

CHILD WELFARE DEFINITIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Margaret Dayton

LONG TITLE

Committee Note:

The Health and Human Services Interim Committee recommended this bill.

The Child Welfare Legislative Oversight Panel recommended this bill.

General Description:

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

Highlighted Provisions:

This bill:

- ▶ eliminates overlapping portions of definitions;
- ▶ modifies definitions;
- ▶ adds new definitions;
- ▶ simplifies and consolidates definitions;
- ▶ establishes consistency between definitions in the Child and Family Services chapter of the Utah Human Services Code and the Juvenile Court Act of 1996;
- ▶ modifies portions of the Child and Family Services chapter of the Utah Human Services Code and the Juvenile Court Act of 1996 to conform with the changes to, and addition of, definitions in this bill; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 **§→ [None] This bill coordinates with H.B. 78 by providing technical amendments. ←§**

30 **Utah Code Sections Affected:**

31 **AMENDS:**

- 32 **62A-4a-101**, as last amended by Laws of Utah 2006, Chapters 75, and 281
- 33 **62A-4a-107.5**, as last amended by Laws of Utah 2000, Chapter 290
- 34 **62A-4a-113**, as last amended by Laws of Utah 2002, Chapter 149
- 35 **62A-4a-201**, as last amended by Laws of Utah 2006, Chapter 75
- 36 **62A-4a-202.4**, as last amended by Laws of Utah 1998, Chapter 263
- 37 **62A-4a-202.6**, as last amended by Laws of Utah 2006, Chapter 55
- 38 **62A-4a-203**, as last amended by Laws of Utah 2006, Chapter 75
- 39 **62A-4a-301**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 40 **62A-4a-302**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 41 **62A-4a-303**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 42 **62A-4a-304**, as last amended by Laws of Utah 1996, Chapter 242
- 43 **62A-4a-305**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 44 **62A-4a-306**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 45 **62A-4a-309**, as last amended by Laws of Utah 2000, Chapter 321
- 46 **62A-4a-311**, as last amended by Laws of Utah 2003, Chapter 246
- 47 **62A-4a-401**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 48 **62A-4a-402**, as last amended by Laws of Utah 2006, Chapter 281
- 49 **62A-4a-403**, as last amended by Laws of Utah 1999, Chapter 21
- 50 **62A-4a-405**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 51 **62A-4a-406**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 52 **62A-4a-409**, as last amended by Laws of Utah 2006, Chapter 75
- 53 **62A-4a-411**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 54 **62A-4a-412**, as last amended by Laws of Utah 2006, Chapters 77, and 281
- 55 **62A-4a-414**, as last amended by Laws of Utah 2007, Chapter 169
- 56 **62A-4a-802**, as last amended by Laws of Utah 2002, Chapter 246
- 57 **62A-4a-1002**, as enacted by Laws of Utah 2006, Chapter 77
- 58 **62A-4a-1003**, as last amended by Laws of Utah 2007, Chapter 152

59 **62A-4a-1005**, as renumbered and amended by Laws of Utah 2006, Chapter 77
60 **62A-4a-1006**, as renumbered and amended by Laws of Utah 2006, Chapter 77
61 **62A-4a-1007**, as renumbered and amended by Laws of Utah 2006, Chapter 77
62 **62A-4a-1009**, as renumbered and amended by Laws of Utah 2006, Chapter 77
63 **62A-4a-1010**, as renumbered and amended by Laws of Utah 2006, Chapter 77
64 **76-7-304**, as last amended by Laws of Utah 2006, Chapter 207
65 **78-3a-103**, as last amended by Laws of Utah 2006, Chapters 75, 97, and 281
66 **78-3a-301**, as last amended by Laws of Utah 2007, Chapter 111
67 **78-3a-306**, as last amended by Laws of Utah 2007, Chapter 169
68 **78-3a-307.1**, as last amended by Laws of Utah 2007, Chapter 152
69 **78-3a-311**, as last amended by Laws of Utah 2006, Chapters 75, and 97
70 **78-3a-314**, as last amended by Laws of Utah 2007, Chapter 152
71 **78-3a-318**, as enacted by Laws of Utah 1996, Chapter 1 and last amended by Laws of
72 Utah 1996, Chapter 318
73 **78-3a-403**, as last amended by Laws of Utah 1996, Chapter 318
74 **78-3a-407**, as last amended by Laws of Utah 2006, Chapter 281
75 **78-3a-408**, as last amended by Laws of Utah 2005, Chapter 95
76 **78-3a-801**, as last amended by Laws of Utah 2007, Chapter 81

77

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

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

80 **62A-4a-101. Definitions.**

81 As used in this chapter:

82 ~~[(1) (a) "Abuse" means:]~~

83 ~~[(i) actual or threatened nonaccidental physical or mental harm;]~~

84 ~~[(ii) negligent treatment;]~~

85 ~~[(iii) sexual exploitation; or]~~

86 ~~[(iv) any sexual abuse.]~~

87 ~~[(b) "Abuse" does not include:]~~

88 ~~[(i) reasonable discipline or management of a child, including withholding privileges;]~~

89 ~~[(ii) conduct described in Section 76-2-401; or]~~

90 ~~[(iii) the use of reasonable and necessary physical restraint or force on a child;]~~
 91 ~~[(A) in self-defense;]~~
 92 ~~[(B) in defense of others;]~~
 93 ~~[(C) to protect the child; or]~~
 94 ~~[(D) to remove a weapon in the possession of a child for any of the reasons described~~
 95 ~~in Subsections (1)(b)(iii)(A) through (C).]~~

96 (1) "Abuse" is as defined in Section 78-3a-103.

97 (2) "Adoption services" means:

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

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

107 (4) "Child" means, except as provided in Part 7, Interstate Compact on Placement of
 108 Children, a person under 18 years of age.

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

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

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

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

116 ~~[(9)]~~ (8) "Custody," with regard to the division, means the custody of a minor in the
 117 division as of the date of disposition.

118 ~~[(10)]~~ (9) "Day-care services" means care of a child for a portion of the day which is
 119 less than 24 hours:

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

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

122 (i) day-care center;

123 (ii) family group home; or

124 (iii) family child care home.

125 ~~[(11)]~~ (10) "Dependent child" or "dependency" means a child, or the condition of a
126 child, who is homeless or without proper care through no fault of the child's parent, guardian,
127 or custodian.

128 ~~[(12)]~~ (11) "Director" means the director of the Division of Child and Family Services.

129 ~~[(13)]~~ (12) "Division" means the Division of Child and Family Services.

130 ~~[(14)(a)]~~ (13) "Domestic violence services" means:

131 ~~[(i)]~~ (a) temporary shelter, treatment, and related services to ~~[persons who are victims~~
132 ~~of abuse and their dependent children; and];~~

133 (i) a person who is a victim of abuse, as defined in Section 30-6-1; and

134 (ii) the dependent children of a person described in Subsection (13)(a)(i); and

135 ~~[(ii)]~~ (b) treatment services for ~~[domestic violence perpetrators. (b) As used in this~~
136 ~~Subsection (14): (i) "abuse" means the same as that term is defined in Section 30-6-1; and (ii)~~
137 ~~"domestic violence perpetrator" means]~~ a person who is alleged to have committed, has been
138 convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

139 (14) "Harm" is as defined in Section 78-3a-103.

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

143 (16) "Incest" is as defined in Section 78-3a-103.

144 ~~[(17)]~~ (17) "Minor" means, except as provided in Part 7, Interstate Compact on
145 Placement of Children:

146 (a) a child; or

147 (b) a person:

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

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

151 (18) "Molestation" is as defined in Section 78-3a-103.

152 ~~[(17)]~~ (19) "Natural parent" means a minor's biological or adoptive parent, and
153 includes a minor's noncustodial parent.

154 ~~[(18)(a) "Neglect" means:]~~

155 ~~[(i) abandonment of a child, except as provided in Part 8, Safe Relinquishment of a~~
156 ~~Newborn Child;]~~

157 ~~[(ii) subjecting a child to mistreatment or abuse;]~~

158 ~~[(iii) lack of proper parental care by reason of the fault or habits of the parent,~~
159 ~~guardian, or custodian;]~~

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

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

165 ~~[(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),~~
166 ~~means that, after receiving notice that a child has been frequently absent from school without~~
167 ~~good cause, or that the child has failed to cooperate with school authorities in a reasonable~~
168 ~~manner, a parent or guardian fails to make a good faith effort to ensure that the child receives~~
169 ~~an appropriate education.]~~

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

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

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

178 (20) "Neglect is as defined in Section 78-3a-103.

179 ~~[(19)]~~ (21) "Protective custody," with regard to the division, means the shelter of a
180 child by the division from the time the child is removed from the child's home until the earlier
181 of:

182 (a) the shelter hearing; or

- 183 (b) the child's return home.
- 184 [~~(20)~~] (22) "Protective services" means expedited services that are provided:
- 185 (a) in response to evidence of neglect, abuse, or dependency of a child;
- 186 (b) to a cohabitant who is neglecting or abusing a child, in order to:
- 187 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
- 188 causes of neglect or abuse; and
- 189 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- 190 (c) in cases where the child's welfare is endangered:
- 191 (i) to bring the situation to the attention of the appropriate juvenile court and law
- 192 enforcement agency;
- 193 (ii) to cause a protective order to be issued for the protection of the child, when
- 194 appropriate; and
- 195 (iii) to protect the child from the circumstances that endanger the child's welfare
- 196 including, when appropriate:
- 197 (A) removal from the child's home;
- 198 (B) placement in substitute care; and
- 199 (C) petitioning the court for termination of parental rights.
- 200 (23) "Severe abuse" is as defined in Section 78-3a-103.
- 201 [~~(21)~~] (24) "Severe neglect" [~~means neglect that causes or threatens to cause serious~~
- 202 ~~harm to a child~~] is as defined in Section 78-3a-103.
- 203 (25) "Sexual abuse" is as defined in Section 78-3a-103.
- 204 (26) "Sexual exploitation" is as defined in Section 78-3a-103.
- 205 [~~(22)~~] (27) "Shelter care" means the temporary care of a minor in a nonsecure facility.
- 206 [~~(23)~~] (28) "State" means:
- 207 (a) a state of the United States;
- 208 (b) the District of Columbia;
- 209 (c) the Commonwealth of Puerto Rico;
- 210 (d) the Virgin Islands;
- 211 (e) Guam;
- 212 (f) the Commonwealth of the Northern Mariana Islands; or
- 213 (g) a territory or possession administered by the United States.

214 ~~[(24) "Severe emotional abuse" means emotional abuse that causes or threatens to~~
215 ~~cause serious harm to a child.]~~

216 ~~[(25) "Severe physical abuse" means physical abuse that causes or threatens to cause~~
217 ~~serious harm to a child.]~~

218 ~~[(26)]~~ (29) "State plan" means the written description of the programs for children,
219 youth, and family services administered by the division in accordance with federal law.

220 ~~[(27)]~~ (30) "Status offense" means a violation of the law that would not be a violation
221 but for the age of the offender.

222 (31) "Substance abuse" is as defined in Section 78-3a-103.

223 ~~[(28)]~~ (32) "Substantiated" or "substantiation" means a judicial finding based on a
224 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
225 identified in a given case shall be considered separately in determining whether there should be
226 a finding of substantiated.

227 ~~[(29)]~~ (33) "Substitute care" means:

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

232 (b) services provided for a minor awaiting placement; and

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

234 ~~[(30)]~~ (34) "Supported" means a finding by the division based on the evidence
235 available at the completion of an investigation that there is a reasonable basis to conclude that
236 abuse, neglect, or dependency occurred. Each allegation made or identified during the course
237 of the investigation shall be considered separately in determining whether there should be a
238 finding of supported.

239 ~~[(31)]~~ (35) "Temporary custody," with regard to the division, means the custody of a
240 child in the division from the date of the shelter hearing until disposition.

241 ~~[(32)]~~ (36) "Transportation services" means travel assistance given to an individual
242 with escort service, if necessary, to and from community facilities and resources as part of a
243 service plan.

244 ~~[(33)]~~ (37) "Unsubstantiated" means a judicial finding that there is insufficient

245 evidence to conclude that abuse or neglect occurred.

246 [~~(34)~~] (38) "Unsupported" means a finding at the completion of an investigation that
247 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

248 However, a finding of unsupported means also that the division worker did not conclude that
249 the allegation was without merit.

250 [~~(35)~~] (39) "Without merit" means a finding at the completion of an investigation by
251 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
252 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

253 Section 2. Section **62A-4a-107.5** is amended to read:

254 **62A-4a-107.5. Private recruitment and training of foster care parents and child**
255 **welfare volunteers -- Extension of immunity.**

256 (1) The division may contract with one or more private, nonprofit organizations to
257 recruit and train foster care parents and child welfare volunteers on a statewide or regional
258 basis.

259 (2) An organization that contracts with the division pursuant to Subsection (1) shall
260 agree to:

261 (a) increase the number of licensed and trained foster care parents in the geographic
262 area covered by:

263 (i) developing a strategic plan;

264 (ii) assessing the needs, perceptions, and qualities of potential foster care parents;

265 (iii) assessing the needs, perceptions, and qualities of children in state custody;

266 (iv) identifying potential foster care parents through public and private resources;

267 (v) screening foster care parent applicants;

268 (vi) providing preservice, ongoing, and customized training to foster care parents;

269 (vii) developing a competency-based training curriculum with input from public and
270 private resources and approved by the division;

271 (viii) focusing training exercises on skill development; and

272 (ix) supporting foster care parents by supplying staff support, identifying common
273 issues, encouraging peer support, and connecting available resources;

274 (b) increase the number of child welfare volunteers in the geographical area covered
275 by:

- 276 (i) developing a strategic plan;
- 277 (ii) seeking the participation of established volunteer organizations;
- 278 (iii) designing and offering initial orientation sessions to child welfare volunteers;
- 279 (iv) informing volunteers of options for service as specified by the division; and
- 280 (v) facilitating the placement and certification of child welfare volunteers;
- 281 (c) coordinate efforts, where appropriate, with the division;
- 282 (d) seek private contributions in furtherance of the organization's activities under this
- 283 Subsection (2);
- 284 (e) perform other related services and activities as may be required by the division; and
- 285 (f) establish a system for evaluating performance and obtaining feedback on the
- 286 activities performed pursuant to this Subsection (2).
- 287 (3) Notwithstanding Subsection (2), the department shall retain ultimate authority over
- 288 and responsibility for:
 - 289 (a) initial and ongoing training content, material, curriculum, and techniques, and
 - 290 certification standards used by an organization; and
 - 291 (b) screening, investigation, licensing, certification, referral, and placement decisions
 - 292 with respect to any person recruited or trained by an organization.
- 293 (4) (a) An organization under contract with the department and its directors, trustees,
- 294 officers, employees, and agents, whether compensated or not, may not be held civilly liable for
- 295 any act or omission on a matter for which the department retains ultimate authority and
- 296 responsibility under Subsection (3).
 - 297 (b) Nothing in Subsection (4)(a) may be construed as altering the [child] abuse and
 - 298 neglect reporting requirements of Section 62A-4a-403, regardless of whether the facts that give
 - 299 rise to such a report occur before or after a screening, investigation, licensing, or placement
 - 300 decision of the department.
- 301 (5) A referring entity or a referring individual that voluntarily and without
- 302 remuneration assists the organization to identify and recruit foster care parents or child welfare
- 303 volunteers is not liable in any civil action for any act or omission of:
 - 304 (a) the referring entity or the referring individual, which is performed in good faith and
 - 305 in furtherance of the entity's assistance to the organization; or
 - 306 (b) any person directly or indirectly referred to the organization by the entity as a foster

307 care parent or child welfare volunteer, if the referring individual was without actual knowledge
308 of any substantiated fact that would have disqualified the person from such a position at the
309 time the referral was made.

310 (6) As used in this section:

311 (a) "referring entity" means:

312 (i) an incorporated or unincorporated organization or association whether formally
313 incorporated or otherwise established and operating for religious, charitable, or educational
314 purposes which does not distribute any of its income or assets to its members, directors,
315 officers, or other participants;

316 (ii) any organization which is described in Section 501(c)(3) of the Internal Revenue
317 Code of 1986 and is exempt from tax under Section 501 of the Internal Revenue Code; or

318 (iii) any not-for-profit organization which is formed and conducted for public benefit
319 and operated primarily for charitable, civic, educational, religious, benevolent, welfare, or
320 health purposes; and

321 (b) "referring individual" means an individual:

322 (i) with the authority to act on behalf of a referring entity in making a referral; and

323 (ii) who may or may not be compensated by the referring entity.

324 Section 3. Section **62A-4a-113** is amended to read:

325 **62A-4a-113. Division's enforcement authority -- Responsibility of attorney**
326 **general to represent division.**

327 (1) The division shall take legal action that is necessary to enforce the provisions of
328 this chapter.

329 (2) (a) Subject to the provisions of Section 67-5-17, the attorney general shall enforce
330 all provisions of this chapter, in addition to the requirements of Title 78, Chapter 3a, Juvenile
331 Court Act of 1996, relating to protection and custody of abused, neglected, or dependent
332 minors. The attorney general may contract with the local county attorney to enforce the
333 provisions of this chapter and Title 78, Chapter 3a, Juvenile Court Act of 1996.

334 (b) It is the responsibility of the attorney general's office to:

335 (i) advise the division regarding decisions to remove a minor from the minor's home;

336 (ii) represent the division in all court and administrative proceedings related to [child]
337 abuse, neglect, and dependency including, but not limited to, shelter hearings, dispositional

338 hearings, dispositional review hearings, periodic review hearings, and petitions for termination
339 of parental rights; and

340 (iii) be available to and advise caseworkers on an ongoing basis.

341 (c) The attorney general shall designate no less than 16 full-time attorneys to advise
342 and represent the division in abuse, neglect, and dependency proceedings, including petitions
343 for termination of parental rights. Those attorneys shall devote their full time and attention to
344 that representation and, insofar as it is practicable, shall be housed in or near various offices of
345 the division statewide.

346 (3) As of July 1, 1998, the attorney general's office shall represent the division with
347 regard to actions involving minors who have not been adjudicated as abused or neglected, but
348 who are otherwise committed to the custody of the division by the juvenile court, and who are
349 classified in the division's management information system as having been placed in custody
350 primarily on the basis of delinquent behavior or a status offense. Nothing in this section may
351 be construed to affect the responsibility of the county attorney or district attorney to represent
352 the state in those matters, in accordance with Section 78-3a-116.

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

354 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
355 **state.**

356 (1) (a) Under both the United States Constitution and the constitution of this state, a
357 parent possesses a fundamental liberty interest in the care, custody, and management of the
358 parent's children. A fundamentally fair process must be provided to parents if the state moves
359 to challenge or interfere with parental rights. A governmental entity must support any actions
360 or allegations made in opposition to the rights and desires of a parent regarding the parent's
361 children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened
362 protection against government interference with the parent's fundamental rights and liberty
363 interests.

364 (b) The fundamental liberty interest of a parent concerning the care, custody, and
365 management of the parent's children is recognized, protected, and does not cease to exist
366 simply because a parent may fail to be a model parent or because the parent's child is placed in
367 the temporary custody of the state. At all times, a parent retains a vital interest in preventing
368 the irretrievable destruction of family life. Prior to an adjudication of unfitness, government

369 action in relation to parents and their children may not exceed the least restrictive means or
370 alternatives available to accomplish a compelling state interest. Until the state proves parental
371 unfitness, the child and the child's parents share a vital interest in preventing erroneous
372 termination of their natural relationship and the state cannot presume that a child and the child's
373 parents are adversaries.

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

383 (d) The state recognizes that:

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

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

387 (e) It is the public policy of this state that parents retain the fundamental right and duty
388 to exercise primary control over the care, supervision, upbringing, and education of their
389 children.

390 (f) Subsections (2) through (7) shall be interpreted and applied consistent with this
391 Subsection (1).

392 (2) It is also the public policy of this state that children have the right to protection
393 from abuse and neglect, and that the state retains a compelling interest in investigating,
394 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78,
395 Chapter 3a, Juvenile Court Act of 1996. Therefore, the state, as *parens patriae*, has an interest
396 in and responsibility to protect children whose parents abuse them or do not adequately provide
397 for their welfare. There may be circumstances where a parent's conduct or condition is a
398 substantial departure from the norm and the parent is unable or unwilling to render safe and
399 proper parental care and protection. Under those circumstances, the state may take action for

400 the welfare and protection of the parent's children.

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

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

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

414 (6) In cases where actual sexual abuse, sexual exploitation, abandonment, [~~or serious~~
415 ~~physical~~] severe abuse, or severe neglect are established, the state has no duty to make
416 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
417 provide reunification services, or to attempt to rehabilitate the offending parent or parents.
418 This Subsection (6) does not exempt the division from providing court-ordered services.

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

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

430 (8) The state's right to direct or intervene in the provision of medical or mental health

431 care for a child is subject to Subsection 78-3a-118(2)(n).

432 Section 5. Section **62A-4a-202.4** is amended to read:

433 **62A-4a-202.4. Access to criminal background information.**

434 (1) For purposes of background screening and investigation of [~~child~~] abuse or neglect
435 under this chapter and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
436 Proceedings, the division shall have direct access to criminal background information
437 maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

438 (2) The division and the Office of the Guardian Ad Litem Director are also authorized
439 to request the Department of Public Safety to conduct a complete Federal Bureau of
440 Investigation criminal background check through the national criminal history system (NCIC).

441 Section 6. Section **62A-4a-202.6** is amended to read:

442 **62A-4a-202.6. Child protective services investigators within the Office of**
443 **Attorney General -- Authority.**

444 (1) (a) Pursuant to Section 67-5-16 the attorney general may employ, with the consent
445 of the division, child protective services investigators to investigate reports of abuse or neglect
446 of a child that occur while the child is in the custody of the division.

447 (b) (i) Under the direction of the Board of Child and Family Services, the division
448 shall, in accordance with Subsection 62A-4a-409(5), contract with an independent child
449 protective service investigator to investigate reports of abuse or neglect of a child that occur
450 while the child is in the custody of the division.

451 (ii) The executive director of the department shall designate an entity within the
452 department, other than the division, to monitor the contract for the investigators described in
453 Subsection (1)(b)(i).

454 (2) The investigators described in Subsection (1) may also investigate allegations of
455 abuse or neglect of a child by a department employee or a licensed substitute care provider.

456 (3) The investigators described in Subsection (1), if not peace officers, shall have the
457 same rights, duties, and authority of a child protective services investigator employed by the
458 division to:

459 (a) make a thorough investigation upon receiving either an oral or written report of
460 alleged abuse or neglect of a child, with the primary purpose of that investigation being the
461 protection of the child;

462 (b) make an inquiry into the child's home environment, emotional, or mental health, the
463 nature and extent of the child's injuries, and the child's physical safety;

464 (c) make a written report of their investigation, including determination regarding
465 whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and
466 forward a copy of that report to the division within the time mandates for investigations
467 established by the division;

468 (d) immediately consult with school authorities to verify the child's status in
469 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or
470 includes an allegation of educational neglect;

471 (e) enter upon public or private premises, using appropriate legal processes, to
472 investigate reports of alleged [child] abuse or neglect; and

473 (f) take a child into protective custody, and deliver the child to a law enforcement
474 officer, or to the division. Control and jurisdiction over the child shall be determined by the
475 provisions of Title 62A, Chapter 4a, Part 2, Child Welfare Services, Title 78, Chapter 3a,
476 Juvenile Court Act of 1996, and as otherwise provided by law.

477 Section 7. Section **62A-4a-203** is amended to read:

478 **62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain**
479 **child in home -- Exception -- Reasonable efforts for reunification.**

480 (1) Because removal of a child from the child's home affects protected, constitutional
481 rights of the parent and has a dramatic, long-term impact on a child, the division shall:

482 (a) when possible and appropriate, without danger to the child's welfare, make
483 reasonable efforts to prevent or eliminate the need for removal of a child from the child's home
484 prior to placement in substitute care;

485 (b) determine whether there is substantial cause to believe that a child has been or is in
486 danger of abuse or neglect, in accordance with the guidelines described in Title 78, Chapter 3a,
487 Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from the
488 child's home; and

489 (c) when it is possible and appropriate, and in accordance with the limitations and
490 requirements of Sections 78-3a-311 and 78-3a-312, make reasonable efforts to make it possible
491 for a child in substitute care to return to the child's home.

492 (2) (a) In determining the reasonableness of efforts needed to maintain a child in the

493 child's home or to return a child to the child's home, in accordance with Subsection (1)(a) or
 494 (c), the child's health, safety, and welfare shall be the paramount concern.

495 (b) The division shall consider whether the efforts described in Subsections (1) and (2)
 496 are likely to prevent abuse or continued neglect of the child.

497 (3) When removal and placement in substitute care is necessary to protect a child, the
 498 efforts described in Subsections (1) and (2):

499 (a) are not reasonable or appropriate; and

500 (b) should not be utilized.

501 (4) Subject to Subsection (5), in cases where sexual abuse, sexual exploitation,
 502 abandonment, [~~or serious physical~~] severe abuse, or severe neglect are involved, the state has
 503 no duty to make reasonable efforts to, in any way, attempt to:

504 (a) maintain a child in the child's home;

505 (b) provide reunification services; or

506 (c) rehabilitate the offending parent or parents.

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

509 Section 8. Section **62A-4a-301** is amended to read:

510 **62A-4a-301. Legislative finding.**

511 The Legislature finds that there is a need to assist private and public agencies in
 512 identifying and establishing community-based education, service, and treatment programs to
 513 prevent the occurrence and recurrence of [~~child~~] abuse and neglect.

514 It is the purpose of this part to provide a means to increase prevention and treatment
 515 programs designed to reduce the occurrence or recurrence of child abuse and neglect.

516 Section 9. Section **62A-4a-302** is amended to read:

517 **62A-4a-302. Definitions.**

518 As used in this part[:(1) "~~Council~~"], "council" means the Child Abuse Advisory
 519 Council established under Section 62A-4a-311.

520 [~~(2) "Child abuse and neglect" means the same as the term "child abuse or neglect,"~~
 521 ~~defined in Section 62A-4a-402.~~]

522 Section 10. Section **62A-4a-303** is amended to read:

523 **62A-4a-303. Director's responsibility.**

524 The director, under the direction of the board, shall:

525 (1) contract with public or private nonprofit organizations, agencies, schools, or with
526 qualified individuals to establish voluntary community-based educational and service programs
527 designed to reduce the occurrence or recurrence of [child] abuse and neglect;

528 (2) facilitate the exchange of information between and among groups concerned with
529 families and children;

530 (3) consult with appropriate state agencies, commissions, and boards to help determine
531 the probable effectiveness, fiscal soundness, and need for proposed education and service
532 programs for the prevention and treatment of [child] abuse and neglect;

533 (4) develop policies to determine whether programs will be discontinued or will
534 receive continuous funding;

535 (5) establish flexible fees and fee schedules based on the recipient's ability to pay for
536 part or all of the costs of service received; and

537 (6) adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as
538 necessary to carry out the purposes of this part.

539 Section 11. Section **62A-4a-304** is amended to read:

540 **62A-4a-304. Contracts for services.**

541 (1) (a) Contracts for services to prevent child abuse and neglect shall be awarded on
542 the basis of probability of success, based in part on sound research data.

543 (b) Each contract entered into by the director under Section 62A-4a-303 shall contain a
544 provision for the evaluation of services provided under the contract.

545 (2) Contract funds awarded for the treatment of victims of [~~physical or sexual~~] abuse
546 and neglect are not a collateral source as described in Section 63-25a-402.

547 Section 12. Section **62A-4a-305** is amended to read:

548 **62A-4a-305. Prevention and treatment programs.**

549 Programs contracted under this part shall be designed to provide voluntary primary
550 [child] abuse and neglect prevention, and voluntary or court-ordered treatment services,
551 including, without limiting the generality of the foregoing, the following community-based
552 programs:

553 (1) those relating to prenatal care, perinatal bonding, child growth and development,
554 basic child care, care of children with special needs, and coping with family stress;

555 (2) those relating to crisis care, aid to parents, [child] abuse counseling, support groups
556 for abusive or potentially abusive parents and their children, and early identification of families
557 where the potential for [child] abuse and neglect exists;

558 (3) those clearly designed to prevent the occurrence or recurrence of [child] abuse,
559 [child] neglect, sexual [~~molestation or~~] abuse, sexual exploitation, medical or educational
560 neglect, and such other programs as the board and council may from time to time consider
561 potentially effective in reducing the incidence of family problems leading to [child] abuse or
562 neglect; and

563 (4) those designed to establish and assist community resources that prevent [child]
564 abuse and neglect.

565 Section 13. Section **62A-4a-306** is amended to read:

566 **62A-4a-306. Programs and services -- Public hearing requirements -- Review by**
567 **local board of education.**

568 (1) Before any [child] abuse or neglect prevention or treatment program or service may
569 be purchased or contracted for, the board shall conduct a public hearing and the council shall
570 conduct a public hearing, to receive public comment on the specific program or service.

571 (2) Additionally, before any [child] abuse or neglect prevention or treatment program
572 or service [~~or program~~] which is intended for presentation in public schools may be purchased
573 or contracted for, evidence shall be submitted to the division that the program or service has
574 been approved by the local board of education for each school district which would be utilizing
575 that program or service.

576 Section 14. Section **62A-4a-309** is amended to read:

577 **62A-4a-309. Children's Trust Account.**

578 (1) There shall be a restricted account within the General Fund to be known as the
579 Children's Trust Account. This account is for crediting of contributions from private sources
580 and from appropriate revenues received under Section 26-2-12.5 for [child] abuse and neglect
581 prevention programs described in Section 62A-4a-305.

582 (2) Money shall be appropriated from the account to the division by the Legislature
583 under the Utah Budgetary Procedures Act, and shall be drawn upon by the director under the
584 direction of the board.

585 (3) The Children's Trust Account may be used only to implement prevention programs

586 described in Section 62A-4a-305, and may only be allocated to entities that provide a
587 one-to-one match, comprising a match from the community of at least 50% in cash and up to
588 50% in in-kind donations, which is 25% of the total funding received from the Children's Trust
589 Account. The entity that receives the statewide evaluation contract is excepted from the
590 cash-match provisions of this Subsection (3).

591 Section 15. Section **62A-4a-311** is amended to read:

592 **62A-4a-311. Child Abuse Advisory Council -- Creation -- Membership --**
593 **Expenses.**

594 (1) (a) There is established the Child Abuse Advisory Council composed of no more
595 than 25 members who are appointed by the board.

596 (b) Except as required by Subsection (1)(c), as terms of current council members
597 expire, the board shall appoint each new member or reappointed member to a four-year term.

598 (c) Notwithstanding the requirements of Subsection (1)(b), the board shall, at the time
599 of appointment or reappointment, adjust the length of terms to ensure that the terms of council
600 members are staggered so that approximately half of the council is appointed every two years.

601 (d) The council shall have geographic, economic, gender, cultural, and philosophical
602 diversity.

603 (e) When a vacancy occurs in the membership for any reason, the replacement shall be
604 appointed for the unexpired term.

605 (2) The council shall elect a chairperson from its membership at least biannually.

606 (3) (a) Members shall receive no compensation or benefits for their services, but may
607 receive per diem and expenses incurred in the performance of the member's official duties at
608 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

609 (b) Members may decline to receive per diem and expenses for their service.

610 (4) The council shall hold a public meeting quarterly. Within budgetary constraints,
611 meetings may also be held on the call of the chair, or of a majority of the members. Thirteen
612 members shall constitute a quorum at any meeting and the action of the majority of the
613 members present shall be the action of the council.

614 (5) The council shall advise the board on matters relating to [child] abuse and neglect.
615 The council shall also recommend to the board how funds contained in the Children's Trust
616 Account shall be allocated.

617 Section 16. Section **62A-4a-401** is amended to read:

618 **62A-4a-401. Legislative purpose.**

619 It is the purpose of this part to protect the best interests of children, offer protective
620 services to prevent harm to children, stabilize the home environment, preserve family life
621 whenever possible, and encourage cooperation among the states in dealing with the problem of
622 [~~child~~] abuse or neglect.

623 Section 17. Section **62A-4a-402** is amended to read:

624 **62A-4a-402. Definitions.**

625 As used in this part:

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

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

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

635 [~~(a) causing nonaccidental physical or mental injury;~~]

636 [~~(b) incest;~~]

637 [~~(c) sexual abuse;~~]

638 [~~(d) sexual exploitation;~~]

639 [~~(e) molestation; or~~]

640 [~~(f) repeated negligent treatment or maltreatment.~~]

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

647 [~~(5) "Molestation" means touching the anus or any part of the genitals of a child or~~

648 otherwise taking indecent liberties with a child, or causing a child to take indecent liberties
649 with the perpetrator or another with the intent to arouse or gratify the sexual desire of any
650 person.]

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

653 [~~(7) "Sexual exploitation of a child" means knowingly employing, using, persuading,~~
654 ~~inducing, enticing, or coercing any child to pose in the nude for the purpose of sexual arousal~~
655 ~~of any person or for profit, or to engage in any sexual or simulated sexual conduct for the~~
656 ~~purpose of photographing, filming, recording, or displaying in any way the sexual or simulated~~
657 ~~sexual conduct, and includes displaying, distributing, possessing for the purpose of~~
658 ~~distribution, or selling material depicting a child in the nude or engaging in sexual or simulated~~
659 ~~sexual conduct.]~~

660 [~~(8)~~ (2) "Subject" or "subject of the report" means any person reported under this part,
661 including, but not limited to, a child, parent, guardian, or other person responsible for a child's
662 care.

663 Section 18. Section **62A-4a-403** is amended to read:

664 **62A-4a-403. Reporting requirements.**

665 (1) (a) Except as provided in Subsection (2), when any person including persons
666 licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse
667 Practice Act, has reason to believe that a child has been subjected to [~~incest, molestation,~~
668 ~~sexual exploitation, sexual abuse, physical abuse,~~] abuse or neglect, or who observes a child
669 being subjected to conditions or circumstances which would reasonably result in [~~sexual abuse,~~
670 ~~physical abuse,~~] abuse or neglect, [~~he~~] that person shall immediately notify the nearest peace
671 officer, law enforcement agency, or office of the division. [~~On~~]

672 (b) Upon receipt of [this notice] the notification described in Subsection (1)(a), the
673 peace officer or law enforcement agency shall immediately notify the nearest office of the
674 division. If an initial report of [~~child~~] abuse or neglect is made to the division, the division
675 shall immediately notify the appropriate local law enforcement agency. The division shall, in
676 addition to its own investigation, comply with and lend support to investigations by law
677 enforcement undertaken pursuant to a report made under this section.

678 (2) [~~The~~] Subject to Subsection (3), the notification requirements of Subsection (1) do

679 not apply to a clergyman or priest, without the consent of the person making the confession,
 680 with regard to any confession made to ~~[him in his]~~ the clergyman or priest in the professional
 681 character of the clergyman or priest in the course of discipline enjoined by the church to which
 682 ~~[he]~~ the clergyman or priest belongs, if:

683 (a) the confession was made directly to the clergyman or priest by the perpetrator; and
 684 (b) the clergyman or priest is, under canon law or church doctrine or practice, bound to
 685 maintain the confidentiality of that confession.

686 (3) (a) When a clergyman or priest receives information about abuse or neglect from
 687 any source other than confession of the perpetrator, ~~[he]~~ the clergyman or priest is required to
 688 give notification on the basis of that information even though ~~[he]~~ the clergyman or priest may
 689 have also received a report of abuse or neglect from the confession of the perpetrator.

690 (b) Exemption of notification requirements for a clergyman or priest does not exempt a
 691 clergyman or priest from any other efforts required by law to prevent further abuse or neglect
 692 by the perpetrator.

693 Section 19. Section **62A-4a-405** is amended to read:

694 **62A-4a-405. Death of child -- Reporting requirements.**

695 (1) Any person who has reason to believe that a child has died as a result of ~~[child]~~
 696 abuse or neglect shall report that fact to:

697 (a) the local law enforcement agency, who shall report to the county attorney or district
 698 attorney as provided under Section 17-18-1 or 17-18-1.7; and ~~[to]~~

699 (b) the appropriate medical examiner in accordance with Title 26, Chapter 4, Utah
 700 Medical Examiner Act. ~~[The]~~

701 (2) After receiving a report described in Subsection (1), the medical examiner shall
 702 investigate and report ~~[his]~~ the medical examiner's findings to:

703 (a) the police[;];

704 (b) the appropriate county attorney or district attorney[;];

705 (c) the attorney general's office[;];

706 (d) the division[;]; and

707 (e) if the institution making the report is a hospital, to that hospital.

708 Section 20. Section **62A-4a-406** is amended to read:

709 **62A-4a-406. Photographs.**

710 (1) Any physician, surgeon, medical examiner, peace officer, law enforcement official,
711 or public health officer or official may take photographs of the areas of trauma visible on a
712 child and, if medically indicated, perform radiological examinations.

713 (2) Photographs may be taken of the premises or of objects relevant to a reported
714 circumstance of [~~child~~] abuse or neglect.

715 (3) Photographs or X-rays, and all other medical records pertinent to an investigation
716 for [~~child~~] abuse or neglect shall be made available to the division, law enforcement officials,
717 and the court.

718 Section 21. Section **62A-4a-409** is amended to read:

719 **62A-4a-409. Investigation by division -- Temporary protective custody --**
720 **Preremoval interviews of children.**

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

725 (b) The primary purpose of the investigation described in Subsection (1)(a) shall be
726 protection of the child.

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

729 (3) The division shall make a written report of its investigation that shall include a
730 determination regarding whether the alleged abuse or neglect is supported, unsupported, or
731 without merit.

732 (4) (a) The division shall use an interdisciplinary approach when appropriate in dealing
733 with reports made under this part.

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

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

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

741 (ii) the child;
742 (iii) parent and family support groups unless the parent is alleged to be the perpetrator;
743 and

744 (iv) other appropriate agencies or individuals.

745 (5) In any case where the division supervises, governs, or directs the affairs of any
746 individual, institution, or facility that is alleged to be involved in acts or omissions of [child]
747 abuse or neglect, the investigation of the reported [child] abuse or neglect shall be conducted
748 by an agency other than the division.

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

752 (7) When the division completes its initial investigation under this part, it shall give
753 notice of that completion to the person who made the initial report.

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

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

760 (a) except as provided in Subsection (9)(b) or (c), the division shall inform a parent of
761 the child prior to the interview of:

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

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

764 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
765 alleged perpetrator, the division is not required to comply with Subsection (9)(a);

766 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
767 is unknown, the division may conduct a minimal interview or conversation, not to exceed 15
768 minutes, with the child prior to complying with Subsection (9)(a);

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

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

774 (f) the child shall be allowed to have a support person of the child's choice present,
775 who:

776 (i) may include:

777 (A) a school teacher;

778 (B) an administrator;

779 (C) a guidance counselor;

780 (D) a child care provider;

781 (E) a family member;

782 (F) a family advocate; or

783 (G) clergy; and

784 (ii) may not be a person who is alleged to be, or potentially may be, the perpetrator.

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

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

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

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

798 Section 22. Section **62A-4a-411** is amended to read:

799 **62A-4a-411. Failure to report -- Criminal penalty.**

800 Any person, official, or institution required to report a case of suspected [~~child abuse,~~
801 ~~child sexual~~] abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, who willfully
802 fails to do so is guilty of a class B misdemeanor. Action for failure to report must be

803 commenced within four years from the date of knowledge of the offense and the willful failure
804 to report.

805 Section 23. Section **62A-4a-412** is amended to read:

806 **62A-4a-412. Reports and information confidential.**

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

811 (a) a police or law enforcement agency investigating a report of known or suspected
812 [child] abuse or neglect;

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

815 (c) an agency that has responsibility or authority to care for, treat, or supervise a minor
816 who is the subject of a report;

817 (d) a contract provider that has a written contract with the division to render services to
818 a minor who is the subject of a report;

819 (e) any subject of the report, the natural parents of the child, and the guardian ad litem;

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

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

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

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

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

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

833 (j) the State Office of Education, acting on behalf of itself or on behalf of a school

834 district, for the purpose of evaluating whether an individual should be permitted to obtain or
835 retain a license as an educator or serve as an employee or volunteer in a school, limited to
836 information with substantiated findings involving an alleged sexual offense, an alleged felony
837 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
838 Chapter 5, Offenses Against the Person, and with the understanding that the office must
839 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond
840 to the report before making a decision concerning licensure or employment;

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

843 (l) a person filing a petition for a child protective order on behalf of a child who is the
844 subject of the report; and

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

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

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

853 (3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division
854 and law enforcement officials shall ensure the anonymity of the person or persons making the
855 initial report and any others involved in its subsequent investigation.

856 (b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but
857 including this chapter and Title 63, Chapter 2, Government Records Access and Management
858 Act, when the division makes a report or other information in its possession available under
859 Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from
860 the report or other information only the names, addresses, and telephone numbers of
861 individuals or specific information that could:

862 (i) identify the referent;

863 (ii) impede a criminal investigation; or

864 (iii) endanger a person's safety.

865 (4) Any person who wilfully permits, or aides and abets the release of data or
866 information obtained as a result of this part, in the possession of the division or contained on
867 any part of the Management Information System, in violation of this part or Sections
868 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

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

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

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

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

878 Section 24. Section **62A-4a-414** is amended to read:

879 **62A-4a-414. Interviews of children -- Recording required -- Exceptions.**

880 (1) (a) Except as provided in Subsection (4), interviews of children during an
881 investigation in accordance with Section 62A-4a-409, and involving allegations of sexual
882 abuse [~~or serious physical abuse~~], sexual exploitation, severe abuse, or severe neglect of a
883 child, shall be conducted only under the following conditions:

884 (i) the interview shall be recorded visually and aurally on film, videotape, or by other
885 electronic means;

886 (ii) both the interviewer and the child shall be simultaneously recorded and visible on
887 the final product;

888 (iii) the time and date of the interview shall be continuously and clearly visible to any
889 subsequent viewer of the recording; and

890 (iv) the recording equipment shall run continuously for the duration of the interview.

891 (b) This Subsection (1) does not apply to initial or minimal interviews conducted in
892 accordance with Subsection 62A-4a-409(9)(b) or (c).

893 (2) Interviews conducted in accordance with Subsection (1) shall be carried out in an
894 existing Children's Justice Center or in a soft interview room, when available.

895 (a) If the Children's Justice Center or a soft interview room is not available, the

896 interviewer shall use the best setting available under the circumstances.

897 (b) Except as provided in Subsection (4), if the equipment required under Subsection
898 (1) is not available, the interview shall be audiotaped, provided that the interviewer shall
899 clearly state at the beginning of the tape:

900 (i) the time, date, and place of the interview;

901 (ii) the full name and age of the child being interviewed; and

902 (iii) that the equipment required under Subsection (1) is not available and why.

903 (3) Except as provided in Subsection (4), all other investigative interviews shall be
904 audiotaped using electronic means. At the beginning of the tape, the worker shall state clearly
905 the time, date, and place of the meeting, and the full name and age of the child in attendance.

906 (4) (a) Subject to Subsection (4)(b), an interview described in this section may be
907 conducted without being taped if the child:

908 (i) is at least nine years old;

909 (ii) refuses to have the interview audio taped; and

910 (iii) refuses to have the interview video taped.

911 (b) If, pursuant to Subsection (4)(a), an interview is conducted without being taped, the
912 child's refusal shall be documented as follows:

913 (i) the interviewer shall attempt to get the child's refusal on tape, including the reasons
914 for the refusal; or

915 (ii) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the
916 interviewer shall:

917 (A) state on the tape that the child is present, but has refused to have the interview,
918 refusal, or the reasons for the refusal taped; or

919 (B) if complying with Subsection (4)(b)(ii)(A) will result in the child, who would
920 otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall
921 document, in writing, that the child refused to allow the interview to be taped and the reasons
922 for that refusal.

923 (c) The division shall track the number of interviews under this section that are not
924 taped, and the number of refusals that are not taped, for each interviewer, in order to determine
925 whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other
926 interviewers.

927 Section 25. Section ~~62A-4a-802~~ is amended to read:

928 **62A-4a-802. Safe relinquishment of a newborn child.**

929 (1) (a) A parent or a parent's designee may safely relinquish a newborn child at a
930 hospital in accordance with the provisions of this part and retain complete anonymity, so long
931 as the child has not been subject to abuse or neglect.

932 (b) Safe relinquishment of a newborn child who has not otherwise been subject to
933 abuse or neglect shall not, in and of itself, constitute neglect as defined in Section
934 [~~62A-4a-101~~] 78-3a-103, and the child shall not be considered a neglected child, as defined in
935 Section 78-3a-103, so long as the relinquishment is carried out in substantial compliance with
936 the provisions of this part.

937 (2) (a) Personnel employed by a hospital shall accept a newborn child that is
938 relinquished pursuant to the provisions of this part, and may presume that the person
939 relinquishing is the child's parent or the parent's designee.

940 (b) The person receiving the newborn child may request information regarding the
941 parent and newborn child's medical histories, and identifying information regarding the
942 nonrelinquishing parent of the child.

943 (c) The division shall provide hospitals with medical history forms and stamped
944 envelopes addressed to the division that a hospital may provide to a person relinquishing a
945 child pursuant to the provisions of this part.

946 (d) Personnel employed by a hospital shall:

947 (i) provide any necessary medical care to the child and notify the division as soon as
948 possible, but no later than 24 hours after receipt of the child; and

949 (ii) prepare a birth certificate or foundling birth certificate if parentage is unknown and
950 file with the Office of Vital Records and Statistics.

951 (e) A hospital and personnel employed by a hospital are immune from any civil or
952 criminal liability arising from accepting a newborn child if the personnel employed by the
953 hospital substantially comply with the provisions of this part and medical treatment is
954 administered according to standard medical practice.

955 (3) The division shall assume care and custody of the child immediately upon notice
956 from the hospital.

957 (4) So long as the division determines there is no abuse or neglect of the newborn

958 child, neither the newborn child nor the child's parents are subject to:

959 (a) the provisions of Part 2 of this chapter, Child Welfare Services;

960 (b) the investigation provisions contained in Section 62A-4a-409; or

961 (c) the provisions of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency

962 Proceedings.

963 (5) Unless identifying information relating to the nonrelinquishing parent of the

964 newborn child has been provided:

965 (a) the division shall work with local law enforcement and the Bureau of Criminal

966 Identification within the Department of Public Safety in an effort to ensure that the newborn

967 child has not been identified as a missing child;

968 (b) the division shall immediately place or contract for placement of the newborn child

969 in a potential adoptive home and, within ten days after receipt of the child, file a petition for

970 termination of parental rights in accordance with Title 78, Chapter 3a, Part 4, Termination of

971 Parental Rights Act;

972 (c) the division shall direct the Office of Vital Records and Statistics to conduct a

973 search for a birth certificate for the child and an Initiation of Proceedings to Establish Paternity

974 Registry for unmarried biological fathers maintained by the Office of Vital Records and

975 Statistics within the Department of Health and provide notice to each potential father identified

976 on the registry. Notice of termination of parental rights proceedings shall be provided in the

977 same manner as is utilized for any other termination proceeding in which the identity of the

978 child's parents is unknown;

979 (d) if no person has affirmatively identified himself or herself within two weeks after

980 notice is complete and established paternity by scientific testing within as expeditious a time

981 frame as practicable, a hearing on the petition for termination of parental rights shall be

982 scheduled; and

983 (e) if a nonrelinquishing parent is not identified, relinquishment of a newborn child

984 pursuant to the provisions of this part shall be considered grounds for termination of parental

985 rights of both the relinquishing and nonrelinquishing parents under Section 78-3a-407.

986 (6) If at any time prior to the adoption, a court finds it is in the best interest of the child,

987 the court shall deny the petition for termination of parental rights.

988 (7) The division shall provide for, or contract with a licensed child-placing agency to

989 provide for expeditious adoption of the newborn child.

990 (8) So long as the person relinquishing a newborn child is the child's parent or
 991 designee, and there is no abuse or neglect, safe relinquishment of a newborn child in substantial
 992 compliance with the provisions of this part is an affirmative defense to any potential criminal
 993 liability for abandonment or neglect relating to that relinquishment.

994 Section 26. Section **62A-4a-1002** is amended to read:

995 **62A-4a-1002. Definitions.**

996 As used in this part:

997 (1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect"
 998 means:

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

1000 (A) [~~severe or~~] chronic [~~physical~~] abuse;

1001 (B) severe abuse;

1002 [~~(B)~~] (C) sexual abuse;

1003 [~~(C)~~] (D) sexual exploitation;

1004 [~~(D)~~] (E) abandonment;

1005 [~~(E) medical neglect resulting in death, disability, or serious illness;~~]

1006 (F) chronic neglect; or

1007 (G) severe neglect; or

1008 [~~(H) chronic emotional abuse; or~~]

1009 [~~(I) severe emotional abuse; or~~]

1010 (ii) if committed by a person under the age of 18:

1011 (A) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
 1012 which indicates a significant risk to other children; or

1013 (B) sexual behavior with or upon another child which indicates a significant risk to
 1014 other children.

1015 (b) "Severe type of child abuse or neglect" does not include:

1016 (i) the use of reasonable and necessary physical restraint or force by an educator in
 1017 accordance with Subsection 53A-11-802(2) or Section 76-2-401;

1018 (ii) a person's conduct that:

1019 (A) is justified under Section 76-2-401; or

1020 (B) constitutes the use of reasonable and necessary physical restraint or force in
1021 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
1022 other dangerous object in the possession or under the control of a child or to protect the child or
1023 another person from physical injury; or

1024 (iii) a health care decision made for a child by the child's parent or guardian, unless,
1025 subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by
1026 clear and convincing evidence, that the health care decision is not reasonable and informed.

1027 (2) "Significant risk" means a risk of harm that is determined to be significant in
1028 accordance with risk assessment tools and rules established by the division that focus on:

- 1029 (a) age;
- 1030 (b) social factors;
- 1031 (c) emotional factors;
- 1032 (d) sexual factors;
- 1033 (e) intellectual factors;
- 1034 (f) family risk factors; and
- 1035 (g) other related considerations.

1036 Section 27. Section **62A-4a-1003** is amended to read:

1037 **62A-4a-1003. Management Information System -- Requirements -- Contents --**
1038 **Purpose -- Access.**

1039 (1) (a) The division shall develop and implement a Management Information System
1040 that meets the requirements of this section and the requirements of federal law and regulation.

1041 (b) The information and records contained in the Management Information System:

1042 (i) are protected records under Title 63, Chapter 2, Government Records Access and
1043 Management Act; and

1044 (ii) except as provided in Subsections (1)(c) and (d), are available only to a person with
1045 statutory authorization under Title 63, Chapter 2, Government Records Access and
1046 Management Act, to review the information and records described in this Subsection (1)(b).

1047 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in
1048 Subsection (1)(b) are available to a person:

- 1049 (i) as provided under Subsection (6) or Section 62A-4a-1006; or
- 1050 (ii) who has specific statutory authorization to access the information or records for the

1051 purpose of assisting the state with state and federal requirements to maintain information solely
1052 for the purpose of protecting minors and providing services to families in need.

1053 (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in
1054 Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act,
1055 be provided by the division:

1056 (i) to comply with [child] abuse and neglect registry checks requested by other states;
1057 and

1058 (ii) to the United States Department of Health and Human Services for purposes of
1059 maintaining an electronic national registry of substantiated cases of [child] abuse and neglect.

1060 (2) With regard to all child welfare cases, the Management Information System shall
1061 provide each caseworker and the department's office of licensing, exclusively for the purposes
1062 of foster parent licensure and monitoring, with a complete history of each child in that worker's
1063 caseload, including:

1064 (a) a record of all past action taken by the division with regard to that child and the
1065 child's siblings;

1066 (b) the complete case history and all reports and information in the control or keeping
1067 of the division regarding that child and the child's siblings;

1068 (c) the number of times the child has been in the custody of the division;

1069 (d) the cumulative period of time the child has been in the custody of the division;

1070 (e) a record of all reports of abuse or neglect received by the division with regard to
1071 that child's parent, parents, or guardian including:

1072 (i) for each report, documentation of the:

1073 (A) latest status; or

1074 (B) final outcome or determination; and

1075 (ii) information that indicates whether each report was found to be:

1076 (A) supported;

1077 (B) unsupported;

1078 (C) substantiated by a juvenile court;

1079 (D) unsubstantiated by a juvenile court; or

1080 (E) without merit;

1081 (f) the number of times the child's parent or parents failed any child and family plan;

1082 and

1083 (g) the number of different caseworkers who have been assigned to that child in the
1084 past.

1085 (3) The division's Management Information System shall:

1086 (a) contain all key elements of each family's current child and family plan, including:

1087 (i) the dates and number of times the plan has been administratively or judicially
1088 reviewed;

1089 (ii) the number of times the parent or parents have failed that child and family plan;

1090 and

1091 (iii) the exact length of time the child and family plan has been in effect; and

1092 (b) alert caseworkers regarding deadlines for completion of and compliance with
1093 policy, including child and family plans.

1094 (4) With regard to all child protective services cases, the Management Information
1095 System shall:

1096 (a) monitor the compliance of each case with:

1097 (i) division rule and policy;

1098 (ii) state law; and

1099 (iii) federal law and regulation; and

1100 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or
1101 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of
1102 the alleged perpetrator.

1103 (5) Except as provided in Subsection (6) regarding contract providers and Section
1104 62A-4a-1006 regarding limited access to the Licensing Information System, all information
1105 contained in the division's Management Information System is available to the department,
1106 upon the approval of the executive director, on a need-to-know basis.

1107 (6) (a) Subject to this Subsection (6), the division may allow its contract providers,
1108 court clerks designated by the Administrative Office of the Courts, and the Office of the
1109 Guardian Ad Litem to have limited access to the Management Information System.

1110 (b) A division contract provider has access only to information about a person who is
1111 currently receiving services from that specific contract provider.

1112 (c) (i) Designated court clerks may only have access to information necessary to

1113 comply with Subsection 78-3h-102(2).

1114 (ii) The Office of the Guardian Ad Litem may access only the information that:

1115 (A) relates to children and families where the Office of the Guardian Ad Litem is
1116 appointed by a court to represent the interests of the children; and

1117 (B) except as provided in Subsection (6)(d), is entered into the Management
1118 Information System on or after July 1, 2004.

1119 (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of the Guardian Ad Litem
1120 shall have access to all [child] abuse and neglect referrals about children and families where the
1121 office has been appointed by a court to represent the interests of the children, regardless of the
1122 date that the information is entered into the Management Information System.

1123 (e) Each contract provider and designated representative of the Office of the Guardian
1124 Ad Litem who requests access to information contained in the Management Information
1125 System shall:

1126 (i) take all necessary precautions to safeguard the security of the information contained
1127 in the Management Information System;

1128 (ii) train its employees regarding:

1129 (A) requirements for protecting the information contained in the Management
1130 Information System as required by this chapter and under Title 63, Chapter 2, Government
1131 Records Access and Management Act; and

1132 (B) the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper
1133 release of information; and

1134 (iii) monitor its employees to ensure that they protect the information contained in the
1135 Management Information System as required by law.

1136 (f) The division shall take reasonable precautions to ensure that its contract providers
1137 comply with the requirements of this Subsection (6).

1138 (7) The division shall take all necessary precautions, including password protection and
1139 other appropriate and available technological techniques, to prevent unauthorized access to or
1140 release of information contained in the Management Information System.

1141 Section 28. Section **62A-4a-1005** is amended to read:

1142 **62A-4a-1005. Supported finding of a severe type of child abuse or neglect --**

1143 **Notation in Licensing Information System -- Juvenile court petition or notice to alleged**

1144 **perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.**

1145 (1) If the division makes a supported finding that a person committed a severe type of
1146 child abuse or neglect, the division shall:

1147 (a) serve notice of the finding on the alleged perpetrator;

1148 (b) enter the following information into the Licensing Information System created in
1149 Section 62A-4a-1006:

1150 (i) the name and other identifying information of the perpetrator with the supported
1151 finding, without identifying the person as a perpetrator or alleged perpetrator; and

1152 (ii) a notation to the effect that an investigation regarding the person is pending; and

1153 (c) if the division considers it advisable, file a petition for substantiation within one
1154 year of the supported finding.

1155 (2) The notice referred to in Subsection (1)(a):

1156 (a) shall state that:

1157 (i) the division has conducted an investigation regarding alleged [~~child~~] abuse or
1158 neglect;

1159 (ii) the division has made a supported finding that the alleged perpetrator described in
1160 Subsection (1) committed a severe type of child abuse or neglect;

1161 (iii) facts gathered by the division support the supported finding;

1162 (iv) as a result of the supported finding, the alleged perpetrator's name and other
1163 identifying information have been listed in the Licensing Information System in accordance
1164 with Subsection (1)(b);

1165 (v) the alleged perpetrator may be disqualified from adopting a child or being licensed
1166 by:

1167 (A) the department;

1168 (B) a human services licensee;

1169 (C) a child care provider or program; or

1170 (D) a covered health care facility;

1171 (vi) the alleged perpetrator has the rights described in Subsection (3); and

1172 (vii) failure to take either action described in Subsection (3)(a) within one year after
1173 service of the notice will result in the action described in Subsection (3)(b);

1174 (b) shall include a general statement of the nature of the findings; and

1175 (c) may not include:

1176 (i) the name of a victim or witness; or

1177 (ii) any privacy information related to the victim or a witness.

1178 (3) (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator

1179 shall have the right to:

1180 (i) file a written request asking the division to review the findings made under

1181 Subsection (1);

1182 (ii) except as provided in Subsection (3)(c), immediately petition the juvenile court

1183 under Section 78-3a-320; or

1184 (iii) sign a written consent to:

1185 (A) the supported finding made under Subsection (1); and

1186 (B) entry into the Licensing Information System of:

1187 (I) the alleged perpetrator's name; and

1188 (II) other information regarding the supported finding made under Subsection (1).

1189 (b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the

1190 information described in Subsection (1)(b) shall remain in the Licensing Information System:

1191 (i) if the alleged perpetrator fails to take the action described in Subsection (3)(a)

1192 within one year after service of the notice described in Subsections (1)(a) and (2);

1193 (ii) during the time that the division awaits a response from the alleged perpetrator

1194 pursuant to Subsection (3)(a); and

1195 (iii) until a court determines that the severe type of child abuse or neglect upon which

1196 the Licensing Information System entry was based is unsubstantiated or without merit.

1197 (c) The alleged perpetrator has no right to petition the juvenile court under Subsection

1198 (3)(a)(ii) if the court previously held a hearing on the same alleged incident of abuse or neglect

1199 pursuant to the filing of a petition under Section 78-3a-305 by some other party.

1200 (d) Consent under Subsection (3)(a)(iii) by a child shall be given by the child's parent

1201 or guardian.

1202 (e) Regardless of whether an appeal on the matter is pending:

1203 (i) an alleged perpetrator's name and the information described in Subsection (1)(b)

1204 shall be removed from the Licensing Information System if the severe type of child abuse or

1205 neglect upon which the Licensing Information System entry was based:

1206 (A) is found to be unsubstantiated or without merit by the juvenile court under Section
1207 78-3a-320; or

1208 (B) is found to be substantiated, but is subsequently reversed on appeal; and

1209 (ii) an alleged perpetrator's name and information that is removed from the Licensing
1210 Information System under Subsection (3)(e)(i) shall be placed back on the Licensing
1211 Information System if the court action that was the basis for removing the alleged perpetrator's
1212 name and information is subsequently reversed on appeal.

1213 (4) Upon the filing of a petition under Subsection (1)(c), the juvenile court shall make
1214 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
1215 78-3a-320(1) and (2).

1216 (5) Service of the notice described in Subsections (1)(a) and (2):

1217 (a) shall be personal service in accordance with Utah Rules of Civil Procedure, Rule 4;
1218 and

1219 (b) does not preclude civil or criminal action against the alleged perpetrator.

1220 Section 29. Section **62A-4a-1006** is amended to read:

1221 **62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding**
1222 **-- Protected record -- Access -- Criminal penalty.**

1223 (1) (a) The division shall maintain a sub-part of the Management Information System
1224 established pursuant to Section 62A-4a-1003, to be known as the Licensing Information
1225 System, to be used:

1226 (i) for licensing purposes; or

1227 (ii) as otherwise specifically provided for by law.

1228 (b) The Licensing Information System shall include only the following information:

1229 (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

1230 (ii) consented-to supported findings by alleged perpetrators under Subsection
1231 62A-4a-1005(3)(a)(iii); and

1232 (iii) the information in the licensing part of the division's Management Information
1233 System as of May 6, 2002.

1234 (2) Notwithstanding Subsection (1), the department's access to information in the
1235 Management Information System for the licensure and monitoring of foster parents is governed
1236 by Sections 62A-4a-1003 and 62A-2-121.

- 1237 (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the
1238 juvenile court under Section 78-3a-320, the division shall:
- 1239 (a) promptly amend the Licensing Information System; and
1240 (b) enter the information in the Management Information System.
- 1241 (4) (a) Information contained in the Licensing Information System is classified as a
1242 protected record under Title 63, Chapter 2, Government Records Access and Management Act.
1243 (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government
1244 Records Access and Management Act, the information contained in the Licensing Information
1245 System may only be used or disclosed as specifically provided in this chapter and Section
1246 62A-2-121.
- 1247 (c) The information described in Subsection (4)(b) is accessible only to:
- 1248 (i) the Office of Licensing within the department:
- 1249 (A) for licensing purposes; or
1250 (B) as otherwise specifically provided for by law;
- 1251 (ii) the division to:
- 1252 (A) screen a person at the request of the Office of the Guardian Ad Litem Director:
1253 (I) at the time that person seeks a paid or voluntary position with the Office of the
1254 Guardian Ad Litem Director; and
1255 (II) on an annual basis, throughout the time that the person remains with the Office of
1256 Guardian Ad Litem Director; and
1257 (B) respond to a request for information from a person whose name is listed in the
1258 Licensing Information System;
- 1259 (iii) two persons designated by and within the Department of Health, only for the
1260 following purposes:
- 1261 (A) licensing a child care program or provider; or
1262 (B) determining whether a person associated with a covered health care facility, as
1263 defined by the Department of Health by rule, who provides direct care to a child, has a
1264 supported finding of a severe type of child abuse or neglect; and
1265 (iv) the department, as specifically provided in this chapter.
- 1266 (5) The two persons designated by the Department of Health under Subsection
1267 (4)(c)(iii) shall adopt measures to:

- 1268 (a) protect the security of the Licensing Information System; and
1269 (b) strictly limit access to the Licensing Information System to those persons
1270 designated by statute.
- 1271 (6) All persons designated by statute as having access to information contained in the
1272 Licensing Information System shall receive training from the department with respect to:
1273 (a) accessing the Licensing Information System;
1274 (b) maintaining strict security; and
1275 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the
1276 improper release of information.
- 1277 (7) (a) A person, except those authorized by this chapter, may not request another
1278 person to obtain or release any other information in the Licensing Information System to screen
1279 for potential perpetrators of [~~child~~] abuse or neglect.
- 1280 (b) A person who requests information knowing that it is a violation of this Subsection
1281 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.
- 1282 Section 30. Section **62A-4a-1007** is amended to read:
1283 **62A-4a-1007. False reports -- Penalties.**
- 1284 (1) The division shall send a certified letter to any person who submits a report of
1285 [~~child~~] abuse or neglect that is placed into or included in any part of the Management
1286 Information System, if the division determines, at the conclusion of its investigation, that:
1287 (a) the report is false;
1288 (b) it is more likely than not that the person knew the report was false at the time that
1289 person submitted the report; and
1290 (c) the reporting person's address is known or reasonably available.
- 1291 (2) The letter shall inform the reporting person of:
1292 (a) the division's determination made under Subsection (1);
1293 (b) the penalty for submitting false information under Section 76-8-506 and other
1294 applicable laws; and
1295 (c) the obligation of the division to inform law enforcement and the person alleged to
1296 have committed abuse or neglect:
1297 (i) in the present instance if law enforcement considers an immediate referral of the
1298 reporting person to law enforcement to be justified by the facts; or

1299 (ii) if the reporting person submits a subsequent false report involving the same alleged
1300 perpetrator or victim.

1301 (3) The division may inform law enforcement and the alleged perpetrator of a report
1302 for which a letter is required to be sent under Subsection (1), if an immediate referral is
1303 justified by the facts.

1304 (4) The division shall inform law enforcement and the alleged perpetrator of a report
1305 for which a letter is required to be sent under Subsection (1) if a second letter is sent to the
1306 reporting person involving the same alleged perpetrator or victim.

1307 (5) The division shall determine, in consultation with law enforcement:

1308 (a) what information should be given to an alleged perpetrator relating to a false report;
1309 and

1310 (b) whether good cause exists, as defined by the division by rule, for not informing an
1311 alleged perpetrator about a false report.

1312 (6) Nothing in this section may be construed as requiring the division to conduct an
1313 investigation beyond what is described in Subsection (1), to determine whether or not a report
1314 is false.

1315 Section 31. Section **62A-4a-1009** is amended to read:

1316 **62A-4a-1009. Notice and opportunity to challenge supported finding in**
1317 **Management Information System -- Right of judicial review.**

1318 (1) (a) Except as provided in Subsection (2), the division shall send a notice of agency
1319 action to a person with respect to whom the division makes a supported finding. In addition, if
1320 the alleged perpetrator is under the age of 18, the division shall:

1321 (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

1322 (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that
1323 lives at a different address, unless there is good cause, as defined by rule, for not sending a
1324 notice to a parent or guardian.

1325 (b) Nothing in this section may be construed as affecting:

1326 (i) the manner in which the division conducts an investigation; or

1327 (ii) the use or effect, in any other setting, of a supported finding by the division at the
1328 completion of an investigation for any purpose other than for notification under Subsection (1)
1329 (a).

1330 (2) Subsection (1) does not apply to a person who has been served with notice under
1331 Subsection 62A-4a-1005(1)(a).

1332 (3) The notice described in Subsection (1) shall state:

1333 (a) that the division has conducted an investigation regarding alleged [child] abuse,
1334 neglect, or dependency;

1335 (b) that the division has made a supported finding of abuse, neglect, or dependency;

1336 (c) that facts gathered by the division support the supported finding;

1337 (d) that the person has the right to request:

1338 (i) a copy of the report; and

1339 (ii) an opportunity to challenge the supported finding by the division; and

1340 (e) that failure to request an opportunity to challenge the supported finding within 30
1341 days of receiving the notice will result in an unappealable supported finding of [child] abuse,
1342 neglect, or dependency unless the person can show good cause for why compliance within the
1343 30-day requirement was virtually impossible or unreasonably burdensome.

1344 (4) (a) A person may make a request to challenge a supported finding within 30 days of
1345 a notice being received under this section.

1346 (b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative
1347 Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b,
1348 Administrative Procedures Act.

1349 (5) (a) In an adjudicative proceeding held pursuant to this section, the division shall
1350 have the burden of proving, by a preponderance of the evidence, that [child] abuse, neglect, or
1351 dependency occurred and that the alleged perpetrator was substantially responsible for the
1352 abuse or neglect that occurred.

1353 (b) Any party shall have the right of judicial review of final agency action, in
1354 accordance with Title 63, Chapter 46b, Administrative Procedures Act.

1355 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after
1356 receiving notice, fails to challenge a supported finding in accordance with this section:

1357 (a) may not further challenge the finding; and

1358 (b) shall have no right to:

1359 (i) agency review of the finding;

1360 (ii) an adjudicative hearing on the finding; or

1361 (iii) judicial review of the finding.

1362 (7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a
1363 request under Subsection (4) to challenge a supported finding if a court of competent
1364 jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that
1365 the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which
1366 was also the subject of the supported finding.

1367 (b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

1368 (c) An adjudicative proceeding under Subsection (5) may be stayed during the time a
1369 judicial action on the same matter is pending.

1370 (8) Pursuant to Section 78-3a 320, an adjudicative proceeding on a supported finding
1371 of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may
1372 be joined in the juvenile court with an adjudicative proceeding on a supported finding of a
1373 severe type of child abuse or neglect.

1374 Section 32. Section **62A-4a-1010** is amended to read:

1375 **62A-4a-1010. Notice and opportunity for court hearing for persons listed in**
1376 **Licensing Information System.**

1377 (1) Persons whose names were listed on the Licensing Information System as of May
1378 6, 2002 and who have not been the subject of a court determination with respect to the alleged
1379 incident of abuse or neglect may at any time:

1380 (a) request review by the division of their case and removal of their name from the
1381 Licensing Information System pursuant to Subsection (3); or

1382 (b) file a petition for an evidentiary hearing and a request for a finding of
1383 unsubstantiated or without merit.

1384 (2) Subsection (1) does not apply to an individual who has been the subject of any of
1385 the following court determinations with respect to the alleged incident of abuse or neglect:

1386 (a) conviction;

1387 (b) adjudication under Title 78, Chapter 3a, Juvenile Court Act of 1996;

1388 (c) plea of guilty;

1389 (d) plea of guilty and mentally ill; or

1390 (e) no contest.

1391 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,

1392 2002 requests removal of the alleged perpetrator's name from the Licensing Information
1393 System, the division shall, within 30 days:

1394 (a) (i) review the case to determine whether the incident of alleged abuse or neglect
1395 qualifies as:

1396 (A) a severe type of child abuse or neglect;

1397 (B) chronic [physical] abuse; or

1398 [~~C~~] chronic emotional abuse; or]

1399 [~~D~~] (C) chronic neglect; and

1400 (ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect
1401 described in Subsections (3)(a)(i)(A) through (D), remove the alleged perpetrator's name from
1402 the Licensing Information System; or

1403 (b) determine whether to file a petition for substantiation.

1404 (4) If the division decides to file a petition, that petition must be filed no more than 14
1405 days after the decision.

1406 (5) The juvenile court shall act on the petition as provided in Subsection 78-3a-320(3).

1407 (6) If a person whose name appears on the Licensing Information System prior to May
1408 6, 2002 files a petition pursuant to Section 78-3a-320 during the time that an alleged
1409 perpetrator's application for clearance to work with children or vulnerable adults is pending, the
1410 court shall hear the matter on an expedited basis.

1411 Section 33. Section **76-7-304** is amended to read:

1412 **76-7-304. Considerations by physician -- Notice to a parent or guardian --**
1413 **Exceptions.**

1414 (1) As used in this section:

1415 (a) "abuse" is as defined in Section [~~62A-4a-101~~] 78-3a-103; and

1416 (b) "minor" means a person who is:

1417 (i) under 18 years of age;

1418 (ii) unmarried; and

1419 (iii) not emancipated.

1420 (2) To enable the physician to exercise the physician's best medical judgment, the
1421 physician shall consider all factors relevant to the well-being of the woman upon whom the
1422 abortion is to be performed including:

- 1423 (a) her physical, emotional and psychological health and safety;
- 1424 (b) her age; and
- 1425 (c) her familial situation.
- 1426 (3) Subject to Subsection (4), at least 24 hours before a physician performs an abortion
- 1427 on a minor, the physician shall notify a parent or guardian of the minor that the minor intends
- 1428 to have an abortion.
- 1429 (4) A physician is not required to comply with Subsection (3) if:
- 1430 (a) subject to Subsection (5)(a):
- 1431 (i) a medical condition exists that, on the basis of the physician's good faith clinical
- 1432 judgment, so complicates the medical condition of a pregnant minor as to necessitate the
- 1433 abortion of her pregnancy to avert:
- 1434 (A) the minor's death; or
- 1435 (B) a serious risk of substantial and irreversible impairment of a major bodily function
- 1436 of the minor; and
- 1437 (ii) there is not sufficient time to give the notice required under Subsection (3) before it
- 1438 is necessary to terminate the minor's pregnancy in order to avert the minor's death or
- 1439 impairment described in Subsection (4)(a)(i);
- 1440 (b) subject to Subsection (5)(b):
- 1441 (i) the physician complies with Subsection (6); and
- 1442 (ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a
- 1443 party; or
- 1444 (B) the parent or guardian has abused the minor; or
- 1445 (c) subject to Subsection (5)(b), the parent or guardian has not assumed responsibility
- 1446 for the minor's care and upbringing.
- 1447 (5) (a) If, for the reason described in Subsection (4)(a), a physician does not give the
- 1448 24-hour notice described in Subsection (3), the physician shall give the required notice as early
- 1449 as possible before the abortion, unless it is necessary to perform the abortion immediately in
- 1450 order to avert the minor's death or impairment described in Subsection (4)(a)(i).
- 1451 (b) If, for a reason described in Subsection (4)(b) or (c), a parent or guardian of a minor
- 1452 is not notified that the minor intends to have an abortion, the physician shall notify another
- 1453 parent or guardian of the minor, if the minor has another parent or guardian that is not exempt

1454 from notification under Subsection (4)(b) or (c).

1455 (6) If, for a reason described in Subsection (4)(b)(ii)(A) or (B), a physician does not
1456 notify a parent or guardian of a minor that the minor intends to have an abortion, the physician
1457 shall report the incest or abuse to the Division of Child and Family Services within the
1458 Department of Human Services.

1459 Section 34. Section **78-3a-103** is amended to read:

1460 **78-3a-103. Definitions.**

1461 (1) As used in this chapter:

1462 [~~(a) "Abused child" includes a child who:~~]

1463 [~~(i) has suffered or been threatened with nonaccidental physical or mental harm;
1464 negligent treatment, or sexual exploitation; or]~~

1465 [~~(ii) has been the victim of any sexual abuse:]~~

1466 (a) (i) "Abuse" means:

1467 (A) nonaccidental harm of a child;

1468 (B) threatened harm of a child;

1469 (C) sexual exploitation; or

1470 (D) sexual abuse.

1471 (ii) "Abuse" does not include:

1472 (A) reasonable discipline or management of a child, including withholding privileges;

1473 (B) conduct described in Section 76-2-401; or

1474 (C) the use of reasonable and necessary physical restraint or force on a child:

1475 (I) in self-defense;

1476 (II) in defense of others;

1477 (III) to protect the child; or

1478 (IV) to remove a weapon in the possession of a child for any of the reasons described
1479 in Subsections (1)(a)(ii)(C)(I) through (III).

1480 (b) "Abused child" means a child who has been subjected to abuse.

1481 [~~(b)~~] (c) "Adjudication" means a finding by the court, incorporated in a decree, that the
1482 facts alleged in the petition have been proved.

1483 [~~(c)~~] (d) "Adult" means a person 18 years of age or over, except that a person 18 years
1484 or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121

1485 shall be referred to as a minor.

1486 ~~[(d)]~~ (e) "Board" means the Board of Juvenile Court Judges.

1487 ~~[(e)]~~ (f) "Child" means a person under 18 years of age.

1488 ~~[(f)]~~ (g) "Child placement agency" means:

1489 (i) a private agency licensed to receive a child for placement or adoption under this
1490 code; or

1491 (ii) a private agency that receives a child for placement or adoption in another state,
1492 which agency is licensed or approved where such license or approval is required by law.

1493 ~~[(g)]~~ (h) "Clandestine laboratory operation" is as defined in Section 58-37d-3.

1494 ~~[(h)]~~ (i) "Commit" means, unless specified otherwise:

1495 (i) with respect to a child, to transfer legal custody; and

1496 (ii) with respect to a minor who is at least 18 years of age, to transfer custody.

1497 ~~[(i)]~~ (j) "Court" means the juvenile court.

1498 ~~[(j)]~~ (k) "Dependent child" includes a child who is homeless or without proper care
1499 through no fault of the child's parent, guardian, or custodian.

1500 ~~[(k)]~~ (l) "Deprivation of custody" means transfer of legal custody by the court from a
1501 parent or the parents or a previous legal custodian to another person, agency, or institution.

1502 ~~[(l)]~~ (m) "Detention" means home detention and secure detention as defined in Section
1503 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
1504 restricting facility:

1505 (i) pending court disposition or transfer to another jurisdiction; or

1506 (ii) while under the continuing jurisdiction of the court.

1507 ~~[(m)]~~ (n) "Division" means the Division of Child and Family Services.

1508 ~~[(n)]~~ (o) "Formal referral" means a written report from a peace officer or other person
1509 informing the court that a minor is or appears to be within the court's jurisdiction and that a
1510 petition may be filed.

1511 ~~[(o)]~~ (p) "Group rehabilitation therapy" means psychological and social counseling of
1512 one or more persons in the group, depending upon the recommendation of the therapist.

1513 ~~[(p)]~~ (q) "Guardianship of the person" includes the authority to consent to:

1514 (i) marriage;

1515 (ii) enlistment in the armed forces;

1516 (iii) major medical, surgical, or psychiatric treatment; or
1517 (iv) legal custody, if legal custody is not vested in another person, agency, or
1518 institution.

1519 [~~(q)~~] (r) "Habitual truant" is as defined in Section 53A-11-101.

1520 (s) "Harm" means:

1521 (i) physical, emotional, or developmental injury or damage;

1522 (ii) sexual abuse; or

1523 (iii) sexual exploitation.

1524 (t) (i) "Incest" means engaging in sexual intercourse with a person whom the
1525 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
1526 nephew, niece, or first cousin.

1527 (ii) The relationships described in Subsection (1)(t)(i) include:

1528 (A) blood relationships of the whole or half blood, without regard to legitimacy;

1529 (B) relationships of parent and child by adoption; and

1530 (C) relationships of stepparent and stepchild while the marriage creating the
1531 relationship of a stepparent and stepchild exists.

1532 [~~(r)~~] (u) "Legal custody" means a relationship embodying the following rights and
1533 duties:

1534 (i) the right to physical custody of the minor;

1535 (ii) the right and duty to protect, train, and discipline the minor;

1536 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
1537 medical care;

1538 (iv) the right to determine where and with whom the minor shall live; and

1539 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1540 [~~(s)~~] (v) "Minor" means:

1541 (i) a child; or

1542 (ii) a person who is:

1543 (A) at least 18 years of age and younger than 21 years of age; and

1544 (B) under the jurisdiction of the juvenile court.

1545 (w) "Molestation" means that a person, with the intent to arouse or gratify the sexual
1546 desire of any person;

1547 (i) touches the anus or any part of the genitals of a child;
1548 (ii) takes indecent liberties with a child; or
1549 (iii) causes a child to take indecent liberties with the perpetrator or another.
1550 ~~[(t) (x) "Natural parent" means a minor's biological or adoptive parent, and includes~~
1551 ~~the minor's noncustodial parent.~~
1552 ~~[(u) (i) "Neglected child" means a child:]~~
1553 ~~[(A) whose parent, guardian, or custodian has abandoned the child, except as provided~~
1554 ~~in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;]~~
1555 ~~[(B) whose parent, guardian, or custodian has subjected the child to mistreatment or~~
1556 ~~abuse;]~~
1557 ~~[(C) who lacks proper parental care by reason of the fault or habits of the parent,~~
1558 ~~guardian, or custodian;]~~
1559 ~~[(D) whose parent, guardian, or custodian fails or refuses to provide proper or~~
1560 ~~necessary subsistence, education, or medical care, including surgery or psychiatric services~~
1561 ~~when required, or any other care necessary for health, safety, morals, or well-being;]~~
1562 ~~[(E) who is at risk of being a neglected or abused child as defined in this chapter~~
1563 ~~because another child in the same home is a neglected or abused child as defined in this~~
1564 ~~chapter; or]~~
1565 ~~[(F) whose parent permits the minor to reside, on a permanent or temporary basis, at~~
1566 ~~the location of a clandestine laboratory operation.]~~
1567 ~~[(ii) The aspect of neglect related to education, described in Subsection (1)(u)(i)(D),~~
1568 ~~means that, after receiving notice that a child has been frequently absent from school without~~
1569 ~~good cause, or that the child has failed to cooperate with school authorities in a reasonable~~
1570 ~~manner, a parent or guardian fails to make a good faith effort to ensure that the child receives~~
1571 ~~an appropriate education.]~~
1572 ~~[(iii) A parent or guardian legitimately practicing religious beliefs and who, for that~~
1573 ~~reason, does not provide specified medical treatment for a child, is not guilty of neglect.]~~
1574 ~~[(iv) Notwithstanding Subsection (1)(u)(i), a health care decision made for a child by~~
1575 ~~the child's parent or guardian does not constitute neglect unless the state or other party to the~~
1576 ~~proceeding shows, by clear and convincing evidence, that the health care decision is not~~
1577 ~~reasonable and informed.]~~

1578 ~~[(v) Nothing in Subsection (1)(u)(iv) may prohibit a parent or guardian from exercising~~
1579 ~~the right to obtain a second health care opinion.]~~

1580 (y) (i) "Neglect" means:

1581 (A) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
1582 Relinquishment of a Newborn Child;

1583 (B) lack of proper parental care of a child by reason of the fault or habits of the parent,
1584 guardian, or custodian;

1585 (C) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
1586 subsistence, education, or medical care, or any other care necessary for the child's health,
1587 safety, morals, or well-being; or

1588 (D) a child at risk of being neglected or abused because another child in the same home
1589 is neglected or abused.

1590 (ii) The aspect of neglect relating to education, described in Subsection (1)(y)(i)(C),
1591 means that, after receiving a notice of compulsory education violation under Section
1592 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school
1593 authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent
1594 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
1595 education.

1596 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that
1597 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

1598 (iv) (A) Notwithstanding Subsection (1)(y)(i), a health care decision made for a child
1599 by the child's parent or guardian does not constitute neglect unless the state or other party to the
1600 proceeding shows, by clear and convincing evidence, that the health care decision is not
1601 reasonable and informed.

1602 (B) Nothing in Subsection (1)(y)(iv)(A) may prohibit a parent or guardian from
1603 exercising the right to obtain a second health care opinion.

1604 (z) "Neglected child" means a child who has been subjected to neglect.

1605 [(v+)] (aa) "Nonjudicial adjustment" means closure of the case by the assigned probation
1606 officer without judicial determination upon the consent in writing of:

1607 (i) the assigned probation officer; and

1608 (ii) (A) the minor; or

1609 (B) the minor and the minor's parent, legal guardian, or custodian.

1610 (bb) "Physical abuse" means abuse that results in physical injury or damage to a child.

1611 [~~(w)~~] (cc) "Probation" means a legal status created by court order following an
1612 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
1613 minor is permitted to remain in the minor's home under prescribed conditions and under
1614 supervision by the probation department or other agency designated by the court, subject to
1615 return to the court for violation of any of the conditions prescribed.

1616 [~~(x)~~] (dd) "Protective supervision" means a legal status created by court order
1617 following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor
1618 is permitted to remain in the minor's home, and supervision and assistance to correct the abuse,
1619 neglect, or dependency is provided by the probation department or other agency designated by
1620 the court.

1621 [~~(y)~~] (ee) (i) "Residual parental rights and duties" means those rights and duties
1622 remaining with the parent after legal custody or guardianship, or both, have been vested in
1623 another person or agency, including:

1624 (A) the responsibility for support;

1625 (B) the right to consent to adoption;

1626 (C) the right to determine the child's religious affiliation; and

1627 (D) the right to reasonable parent-time unless restricted by the court.

1628 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
1629 the right to consent to:

1630 (A) marriage;

1631 (B) enlistment; and

1632 (C) major medical, surgical, or psychiatric treatment.

1633 [~~(z)~~] (ff) "Secure facility" means any facility operated by or under contract with the
1634 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
1635 youth offenders committed to the division for custody and rehabilitation.

1636 (gg) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
1637 child.

1638 (hh) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
1639 child.

- 1640 (ii) "Sexual abuse" means:
- 1641 (i) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed
- 1642 towards a child; or
- 1643 (ii) engaging in any conduct with a child that would constitute an offense under any of
- 1644 the following, regardless of whether the person who engages in the conduct is actually charged
- 1645 with, or convicted of, the offense:
- 1646 (A) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 1647 (B) child bigamy, Section 76-7-101.5;
- 1648 (C) incest, Section 76-7-102;
- 1649 (D) lewdness or sexual battery, Section 76-9-702;
- 1650 (E) lewdness involving a child, Section 76-9-702.5; or
- 1651 (F) voyeurism, Section 76-9-702.7.
- 1652 (jj) "Sexual exploitation" means knowingly:
- 1653 (i) employing, using, persuading, inducing, enticing, or coercing any child to:
- 1654 (A) pose in the nude for the purpose of sexual arousal of any person; or
- 1655 (B) engage in any sexual or simulated sexual conduct for the purpose of
- 1656 photographing, filming, recording, or displaying in any way the sexual or simulated sexual
- 1657 conduct;
- 1658 (ii) displaying, distributing, possessing for the purpose of distribution, or selling
- 1659 material depicting a child:
- 1660 (A) in the nude, for the purpose of sexual arousal of any person; or
- 1661 (B) engaging in sexual or simulated sexual conduct; or
- 1662 (iii) engaging in any conduct that would constitute an offense under Title 76, Chapter
- 1663 5a, Sexual Exploitation of Children, regardless of whether the person who engages in the
- 1664 conduct is actually charged with, or convicted of, the offense.
- 1665 ~~[(aa)]~~ (kk) "Shelter" means the temporary care of a child in a physically unrestricted
- 1666 facility pending court disposition or transfer to another jurisdiction.
- 1667 ~~[(bb)]~~ (ll) "State supervision" means a disposition that provides a more intensive level
- 1668 of intervention than standard probation but is less intensive or restrictive than a community
- 1669 placement with the Division of Juvenile Justice Services.
- 1670 (mm) "Substance abuse" means the misuse or excessive use of alcohol or other drugs

1671 or substances.

1672 [~~cc~~] (nn) "Substantiated" is as defined in Section 62A-4a-101.

1673 [~~dd~~] (oo) "Supported" is as defined in Section 62A-4a-101.

1674 [~~ee~~] (pp) "Termination of parental rights" means the permanent elimination of all
1675 parental rights and duties, including residual parental rights and duties, by court order.

1676 [~~ff~~] (qq) "Therapist" means:

1677 (i) a person employed by a state division or agency for the purpose of conducting
1678 psychological treatment and counseling of a minor in its custody; or

1679 (ii) any other person licensed or approved by the state for the purpose of conducting
1680 psychological treatment and counseling.

1681 [~~gg~~] (rr) "Unsubstantiated" is as defined in Section 62A-4a-101.

1682 [~~hh~~] (ss) "Without merit" is as defined in Section 62A-4a-101.

1683 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
1684 Division of Child and Family Services:

1685 (a) "Custody" means the custody of a minor in the Division of Child and Family
1686 Services as of the date of disposition.

1687 (b) "Protective custody" means the shelter of a child by the Division of Child and
1688 Family Services from the time the child is removed from home until the earlier of:

1689 (i) the shelter hearing; or

1690 (ii) the child's return home.

1691 (c) "Temporary custody" means the custody of a child in the Division of Child and
1692 Family Services from the date of the shelter hearing until disposition.

1693 Section 35. Section **78-3a-301** is amended to read:

1694 **78-3a-301. Court-ordered protective custody of a child following petition filing --**
1695 **Grounds.**

1696 (1) After a petition has been filed under Section 78-3a-305, if the child who is the
1697 subject of the petition is not in the protective custody of the division, a court may order that the
1698 child be removed from the child's home or otherwise taken into protective custody if the court
1699 finds, by a preponderance of the evidence, that any one or more of the following circumstances
1700 exist:

1701 (a) (i) there is an imminent danger to the physical health or safety of the child; and

- 1702 (ii) the child's physical health or safety may not be protected without removing the
1703 child from the custody of the child's parent or guardian;
- 1704 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
1705 that causes the child to suffer emotional damage; and
- 1706 (ii) there are no reasonable means available by which the child's emotional health may
1707 be protected without removing the child from the custody of the child's parent or guardian;
- 1708 (c) the child or another child residing in the same household has been, or is considered
1709 to be at substantial risk of being, physically [~~or~~] abused, sexually abused, or [~~is considered to~~
1710 ~~be at substantial risk of being physically or~~] sexually [~~abused~~] exploited, by a parent or
1711 guardian, a member of the parent's or guardian's household, or other person known to the
1712 parent or guardian;
- 1713 (d) the parent or guardian is unwilling to have physical custody of the child;
- 1714 (e) the child is abandoned or left without any provision for the child's support;
- 1715 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
1716 or cannot arrange for safe and appropriate care for the child;
- 1717 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
1718 guardian is unwilling or unable to provide care or support for the child;
- 1719 (ii) the whereabouts of the parent or guardian are unknown; and
- 1720 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- 1721 (h) the child is in immediate need of medical care;
- 1722 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
1723 environment that poses a threat to the child's health or safety; or
- 1724 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
1725 a threat to the child's health or safety;
- 1726 (j) the child or another child residing in the same household has been neglected;
- 1727 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;
- 1728 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or
1729 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;
1730 and
- 1731 (ii) any clandestine laboratory operation was located in the residence or on the property
1732 where the child resided; or

1733 (m) the child's welfare is otherwise endangered.

1734 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as
1735 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
1736 occurs involving the same substantiated abuser or under similar circumstance as the previous
1737 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the
1738 custody of the child's parent.

1739 (b) For purposes of Subsection (1)(c):

1740 (i) another child residing in the same household may not be removed from the home
1741 unless that child is considered to be at substantial risk of being physically [or] abused, sexually
1742 abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

1743 (ii) if a parent or guardian has received actual notice that physical [or] abuse, sexual
1744 abuse, or sexual exploitation by a person known to the parent has occurred, and there is
1745 evidence that the parent or guardian failed to protect the child, after having received the notice,
1746 by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes
1747 prima facie evidence that the child is at substantial risk of being physically [or] abused,
1748 sexually abused, or sexually exploited.

1749 (3) In the absence of one of the factors described in Subsection (1), a court may not
1750 remove a child from the parent's or guardian's custody on the basis of:

1751 (a) educational neglect;

1752 (b) mental illness or poverty of the parent or guardian; or

1753 (c) disability of the parent or guardian, as defined in Section 57-21-2.

1754 (4) A child removed from the custody of the child's parent or guardian under this
1755 section may not be placed or kept in a secure detention facility pending further court
1756 proceedings unless the child is detainable based on guidelines promulgated by the Division of
1757 Juvenile Justice Services.

1758 (5) This section does not preclude removal of a child from the child's home without a
1759 warrant or court order under Section 62A-4a-202.1.

1760 (6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and
1761 Family Services may not remove a child from the custody of the child's parent or guardian on
1762 the sole or primary basis that the parent or guardian refuses to consent to:

1763 (i) the administration of a psychotropic medication to a child;

- 1764 (ii) a psychiatric, psychological, or behavioral treatment for a child; or
- 1765 (iii) a psychiatric or behavioral health evaluation of a child.
- 1766 (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family
- 1767 Services may remove a child under conditions that would otherwise be prohibited under
- 1768 Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a
- 1769 serious, imminent risk to the child's physical safety or the physical safety of others.

1770 Section 36. Section **78-3a-306** is amended to read:

1771 **78-3a-306. Shelter hearing.**

1772 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays

1773 after any one or all of the following occur:

- 1774 (a) removal of the child from the child's home by the division;
- 1775 (b) placement of the child in the protective custody of the division;
- 1776 (c) emergency placement under Subsection 62A-4a-202.1(4);
- 1777 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
- 1778 at the request of the division; or
- 1779 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
- 1780 Subsection 78-3a-106(4).

1781 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)

1782 through (e), the division shall issue a notice that contains all of the following:

- 1783 (a) the name and address of the person to whom the notice is directed;
- 1784 (b) the date, time, and place of the shelter hearing;
- 1785 (c) the name of the child on whose behalf a petition is being brought;
- 1786 (d) a concise statement regarding:
 - 1787 (i) the reasons for removal or other action of the division under Subsection (1); and
 - 1788 (ii) the allegations and code sections under which the proceeding has been instituted;
- 1789 (e) a statement that the parent or guardian to whom notice is given, and the child, are
- 1790 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
- 1791 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
- 1792 provided; and
- 1793 (f) a statement that the parent or guardian is liable for the cost of support of the child in
- 1794 the protective custody, temporary custody, and custody of the division, and the cost for legal

1795 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
1796 ability of the parent or guardian.

1797 (3) The notice described in Subsection (2) shall be personally served as soon as
1798 possible, but no later than one business day after removal of the child from the child's home, or
1799 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
1800 78-3a-106(4), on:

1801 (a) the appropriate guardian ad litem; and

1802 (b) both parents and any guardian of the child, unless the parents or guardians cannot
1803 be located.

1804 (4) The following persons shall be present at the shelter hearing:

1805 (a) the child, unless it would be detrimental for the child;

1806 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
1807 fail to appear in response to the notice;

1808 (c) counsel for the parents, if one is requested;

1809 (d) the child's guardian ad litem;

1810 (e) the caseworker from the division who is assigned to the case; and

1811 (f) the attorney from the attorney general's office who is representing the division.

1812 (5) (a) At the shelter hearing, the court shall:

1813 (i) provide an opportunity to provide relevant testimony to:

1814 (A) the child's parent or guardian, if present; and

1815 (B) any other person having relevant knowledge; and

1816 (ii) subject to Section 78-3a-305.5, provide an opportunity for the child to testify.

1817 (b) The court:

1818 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
1819 Procedure;

1820 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
1821 the requesting party, or their counsel; and

1822 (iii) may in its discretion limit testimony and evidence to only that which goes to the
1823 issues of removal and the child's need for continued protection.

1824 (6) If the child is in the protective custody of the division, the division shall report to
1825 the court:

1826 (a) the reason why the child was removed from the parent's or guardian's custody;

1827 (b) any services provided to the child and the child's family in an effort to prevent
1828 removal;

1829 (c) the need, if any, for continued shelter;

1830 (d) the available services that could facilitate the return of the child to the custody of
1831 the child's parent or guardian; and

1832 (e) subject to Subsection 78-3a-307(8)(c), whether any relatives of the child or friends
1833 of the child's parents may be able and willing to take temporary custody.

1834 (7) The court shall consider all relevant evidence provided by persons or entities
1835 authorized to present relevant evidence pursuant to this section.

1836 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
1837 cause shown, the court may grant no more than one continuance, not to exceed five judicial
1838 days.

1839 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
1840 a continuance under Subsection (8)(a).

1841 (9) (a) If the child is in the protective custody of the division, the court shall order that
1842 the child be released from the protective custody of the division unless it finds, by a
1843 preponderance of the evidence, that any one of the following exist:

1844 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or
1845 safety of the child and the child's physical health or safety may not be protected without
1846 removing the child from the custody of the child's parent;

1847 (ii) (A) the child is suffering emotional damage; and

1848 (B) there are no reasonable means available by which the child's emotional health may
1849 be protected without removing the child from the custody of the child's parent;

1850 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
1851 not removed from the custody of the child's parents;

1852 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same
1853 household has been [~~physically or sexually abused~~], or is considered to be at substantial risk of
1854 being, physically [~~or~~] abused, sexually abused, or sexually exploited by a:

1855 (A) parent;

1856 (B) member of the parent's household; or

1857 (C) person known to the parent;

1858 (v) the parent is unwilling to have physical custody of the child;

1859 (vi) the child is without any provision for the child's support;

1860 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe

1861 and appropriate care for the child;

1862 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is

1863 unwilling or unable to provide care or support for the child;

1864 (B) the whereabouts of the parent are unknown; and

1865 (C) reasonable efforts to locate the parent are unsuccessful;

1866 (ix) the child is in urgent need of medical care;

1867 (x) the physical environment or the fact that the child is left unattended beyond a

1868 reasonable period of time poses a threat to the child's health or safety;

1869 (xi) the child or a minor residing in the same household has been neglected;

1870 (xii) the parent, or an adult residing in the same household as the parent, is charged or

1871 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine

1872 laboratory operation was located in the residence or on the property where the child resided; or

1873 (xiii) the child's welfare is substantially endangered.

1874 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is

1875 established if:

1876 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency

1877 involving the parent; and

1878 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

1879 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly

1880 allowed the child to be in the physical care of a person after the parent received actual notice

1881 that the person physically [~~or~~] abused, sexually abused, or sexually exploited the child, that fact

1882 constitutes prima facie evidence that there is a substantial risk that the child will be physically

1883 [~~or~~] abused, sexually abused, or sexually exploited.

1884 (10) (a) (i) The court shall also make a determination on the record as to whether

1885 reasonable efforts were made to prevent or eliminate the need for removal of the child from the

1886 child's home and whether there are available services that would prevent the need for continued

1887 removal.

1888 (ii) If the court finds that the child can be safely returned to the custody of the child's
1889 parent or guardian through the provision of those services, the court shall place the child with
1890 the child's parent or guardian and order that those services be provided by the division.

1891 (b) In making the determination described in Subsection (10)(a), and in ordering and
1892 providing services, the child's health, safety, and welfare shall be the paramount concern, in
1893 accordance with federal law.

1894 (11) Where the division's first contact with the family occurred during an emergency
1895 situation in which the child could not safely remain at home, the court shall make a finding that
1896 any lack of preplacement preventive efforts was appropriate.

1897 (12) In cases where actual sexual abuse [~~or~~], sexual exploitation, abandonment, [~~or~~
1898 ~~serious physical~~] severe abuse, or severe neglect are involved, neither the division nor the court
1899 has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in
1900 the child's home, return a child to the child's home, provide reunification services, or attempt to
1901 rehabilitate the offending parent or parents.

1902 (13) The court may not order continued removal of a child solely on the basis of
1903 educational neglect as described in Subsection 78-3a-103(1)[~~(t)~~](y)(ii).

1904 (14) (a) Whenever a court orders continued removal of a child under this section, the
1905 court shall state the facts on which that decision is based.

1906 (b) If no continued removal is ordered and the child is returned home, the court shall
1907 state the facts on which that decision is based.

1908 (15) If the court finds that continued removal and temporary custody are necessary for
1909 the protection of a child because harm may result to the child if the child were returned home,
1910 the court shall order continued removal regardless of:

1911 (a) any error in the initial removal of the child;

1912 (b) the failure of a party to comply with notice provisions; or

1913 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
1914 and Family Services.

1915 Section 37. Section **78-3a-307.1** is amended to read:

1916 **78-3a-307.1. Criminal background checks necessary prior to out-of-home**
1917 **placement.**

1918 (1) Upon ordering removal of a child from the custody of the child's parent and placing

1919 that child in the custody of the Division of Child and Family Services, prior to the division's
1920 placement of that child in out-of-home care, the court shall require the completion of a
1921 background check by the Utah Bureau of Criminal Identification regarding the proposed
1922 placement.

1923 (2) (a) The Division of Child and Family Services and the Office of the Guardian ad
1924 Litem Director may request, or the court upon its own motion may order, the Department of
1925 Public Safety to conduct a complete Federal Bureau of Investigation criminal background
1926 check through the national criminal history system (NCIC).

1927 (b) Upon request by the Division of Child and Family Services or the Office of the
1928 Guardian ad Litem Director, or upon the court's order, persons subject to the requirements of
1929 Subsection (1) shall submit fingerprints and shall be subject to an FBI fingerprint background
1930 check. The child may be temporarily placed, pending the outcome of that background check.

1931 (c) The cost of those investigations shall be borne by whoever is to receive placement
1932 of the child, except that the Division of Child and Family Services may pay all or part of the
1933 cost of those investigations if the person with whom the child is to be placed is unable to pay.

1934 (3) Notwithstanding any other provision of this section, except as otherwise permitted
1935 by federal law or rule, a child who is in the legal custody of the state may not be placed with a
1936 prospective foster parent or a prospective adoptive parent, unless, before the child is placed
1937 with the prospective foster parent or the prospective adoptive parent:

1938 (a) a fingerprint based FBI national criminal history records check is conducted on the
1939 prospective foster parent or prospective adoptive parent and each adult living in the home of
1940 the prospective foster parent or prospective adoptive parent;

1941 (b) the Department of Human Services conducts a check of the [~~child~~] abuse and
1942 neglect registry in each state where the prospective foster parent or prospective adoptive parent
1943 resided in the five years immediately preceding the day on which the prospective foster parent
1944 or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
1945 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
1946 having a substantiated or supported finding of [~~child~~] abuse or neglect;

1947 (c) the Department of Human Services conducts a check of the [~~child~~] abuse and
1948 neglect registry of each state where each adult living in the home of the prospective foster
1949 parent or prospective adoptive parent described in Subsection (3)(b) resided in the five years

1950 immediately preceding the day on which the prospective foster parent or prospective adoptive
1951 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
1952 in the registry as having a substantiated or supported finding of [child] abuse or neglect; and

1953 (d) each person required to undergo a background check described in this Subsection
1954 (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

1955 Section 38. Section **78-3a-311** is amended to read:

1956 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

1957 (1) The court may:

1958 (a) make any of the dispositions described in Section 78-3a-118;

1959 (b) place the minor in the custody or guardianship of any:

1960 (i) individual; or

1961 (ii) public or private entity or agency; or

1962 (c) order:

1963 (i) protective supervision;

1964 (ii) family preservation;

1965 (iii) subject to Subsection 78-3a-118(2)(n)(iii), medical or mental health treatment; or

1966 (iv) other services.

1967 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
1968 and that the minor remain in the custody of the division, the court shall first:

1969 (A) establish a primary permanency goal for the minor; and

1970 (B) determine whether, in view of the primary permanency goal, reunification services
1971 are appropriate for the minor and the minor's family, pursuant to Subsection (3).

1972 (ii) Subject to Subsection (2)(b), if the court determines that reunification services are
1973 appropriate for the minor and the minor's family, the court shall provide for reasonable
1974 parent-time with the parent or parents from whose custody the minor was removed, unless
1975 parent-time is not in the best interest of the minor.

1976 (iii) (A) In cases where obvious sexual abuse, sexual exploitation, abandonment, [~~or~~
1977 ~~serious physical~~] severe abuse, or severe neglect are involved, neither the division nor the court
1978 has any duty to make "reasonable efforts" or to, in any other way, attempt to provide
1979 reunification services, or to attempt to rehabilitate the offending parent or parents.

1980 (B) In all cases, the minor's health, safety, and welfare shall be the court's paramount

1981 concern in determining whether reasonable efforts to reunify should be made.

1982 (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a

1983 minor unless the court makes a finding that it is necessary to deny parent-time in order to:

1984 (A) protect the physical safety of the minor;

1985 (B) protect the life of the minor; or

1986 (C) prevent the minor from being traumatized by contact with the parent due to the

1987 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

1988 (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based

1989 solely on a parent's failure to:

1990 (A) prove that the parent has not used legal or illegal substances; or

1991 (B) comply with an aspect of the child and family plan that is ordered by the court.

1992 (c) (i) In addition to the primary permanency goal, the court shall establish a concurrent

1993 permanency goal that shall include:

1994 (A) a representative list of the conditions under which the primary permanency goal

1995 will be abandoned in favor of the concurrent permanency goal; and

1996 (B) an explanation of the effect of abandoning or modifying the primary permanency

1997 goal.

1998 (ii) A permanency hearing shall be conducted in accordance with Subsection

1999 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a

2000 minor's primary permanency goal.

2001 (iii) (A) The court may amend a minor's primary permanency goal before the

2002 establishment of a final permanency plan under Section 78-3a-312.

2003 (B) The court is not limited to the terms of the concurrent permanency goal in the event

2004 that the primary permanency goal is abandoned.

2005 (C) If, at any time, the court determines that reunification is no longer a minor's

2006 primary permanency goal, the court shall conduct a permanency hearing in accordance with

2007 Section 78-3a-312 on or before the earlier of:

2008 (I) 30 days from the day on which the court makes the determination described in this

2009 Subsection (2)(c)(iii)(C); or

2010 (II) 12 months from the day on which the minor was first removed from the minor's

2011 home.

2012 (d) (i) (A) If the court determines that reunification services are appropriate, it shall
2013 order that the division make reasonable efforts to provide services to the minor and the minor's
2014 parent for the purpose of facilitating reunification of the family, for a specified period of time.

2015 (B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health,
2016 safety, and welfare shall be the division's paramount concern, and the court shall so order.

2017 (ii) The court shall:

2018 (A) determine whether the services offered or provided by the division under the child
2019 and family plan constitute "reasonable efforts" on the part of the division;

2020 (B) determine and define the responsibilities of the parent under the child and family
2021 plan in accordance with Subsection 62A-4a-205(6)(e); and

2022 (C) identify on the record the responsibilities described in Subsection (2)(d)(ii)(B), for
2023 the purpose of assisting in any future determination regarding the provision of reasonable
2024 efforts, in accordance with state and federal law.

2025 (iii) (A) The time period for reunification services may not exceed 12 months from the
2026 date that the minor was initially removed from the minor's home.

2027 (B) Nothing in this section may be construed to entitle any parent to an entire 12
2028 months of reunification services.

2029 (iv) If reunification services are ordered, the court may terminate those services at any
2030 time.

2031 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined
2032 to be inconsistent with the final permanency plan for the minor established pursuant to Section
2033 78-3a-312, then measures shall be taken, in a timely manner, to:

2034 (A) place the minor in accordance with the permanency plan; and

2035 (B) complete whatever steps are necessary to finalize the permanent placement of the
2036 minor.

2037 (e) Any physical custody of the minor by the parent or a relative during the period
2038 described in Subsection (2)(d) does not interrupt the running of the period.

2039 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by
2040 the court in accordance with Section 78-3a-312 at the expiration of the time period for
2041 reunification services.

2042 (ii) The permanency hearing shall be held no later than 12 months after the original

2043 removal of the minor.

2044 (iii) If reunification services are not ordered, a permanency hearing shall be conducted
2045 within 30 days, in accordance with Section 78-3a-312.

2046 (g) With regard to a minor who is 36 months of age or younger at the time the minor is
2047 initially removed from the home, the court shall:

2048 (i) hold a permanency hearing eight months after the date of the initial removal,
2049 pursuant to Section 78-3a-312; and

2050 (ii) order the discontinuance of those services after eight months from the initial
2051 removal of the minor from the home if the parent or parents have not made substantial efforts
2052 to comply with the child and family plan.

2053 (h) With regard to a minor in the custody of the division whose parent or parents are
2054 ordered to receive reunification services but who have abandoned that minor for a period of six
2055 months from the date that reunification services were ordered:

2056 (i) the court shall terminate reunification services; and

2057 (ii) the division shall petition the court for termination of parental rights.

2058 (3) (a) Because of the state's interest in and responsibility to protect and provide
2059 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
2060 parent's interest in receiving reunification services is limited.

2061 (b) The court may determine that:

2062 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
2063 based on the individual circumstances; and

2064 (ii) reunification services should not be provided.

2065 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
2066 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
2067 concern.

2068 (d) (i) There is a presumption that reunification services should not be provided to a
2069 parent if the court finds, by clear and convincing evidence, that any of the following
2070 circumstances exist:

2071 (A) the whereabouts of the parents are unknown, based upon a verified affidavit
2072 indicating that a reasonably diligent search has failed to locate the parent;

2073 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such

2074 magnitude that it renders the parent incapable of utilizing reunification services;

2075 (C) the minor was previously adjudicated as an abused child due to physical [or] abuse,

2076 sexual abuse, or sexual exploitation, and following the adjudication the minor:

2077 (I) was removed from the custody of the minor's parent;

2078 (II) was subsequently returned to the custody of the parent; and

2079 (III) is being removed due to additional physical [or] abuse, sexual abuse, or sexual

2080 exploitation;

2081 (D) the parent:

2082 (I) caused the death of another minor through abuse or neglect; or

2083 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:

2084 (Aa) murder or manslaughter of a child; or

2085 (Bb) child abuse homicide;

2086 (E) the minor suffered severe abuse by the parent or by any person known by the

2087 parent, if the parent knew or reasonably should have known that the person was abusing the

2088 minor;

2089 (F) the minor is adjudicated an abused child as a result of severe abuse by the parent,

2090 and the court finds that it would not benefit the minor to pursue reunification services with the

2091 offending parent;

2092 (G) the parent's rights are terminated with regard to any other minor;

2093 (H) the minor is removed from the minor's home on at least two previous occasions

2094 and reunification services were offered or provided to the family at those times;

2095 (I) the parent has abandoned the minor for a period of six months or longer;

2096 (J) the parent permitted the child to reside, on a permanent or temporary basis, at a

2097 location where the parent knew or should have known that a clandestine laboratory operation

2098 was located; or

2099 (K) any other circumstance that the court determines should preclude reunification

2100 efforts or services.

2101 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence

2102 from at least two medical or mental health professionals, who are not associates, establishing

2103 that, even with the provision of services, the parent is not likely to be capable of adequately

2104 caring for the minor within 12 months from the day on which the court finding is made.

2105 (4) In determining whether reunification services are appropriate, the court shall take
2106 into consideration:

2107 (a) failure of the parent to respond to previous services or comply with a previous child
2108 and family plan;

2109 (b) the fact that the minor was abused while the parent was under the influence of
2110 drugs or alcohol;

2111 (c) any history of violent behavior directed at the child or an immediate family
2112 member;

2113 (d) whether a parent continues to live with an individual who abused the minor;

2114 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

2115 (f) testimony by a competent professional that the parent's behavior is unlikely to be
2116 successful; and

2117 (g) whether the parent has expressed an interest in reunification with the minor.

2118 (5) (a) If reunification services are not ordered pursuant to Subsection (3)(a), and the
2119 whereabouts of a parent become known within six months of the out-of-home placement of the
2120 minor, the court may order the division to provide reunification services.

2121 (b) The time limits described in Subsection (2) are not tolled by the parent's absence.

2122 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
2123 services unless it determines that those services would be detrimental to the minor.

2124 (b) In making the determination described in Subsection (6)(a), the court shall
2125 consider:

2126 (i) the age of the minor;

2127 (ii) the degree of parent-child bonding;

2128 (iii) the length of the sentence;

2129 (iv) the nature of the treatment;

2130 (v) the nature of the crime or illness;

2131 (vi) the degree of detriment to the minor if services are not offered;

2132 (vii) for a minor ten years of age or older, the minor's attitude toward the
2133 implementation of family reunification services; and

2134 (viii) any other appropriate factors.

2135 (c) Reunification services for an incarcerated parent are subject to the 12-month

2136 limitation imposed in Subsection (2).

2137 (d) Reunification services for an institutionalized parent are subject to the 12-month
2138 limitation imposed in Subsection (2), unless the court determines that continued reunification
2139 services would be in the minor's best interest.

2140 (7) If, pursuant to Subsections (3)(d)(i)(B) through (K), the court does not order
2141 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
2142 with Section 78-3a-312.

2143 Section 39. Section **78-3a-314** is amended to read:

2144 **78-3a-314. All proceedings -- Persons entitled to be present.**

2145 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
2146 pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, foster parents, and any
2147 relative providing care for the child, are:

2148 (a) entitled to notice of, and to be present at, each hearing and proceeding held under
2149 this part, including administrative and citizen reviews; and

2150 (b) have a right to be heard at each hearing and proceeding described in Subsection
2151 (1)(a).

2152 (2) A child shall be represented at each hearing by the guardian ad litem appointed to
2153 the child's case by the court. The child has a right to be present at each hearing, subject to the
2154 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

2155 (3) (a) The parent or guardian of a child who is the subject of a petition under this part
2156 has the right to be represented by counsel, and to present evidence, at each hearing.

2157 (b) When it appears to the court that a parent or guardian of the child desires counsel
2158 but is financially unable to afford and cannot for that reason employ counsel, and the child has
2159 been placed in out-of-home care, or the petitioner is recommending that the child be placed in
2160 out-of-home care, the court shall appoint counsel.

2161 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court
2162 shall order that the child be represented by a guardian ad litem, in accordance with Section
2163 78-3a-912. The guardian ad litem shall represent the best interest of the child, in accordance
2164 with the requirements of that section, at the shelter hearing and at all subsequent court and
2165 administrative proceedings, including any proceeding for termination of parental rights in
2166 accordance with Part 4, Termination of Parental Rights Act.

2167 (5) Notwithstanding any other provision of law, counsel for all parties to the action
2168 shall be given access to all records, maintained by the division or any other state or local public
2169 agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter. If
2170 the natural parent of a child is [~~representing himself~~] not represented by counsel, the natural
2171 parent shall have access to those records. The above disclosures are not required in the
2172 following circumstances:

2173 (a) The division or other state or local public agency did not originally create the record
2174 being requested. In those circumstances, the person making the request under this section shall
2175 be informed of the following:

2176 (i) the existence of all records in the possession of the division or any other state or
2177 local public agency;

2178 (ii) the name and address of the person or agency that originally created the record; and

2179 (iii) that the person must seek access to the record from the person or agency that
2180 originally created the record.

2181 (b) Disclosure of the record would jeopardize the life or physical safety of a child who
2182 has been a victim of [~~child~~] abuse or neglect, or any person who provided substitute care for
2183 the child.

2184 (c) Disclosure of the record would jeopardize the anonymity of the person or persons
2185 making the initial report of abuse or neglect or any others involved in the subsequent
2186 investigation.

2187 (d) Disclosure of the record would jeopardize the life or physical safety of a person
2188 who has been a victim of domestic violence.

2189 (6) (a) The appropriate foster care citizen review board shall be given access to all
2190 records, maintained by the division or any other state or local public agency, that are relevant to
2191 an abuse, neglect, or dependency proceeding under this chapter.

2192 (b) Representatives of the appropriate foster care citizen review board are entitled to be
2193 present at each hearing held under this part, but notice is not required to be provided.

2194 Section 40. Section **78-3a-318** is amended to read:

2195 **78-3a-318. Treatment for offender and victim -- Costs.**

2196 (1) Upon adjudication in the juvenile court of a person or persons charged with child
2197 abuse [~~or~~], child sexual abuse, or sexual exploitation of a child the court may order treatment

2198 for the adjudicated offender and the victim or the child victim.

2199 (2) The adjudicated offender shall be required by the court to pay, to the extent that he
2200 is able, the costs of that treatment together with the administrative costs incurred by the
2201 division in monitoring completion of the ordered therapy or treatment.

2202 (3) If the adjudicated offender is unable to pay the full cost of treatment, the court may
2203 order the Division of Child and Family Services to pay those costs, to the extent that funding is
2204 provided by the Legislature for that purpose, and the offender shall be required by the court to
2205 perform public service work as compensation for the cost of treatment.

2206 Section 41. Section **78-3a-403** is amended to read:

2207 **78-3a-403. Definitions.**

2208 As used in this chapter:

2209 (1) "Division" means the Division of Child and Family Services within the Department
2210 of Human Services.

2211 (2) "Failure of parental adjustment" means that a parent or parents are unable or
2212 unwilling within a reasonable time to substantially correct the circumstances, conduct, or
2213 conditions that led to placement of their child outside of their home, notwithstanding
2214 reasonable and appropriate efforts made by the Division of Child and Family Services to return
2215 the child to that home.

2216 (3) "Plan" means a written agreement between the parents of a child, who has been
2217 removed from [~~his~~] the child's home by the juvenile court, and the Division of Child and
2218 Family Services or written conditions and obligations imposed upon the parents directly by the
2219 juvenile court, that have a primary objective of reuniting the family or, if the parents [~~neglect~~]
2220 fail or refuse to comply with the terms and conditions of the case plan, freeing the child for
2221 adoption.

2222 Section 42. Section **78-3a-407** is amended to read:

2223 **78-3a-407. Grounds for termination of parental rights -- Findings regarding**
2224 **reasonable efforts.**

2225 (1) The court may terminate all parental rights with respect to a parent if the court finds
2226 any one of the following:

2227 (a) that the parent has abandoned the child;

2228 (b) that the parent has neglected or abused the child;

- 2229 (c) that the parent is unfit or incompetent;
- 2230 (d) (i) that the child is being cared for in an out-of-home placement under the
2231 supervision of the court or the division;
- 2232 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or
2233 unwilling to remedy the circumstances that cause the child to be in an out-of-home placement;
2234 and
- 2235 (iii) that there is a substantial likelihood that the parent will not be capable of
2236 exercising proper and effective parental care in the near future;
- 2237 (e) failure of parental adjustment, as defined in this chapter;
- 2238 (f) that only token efforts have been made by the parent:
- 2239 (i) to support or communicate with the child;
- 2240 (ii) to prevent neglect of the child;
- 2241 (iii) to eliminate the risk of serious [~~physical, mental, or emotional abuse of~~] harm to
2242 the child; or
- 2243 (iv) to avoid being an unfit parent;
- 2244 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the
2245 child; and
- 2246 (ii) that termination is in the child's best interest;
- 2247 (h) that, after a period of trial during which the child was returned to live in the child's
2248 own home, the parent substantially and continuously or repeatedly refused or failed to give the
2249 child proper parental care and protection; or
- 2250 (i) the terms and conditions of safe relinquishment of a newborn child have been
2251 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
2252 Child.
- 2253 (2) The court may not terminate the parental rights of a parent because the parent has
2254 failed to complete the requirements of a child and family plan.
- 2255 (3) (a) Except as provided in Subsection (3)(b), in any case in which the court has
2256 directed the division to provide reunification services to a parent, the court must find that the
2257 division made reasonable efforts to provide those services before the court may terminate the
2258 parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).
- 2259 (b) Notwithstanding Subsection (3)(a), the court is not required to make the finding

2260 under Subsection (3)(a) before terminating a parent's rights:

2261 (i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred
2262 subsequent to adjudication; or

2263 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not
2264 required under federal law.

2265 Section 43. Section **78-3a-408** is amended to read:

2266 **78-3a-408. Evidence of grounds for termination.**

2267 (1) In determining whether a parent or parents have abandoned a child, it is prima facie
2268 evidence of abandonment that the parent or parents:

2269 (a) although having legal custody of the child, have surrendered physical custody of the
2270 child, and for a period of six months following the surrender have not manifested to the child
2271 or to the person having the physical custody of the child a firm intention to resume physical
2272 custody or to make arrangements for the care of the child;

2273 (b) have failed to communicate with the child by mail, telephone, or otherwise for six
2274 months;

2275 (c) failed to have shown the normal interest of a natural parent, without just cause; or

2276 (d) have abandoned an infant, as described in Subsection 78-3a-313.5(1).

2277 (2) In determining whether a parent or parents are unfit or have neglected a child the
2278 court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

2279 (a) emotional illness, mental illness, or mental deficiency of the parent that renders the
2280 parent unable to care for the immediate and continuing physical or emotional needs of the child
2281 for extended periods of time;

2282 (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive
2283 nature;

2284 (c) habitual or excessive use of intoxicating liquors, controlled substances, or
2285 dangerous drugs that render the parent unable to care for the child;

2286 (d) repeated or continuous failure to provide the child with adequate food, clothing,
2287 shelter, education, or other care necessary for the child's physical, mental, and emotional health
2288 and development by a parent or parents who are capable of providing that care;

2289 (e) with regard to a child who is in the custody of the division, if the parent is
2290 incarcerated as a result of conviction of a felony, and the sentence is of such length that the

2291 child will be deprived of a normal home for more than one year; or

2292 (f) a history of violent behavior.

2293 (3) A parent who, legitimately practicing the parent's religious beliefs, does not provide
2294 specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

2295 (4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or
2296 unfit because of a health care decision made for a child by the child's parent unless the state or
2297 other party to the proceeding shows, by clear and convincing evidence, that the health care
2298 decision is not reasonable and informed.

2299 (b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to
2300 obtain a second health care opinion.

2301 (5) If a child has been placed in the custody of the division and the parent or parents
2302 fail to comply substantially with the terms and conditions of a plan within six months after the
2303 date on which the child was placed or the plan was commenced, whichever occurs later, that
2304 failure to comply is evidence of failure of parental adjustment.

2305 (6) The following circumstances constitute prima facie evidence of unfitness:

2306 (a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any
2307 child, due to known or substantiated abuse or neglect by the parent or parents;

2308 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to
2309 indicate the unfitness of the parent to provide adequate care to the extent necessary for the
2310 child's physical, mental, or emotional health and development;

2311 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement
2312 of the child; or

2313 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to
2314 commit murder or manslaughter of a child or child abuse homicide.

2315 Section 44. Section **78-3a-801** is amended to read:

2316 **78-3a-801. Jurisdiction over adults for offenses against minors -- Proof of**
2317 **delinquency not required for conviction.**

2318 (1) The court shall have jurisdiction, concurrent with the district court or justice court
2319 otherwise having subject matter jurisdiction, to try adults for the following offenses committed
2320 against minors:

2321 (a) unlawful sale or supply of alcohol beverage or product to minors in violation of

2322 Section 32A-12-203;

2323 (b) failure to report [child] abuse or neglect, as required by Title 62A, Chapter 4a, Part
2324 4, Child Abuse or Neglect Reporting Requirements;

2325 (c) harboring a minor in violation of Section 62A-4a-501;

2326 (d) misdemeanor custodial interference in violation of Section 76-5-303;

2327 (e) contributing to the delinquency of a minor in violation of Section 76-10-2301; and

2328 (f) failure to comply with compulsory education requirements in violation of Section
2329 53A-11-101.5.

2330 (2) It is not necessary for the minor to be found to be delinquent or to have committed
2331 a delinquent act for the court to exercise jurisdiction under Subsection (1).

2331a **§→ Section 45. Coordinating H.B. 31 with H.B. 78 -- Technical Amendments.**

2331b **If this H.B. 31 and H.B. 78, Title 78 Recodification and Revision, both pass, it is**
2331c **the intent of the Legislature that the Office of Legislative Research and General Counsel shall**
2331d **prepare the Utah Code database for publication as follows:**

2331e **(1) in Section 62A-4a-101 of H.B. 31, change all references from "78-3a-103" to**
2331f **"78A-6-105";**

2331g **(2) amend Subsection 62A-4a-802(1)(b) to read as follows:**

2331h **"(b) Safe relinquishment of a newborn child who has not otherwise been subject**
2331i **to abuse or neglect shall not, in and of itself, constitute neglect as defined in Section**
2331j **[62A-4a-101] 78A-6-105, and the child shall not be considered a neglected child, as defined in**
2331k **Section [78-3a-103] 78A-6-105, so long as the relinquishment is carried out in substantial**
2331l **compliance with the provisions of this part.";**

2331m **(3) change the reference in Subsection 76-7-304(1)(a) from**

2331n **"62A-4a-101" to "78A-6-105";**

2331o **(4) not make the changes to Section 78-3a-103 in H.B. 31, and amend Section**
2331p **78A-6-105 in H.B. 78, to read as follows:**

2331q **"[(1)] As used in this chapter:**

2331r **[(a) "Abused child" includes a child who:]**

2331s **[(i) has suffered or been threatened with nonaccidental physical or mental**
2331t **harm, negligent treatment, or sexual exploitation; or]**

2331u **[(ii) has been the victim of any sexual abuse.]**

2331v **(1) (a) "Abuse" means:**

2331w **(i) nonaccidental harm of a child;**

2331x **(ii) threatened harm of a child; ←§**

- 2331y **§→** (iii) sexual exploitation; or
- 2331z (iv) sexual abuse.
- 2331aa (b) "Abuse" does not include:
- 2331ab (i) reasonable discipline or management of a child, including withholding
- 2331ac privileges;
- 2331ad (ii) conduct described in Section 76-2-401; or
- 2331ae (iii) the use of reasonable and necessary physical restraint or force on a child:
- 2331af (A) in self-defense;
- 2331ag (B) in defense of others;
- 2331ah (C) to protect the child; or
- 2331ai (D) to remove a weapon in the possession of a child for any of the reasons
- 2331aj described in Subsections (1)(b)(iii)(A) through (C).
- 2331ak (2) "Abused child" means a child who has been subjected to abuse.
- 2331al [(b)](3) "Adjudication" means a finding by the court, incorporated in a decree,
- 2331am that the facts alleged in the petition have been proved.
- 2331an [(c)](4) "Adult" means a person 18 years of age or over, except that a person 18
- 2331ao years or over under the continuing jurisdiction of the juvenile court pursuant to Section
- 2331ap [78-3a-121] 78A-6-120 shall be referred to as a minor.
- 2331aq [(d)](5) "Board" means the Board of Juvenile Court Judges.
- 2331ar [(e)](6) "Child" means a person under 18 years of age.
- 2331as [(f)](7) "Child placement agency" means:
- 2331at [(i)](a) a private agency licensed to receive a child for placement or adoption
- 2331au under this code; or
- 2331av [(i)](b) a private agency that receives a child for placement or adoption in law
- 2331ax approval is required by law.
- 2331ay [(g)](8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.
- 2331az [(h)](9) "Commit" means, unless specified otherwise:
- 2331ba [(i)](a) with respect to a child, to transfer legal custody; and
- 2331bb [(i)](b) with respect to a minor who is at least 18 years of age, to transfer
- 2331bc custody.
- 2331bd [(i)](10) "Court" means the juvenile court.
- 2331be [(j)](11) "Dependent child" includes a child who is homeless
- 2331bf or without proper care through no fault of the child's parent, guardian, ←§

2331bg **§→ or custodian.**

2331bh **~~(k)~~(12) "Deprivation of custody" means transfer of legal custody by the court**
 2331bi **from a parent or the parents or a previous legal custodian to another person, agency, or**
 2331bj **institution.**

2331bk **~~(h)~~(13) "Detention" means home detention and secure**
 2331bl **detention as defined in Section 62A-7-101 for the temporary care of a minor who**
 2331bm **requires secure custody in a physically restricting facility:**

2331bn **~~(i)~~(a) pending court disposition or transfer to another jurisdiction; or**

2331bo **~~(ii)~~(b) while under the continuing jurisdiction of the court.**

2331bp **~~(m)~~(14) "Division" means the Division of Child and Family Services.**

2331bq **~~(n)~~(15) "Formal referral" means a written report from a peace officer or other**
 2331br **person informing the court that a minor is or appears to be within the court's jurisdiction and**
 2331bs **that a petition may be filed.**

2331bt **~~(o)~~(16) "Group rehabilitation therapy" means psychological and social**
 2331bu **counseling of one or more persons in the group, depending upon the recommendation of the**
 2331bv **therapist.**

2331bw **~~(p)~~(17) "Guardianship of the person" includes the authority to consent to:**

2331bx **~~(i)~~(a) marriage;**

2331by **~~(ii)~~(b) enlistment in the armed forces;**

2331bz **~~(iii)~~(c) major medical, surgical, or psychiatric treatment; or**

2331ca **~~(iv)~~(d) legal custody, if legal custody is not vested in another person, agency, or**
 2331cb **institution.**

2331cc **~~(q)~~(18) "Habitual truant" is as defined in Section 53A-11-101.**

2331cd **(19) "Harm" means:**

2331ce **(a) physical, emotional, or developmental injury or damage;**

2331cf **(b) sexual abuse; or**

2331cg **(c) sexual exploitation.**

2331ch **(20) (a) "Incest" means engaging in sexual intercourse with a person whom the**
 2331ci **perpetrator knows to be the perpetrator's ancestor, descendant, brother,**
sister,

2331cj **uncle, aunt, nephew, niece, or first cousin.**

2331ck **(b) The relationships described in Subsection (20)(a) include:**

2331cl **(i) blood relationships of the whole or half blood, without regard to legitimacy;**

2331cm **(ii) relationships of parent and child by adoption; and ←§**

2331cn **§→** (iii) relationships of stepparent and stepchild while the marriage creating the
 2331co relationship of a stepparent and stepchild exists.

2331cp [(r)](21) "Legal custody" means a relationship embodying the following rights
 2331cq **and duties:**

2331cr [(i)](a) the right to physical custody of the minor;
 2331cs [(ii)](b) the right and duty to protect, train, and discipline the minor;
 2331ct [(iii)](c) the duty to provide the minor with food, clothing, shelter, education,
 2331cu **and ordinary medical care;**

2331cv [(iv)](d) the right to determine where and with whom the minor shall live; and
 2331cw [(v)](e) the right, in an emergency, to authorize surgery or other extraordinary
 2331cx **care.**

2331cy [(s)](22) "Minor" means:

2331cz [(i)](a) a child; or
 2331da [(ii)](b) a person who is:

2331db [(A)](i) at least 18 years of age and younger than 21 years of age; and
 2331dc [(B)](ii) under the jurisdiction of the juvenile court.

2331dd (23) "Molestation" means that a person, with the intent to arouse or gratify the
 2331de **sexual desire of any person:**

2331df (a) touches the anus or any part of the genitals of a child;
 2331dg (b) takes indecent liberties with a child; or
 2331dh (c) causes a child to take indecent liberties with the perpetrator or another.

2331di [(t)](24) "Natural parent" means a minor's biological or adoptive parent, and
 2331dj **includes the minor's noncustodial parent.**

2331dk [(u)(i)"Neglected child" means a child:]

2331dl [(A) whose parent, guardian, or custodian has abandoned the child, except as
 2331dm **provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;]**

2331dn [(B) whose parent, guardian, or custodian has subjected the child to
 2331do **mistreatment or abuse;]**

2331dp [(C) who lacks proper parental care by reason of the fault or habits of the
 2331dq **parent, guardian, or custodian;]**

2331dr [(D) whose parent, guardian, or custodian fails or refuses to provide proper or
 2331ds **necessary subsistence, education, or medical care, including surgery or psychiatric services**
 2331dt **when required, or any other care necessary for health, safety, morals, or well-being;]**

2331du [(E) who is at risk of being a neglected or abused child as defined in this ←§

2331dv ~~§→ chapter because another child in the same home is a neglected or abused child as defined in~~
 2331dw ~~this chapter; or]~~

2331dx ~~[(F) whose parent permits the minor to reside, on a permanent or temporary~~
 2331dy ~~basis, at the location of a clandestine laboratory operation.]~~

2331dz ~~[(ii) The aspect of neglect related to education, described in Subsection~~
 2331ea ~~(1)(u)(i)(D), means that, after receiving notice that a child has been frequently absent from~~
 2331eb ~~school without good cause, or that the child has failed to cooperate with school authorities in a~~
 2331ec ~~reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the~~
 2331ed ~~child receives an appropriate education.]~~

2331ee ~~[(iii) A parent or guardian legitimately practicing religious beliefs and who, for~~
 2331ef ~~that reason, does not provide specified medical treatment for a child, is not guilty of neglect.]~~

2331eg ~~[(iv) Notwithstanding Subsection (1)(u)(i), a health care decision made for a~~
 2331eh ~~child by the child's parent or guardian does not constitute neglect unless the state or other~~
 2331ei ~~party to the proceeding shows, by clear and convincing evidence, that the health care decision~~
 2331ej ~~is not reasonable and informed.]~~

2331ek ~~[(v) Nothing in Subsection (1)(u)(iv) may prohibit a parent or guardian from~~
 2331el ~~exercising the right to obtain a second health care opinion.]~~

2331em (25)(a) "Neglect" means:

2331en (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8,
 2331eo Safe Relinquishment of a Newborn Child;

2331ep (ii) lack of proper parental care of a child by reason of the fault or habits of the
 2331eq parent, guardian, or custodian;

2331er (iii) failure or refusal of a parent, guardian, or custodian to provide proper or
 2331es necessary subsistence, education, or medical care, or any other care necessary for the child's
 2331et health, safety, morals, or well-being; or

2331eu (iv) a child at risk of being neglected or abused because another child in the
 2331ev same home is neglected or abused.

2331ew (b) The aspect of neglect relating to education, described in Subsection
 2331ex (25)(a)(iii), means that, after receiving a notice of compulsory education violation under
 2331ey Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school
 2331ez authorities in a reasonable manner as required under Subsection
 2331fa 53A-11-101.7(5)(a), the

2331fb parent or guardian fails to make a good faith effort to ensure that the child receives an
appropriate education. ←§

2331fc **§→** (c) A parent or guardian legitimately practicing religious beliefs and who, for
 2331fd that reason, does not provide specified medical treatment for a child, is not guilty of neglect.
 2331fe (d)(i) Notwithstanding Subsection (25)(a), a health care decision made for a
 2331ff child by the child's parent or guardian does not constitute neglect unless the state or other
 2331fg party to the proceeding shows, by clear and convincing evidence, that the health care decision
 2331fh is not reasonable and informed.
 2331fi (ii) Nothing in Subsection (25)(d)(i) may prohibit a parent or guardian from
 2331fj exercising the right to obtain a second health care opinion.
 2331fk (26) "Neglected child" means a child who has been subjected to neglect.
 2331fl [(v)](27) "Nonjudicial adjustment" means closure of the case by the assigned
 2331fm probation officer without judicial determination upon the consent in writing of:
 2331fn [(†)](a) the assigned probation officer; and
 2331fo [(†)(A)](b)(i) the minor; or
 2331fp [(B)](ii) the minor and the minor's parent, legal guardian, or custodian.
 2331fq (28) "Physical abuse" means abuse that results in physical injury or damage to
 2331fr a child.
 2331fs [(w)](29) "Probation" means a legal status created by court order following an
 2331ft adjudication on the ground of a violation of law or under Section [78-3a-104] 78A-6-103,
 2331fu whereby the minor is permitted to remain in the minor's home under prescribed conditions
 2331fv and under supervision by the probation department or other agency designated by the court,
 2331fw subject to return to the court for violation of any of the conditions prescribed.
 2331fx [(x)](30) "Protective supervision" means a legal status created by court order
 2331fy following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor
 2331fz is permitted to remain in the minor's home, and supervision and assistance to correct the
 2331ga abuse, neglect, or dependency is provided by the probation department or other agency
 2331gb designated by the court.
 2331gc [(y)(†)](31)(a) "Residual parental rights and duties" means those rights and
 2331gd duties remaining with the parent after legal custody or guardianship, or both, have been
 2331ge vested in another person or agency, including:
 2331gf [(A)](i) the responsibility for support;
 2331gg [(B)](ii) the right to consent to adoption;
 2331gh [(C)](iii) the right to determine the child's religious affiliation; and
 2331gi [(D)](iv) the right to reasonable parent-time unless restricted by the court.
 2331gj [(†)](b) If no guardian has been appointed, "residual parental rights and ←§

2331gk **§→ duties" also include the right to consent to:**

2331gl **~~(A)~~(i) marriage;**

2331gm **~~(B)~~(ii) enlistment; and**

2331gn **~~(C)~~(iii) major medical, surgical, or psychiatric treatment.**

2331go **~~(z)~~(32) "Secure facility" means any facility operated by or under contract with**
 2331gp **the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement**
 2331gq **for youth offenders committed to the division for custody and rehabilitation.**

2331gr **(33) "Severe abuse" means abuse that causes or threatens to cause serious harm**
 2331gs **to a child.**

2331gt **(34) "Severe neglect" means neglect that causes or threatens to cause serious**
 2331gu **harm to a child.**

2331gv **(35) "Sexual abuse" means:**

2331gw **(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation**
 2331gx **directed towards a child; or**

2331gy **(b) engaging in any conduct with a child that would constitute an offense under**
 2331gz **any of the following, regardless of whether the person who engages in the conduct is actually**
 2331ha **charged with, or convicted of, the offense:**

2331hb **(i) Title 76, Chapter 5, Part 4, Sexual Offenses;**

2331hc **(ii) child bigamy, Section 76-7-101.5;**

2331hd **(iii) incest, Section 76-7-102;**

2331he **(iv) lewdness or sexual battery, Section 76-9-702;**

2331hf **(v) lewdness involving a child, Section 76-9-702.5; or**

2331hg **(vi) voyeurism, Section 76-9-702.7.**

2331hh **(36) "Sexual exploitation" means knowingly:**

2331hi **(a) employing, using, persuading, inducing, enticing, or coercing any child to:**

2331hj **(i) pose in the nude for the purpose of sexual arousal of any person; or**

2331hk **(ii) engage in any sexual or simulated sexual conduct for the purpose of**

2331hl **photographing, filming, recording, or displaying in any way the sexual or**

2331hm **simulated sexual conduct;**

2331hn **(b) displaying, distributing, possessing for the purpose of distribution, or selling**

2331ho **material depicting a child:**

2331hp **(i) in the nude, for the purpose of sexual arousal of any person; or**

2331hq **(ii) engaging in sexual or simulated sexual conduct; or**

2331hr **(c) engaging in any conduct that would constitute an offense under Title 76, ←§**

2331hs **§→Chapter 5a, Sexual Exploitation of Children, regardless of whether the person who engages in**
 2331ht **the conduct is actually charged with, or convicted of, the offense.**

2331hu **[(aa)](37) "Shelter" means the temporary care of a child in a physically**
 2331hv **unrestricted facility pending court disposition or transfer to another jurisdiction.**

2331hw **[(bb)](38) "State supervision" means a disposition that provides a more**
 2331hx **intensive level of intervention than standard probation but is less intensive or restrictive than a**
 2331hy **community placement with the Division of Juvenile Justice Services.**

2331hz **(39) "Substance abuse" means the misuse or excessive use of**
 2331ia **alcohol or other drugs or substances.**

2331ib **[(cc)](40) "Substantiated" is as defined in Section 62A-4a-101.**

2331ic **[(dd)](41) "Supported" is as defined in Section 62A-4a-101.**

2331id **[(ee)](42) "Termination of parental rights" means the permanent elimination of**
 2331ie **all parental rights and duties, including residual parental rights and duties, by court order.**

2331if **[(ff)](43) "Therapist" means:**

2331ig **[(i)](a) a person employed by a state division or agency for the purpose of**
 2331ih **conducting psychological treatment and counseling of a minor in its custody; or**

2331ii **[(ii)](b) any other person licensed or approved by the state for the purpose of**
 2331ij **conducting psychological treatment and counseling.**

2331ik **[(gg)](44) "Unsubstantiated" is as defined in Section 62A-4a-101.**

2331il **[(hh)](45) "Without merit" is as defined in Section 62A-4a-101.**

2331im **[(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with**
 2331in **regard to the Division of Child and Family Services:]**

2331io **[(a) "Custody" means the custody of a minor in the Division of Child and**
 2331ip **Family Services as of the date of disposition.]**

2331iq **[(b) "Protective custody" means the shelter of a child by the Division of Child**
 2331ir **and Family Services from the time the child is removed from home until the earlier of:]**

2331is **[(i) the shelter hearing; or]**

2331it **[(ii) the child's return home.]**

2331iu **[(c) "Temporary custody" means the custody of a child in the Division of Child**
 2331iv **and Family Services from the date of the shelter hearing until disposition.];**

2331iw **(5) amend Subsection 78A-6-306(13) in H.B. 78 to read as follows:**

2331ix **"(13) The court may not order continued removal of a child solely on the basis**
 2331iy **of educational neglect as described in Subsection [78-3a-103(1)(u)(ii)] 78A-6-105(25)(a)(iii).";**

2331iz **(6) amend Subsection 78-3a-306(13) in H.B. 31 to read as follows: ←§**

2331ja **§→** "(13) The court may not order continued removal of a child solely on the basis
 2331jb of educational neglect as described in Subsection [~~78-3a-103(1)(u)(ii)~~] 78A-6-105(25)(a)(iii).";
 2331jc (7) merge the changes in Subsections 78-3a-301(1)(c) and (2)(b) of H.B. 31 into
 2331jd Subsections 78A-6-302(1)(c) and (2)(b) of H.B. 78;
 2331je (8) merge the changes in Subsections 78-3a-306(9)(a)(iv), (9)(b)(ii), and (12) of
 2331jf H.B. 31 into Subsections 78A-6-306(9)(a)(iv), (9)(b)(ii), and (12) of H.B. 78;
 2331jg (9) merge the changes in Subsections 78-3a-307.1(3)(b) and (3)(c) of H.B. 31 into
 2331jh Subsections 78A-6-308(3)(b) and (3)(c) of H.B. 78;
 2331ji (10) merge the changes in Subsections 78-3a-311(2)(a)(iii)(A) and (3)(d)(i)(C) of
 2331jj H.B. 31 into Subsections 78A-6-312(2)(a)(iii)(A) and (3)(d)(i)(C) of H.B. 78;
 2331jk (11) merge the changes in Subsection 78-3a-314(5) of H.B. 31 into Subsection
 2331jl 78A-6-317(5) of H.B. 78;
 2331jm (12) merge the changes in Subsection 78-3a-318(1) of H.B. 31 into Subsection
 2331jn 78A-6-321(1) of H.B. 78;
 2331jo (13) merge the changes in Subsection 78-3a-403(3) of H.B. 31 into Subsection
 2331jp 78A-6-502(3) of H.B. 78;
 2331jq (14) merge the changes in Subsection 78-3a-407(1)(f)(iii) of H.B. 31 into
 2331jr Subsection 78A-6-507(1)(f)(iii) of H.B. 78;
 2331js (15) merge the changes in Subsection 78-3a-408(6)(a) of H.B. 31 into Subsection
 2331jt 78A-6-508(6)(a) of H.B. 78; and
 2331ju (16) merge the changes in Subsection 78-3a-801(1)(b) of H.B. 31 into Subsection
 2331jv 78A-6-1001(1)(b) of H.B. 78. ←§

Legislative Review Note
 as of 10-22-07 7:31 AM

Office of Legislative Research and General Counsel

H.B. 31 - Child Welfare Definitions

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
