

SCHOOL TRUANCY AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill amends provisions related to compulsory education and truancy.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes compulsory education requirements relating to school-age minors;
- ▶ provides for the service of a notice of compulsory education violation on a parent or guardian of a school-age child who is less than 14 years old if the child has been absent without a valid excuse at least five times during the school year;
- ▶ makes it a class B misdemeanor for a parent or guardian to intentionally or recklessly:
 - fail to enroll the parent's school-age minor in school, unless the school-age minor is exempt from enrollment; or
 - after being served with a notice of compulsory education violation, fail to meet and discuss a child's school attendance problems with school authorities or fail to prevent a child from being truant five or more times during the remainder of the school year;
- ▶ provides for juvenile court jurisdiction of habitual truant proceedings and compulsory education violations;
- ▶ establishes school attendance requirements for a school-age minor;



- 28 ▶ provides for the issuance of a notice of truancy to a school-age minor who is at least
- 29 12 years old and has been truant at least five times during the school year;
- 30 ▶ establishes a procedure for resolving the truancy problems of a school-age minor
- 31 who is at least 12 years old;
- 32 ▶ modifies and describes requirements for proceedings on, and the issuance of,
- 33 citations and notices relating to truancy;
- 34 ▶ removes provisions permitting the issuance of a truancy citation, except for a
- 35 habitual truant citation;
- 36 ▶ provides that a notice of truancy or a habitual truant citation may only be issued by a
- 37 school administrator or truancy specialist authorized by a local school board, or by
- 38 the school administrator's designee;
- 39 ▶ modifies the duties of a local school board or school district for attempting to
- 40 resolve a minor's school attendance problems;
- 41 ▶ clarifies civil liability limitations relating to compulsory education and truancy;
- 42 ▶ changes the term "truancy officer" to "truancy specialist"; and
- 43 ▶ makes technical changes.

44 Monies Appropriated in this Bill:

45 None

46 Other Special Clauses:

47 None

48 Utah Code Sections Affected:

49 AMENDS:

- 50 **35A-3-304**, as last amended by Chapter 29, Laws of Utah 2004
- 51 **53A-11-101**, as last amended by Chapter 99, Laws of Utah 1999
- 52 **53A-11-102**, as last amended by Chapter 253, Laws of Utah 2005
- 53 **53A-11-102.5**, as last amended by Chapter 221, Laws of Utah 2003
- 54 **53A-11-103**, as last amended by Chapter 221, Laws of Utah 2003
- 55 **53A-11-104**, as enacted by Chapter 2, Laws of Utah 1988
- 56 **53A-11-105**, as last amended by Chapter 99, Laws of Utah 1999
- 57 **53A-11-106**, as enacted by Chapter 337, Laws of Utah 1997
- 58 **62A-2-108.1**, as last amended by Chapter 188, Laws of Utah 2005

59 **62A-4a-606**, as last amended by Chapter 10, Laws of Utah 1997
 60 **78-3a-103**, as last amended by Chapter 95, Laws of Utah 2005
 61 **78-3a-801**, as last amended by Chapter 249, Laws of Utah 1999

62 ENACTS:

63 **53A-11-101.5**, Utah Code Annotated 1953
 64 **53A-11-101.7**, Utah Code Annotated 1953

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

67 Section 1. Section **35A-3-304** is amended to read:

68 **35A-3-304. Assessment -- Participation requirements and limitations -- Mentors.**

69 (1) (a) Within 20 business days of the date of enrollment, a parent client shall:

- 70 (i) be assigned an employment counselor; and
- 71 (ii) complete an assessment provided by the division regarding the parent client's:
 - 72 (A) family circumstances;
 - 73 (B) education;
 - 74 (C) work history;
 - 75 (D) skills; and
 - 76 (E) ability to become self-sufficient.

77 (b) The assessment provided under Subsection (1)(a)(ii) shall include a survey to be
78 completed by the parent client with the assistance of the division.

79 (2) (a) Within 15 business days of a parent client completing an assessment, the
80 division and the parent client shall enter into an employment plan.

- 81 (b) The employment plan shall have a target date for entry into employment.
- 82 (c) The division shall provide a copy of the employment plan to the parent client.
- 83 (d) As to the parent client, the plan may include:
 - 84 (i) job searching requirements;
 - 85 (ii) if the parent client does not have a high school diploma, participation in an
86 educational program to obtain a high school diploma, or its equivalent;
 - 87 (iii) education or training necessary to obtain employment;
 - 88 (iv) a combination of work and education or training;
 - 89 (v) assisting the Office of Recovery Services in good faith to:

- 90 (A) establish the paternity of a minor child; and
- 91 (B) establish or enforce a child support order; and
- 92 (vi) if the parent client is a drug dependent person as defined in Section 58-37-2,
- 93 participation in available treatment for drug dependency and progress toward overcoming that
- 94 dependency.
- 95 (e) As to the division, the plan may include:
- 96 (i) providing cash and other types of public and employment assistance, including child
- 97 care;
- 98 (ii) assisting the parent client to obtain education or training necessary for employment;
- 99 (iii) assisting the parent client to set up and follow a household budget; and
- 100 (iv) assisting the parent client to obtain employment.
- 101 (f) The division may amend the employment plan to reflect new information or
- 102 changed circumstances.
- 103 (g) If immediate employment is an activity contained in the employment plan the
- 104 parent client shall:
- 105 (i) promptly commence a search for a specified number of hours each week for
- 106 employment; and
- 107 (ii) regularly submit a report to the division on:
- 108 (A) how time was spent in search for a job;
- 109 (B) the number of job applications completed;
- 110 (C) the interviews attended;
- 111 (D) the offers of employment extended; and
- 112 (E) other related information required by the division.
- 113 (h) (i) If full-time education or training to secure employment is an activity contained
- 114 in an employment plan, the parent client shall promptly undertake a full-time education or
- 115 training program.
- 116 (ii) The employment plan may describe courses, education or training goals, and
- 117 classroom hours.
- 118 (i) (i) As a condition of receiving cash assistance under this part, a parent client shall
- 119 agree to make a good faith effort to comply with the employment plan.
- 120 (ii) If a parent client consistently fails to show good faith in complying with the

121 employment plan, the division may seek under Subsection (2)(i)(iii) to terminate all or part of
122 the cash assistance services provided under this part.

123 (iii) The division shall establish a process to reconcile disputes between a client and the
124 division as to whether:

125 (A) the parent client has made a good faith effort to comply with the employment plan;
126 or

127 (B) the division has complied with the employment plan.

128 (3) (a) Except as provided in Subsection (3)(b), a parent client's participation in
129 education or training beyond that required to obtain a high school diploma or its equivalent is
130 limited to the lesser of:

131 (i) 24 months; or

132 (ii) the completion of the education and training requirements of the employment plan.

133 (b) A parent client may participate in education or training for up to six months beyond
134 the 24-month limit of Subsection (3)(a)(i) if:

135 (i) the parent client is employed for 80 or more hours a month; and

136 (ii) the extension is for good cause shown and approved by the director.

137 (c) A parent client who receives an extension under Subsection (3)(b) remains subject
138 to Subsection (4).

139 (4) (a) A parent client with a high school diploma or equivalent who has received 24
140 months of education or training shall participate in full-time work activities.

141 (b) The 24 months need not be continuous and the department may define "full-time
142 work activities" by rule.

143 (5) As a condition for receiving cash assistance on behalf of a minor child under this
144 part, the minor child must be:

145 (a) enrolled in and attending school in compliance with ~~[Section 53A-11-101]~~ Sections
146 53A-11-101.5 and 53A-11-101.7; or

147 (b) exempt from school attendance under Section 53A-11-102.

148 (6) This section does not apply to a person who has received diversion assistance under
149 Section 35A-3-303.

150 (7) (a) The division shall recruit and train volunteers to serve as mentors for parent
151 clients.

152 (b) A mentor may advocate on behalf of a parent client and help a parent client:

153 (i) develop life skills;

154 (ii) implement an employment plan; or

155 (iii) obtain services and supports from:

156 (A) the volunteer mentor;

157 (B) the division; or

158 (C) civic organizations.

159 Section 2. Section **53A-11-101** is amended to read:

160 **53A-11-101. Definitions.**

161 ~~[(+)]~~ For purposes of this part:

162 (1) "Absence" or "absent" means failure, on any day, of a school-age minor to attend
 163 the entire class or class period of each scheduled class or class period to which the school-age
 164 minor is assigned that is held on that day.

165 ~~[(+)]~~ (2) "Habitual truant" [is] means a school-age minor who [has received more than
 166 two truancy citations within one school year from the school in which the minor is or should be
 167 enrolled and eight absences without a legitimate or valid excuse or who, in defiance of]:

168 (a) is at least 12 years old;

169 (b) is subject to the requirements of Section 53A-11-101.5; and

170 (c) (i) is truant at least ten times during one school year; or

171 (ii) fails to cooperate with efforts on the part of school authorities to resolve [a
 172 student's] the minor's attendance problem as required under Section 53A-11-103[; refuses to
 173 regularly attend school or any scheduled period of the school day].

174 ~~[(b)]~~ (3) "Minor" means a person under the age of 18 years.

175 ~~[(+)]~~ (4) "Parent" includes:

176 ~~[(+)]~~ (a) a custodial parent of the minor;

177 ~~[(+)]~~ (b) a legally appointed guardian of a minor; or

178 ~~[(+)]~~ (c) any other person purporting to exercise any authority over the minor which
 179 could be exercised by [persons listed under Subsections (1)(c)(i) and (ii) above] a person
 180 described in Subsection (4)(a) or (b).

181 ~~[(+)]~~ (5) "School-age minor" means a minor who [has reached the age of]:

182 (a) is at least six years old, but [has not reached the age of eighteen] younger than 18

183 years~~[, but does not include a minor]~~ old; and

184 (b) is not emancipated by marriage.

185 ~~[(e) "Truancy citation" is an administrative notice to a truant minor requiring an~~
186 ~~appearance before the school truancy control officer or body from which the minor is truant.]~~

187 (6) "School year" means the period of time designated by a local school board as the
188 school year for the school where a school-age minor:

189 (a) is enrolled; or

190 (b) if the school-age minor is not enrolled in school, should be enrolled.

191 (7) "Truant" means absent without a valid excuse.

192 ~~[(f)]~~ (8) "Truant minor" [is any] means a school-age minor who:

193 (a) is subject to the [state's compulsory education law] requirements of Section
194 53A-11-101.5 or 53A-11-101.7; and [who is absent from school without a legitimate or valid
195 excuse.]

196 ~~[(2) A parent shall enroll and send a school-age minor to a public or regularly~~
197 ~~established private school during the school year of the district in which the minor resides:]~~

198 ~~[(3) It is a class B misdemeanor for a parent to knowingly:]~~

199 ~~[(a) fail to enroll a school-age minor in school; or]~~

200 ~~[(b) refuse to respond to a written request which is delivered to the parent pursuant to~~
201 ~~the provisions of Subsection 53A-11-103(1)(b) by a local school board or school district.]~~

202 ~~[(4) The provisions of this section do not apply to a parent of a school-age minor who~~
203 ~~has been declared by the local school board to be exempt from school attendance in conformity~~
204 ~~with Section 53A-11-102.]~~

205 ~~[(5) A local board of education or school district shall report violations of Subsection~~
206 ~~(3) to the appropriate city, county, or district attorney:]~~

207 (b) is truant.

208 (9) "Valid excuse" means:

209 (a) an illness;

210 (b) a family death or crisis;

211 (c) an approved school activity; or

212 (d) any other excuse established as valid by a local school board or school district.

213 Section 3. Section **53A-11-101.5** is enacted to read:

214 **53A-11-101.5. Compulsory education.**

215 (1) For purposes of this section:

216 (a) "intentionally" is as defined in Section 76-2-103;217 (b) "recklessly" is as defined in Section 76-2-103;218 (c) "remainder of the school year" means the portion of the school year beginning on
219 the day after the day that the notice of compulsory education violation described in Subsection
220 (3) is served and ending on the last day of the school year; and221 (d) "school-age child" means a school-age minor under the age of 14.222 (2) Except as provided in Section 53A-11-102 or 53A-11-102.5, the parent of a
223 school-age minor shall enroll and send the school-age minor to a public or regularly established
224 private school during the school year of the district in which the school-age minor resides.225 (3) A school administrator, a designee of a school administrator, or a truancy specialist
226 may issue a notice of compulsory education violation to a parent of a school-age child if the
227 school-age child is absent without a valid excuse at least five times during the school year.

228 (4) The notice of compulsory education violation, described in Subsection (3):

229 (a) shall request that the parent of the school-age child:

230 (i) meet with school authorities to discuss the school-age child's school attendance
231 problems; and232 (ii) cooperate with the school board or school district in securing regular attendance by
233 the school-age child;234 (b) shall designate the school authorities with whom the parent is required to meet;235 (c) shall state that it is a class B misdemeanor for the parent of the school-age child to
236 intentionally or recklessly:237 (i) fail to meet with the designated school authorities to discuss the school-age child's
238 school attendance problems; or239 (ii) fail to prevent the school-age child from being absent without a valid excuse five or
240 more times during the remainder of the school year;241 (d) shall be served on the school-age child's parent by personal service or certified
242 mail; and243 (e) may not be issued unless the school-age child has been truant at least five times
244 during the school year.

245 (5) It is a class B misdemeanor for a parent of a school-age minor to intentionally or
246 recklessly:

247 (a) fail to enroll the school-age minor in school, unless the school-age minor is exempt
248 from enrollment under Section 53A-11-102 or 53A-11-102.5; or

249 (b) after being served with a notice of compulsory education violation in accordance
250 with Subsections (3) and (4):

251 (i) fail to meet with the school authorities designated in the notice of compulsory
252 education violation to discuss a school-age child's school attendance problems; or

253 (ii) fail to prevent a school-age child from being absent without a valid excuse five or
254 more times during the remainder of the school year.

255 (6) A local school board or school district shall report violations of this section to the
256 appropriate county or district attorney.

257 (7) The juvenile court has jurisdiction over an action filed under this section.

258 Section 4. Section **53A-11-101.7** is enacted to read:

259 **53A-11-101.7. Truancy -- Notice of truancy -- Failure to cooperate with school**
260 **authorities -- Habitual truant citation.**

261 (1) Except as provided in Section 53A-11-102 or 53A-11-102.5, a school-age minor
262 shall attend the public or regularly established private school in which the school-age minor is
263 enrolled.

264 (2) A local school board or school district may impose administrative penalties on a
265 school-age minor who is truant.

266 (3) A local school board:

267 (a) may authorize a school administrator, a designee of a school administrator, or a
268 truancy specialist to issue notices of truancy to school-age minors who are at least 12 years old;
269 and

270 (b) shall establish a procedure for a school-age minor, or a school-age minor's parents,
271 to contest a notice of truancy.

272 (4) The notice of truancy described in Subsection (3):

273 (a) may not be issued until the school-age minor has been truant at least five times
274 during the school year;

275 (b) may not be issued to a school-age minor who is less than 12 years old;

276 (c) shall request that the school-age minor and the parent of the school-age minor:
277 (i) meet with school authorities to discuss the school-age minor's truancies; and
278 (ii) cooperate with the school board or school district in securing regular attendance by
279 the school-age minor; and

280 (d) shall be mailed to, or served on, the school-age minor's parent.

281 (5) A habitual truant citation may be issued to a habitual truant if:

282 (a) the local school board or school district has made reasonable efforts, under Section
283 53A-11-103, to resolve the school attendance problems of the habitual truant; and

284 (b) the efforts to resolve the school attendance problems, described in Subsection
285 (5)(a), have not been successful.

286 (6) A habitual truant to whom a habitual truant citation is issued under Subsection (5):

287 (a) shall be referred to the juvenile court for violation of Subsection (1); and

288 (b) is subject to the jurisdiction of the juvenile court.

289 (7) A notice of truancy or a habitual truant citation may only be issued by:

290 (a) a school administrator, or a truancy specialist, who is authorized by a local school
291 board; or

292 (b) a designee of a school administrator described in Subsection (7)(a).

293 (8) Nothing in this part prohibits a local school board or school district from taking
294 action to resolve a truancy problem with a school-age minor who has been truant less than five
295 times, provided that the action does not conflict with the requirements of this part.

296 Section 5. Section **53A-11-102** is amended to read:

297 **53A-11-102. Minors exempt from school attendance.**

298 (1) (a) A school-age minor may be excused from attendance by the local board of
299 education and a parent exempted from application of Subsections [~~53A-11-101~~]

300 ~~53A-11-101.5~~(2) and [~~(3)~~] (5) for any of the following reasons:

301 (i) a minor over age 16 may receive a partial release from school to enter employment
302 if the minor has completed the eighth grade; or

303 (ii) on an annual basis, a minor may receive a full release from attending a public,
304 regularly established private, or part-time school or class if:

305 (A) the minor has already completed the work required for graduation from high
306 school, or has demonstrated mastery of required skills and competencies in accordance with

307 Subsection 53A-15-102(1);

308 (B) the minor is in a physical or mental condition, certified by a competent physician if
309 required by the district board, which renders attendance inexpedient and impracticable;

310 (C) proper influences and adequate opportunities for education are provided in
311 connection with the minor's employment; or

312 (D) the district superintendent has determined that a minor over the age of 16 is unable
313 to profit from attendance at school because of inability or a continuing negative attitude toward
314 school regulations and discipline.

315 (b) Minors receiving a partial release from school under Subsection (1)(a)(i) are
316 required to attend:

317 (i) school part-time as prescribed by the local school board; or

318 (ii) a home school part-time.

319 (c) In each case, evidence of reasons for granting an exemption under Subsection (1)
320 must be sufficient to satisfy the local board.

321 (2) (a) On an annual basis, a school-age minor shall be excused from attendance by a
322 local board of education and a parent exempted from application of Subsections [~~53A-11-101~~]
323 53A-11-101.5(2) and [~~(3)~~] (5), if the minor's parent files a signed affidavit with the minor's
324 school district of residence, as defined in Section 53A-2-201, that the minor will attend a home
325 school and receive instruction as required by Subsection (2)(b).

326 (b) Each minor who attends a home school shall receive instruction:

327 (i) in the subjects the State Board of Education requires to be taught in public schools
328 in accordance with the law; and

329 (ii) for the same length of time as minors are required by law to receive instruction in
330 public schools, as provided by rules of the State Board of Education.

331 (c) Subject to the requirements of Subsection (2)(b), a parent of a minor who attends a
332 home school is solely responsible for:

333 (i) the selection of instructional materials and textbooks;

334 (ii) the time, place, and method of instruction, and

335 (iii) the evaluation of the home school instruction.

336 (d) A local school board may not:

337 (i) require a parent of a minor who attends a home school to maintain records of

338 instruction or attendance;

339 (ii) require credentials for individuals providing home school instruction;

340 (iii) inspect home school facilities; or

341 (iv) require standardized or other testing of home school students.

342 (3) Boards excusing minors from attendance as provided by Subsections (1) and (2)
343 shall issue a certificate stating that the minor is excused from attendance during the time
344 specified on the certificate.

345 (4) Nothing in this section may be construed to prohibit or discourage voluntary
346 cooperation, resource sharing, or testing opportunities between a school or school district and a
347 parent or guardian of a minor attending a home school.

348 Section 6. Section **53A-11-102.5** is amended to read:

349 **53A-11-102.5. Dual enrollment.**

350 (1) A person having control of a minor under this part who is enrolled in a regularly
351 established private school or a home school may also enroll the minor in a public school for
352 dual enrollment purposes.

353 (2) The minor may participate in any academic activity in the public school available to
354 students in the minor's grade or age group, subject to compliance with the same rules and
355 requirements that apply to a full-time student's participation in the activity.

356 (3) Except as otherwise provided in Sections [~~53A-11-101~~] 53A-11-101.5 and
357 53A-11-102, a student enrolled in a public school may also be enrolled in a private school or a
358 home school for dual enrollment purposes.

359 (4) A student enrolled in a dual enrollment program is considered a student of the
360 district in which the public school of attendance is located for purposes of state funding to the
361 extent of the student's participation in the public school programs.

362 (5) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
363 State Board of Education shall make rules for purposes of dual enrollment to govern and
364 regulate the transferability of credits toward graduation that are earned in a private or home
365 school.

366 (6) The State Board of Education shall determine the policies and procedures necessary
367 to permit students enrolled under Subsection (1) to participate in public school extracurricular
368 activities.

369 Section 7. Section 53A-11-103 is amended to read:

370 **53A-11-103. Duties of a school board or school district in resolving attendance**
371 **problems -- Parental involvement -- Liability not imposed.**

372 (1) ~~[For each school-age minor who is or should be enrolled within that school district,~~
373 ~~the] A~~ local school board or school district shall make efforts to resolve ~~[a minor's] the~~ school
374 attendance problems~~[- Those efforts] of each school-age minor who is, or should be, enrolled~~
375 in the school district.

376 (2) The efforts described in Subsection (1) shall include, as reasonably feasible:

377 (a) counseling of the minor by school authorities;

378 ~~[(b) a written request for parental support in securing regular attendance by the minor~~
379 ~~delivered by certified mail, containing notice of the requirements of this section and stating that~~
380 ~~refusal to respond to the notice is a class B misdemeanor;]~~

381 ~~[(c) at least one meeting with the minor and the parents;]~~

382 (b) issuing a notice of truancy to a school-age minor who is at least 12 years old, in
383 accordance with Section 53A-11-101.7;

384 (c) issuing a notice of compulsory education violation to a parent of a school-age child,
385 in accordance with Section 53A-11-101.5;

386 (d) making any necessary adjustment to the curriculum and schedule to meet special
387 needs of the minor; [and]

388 (e) considering alternatives proposed by a parent; and

389 ~~[(e)] (f) monitoring school attendance of the minor [for a period not to exceed 30~~
390 ~~days].~~

391 ~~[(2)] (3)~~ In addition to the efforts ~~[listed] described~~ in Subsection ~~[(1)] (2)~~, the local
392 school board or school district may enlist the assistance of community and law enforcement
393 agencies as appropriate and reasonably feasible.

394 ~~[(3) In the event that the minor's school attendance problem cannot be resolved by the~~
395 ~~efforts of the local school board or school district, the local school board or school district shall~~
396 ~~refer the school-age minor to the appropriate district or county attorney or juvenile court as a~~
397 ~~habitual truant.]~~

398 ~~[(4) Any parent of a school-age minor shall, upon written request from a local school~~
399 ~~board or school district, cooperate with school authorities in resolving the minor's school~~

400 attendance problem.]

401 [~~(5) A local school board may authorize the issuance of truancy citations by school~~
402 ~~administrators and appointed truancy specialists. Recipients of truancy citations may be~~
403 ~~subjected to administrative penalties.]~~

404 [~~(6) A local school board that authorizes the issuance of truancy citations shall~~
405 ~~establish a procedure for students to contest citations. Any minor having received three prior~~
406 ~~truancy citations within a single school year and for whom reasonable efforts to resolve the~~
407 ~~attendance problem have failed, shall be issued a habitual truancy citation and referred by the~~
408 ~~local school board or school district to the appropriate county or district attorney or juvenile~~
409 ~~court as a habitual truant. Proceedings for habitual truancy shall be expedited by the court.]~~

410 [~~(7)~~ (4) This section shall not impose any civil liability on boards of education, local
411 school boards, school districts, or their employees.

412 (5) Proceedings initiated under this part do not obligate or preclude action by the
413 Division of Child and Family Services under Section 78-3a-316.

414 Section 8. Section **53A-11-104** is amended to read:

415 **53A-11-104. Truancy specialists.**

416 A local school board may appoint and fix the compensation of a [~~truancy officer~~] truancy
417 specialist to assist in enforcing laws related to school attendance and to perform other duties
418 prescribed by law or the board.

419 Section 9. Section **53A-11-105** is amended to read:

420 **53A-11-105. Taking custody of person believed to be truant minor -- Disposition**
421 **-- Receiving centers -- Reports -- Immunity from liability.**

422 (1) A peace officer[~~, truant officer,~~] or public school administrator may take a minor
423 into temporary custody [~~or issue a truancy citation, or both,~~] if there is reason to believe the
424 minor is a truant minor. [~~A truancy citation issued by a truant officer shall be approved by the~~
425 ~~school administrator.~~]

426 (2) An individual taking a school-age minor into custody under Subsection (1) shall,
427 without unnecessary delay, release the minor to:

428 (a) the principal of the minor's school;

429 (b) a person who has been designated by the local school board to receive and return
430 the minor to school; or

431 (c) a receiving center established under Subsection (5).

432 (3) If the minor refuses to return to school or go to the receiving center, the officer or
433 administrator shall, without unnecessary delay, notify the minor's parents and release the minor
434 to their custody.

435 (4) If the parents cannot be reached or are unable or unwilling to accept custody, the
436 minor shall be referred to the Division of Child and Family Services.

437 (5) (a) A local school board, singly or jointly with another school board, may establish
438 or designate receiving centers within existing school buildings and staff the centers with
439 existing teachers or staff to provide educational guidance and counseling for truant minors.
440 Upon receipt of a truant minor, the center shall, without unnecessary delay, notify and direct
441 the minor's parents to come to the center, pick up the minor, and return the minor to the school
442 in which ~~he~~ the minor is enrolled.

443 (b) If the parents cannot be reached or are unable or unwilling to comply with the
444 request within a reasonable time, the center shall take such steps as are reasonably necessary to
445 insure the safety and well being of the minor, including, when appropriate, returning the minor
446 to school or referring the minor to the Division of Child and Family Services. A minor taken
447 into custody under this section may not be placed in a detention center or other secure
448 confinement facility.

449 (6) Action taken under this section shall be reported to the appropriate school district.
450 The district shall promptly notify the minor's parents of the action taken.

451 (7) The Utah Governmental Immunity Act applies to all actions taken under this
452 section.

453 (8) Nothing in this section may be construed to grant authority to a public school
454 administrator ~~[or truant officer]~~ to place a minor in the custody of the Division of Child and
455 Family Services, without complying with the provisions of Title 62A, Chapter 4a, Parts 2,
456 Child Welfare Services, and 2A, Minors in Custody on Grounds Other Than Abuse or Neglect,
457 and of Title 78, Chapter 3a, Parts 3, Abuse, Neglect, and Dependency Hearings, and 3A,
458 Minors in Custody on Grounds Other Than Abuse or Neglect.

459 Section 10. Section **53A-11-106** is amended to read:

460 **53A-11-106. Truancy support centers.**

461 (1) A school district may establish one or more truancy support centers for:

- 462 (a) truant [~~students~~] minors taken into custody under Section 53A-11-105; or
463 (b) students suspended or expelled from school.

464 (2) A truancy support center shall provide a wide spectrum of services to the truant
465 [~~student~~] minor and the [~~student's~~] truant minor's family, including:

- 466 (a) assessments of the [~~student's~~] truant minor's needs and abilities;
467 (b) support for the parents and [~~student~~] truant minor through counseling and
468 community programs; and
469 (c) tutoring for the [~~student~~] truant minor during the time spent at the center.

470 (3) For the suspended or expelled student, the truancy support center shall provide an
471 educational setting, staffed with certified teachers and aides, to provide the student with
472 ongoing educational programming appropriate to [~~their~~] the student's grade level.

473 (4) In a district with a truancy support center, all students suspended or expelled from
474 school shall be referred to the center. A parent or guardian shall appear with the student at the
475 center within 48 hours of the suspension or expulsion, not including weekends or holidays.
476 The student shall register and attend classes at the truancy support center for the duration of the
477 suspension or expulsion unless the parent or guardian demonstrates that alternative
478 arrangements have been made for the education or supervision of the student during the time of
479 suspension or expulsion.

480 (5) The truancy support center may provide counseling and other support programming
481 for students suspended or expelled from school and their parents or guardian.

482 Section 11. Section **62A-2-108.1** is amended to read:

483 **62A-2-108.1. Coordination of human services and educational services --**

484 **Licensing of programs -- Procedures.**

485 (1) For purposes of this section:

486 (a) "accredited private school" means a private school that is accredited by an
487 accrediting entity recognized by the Utah State Board of Education; and

488 (b) "education entitled children" means children:

489 (i) subject to compulsory education under Section [~~53A-11-101~~] 53A-11-101.5; [~~or~~]

490 (ii) subject to the school attendance requirements of Section 53A-11-101.7; or

491 [~~(ii)~~] (iii) entitled to educational services under Section 53A-15-301.

492 (2) Subject to Subsection (8) or (9), a human services program may not be licensed to

493 serve education entitled children unless the human services program presents an educational
494 service plan that includes evidence:

495 (a) satisfactory to:

496 (i) the office; and

497 (ii) (A) the local school board of the school district in which the human services
498 program will be operated; or

499 (B) the school district superintendent of the school district in which the human services
500 program will be operated; and

501 (b) that children served by the human services program shall receive appropriate
502 educational services satisfying the requirements of applicable law.

503 (3) Subject to Subsection (8) or (9), if a human services program serves any education
504 entitled children whose custodial parents or legal guardians reside outside the state, then the
505 program shall also provide an educational funding plan that includes evidence:

506 (a) satisfactory to:

507 (i) the office; and

508 (ii) (A) the local school board of the school district in which the human services
509 program will be operated; or

510 (B) the school district superintendent of the school district in which the human services
511 program will be operated; and

512 (b) that all costs for educational services to be provided to the education entitled
513 children, including tuition, and school fees approved by the local school board, shall be borne
514 by the human services program.

515 (4) Subject to Subsection (8) or (9), and in accordance with Subsection (2), the human
516 services program shall obtain and provide the office with a letter:

517 (a) from the entity referred to in Subsection (2)(a)(ii):

518 (i) approving the educational service plan referred to in Subsection (2); or

519 (ii) (A) disapproving the educational service plan referred to in Subsection (2); and

520 (B) listing the specific requirements the human services program must meet before
521 approval is granted; and

522 (b) from the entity referred to in Subsection (3)(a)(ii):

523 (i) approving the educational funding plan, referred to in Subsection (3); or

524 (ii) (A) disapproving the educational funding plan, referred to in Subsection (3); and
525 (B) listing the specific requirements the human services program must meet before
526 approval is granted.

527 (5) Subject to Subsection (8), failure of a local school board or school district
528 superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent
529 to approval of the plan by the local school board or school district superintendent if the human
530 services program provides to the office:

531 (a) proof that:

532 (i) the human services program submitted the proposed plan to the local school board
533 or school district superintendent; and

534 (ii) more than 45 days have passed from the day on which the plan was submitted; and

535 (b) an affidavit, on a form produced by the office, stating:

536 (i) the date that the human services program submitted the proposed plan to the local
537 school board or school district superintendent;

538 (ii) that more than 45 days have passed from the day on which the plan was submitted;
539 and

540 (iii) that the local school board or school district superintendent described in
541 Subsection (5)(b)(i) failed to respond to the proposed plan within 45 days from the day on
542 which the plan was submitted.

543 (6) If a licensee that is licensed to serve an education entitled child fails to comply with
544 its approved educational service plan or educational funding plan, then:

545 (a) the office shall give the licensee notice of intent to revoke the licensee's license; and

546 (b) if the licensee continues its noncompliance for more than 30 days after receipt of
547 the notice described in Subsection (6)(a), the office shall revoke the licensee's license.

548 (7) If an education entitled child whose custodial parent or legal guardian resides
549 within the state is provided with educational services by a school district other than the school
550 district in which the custodial parent or legal guardian resides, then the funding provisions of
551 Section 53A-2-210 apply.

552 (8) A human services program that is an accredited private school:

553 (a) for purposes of Subsection (2):

554 (i) is only required to submit proof to the office that the accreditation of the private

555 school is current; and

556 (ii) is not required to submit an educational service plan for approval by an entity
557 described in Subsection (2)(a)(ii);

558 (b) for purposes of Subsection (3):

559 (i) is only required to submit proof to the office that all costs for educational services
560 provided to education entitled children will be borne by the human services program; and

561 (ii) is not required to submit an educational funding plan for approval by an entity
562 described in Subsection (3)(a)(ii); and

563 (c) is not required to comply with Subsections (4) and (5).

564 (9) Except for Subsection (7), the provisions of this section do not apply to a human
565 services program that is:

566 (a) a foster home; and

567 (b) required to be licensed by the office.

568 Section 12. Section **62A-4a-606** is amended to read:

569 **62A-4a-606. Child placing agency responsibility for educational services --**
570 **Payment of costs.**

571 (1) A child placing agency shall ensure that the requirements of [~~Section 53A-11-101~~]
572 Subsections 53A-11-101.5(2) and 53A-11-101.7(1) are met through the provision of
573 appropriate educational services for all children served in the state by the agency.

574 (2) If the educational services are to be provided through a public school, and:

575 (a) the custodial parent or legal guardian resides outside the state, then the child
576 placing agency shall pay all educational costs required under Sections 53A-2-205 and
577 53A-12-102; or

578 (b) the custodial parent or legal guardian resides within the state, then the child placing
579 agency shall pay all educational costs required under Section 53A-12-102.

580 (3) Children in the custody or under the care of a Utah state agency are exempt from
581 the payment of fees required under Subsection (2).

582 (4) A public school shall admit any child living within its school boundaries who is
583 under the supervision of a child placing agency upon payment by the agency of the tuition and
584 fees required under Subsection (2).

585 Section 13. Section **78-3a-103** is amended to read:

586 **78-3a-103. Definitions.**

587 (1) As used in this chapter:

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

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

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

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

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

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

598 (e) "Child placement agency" means:

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

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

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

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

605 (h) "Dependent child" includes a minor who is homeless or without proper care
606 through no fault of the minor's parent, guardian, or custodian.

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

609 (j) "Detention" means home detention and secure detention as defined in Section
610 62A-7-101 for the temporary care of minors who require secure custody in physically
611 restricting facilities:

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

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

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

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

617 petition may be filed.

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

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

623 (o) "Habitual truant" is ~~[a school-age minor who:]~~ as defined in Section 53A-11-101.
624 ~~[(i) has received:]~~

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

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

628 ~~[(ii) in defiance of efforts on the part of school authorities as required under Section~~
629 ~~53A-11-103, refuses to regularly attend school or any scheduled period of the school day.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

682 (A) the responsibility for support;

683 (B) the right to consent to adoption;

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

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

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

688 (A) marriage;

689 (B) enlistment; and

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

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

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

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

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

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

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

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

707 (ee) "Unsubstantiated" has the same meaning as defined in Subsection
708 62A-4a-101(34).

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

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

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

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

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

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

720 Section 14. Section **78-3a-801** is amended to read:

721 **78-3a-801. Jurisdiction over adults for offenses against minors -- Proof of**
722 **delinquency not required for conviction.**

723 (1) The court shall have jurisdiction, concurrent with the district court or justice court
724 otherwise having subject matter jurisdiction, to try adults for the following offenses committed
725 against minors:

726 (a) unlawful sale or supply of alcohol beverage or product to minors in violation of
727 Section 32A-12-203;

728 (b) failure to report child abuse or neglect, as required by Title 62A, Chapter 4a, Part 4,
729 Child Abuse or Neglect Reporting Requirements;

730 (c) harboring a minor in violation of Section 62A-4a-501;

731 (d) misdemeanor custodial interference in violation of Section 76-5-303;

732 (e) contributing to the delinquency of a minor in violation of Section 76-10-2301;

733 (f) failure to comply with compulsory education requirements in violation of Section
734 [~~53A-11-101~~] 53A-11-101.5.

735 (2) It is not necessary for the minor to be found to be delinquent or to have committed
736 a delinquent act for the court to exercise jurisdiction under Subsection (1).

Legislative Review Note

as of 1-6-06 3:02 PM

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

Office of Legislative Research and General Counsel