

Representative Walt Brooks proposes the following substitute bill:

YOUTH AND CHILD WELFARE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: David G. Buxton

LONG TITLE

General Description:

This bill amends provisions relating to the welfare of children and minors.

Highlighted Provisions:

This bill:

- ▶ amends and defines terms;
- ▶ amends the definition of sexual abuse;
- ▶ amends provisions related to runaway children;
- ▶ requires a court or the Division of Child and Family Services to take into consideration a child's wishes for placement; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-209, as last amended by Laws of Utah 2017, Chapter 181

62A-4a-501, as last amended by Laws of Utah 2014, Chapter 312



26 [78A-6-105](#), as last amended by Laws of Utah 2017, Chapters 181, 330, and 401

27 [78A-6-307](#), as last amended by Laws of Utah 2015, Chapter 142

28 [78A-6-307.5](#), as enacted by Laws of Utah 2008, Chapter 17

29

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

31 Section 1. Section [62A-4a-209](#) is amended to read:

32 **[62A-4a-209](#). Emergency placement.**

33 (1) As used in this section:

34 (a) "Friend" means the same as that term is defined in Subsection [78A-6-307\(1\)\(a\)](#).

35 (b) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

36 (c) "Relative" means the same as that term is defined in Subsection [78A-6-307\(1\)\(c\)](#).

37 (2) The division may use an emergency placement under Subsection

38 [62A-4a-202.1\(4\)\(b\)\(ii\)](#) when:

39 (a) the case worker has made the determination that:

40 (i) the child's home is unsafe;

41 (ii) removal is necessary under the provisions of Section [62A-4a-202.1](#); and

42 (iii) the child's custodial parent or guardian will agree to not remove the child from the
43 home of the person that serves as the placement and not have any contact with the child until
44 after the shelter hearing required by Section [78A-6-306](#);

45 (b) a person, with preference being given in accordance with Subsection (4), can be
46 identified who has the ability and is willing to provide care for the child who would otherwise
47 be placed in shelter care, including:

48 (i) taking the child to medical, mental health, dental, and educational appointments at
49 the request of the division; and

50 (ii) making the child available to division services and the guardian ad litem; and

51 (c) the person described in Subsection (2)(b) agrees to care for the child on an
52 emergency basis under the following conditions:

53 (i) the person meets the criteria for an emergency placement under Subsection (3);

54 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
55 with the child until after the shelter hearing unless authorized by the division in writing;

56 (iii) the person agrees to contact law enforcement and the division if the custodial

- 57 parent or guardian attempts to make unauthorized contact with the child;
- 58 (iv) the person agrees to allow the division and the child's guardian ad litem to have
59 access to the child;
- 60 (v) the person has been informed and understands that the division may continue to
61 search for other possible placements for long-term care, if needed;
- 62 (vi) the person is willing to assist the custodial parent or guardian in reunification
63 efforts at the request of the division, and to follow all court orders; and
- 64 (vii) the child is comfortable with the person.
- 65 (3) Except as otherwise provided in Subsection (5), before the division places a child
66 in an emergency placement, the division:
- 67 (a) may request the name of a reference and may contact the reference to determine the
68 answer to the following questions:
- 69 (i) would the person identified as a reference place a child in the home of the
70 emergency placement; and
- 71 (ii) are there any other relatives or friends to consider as a possible emergency or
72 long-term placement for the child;
- 73 (b) shall have the custodial parent or guardian sign an emergency placement agreement
74 form during the investigation;
- 75 (c) (i) if the emergency placement will be with a relative [~~of the child~~], shall comply
76 with the background check provisions described in Subsection (7); or
- 77 (ii) if the emergency placement will be with a person other than a noncustodial parent
78 or a relative, shall comply with the background check provisions described in Subsection (8)
79 for adults living in the household where the child will be placed;
- 80 (d) shall complete a limited home inspection of the home where the emergency
81 placement is made; and
- 82 (e) shall have the emergency placement approved by a family service specialist.
- 83 (4) (a) The following order of preference shall be applied when determining the person
84 with whom a child will be placed in an emergency placement described in this section,
85 provided that the person is willing, and has the ability, to care for the child:
- 86 (i) a noncustodial parent of the child in accordance with Section 78A-6-307;
87 (ii) a relative [~~of the child~~];

88 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent [~~or~~],
89 guardian [~~of the child~~], or the child, if the child is of sufficient maturity to articulate the child's
90 wishes in relation to a placement; and

91 (iv) a shelter facility, former foster placement, or other foster placement designated by
92 the division.

93 [~~(b) Unless the division agrees otherwise, the custodial parent or guardian described in~~
94 ~~Subsection (4)(a)(iii) may designate up to two friends as a potential emergency placement.~~]

95 (b) In determining whether a friend is a willing and appropriate temporary emergency
96 placement for a child, the division:

97 (i) is required to consider no more than one friend designated by each parent or legal
98 guardian of the child and one friend designated by the child, if the child is of sufficient maturity
99 to articulate the child's wishes in relation to a placement;

100 (ii) may limit the number of designated friends to two, one of whom shall be a friend
101 designated by the child, if the child is of sufficient maturity to articulate the child's wishes in
102 relation to a placement; and

103 (iii) shall give preference to a friend designated by the child, if:

104 (A) the child is of sufficient maturity to articulate the child's wishes; and

105 (B) the division's basis for removing the child under Section [62A-4a-202.1](#) is sexual
106 abuse of the child.

107 (5) (a) The division may, pending the outcome of the investigation described in
108 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial
109 parent if, based on a limited investigation, prior to making the emergency placement, the
110 division:

111 (i) determines that the noncustodial parent has regular, unsupervised visitation with the
112 child that is not prohibited by law or court order;

113 (ii) determines that there is not reason to believe that the child's health or safety will be
114 endangered during the emergency placement; and

115 (iii) has the custodial parent or guardian sign an emergency placement agreement.

116 (b) Either before or after making an emergency placement with the noncustodial parent
117 of the child, the division may conduct the investigation described in Subsection (3)(a) in
118 relation to the noncustodial parent.

119 (c) Before, or within one day, excluding weekends and holidays, after a child is placed
120 in an emergency placement with the noncustodial parent of the child, the division shall conduct
121 a limited:

122 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

123 (ii) inspection of the home where the emergency placement is made.

124 (6) After an emergency placement, the division caseworker must:

125 (a) respond to the emergency placement's calls within one hour if the custodial parents
126 or guardians attempt to make unauthorized contact with the child or attempt to remove the
127 child;

128 (b) complete all removal paperwork, including the notice provided to the custodial
129 parents and guardians under Section [78A-6-306](#);

130 (c) contact the attorney general to schedule a shelter hearing;

131 (d) complete the placement procedures required in Section [78A-6-307](#); and

132 (e) continue to search for other relatives as a possible long-term placement, if needed.

133 (7) (a) The background check described in Subsection (3)(c)(i) shall include
134 completion of:

135 (i) a name-based, Utah Bureau of Criminal Identification background check; and

136 (ii) a search of the Management Information System described in Section
137 [62A-4a-1003](#).

138 (b) The division shall determine whether a person passes the background check
139 described in this Subsection (7) pursuant to the provisions of Subsection [62A-2-120](#)(14).

140 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an
141 individual who is prohibited by court order from having access to that child.

142 (8) (a) The background check described in Subsection (3)(c)(ii) shall include
143 completion of:

144 (i) a name-based, Utah Bureau of Criminal Identification background check;

145 (ii) a federal name-based criminal background check; and

146 (iii) a search of the Management Information System described in Section
147 [62A-4a-1003](#).

148 (b) The division shall determine whether a person passes the background checks
149 described in this Subsection (8) pursuant to the provisions of Subsection [62A-2-120](#).

150 (c) If the division denies placement of a child as a result of a name-based criminal
151 background check described in Subsection (8)(a), and the person contests that denial, the
152 person shall submit a complete set of fingerprints with written permission to the Utah Bureau
153 of Criminal Identification for submission to the Federal Bureau of Investigation for a
154 fingerprint-based criminal background check.

155 (d) (i) Within 15 calendar days of the name-based background checks, the division
156 shall require a person to provide a complete set of fingerprints with written permission to the
157 Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation
158 for a fingerprint-based criminal background check.

159 (ii) If a person fails to provide the fingerprints and written permission described in
160 Subsection (8)(d)(i), the child shall immediately be removed from the home.

161 Section 2. Section **62A-4a-501** is amended to read:

162 **62A-4a-501. Harboring a runaway -- Reporting requirements -- Division to**
163 **provide assistance -- Affirmative defense -- Providing shelter after notice.**

164 (1) As used in this section:

165 (a) "Harbor" means to provide shelter in:

166 (i) the home of the person who is providing the shelter; or

167 (ii) any structure over which the person providing the shelter has any control.

168 (b) "Receiving center" [~~is as~~] means the same as that term is defined in Section
169 **62A-7-101**.

170 (c) "Runaway" means a [~~minor~~] child, other than an emancipated minor, who is absent
171 from the home or lawfully prescribed residence of the parent or legal guardian of the [~~minor~~]
172 child without the permission of the parent or legal guardian.

173 (d) "Temporary homeless youth shelter" means a facility that:

174 (i) provides temporary shelter to a runaway; and

175 (ii) is licensed by the Office of Licensing, created in Section **62A-1-105**, as a
176 residential support program.

177 (e) "Youth services center" means a center established by, or under contract with, the
178 Division of Juvenile Justice Services, created in Section **62A-1-105**, to provide youth services,
179 as defined in Section **62A-7-101**.

180 (2) Except as provided in Subsection (3), a person, including a temporary homeless

181 youth shelter, is guilty of a class B misdemeanor if the person:

182 (a) knowingly and intentionally harbors a [minor] child;

183 (b) knows at the time of harboring the [minor] child that the [minor] child is a
184 runaway;

185 (c) fails to notify one of the following, by telephone or other reasonable means, of the
186 location of the [minor] child:

187 (i) the parent or legal guardian of the [minor] child;

188 (ii) the division; or

189 (iii) a youth services center; and

190 (d) fails to notify a person described in Subsection (2)(c) within eight hours after the
191 later of:

192 (i) the time that the person becomes aware that the [minor] child is a runaway; or

193 (ii) the time that the person begins harboring the [minor] child.

194 (3) A person described in Subsection (2), including a temporary homeless youth
195 shelter, is not guilty of a violation of Subsection (2) and is not required to comply with
196 Subsections (2)(c) and (d), if:

197 (a) a court order is issued authorizing a peace officer to take the [minor] child into
198 custody; and

199 (b) the person notifies a peace officer or the nearest detention center, as defined in
200 Section 62A-7-101, by telephone or other reasonable means, of the location of the [minor]
201 child, within eight hours after the later of:

202 (i) the time that the person becomes aware that the [minor] child is a runaway; or

203 (ii) the time that the person begins harboring the [minor] child.

204 ~~[(4) Nothing in this section limits the obligation of a person to report child abuse or~~
205 ~~neglect in accordance with Section 62A-4a-403.]~~

206 ~~[(5) Except as provided in Subsection (6), a temporary homeless youth shelter shall~~
207 ~~notify:]~~

208 ~~[(a) the parent or legal guardian of a minor within eight hours after the later of:]~~

209 ~~[(i) the time that the temporary homeless youth shelter becomes aware that the minor is~~
210 ~~a runaway; or]~~

211 ~~[(ii) the time that the temporary homeless youth shelter begins harboring the minor;~~

212 and]

213 [~~(b) the division or a youth services center, within 48 hours after the later of:~~

214 [~~(i) the time that the temporary homeless youth shelter becomes aware that a minor is a~~

215 runaway; or]

216 [~~(ii) the time that the temporary homeless youth shelter begins harboring the minor.]~~

217 [~~(6) A temporary homeless youth shelter is not required to comply with Subsection (5)~~

218 if:]

219 [~~(a) a court order is issued authorizing a peace officer to take the minor into custody;~~

220 and]

221 [~~(b) the temporary homeless youth shelter notifies a peace officer or the nearest~~

222 detention center, as defined in Section [62A-7-101](#), by telephone or other reasonable means, of

223 the location of the minor, within eight hours after the later of:]

224 [~~(i) the time that the person becomes aware that the minor is a runaway; or]~~

225 [~~(ii) the time that the person begins harboring the minor.]~~

226 (4) A person described in Subsection (2), including a temporary homeless youth

227 shelter, shall provide a report to the division:

228 (a) if the person has an obligation under Section [62A-4a-403](#) to report child abuse or

229 neglect; or

230 (b) if, within 48 hours after the person begins harboring the child:

231 (i) the person continues to harbor the child; and

232 (ii) the person does not make direct contact with:

233 (A) a parent or legal guardian of the child;

234 (B) the division;

235 (C) a youth services center; or

236 (D) a peace officer or the nearest detention center, as defined in Section [62A-7-101](#), if

237 a court order is issued authorizing a peace officer to take the minor into custody.

238 [~~(7)~~] (5) It is an affirmative defense to the crime described in Subsection (2) that:

239 (a) the person failed to provide notice as described in Subsection (2) or (3) due to

240 circumstances beyond the control of the person providing the shelter; and

241 (b) the person provided the notice described in Subsection (2) or (3) as soon as it was

242 reasonably practicable to provide the notice.

243 [(8)] (6) Upon receipt of a report that a runaway is being harbored by a person:

244 (a) a youth services center shall:

245 (i) notify the parent or legal guardian that a report has been made; and

246 (ii) inform the parent or legal guardian of assistance available from the youth services

247 center; or

248 (b) the division shall:

249 (i) determine whether the runaway is abused, neglected, or dependent; and

250 (ii) if appropriate, make a referral for services for the runaway.

251 [(9)] (7) A parent or legal guardian of a runaway who is aware that the runaway is
252 being harbored may notify a law enforcement agency and request assistance in retrieving the
253 runaway. The local law enforcement agency may assist the parent or legal guardian in
254 retrieving the runaway.

255 [(10)] (8) Nothing in this section prohibits a person [or], including a temporary
256 homeless youth shelter, from continuing to provide shelter to a runaway, after giving the notice
257 described in Subsections (2) through [(6)] (4), if:

258 (a) a parent or legal guardian of the [~~minor~~] child consents to the continued provision
259 of shelter; or

260 (b) a peace officer or a parent or legal guardian of the [~~minor~~] child fails to retrieve the
261 runaway.

262 [(11)] (9) Nothing in this section prohibits a person or a temporary homeless youth
263 shelter from providing shelter to a [~~non-emancipated minor~~] child whose parents or legal
264 guardians have intentionally:

265 (a) ceased to maintain physical custody of the [~~minor~~] child;

266 (b) failed to make reasonable arrangements for the safety, care, and physical custody of
267 the [~~minor~~] child; and

268 (c) failed to provide the [~~minor~~] child with food, shelter, or clothing.

269 [(12)] (10) Nothing in this section prohibits:

270 (a) a receiving center or a youth services center from providing shelter to a runaway in
271 accordance with the requirements of Title 62A, Chapter 7, Juvenile Justice Services, and the
272 rules relating to a receiving center or a youth services center; or

273 (b) a government agency from taking custody of a [~~minor~~] child as otherwise provided

274 by law.

275 Section 3. Section **78A-6-105** is amended to read:

276 **78A-6-105. Definitions.**

277 As used in this chapter:

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

279 (i) (A) nonaccidental harm of a child;

280 (B) threatened harm of a child;

281 (C) sexual exploitation;

282 (D) sexual abuse; or

283 (E) human trafficking of a child in violation of Section **76-5-308.5**; or

284 (ii) that a child's natural parent:

285 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
286 child;

287 (B) is identified by a law enforcement agency as the primary suspect in an investigation
288 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

289 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
290 recklessly causing the death of another parent of the child.

291 (b) "Abuse" does not include:

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

293 (ii) conduct described in Section **76-2-401**; or

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

295 (A) in self-defense;

296 (B) in defense of others;

297 (C) to protect the child; or

298 (D) to remove a weapon in the possession of a child for any of the reasons described in
299 Subsections (1)(b)(iii)(A) through (C).

300 (2) "Abused child" means a child who has been subjected to abuse.

301 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
302 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
303 Section **78A-6-1302** is not an adjudication.

304 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or

305 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
306 be referred to as a minor.

307 (5) "Board" means the Board of Juvenile Court Judges.

308 (6) "Child" means a person under 18 years of age.

309 (7) "Child placement agency" means:

310 (a) a private agency licensed to receive a child for placement or adoption under this
311 code; or

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

314 (8) "Clandestine laboratory operation" means the same as that term is defined in
315 Section 58-37d-3.

316 (9) "Commit" means, unless specified otherwise:

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

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

319 (10) "Court" means the juvenile court.

320 (11) "Criminogenic risk factors" means evidence-based factors that are associated with
321 a minor's likelihood of reoffending.

322 (12) "Delinquent act" means an act that would constitute a felony or misdemeanor if
323 committed by an adult.

324 (13) "Dependent child" includes a child who is homeless or without proper care
325 through no fault of the child's parent, guardian, or custodian.

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

328 (15) "Detention" means home detention and secure detention as defined in Section
329 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
330 restricting facility:

331 (a) pending court disposition or transfer to another jurisdiction; or

332 (b) while under the continuing jurisdiction of the court.

333 (16) "Detention risk assessment tool" means an evidence-based tool established under
334 Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in
335 court or reoffending pre-adjudication and designed to assist in making detention

336 determinations.

337 (17) "Division" means the Division of Child and Family Services.

338 (18) "Evidence-based" means a program or practice that has had multiple randomized
339 control studies or a meta-analysis demonstrating that the program or practice is effective for a
340 specific population or has been rated as effective by a standardized program evaluation tool.

341 (19) "Formal probation" means a minor is under field supervision by the probation
342 department or other agency designated by the court and subject to return to the court in
343 accordance with Section [78A-6-123](#) on and after July 1, 2018.

344 (20) "Formal referral" means a written report from a peace officer or other person
345 informing the court that a minor is or appears to be within the court's jurisdiction and that a
346 case must be reviewed.

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

349 (22) "Guardianship of the person" includes the authority to consent to:

350 (a) marriage;

351 (b) enlistment in the armed forces;

352 (c) major medical, surgical, or psychiatric treatment; or

353 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

354 (23) "Habitual truant" means the same as that term is defined in Section [53A-11-101](#).

355 (24) "Harm" means:

356 (a) physical or developmental injury or damage;

357 (b) emotional damage that results in a serious impairment in the child's growth,
358 development, behavior, or psychological functioning;

359 (c) sexual abuse; or

360 (d) sexual exploitation.

361 (25) (a) "Incest" means engaging in sexual intercourse with a person whom the
362 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
363 nephew, niece, or first cousin.

364 (b) The relationships described in Subsection (25)(a) include:

365 (i) blood relationships of the whole or half blood, without regard to legitimacy;

366 (ii) relationships of parent and child by adoption; and

367 (iii) relationships of stepparent and stepchild while the marriage creating the
368 relationship of a stepparent and stepchild exists.

369 (26) "Intake probation" means a period of court monitoring that does not include field
370 supervision, but is overseen by a juvenile probation officer, during which a minor is subject to
371 return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

372 (27) "Intellectual disability" means:

373 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or
374 below on an individually administered IQ test, for infants, a clinical judgment of significantly
375 subaverage intellectual functioning;

376 (b) concurrent deficits or impairments in present adaptive functioning, the person's
377 effectiveness in meeting the standards expected for the person's age by the person's cultural
378 group, in at least two of the following areas: communication, self-care, home living,
379 social/interpersonal skills, use of community resources, self-direction, functional academic
380 skills, work, leisure, health, and safety; and

381 (c) the onset is before the person reaches the age of 18 years.

382 (28) "Legal custody" means a relationship embodying the following rights and duties:

383 (a) the right to physical custody of the minor;

384 (b) the right and duty to protect, train, and discipline the minor;

385 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
386 medical care;

387 (d) the right to determine where and with whom the minor shall live; and

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

389 (29) "Material loss" means an uninsured:

390 (a) property loss;

391 (b) out-of-pocket monetary loss;

392 (c) lost wages; or

393 (d) medical expenses.

394 (30) "Mental disorder" means a serious emotional and mental disturbance that severely
395 limits a minor's development and welfare over a significant period of time.

396 (31) "Minor" means:

397 (a) a child; or

398 (b) a person who is:

399 (i) at least 18 years of age and younger than 21 years of age; and

400 (ii) under the jurisdiction of the juvenile court.

401 (32) "Mobile crisis outreach team" means a crisis intervention service for minors or
402 families of minors experiencing behavioral health or psychiatric emergencies.

403 (33) "Molestation" means that a person, with the intent to arouse or gratify the sexual
404 desire of any person:

405 (a) touches the anus or any part of the genitals of a child;

406 (b) takes indecent liberties with a child; or

407 (c) causes a child to take indecent liberties with the perpetrator or another.

408 (34) "Natural parent" means a minor's biological or adoptive parent, and includes the
409 minor's noncustodial parent.

410 (35) (a) "Neglect" means action or inaction causing:

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

413 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
414 guardian, or custodian;

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

418 (iv) a child to be at risk of being neglected or abused because another child in the same
419 home is neglected or abused; or

420 (v) abandonment of a child through an unregulated custody transfer.

421 (b) The aspect of neglect relating to education, described in Subsection (35)(a)(iii),

422 means that, after receiving a notice of compulsory education violation under Section

423 [53A-11-101.5](#), the parent or guardian fails to make a good faith effort to ensure that the child
424 receives an appropriate education.

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

427 (d) (i) Notwithstanding Subsection (35)(a), a health care decision made for a child by
428 the child's parent or guardian does not constitute neglect unless the state or other party to the

429 proceeding shows, by clear and convincing evidence, that the health care decision is not
430 reasonable and informed.

431 (ii) Nothing in Subsection (35)(d)(i) may prohibit a parent or guardian from exercising
432 the right to obtain a second health care opinion and from pursuing care and treatment pursuant
433 to the second health care opinion, as described in Section [78A-6-301.5](#).

434 (36) "Neglected child" means a child who has been subjected to neglect.

435 (37) "Nonjudicial adjustment" means closure of the case by the assigned probation
436 officer without judicial determination upon the consent in writing of:

437 (a) the assigned probation officer; and

438 (b) (i) the minor; or

439 (ii) the minor and the minor's parent, legal guardian, or custodian.

440 (38) "Not competent to proceed" means that a minor, due to a mental disorder,
441 intellectual disability, or related condition as defined, lacks the ability to:

442 (a) understand the nature of the proceedings against them or of the potential disposition
443 for the offense charged; or

444 (b) consult with counsel and participate in the proceedings against them with a
445 reasonable degree of rational understanding.

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

447 (40) "Probation" means a legal status created by court order following an adjudication
448 on the ground of a violation of law or under Section [78A-6-103](#), whereby the minor is
449 permitted to remain in the minor's home under prescribed conditions.

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

454 (42) "Related condition" means a condition closely related to intellectual disability in
455 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah
456 Administrative Code.

457 (43) (a) "Residual parental rights and duties" means those rights and duties remaining
458 with the parent after legal custody or guardianship, or both, have been vested in another person
459 or agency, including:

- 460 (i) the responsibility for support;
- 461 (ii) the right to consent to adoption;
- 462 (iii) the right to determine the child's religious affiliation; and
- 463 (iv) the right to reasonable parent-time unless restricted by the court.
- 464 (b) If no guardian has been appointed, "residual parental rights and duties" also include
- 465 the right to consent to:
- 466 (i) marriage;
- 467 (ii) enlistment; and
- 468 (iii) major medical, surgical, or psychiatric treatment.
- 469 (44) "Secure facility" means any facility operated by or under contract with the
- 470 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
- 471 youth offenders committed to the division for custody and rehabilitation pursuant to Subsection
- 472 [78A-6-117\(2\)\(d\)](#).
- 473 (45) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
- 474 child.
- 475 (46) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
- 476 child.
- 477 (47) "Sexual abuse" means:
- 478 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
- 479 adult directed towards a child;
- 480 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
- 481 committed by a child towards another child if:
- 482 (i) there is an indication of force or coercion;
- 483 (ii) the children are related, as described in Subsection (25);
- 484 (iii) there have been repeated incidents of sexual contact between the two children,
- 485 unless the children are 14 years of age or older; or
- 486 (iv) there is a disparity in chronological age of four or more years between the two
- 487 children; [or]
- 488 (c) engaging in any conduct with a child that would constitute an offense under any of
- 489 the following, regardless of whether the person who engages in the conduct is actually charged
- 490 with, or convicted of, the offense:

- 491 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
492 alleged perpetrator of an offense described in Section 76-5-401 is a minor;
- 493 (ii) child bigamy, Section 76-7-101.5;
- 494 (iii) incest, Section 76-7-102;
- 495 (iv) lewdness, Section 76-9-702;
- 496 (v) sexual battery, Section 76-9-702.1;
- 497 (vi) lewdness involving a child, Section 76-9-702.5; or
- 498 (vii) voyeurism, Section 76-9-702.7[:]; or
- 499 (d) subjecting a child to participate in or threatening to subject a child to participate in
500 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural
501 marriage.
- 502 (48) "Sexual exploitation" means knowingly:
- 503 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
- 504 (i) pose in the nude for the purpose of sexual arousal of any person; or
- 505 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
506 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
- 507 (b) displaying, distributing, possessing for the purpose of distribution, or selling
508 material depicting a child:
- 509 (i) in the nude, for the purpose of sexual arousal of any person; or
- 510 (ii) engaging in sexual or simulated sexual conduct; or
- 511 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
512 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
513 actually charged with, or convicted of, the offense.
- 514 (49) "Shelter" means the temporary care of a child in a physically unrestricted facility
515 pending court disposition or transfer to another jurisdiction.
- 516 (50) "Status offense" means a violation of the law that would not be a violation but for
517 the age of the offender.
- 518 (51) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
519 substances.
- 520 (52) "Substantiated" means the same as that term is defined in Section 62A-4a-101.
- 521 (53) "Supported" means the same as that term is defined in Section 62A-4a-101.

522 (54) "Termination of parental rights" means the permanent elimination of all parental
523 rights and duties, including residual parental rights and duties, by court order.

524 (55) "Therapist" means:

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

527 (b) any other person licensed or approved by the state for the purpose of conducting
528 psychological treatment and counseling.

529 (56) "Unregulated custody transfer" means the placement of a child:

530 (a) with a person who is not the child's parent, step-parent, grandparent, adult sibling,
531 adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom
532 the child is familiar, or a member of the child's federally recognized tribe;

533 (b) with the intent of severing the child's existing parent-child or guardian-child
534 relationship; and

535 (c) without taking:

536 (i) reasonable steps to ensure the safety of the child and permanency of the placement;
537 and

538 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or
539 guardianship to the person taking custody of the child.

540 (57) "Unsubstantiated" means the same as that term is defined in Section [62A-4a-101](#).

541 (58) "Validated risk and needs assessment" means an evidence-based tool that assesses
542 a minor's risk of reoffending and a minor's criminogenic needs.

543 (59) "Without merit" means the same as that term is defined in Section [62A-4a-101](#).

544 Section 4. Section **78A-6-307** is amended to read:

545 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

546 (1) As used in this section:

547 (a) "Friend" means an adult the child knows and is comfortable with.

548 (b) (i) "Natural parent," notwithstanding the provisions of Section [78A-6-105](#), means:

549 (A) a biological or adoptive mother of the child;

550 (B) an adoptive father of the child; or

551 (C) a biological father of the child who:

552 (I) was married to the child's biological mother at the time the child was conceived or

553 born; or

554 (II) has strictly complied with the provisions of Sections 78B-6-120 through
555 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial
556 parent.

557 (ii) The definition of "natural parent" described in Subsection (1)(b)(i) applies
558 regardless of whether the child has been or will be placed with adoptive parents or whether
559 adoption has been or will be considered as a long-term goal for the child.

560 (c) "Relative" means:

561 (i) an adult who is [a] the child's grandparent, great grandparent, aunt, great aunt,
562 uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling
563 [~~of a child, or~~];

564 (ii) a first cousin of the child's parent;

565 [(ii)] (iii) an adult who is an adoptive parent of the child's sibling; or

566 [(iii)] (iv) in the case of a child defined as an "Indian" under the Indian Child Welfare
567 Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by
568 that statute.

569 (2) (a) At the shelter hearing, when the court orders that a child be removed from the
570 custody of the child's parent in accordance with the requirements of Section 78A-6-306, the
571 court shall first determine whether there is another natural parent with whom the child was not
572 residing at the time the events or conditions that brought the child within the court's jurisdiction
573 occurred, who desires to assume custody of the child.

574 (b) If another natural parent requests custody under Subsection (2)(a), the court shall
575 place the child with that parent unless it finds that the placement would be unsafe or otherwise
576 detrimental to the child.

577 (c) The provisions of this Subsection (2) are limited by the provisions of Subsection
578 (18)(b).

579 (d) (i) The court shall make a specific finding regarding the fitness of the parent
580 described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the
581 placement.

582 (ii) The court shall, at a minimum, order the division to visit the parent's home, comply
583 with the criminal background check provisions described in Section 78A-6-308, and check the

584 division's management information system for any previous reports of abuse or neglect
585 received by the division regarding the parent at issue.

586 (iii) The court may order the division to conduct any further investigation regarding the
587 safety and appropriateness of the placement.

588 (iv) The division shall report its findings in writing to the court.

589 (v) The court may place the child in the temporary custody of the division, pending its
590 determination regarding that placement.

591 (3) If the court orders placement with a parent under Subsection (2):

592 (a) the child and the parent are under the continuing jurisdiction of the court;

593 (b) the court may order:

594 (i) that the parent assume custody subject to the supervision of the court; and

595 (ii) that services be provided to the parent from whose custody the child was removed,
596 the parent who has assumed custody, or both; and

597 (c) the court shall order reasonable parent-time with the parent from whose custody the
598 child was removed, unless parent-time is not in the best interest of the child.

599 (4) The court shall periodically review an order described in Subsection (3) to
600 determine whether:

601 (a) placement with the parent continues to be in the child's best interest;

602 (b) the child should be returned to the original custodial parent;

603 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)
604 through (12); or

605 (d) the child should be placed in the custody of the division.

606 (5) The time limitations described in Section [78A-6-312](#) with regard to reunification
607 efforts, apply to children placed with a previously noncustodial parent in accordance with
608 Subsection (2).

609 (6) Legal custody of the child is not affected by an order entered under Subsection (2)
610 or (3). In order to affect a previous court order regarding legal custody, the party must petition
611 that court for modification of the order.

612 (7) If, at the time of the shelter hearing, a child is removed from the custody of the
613 child's parent and is not placed in the custody of the child's other parent, the court:

614 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),

615 there is a relative [~~of the child~~] or a friend [~~of a parent of the child~~] who is able and willing to
616 care for the child, which may include asking a child, who is of sufficient maturity to articulate
617 the child's wishes in relation to a placement, if there is a relative or friend with whom the child
618 would prefer to reside;

619 (b) may order the division to conduct a reasonable search to determine whether, subject
620 to Subsections (18)(c) through (e), there are relatives [~~of the child~~] or friends [~~of a parent of the~~
621 ~~child~~] who are willing and appropriate, in accordance with the requirements of this part and
622 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

623 (c) shall order the parents to cooperate with the division, within five working days, to,
624 subject to Subsections (18)(c) through (e), provide information regarding relatives [~~of the~~
625 ~~child~~] or friends who may be able and willing to care for the child; and

626 (d) may order that the child be placed in the custody of the division pending the
627 determination under Subsection (7)(a).

628 (8) This section may not be construed as a guarantee that an identified relative or friend
629 will receive custody of the child.

630 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given
631 to a relative's or a friend's request for placement of the child, if it is in the best interest of the
632 child, and the provisions of this section are satisfied.

633 (10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court
634 shall make a specific finding regarding:

635 (i) the fitness of that relative or friend as a placement for the child; and

636 (ii) the safety and appropriateness of placement with that relative or friend.

637 (b) In order to be considered a "willing relative or friend" under this section, the
638 relative or friend shall be willing to cooperate with the child's permanency goal.

639 (11) (a) In making the finding described in Subsection (10)(a), the court shall, at a
640 minimum, order the division to:

641 (i) if the child may be placed with a relative [~~of the child~~], conduct a background check
642 that includes:

643 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
644 background check of the relative;

645 (B) a completed search, relating to the relative, of the Management Information System

646 described in Section 62A-4a-1003; and

647 (C) a background check that complies with the criminal background check provisions
648 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
649 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;

650 (ii) if the child will be placed with a noncustodial parent [~~of the child~~], complete a
651 background check that includes:

652 (A) the background check requirements applicable to an emergency placement with a
653 noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);

654 (B) a completed search, relating to the noncustodial parent of the child, of the
655 Management Information System described in Section 62A-4a-1003; and

656 (C) a background check that complies with the criminal background check provisions
657 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
658 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;

659 (iii) if the child may be placed with an individual other than a noncustodial parent or a
660 relative [~~of the child~~], conduct a criminal background check of the individual, and each adult
661 that resides in the household where the child may be placed, that complies with the criminal
662 background check provisions described in Section 78A-6-308;

663 (iv) visit the relative's or friend's home;

664 (v) check the division's management information system for any previous reports of
665 abuse or neglect regarding the relative or friend at issue;

666 (vi) report the division's findings in writing to the court; and

667 (vii) provide sufficient information so that the court may determine whether:

668 (A) the relative or friend has any history of abusive or neglectful behavior toward other
669 children that may indicate or present a danger to this child;

670 (B) the child is comfortable with the relative or friend;

671 (C) the relative or friend recognizes the parent's history of abuse and is committed to
672 protect the child;

673 (D) the relative or friend is strong enough to resist inappropriate requests by the parent
674 for access to the child, in accordance with court orders;

675 (E) the relative or friend is committed to caring for the child as long as necessary; and

676 (F) the relative or friend can provide a secure and stable environment for the child.

677 (b) The division may determine to conduct, or the court may order the division to
678 conduct, any further investigation regarding the safety and appropriateness of the placement.

679 (c) The division shall complete and file its assessment regarding placement with a
680 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
681 relative or friend.

682 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary
683 custody of the division, pending the division's investigation pursuant to Subsections (10) and
684 (11), and the court's determination regarding the appropriateness of that placement.

685 (b) The court shall ultimately base its determination regarding the appropriateness of a
686 placement with a relative or friend on the best interest of the child.

687 (13) When the court awards custody and guardianship of a child with a relative or
688 friend:

689 (a) the court shall order that:

690 (i) the relative or friend assume custody, subject to the continuing supervision of the
691 court; and

692 (ii) any necessary services be provided to the child and the relative or friend;

693 (b) the child and any relative or friend with whom the child is placed are under the
694 continuing jurisdiction of the court;

695 (c) the court may enter any order that it considers necessary for the protection and best
696 interest of the child;

697 (d) the court shall provide for reasonable parent-time with the parent or parents from
698 whose custody the child was removed, unless parent-time is not in the best interest of the child;
699 and

700 (e) the court shall conduct a periodic review no less often than every six months, to
701 determine whether:

702 (i) placement with the relative or friend continues to be in the child's best interest;

703 (ii) the child should be returned home; or

704 (iii) the child should be placed in the custody of the division.

705 (14) No later than 12 months after placement with a relative or friend, the court shall
706 schedule a hearing for the purpose of entering a permanent order in accordance with the best
707 interest of the child.

708 (15) The time limitations described in Section 78A-6-312, with regard to reunification
709 efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

710 (16) (a) If the court awards custody of a child to the division, and the division places
711 the child with a relative, the division shall:

712 (i) conduct a criminal background check of the relative that complies with the criminal
713 background check provisions described in Section 78A-6-308; and

714 (ii) if the results of the criminal background check described in Subsection (16)(a)(i)
715 would prohibit the relative from having direct access to the child under Section 62A-2-120, the
716 division shall:

717 (A) take the child into physical custody; and

718 (B) within three days, excluding weekends and holidays, after taking the child into
719 physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all
720 parties to the proceedings, of the division's action.

721 (b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a
722 relative, pending the results of the background check described in Subsection (16)(a) on the
723 relative.

724 (17) When the court orders that a child be removed from the custody of the child's
725 parent and does not award custody and guardianship to another parent, relative, or friend under
726 this section, the court shall order that the child be placed in the temporary custody of the
727 Division of Child and Family Services, to proceed to adjudication and disposition and to be
728 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,
729 Child and Family Services.

730 (18) (a) Any preferential consideration that a relative or friend is initially granted
731 pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that
732 time period has expired, a relative or friend who has not obtained custody or asserted an
733 interest in a child, may not be granted preferential consideration by the division or the court.

734 (b) When the time period described in Subsection (18)(a) has expired, the preferential
735 consideration, which is initially granted to a natural parent in accordance with Subsection (2),
736 is limited. After that time the court shall base its custody decision on the best interest of the
737 child.

738 (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the

739 following order of preference shall be applied when determining the person with whom a child
740 will be placed, provided that the person is willing, and has the ability, to care for the child:

741 (i) a noncustodial parent of the child;

742 (ii) a relative of the child;

743 (iii) subject to Subsection (18)(d), a friend ~~[of a parent of the child]~~, if the friend is a
744 licensed foster parent; and

745 (iv) other placements that are consistent with the requirements of law.

746 (d) (i) In determining whether a friend is a willing and appropriate placement for a
747 child, neither the court, nor the division, is required to consider more than one friend
748 designated by each parent of the child~~[-]~~ and one friend designated by the child, if the child is
749 of sufficient maturity to articulate the child's wishes in relation to a placement.

750 (ii) The court or the division may limit the number of designated friends to two, one of
751 whom shall be a friend designated by the child, if the child is of sufficient maturity to articulate
752 the child's wishes in relation to a placement.

753 (iii) The court and the division shall give preference to a friend designated by the child,
754 if:

755 (A) the child is of sufficient maturity to articulate the child's wishes; and

756 (B) the basis for removing the child under Section 78A-6-306 is sexual abuse of the
757 child.

758 (e) If a parent of the child or the child, if the child is of sufficient maturity to articulate
759 the child's wishes in relation to a placement, is not able to designate a friend who is a licensed
760 foster parent for placement of the child, but is able to identify a friend who is willing to become
761 licensed as a foster parent:

762 (i) the department shall fully cooperate to expedite the licensing process for the friend;
763 and

764 (ii) if the friend becomes licensed as a foster parent within the time frame described in
765 Subsection (18)(a), the court shall determine whether it is in the best interests of the child to
766 place the child with the friend.

767 (19) If, following the shelter hearing, the child is placed with a person who is not a
768 parent ~~[of the child]~~, a relative ~~[of the child]~~, a friend ~~[of a parent of the child]~~, or a former
769 foster parent of the child, priority shall be given to a foster placement with a man and a woman

770 who are married to each other, unless it is in the best interests of the child to place the child
771 with a single foster parent.

772 (20) In determining the placement of a child, neither the court, nor the division, may
773 take into account, or discriminate against, the religion of a person with whom the child may be
774 placed, unless the purpose of taking religion into account is to place the child with a person or
775 family of the same religion as the child.

776 Section 5. Section **78A-6-307.5** is amended to read:

777 **78A-6-307.5. Post-shelter hearing placement of a child who is in division custody.**

778 (1) If the court awards custody of a child to the division under Section **78A-6-307**, or
779 as otherwise permitted by law, the division shall determine ongoing placement of the child.

780 (2) In placing a child under Subsection (1), the division:

781 (a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable
782 background check provisions described in Section **78A-6-307**;

783 (b) is not required to receive approval from the court prior to making the placement;

784 (c) shall, within three days, excluding weekends and holidays, after making the
785 placement, give written notice to the court, and all parties to the proceedings, that the
786 placement has been made; ~~and~~

787 (d) may place the child with a noncustodial parent ~~[or]~~, relative ~~[of the child]~~, or friend,
788 using the same criteria established for an emergency placement under Section **62A-4a-209**,
789 pending the results of:

790 (i) the background check described in Subsection **78A-6-307(16)(a)**; and

791 (ii) evaluation with the noncustodial parent ~~[or]~~, relative, or friend to determine the

792 ~~[noncustodial parent's or relative's]~~ individual's capacity to provide ongoing care to the child~~[-]~~;
793 and

794 (e) shall take into consideration the will of the child, if the child is of sufficient
795 maturity to articulate the child's wishes in relation to the child's placement.