minor's protection or the  
1531 protection of others;

1532 (d) there are reasonable grounds to believe the minor has run away or escaped from  
1533 [~~his~~] the minor's parents, guardian, or custodian; or

1534 (e) there is reason to believe that the minor is;

1535 (i) subject to the state's compulsory education law; and [~~that the minor is~~]

1536 (ii) absent from school without legitimate or valid excuse, subject to Section  
1537 53A-11-105.

1538 (2) (a) A private citizen or a probation officer may take a minor into custody if under  
1539 the circumstances he could make a citizen's arrest if the minor was an adult.

1540 (b) A probation officer may also take a minor into custody under Subsection (1) or if  
1541 the minor has violated the conditions of probation, if the minor is under the continuing  
1542 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not  
1543 immediately available.

1544 (3) (a) (i) If an officer or other person takes a minor into temporary custody, he shall  
1545 without unnecessary delay notify the parents, guardian, or custodian.

1546 (ii) The minor shall then be released to the care of [~~his~~] the minor's parent or other

1547 responsible adult, unless [his] the minor's immediate welfare or the protection of the  
1548 community requires [his] the minor's detention.

1549 (b) If the minor is taken into custody or detention for a violent felony, as defined in  
1550 Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the  
1551 officer or other law enforcement agent taking the minor into custody shall, as soon as  
1552 practicable or as established under Subsection 53A-11-1001(2), notify the school  
1553 superintendent of the district in which the minor resides or attends school for the purposes of  
1554 the minor's supervision and student safety.

1555 (i) The notice shall disclose only:

1556 (A) the name of the minor;

1557 (B) the offense for which the minor was taken into custody or detention; and

1558 (C) if available, the name of the victim, if the victim:

1559 (I) resides in the same school district as the minor; or

1560 (II) attends the same school as the minor.

1561 (ii) The notice shall be classified as a protected record under Section 63-2-304.

1562 (iii) All other records disclosures are governed by Title 63, Chapter 2, Government  
1563 Records Access and Management Act and the Federal Family Educational Rights and Privacy  
1564 Act.

1565 (c) Employees of a governmental agency are immune from any criminal liability for  
1566 providing or failing to provide the information required by this section unless the person acts or  
1567 fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

1568 (d) Before the minor is released, the parent or other person to whom the minor is  
1569 released shall be required to sign a written promise on forms supplied by the court to bring the  
1570 minor to the court at a time set or to be set by the court.

1571 (4) (a) A [~~minor~~] child may not be held in temporary custody by law enforcement any  
1572 longer than is reasonably necessary to obtain [his] the child's name, age, residence, and other  
1573 necessary information and to contact [his] the child's parents, guardian, or custodian.

1574 (b) If the minor is not released under Subsection (3), [~~he~~] the minor shall be taken to a  
1575 place of detention or shelter without unnecessary delay.

1576 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly  
1577 file with the detention or shelter facility a written report on a form provided by the division

1578 stating the details of the presently alleged offense, the facts which bring the minor within the  
1579 jurisdiction of the juvenile court, and the reason the minor was not released by law  
1580 enforcement.

1581 (b) (i) The designated youth corrections facility staff person shall immediately review  
1582 the form and determine, based on the guidelines for detention admissions established by the  
1583 Division of Juvenile Justice Services under Section 62A-7-202, whether to admit the minor to  
1584 secure detention, admit the minor to home detention, place the minor in a placement other than  
1585 detention, or return the minor home upon written promise to bring the minor to the court at a  
1586 time set, or without restriction.

1587 (ii) If the designated youth corrections facility staff person determines to admit the  
1588 minor to home detention, that staff person shall notify the juvenile court of that determination.  
1589 The court shall order that notice be provided to the designated persons in the local law  
1590 enforcement agency and the school or transferee school, if applicable, which the minor attends  
1591 of the home detention. The designated persons may receive the information for purposes of the  
1592 minor's supervision and student safety.

1593 (iii) Any employee of the local law enforcement agency and the school which the  
1594 minor attends who discloses the notification of home detention is not:

1595 (A) civilly liable except when disclosure constitutes fraud or willful misconduct as  
1596 provided in Section 63-30d-202; and

1597 (B) civilly or criminally liable except when disclosure constitutes a knowing violation  
1598 of Section 63-2-801.

1599 (c) A minor may not be admitted to detention unless the minor is detainable based on  
1600 the guidelines or the minor has been brought to detention pursuant to a judicial order or  
1601 division warrant pursuant to Section 62A-7-504.

1602 (d) If a minor taken to detention does not qualify for admission under the guidelines  
1603 established by the division under ~~[Sections]~~ Section 62A-7-104 ~~[and 62A-7-205]~~, detention  
1604 staff shall arrange appropriate placement.

1605 (e) If a minor is taken into custody and admitted to a secure detention or shelter  
1606 facility, facility staff shall:

1607 (i) immediately notify the minor's parents, guardian, or custodian; and ~~[shall]~~

1608 (ii) promptly notify the court of the placement.

1609 (f) If the minor is admitted to a secure detention or shelter facility outside the county of  
1610 ~~his~~ the minor's residence and it is determined in the hearing held under Subsection  
1611 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of  
1612 the county of the minor's residence to transport the minor to a detention or shelter facility as  
1613 provided in this section.

1614 (6) A person may be taken into custody by a peace officer without a court order if the  
1615 person is in apparent violation of a protective order or if there is reason to believe that a  
1616 ~~minor~~ child is being abused by the person and any of the situations outlined in Section 77-7-2  
1617 exist.

1618 Section 22. Section **78-3a-114** is amended to read:

1619 **78-3a-114. Placement of minor in detention or shelter facility -- Grounds --**  
1620 **Detention hearings -- Period of detention -- Notice -- Confinement for criminal**  
1621 **proceedings -- Bail laws inapplicable, exception.**

1622 (1) (a) A minor may not be placed or kept in a secure detention facility pending court  
1623 proceedings unless it is unsafe for the public to leave the minor with ~~his~~ the minor's parents,  
1624 guardian, or custodian and the minor is detainable based on guidelines promulgated by the  
1625 Division of Juvenile Justice Services.

1626 (b) A ~~minor~~ child who must be taken from ~~his~~ the child's home but who does not  
1627 require physical restriction shall be given temporary care in a shelter facility and may not be  
1628 placed in a detention facility.

1629 (c) A ~~minor~~ child may not be placed or kept in a shelter facility pending court  
1630 proceedings unless it is unsafe ~~[for the minor to leave him with his]~~ to leave the child with the  
1631 child's parents, guardian, or custodian.

1632 (2) After admission of a child to a detention facility pursuant to the guidelines  
1633 established by the Division of Juvenile Justice Services and immediate investigation by an  
1634 authorized officer of the court, the judge or the officer shall order the release of the ~~minor to~~  
1635 ~~his~~ child to the child's parents, guardian, or custodian if it is found ~~he~~ the child can be safely  
1636 returned to their care, either upon written promise to bring the ~~minor~~ child to the court at a  
1637 time set or without restriction.

1638 (a) If ~~the minor's~~ a child's parent, guardian, or custodian fails to retrieve the ~~minor~~  
1639 child from a facility within 24 hours after notification of release, the parent, guardian, or

1640 custodian is responsible for the cost of care for the time the [minor] child remains in the  
1641 facility.

1642 (b) The facility shall determine the cost of care.

1643 (c) Any money collected under this Subsection (2) shall be retained by the Division of  
1644 Juvenile Justice Services to recover the cost of care for the time the [minor] child remains in  
1645 the facility.

1646 (3) (a) When a [minor] child is detained in a detention or shelter facility, the parents or  
1647 guardian shall be informed by the person in charge of the facility that they have the right to a  
1648 prompt hearing in court to determine whether the [minor] child is to be further detained or  
1649 released.

1650 (b) When a minor is detained in a detention facility, the minor shall be informed by the  
1651 person in charge of the facility that the minor has the right to a prompt hearing in court to  
1652 determine whether the minor is to be further detained or released.

1653 [~~(b)~~] (c) Detention hearings shall be held by the judge or by a commissioner.

1654 [~~(c)~~] (d) The court may, at any time, order the release of the minor, whether a detention  
1655 hearing is held or not.

1656 [~~(d)~~] (e) If [~~the minor~~] a child is released, and the [minor] child remains in the facility,  
1657 because the parents, guardian, or custodian fails to retrieve the [minor] child, the parents,  
1658 guardian, or custodian shall be responsible for the cost of care as provided in Subsections  
1659 (2)(a), (b), and (c).

1660 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a  
1661 detention hearing, excluding weekends and holidays, unless the court has entered an order for  
1662 continued detention.

1663 (b) A [minor] child may not be held in a shelter facility longer than 48 hours prior to a  
1664 shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has  
1665 been entered by the court after notice to all parties described in Section 78-3a-306.

1666 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide  
1667 the court with all information received from the person who brought the minor to the detention  
1668 facility.

1669 (d) If the court finds at a detention hearing that it is not safe to release the minor, the  
1670 judge or commissioner may order the minor to be held in the facility or be placed in another

1671 appropriate facility, subject to further order of the court.

1672 (e) (i) After a detention hearing has been held, only the court may release a minor from  
1673 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to  
1674 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued  
1675 detention is necessary.

1676 (ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or  
1677 an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that  
1678 notice of its decision, including any disposition, order, or no contact orders, be provided to  
1679 designated persons in the appropriate local law enforcement agency and district superintendent  
1680 or the school or transferee school, if applicable, [~~which~~] that the minor attends. The designated  
1681 persons may receive the information for purposes of the minor's supervision and student safety.

1682 (iii) Any employee of the local law enforcement agency, school district, and the school  
1683 [~~which~~] that the minor attends who discloses the court's order of probation is not:

1684 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as  
1685 provided in Section 63-30d-202; and

1686 (B) civilly or criminally liable except when disclosure constitutes a knowing violation  
1687 of Section 63-2-801.

1688 (5) A minor may not be held in a detention facility, following a dispositional order of  
1689 the court for nonsecure substitute care as defined in Section 62A-4a-101, or for  
1690 community-based placement under Section 62A-7-101 for longer than 72 hours, excluding  
1691 weekends and holidays. The period of detention may be extended by the court for one period  
1692 of seven calendar days if:

1693 (a) the Division of Juvenile Justice Services or another agency responsible for  
1694 placement files a written petition with the court requesting the extension and setting forth good  
1695 cause; and

1696 (b) the court enters a written finding that it is in the best interests of both the minor and  
1697 the community to extend the period of detention.

1698 (6) The agency requesting an extension shall promptly notify the detention facility that  
1699 a written petition has been filed.

1700 (7) The court shall promptly notify the detention facility regarding its initial disposition  
1701 and any ruling on a petition for an extension, whether granted or denied.

1702 (8) (a) A [minor] child under 16 years of age may not be held in a jail, lockup, or other  
1703 place for adult detention except as provided by Section 62A-7-201 or unless certified as an  
1704 adult pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding  
1705 confinement facilities apply to this Subsection (8).

1706 (b) A [minor] child 16 years of age or older whose conduct or condition endangers the  
1707 safety or welfare of others in the detention facility for [minors] children may, by court order  
1708 that specifies the reasons, be detained in another place of confinement considered appropriate  
1709 by the court, including a jail or other place of confinement for adults. However, a secure youth  
1710 corrections facility is not an appropriate place of confinement for detention purposes under this  
1711 section.

1712 (9) A sheriff, warden, or other official in charge of a jail or other facility for the  
1713 detention of adult offenders or persons charged with crime shall immediately notify the  
1714 juvenile court when a [minor] person who is or appears to be under 18 years of age is received  
1715 at the facility and shall make arrangements for the transfer of the [minor] person to a detention  
1716 facility, unless otherwise ordered by the juvenile court.

1717 (10) This section does not apply to a minor who is brought to the adult facility under  
1718 charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal  
1719 proceedings in the district court under Section 78-3a-603.

1720 (11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may  
1721 be detained in a jail or other place of detention used for adults charged with crime.

1722 (12) Provisions of law regarding bail are not applicable to minors detained or taken  
1723 into custody under this chapter, except that bail may be allowed:

1724 (a) if a minor who need not be detained lives outside this state; or

1725 (b) when a minor who need not be detained comes within one of the classes in  
1726 Subsection 78-3a-503(11).

1727 (13) Section 76-8-418 is applicable to a [minor] child who willfully and intentionally  
1728 commits an act against a jail or other place of confinement, including a Division of Juvenile  
1729 Justice Services detention, shelter, or secure confinement facility which would be a third  
1730 degree felony if committed by an adult.

1731 Section 23. Section **78-3a-115** is amended to read:

1732 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**



1733 **cases heard separately from adult cases -- Minor or parents or custodian heard**  
1734 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**  
1735 **one minor.**

1736 (1) Hearings in minor's cases shall be held before the court without a jury and may be  
1737 conducted in an informal manner.

1738 (a) In abuse, neglect, and dependency cases in all districts other than pilot districts  
1739 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude the  
1740 general public from hearings held prior to July 1, 2004.

1741 (b) In delinquency cases the court shall admit all persons who have a direct interest in  
1742 the case and may admit persons requested by the parent or legal guardian to be present. The  
1743 court shall exclude all other persons except as provided in Subsection (1)(c).

1744 (c) In delinquency cases in which the minor charged is 14 years of age or older, the  
1745 court shall admit any person unless the hearing is closed by the court upon findings on the  
1746 record for good cause if:

1747 (i) the minor has been charged with an offense which would be a felony if committed  
1748 by an adult; or

1749 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if  
1750 committed by an adult, and the minor has been previously charged with an offense which  
1751 would be a misdemeanor or felony if committed by an adult.

1752 (d) The victim of any act charged in a petition or information involving an offense  
1753 committed by a minor which if committed by an adult would be a felony or a class A or class B  
1754 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter  
1755 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,  
1756 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not  
1757 apply to important juvenile justice hearings as defined in Section 77-38-2.

1758 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right  
1759 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

1760 (i) the scheduling of any court hearings on the petition;

1761 (ii) any findings made by the court; and

1762 (iii) any sentence or decree imposed by the court.

1763 (2) Minor's cases shall be heard separately from adult cases. The minor or the

1764 [minor's] parents or custodian of a minor may be heard separately when considered necessary  
1765 by the court. The hearing may be continued from time to time to a date specified by court  
1766 order.

1767 (3) When more than one [minor] child is involved in a home situation which may be  
1768 found to constitute neglect or dependency, or when more than one minor is alleged to be  
1769 involved in the same law violation, the proceedings may be consolidated, except that separate  
1770 hearings may be held with respect to disposition.

1771 Section 24. Section **78-3a-116** is amended to read:

1772 **78-3a-116. Hearings -- Record -- County attorney or district attorney**  
1773 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**  
1774 **evidence.**

1775 (1) (a) A verbatim record of the proceedings shall be taken by an official court reporter  
1776 or by means of a mechanical recording device in all cases that might result in deprivation of  
1777 custody as defined in this chapter. In all other cases a verbatim record shall also be made  
1778 unless dispensed with by the court.

1779 (b) (i) Notwithstanding any other provision, including Title 63, Chapter 2, Government  
1780 Records Access and Management Act, a record of a proceeding made under Subsection (1)(a)  
1781 shall be released by the court to any person upon a finding on the record for good cause.

1782 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the  
1783 court shall:

1784 (A) provide notice to all subjects of the record that a request for release of the record  
1785 has been made; and

1786 (B) allow sufficient time for the subjects of the record to respond before making a  
1787 finding on the petition.

1788 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the  
1789 court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the  
1790 request.

1791 (iv) For purposes of this Subsection (1)(b):

1792 (A) "record of a proceeding" does not include documentary materials of any type  
1793 submitted to the court as part of the proceeding, including items submitted under Subsection  
1794 (4)(a); and

1795 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal  
1796 guardian, the Division of Child and Family Services, and any other party to the proceeding.

1797 (v) This Subsection (1)(b) applies:

1798 (A) to records of proceedings made on or after November 1, 2003 in districts selected  
1799 by the Judicial Council as pilot districts under Subsection 78-3-21(15)(a); and

1800 (B) to records of proceedings made on or after July 1, 2004 in all other districts.

1801 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a  
1802 prosecution district, the district attorney shall represent the state in any proceeding in a minor's  
1803 case.

1804 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child  
1805 and Family Services, and Title 78, Chapter 3a, Juvenile ~~Courts~~ Court Act of 1996, relating to:

1806 (i) protection or custody of an abused, neglected, or dependent child; and

1807 (ii) petitions for termination of parental rights.

1808 (c) The attorney general shall represent the Division of Child and Family Services in  
1809 actions involving ~~[minors who have not been]~~ a minor who is not adjudicated as abused or  
1810 neglected, but who ~~[are]~~ is otherwise committed to the custody of that division by the juvenile  
1811 court, and who ~~[are]~~ is classified in the division's management information system as having  
1812 been placed in custody primarily on the basis of delinquent behavior or a status offense.  
1813 Nothing in this Subsection (2)(c) may be construed to affect the responsibility of the county  
1814 attorney or district attorney to represent the state in those matters, in accordance with the  
1815 provisions of Subsection (2)(a).

1816 (3) The board may adopt special rules of procedure to govern proceedings involving  
1817 violations of traffic laws or ordinances, fish and game laws, and boating laws. However,  
1818 proceedings involving offenses under Section 78-3a-506 are governed by that section regarding  
1819 suspension of driving privileges.

1820 (4) (a) For the purposes of determining proper disposition of the minor in dispositional  
1821 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and  
1822 in hearings upon petitions for termination of parental rights, written reports and other material  
1823 relating to the minor's mental, physical, and social history and condition may be received in  
1824 evidence and may be considered by the court along with other evidence. The court may require  
1825 that the person who wrote the report or prepared the material appear as a witness if the person

1826 is reasonably available.

1827 (b) For the purpose of determining proper disposition of a minor alleged to be or  
1828 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care  
1829 Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be  
1830 considered by the court along with other evidence. The court may require any person who  
1831 participated in preparing the dispositional report to appear as a witness, if the person is  
1832 reasonably available.

1833 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the  
1834 commencement of a shelter hearing under Section 78-3a-306 or the filing of a petition under  
1835 Section 78-3a-305, each party to the proceeding shall provide in writing to the other parties or  
1836 their counsel any information which the party:

1837 (i) plans to report to the court at the proceeding; or

1838 (ii) could reasonably expect would be requested of the party by the court at the  
1839 proceeding.

1840 (b) The disclosure required under Subsection (5)(a) shall be made:

1841 (i) for dispositional hearings under Sections 78-3a-310 and 78-3a-311, no less than five  
1842 days before the proceeding;

1843 (ii) for proceedings under Title 78, Chapter 3a, Part 4, Termination of Parental Rights  
1844 Act, in accordance with Utah Rules of Civil Procedure; and

1845 (iii) for all other proceedings, no less than five days before the proceeding.

1846 (c) If a party to a proceeding obtains information after the deadline in Subsection  
1847 (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the  
1848 party certifies to the court that the information was obtained after the deadline.

1849 (d) Subsection (5)(a) does not apply to:

1850 (i) pretrial hearings; and

1851 (ii) the frequent, periodic review hearings held in a dependency drug court case to  
1852 assess and promote the parent's progress in substance abuse treatment.

1853 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court  
1854 may, in its discretion, consider evidence of statements made by a [~~minor~~] child under eight  
1855 years of age to a person in a trust relationship.

1856 Section 25. Section **78-3a-117** is amended to read:

1857           **78-3a-117. Minor's cases considered civil proceedings -- Adjudication of**  
1858 **jurisdiction by juvenile court not conviction of crime, exceptions -- Minor not to be**  
1859 **charged with crime, exception -- Traffic violation cases, abstracts to Department of**  
1860 **Public Safety.**

1861           (1) Except as provided in Sections 78-3a-602 and 78-3a-603, proceedings in a minor's  
1862 [~~cases~~] case shall be regarded as a civil [~~proceedings~~] proceeding with the court exercising  
1863 equitable powers.

1864           (2) An adjudication by a juvenile court that a minor is within its jurisdiction under  
1865 Section 78-3a-104 is not considered a conviction of a crime, except in cases involving traffic  
1866 violations. An adjudication may not operate to impose any civil disabilities upon the minor nor  
1867 to disqualify the minor for any civil service or military service or appointment.

1868           (3) A minor may not be charged with a crime or convicted in any court except as  
1869 provided in Sections 78-3a-602 and 78-3a-603, and in cases involving traffic violations. When  
1870 a petition has been filed in the juvenile court, the minor may not later be subjected to criminal  
1871 prosecution based on the same facts except as provided in Section 78-3a-602 or 78-3a-603.

1872           (4) An adjudication by a juvenile court that a minor is within its jurisdiction under  
1873 Section 78-3a-104 is considered a conviction for the purposes of determining the level of  
1874 offense for which a [~~juvenile~~] minor may be charged and enhancing the level of an offense in  
1875 the juvenile court. A prior adjudication may be used to enhance the level or degree of an  
1876 offense committed by an adult only as otherwise specifically provided.

1877           (5) Abstracts of court records for all adjudications of traffic violations shall be  
1878 submitted to the Department of Public Safety as provided in Section 53-3-218.

1879           (6) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution  
1880 may be forwarded to employers, financial institutions, law enforcement, constables, the Office  
1881 of Recovery Services, or other agencies for purposes of enforcing the order as provided in  
1882 Section 78-3a-118.

1883           Section 26. Section **78-3a-118** is amended to read:

1884           **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**  
1885 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**  
1886 **sample.**

1887           (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the

1888 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its  
1889 jurisdiction over the minor. However, in cases within the provisions of Subsection  
1890 78-3a-104(1), findings of fact are not necessary.

1891 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of  
1892 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided  
1893 to the school superintendent of the district in which the minor resides or attends school. Notice  
1894 shall be made to the district superintendent within three days of the adjudication and shall  
1895 include:

1896 (i) the specific offenses for which the minor was adjudicated; and

1897 (ii) if available, if the victim:

1898 (A) resides in the same school district as the minor; or

1899 (B) attends the same school as the minor.

1900 (2) Upon adjudication the court may make the following dispositions by court order:

1901 (a) (i) The court may place the minor on probation or under protective supervision in  
1902 the minor's own home and upon conditions determined by the court, including compensatory  
1903 service as provided in Section 78-11-20.7.

1904 (ii) The court may place the minor in state supervision with the probation department  
1905 of the court, under the legal custody of:

1906 (A) ~~his~~ the minor's parent or guardian;

1907 (B) the Division of Juvenile Justice Services; or

1908 (C) the Division of Child and Family Services.

1909 (iii) If the court orders probation or state supervision, the court shall direct that notice  
1910 of its order be provided to designated persons in the local law enforcement agency and the  
1911 school or transferee school, if applicable, ~~which~~ that the minor attends. The designated  
1912 persons may receive the information for purposes of the minor's supervision and student safety.

1913 (iv) Any employee of the local law enforcement agency and the school ~~which~~ that the  
1914 minor attends who discloses the court's order of probation is not:

1915 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as  
1916 provided in Section 63-30d-202; and

1917 (B) civilly or criminally liable except when the disclosure constitutes a knowing  
1918 violation of Section 63-2-801.

1919 (b) The court may place the minor in the legal custody of a relative or other suitable  
1920 person, with or without probation or protective supervision, but the juvenile court may not  
1921 assume the function of developing foster home services.

1922 (c) (i) The court may:

1923 (A) vest legal custody of the minor in the Division of Child and Family Services,  
1924 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;  
1925 and

1926 (B) order the Department of Human Services to provide dispositional  
1927 recommendations and services.

1928 (ii) For minors who may qualify for services from two or more divisions within the  
1929 Department of Human Services, the court may vest legal custody with the department.

1930 (iii) (A) ~~[Minors who are]~~ A minor who is committed to the custody of the Division of  
1931 Child and Family Services on grounds other than abuse or neglect ~~[are]~~ is subject to the  
1932 provisions of Title 78, Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse  
1933 or Neglect, and Title 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than  
1934 Abuse or Neglect.

1935 (B) Prior to the court entering an order to place a minor in the custody of the Division  
1936 of Child and Family Services on grounds other than abuse or neglect, the court shall provide  
1937 the division with notice of the hearing no later than five days before the time specified for the  
1938 hearing so the division may attend the hearing.

1939 (C) Prior to committing a ~~[minor]~~ child to the custody of the Division of Child and  
1940 Family Services, the court shall make a finding as to what reasonable efforts have been  
1941 attempted to prevent the ~~[minor's]~~ child's removal from ~~[his]~~ the child's home.

1942 (d) (i) The court may commit ~~[the]~~ a minor to the Division of Juvenile Justice Services  
1943 for secure confinement.

1944 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,  
1945 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of  
1946 Juvenile Justice Services.

1947 (e) The court may commit ~~[the]~~ a minor, subject to the court retaining continuing  
1948 jurisdiction over ~~[him]~~ the minor, to the temporary custody of the Division of Juvenile Justice  
1949 Services for observation and evaluation for a period not to exceed 45 days, which period may

1950 be extended up to 15 days at the request of the director of the Division of Juvenile Justice  
1951 Services.

1952 (f) (i) The court may commit ~~the~~ a minor to a place of detention or an alternative to  
1953 detention for a period not to exceed 30 days subject to the court retaining continuing  
1954 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions  
1955 ordered by the court.

1956 (ii) This Subsection (2)(f) applies only to ~~those minors~~ a minor adjudicated for:

1957 (A) an act which if committed by an adult would be a criminal offense; or

1958 (B) contempt of court under Section 78-3a-901.

1959 (g) The court may vest legal custody of an abused, neglected, or dependent minor in  
1960 the Division of Child and Family Services or any other appropriate person in accordance with  
1961 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and  
1962 Dependency Proceedings.

1963 (h) The court may place ~~the~~ a minor on a ranch or forestry camp, or similar facility  
1964 for care and also for work, if possible, if the person, agency, or association operating the  
1965 facility has been approved or has otherwise complied with all applicable state and local laws.  
1966 A minor placed in a forestry camp or similar facility may be required to work on fire  
1967 prevention, forestation and reforestation, recreational works, forest roads, and on other works  
1968 on or off the grounds of the facility and may be paid wages, subject to the approval of and  
1969 under conditions set by the court.

1970 (i) (i) The court may order ~~the~~ a minor to repair, replace, or otherwise make  
1971 restitution for damage or loss caused by the minor's wrongful act, including costs of treatment  
1972 as stated in Section 78-3a-318 and impose fines in limited amounts.

1973 (ii) The court may also require ~~the~~ a minor to reimburse an individual, entity, or  
1974 governmental agency who offered and paid a reward to a person or persons for providing  
1975 information resulting in a court adjudication that the minor is within the jurisdiction of the  
1976 juvenile court due to the commission of a criminal offense.

1977 (iii) If a minor ~~has been~~ is returned to this state under the Interstate Compact on  
1978 Juveniles, the court may order the minor to make restitution for costs expended by any  
1979 governmental entity for the return.

1980 (j) The court may issue orders necessary for the collection of restitution and fines



1981 ordered by the court, including garnishments, wage withholdings, and executions.

1982 (k) (i) The court may through its probation department encourage the development of  
1983 employment or work programs to enable minors to fulfill their obligations under Subsection  
1984 (2)(i) and for other purposes considered desirable by the court.

1985 (ii) Consistent with the order of the court, the probation officer may permit ~~the~~ a  
1986 minor found to be within the jurisdiction of the court to participate in a program of work  
1987 restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

1988 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in  
1989 addition to any other disposition authorized by this section:

1990 (A) restrain the minor from driving for periods of time the court considers necessary;  
1991 and

1992 (B) take possession of the minor's driver license.

1993 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the  
1994 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by  
1995 Section 78-3a-506.

1996 (m) (i) When a minor is found within the jurisdiction of the juvenile court under  
1997 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug  
1998 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court  
1999 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a  
2000 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory  
2001 completion of an approved substance abuse prevention or treatment program may be credited  
2002 by the court as compensatory service hours.

2003 (ii) When a minor is found within the jurisdiction of the juvenile court under Section  
2004 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court  
2005 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order  
2006 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory  
2007 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an  
2008 approved substance abuse prevention or treatment program may be credited by the court as  
2009 compensatory service hours.

2010 (n) The court may order that ~~the~~ a minor be examined or treated by a physician,  
2011 surgeon, psychiatrist, or psychologist or that ~~he~~ the minor receive other special care. For

2012 these purposes the court may place the minor in a hospital or other suitable facility.

2013 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the  
2014 interest of the minor, and may appoint as guardian a public or private institution or agency in  
2015 which legal custody of the minor is vested.

2016 (ii) In placing a minor under the guardianship or legal custody of an individual or of a  
2017 private agency or institution, the court shall give primary consideration to the welfare of the  
2018 minor. When practicable, the court may take into consideration the religious preferences of the  
2019 minor and of [~~the minor's~~] a child's parents.

2020 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable  
2021 conditions to be complied with by [~~the~~] a minor's parents or guardian, [~~the~~] a minor, [~~the~~] a  
2022 minor's custodian, or any other person who has been made a party to the proceedings.

2023 Conditions may include:

2024 (A) parent-time by the parents or one parent;

2025 (B) restrictions on the minor's associates;

2026 (C) restrictions on the minor's occupation and other activities; and

2027 (D) requirements to be observed by the parents or custodian.

2028 (ii) A minor whose parents or guardians successfully complete a family or other  
2029 counseling program may be credited by the court for detention, confinement, or probation time.

2030 (q) The court may order the [~~minor~~] child to be committed to the physical custody of a  
2031 local mental health authority, in accordance with the procedures and requirements of Title 62A,  
2032 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and  
2033 Mental Health.

2034 (r) (i) The court may make an order committing a minor within [~~its~~] the court's  
2035 jurisdiction to the Utah State Developmental Center if the minor has mental retardation in  
2036 accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental  
2037 Retardation Facility.

2038 (ii) The court shall follow the procedure applicable in the district courts with respect to  
2039 judicial commitments to the Utah State Developmental Center when ordering a commitment  
2040 under Subsection (2)(r)(i).

2041 (s) The court may terminate all parental rights upon a finding of compliance with the  
2042 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

2043 (t) The court may make any other reasonable orders for the best interest of the minor or  
2044 as required for the protection of the public, except that a [~~person younger than 18 years of age~~]  
2045 child may not be committed to jail or prison.

2046 (u) The court may combine the dispositions listed in this section if they are compatible.

2047 (v) Before depriving any parent of custody, the court shall give due consideration to the  
2048 rights of parents concerning their [~~minor~~] child. The court may transfer custody of a minor to  
2049 another person, agency, or institution in accordance with the requirements and procedures of  
2050 Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

2051 (w) Except as provided in Subsection (2)(y)(i), an order under this section for  
2052 probation or placement of a minor with an individual or an agency shall include a date certain  
2053 for a review of the case by the court. A new date shall be set upon each review.

2054 (x) In reviewing foster home placements, special attention shall be given to making  
2055 adoptable [~~minors~~] children available for adoption without delay.

2056 (y) (i) The juvenile court may enter an order of permanent custody and guardianship  
2057 with [~~a relative or individual of a minor~~] an individual or relative of a child where the court has  
2058 previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency.  
2059 The juvenile court may enter an order for child support on behalf of the [~~minor~~] child against  
2060 the natural or adoptive parents of the child.

2061 (ii) Orders under Subsection (2)(y)(i):

2062 (A) shall remain in effect until the [~~minor~~] child reaches majority;

2063 (B) are not subject to review under Section 78-3a-119; and

2064 (C) may be modified by petition or motion as provided in Section 78-3a-903.

2065 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and  
2066 permanent orders of custody and guardianship do not expire with a termination of jurisdiction  
2067 of the juvenile court.

2068 (3) In addition to the dispositions described in Subsection (2), when a minor comes  
2069 within the court's jurisdiction [~~he~~], the minor may be given a choice by the court to serve in the  
2070 National Guard in lieu of other sanctions, provided:

2071 (a) the minor meets the current entrance qualifications for service in the National  
2072 Guard as determined by a recruiter, whose determination is final;

2073 (b) the minor is not under the jurisdiction of the court for any act that:

2074 (i) would be a felony if committed by an adult;  
2075 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or  
2076 (iii) was committed with a weapon; and  
2077 (c) the court retains jurisdiction over the minor under conditions set by the court and  
2078 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

2079 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction  
2080 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by  
2081 designated employees of the court or, if the minor is in the legal custody of the Division of  
2082 Juvenile Justice Services, then by designated employees of the division under Subsection  
2083 53-10-404(5)(b).

2084 (b) The responsible agency shall ensure that employees designated to collect the saliva  
2085 DNA specimens receive appropriate training and that the specimens are obtained in accordance  
2086 with accepted protocol.

2087 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA  
2088 Specimen Restricted Account created in Section 53-10-407.

2089 (d) Payment of the reimbursement is second in priority to payments the minor is  
2090 ordered to make for restitution under this section and treatment under Section 78-3a-318.

2091 Section 27. Section **78-3a-120** is amended to read:

2092 **78-3a-120. Modification of order or decree -- Requirements for changing or**  
2093 **terminating custody, probation, or protective supervision.**

2094 (1) The court may modify or set aside any order or decree made by it, however a  
2095 modification of an order placing a minor on probation may not be made upon an alleged  
2096 violation of the terms of probation unless there has been a hearing in accordance with the  
2097 procedures in Section 78-3a-903.

2098 (2) Notice of the hearing shall be required in any case in which the effect of modifying  
2099 or setting aside an order or decree may be to make any change in the minor's legal custody.

2100 (3) (a) Notice of an order terminating probation or protective supervision of a child  
2101 shall be given to the child's:

2102 (i) parents[;];

2103 (ii) guardian[;];

2104 (iii) custodian[;]; and[;]

2105 (iv) where appropriate, to the [minor] child.

2106 (b) Notice of an order terminating probation or protective supervision of a minor who  
2107 is at least 18 years of age shall be given to the minor.

2108 Section 28. Section **78-3a-206** is amended to read:

2109 **78-3a-206. Court records -- Inspection.**

2110 (1) The court and the probation department shall keep records as required by the board  
2111 and the presiding judge.

2112 (2) Court records shall be open to inspection by:

2113 (a) the parents or guardian of a child, a minor who is at least 18 years of age, other  
2114 parties in the case, the attorneys, and agencies to which custody of a minor has been  
2115 transferred;

2116 (b) for information relating to adult offenders alleged to have committed a sexual  
2117 offense, a felony or class A misdemeanor drug offense, or an offense against the person under  
2118 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose  
2119 of evaluating whether an individual should be permitted to obtain or retain a license as an  
2120 educator or serve as an employee or volunteer in a school, with the understanding that the  
2121 office must provide the individual with an opportunity to respond to any information gathered  
2122 from its inspection of the records before it makes a decision concerning licensure or  
2123 employment;

2124 (c) the ~~[Division of]~~ Criminal Investigations and Technical Services Division,  
2125 established in Section 53-10-103, for the purpose of a criminal history background check for  
2126 the purchase of a firearm and establishing good character for issuance of a concealed firearm  
2127 permit as provided in Section 53-5-704; and

2128 (d) the Division of Child and Family Services for the purpose of Child Protective  
2129 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and  
2130 administrative hearings in accordance with Section 62A-4a-116.5.

2131 (3) With the consent of the judge, court records may be inspected by the [minor] child,  
2132 by persons having a legitimate interest in the proceedings, and by persons conducting pertinent  
2133 research studies.

2134 (4) If a petition is filed charging a minor 14 years of age or older with an offense that  
2135 would be a felony if committed by an adult, the court shall make available to any person upon

2136 request the petition, any adjudication or disposition orders, and the delinquency history  
2137 summary of the minor charged unless the records are closed by the court upon findings on the  
2138 record for good cause.

2139 (5) Probation officers' records and reports of social and clinical studies are not open to  
2140 inspection, except by consent of the court, given under rules adopted by the board.

2141 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency  
2142 history summary of any person charged as an adult with a felony offense shall be made  
2143 available to any person upon request.

2144 (b) This provision does not apply to records that have been destroyed or expunged in  
2145 accordance with court rules.

2146 (c) The court may charge a reasonable fee to cover the costs associated with retrieving  
2147 a requested record that has been archived.

2148 Section 29. Section **78-3a-301** is amended to read:

2149 **78-3a-301. Court-ordered protective custody of a child following petition filing --**  
2150 **Grounds.**

2151 (1) After a petition has been filed under Subsection 78-3a-305(1), if the [minor] child  
2152 who is the subject of the petition is not in the protective custody of the division, a court may  
2153 order that the [minor] child be removed from the [minor's] child's home or otherwise taken into  
2154 protective custody if the court finds, by a preponderance of the evidence, that any one or more  
2155 of the following circumstances exist:

2156 (a) there is an imminent danger to the physical health or safety of the [minor] child and  
2157 the [minor's] child's physical health or safety may not be protected without removing the  
2158 [minor] child from the custody of the [minor's] child's parent or guardian;

2159 (b) a parent or guardian engages in or threatens the [minor] child with unreasonable  
2160 conduct that causes the [minor] child to suffer emotional damage and there are no reasonable  
2161 means available by which the [minor's] child's emotional health may be protected without  
2162 removing the [minor] child from the custody of the [minor's] child's parent or guardian;

2163 (c) the [minor] child or another [minor] child residing in the same household has been  
2164 physically or sexually abused, or is considered to be at substantial risk of being physically or  
2165 sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or  
2166 other person known to the parent or guardian;

2167 (d) the parent or guardian is unwilling to have physical custody of the [minor] child;

2168 (e) the [~~minor has been~~] child is abandoned or left without any provision for the

2169 [~~minor's~~] child's support;

2170 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged

2171 or cannot arrange for safe and appropriate care for the [minor] child;

2172 (g) a relative or other adult custodian with whom the [~~minor has been~~] child is left by

2173 the parent or guardian is unwilling or unable to provide care or support for the [minor] child,

2174 the whereabouts of the parent or guardian are unknown, and reasonable efforts to locate the

2175 parent or guardian [~~have been~~] are unsuccessful;

2176 (h) the [minor] child is in immediate need of medical care;

2177 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an

2178 environment that poses a threat to the [~~minor's~~] child's health or safety; or

2179 (ii) a parent's or guardian's action in leaving a [minor] child unattended would

2180 reasonably pose a threat to the [~~minor's~~] child's health or safety;

2181 (j) the [minor] child or another [minor] child residing in the same household has been

2182 neglected;

2183 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

2184 (l) the parent or guardian, or an adult residing in the same household as the parent or

2185 guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab

2186 Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in

2187 the residence or on the property where the minor resided; or

2188 (m) the [~~minor's~~] child's welfare is otherwise endangered.

2189 (2) (a) For purposes of Subsection (1)(a), if a [minor] child has previously been

2190 adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or

2191 dependency [~~has occurred~~] occurs involving the same substantiated abuser or under similar

2192 circumstance as the previous abuse, that fact constitutes prima facie evidence that the [minor]

2193 child cannot safely remain in the custody of the [~~minor's~~] child's parent.

2194 (b) For purposes of Subsection (1)(c):

2195 (i) another [minor] child residing in the same household may not be removed from the

2196 home unless that [minor] child is considered to be at substantial risk of being physically or

2197 sexually abused as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

2198 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a  
2199 person known to the parent has occurred, and there is evidence that the parent or guardian  
2200 failed to protect the [minor] child, after having received the notice, by allowing the [minor]  
2201 child to be in the physical presence of the alleged abuser, that fact constitutes prima facie  
2202 evidence that the [minor] child is at substantial risk of being physically or sexually abused.

2203 (3) In the absence of one of the factors described in Subsection (1), a court may not  
2204 remove a [minor] child from the parent's or guardian's custody on the basis of:

2205 (a) educational neglect;

2206 (b) mental illness or poverty of the parent or guardian; or

2207 (c) disability of the parent or guardian, as defined in Subsection [~~57-21-3~~] 57-21-2(9).

2208 (4) A [minor] child removed from the custody of the [minor's] child's parent or  
2209 guardian under this section may not be placed or kept in a secure detention facility pending  
2210 further court proceedings unless the [minor] child is detainable based on guidelines  
2211 promulgated by the Division of Juvenile Justice Services.

2212 (5) This section does not preclude removal of a [minor] child from the [minor's] child's  
2213 home without a warrant or court order under Section 62A-4a-202.1.

2214 Section 30. Section **78-3a-305** is amended to read:

2215 **78-3a-305. Petition filed -- Protective orders.**

2216 (1) Any interested person may file a petition to commence proceedings in the juvenile  
2217 court alleging that a [minor] child is abused, neglected, or dependent. The person shall first  
2218 make a referral with the division.

2219 (2) (a) If the child who is the subject of a petition was removed from [his] the child's  
2220 home by the Division of Child and Family Services that petition shall be filed on or before the  
2221 date of the initial shelter hearing described in Section 78-3a-306.

2222 (b) If a petition is requested by the division, the attorney general shall file the petition  
2223 within 72 hours of the completion of the investigation and request, excluding weekends and  
2224 holidays, if:

2225 (i) the child who is the subject of the requested petition has not been removed from  
2226 [his] the child's home by the division; and

2227 (ii) without an expedited hearing and services ordered under the protective supervision  
2228 of the court, the child will likely be taken into protective custody.



- 2229 (3) The petition shall be verified, and contain all of the following:
- 2230 (a) the name, age, and address, if any, of the [minor] child upon whose behalf the
- 2231 petition is brought;
- 2232 (b) the names and addresses, if known to the petitioner, of both parents and any
- 2233 guardian of the [minor] child;
- 2234 (c) a concise statement of facts, separately stated, to support the conclusion that the
- 2235 [minor] child upon whose behalf the petition is being brought is abused, neglected, or
- 2236 dependent; and
- 2237 (d) a statement regarding whether the [minor] child is in protective custody, and if so,
- 2238 the date and precise time the [minor] child was taken into protective custody.

2239 Section 31. Section **78-3a-306** is amended to read:

2240 **78-3a-306. Shelter hearing.**

- 2241 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
- 2242 after any one or all of the following occur:
- 2243 (a) removal of the child from [his] the child's home by the Division of Child and
- 2244 Family Services;
- 2245 (b) placement of the child in the protective custody of the Division of Child and Family
- 2246 Services;
- 2247 (c) emergency kinship placement under Subsection 62A-4a-202.1(4); or
- 2248 (d) as an alternative to removal of the child, a parent has entered a domestic violence
- 2249 shelter at the request of the Division of Child and Family Services.
- 2250 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
- 2251 through (1)(d), the division shall issue a notice that contains all of the following:
- 2252 (a) the name and address of the person to whom the notice is directed;
- 2253 (b) the date, time, and place of the shelter hearing;
- 2254 (c) the name of the [minor] child on whose behalf a petition is being brought;
- 2255 (d) a concise statement regarding:
- 2256 (i) the reasons for removal or other action of the division under Subsection (1); and
- 2257 (ii) the allegations and code sections under which the proceeding has been instituted;
- 2258 (e) a statement that the parent or guardian to whom notice is given, and the [minor]
- 2259 child, are entitled to have an attorney present at the shelter hearing, and that if the parent or

2260 guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney,  
2261 one will be provided; and

2262 (f) a statement that the parent or guardian is liable for the cost of support of the [minor]  
2263 child in the protective custody, temporary custody, and custody of the division, and the cost for  
2264 legal counsel appointed for the parent or guardian under Subsection (2)(e), according to [his]  
2265 the parent's or guardian's financial ability.

2266 (3) That notice shall be personally served as soon as possible, but no later than one  
2267 business day after removal of a child from [his] the child's home, on:

2268 (a) the appropriate guardian ad litem; and

2269 (b) both parents and any guardian of the [minor] child, unless [they] the parents or  
2270 guardians cannot be located.

2271 (4) The following persons shall be present at the shelter hearing:

2272 (a) the child, unless it would be detrimental for the child;

2273 (b) the child's parents or guardian, unless [they] the parents or guardian cannot be  
2274 located, or fail to appear in response to the notice;

2275 (c) counsel for the parents, if one has been requested;

2276 (d) the child's guardian ad litem;

2277 (e) the caseworker from the Division of Child and Family Services who has been  
2278 assigned to the case; and

2279 (f) the attorney from the attorney general's office who is representing the division.

2280 (5) (a) At the shelter hearing, the court shall provide an opportunity for the [minor's]  
2281 child's parent or guardian, if present, and any other person having relevant knowledge, to  
2282 provide relevant testimony. The court may also provide an opportunity for the [minor] child to  
2283 testify.

2284 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of  
2285 Juvenile Procedure. The court shall hear relevant evidence presented by the [minor] child,  
2286 [his] the child's parent or guardian, the requesting party, or their counsel, but may in its  
2287 discretion limit testimony and evidence to only that which goes to the issues of removal and the  
2288 child's need for continued protection.

2289 (6) If the child is in the protective custody of the division, the division shall report to  
2290 the court:

- 2291 (a) the reasons why the [minor] child was removed from the parent's or guardian's  
2292 custody;
- 2293 (b) any services provided to the child and [his] the child's family in an effort to prevent  
2294 removal;
- 2295 (c) the need, if any, for continued shelter;
- 2296 (d) the available services that could facilitate the return of the [minor] child to the  
2297 custody of [his] the child's parent or guardian; and
- 2298 (e) whether the child has any relatives who may be able and willing to take temporary  
2299 custody.
- 2300 (7) The court shall consider all relevant evidence provided by persons or entities  
2301 authorized to present relevant evidence pursuant to this section.
- 2302 (8) If necessary to protect the child, preserve the rights of a party, or for other good  
2303 cause shown, the court may grant no more than one time-limited continuance, not to exceed  
2304 five judicial days.
- 2305 (9) If the child is in the protective custody of the division, the court shall order that the  
2306 [minor] child be released from the protective custody of the division unless it finds, by a  
2307 preponderance of the evidence, that any one of the following exist:
- 2308 (a) there is a substantial danger to the physical health or safety of the [minor] child and  
2309 the [minor's] child's physical health or safety may not be protected without removing [him] the  
2310 child from [~~his parent's~~] the custody of the child's parent. If a [minor] child has previously  
2311 been adjudicated as abused, neglected, or dependent and a subsequent incident of abuse,  
2312 neglect, or dependency occurs, that fact constitutes prima facie evidence that the child cannot  
2313 safely remain in the custody of [his] the child's parent;
- 2314 (b) the [minor] child is suffering emotional damage, as may be indicated by, but is not  
2315 limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward  
2316 self or others, and there are no reasonable means available by which the [minor's] child's  
2317 emotional health may be protected without removing the [minor] child from the custody of  
2318 [his] the child's parent;
- 2319 (c) the [minor] child or another [minor] child residing in the same household has been  
2320 physically or sexually abused, or is considered to be at substantial risk of being physically or  
2321 sexually abused, by a parent, a member of the parent's household, or other person known to the

2322 parent. If a parent has received actual notice that physical or sexual abuse by a person known  
2323 to the parent has occurred, and there is evidence that the parent has allowed the child to be in  
2324 the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the  
2325 child is at substantial risk of being physically or sexually abused;

2326 (d) the parent is unwilling to have physical custody of the child;

2327 (e) the [minor] child has been left without any provision for [his] the child's support;

2328 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange for  
2329 safe and appropriate care for the [minor] child;

2330 (g) a relative or other adult custodian with whom the [~~minor has been~~] child is left by  
2331 the parent is unwilling or unable to provide care or support for the [minor] child, the  
2332 whereabouts of the parent are unknown, and reasonable efforts to locate [him] the parent have  
2333 been unsuccessful;

2334 (h) the [minor] child is in immediate need of medical care;

2335 (i) the physical environment or the fact that the child is left unattended poses a threat to  
2336 the child's health or safety;

2337 (j) the [minor] child or [another] a minor residing in the same household has been  
2338 neglected;

2339 (k) the parent, or an adult residing in the same household as the parent, has been  
2340 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any  
2341 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence  
2342 or on the property where the child resided; or

2343 (l) the child's welfare is otherwise endangered.

2344 (10) (a) The court shall also make a determination on the record as to whether  
2345 reasonable efforts were made to prevent or eliminate the need for removal of the [minor] child  
2346 from [his] the child's home and whether there are available services that would prevent the  
2347 need for continued removal. If the court finds that the [minor] child can be safely returned to  
2348 the custody of [his] the child's parent or guardian through the provision of those services, it  
2349 shall place the [minor] child with [his] the child's parent or guardian and order that those  
2350 services be provided by the division.

2351 (b) In making that determination, and in ordering and providing services, the child's  
2352 health, safety, and welfare shall be the paramount concern, in accordance with federal law.

2353 (11) Where the division's first contact with the family occurred during an emergency  
2354 situation in which the child could not safely remain at home, the court shall make a finding that  
2355 any lack of preplacement preventive efforts was appropriate.

2356 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or  
2357 neglect are involved, neither the division nor the court has any duty to make "reasonable  
2358 efforts" or to, in any other way, attempt to maintain a child in [~~his~~] the child's home, return a  
2359 child to [~~his~~] the child's home, provide reunification services, or attempt to rehabilitate the  
2360 offending parent or parents.

2361 (13) The court may not order continued removal of a [~~minor~~] child solely on the basis  
2362 of educational neglect as described in Subsection 78-3a-103(1)(~~s~~)(t)(ii).

2363 (14) (a) Whenever a court orders continued removal of a [~~minor~~] child under this  
2364 section, it shall state the facts on which that decision is based.

2365 (b) If no continued removal is ordered and the [~~minor~~] child is returned home, the court  
2366 shall state the facts on which that decision is based.

2367 (15) If the court finds that continued removal and temporary custody are necessary for  
2368 the protection of a child because harm may result to the child if [~~he~~] the child were returned  
2369 home, it shall order continued removal regardless of any error in the initial removal of the  
2370 child, or the failure of a party to comply with notice provisions, or any other procedural  
2371 requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

2372 Section 32. Section **78-3a-307** is amended to read:

2373 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**  
2374 **DCFS custody.**

2375 (1) (a) At the shelter hearing, when the court orders that a child be removed from the  
2376 custody of [~~his~~] the child's parent in accordance with the requirements of Section 78-3a-306,  
2377 the court shall first determine whether there is another natural parent as defined in Subsection  
2378 (1)(b), with whom the child was not residing at the time the events or conditions that brought  
2379 [~~him~~] the child within the court's jurisdiction occurred, who desires to assume custody of the  
2380 child. If that parent requests custody, the court shall place the [~~minor~~] child with that parent  
2381 unless it finds that the placement would be unsafe or otherwise detrimental to the child. The  
2382 provisions of this Subsection (1) are limited by the provisions of Subsection (8)(b).

2383 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section

2384 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a  
2385 biological father who was married to the child's biological mother at the time the child was  
2386 conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior  
2387 to removal of the child or voluntary surrender of the child by the custodial parent. This  
2388 definition applies regardless of whether the child has been or will be placed with adoptive  
2389 parents or whether adoption has been or will be considered as a long term goal for the child.

2390 (c) (i) The court shall make a specific finding regarding the fitness of that parent to  
2391 assume custody, and the safety and appropriateness of the placement.

2392 (ii) The court shall, at a minimum, order the division to visit the parent's home,  
2393 perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and  
2394 check the division's management information system for any previous reports of abuse or  
2395 neglect received by the division regarding the parent at issue.

2396 (iii) The court may order the Division of Child and Family Services to conduct any  
2397 further investigation regarding the safety and appropriateness of the placement.

2398 (iv) The division shall report its findings in writing to the court.

2399 (v) The court may place the child in the temporary custody of the division, pending its  
2400 determination regarding that placement.

2401 (2) If the court orders placement with a parent under Subsection (1), the child and the  
2402 parent are under the continuing jurisdiction of the court. The court may order that the parent  
2403 assume custody subject to the supervision of the court, and order that services be provided to  
2404 the parent from whose custody the child was removed, the parent who has assumed custody, or  
2405 both. The court shall also provide for reasonable parent-time with the parent from whose  
2406 custody the child was removed, unless parent-time is not in the best interest of the child. The  
2407 court's order shall be periodically reviewed to determine whether:

2408 (a) placement with the parent continues to be in the child's best interest;

2409 (b) the child should be returned to the original custodial parent;

2410 (c) the child should be placed with a relative, pursuant to Subsection (5); or

2411 (d) the child should be placed in the custody of the division.

2412 (3) The time limitations described in Section 78-3a-311 with regard to reunification  
2413 efforts, apply to children placed with a previously noncustodial parent in accordance with  
2414 Subsection (1).

2415 (4) Legal custody of the child is not affected by an order entered under Subsection (1)  
2416 or (2). In order to affect a previous court order regarding legal custody, the party must petition  
2417 that court for modification of the order.

2418 (5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of  
2419 ~~his~~ the child's parent and is not placed in the custody of his other parent, the court shall, at  
2420 that time, determine whether there is a relative who is able and willing to care for the child.

2421 (ii) The court may order the Division of Child and Family Services to conduct a  
2422 reasonable search to determine whether there are relatives of the child who are willing and  
2423 appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2,  
2424 Child Welfare Services, for placement of the child. The court shall order the parents to  
2425 cooperate with the division, within five working days, to provide information regarding  
2426 relatives who may be able and willing to care for the child.

2427 (iii) The child may be placed in the temporary custody of the division pending the  
2428 determination under Subsection (5)(a)(ii).

2429 (iv) This section may not be construed as a guarantee that an identified relative will  
2430 receive custody of the child. However, preferential consideration shall be given to a relative's  
2431 request for placement of the child, if it is in the best interest of the child, and the provisions of  
2432 this section are satisfied.

2433 (b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall  
2434 make a specific finding regarding the fitness of that relative to assume custody, and the safety  
2435 and appropriateness of placement with that relative. In order to be considered a "willing  
2436 relative" under this section, the relative shall be willing to cooperate if the child's permanency  
2437 goal is reunification with his parent or parents, and be willing to adopt or take permanent  
2438 custody of the child if that is determined to be in the best interest of the child.

2439 (ii) The court shall, at a minimum, order the division to conduct criminal background  
2440 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check  
2441 the division's management information system for any previous reports of abuse or neglect  
2442 regarding the relative at issue, report its findings in writing to the court, and provide sufficient  
2443 information so that the court may determine whether:

2444 (A) the relative has any history of abusive or neglectful behavior toward other children  
2445 that may indicate or present a danger to this child;

- 2446 (B) the child is comfortable with the relative;
- 2447 (C) the relative recognizes the parent's history of abuse and is determined to protect the  
2448 child;
- 2449 (D) the relative is strong enough to resist inappropriate requests by the parent for  
2450 access to the child, in accordance with court orders;
- 2451 (E) the relative is committed to caring for the child as long as necessary; and
- 2452 (F) the relative can provide a secure and stable environment for the child.
- 2453 (iii) The court may order the Division of Child and Family Services to conduct any  
2454 further investigation regarding the safety and appropriateness of the placement.
- 2455 (iv) The division shall complete and file its assessment regarding placement with a  
2456 relative as soon as practicable, in an effort to facilitate placement of the child with a relative.
- 2457 (c) The court may place the child in the temporary custody of the division, pending the  
2458 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding  
2459 that placement. The court shall ultimately base its determination regarding placement with a  
2460 relative on the best interest of the child.
- 2461 (d) For purposes of this section, "relative" means an adult who is a grandparent, great  
2462 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first  
2463 cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under  
2464 the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended  
2465 family member" as defined by that statute.
- 2466 (6) (a) When the court vests physical custody of a child with a relative pursuant to  
2467 Subsection (5), it shall order that the relative assume custody subject to the continuing  
2468 supervision of the court, and shall order that any necessary services be provided to the [~~minor~~  
2469 child] and the relative. That child is not within the temporary custody or custody of the  
2470 Division of Child and Family Services. The child and any relative with whom the child is  
2471 placed are under the continuing jurisdiction of the court. The court may enter any order that it  
2472 considers necessary for the protection and best interest of the child. The court shall provide for  
2473 reasonable parent-time with the parent or parents from whose custody the child was removed  
2474 unless parent-time is not in the best interest of the child.
- 2475 (b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically  
2476 reviewed by the court, no less often than every six months, to determine whether:



- 2477 (A) placement with the relative continues to be in the child's best interest;
- 2478 (B) the child should be returned home; or
- 2479 (C) the child should be placed in the custody of the division.
- 2480 (ii) No later than 12 months after placement with a relative the court shall schedule a
- 2481 hearing for the purpose of entering a permanent order in accordance with the best interest of the
- 2482 child.
- 2483 (iii) The time limitations described in Section 78-3a-311, with regard to reunification
- 2484 efforts, apply to children placed with a relative pursuant to Subsection (5).
- 2485 (7) When the court orders that a child be removed from the custody of [~~his~~] the child's
- 2486 parent and does not vest custody in another parent or relative under this section, the court shall
- 2487 order that the child be placed in the temporary custody of the Division of Child and Family
- 2488 Services, to proceed to adjudication and disposition and to be provided with care and services
- 2489 in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.
- 2490 (8) (a) Any preferential consideration that a relative is initially granted pursuant to
- 2491 Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has
- 2492 expired, a relative who has not obtained custody or asserted an interest in a child, may not be
- 2493 granted preferential consideration by the division or the court.
- 2494 (b) When the time period described in Subsection (8)(a) has expired, the preferential
- 2495 consideration which is initially granted to a natural parent in accordance with Subsection (1), is
- 2496 limited. After that time the court shall base its custody decision on the best interest of the
- 2497 child.
- 2498 Section 33. Section **78-3a-309** is amended to read:
- 2499 **78-3a-309. Notice of adjudication hearing.**
- 2500 (1) Upon the filing of a petition pursuant to Section 78-3a-305, the petitioner shall
- 2501 cause the petition and notice to be served on:
- 2502 (a) the guardian ad litem;
- 2503 (b) both parents and any guardian of the [~~minor~~] child; and
- 2504 (c) the child's foster parents.
- 2505 (2) The notice shall contain all of the following:
- 2506 (a) the name and address of the person to whom the notice is directed;
- 2507 (b) the date, time, and place of the hearing on the petition;

2508 (c) the name of the [minor] child on whose behalf the petition has been brought;

2509 (d) a statement that the parent or guardian to whom notice is given, and the [minor]  
2510 child, are entitled to have an attorney present at the hearing on the petition, and that if the  
2511 parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an  
2512 attorney, one will be provided; and

2513 (e) a statement that the parent or legal guardian is liable for the cost of support of the  
2514 [minor] child in the protective custody, temporary custody, and custody of the division, and for  
2515 legal counsel appointed for the parent or guardian under Subsection (2)(d), according to [his]  
2516 the parent's or guardian's financial ability.

2517 (3) Notice and a copy of the petition shall be served on all persons required to receive  
2518 notice under Subsection (1) as soon as possible after the petition is filed and at least five days  
2519 prior to the time set for the hearing.

2520 Section 34. Section **78-3a-311** is amended to read:

2521 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

2522 (1) The court may:

2523 (a) make any of the dispositions described in Section 78-3a-118;

2524 (b) place the minor in the custody or guardianship of any:

2525 (i) individual; or

2526 (ii) public or private entity or agency; or

2527 (c) order:

2528 (i) protective supervision;

2529 (ii) family preservation;

2530 (iii) medical or mental health treatment; or

2531 (iv) other services.

2532 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,  
2533 and that the minor remain in the custody of the division, the court shall first:

2534 (A) establish a primary permanency goal for the minor; and

2535 (B) determine whether, in view of the primary permanency goal, reunification services  
2536 are appropriate for [~~the minor~~] a child and [~~the minor's~~] a child's family, pursuant to Subsection  
2537 (3).

2538 (ii) Subject to Subsection (2)(b), if the court determines that reunification services are

2539 appropriate for the [minor] child and the [minor's] child's family, the court shall provide for  
2540 reasonable parent-time with the parent or parents from whose custody the [minor] child was  
2541 removed, unless parent-time is not in the best interest of the [minor] child.

2542 (iii) (A) In cases where obvious sexual abuse, abandonment, or serious physical abuse  
2543 or neglect are involved, neither the division nor the court has any duty to make "reasonable  
2544 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to  
2545 rehabilitate the offending parent or parents.

2546 (B) In all cases, the [minor's] child's health, safety, and welfare shall be the court's  
2547 paramount concern in determining whether reasonable efforts to reunify should be made.

2548 (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a  
2549 [minor] child unless the court makes a finding that it is necessary to deny parent-time in order  
2550 to:

2551 (A) protect the physical safety of the [minor] child;

2552 (B) protect the life of the [minor] child; or

2553 (C) prevent the [minor] child from being traumatized by contact with the parent due to  
2554 the [minor's] child's fear of the parent in light of the nature of the alleged abuse or neglect.

2555 (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based  
2556 solely on a parent's failure to:

2557 (A) prove that the parent has not used legal or illegal substances; or

2558 (B) comply with an aspect of the child and family plan that is ordered by the court.

2559 (c) (i) In addition to the primary permanency goal, the court shall establish a concurrent  
2560 permanency goal that shall include:

2561 (A) a representative list of the conditions under which the primary permanency goal  
2562 will be abandoned in favor of the concurrent permanency goal; and

2563 (B) an explanation of the effect of abandoning or modifying the primary permanency  
2564 goal.

2565 (ii) A permanency hearing shall be conducted in accordance with Subsection  
2566 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a  
2567 [minor's] child's primary permanency goal.

2568 (iii) (A) The court may amend a [minor's] child's primary permanency goal before the  
2569 establishment of a final permanency plan under Section 78-3a-312.

2570 (B) The court is not limited to the terms of the concurrent permanency goal in the event  
2571 that the primary permanency goal is abandoned.

2572 (C) If, at any time, the court determines that reunification is no longer a [minor's]  
2573 child's primary permanency goal, the court shall conduct a permanency hearing in accordance  
2574 with Section 78-3a-312 on or before the earlier of:

2575 (I) 30 days from the day on which the court makes the determination described in this  
2576 Subsection (2)(c)(iii)(C); or

2577 (II) 12 months from the day on which the [minor] child was first removed from the  
2578 [minor's] child's home.

2579 (d) (i) (A) If the court determines that reunification services are appropriate, it shall  
2580 order that the division make reasonable efforts to provide services to the [minor] child and the  
2581 [minor's] child's parent for the purpose of facilitating reunification of the family, for a specified  
2582 period of time.

2583 (B) In providing the services described in Subsection (2)(d)(i)(A), the [minor's] child's  
2584 health, safety, and welfare shall be the division's paramount concern, and the court shall so  
2585 order.

2586 (ii) The court shall:

2587 (A) determine whether the services offered or provided by the division under the child  
2588 and family plan constitute "reasonable efforts" on the part of the division;

2589 (B) determine and define the responsibilities of the parent under the child and family  
2590 plan in accordance with Subsection 62A-4a-205(6)(e); and

2591 (C) identify on the record the responsibilities described in Subsection (2)(d)(ii)(B), for  
2592 the purpose of assisting in any future determination regarding the provision of reasonable  
2593 efforts, in accordance with state and federal law.

2594 (iii) (A) The time period for reunification services may not exceed 12 months from the  
2595 date that the [minor] child was initially removed from the [minor's] child's home.

2596 (B) Nothing in this section may be construed to entitle any parent to an entire 12  
2597 months of reunification services.

2598 (iv) If reunification services are ordered, the court may terminate those services at any  
2599 time.

2600 (v) If, at any time, continuation of reasonable efforts to reunify a [minor] child is

2601 determined to be inconsistent with the final permanency plan for the minor established  
2602 pursuant to Subsection 78-3a-312, then measures shall be taken, in a timely manner, to:

2603 (A) place the [minor] child in accordance with the permanency plan; and

2604 (B) complete whatever steps are necessary to finalize the permanent placement of the  
2605 [minor] child.

2606 (e) Any physical custody of the [minor] child by the parent or a relative during the  
2607 period described in Subsection (2)(d) does not interrupt the running of the period.

2608 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by  
2609 the court in accordance with Section 78-3a-312 at the expiration of the time period for  
2610 reunification services.

2611 (ii) The permanency hearing shall be held no later than 12 months after the original  
2612 removal of the [minor] child.

2613 (iii) If reunification services are not ordered, a permanency hearing shall be conducted  
2614 within 30 days, in accordance with Section 78-3a-312.

2615 (g) With regard to a [minor] child who is 36 months of age or younger at the time the  
2616 [minor] child is initially removed from the home, the court shall:

2617 (i) hold a permanency hearing eight months after the date of the initial removal,  
2618 pursuant to Section 78-3a-312; and

2619 (ii) order the discontinuance of those services after eight months from the initial  
2620 removal of the [minor] child from the home if the parent or parents have not made substantial  
2621 efforts to comply with the child and family plan.

2622 (h) With regard to a [minor] child in the custody of the division whose parent or  
2623 parents are ordered to receive reunification services but who have abandoned that [minor] child  
2624 for a period of six months from the date that reunification services were ordered:

2625 (i) the court shall terminate reunification services; and

2626 (ii) the division shall petition the court for termination of parental rights.

2627 (3) (a) Because of the state's interest in and responsibility to protect and provide  
2628 permanency for [minors] children who are abused, neglected, or dependent, the Legislature  
2629 finds that a parent's interest in receiving reunification services is limited.

2630 (b) The court may determine that:

2631 (i) efforts to reunify a [minor] child with the [minor's] child's family are not reasonable

2632 or appropriate, based on the individual circumstances; and

2633 (ii) reunification services should not be provided.

2634 (c) In determining "reasonable efforts" to be made with respect to a [minor] child, and  
2635 in making "reasonable efforts," the [minor's] child's health, safety, and welfare shall be the  
2636 paramount concern.

2637 (d) (i) There is a presumption that reunification services should not be provided to a  
2638 parent if the court finds, by clear and convincing evidence, that any of the following  
2639 circumstances exist:

2640 (A) the whereabouts of the parents are unknown, based upon a verified affidavit  
2641 indicating that a reasonably diligent search has failed to locate the parent;

2642 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such  
2643 magnitude that it renders the parent incapable of utilizing reunification services;

2644 (C) the [minor] child was previously adjudicated as an abused child due to physical or  
2645 sexual abuse, and following the adjudication the [minor] child:

2646 (I) was removed from the custody of the [minor's] child's parent;

2647 (II) was subsequently returned to the custody of the parent; and

2648 (III) is being removed due to additional physical or sexual abuse;

2649 (D) the parent:

2650 (I) caused the death of another [minor] child through abuse or neglect; or

2651 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:

2652 (Aa) murder or manslaughter of a child; or

2653 (Bb) child abuse homicide;

2654 (E) the [minor] child suffered severe abuse by the parent or by any person known by  
2655 the parent, if the parent knew or reasonably should have known that the person was abusing the  
2656 [minor] child;

2657 (F) the [minor] child is adjudicated an abused child as a result of severe abuse by the  
2658 parent, and the court finds that it would not benefit the [minor] child to pursue reunification  
2659 services with the offending parent;

2660 (G) the parent's rights are terminated with regard to any other [minor] child;

2661 (H) the [minor] child is removed from the [minor's] child's home on at least two  
2662 previous occasions and reunification services were offered or provided to the family at those

2663 times;

2664 (I) the parent has abandoned the [minor] child for a period of six months or longer; or

2665 (J) any other circumstance that the court determines should preclude reunification  
2666 efforts or services.

2667 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence  
2668 from mental health professionals establishing that, even with the provision of services, the  
2669 parent is not likely to be capable of adequately caring for the [minor] child within 12 months  
2670 from the day on which the court finding is made.

2671 (4) In determining whether reunification services are appropriate, the court shall take  
2672 into consideration:

2673 (a) failure of the parent to respond to previous services or comply with a previous child  
2674 and family plan;

2675 (b) the fact that the [minor] child was abused while the parent was under the influence  
2676 of drugs or alcohol;

2677 (c) any history of violent behavior;

2678 (d) whether a parent continues to live with an individual who abused the [minor] child;

2679 (e) any patterns of the parent's behavior that have exposed the [minor] child to repeated  
2680 abuse;

2681 (f) testimony by a competent professional that the parent's behavior is unlikely to be  
2682 successful; and

2683 (g) whether the parent has expressed an interest in reunification with the [minor] child.

2684 (5) (a) If reunification services are not ordered pursuant to Subsection (3)(a), and the  
2685 whereabouts of a parent become known within six months of the out-of-home placement of the  
2686 [minor] child, the court may order the division to provide reunification services.

2687 (b) The time limits described in Subsection (2) are not tolled by the parent's absence.

2688 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable  
2689 services unless it determines that those services would be detrimental to the [minor] child.

2690 (b) In making the determination described in Subsection (6)(a), the court shall  
2691 consider:

2692 (i) the age of the [minor] child;

2693 (ii) the degree of parent-child bonding;

- 2694 (iii) the length of the sentence;  
2695 (iv) the nature of the treatment;  
2696 (v) the nature of the crime or illness;  
2697 (vi) the degree of detriment to the [minor] child if services are not offered;  
2698 (vii) for a [minor] child ten years of age or older, the [minor's] child's attitude toward  
2699 the implementation of family reunification services; and  
2700 (viii) any other appropriate factors.

2701 (c) Reunification services for an incarcerated parent are subject to the 12-month  
2702 limitation imposed in Subsection (2).

2703 (d) Reunification services for an institutionalized parent are subject to the 12-month  
2704 limitation imposed in Subsection (2), unless the court determines that continued reunification  
2705 services would be in the [minor's] child's best interest.

2706 (7) If, pursuant to Subsections (3)(d)(i)(B) through (J), the court does not order  
2707 reunification services, a permanency hearing shall be conducted within 30 days, in accordance  
2708 with Section 78-3a-312.

2709 Section 35. Section **78-3a-311.5** is amended to read:

2710 **78-3a-311.5. Six-month review hearing -- Court determination regarding**  
2711 **reasonable efforts by the Division of Child and Family Services and parental compliance**  
2712 **with child and family plan requirements.**

2713 If reunification efforts have been ordered by the court, a hearing shall be held no more  
2714 than six months after initial removal of a [minor] child from the [minor's] child's home, in  
2715 order for the court to determine whether:

2716 (1) the division has provided and is providing "reasonable efforts" to reunify a family,  
2717 in accordance with the child and family plan established under Section 62A-4a-205; and

2718 (2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order  
2719 to comply with the requirements of the child and family plan.

2720 Section 36. Section **78-3a-312** is amended to read:

2721 **78-3a-312. Permanency hearing -- Final plan -- Petition for termination of**  
2722 **parental rights filed -- Hearing on termination of parental rights.**

2723 (1) (a) When reunification services have been ordered in accordance with Section  
2724 78-3a-311, with regard to a [minor] child who is in the custody of the Division of Child and



2725 Family Services, a permanency hearing shall be held by the court no later than 12 months after  
2726 the original removal of [~~the minor~~] that child.

2727 (b) If reunification services were not ordered at the dispositional hearing, a permanency  
2728 hearing shall be held within 30 days from the date of the dispositional hearing.

2729 (2) (a) If reunification services were ordered by the court in accordance with Section  
2730 78-3a-311, the court shall, at the permanency hearing, determine, consistent with Subsection  
2731 (3), whether the [~~minor~~] child may safely be returned to the custody of the [~~minor's~~] child's  
2732 parent.

2733 (b) If the court finds, by a preponderance of the evidence, that return of the [~~minor~~]  
2734 child would create a substantial risk of detriment to the [~~minor's~~] child's physical or emotional  
2735 well-being, the [~~minor~~] child may not be returned to the custody of the [~~minor's~~] child's parent.

2736 (c) Prima facie evidence that return of the [~~minor~~] child to a parent or guardian would  
2737 create a substantial risk of detriment to the [~~minor~~] child is established if the parent or guardian  
2738 fails to:

2739 (i) participate in a court approved child and family plan;

2740 (ii) comply with a court approved child and family plan in whole or in part; or

2741 (iii) meet the goals of a court approved child and family plan.

2742 (3) In making a determination under Subsection (2)(a), the court shall review and  
2743 consider:

2744 (a) the report prepared by the Division of Child and Family Services;

2745 (b) any admissible evidence offered by the [~~minor's~~] child's guardian ad litem;

2746 (c) any report prepared by a foster care citizen review board pursuant to Section  
2747 78-3g-103;

2748 (d) any evidence regarding the efforts or progress demonstrated by the parent; and

2749 (e) the extent to which the parent cooperated and availed himself of the services  
2750 provided.

2751 (4) (a) With regard to a case where reunification services were ordered by the court, if  
2752 a [~~minor~~] child is not returned to the [~~minor's~~] child's parent or guardian at the permanency  
2753 hearing, the court shall:

2754 (i) order termination of reunification services to the parent;

2755 (ii) make a final determination regarding whether termination of parental rights,

2756 adoption, or permanent custody and guardianship is the most appropriate final plan for the  
2757 [minor] child, taking into account the [minor's] child's primary permanency goal established by  
2758 the court pursuant to Section 78-3a-311; and

2759 (iii) establish a concurrent plan that identifies the second most appropriate final plan  
2760 for the [minor] child.

2761 (b) If the Division of Child and Family Services documents to the court that there is a  
2762 compelling reason that adoption, reunification, guardianship, and kinship placement are not in  
2763 the [minor's] child's best interest, the court may order another planned permanent living  
2764 arrangement, in accordance with federal law.

2765 (c) If the [minor] child clearly desires contact with the parent, the court shall take the  
2766 [minor's] child's desire into consideration in determining the final plan.

2767 (d) Consistent with Subsection (4)(e), the court may not extend reunification services  
2768 beyond 12 months from the date the [minor] child was initially removed from the [minor's]  
2769 child's home, in accordance with the provisions of Section 78-3a-311, except that the court may  
2770 extend reunification services for no more than 90 days if the court finds that:

2771 (i) there has been substantial compliance with the child and family plan;

2772 (ii) reunification is probable within that 90-day period; and

2773 (iii) the extension is in the best interest of the [minor] child.

2774 (e) (i) In no event may any reunification services extend beyond 15 months from the  
2775 date the [minor] child was initially removed from the [minor's] child's home.

2776 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a  
2777 basis for the court to extend services for that parent beyond that 12-month period.

2778 (f) The court may, in its discretion:

2779 (i) enter any additional order that it determines to be in the best interest of the [minor]  
2780 child, so long as that order does not conflict with the requirements and provisions of

2781 Subsections (4)(a) through (e); or

2782 (ii) order the division to provide protective supervision or other services to a minor and  
2783 the minor's family after the division's custody of a minor [~~has been~~] is terminated.

2784 (5) If the final plan for the [minor] child is to proceed toward termination of parental  
2785 rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45  
2786 calendar days after the permanency hearing.

2787 (6) (a) Any party to an action may, at any time, petition the court for an expedited  
2788 permanency hearing on the basis that continuation of reunification efforts are inconsistent with  
2789 the permanency needs of the [minor] child.

2790 (b) If the court so determines, it shall order, in accordance with federal law, that:

2791 (i) the [minor] child be placed in accordance with the permanency plan; and

2792 (ii) whatever steps are necessary to finalize the permanent placement of the [minor]  
2793 child be completed as quickly as possible.

2794 (7) Nothing in this section may be construed to:

2795 (a) entitle any parent to reunification services for any specified period of time;

2796 (b) limit a court's ability to terminate reunification services at any time prior to a  
2797 permanency hearing; or

2798 (c) limit or prohibit the filing of a petition for termination of parental rights by any  
2799 party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

2800 (8) (a) Subject to Subsection (8)(b), if a petition for termination of parental rights is  
2801 filed prior to the date scheduled for a permanency hearing, the court may consolidate the  
2802 hearing on termination of parental rights with the permanency hearing.

2803 (b) For purposes of Subsection (8)(a), if the court consolidates the hearing on  
2804 termination of parental rights with the permanency hearing:

2805 (i) the court shall first make a finding regarding whether reasonable efforts have been  
2806 made by the Division of Child and Family Services to finalize the permanency goal for the  
2807 [minor] child; and

2808 (ii) any reunification services shall be terminated in accordance with the time lines  
2809 described in Section 78-3a-311.

2810 (c) A decision on a petition for termination of parental rights shall be made within 18  
2811 months from the day on which the [minor] child is removed from the [minor's] child's home.

2812 Section 37. Section **78-3a-313.5** is amended to read:

2813 **78-3a-313.5. Mandatory petition for termination of parental rights.**

2814 (1) For purposes of this section, "abandoned infant" means a [minor] child who is 12  
2815 months of age or younger whose parent or parents:

2816 (a) although having legal custody of the [minor] child, fail to maintain physical custody  
2817 of the [minor] child without making arrangements for the care of the [minor] child;

2818 (b) have failed to:

2819 (i) maintain physical custody; and

2820 (ii) exhibit the normal interest of a natural parent without just cause; or

2821 (c) are unwilling to have physical custody of the [minor] child.

2822 (2) Except as provided in Subsection (3), notwithstanding any other provision of this

2823 chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition

2824 for termination of parental rights with regard to:

2825 (a) an abandoned infant; or

2826 (b) the [minor] child of a parent, whenever a court has determined that the parent has:

2827 (i) committed murder or child abuse homicide of another [minor] child of that parent;

2828 (ii) committed manslaughter of another [minor] child of that parent;

2829 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse

2830 homicide, or manslaughter against another [minor] child of that parent; or

2831 (iv) committed a felony assault or abuse that results in serious physical injury to:

2832 (A) another [minor] child of that parent; or

2833 (B) the other parent of the [minor] child.

2834 (3) The division is not required to file a petition for termination of parental rights under

2835 Subsection (2) if:

2836 (a) the [minor] child is being cared for by a relative;

2837 (b) the division has:

2838 (i) documented in the [minor's] child's child and family plan a compelling reason for

2839 determining that filing a petition for termination of parental rights is not in the [minor's] child's

2840 best interest; and

2841 (ii) made that child and family plan available to the court for its review; or

2842 (c) (i) the court has previously determined, in accordance with the provisions and

2843 limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable

2844 efforts to reunify the [minor] child with the [minor's] child's parent or parents were required;

2845 and

2846 (ii) the division has not provided, within the time period specified in the child and

2847 family plan, services that had been determined to be necessary for the safe return of the [minor]

2848 child.

2849 Section 38. Section **78-3a-316.1** is amended to read:

2850 **78-3a-316.1. Proceedings arising from failure to attend public school.**

2851 (1) When a proceeding arises from a [~~minor's~~] child's failure to attend public school  
2852 based upon the assertion of a constitutional or statutory right or duty, raised either by the  
2853 [~~minor~~] child or by [~~his~~] the child's custodial parent, guardian, or custodian, the court shall hear  
2854 the petition and resolve the issues associated with the asserted constitutional or statutory claims  
2855 within 15 days after the petition is filed. The parties may waive the time limitation described  
2856 in this subsection.

2857 (2) Absent an emergency situation or other exigent circumstances, the court may not  
2858 enter any order changing the educational status of the [~~minor~~] child that existed at the time the  
2859 petition was filed, until the hearing described in Subsection (1) [~~has been~~] is concluded.

2860 (3) Parties proceeding under this section shall, insofar as it is possible, provide the  
2861 court with factual stipulations and make all other efforts that are reasonably available to  
2862 minimize the time required to hear the claims described in Subsection (1).

2863 Section 39. Section **78-3a-321** is amended to read:

2864 **78-3a-321. Mental health therapists.**

2865 (1) When a mental health practitioner is appointed in any juvenile court proceeding to  
2866 evaluate the mental health of a parent or a minor, or to provide mental health services to a  
2867 parent or minor, the court:

2868 (a) may appoint any mental health therapist, as defined in Section 58-60-102, which the  
2869 court finds to be qualified; and

2870 (b) may not refuse to appoint a mental health therapist for the reason that the therapist's  
2871 recommendations in another case have not followed the recommendations of the Division of  
2872 Child and Family Services.

2873 (2) This section applies to all juvenile court proceedings involving:

2874 (a) parents and [~~minor children~~] minors; or

2875 (b) the Division of Child and Family Services.

2876 Section 40. Section **78-3a-350** is amended to read:

2877 **78-3a-350. Separate procedures for minors committed to the Division of Child**  
2878 **and Family Services on grounds other than abuse or neglect -- Attorney general**  
2879 **responsibility.**

2880 (1) The processes and procedures described in Part 3, Abuse, Neglect, and Dependency  
2881 Proceedings, designed to meet the needs of minors who are abused or neglected, are not  
2882 applicable to a minor who is committed to the custody of the Division of Child and Family  
2883 Services on a basis other than abuse or neglect and who are classified in the division's  
2884 management information system as having been placed in custody primarily on the basis of  
2885 delinquent behavior or a status offense.

2886 (2) The procedures described in Subsection 78-3a-119(2)(a) are applicable to [~~the~~  
2887 ~~minors~~] a minor described in Subsection (1).

2888 (3) The court may appoint a guardian ad litem to represent the interests of a minor  
2889 described in Subsection (1), upon request of the minor or the minor's parent or guardian.

2890 (4) As of July 1, 1998, the attorney general's office shall represent the Division of  
2891 Child and Family Services with regard to actions involving [~~minors who have~~] a minor who  
2892 has not been adjudicated as abused or neglected, but who [~~are~~] is otherwise committed to the  
2893 custody of the division by the juvenile court, and who [~~are~~] is classified in the division's  
2894 management information system as having been placed in custody primarily on the basis of  
2895 delinquent behavior or a status offense. Nothing in Subsection (3) may be construed to affect  
2896 the responsibility of the county attorney or district attorney to represent the state in those  
2897 matters, in accordance with the provisions of Section 78-3a-116.

2898 Section 41. Section ~~78-3a-407~~ is amended to read:

2899 **78-3a-407. Grounds for termination of parental rights -- Findings regarding**  
2900 **reasonable efforts.**

2901 (1) The court may terminate all parental rights with respect to a parent if the court finds  
2902 any one of the following:

2903 (a) that the parent has abandoned the [~~minor~~] child;

2904 (b) that the parent has neglected or abused the [~~minor~~] child;

2905 (c) that the parent is unfit or incompetent;

2906 (d) (i) that the [~~minor~~] child is being cared for in an out-of-home placement under the  
2907 supervision of the court or the division;

2908 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or  
2909 unwilling to remedy the circumstances that cause the [~~minor~~] child to be in an out-of-home  
2910 placement; and

- 2911 (iii) that there is a substantial likelihood that the parent will not be capable of  
2912 exercising proper and effective parental care in the near future;
- 2913 (e) failure of parental adjustment, as defined in this chapter;
- 2914 (f) that only token efforts have been made by the parent:
- 2915 (i) to support or communicate with the [minor] child;
- 2916 (ii) to prevent neglect of the [minor] child;
- 2917 (iii) to eliminate the risk of serious physical, mental, or emotional abuse of the [minor]  
2918 child; or
- 2919 (iv) to avoid being an unfit parent;
- 2920 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the  
2921 [minor] child; and
- 2922 (ii) that termination is in the [minor's] child's best interest;
- 2923 (h) that, after a period of trial during which the [minor] child was returned to live in the  
2924 [minor's] child's own home, the parent substantially and continuously or repeatedly refused or  
2925 failed to give the [minor] child proper parental care and protection; or
- 2926 (i) the terms and conditions of safe relinquishment of a newborn child have been  
2927 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn  
2928 Child.
- 2929 (2) The court may not terminate the parental rights of a parent because the parent has  
2930 failed to complete the requirements of a child and family plan.
- 2931 (3) (a) Except as provided in Subsection (3)(b), in any case in which the court has  
2932 directed the division to provide reunification services to a parent, the court must find that the  
2933 division made reasonable efforts to provide those services before the court may terminate the  
2934 parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).
- 2935 (b) Notwithstanding Subsection (3)(a), the court is not required to make the finding  
2936 under Subsection (3)(a) before terminating a parent's rights:
- 2937 (i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred  
2938 subsequent to adjudication; or
- 2939 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not  
2940 required under federal law.
- 2941 Section 42. Section **78-3a-415** is amended to read:

2942 **78-3a-415. Mental health therapist.**

2943 (1) When a mental health practitioner is to be appointed in a parental rights action to  
2944 evaluate the mental health of a parent or a [minor] child, or to provide mental health services to  
2945 a parent or a [minor] child, the court:

2946 (a) may appoint any mental health therapist, as defined in Section 58-60-102, which the  
2947 court finds to be qualified;

2948 (b) may not refuse to appoint a mental health therapist for the reason that the therapist's  
2949 recommendations in another case have not followed the recommendations of the Division of  
2950 Child and Family Services or the Office of the Guardian Ad Litem; and

2951 (c) shall give strong consideration to the parent's or guardian's wishes regarding the  
2952 selection of a mental health therapist.

2953 (2) This section applies to all juvenile court proceedings involving:

2954 (a) parents and [minor] children; or

2955 (b) the Division of Child and Family Services.

2956 Section 43. Section **78-3a-502** is amended to read:

2957 **78-3a-502. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal**  
2958 **referral -- Citation -- Failure to appear.**

2959 (1) [~~Proceedings in minor's cases are~~] A proceeding in a minor's case is commenced by  
2960 petition.

2961 (2) (a) A peace officer or any public official of the state, any county, city, or town  
2962 charged with the enforcement of the laws of the state or local jurisdiction shall file a formal  
2963 referral with the juvenile court within ten days of [~~the~~] a minor's arrest. If the arrested minor is  
2964 taken to a detention facility, the formal referral shall be filed with the juvenile court within 72  
2965 hours, excluding weekends and holidays. There shall be no requirement to file a formal  
2966 referral with the juvenile court on an offense that would be a class B misdemeanor or less if  
2967 committed by an adult.

2968 (b) When the court is informed by a peace officer or other person that a minor is or  
2969 appears to be within the court's jurisdiction, the probation department shall make a preliminary  
2970 inquiry to determine whether the interests of the public or of the minor require that further  
2971 action be taken.

2972 (c) Based on the preliminary inquiry, the court may authorize the filing of or request



2973 that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7  
2974 file a petition. In its discretion, the court may, through its probation department, enter into a  
2975 written consent agreement with the minor and, if the minor is a child, the minor's parent,  
2976 guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and  
2977 establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for  
2978 a period of more than two months without leave of a judge of the court, who may extend the  
2979 period for an additional two months. The probation department may not in connection with  
2980 any nonjudicial adjustment compel any person to appear at any conference, produce any papers,  
2981 or visit any place.

2982 (d) The nonjudicial adjustment of a case may include conditions agreed upon as part of  
2983 the nonjudicial closure:

- 2984 (i) payment of a financial penalty of not more than \$100 to the Juvenile Court;  
2985 (ii) payment of victim restitution;  
2986 (iii) satisfactory completion of compensatory service;  
2987 (iv) referral to an appropriate provider for counseling or treatment;  
2988 (v) attendance at substance abuse programs or counseling programs;  
2989 (vi) compliance with specified restrictions on activities and associations; and  
2990 (vii) other reasonable actions that are in the interest of the child or minor and the  
2991 community.

2992 (e) Proceedings involving offenses under Section 78-3a-506 are governed by that  
2993 section regarding suspension of driving privileges.

2994 (f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile  
2995 Court shall include a minimum fine or penalty of \$60 and participation in a court-approved  
2996 tobacco education program, which may include a participation fee.

2997 (3) Except as provided in Section 78-3a-602, in the case of a minor 14 years of age or  
2998 older, the county attorney, district attorney, or attorney general may commence an action by  
2999 filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction  
3000 and certify the minor to the district court.

3001 (4) (a) In cases of violations of fish and game laws, boating laws, class B and class C  
3002 misdemeanors, other infractions or misdemeanors as designated by general order of the Board  
3003 of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the

3004 Juvenile Court, a petition is not required and the issuance of a citation as provided in Section  
3005 78-3a-503 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not  
3006 required unless requested by the court.

3007 (b) Any failure to comply with the time deadline on a formal referral may not be the  
3008 basis of dismissing the formal referral.

3009 Section 44. Section **78-3a-503** is amended to read:

3010 **78-3a-503. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to**  
3011 **appear.**

3012 (1) As used in this section, "citation" means an abbreviated referral and is sufficient to  
3013 invoke the jurisdiction of the court in lieu of a petition.

3014 (2) A citation shall be submitted to the court within five days of its issuance.

3015 (3) Each copy of the citation shall contain:

3016 (a) the name and address of the juvenile court before which the minor is to appear;

3017 (b) the name of the minor cited;

3018 (c) the statute or local ordinance that is alleged to have been violated;

3019 (d) a brief description of the offense charged;

3020 (e) the date, time, and location at which the offense is alleged to have occurred;

3021 (f) the date the citation was issued;

3022 (g) the name and badge or identification number of the peace officer or public official  
3023 who issued the citation;

3024 (h) the name of the arresting person if an arrest was made by a private party and the  
3025 citation was issued in lieu of taking the arrested minor into custody as provided in Section  
3026 78-3a-113;

3027 (i) the date and time when the minor is to appear, or a statement that the minor and  
3028 parent or legal guardian are to appear when notified by the juvenile court; and

3029 (j) the signature of the minor and the parent or legal guardian, if present, agreeing to  
3030 appear at the juvenile court as designated on the citation.

3031 (4) Each copy of the citation shall contain space for the following information to be  
3032 entered if known:

3033 (a) the minor's address;

3034 (b) the minor's date of birth;

3035 (c) the name and address of the ~~[minor's]~~ child's custodial parent or legal guardian, if  
3036 different from the ~~[minor]~~ child; and

3037 (d) if there is a victim, the victim's name, address, and an estimate of loss, except that  
3038 this information shall be removed from the documents the minor receives.

3039 (5) A citation received by the court beyond the time designated in Subsection (2) shall  
3040 include a written explanation for the delay.

3041 (6) The following offenses may be sent to the juvenile court as a citation:

3042 (a) violations of fish and game laws;

3043 (b) violations of boating laws;

3044 (c) violations of curfew laws;

3045 (d) any class B misdemeanor or less traffic violations where the person is under the age  
3046 of 16;

3047 (e) any class B or class C misdemeanor or infraction;

3048 (f) any other infraction or misdemeanor as designated by general order of the Board of  
3049 Juvenile Court Judges; and

3050 (g) violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court.

3051 (7) A preliminary inquiry is not required unless requested by the court.

3052 (8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or  
3053 habitually truant ~~[minor]~~ child.

3054 (9) In the case of Section 76-10-105 violations committed on school property when a  
3055 citation is issued under this section, the peace officer, public official, or compliance officer  
3056 shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and  
3057 file a duplicate with the juvenile court specified in the citation within five days.

3058 (10) (a) A minor receiving a citation described in this section shall appear at the  
3059 juvenile court designated in the citation on the time and date specified in the citation or when  
3060 notified by the juvenile court.

3061 (b) A citation may not require a minor to appear sooner than five days following its  
3062 issuance.

3063 (11) A minor who receives a citation and willfully fails to appear before the juvenile  
3064 court pursuant to a citation is subject to arrest and may be found in contempt of court. The  
3065 court may proceed against the minor as provided in Section 78-3a-901 regardless of the

3066 disposition of the offense upon which the minor was originally cited.

3067 (12) When a citation is issued under this section, bail may be posted and forfeited  
3068 under Subsection 78-3a-114(12) with the consent of:

3069 (a) the court; and

3070 (b) if the minor is a child, the parent or legal guardian of the [minor] child cited.

3071 Section 45. Section **78-3a-602** is amended to read:

3072 **78-3a-602. Serious youth offender -- Procedure.**

3073 (1) Any action filed by a county attorney, district attorney, or attorney general charging  
3074 a minor 16 years of age or older with a felony shall be by criminal information and filed in the  
3075 juvenile court if the information charges any of the following offenses:

3076 (a) any felony violation of:

3077 (i) Section 76-6-103, aggravated arson;

3078 (ii) Subsection 76-5-103(1)(a), aggravated assault, involving intentionally causing  
3079 serious bodily injury to another;

3080 (iii) Section 76-5-302, aggravated kidnaping;

3081 (iv) Section 76-6-203, aggravated burglary;

3082 (v) Section 76-6-302, aggravated robbery;

3083 (vi) Section 76-5-405, aggravated sexual assault;

3084 (vii) Section 76-10-508, discharge of a firearm from a vehicle;

3085 (viii) Section 76-5-202, attempted aggravated murder; or

3086 (ix) Section 76-5-203, attempted murder; or

3087 (b) an offense other than those listed in Subsection (1)(a) involving the use of a  
3088 dangerous weapon which would be a felony if committed by an adult, and the minor has been  
3089 previously adjudicated or convicted of an offense involving the use of a dangerous weapon  
3090 which also would have been a felony if committed by an adult.

3091 (2) All proceedings before the juvenile court related to charges filed under Subsection  
3092 (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

3093 (3) (a) If the information alleges the violation of a felony listed in Subsection (1), the  
3094 state shall have the burden of going forward with its case and the burden of proof to establish  
3095 probable cause to believe that one of the crimes listed in Subsection (1) has been committed  
3096 and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have

3097 the additional burden of proving by a preponderance of the evidence that the defendant has  
3098 previously been adjudicated or convicted of an offense involving the use of a dangerous  
3099 weapon.

3100 (b) If the juvenile court judge finds the state has met its burden under this Subsection  
3101 (3), the court shall order that the defendant be bound over and held to answer in the district  
3102 court in the same manner as an adult unless the juvenile court judge finds that all of the  
3103 following conditions exist:

3104 (i) the minor has not been previously adjudicated delinquent for an offense involving  
3105 the use of a dangerous weapon which would be a felony if committed by an adult;

3106 (ii) that if the offense was committed with one or more other persons, the minor  
3107 appears to have a lesser degree of culpability than the codefendants; and

3108 (iii) that the minor's role in the offense was not committed in a violent, aggressive, or  
3109 premeditated manner.

3110 (c) Once the state has met its burden under this Subsection (3) as to a showing of  
3111 probable cause, the defendant shall have the burden of going forward and presenting evidence  
3112 as to the existence of the above conditions.

3113 (d) If the juvenile court judge finds by clear and convincing evidence that all the above  
3114 conditions are satisfied, the court shall so state in its findings and order the minor held for trial  
3115 as a minor and shall proceed upon the information as though it were a juvenile petition.

3116 (4) If the juvenile court judge finds that an offense has been committed, but that the  
3117 state has not met its burden of proving the other criteria needed to bind the defendant over  
3118 under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor  
3119 and shall proceed upon the information as though it were a juvenile petition.

3120 (5) At the time of a bind over to district court a criminal warrant of arrest shall issue.  
3121 The defendant shall have the same right to bail as any other criminal defendant and shall be  
3122 advised of that right by the juvenile court judge. The juvenile court shall set initial bail in  
3123 accordance with Title 77, Chapter 20, Bail.

3124 (6) If an indictment is returned by a grand jury charging a violation under this section,  
3125 the preliminary examination held by the juvenile court judge need not include a finding of  
3126 probable cause that the crime alleged in the indictment was committed and that the defendant  
3127 committed it, but the juvenile court shall proceed in accordance with this section regarding the

3128 additional considerations listed in Subsection (3)(b).

3129 (7) When a defendant is charged with multiple criminal offenses in the same  
3130 information or indictment and is bound over to answer in the district court for one or more  
3131 charges under this section, other offenses arising from the same criminal episode and any  
3132 subsequent misdemeanors or felonies charged against him shall be considered together with  
3133 those charges, and where the court finds probable cause to believe that those crimes have been  
3134 committed and that the defendant committed them, the defendant shall also be bound over to  
3135 the district court to answer for those charges.

3136 (8) A minor who is bound over to answer as an adult in the district court under this  
3137 section or on whom an indictment has been returned by a grand jury, is not entitled to a  
3138 preliminary examination in the district court.

3139 (9) Allegations contained in the indictment or information that the defendant has  
3140 previously been adjudicated or convicted of an offense involving the use of a dangerous  
3141 weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need  
3142 to be proven at trial in the district court.

3143 (10) If a minor enters a plea to, or is found guilty of, any of the charges filed or any  
3144 other offense arising from the same criminal episode, the district court retains jurisdiction over  
3145 the minor for all purposes, including sentencing.

3146 (11) The juvenile court under Section 78-3a-104 and the Division of Juvenile Justice  
3147 Services regain jurisdiction and any authority previously exercised over the [juvenile] minor  
3148 when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district  
3149 court.

3150 Section 46. Section **78-3a-903** is amended to read:

3151 **78-3a-903. Modification or termination of custody order or decree -- Grounds --**  
3152 **Procedure.**

3153 (1) A parent, guardian, or next friend of a [minor] child whose legal custody has been  
3154 transferred by the court to an individual, agency, or institution, except a secure youth  
3155 corrections facility, may petition the court for restoration of custody or other modification or  
3156 revocation of the court's order, on the ground that a change of circumstances has occurred  
3157 which requires such modification or revocation in the best interest of the [minor] child or the  
3158 public.

3159 (2) The court shall make a preliminary investigation. If the court finds that the alleged  
3160 change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If  
3161 the court finds that a further examination of the facts is needed, or if the court on its own  
3162 motion determines that the decree should be reviewed, it shall conduct a hearing. Notice shall  
3163 be given to all persons concerned. At the hearing, the court may enter an order continuing,  
3164 modifying, or terminating the decree.

3165 (3) A petition by a parent may not be filed under this section after [~~his or her~~] the  
3166 parent's parental rights have been terminated in accordance with Part 4, Termination of  
3167 Parental Rights Act.

3168 (4) An individual, agency, or institution vested with legal custody of a [~~minor~~] child  
3169 may petition the court for a modification of the custody order on the ground that the change is  
3170 necessary for the welfare of the [~~minor~~] child or in the public interest. The court shall proceed  
3171 upon the petition in accordance with Subsections (1) and (2).

3172 Section 47. Section **78-3a-904** is amended to read:

3173 **78-3a-904. When photographs, fingerprints, or HIV infection tests may be taken**  
3174 **-- Distribution -- Expungement.**

3175 (1) Photographs may be taken of a minor 14 years of age or older who:

3176 (a) is taken into custody for the alleged commission of an offense under Sections  
3177 78-3a-104, 78-3a-601, and 78-3a-602 that would also be an offense if the minor were 18 years  
3178 of age or older; or

3179 (b) has been determined to be a serious habitual offender for tracking under Section  
3180 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of  
3181 Juvenile Justice Services.

3182 (2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

3183 (i) is taken into custody for the alleged commission of an offense that would be a  
3184 felony if the minor were 18 years of age or older;

3185 (ii) has been determined to be a serious habitual offender for tracking under Section  
3186 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of  
3187 Juvenile Justice Services; or

3188 (iii) is required to provide a DNA specimen under Section 53-10-403.

3189 (b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be

3190 stored by electronic medium.

3191 (3) HIV testing may be conducted on a minor who is taken into custody after having  
3192 been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter  
3193 5, Part 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a [minor]  
3194 child victim.

3195 (4) HIV tests, photographs, and fingerprints may not be taken of a [minor] child  
3196 younger than 14 years of age without the consent of the court.

3197 (5) (a) Photographs may be distributed or disbursed to individuals or agencies other  
3198 than state or local law enforcement agencies only when a minor 14 years of age or older is  
3199 charged with an offense which would be a felony if committed by an adult.

3200 (b) Fingerprints may be distributed or disbursed to individuals or agencies other than  
3201 state or local law enforcement agencies.

3202 (6) When a minor's juvenile record is expunged, all photographs and other records as  
3203 ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records  
3204 may not be destroyed.

3205 Section 48. Section **78-3a-905** is amended to read:

3206 **78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.**

3207 (1) (a) A person who has been adjudicated under this chapter may petition the court for  
3208 the expungement of [his] the person's record in the juvenile court if:

3209 (i) [~~he~~] the person has reached 18 years of age; and

3210 (ii) one year has elapsed from the date of termination of the continuing jurisdiction of  
3211 the juvenile court or, [~~in case he~~] if the person was committed to a secure youth corrections  
3212 facility, one year from the date of [his] the person's unconditional release from the custody of  
3213 the Division of Juvenile Justice Services.

3214 (b) The court may waive the requirements in Subsection (1)(a), if the court finds, and  
3215 states on the record, the reason why the waiver is appropriate.

3216 (c) The petitioner shall include with [his] the petition the original criminal history  
3217 report obtained from the Bureau of Criminal Identification in accordance with the provisions of  
3218 Subsection 53-10-108(8).

3219 (d) The petitioner shall send a copy of the petition to the county attorney or, if within a  
3220 prosecution district, the district attorney.



3221 (e) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall  
3222 notify the county attorney or district attorney, and the agency with custody of the records of the  
3223 pendency of the petition and of the date of the hearing. Notice shall be given at least 30 days  
3224 prior to the hearing.

3225 (ii) The court shall provide a victim with the opportunity to request notice of a petition  
3226 for expungement. A victim shall receive notice of a petition for expungement at least 30 days  
3227 prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a  
3228 [~~minor~~] child or a person who is incapacitated or deceased, the victim's next of kin or  
3229 authorized representative, submits a written and signed request for notice to the court in the  
3230 judicial district in which the crime occurred or judgment was entered. The notice shall include  
3231 a copy of the petition and statutes and rules applicable to the petition.

3232 (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other  
3233 person who may have relevant information about the petitioner may testify.

3234 (b) In deciding whether to grant a petition for expungement, the court shall consider  
3235 whether the rehabilitation of the petitioner has been attained to the satisfaction of the court,  
3236 taking into consideration the petitioner's response to programs and treatment, [~~his~~] the  
3237 petitioner's behavior subsequent to adjudication, and the nature and seriousness of the conduct.

3238 (c) The court may order sealed all petitioner's records under the control of the juvenile  
3239 court and any of petitioner's records under the control of any other agency or official pertaining  
3240 to the petitioner's adjudicated juvenile court cases if the court finds that:

3241 (i) the petitioner has not, since the termination of the court's jurisdiction or his  
3242 unconditional release from the Division of Juvenile Justice Services, been convicted of a:

3243 (A) felony; or

3244 (B) misdemeanor involving moral turpitude; and

3245 (ii) no proceeding involving a felony or misdemeanor is pending or being instituted  
3246 against [~~him~~] the petitioner.

3247 (3) The petitioner shall be responsible for service of the order of expungement to all  
3248 affected state, county, and local entities, agencies, and officials. To avoid destruction or  
3249 sealing of the records in whole or in part, the agency or entity receiving the expungement order  
3250 shall only expunge all references to the petitioner's name in the records pertaining to the  
3251 petitioner's adjudicated juvenile court cases.

3252 (4) Upon the entry of the order, the proceedings in the petitioner's case shall be  
3253 considered never to have occurred and the petitioner may properly reply accordingly upon any  
3254 inquiry in the matter. Inspection of the records may thereafter only be permitted by the court  
3255 upon petition by the person who is the subject of the records, and only to persons named in the  
3256 petition.

3257 (5) The court may not expunge a juvenile court record if the record contains an  
3258 adjudication of:

3259 (a) Section 76-5-202, aggravated murder; or

3260 (b) Section 76-5-203, murder.

3261 (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments  
3262 as provided in Section 78-3a-502 may petition the court for expungement of [~~his~~] the person's  
3263 record if the person:

3264 (i) has reached 18 years of age; and

3265 (ii) has completed the conditions of the nonjudicial adjustments.

3266 (b) The court shall, without a hearing, order sealed all petitioner's records under the  
3267 control of the juvenile court and any of petitioner's records under the control of any other  
3268 agency or official pertaining to the petitioner's nonjudicial adjustments.

3269 Section 49. Section **78-3a-906** is amended to read:

3270 **78-3a-906. Child support obligation when custody of a child is vested in an**  
3271 **individual or institution.**

3272 (1) When legal custody of a [~~minor~~] child is vested by the court in a secure youth  
3273 corrections facility or any other state department, division, or agency other than [~~his~~] the child's  
3274 parents, or if the guardianship of the child has been granted to another party and an agreement  
3275 for a guardianship subsidy has been signed by the guardian, the court shall order the parents, a  
3276 parent, or any other obligated person to pay child support for each month the child is in  
3277 custody. In the same proceeding the court shall inform the parents, a parent, or any other  
3278 obligated person, verbally and in writing, of the requirement to pay child support in accordance  
3279 with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

3280 (2) If legal custody of a [~~minor~~] child is vested by the court in a secure youth  
3281 corrections facility, or any other state department, division, or agency, the court may refer the  
3282 establishment of a child support order to the Office of Recovery Services. The referral shall be

3283 sent to the Office of Recovery Services within three working days of the hearing. Support  
3284 obligation amounts shall be set by the Office of Recovery Services in accordance with Title 78,  
3285 Chapter 45, Uniform Civil Liability for Support Act.

3286 (3) If referred to the Office of Recovery Services pursuant to Subsection (2), the court  
3287 shall also inform the parties that they are required to contact the Office of Recovery Services  
3288 within 30 days of the date of the hearing to establish a child support order and the penalty in  
3289 Subsection (5) for failing to do so. If there is no existing child support order for the child, the  
3290 liability for support shall accrue beginning on the 61st day following the hearing that occurs the  
3291 first time the court vests custody of the child in a secure youth corrections facility, or any other  
3292 state department, division, or agency other than his parents.

3293 (4) If a child is returned home and legal custody is subsequently vested by the court in  
3294 a secure youth corrections facility or any other state department, division, or agency other than  
3295 his parents, the liability for support shall accrue from the date the ~~[minor]~~ child is subsequently  
3296 removed from the home, including time spent in detention or sheltered care.

3297 (5) (a) If the parents, parent, or other obligated person meets with the Office of  
3298 Recovery Services within 30 days of the date of the hearing, the child support order may not  
3299 include a judgment for past due support for more than two months.

3300 (b) Notwithstanding Subsection (5)(a), the court may order the liability of support to  
3301 begin to accrue from the date of the proceeding referenced in Subsection (1) if:

3302 (i) the parents, parent, or any other person obligated fails to meet with the Office of  
3303 Recovery Services within 30 days after being informed orally and in writing by the court of that  
3304 requirement; and

3305 (ii) the Office of Recovery Services took reasonable steps under the circumstances to  
3306 contact the parents, parent, or other person obligated within the subsequent 30-day period to  
3307 facilitate the establishment of the child support order.

3308 (c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be  
3309 presumed to have taken reasonable steps if the office:

3310 (i) has a signed, returned receipt for a certified letter mailed to the address of the  
3311 parents, parent, or other obligated person regarding the requirement that a child support order  
3312 be established; or

3313 (ii) has had a documented conversation, whether by telephone or in person, with the

3314 parents, parent, or other obligated person regarding the requirement that a child support order  
3315 be established.

3316 (6) In collecting arrears, the Office of Recovery Services shall comply with Section  
3317 62A-11-320 in setting a payment schedule or demanding payment in full.

3318 (7) Unless otherwise ordered, the parents or other person shall pay the child support to  
3319 the Office of Recovery Services. The clerk of the court, the Office of Recovery Services, or the  
3320 Department of Human Services and its divisions shall have authority to receive periodic  
3321 payments for the care and maintenance of the [minor] child, such as Social Security payments  
3322 or railroad retirement payments made in the name of or for the benefit of the [minor] child.

3323 (8) No court order under this section against a parent or other person shall be entered,  
3324 unless notice of hearing has been served within the state, a voluntary appearance is made, or a  
3325 waiver of service given. The notice shall specify that a hearing with respect to the financial  
3326 support of the [minor] child will be held.

3327 (9) An existing child support order payable to a parent or other obligated person shall  
3328 be assigned to the Department of Human Services as provided in Section 62A-1-117.

3329 (10) (a) Subsections (3) through (9) shall not apply if legal custody of a [minor] child is  
3330 vested by the court in an individual.

3331 (b) If legal custody of a [minor] child is vested by the court in an individual, the court  
3332 may order the parents, a parent, or any other obligated person to pay child support to the  
3333 individual. In the same proceeding the court shall inform the parents, a parent, or any other  
3334 obligated person, verbally and in writing, of the requirement to pay child support in accordance  
3335 with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

3336 Section 50. Section **78-3a-908** is amended to read:

3337 **78-3a-908. New hearings authorized -- Grounds and procedure.**

3338 (1) A parent, guardian, custodian, or next friend of any [minor] child adjudicated under  
3339 this chapter, or any minor who is at least 18 years old, or adult affected by a decree in a  
3340 proceeding under this chapter, may at any time petition the court for a new hearing on the  
3341 ground that new evidence which was not known and could not with due diligence have been  
3342 made available at the original hearing and which might affect the decree, has been discovered.

3343 (2) If it appears to the court that there is new evidence which might affect its decree, it  
3344 shall order a new hearing, enter a decree, and make any disposition of the case warranted by all

3345 the facts and circumstances and the best interests of the minor.

3346 (3) This section does not apply to a minor's [~~cases~~] case handled under the provisions  
3347 of Section 78-3a-602.

3348 Section 51. Section **78-3a-909** is amended to read:

3349 **78-3a-909. Appeals.**

3350 (1) An appeal to the Court of Appeals may be taken from any order, decree, or  
3351 judgment of the juvenile court.

3352 (2) Appeals of right from juvenile court orders related to abuse, neglect, dependency,  
3353 termination, and adoption proceedings, shall be taken within 15 days from entry of the order,  
3354 decree, or judgment appealed from. In addition, the notice of appeal must be signed by  
3355 appellant's counsel, if any, and by appellant, unless the appellant is a [~~minor~~] child or state  
3356 agency. If an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

3357 (3) If the parties are present in the courtroom, the court shall inform them of:

3358 (a) their right to appeal within the specified time limits;

3359 (b) the need for their signature on a notice of appeal in appeals from juvenile court  
3360 orders related to abuse, neglect, dependency, termination, and adoption proceedings; and

3361 (c) the need for parties to maintain regular contact with their counsel and to keep all  
3362 other parties and the appellate court informed of their whereabouts.

3363 (4) If the parties are not present in the courtroom, the court shall mail a written  
3364 statement containing the information provided in Subsection (3) to the parties at their last  
3365 known address.

3366 (5) (a) The court shall inform the parties' counsel at the conclusion of the proceedings  
3367 that, if an appeal is filed, they must represent their clients throughout the appellate process  
3368 unless relieved of that obligation by the juvenile court upon a showing of extraordinary  
3369 circumstances.

3370 (b) Until the petition on appeal is filed, claims of ineffective assistance of counsel do  
3371 not constitute extraordinary circumstances. If a claim is raised by trial counsel or a party, it  
3372 must be included in the petition on appeal.

3373 (6) During the pendency of an appeal from juvenile court orders related to abuse,  
3374 neglect, dependency, termination, and adoption proceedings, parties shall maintain regular  
3375 contact with their counsel, if any, and keep all other parties and the appellate court informed of

3376 their whereabouts.

3377 (7) In all other appeals of right, the appeal shall be taken within 30 days from the entry  
3378 of the order, decree, or judgment appealed from and the notice of appeal must be signed by  
3379 appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all  
3380 appeals under this chapter.

3381 (8) Unless the juvenile court stays its order, the pendency of an appeal does not stay the  
3382 order or decree appealed from in a minor's case, unless otherwise ordered by the Court of  
3383 Appeals, if suitable provision for the care and custody of the minor involved is made pending  
3384 the appeal.

3385 (9) The name of the minor may not appear on the record on appeal.

3386 Section 52. Section **78-3a-911** is amended to read:

3387 **78-3a-911. Office of Guardian Ad Litem Director -- Appointment of director --**  
3388 **Duties of director -- Contracts in second, third, and fourth districts.**

3389 (1) There is hereby created the Office of Guardian Ad Litem Director under the direct  
3390 supervision of the Judicial Council in accordance with Subsection 78-3-21(13).

3391 (2) (a) The Judicial Council shall appoint one person to serve full time as the guardian  
3392 ad litem director for the state. The guardian ad litem director shall serve at the pleasure of the  
3393 Judicial Council.

3394 (b) The director shall be an attorney licensed to practice law in this state and selected  
3395 on the basis of:

3396 (i) professional ability;

3397 (ii) experience in abuse, neglect, and dependency proceedings;

3398 (iii) familiarity with the role, purpose, and function of guardians ad litem in both  
3399 juvenile and district courts; and

3400 (iv) ability to develop training curricula and reliable methods for data collection and  
3401 evaluation.

3402 (c) The director shall be trained in the United States Department of Justice National  
3403 Court Appointed Special Advocate program prior to or immediately after ~~[his]~~ the director's  
3404 appointment.

3405 (3) The guardian ad litem director shall:

3406 (a) establish policy and procedure for the management of a statewide guardian ad litem

3407 program;

3408 (b) manage the guardian ad litem program to assure that minors receive qualified  
3409 guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with  
3410 state and federal law and policy;

3411 (c) develop standards for contracts of employment and contracts with independent  
3412 contractors, and employ or contract with attorneys licensed to practice law in this state, to act  
3413 as attorney guardians ad litem in accordance with Section 78-3a-912;

3414 (d) develop and provide training programs for attorney guardians ad litem and  
3415 volunteers in accordance with the United States Department of Justice National Court  
3416 Appointed Special Advocates Association standards;

3417 (e) update and develop the guardian ad litem manual, combining elements of the  
3418 National Court Appointed Special Advocates Association manual with specific information  
3419 about the law and policy of this state;

3420 (f) develop and provide a library of materials for the continuing education of attorney  
3421 guardians ad litem and volunteers;

3422 (g) educate court personnel regarding the role and function of guardians ad litem;

3423 (h) develop needs assessment strategies, perform needs assessment surveys, and ensure  
3424 that guardian ad litem training programs correspond with actual and perceived needs for  
3425 training;

3426 (i) design and implement evaluation tools based on specific objectives targeted in the  
3427 needs assessments described in Subsection (3)(h);

3428 (j) prepare and submit an annual report to the Judicial Council and the Child Welfare  
3429 Legislative Oversight Panel regarding the development, policy, and management of the  
3430 statewide guardian ad litem program, and the training and evaluation of attorney guardians ad  
3431 litem and volunteers;

3432 (k) hire, train, and supervise investigators; and

3433 (l) administer the program of private guardians ad litem established by Section  
3434 78-7-45.

3435 (4) A contract of employment or independent contract described under Subsection  
3436 (3)(c) shall provide that attorney guardians ad litem in the second, third, and fourth judicial  
3437 districts devote their full time and attention to the role of attorney guardian ad litem, having no

3438 clients other than the [~~children~~] minors whose interest they represent within the guardian ad  
3439 litem program.

3440 Section 53. Section **78-3a-912** is amended to read:

3441 **78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal --**  
3442 **Duties and responsibilities -- Training -- Trained staff and court-appointed special**  
3443 **advocate volunteers -- Costs -- Immunity -- Annual report.**

3444 (1) (a) The court:

3445 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor  
3446 involved in any case before the court; and

3447 (ii) shall consider the best interest of a minor, consistent with the provisions of Section  
3448 62A-4a-201, in determining whether to appoint a guardian ad litem.

3449 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a  
3450 finding that establishes the necessity of the appointment.

3451 (2) An attorney guardian ad litem shall represent the best interest of each [~~minor~~] child  
3452 who may become the subject of a petition alleging abuse, neglect, or dependency, from the  
3453 earlier of the day that:

3454 (a) the [~~minor~~] child is removed from the [~~minor's~~] child's home by the division; or

3455 (b) the petition is filed.

3456 (3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad  
3457 litem, shall:

3458 (a) represent the best interest of the minor in all proceedings;

3459 (b) prior to representing any minor before the court, be trained in:

3460 (i) applicable statutory, regulatory, and case law; and

3461 (ii) accordance with the United States Department of Justice National Court Appointed  
3462 Special Advocate Association guidelines;

3463 (c) conduct or supervise an independent investigation in order to obtain first-hand, a  
3464 clear understanding of the situation and needs of the minor;

3465 (d) (i) personally meet with the minor;

3466 (ii) personally interview the minor if the minor is old enough to communicate;

3467 (iii) determine the minor's goals and concerns regarding placement; and

3468 (iv) personally assess or supervise an assessment of the appropriateness and safety of



3469 the minor's environment in each placement;

3470 (e) file written motions, responses, or objections at all stages of a proceeding when  
3471 necessary to protect the best interest of a minor;

3472 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all  
3473 administrative and foster care citizen review board hearings pertaining to the minor's case;

3474 (g) participate in all appeals unless excused by order of the court;

3475 (h) be familiar with local experts who can provide consultation and testimony  
3476 regarding the reasonableness and appropriateness of efforts made by the Division of Child and  
3477 Family Services to:

3478 (i) maintain a minor in the minor's home; or

3479 (ii) reunify a [minor] child with the [minor's] child's parent;

3480 (i) to the extent possible, and unless it would be detrimental to the minor, personally or  
3481 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of:

3482 (i) the status of the minor's case;

3483 (ii) all court and administrative proceedings;

3484 (iii) discussions with, and proposals made by, other parties;

3485 (iv) court action; and

3486 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be  
3487 provided to the minor;

3488 (j) review proposed orders for, and as requested by the court;

3489 (k) prepare proposed orders with clear and specific directions regarding services,  
3490 treatment, evaluation, assessment, and protection of the minor and the minor's family; and

3491 (l) personally or through a trained volunteer, paralegal, or other trained staff, monitor  
3492 implementation of a minor's child and family plan and any dispositional orders to:

3493 (i) determine whether services ordered by the court:

3494 (A) are actually provided; and

3495 (B) are provided in a timely manner; and

3496 (ii) attempt to assess whether services ordered by the court are accomplishing the  
3497 intended goal of the services.

3498 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use  
3499 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers

3500 Act, trained paralegals, and other trained staff to assist in investigation and preparation of  
3501 information regarding the cases of individual minors before the court.

3502 (b) The attorney guardian ad litem described in Subsection (4)(a) may not delegate the  
3503 attorney's responsibilities described in Subsection (3).

3504 (c) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained  
3505 in and follow, at a minimum, the guidelines established by the United States Department of  
3506 Justice Court Appointed Special Advocate Association.

3507 (d) The court may use volunteers trained in accordance with the requirements of  
3508 Subsection (4)(c) to assist in investigation and preparation of information regarding the cases  
3509 of individual minors within the jurisdiction.

3510 (e) When possible and appropriate, the court may use a volunteer who is a peer of the  
3511 minor appearing before the court, in order to provide assistance to that minor, under the  
3512 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or  
3513 other trained staff.

3514 (5) The attorney guardian ad litem shall continue to represent the best interest of the  
3515 minor until released from that duty by the court.

3516 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

3517 (i) all costs resulting from the appointment of an attorney guardian ad litem; and

3518 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

3519 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem  
3520 program to cover the costs described in Subsection (6)(a).

3521 (c) (i) When the court appoints an attorney guardian ad litem under this section, the  
3522 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer  
3523 expenses against the ~~minor's~~ child's parents, parent, or legal guardian in a proportion that the  
3524 court determines to be just and appropriate.

3525 (ii) The court may not assess those fees or costs against:

3526 (A) a legal guardian, when that guardian is the state; or

3527 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

3528 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the  
3529 court shall:

3530 (i) require that person to submit an affidavit of impecuniosity as provided in Section

3531 78-7-36; and

3532 (ii) follow the procedures and make the determinations as provided in Section 78-7-37.

3533 (7) An attorney guardian ad litem appointed under this section, when serving in the  
3534 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee  
3535 of the state for purposes of indemnification under Title 63, Chapter 30d, Governmental  
3536 Immunity Act of Utah.

3537 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

3538 (b) If the minor's wishes differ from the attorney's determination of the minor's best  
3539 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in  
3540 addition to presenting the attorney's determination of the minor's best interest.

3541 (c) A difference between the minor's wishes and the attorney's determination of best  
3542 interest may not be considered a conflict of interest for the attorney.

3543 (d) The court may appoint one attorney guardian ad litem to represent the best interests  
3544 of more than one [minor] child of a marriage.

3545 (9) An attorney guardian ad litem shall be provided access to all Division of Child and  
3546 Family Services records regarding the minor at issue and the minor's family.

3547 (10) An attorney guardian ad litem shall maintain current and accurate records  
3548 regarding:

3549 (a) the number of times the attorney has had contact with each minor; and

3550 (b) the actions the attorney has taken in representation of the minor's best interest.

3551 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian  
3552 ad litem are confidential and may not be released or made public upon subpoena, search  
3553 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2,  
3554 Government Records Access and Management Act.

3555 (b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:

3556 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative  
3557 Subpoena Powers; and

3558 (ii) shall be released to the Legislature.

3559 (c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with  
3560 Subsection (11)(b) shall be maintained as confidential by the Legislature.

3561 (ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor

3562 General may include summary data and nonidentifying information in its audits and reports to  
3563 the Legislature.

3564 (d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct,  
3565 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

3566 (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

3567 (B) the state's role and responsibility:

3568 (I) to provide a guardian ad litem program; and

3569 (II) as parens patriae, to protect minors.

3570 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney  
3571 guardian ad litem by the Legislature, through legislative subpoena.

3572 (e) The Office of the Guardian Ad Litem shall present an annual report to the Child  
3573 Welfare Legislative Oversight Panel detailing:

3574 (i) the development, policy, and management of the statewide guardian ad litem  
3575 program;

3576 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

3577 (iii) the number of [~~children~~] minors served by the Office of the Guardian Ad Litem.

3578 Section 54. Section **78-3a-913** is amended to read:

3579 **78-3a-913. Right to counsel -- Appointment of counsel for indigent -- Cost --**

3580 **Court hearing to determine compelling reason to appoint a noncontracting attorney --**

3581 **Rate of pay.**

3582 (1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed  
3583 that they have the right to be represented by counsel at every stage of the proceedings. They  
3584 have the right to employ counsel of their own choice and if any of them requests an attorney  
3585 and is found by the court to be indigent, counsel shall be appointed by the court as provided in  
3586 Subsection (3). The court may appoint counsel without a request if it considers representation  
3587 by counsel necessary to protect the interest of the minor or of other parties.

3588 (b) The cost of appointed counsel for an indigent minor or other indigent party,  
3589 including the cost of counsel and expense of appeal, shall be paid by the county in which the  
3590 trial court proceedings are held. Counties may levy and collect taxes for these purposes.

3591 (c) The court shall take into account the income and financial ability to retain counsel  
3592 of the parents or guardian of a [~~minor~~] child in determining the indigency of the [~~minor~~] child.

3593 (2) If the state or county responsible to provide legal counsel for an indigent under  
3594 Subsection (1)(b) has arranged by contract to provide services, the court if it has received  
3595 notice or a copy of such contract shall appoint the contracting attorney as legal counsel to  
3596 represent that indigent.

3597 (3) In the absence of contrary contractual provisions regarding the selection and  
3598 appointment of parental defense counsel, the court shall select and appoint the attorney or  
3599 attorneys if:

3600 (a) the contract for indigent legal services is with multiple attorneys; or

3601 (b) the contract is with an additional attorney or attorneys in the event of a conflict of  
3602 interest.

3603 (4) If the court considers the appointment of a noncontracting attorney to provide legal  
3604 services to an indigent despite the existence of an indigent legal services contract and the court  
3605 has a copy or notice of such contract, before the court may make the appointment, it shall:

3606 (a) set the matter for a hearing;

3607 (b) give proper notice to the attorney general and the Office of Child Welfare Parental  
3608 Defense created in Section 63A-11-103; and

3609 (c) make findings that there is a compelling reason to appoint a noncontracting attorney  
3610 before it may make such appointment.

3611 (5) The indigent's mere preference for other counsel shall not be considered a  
3612 compelling reason justifying the appointment of a noncontracting attorney.

3613 (6) The court may order a minor, parent, guardian, or custodian for whom counsel is  
3614 appointed and the parents or guardian of any [~~minor~~] child for whom counsel is appointed to  
3615 reimburse the county for the cost of appointed counsel.

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**Legislative Review Note**

**as of 1-11-06 9:12 AM**

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**