

JUVENILE JUSTICE COMPETENCY REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon Hawkins

Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

This bill amends provisions related to evaluations of competency of juveniles.

Highlighted Provisions:

This bill:

- ▶ amends definitions and defines terms related to competency evaluations of minors;
- ▶ amends procedures and requirements for an evaluation of a minor for competency;
- ▶ provides instructions to forensic evaluators, courts, and others involved with the prosecution, evaluation, and adjudication of matters related to minors;
- ▶ amends provisions related to an evaluation to determine likelihood of attaining competency; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-201, as last amended by Laws of Utah 2017, Chapter 330

62A-4a-711, as enacted by Laws of Utah 2017, Chapter 401

78A-6-105, as last amended by Laws of Utah 2018, Chapters 45, 91, 192, 235, 285, and

- 29 **78A-6-302**, as last amended by Laws of Utah 2018, Chapter 91
- 30 **78A-6-312**, as last amended by Laws of Utah 2018, Chapter 91
- 31 **78A-6-1301**, as enacted by Laws of Utah 2012, Chapter 316
- 32 **78A-6-1302**, as last amended by Laws of Utah 2017, Chapter 330
- 33 **78A-6-1303**, as enacted by Laws of Utah 2012, Chapter 316

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

36 Section 1. Section **62A-4a-201** is amended to read:

37 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
38 **state.**

39 (1) (a) Under both the United States Constitution and the constitution of this state, a
40 parent possesses a fundamental liberty interest in the care, custody, and management of the
41 parent's children. A fundamentally fair process must be provided to parents if the state moves
42 to challenge or interfere with parental rights. A governmental entity must support any actions
43 or allegations made in opposition to the rights and desires of a parent regarding the parent's
44 children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened
45 protection against government interference with the parent's fundamental rights and liberty
46 interests and, concomitantly, the right of the child to be reared by the child's natural parent.

47 (b) The fundamental liberty interest of a parent concerning the care, custody, and
48 management of the parent's children is recognized, protected, and does not cease to exist
49 simply because a parent may fail to be a model parent or because the parent's child is placed in
50 the temporary custody of the state. At all times, a parent retains a vital interest in preventing
51 the irretrievable destruction of family life. Prior to an adjudication of unfitness, government
52 action in relation to parents and their children may not exceed the least restrictive means or
53 alternatives available to accomplish a compelling state interest. Until the state proves parental
54 unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result,
55 the child and the child's parents share a vital interest in preventing erroneous termination of

56 their natural relationship and the state cannot presume that a child and the child's parents are
57 adversaries.

58 (c) It is in the best interest and welfare of a child to be raised under the care and
59 supervision of the child's natural parents. A child's need for a normal family life in a
60 permanent home, and for positive, nurturing family relationships is usually best met by the
61 child's natural parents. Additionally, the integrity of the family unit and the right of parents to
62 conceive and raise their children are constitutionally protected. The right of a fit, competent
63 parent to raise the parent's child without undue government interference is a fundamental
64 liberty interest that has long been protected by the laws and Constitution and is a fundamental
65 public policy of this state.

66 (d) The state recognizes that:

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

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

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

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

75 (2) It is also the public policy of this state that children have the right to protection
76 from abuse and neglect, and that the state retains a compelling interest in investigating,
77 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A,
78 Chapter 6, Juvenile Court Act. Therefore, the state, as *parens patriae*, has an interest in and
79 responsibility to protect children whose parents abuse them or do not adequately provide for
80 their welfare. There may be circumstances where a parent's conduct or condition is a
81 substantial departure from the norm and the parent is unable or unwilling to render safe and
82 proper parental care and protection. Under those circumstances, the state may take action for

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

84 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
85 it shall take into account the child's need for protection from immediate harm and the extent to
86 which the child's extended family may provide needed protection. Throughout its involvement,
87 the division shall utilize the least intrusive and least restrictive means available to protect a
88 child, in an effort to ensure that children are brought up in stable, permanent families, rather
89 than in temporary foster placements under the supervision of the state.

90 (4) When circumstances within the family pose a threat to the child's immediate safety
91 or welfare, the division may seek custody of the child for a planned, temporary period and
92 place the child in a safe environment, subject to the requirements of this section and in
93 accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
94 Dependency Proceedings, and:

95 (a) when safe and appropriate, return the child to the child's parent; or

96 (b) as a last resort, pursue another permanency plan.

97 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to
98 the provisions of Section [62A-4a-203](#), both the division's and the court's paramount concern
99 shall be the child's health, safety, and welfare. The desires of a parent for the parent's child,
100 and the constitutionally protected rights of a parent, as described in this section, shall be given
101 full and serious consideration by the division and the court.

102 (6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
103 abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or
104 to, in any other way, attempt to maintain a child in the child's home, provide reunification
105 services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does
106 not exempt the division from providing court-ordered services.

107 (7) (a) In accordance with Subsection (1), the division shall strive to achieve
108 appropriate permanency for children who are abused, neglected, or dependent. The division
109 shall provide in-home services, where appropriate and safe, in an effort to help a parent to

110 correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. The
111 division may pursue a foster placement only if in-home services fail or are otherwise
112 insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services
113 and kinship placement fail and cannot be corrected. The division shall also seek qualified
114 extended family support or a kinship placement to maintain a sense of security and stability for
115 the child.

116 (b) If the use or continuation of "reasonable efforts," as described in Subsections (5)
117 and (6), is determined to be inconsistent with the permanency plan for a child, then measures
118 shall be taken, in a timely manner, to place the child in accordance with the permanency plan,
119 and to complete whatever steps are necessary to finalize the permanent placement of the child.

120 (c) Subject to the parental rights recognized and protected under this section, if,
121 because of a parent's conduct or condition, the parent is determined to be unfit or incompetent
122 based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part
123 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of
124 paramount importance, and shall be protected in determining whether that parent's rights
125 should be terminated.

126 (8) The state's right to direct or intervene in the provision of medical or mental health
127 care for a child is subject to Subsections ~~78A-6-105[(35)(d)](39)~~ and 78A-6-117(2) and
128 Section 78A-6-301.5.

129 Section 2. Section ~~62A-4a-711~~ is amended to read:

130 **62A-4a-711. Penalty.**

131 An individual or entity that knowingly engages in an unregulated custody transfer, as
132 defined in [~~Subsection~~] Section ~~78A-6-105[(56)]~~, is guilty of a class B misdemeanor.

133 Section 3. Section ~~78A-6-105~~ is amended to read:

134 **78A-6-105. Definitions.**

135 As used in this chapter:

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

- 137 (i) (A) nonaccidental harm of a child;
138 (B) threatened harm of a child;
139 (C) sexual exploitation;
140 (D) sexual abuse; or
141 (E) human trafficking of a child in violation of Section 76-5-308.5; or
142 (ii) that a child's natural parent:
143 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
144 child;
145 (B) is identified by a law enforcement agency as the primary suspect in an investigation
146 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
147 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
148 recklessly causing the death of another parent of the child.
- 149 (b) "Abuse" does not include:
150 (i) reasonable discipline or management of a child, including withholding privileges;
151 (ii) conduct described in Section 76-2-401; or
152 (iii) the use of reasonable and necessary physical restraint or force on a child:
153 (A) in self-defense;
154 (B) in defense of others;
155 (C) to protect the child; or
156 (D) to remove a weapon in the possession of a child for any of the reasons described in
157 Subsections (1)(b)(iii)(A) through (C).
- 158 (2) "Abused child" means a child who has been subjected to abuse.
159 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
160 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
161 Section 78A-6-1302 is not an adjudication.
- 162 (4) "Adult" means an individual 18 years of age or over, except that an individual 18
163 years or over under the continuing jurisdiction of the juvenile court pursuant to Section

164 [78A-6-120](#) shall be referred to as a minor.

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

166 (6) "Child" means an individual under 18 years of age.

167 (7) "Child placement agency" means:

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

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

172 (8) "Clandestine laboratory operation" means the same as that term is defined in
173 Section [58-37d-3](#).

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

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

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

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

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

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

182 (13) "Department" means the Department of Human Services created in Section
183 [62A-1-102](#).

184 [~~(13)~~] (14) "Dependent child" includes a child who is homeless or without proper care
185 through no fault of the child's parent, guardian, or custodian.

186 [~~(14)~~] (15) "Deprivation of custody" means transfer of legal custody by the court from
187 a parent or the parents or a previous legal custodian to another person, agency, or institution.

188 [~~(15)~~] (16) "Detention" means home detention and secure detention as defined in
189 Section [62A-7-101](#) for the temporary care of a minor who requires secure custody in a
190 physically restricting facility:

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

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

193 ~~[(16)]~~ (17) "Detention risk assessment tool" means an evidence-based tool established
194 under Section [78A-6-124](#), on and after July 1, 2018, that assesses a minor's risk of failing to
195 appear in court or reoffending pre-adjudication and designed to assist in making detention
196 determinations.

197 (18) "Developmental immaturity" means incomplete development in one or more
198 domains which manifests as a functional limitation in the minor's present ability to consult with
199 counsel with a reasonable degree of rational understanding and have a rational as well as
200 factual understanding of the proceedings.

201 ~~[(17)]~~ (19) "Division" means the Division of Child and Family Services.

202 ~~[(18)]~~ (20) "Educational neglect" means that, after receiving a notice of compulsory
203 education violation under Section [53G-6-202](#), the parent or guardian fails to make a good faith
204 effort to ensure that the child receives an appropriate education.

205 ~~[(19)]~~ (21) "Evidence-based" means a program or practice that has had multiple
206 randomized control studies or a meta-analysis demonstrating that the program or practice is
207 effective for a specific population or has been rated as effective by a standardized program
208 evaluation tool.

209 (22) "Forensic evaluator" means the same as that term is defined in Section [77-15-2](#).

210 ~~[(20)]~~ (23) "Formal probation" means a minor is under field supervision by the
211 probation department or other agency designated by the court and subject to return to the court
212 in accordance with Section [78A-6-123](#) on and after July 1, 2018.

213 ~~[(21)]~~ (24) "Formal referral" means a written report from a peace officer or other
214 person informing the court that a minor is or appears to be within the court's jurisdiction and
215 that a case must be reviewed.

216 ~~[(22)]~~ (25) "Group rehabilitation therapy" means psychological and social counseling
217 of one or more individuals in the group, depending upon the recommendation of the therapist.

218 ~~[(23)]~~ (26) "Guardianship of the person" includes the authority to consent to:
219 (a) marriage;
220 (b) enlistment in the armed forces;
221 (c) major medical, surgical, or psychiatric treatment; or
222 (d) legal custody, if legal custody is not vested in another individual, agency, or
223 institution.

224 ~~[(24)]~~ (27) "Habitual truant" means the same as that term is defined in Section
225 [53G-6-201](#).

226 ~~[(25)]~~ (28) "Harm" means:
227 (a) physical or developmental injury or damage;
228 (b) emotional damage that results in a serious impairment in the child's growth,
229 development, behavior, or psychological functioning;
230 (c) sexual abuse; or
231 (d) sexual exploitation.

232 ~~[(26)]~~ (29) (a) "Incest" means engaging in sexual intercourse with an individual whom
233 the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
234 nephew, niece, or first cousin.

235 (b) The relationships described in Subsection ~~[(26)]~~ (29)(a) include:
236 (i) blood relationships of the whole or half blood, without regard to legitimacy;
237 (ii) relationships of parent and child by adoption; and
238 (iii) relationships of stepparent and stepchild while the marriage creating the
239 relationship of a stepparent and stepchild exists.

240 ~~[(27)]~~ (30) "Intake probation" means a period of court monitoring that does not include
241 field supervision, but is overseen by a juvenile probation officer, during which a minor is
242 subject to return to the court in accordance with Section [78A-6-123](#) on and after July 1, 2018.

243 ~~[(28)]~~ "Intellectual disability" means:
244 ~~[(a)]~~ significantly subaverage intellectual functioning, an IQ of approximately 70 or

245 below on an individually administered IQ test, for infants, a clinical judgment of significantly
246 subaverage intellectual functioning;]

247 [~~(b) concurrent deficits or impairments in present adaptive functioning, regarding the~~
248 individual's effectiveness in meeting the standards expected for the individual's age by the
249 individual's cultural group, in at least two of the following areas: communication, self-care,
250 home living, social/interpersonal skills, use of community resources, self-direction, functional
251 academic skills, work, leisure, health, and safety; and]

252 [~~(c) the onset is before the individual reaches the age of 18 years.]~~

253 (31) "Intellectual disability" means a significant subaverage general intellectual
254 functioning existing concurrently with deficits in adaptive behavior that constitutes a
255 substantial limitation to the individual's ability to function in society.

256 [~~(29)~~] (32) "Legal custody" means a relationship embodying the following rights and
257 duties:

- 258 (a) the right to physical custody of the minor;
- 259 (b) the right and duty to protect, train, and discipline the minor;
- 260 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
261 medical care;
- 262 (d) the right to determine where and with whom the minor shall live; and
- 263 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

264 [~~(30)~~] (33) "Material loss" means an uninsured:

- 265 (a) property loss;
- 266 (b) out-of-pocket monetary loss;
- 267 (c) lost wages; or
- 268 (d) medical expenses.

269 [~~(31) "Mental disorder" means a serious emotional and mental disturbance that~~
270 ~~severely limits a minor's development and welfare over a significant period of time.]~~

271 (34) "Mental illness" means:

272 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
273 behavioral, or related functioning; or

274 (b) the same as that term is defined in:

275 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
276 published by the American Psychiatric Association; or

277 (ii) the current edition of the International Statistical Classification of Diseases and
278 Related Health Problems.

279 ~~[(32)]~~ (35) "Minor" means:

280 (a) a child; or

281 (b) an individual who is:

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

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

284 ~~[(33)]~~ (36) "Mobile crisis outreach team" means a crisis intervention service for minors
285 or families of minors experiencing behavioral health or psychiatric emergencies.

286 ~~[(34)]~~ (37) "Molestation" means that an individual, with the intent to arouse or gratify
287 the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any
288 child, or the breast of a female child, or takes indecent liberties with a child as defined in
289 Section 76-5-416.

290 ~~[(35)]~~ (38) "Natural parent" means a minor's biological or adoptive parent, and
291 includes the minor's noncustodial parent.

292 ~~[(36)]~~ (39) (a) "Neglect" means action or inaction causing:

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

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

297 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
298 subsistence or medical care, or any other care necessary for the child's health, safety, morals, or

299 well-being;

300 (iv) a child to be at risk of being neglected or abused because another child in the same

301 home is neglected or abused;

302 (v) abandonment of a child through an unregulated custody transfer; or

303 (vi) educational neglect.

304 (b) "Neglect" does not include:

305 (i) a parent or guardian legitimately practicing religious beliefs and who, for that

306 reason, does not provide specified medical treatment for a child;

307 (ii) a health care decision made for a child by the child's parent or guardian, unless the

308 state or other party to a proceeding shows, by clear and convincing evidence, that the health

309 care decision is not reasonable and informed;

310 (iii) a parent or guardian exercising the right described in Section [78A-6-301.5](#); or

311 (iv) permitting a child, whose basic needs are met and who is of sufficient age and

312 maturity to avoid harm or unreasonable risk of harm, to engage in independent activities,

313 including:

314 (A) traveling to and from school, including by walking, running, or bicycling;

315 (B) traveling to and from nearby commercial or recreational facilities;

316 (C) engaging in outdoor play;

317 (D) remaining in a vehicle unattended, except under the conditions described in

318 Subsection [76-10-2202\(2\)](#);

319 (E) remaining at home unattended; or

320 (F) engaging in a similar independent activity.

321 [~~37~~] [\(40\)](#) "Neglected child" means a child who has been subjected to neglect.

322 [~~38~~] [\(41\)](#) "Nonjudicial adjustment" means closure of the case by the assigned

323 probation officer without judicial determination upon the consent in writing of:

324 (a) the assigned probation officer; and

325 (b) (i) the minor; or

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

327 [~~(39)~~] (42) "Not competent to proceed" means that a minor, due to a mental [~~disorder~~]
328 illness, intellectual disability[, or related condition as defined] or related condition, or
329 developmental immaturity, lacks the ability to:

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

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

334 [~~(40)~~] (43) "Physical abuse" means abuse that results in physical injury or damage to a
335 child.

336 [~~(41)~~] (44) "Probation" means a legal status created by court order following an
337 adjudication on the ground of a violation of law or under Section [78A-6-103](#), whereby the
338 minor is permitted to remain in the minor's home under prescribed conditions.

339 [~~(42)~~] (45) "Protective supervision" means a legal status created by court order
340 following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor
341 is permitted to remain in the minor's home, and supervision and assistance to correct the abuse,
342 neglect, or dependency is provided by the probation department or other agency designated by
343 the court.

344 [~~(43)~~] "~~Related condition~~" means a condition closely related to intellectual disability in
345 accordance with ~~42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah~~
346 ~~Administrative Code.~~]

347 (46) (a) "Related condition" means a condition that:

348 (i) is found to be closely related to intellectual disability;

349 (ii) results in impairment of general intellectual functioning or adaptive behavior
350 similar to that of an intellectually disabled individual;

351 (iii) is likely to continue indefinitely; and

352 (iv) constitutes a substantial limitation to the individual's ability to function in society.

353 (b) "Related condition" does not include mental illness, psychiatric impairment, or
354 serious emotional or behavioral disturbance.

355 [~~44~~] (47) (a) "Residual parental rights and duties" means those rights and duties
356 remaining with the parent after legal custody or guardianship, or both, have been vested in
357 another person or agency, including:

- 358 (i) the responsibility for support;
- 359 (ii) the right to consent to adoption;
- 360 (iii) the right to determine the child's religious affiliation; and
- 361 (iv) the right to reasonable parent-time unless restricted by the court.

362 (b) If no guardian has been appointed, "residual parental rights and duties" also include
363 the right to consent to:

- 364 (i) marriage;
- 365 (ii) enlistment; and
- 366 (iii) major medical, surgical, or psychiatric treatment.

367 [~~45~~] (48) "Secure facility" means any facility operated by or under contract with the
368 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
369 youth offenders committed to the division for custody and rehabilitation pursuant to Subsection
370 [78A-6-117\(2\)\(d\)](#).

371 [~~46~~] (49) "Severe abuse" means abuse that causes or threatens to cause serious harm
372 to a child.

373 [~~47~~] (50) "Severe neglect" means neglect that causes or threatens to cause serious
374 harm to a child.

375 [~~48~~] (51) "Sexual abuse" means:

376 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
377 adult directed towards a child;

378 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
379 committed by a child towards another child if:

- 380 (i) there is an indication of force or coercion;
- 381 (ii) the children are related, as described in Subsection [~~26~~] (29), including siblings
382 by marriage while the marriage exists or by adoption;
- 383 (iii) there have been repeated incidents of sexual contact between the two children,
384 unless the children are 14 years of age or older; or
- 385 (iv) there is a disparity in chronological age of four or more years between the two
386 children;
- 387 (c) engaging in any conduct with a child that would constitute an offense under any of
388 the following, regardless of whether the individual who engages in the conduct is actually
389 charged with, or convicted of, the offense:
 - 390 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
391 alleged perpetrator of an offense described in Section 76-5-401 is a minor;
 - 392 (ii) child bigamy, Section 76-7-101.5;
 - 393 (iii) incest, Section 76-7-102;
 - 394 (iv) lewdness, Section 76-9-702;
 - 395 (v) sexual battery, Section 76-9-702.1;
 - 396 (vi) lewdness involving a child, Section 76-9-702.5; or
 - 397 (vii) voyeurism, Section 76-9-702.7; or
- 398 (d) subjecting a child to participate in or threatening to subject a child to participate in
399 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural
400 marriage.
- 401 [~~49~~] (52) "Sexual exploitation" means knowingly:
 - 402 (a) employing, using, persuading, inducing, enticing, or coercing any child to:
 - 403 (i) pose in the nude for the purpose of sexual arousal of any individual; or
 - 404 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
405 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
 - 406 (b) displaying, distributing, possessing for the purpose of distribution, or selling

407 material depicting a child:

408 (i) in the nude, for the purpose of sexual arousal of any individual; or

409 (ii) engaging in sexual or simulated sexual conduct; or

410 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
411 sexual exploitation of a minor, regardless of whether the individual who engages in the conduct
412 is actually charged with, or convicted of, the offense.

413 ~~[(50)]~~ (53) "Shelter" means the temporary care of a child in a physically unrestricted
414 facility pending court disposition or transfer to another jurisdiction.

415 ~~[(51)]~~ (54) "Status offense" means a violation of the law that would not be a violation
416 but for the age of the offender.

417 ~~[(52)]~~ (55) "Substance abuse" means the misuse or excessive use of alcohol or other
418 drugs or substances.

419 ~~[(53)]~~ (56) "Substantiated" means the same as that term is defined in Section
420 62A-4a-101.

421 ~~[(54)]~~ (57) "Supported" means the same as that term is defined in Section 62A-4a-101.

422 ~~[(55)]~~ (58) "Termination of parental rights" means the permanent elimination of all
423 parental rights and duties, including residual parental rights and duties, by court order.

424 ~~[(56)]~~ (59) "Therapist" means:

425 (a) an individual employed by a state division or agency for the purpose of conducting
426 psychological treatment and counseling of a minor in its custody; or

427 (b) any other individual licensed or approved by the state for the purpose of conducting
428 psychological treatment and counseling.

429 ~~[(57)]~~ (60) "Unregulated custody transfer" means the placement of a child:

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

433 (b) with the intent of severing the child's existing parent-child or guardian-child

434 relationship; and

435 (c) without taking:

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

437 and

438 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or
439 guardianship to the individual taking custody of the child.

440 [~~58~~] (61) "Unsubstantiated" means the same as that term is defined in Section

441 62A-4a-101.

442 [~~59~~] (62) "Validated risk and needs assessment" means an evidence-based tool that
443 assesses a minor's risk of reoffending and a minor's criminogenic needs.

444 [~~60~~] (63) "Without merit" means the same as that term is defined in Section

445 62A-4a-101.

446 Section 4. Section 78A-6-302 is amended to read:

447 **78A-6-302. Court-ordered protective custody of a child following petition filing --**

448 **Grounds.**

449 (1) After a petition has been filed under Section 78A-6-304, if the child who is the
450 subject of the petition is not in the protective custody of the division, a court may order that the
451 child be removed from the child's home or otherwise taken into protective custody if the court
452 finds, by a preponderance of the evidence, that any one or more of the following circumstances
453 exist:

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

455 (ii) the child's physical health or safety may not be protected without removing the
456 child from the custody of the child's parent or guardian;

457 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
458 that causes the child to suffer harm; and

459 (ii) there are no less restrictive means available by which the child's emotional health
460 may be protected without removing the child from the custody of the child's parent or guardian;

461 (c) the child or another child residing in the same household has been, or is considered
462 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a
463 parent or guardian, a member of the parent's or guardian's household, or other person known to
464 the parent or guardian;

465 (d) the parent or guardian is unwilling to have physical custody of the child;

466 (e) the child is abandoned or left without any provision for the child's support;

467 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
468 or cannot arrange for safe and appropriate care for the child;

469 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
470 guardian is unwilling or unable to provide care or support for the child;

471 (ii) the whereabouts of the parent or guardian are unknown; and

472 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;

473 (h) subject to Subsections [78A-6-105](#)[(35)(c)(i) through (iii)](39) and [78A-6-117](#)(2)
474 and Section [78A-6-301.5](#), the child is in immediate need of medical care;

475 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
476 environment that poses a serious risk to the child's health or safety for which immediate
477 remedial or preventive action is necessary; or

478 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
479 a threat to the child's health or safety;

480 (j) the child or another child residing in the same household has been neglected;

481 (k) the child's natural parent:

482 (i) intentionally, knowingly, or recklessly causes the death of another parent of the
483 child;

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

486 (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or
487 recklessly causing the death of another parent of the child;

488 (l) an infant has been abandoned, as defined in Section 78A-6-316;
489 (m) (i) the parent or guardian, or an adult residing in the same household as the parent
490 or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
491 Act; and
492 (ii) any clandestine laboratory operation was located in the residence or on the property
493 where the child resided; or
494 (n) the child's welfare is otherwise endangered.

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

500 (b) For purposes of Subsection (1)(c):
501 (i) another child residing in the same household may not be removed from the home
502 unless that child is considered to be at substantial risk of being physically abused, sexually
503 abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and
504 (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse,
505 or sexual exploitation by a person known to the parent has occurred, and there is evidence that
506 the parent or guardian failed to protect the child, after having received the notice, by allowing
507 the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie
508 evidence that the child is at substantial risk of being physically abused, sexually abused, or
509 sexually exploited.

510 (3) (a) For purposes of Subsection (1), if the division files a petition under Section
511 78A-6-304, the court shall consider the division's safety and risk assessments described in
512 Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the
513 child's parent or guardian or should otherwise be taken into protective custody.

514 (b) The division shall make a diligent effort to provide the safety and risk assessments

515 described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or
516 guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

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

519 (a) educational neglect, truancy, or failure to comply with a court order to attend
520 school;

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

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

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

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

529 (7) (a) Except as provided in Subsection (7)(b), a court or the Division of Child and
530 Family Services may not remove a child from the custody of the child's parent or guardian on
531 the sole or primary basis that the parent or guardian refuses to consent to:

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

533 (ii) a psychiatric, psychological, or behavioral treatment for a child; or

534 (iii) a psychiatric or behavioral health evaluation of a child.

535 (b) Notwithstanding Subsection (7)(a), a court or the Division of Child and Family
536 Services may remove a child under conditions that would otherwise be prohibited under
537 Subsection (7)(a) if failure to take an action described under Subsection (7)(a) would present a
538 serious, imminent risk to the child's physical safety or the physical safety of others.

539 Section 5. Section 78A-6-312 is amended to read:

540 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

541 (1) The court may:

- 542 (a) make any of the dispositions described in Section 78A-6-117;
- 543 (b) place the minor in the custody or guardianship of any:
 - 544 (i) individual; or
 - 545 (ii) public or private entity or agency; or
 - 546 (c) order:
 - 547 (i) protective supervision;
 - 548 (ii) family preservation;
 - 549 (iii) subject to Subsections (12)(b), 78A-6-105~~[(35)(c)(i) through (iii)]~~(39), and
 - 550 78A-6-117(2) and Section 78A-6-301.5, medical or mental health treatment;
 - 551 (iv) sibling visitation; or
 - 552 (v) other services.
- 553 (2) Whenever the court orders continued removal at the dispositional hearing, and that
- 554 the minor remain in the custody of the division, the court shall first:
 - 555 (a) establish a primary permanency plan for the minor; and
 - 556 (b) determine whether, in view of the primary permanency plan, reunification services
 - 557 are appropriate for the minor and the minor's family, pursuant to Subsections (21) through (23).
- 558 (3) Subject to Subsections (6) and (7), if the court determines that reunification
- 559 services are appropriate for the minor and the minor's family, the court shall provide for
- 560 reasonable parent-time with the parent or parents from whose custody the minor was removed,
- 561 unless parent-time is not in the best interest of the minor.
- 562 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
- 563 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
- 564 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
- 565 attempt to rehabilitate the offending parent or parents.
- 566 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
- 567 concern in determining whether reasonable efforts to reunify should be made.
- 568 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless

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

570 (a) protect the physical safety of the minor;

571 (b) protect the life of the minor; or

572 (c) prevent the minor from being traumatized by contact with the parent due to the
573 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

574 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a
575 parent's failure to:

576 (a) prove that the parent has not used legal or illegal substances; or

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

578 (8) (a) In addition to the primary permanency plan, the court shall establish a
579 concurrent permanency plan that shall include:

580 (i) a representative list of the conditions under which the primary permanency plan will
581 be abandoned in favor of the concurrent permanency plan; and

582 (ii) an explanation of the effect of abandoning or modifying the primary permanency
583 plan.

584 (b) In determining the primary permanency plan and concurrent permanency plan, the
585 court shall consider:

586 (i) the preference for kinship placement over nonkinship placement;

587 (ii) the potential for a guardianship placement if the parent-child relationship is legally
588 terminated and no appropriate adoption placement is available; and

589 (iii) the use of an individualized permanency plan, only as a last resort.

590 (9) A permanency hearing shall be conducted in accordance with Subsection

591 [78A-6-314\(1\)\(b\)](#) within 30 days after the day on which the dispositional hearing ends if

592 something other than reunification is initially established as a minor's primary permanency
593 plan.

594 (10) (a) The court may amend a minor's primary permanency plan before the

595 establishment of a final permanency plan under Section [78A-6-314](#).

596 (b) The court is not limited to the terms of the concurrent permanency plan in the event
597 that the primary permanency plan is abandoned.

598 (c) If, at any time, the court determines that reunification is no longer a minor's primary
599 permanency plan, the court shall conduct a permanency hearing in accordance with Section
600 78A-6-314 on or before the earlier of:

601 (i) 30 days after the day on which the court makes the determination described in this
602 Subsection (10)(c); or

603 (ii) the day on which the provision of reunification services, described in Section
604 78A-6-314, ends.

605 (11) (a) If the court determines that reunification services are appropriate, the court
606 shall order that the division make reasonable efforts to provide services to the minor and the
607 minor's parent for the purpose of facilitating reunification of the family, for a specified period
608 of time.

609 (b) In providing the services described in Subsection (11)(a), the minor's health, safety,
610 and welfare shall be the division's paramount concern, and the court shall so order.

611 (12) (a) The court shall:

612 (i) determine whether the services offered or provided by the division under the child
613 and family plan constitute "reasonable efforts" on the part of the division;

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

616 (iii) identify verbally on the record, or in a written document provided to the parties,
617 the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future
618 determination regarding the provision of reasonable efforts, in accordance with state and
619 federal law.

620 (b) If the parent is in a substance use disorder treatment program, other than a certified
621 drug court program:

622 (i) the court may order the parent to submit to supplementary drug or alcohol testing in

623 addition to the testing recommended by the parent's substance use disorder program based on a
624 finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

625 (ii) the court may order the parent to provide the results of drug or alcohol testing
626 recommended by the substance use disorder program to the court or division.

627 (13) (a) The time period for reunification services may not exceed 12 months from the
628 date that the minor was initially removed from the minor's home, unless the time period is
629 extended under Subsection 78A-6-314(7).

630 (b) Nothing in this section may be construed to entitle any parent to an entire 12
631 months of reunification services.

632 (14) (a) If reunification services are ordered, the court may terminate those services at
633 any time.

634 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
635 to be inconsistent with the final permanency plan for the minor established pursuant to Section
636 78A-6-314, then measures shall be taken, in a timely manner, to:

637 (i) place the minor in accordance with the permanency plan; and

638 (ii) complete whatever steps are necessary to finalize the permanent placement of the
639 minor.

640 (15) Any physical custody of the minor by the parent or a relative during the period
641 described in Subsections (11) through (14) does not interrupt the running of the period.

642 (16) (a) If reunification services are ordered, a permanency hearing shall be conducted
643 by the court in accordance with Section 78A-6-314 at the expiration of the time period for
644 reunification services.

645 (b) The permanency hearing shall be held no later than 12 months after the original
646 removal of the minor.

647 (c) If reunification services are not ordered, a permanency hearing shall be conducted
648 within 30 days, in accordance with Section 78A-6-314.

649 (17) With regard to a minor in the custody of the division whose parent or parents are

650 ordered to receive reunification services but who have abandoned that minor for a period of six
651 months from the date that reunification services were ordered:

652 (a) the court shall terminate reunification services; and

653 (b) the division shall petition the court for termination of parental rights.

654 (18) When a court conducts a permanency hearing for a minor under Section
655 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
656 sibling group together is:

657 (a) practicable; and

658 (b) in accordance with the best interest of the minor.

659 (19) When a child is under the custody of the division and has been separated from a
660 sibling due to foster care or adoptive placement, a court may order sibling visitation, subject to
661 the division obtaining consent from the sibling's legal guardian, according to the court's
662 determination of the best interests of the child for whom the hearing is held.

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

666 (b) The court may determine that:

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

669 (ii) reunification services should not be provided.

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

673 (21) There is a presumption that reunification services should not be provided to a
674 parent if the court finds, by clear and convincing evidence, that any of the following
675 circumstances exist:

676 (a) the whereabouts of the parents are unknown, based upon a verified affidavit

677 indicating that a reasonably diligent search has failed to locate the parent;

678 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such
679 magnitude that it renders the parent incapable of utilizing reunification services;

680 (c) the minor was previously adjudicated as an abused child due to physical abuse,
681 sexual abuse, or sexual exploitation, and following the adjudication the minor:

682 (i) was removed from the custody of the minor's parent;

683 (ii) was subsequently returned to the custody of the parent; and

684 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
685 exploitation;

686 (d) the parent:

687 (i) caused the death of another minor through abuse or neglect;

688 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

689 (A) murder or manslaughter of a child; or

690 (B) child abuse homicide;

691 (iii) committed sexual abuse against the child;

692 (iv) is a registered sex offender or required to register as a sex offender; or

693 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the
694 child;

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

697 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
698 recklessly causing the death of another parent of the child;

699 (e) the minor suffered severe abuse by the parent or by any person known by the
700 parent, if the parent knew or reasonably should have known that the person was abusing the
701 minor;

702 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
703 and the court finds that it would not benefit the minor to pursue reunification services with the

704 offending parent;

705 (g) the parent's rights are terminated with regard to any other minor;

706 (h) the minor was removed from the minor's home on at least two previous occasions
707 and reunification services were offered or provided to the family at those times;

708 (i) the parent has abandoned the minor for a period of six months or longer;

709 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
710 location where the parent knew or should have known that a clandestine laboratory operation
711 was located;

712 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
713 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
714 exposed to an illegal or prescription drug that was abused by the child's mother while the child
715 was in utero, if the child was taken into division custody for that reason, unless the mother
716 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
717 substance use disorder treatment program approved by the department; or

718 (l) any other circumstance that the court determines should preclude reunification
719 efforts or services.

720 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence
721 from at least two medical or mental health professionals, who are not associates, establishing
722 that, even with the provision of services, the parent is not likely to be capable of adequately
723 caring for the minor within 12 months after the day on which the court finding is made.

724 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under
725 the circumstances of the case, that the substance use disorder treatment described in Subsection
726 (21)(k) is not warranted.

727 (23) In determining whether reunification services are appropriate, the court shall take
728 into consideration:

729 (a) failure of the parent to respond to previous services or comply with a previous child
730 and family plan;

731 (b) the fact that the minor was abused while the parent was under the influence of
732 drugs or alcohol;

733 (c) any history of violent behavior directed at the child or an immediate family
734 member;

735 (d) whether a parent continues to live with an individual who abused the minor;

736 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

737 (f) testimony by a competent professional that the parent's behavior is unlikely to be
738 successful; and

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

740 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through
741 (22), and the whereabouts of a parent become known within six months after the day on which
742 the out-of-home placement of the minor is made, the court may order the division to provide
743 reunification services.

744 (b) The time limits described in Subsections (2) through (18) are not tolled by the
745 parent's absence.

746 (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
747 services unless the court determines that those services would be detrimental to the minor.

748 (b) In making the determination described in Subsection (25)(a), the court shall
749 consider:

750 (i) the age of the minor;

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

752 (iii) the length of the sentence;

753 (iv) the nature of the treatment;

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

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

756 (vii) for a minor 10 years old or older, the minor's attitude toward the implementation
757 of family reunification services; and

758 (viii) any other appropriate factors.

759 (c) Reunification services for an incarcerated parent are subject to the time limitations
760 imposed in Subsections (2) through (18).

761 (d) Reunification services for an institutionalized parent are subject to the time
762 limitations imposed in Subsections (2) through (18), unless the court determines that continued
763 reunification services would be in the minor's best interest.

764 (26) If, pursuant to Subsections (21)(b) through (l), the court does not order
765 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
766 with Section 78A-6-314.

767 Section 6. Section 78A-6-1301 is amended to read:

768 **78A-6-1301. Competency to proceed.**

769 ~~[(1) Whenever a petition is filed alleging that a minor has committed an act that would
770 be a crime if committed by an adult, a motion for an inquiry into the minor's competency may
771 be filed. The motion shall be filed in the juvenile court where the petition is pending.]~~

772 (1) In a case alleging that a minor has violated any federal, state, or local law, a written
773 motion may be filed alleging reasonable grounds to believe the minor is not competent to
774 proceed.

775 (2) The written motion shall contain:

776 (a) a certificate that it is filed in good faith and on reasonable grounds to believe the
777 minor is not competent to proceed[;] due to:

778 (i) a mental illness;

779 (ii) intellectual disability or a related condition; or

780 (iii) developmental immaturity;

781 (b) a recital of the facts, observations, and conversations with the minor that have
782 formed the basis for the motion; and

783 (c) if filed by defense counsel, the motion shall contain information that can be
784 revealed without invading the lawyer-client privilege.

785 (3) The motion may be based upon knowledge or information and belief and may be
786 filed by:

- 787 (a) the minor alleged not competent to proceed;
- 788 (b) any person acting on the minor's behalf;
- 789 (c) the prosecuting attorney;
- 790 (d) the guardian ad litem; or
- 791 (e) any person having custody or supervision over the minor.

792 (4) (a) The court in which a petition is pending may raise the issue of a minor's
793 competency at any time.

794 (b) If raised by the court, counsel for each party shall be permitted to address the issue
795 of competency[-], and the court shall state the basis for the finding that there are reasonable
796 grounds to believe the minor is not competent to proceed.

797 Section 7. Section **78A-6-1302** is amended to read:

798 **78A-6-1302. Procedure -- Standard.**

799 (1) When a written motion is filed pursuant to Section **78A-6-1301** raising the issue of
800 a minor's competency to proceed, or when the court raises the issue of a minor's competency to
801 proceed, the juvenile court in which proceedings are pending shall stay all delinquency
802 proceedings.

803 (2) (a) If a motion for inquiry is opposed by either party, the court shall, prior to
804 granting or denying the motion, hold a limited hearing solely for the purpose of determining the
805 sufficiency of the motion.

806 (b) If the court finds that the allegations of incompetency raise a bona fide doubt as to
807 the minor's competency to proceed, it shall enter an order for an evaluation of the minor's
808 competency to proceed, and shall set a date for a hearing on the issue of the minor's
809 competency.

810 (3) After the granting of a motion, and prior to a full competency hearing, the court
811 may order the Department of Human Services to evaluate the minor and to report to the court

812 concerning the minor's mental condition.

813 (4) (a) The minor shall be evaluated by a [~~mental health examiner~~] forensic evaluator
814 with experience in juvenile forensic evaluations and juvenile brain development, who is not
815 involved in the current treatment of the minor.

816 (b) If it becomes apparent that the minor may be not competent due to an intellectual
817 disability or related condition, the [~~examiner~~] forensic evaluator shall be experienced in
818 intellectual disability or related condition evaluations of minors.

819 (5) The petitioner or other party, as directed by the court, shall provide all information
820 and materials [~~to the examiners relevant to a determination of the minor's competency~~
821 including] relevant to a determination of the minor's competency to the department within
822 seven days of the court's order, including:

- 823 (a) the motion;
- 824 (b) the arrest or incident reports pertaining to the charged offense;
- 825 (c) the minor's known delinquency history information;
- 826 (d) the minor's probation record relevant to competency;
- 827 [~~(d)~~] (e) known prior mental health evaluations and treatments; and
- 828 [~~(e)~~] (f) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the
829 minor's education.

830 (6) (a) The minor's parents or guardian, the prosecutor, defense attorney, and guardian
831 ad litem, shall cooperate, by executing releases of information when necessary, in providing the
832 relevant information and materials to the [~~examiners.~~] forensic evaluator, including:

833 [~~(7) In conducting the evaluation and in the report determining if a minor is competent~~
834 ~~to proceed as defined in Subsection 78A-6-105(38), the examiner shall consider the impact of a~~
835 ~~mental disorder, intellectual disability, or related condition on a minor's present capacity to:]~~

- 836 [~~(a) comprehend and appreciate the charges or allegations;]~~
- 837 [~~(b) disclose to counsel pertinent facts, events, or states of mind;]~~
- 838 [~~(c) comprehend and appreciate the range and nature of possible penalties, if~~

839 applicable, that may be imposed in the proceedings against the minor;]
840 ~~[(d) engage in reasoned choice of legal strategies and options;]~~
841 ~~[(e) understand the adversarial nature of the proceedings;]~~
842 ~~[(f) manifest appropriate courtroom behavior; and]~~
843 ~~[(g) testify relevantly, if applicable.]~~
844 ~~[(8) In addition to the requirements of Subsection (7), the examiner's written report~~
845 ~~shall:]~~
846 ~~[(a) identify the specific matters referred for evaluation;]~~
847 ~~[(b) describe the procedures, techniques, and tests used in the evaluation and the~~
848 ~~purpose or purposes for each;]~~
849 ~~[(c) state the examiner's clinical observations, findings, and opinions on each issue~~
850 ~~referred for evaluation by the court, and indicate specifically those issues, if any, on which the~~
851 ~~examiner could not give an opinion;]~~
852 ~~[(d) state the likelihood that the minor will attain competency and the amount of time~~
853 ~~estimated to achieve it; and]~~
854 ~~[(e) identify the sources of information used by the examiner and present the basis for~~
855 ~~the examiner's clinical findings and opinions.]]~~
856 (i) medical records;
857 (ii) prior mental evaluations; or
858 (iii) records of diagnosis or treatment of substance abuse disorders.
859 (b) The minor shall cooperate, by executing a release of information when necessary,
860 in providing the relevant information and materials to the forensic evaluator regarding records
861 of diagnosis or treatment of a substance abuse disorder.
862 (7) (a) In conducting the evaluation and in the report determining if a minor is
863 competent to proceed, the forensic evaluator shall inform the court of the forensic evaluator's
864 opinion whether the minor has a present ability to consult with counsel with a reasonable
865 degree of rational understanding and whether the minor has a rational as well as factual

866 understanding of the proceedings.

867 (b) In evaluating the minor, the forensic evaluator shall consider the minor's present
868 ability to:

869 (i) understand the charges or allegations against the minor;

870 (ii) communicate facts, events, and states of mind;

871 (iii) understand the range of possible penalties associated with the allegations against
872 the minor;

873 (iv) engage in reasoned choice of legal strategies and options;

874 (v) understand the adversarial nature of the proceedings against the minor;

875 (vi) manifest behavior sufficient to allow the court to proceed;

876 (vii) testify relevantly; and

877 (viii) any other factor determined to be relevant to the forensic evaluator.

878 ~~[(9)]~~ (8) (a) The [examiner] forensic evaluator shall provide an initial report to the
879 court, the prosecuting and defense attorneys, and the guardian ad litem, if applicable, within 30
880 days of the receipt of the court's order. [~~If the examiner~~]

881 (b) If the forensic evaluator informs the court that additional time is needed, the court
882 may grant, taking into consideration the custody status of the minor, up to an additional [30] 15
883 days to provide the report to the court and counsel. [~~The examiner~~]

884 (c) The forensic evaluator must provide the report within [60] 45 days from the receipt
885 of the court's order unless, for good cause shown, the court authorizes an additional period of
886 time to complete the evaluation and provide the report. [~~The report shall inform the court of the~~
887 examiner's opinion concerning the competency and the likelihood of the minor to attain
888 competency within a year. In the alternative, the examiner may inform the court in writing that
889 additional time is needed to complete the report.]

890 (d) The report shall inform the court of the forensic evaluator's opinion concerning the
891 minor's competency.

892 (9) If the forensic evaluator's opinion is that the minor is not competent to proceed, the

893 report shall indicate:

894 (a) the nature of the minor's:

895 (i) mental illness;

896 (ii) intellectual disability or related condition; or

897 (iii) developmental immaturity;

898 (b) the relationship of the minor's mental illness, intellectual disability, related

899 condition, or developmental immaturity to the minor's incompetence;

900 (c) whether there is a substantial likelihood that the minor may attain competency in

901 the foreseeable future;

902 (d) the amount of time estimated for the minor to achieve competency if the minor

903 undergoes competency attainment treatment, including medication;

904 (e) the sources of information used by the forensic evaluator; and

905 (f) the basis for clinical findings and opinions.

906 (10) Any statement made by the minor in the course of any competency evaluation,

907 whether the evaluation is with or without the consent of the minor, any testimony by the

908 [~~examiner~~] forensic evaluator based upon any statement, and any other fruits of the statement;

909 (a) may not be admitted in evidence against the minor in any delinquency or criminal

910 proceeding except on an issue respecting the mental condition on which the minor has

911 introduced evidence[~~]. The evidence~~]; and

912 (b) may be admitted[~~, however,~~] where relevant to a determination of the minor's

913 competency.

914 (11) Before evaluating the minor, [~~examiners~~] a forensic evaluator shall specifically

915 advise the minor [~~and~~], and, if reasonably available, the parents or guardian₂ of the limits of

916 confidentiality as provided under Subsection (10).

917 (12) When the report is received₂, the court shall set a date for a competency hearing

918 that shall be held in not less than five and not more than 15 days, unless the court enlarges the

919 time for good cause.

920 (13) A minor shall be presumed competent unless the court, by a preponderance of the
921 evidence, finds the minor not competent to proceed. The burden of proof is upon the
922 proponent of incompetency to proceed.

923 (14) (a) Following the hearing, the court shall determine by a preponderance of
924 evidence whether the minor is:

925 (i) competent to proceed;

926 (ii) not competent to proceed with a substantial probability that the minor may attain
927 competency in the foreseeable future; or

928 (iii) not competent to proceed without a substantial probability that the minor may
929 attain competency in the foreseeable future.

930 (b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall
931 proceed with the delinquency proceedings.

932 (c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall
933 proceed consistent with Section [78A-6-1303](#).

934 (d) (i) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall
935 terminate the competency proceeding, dismiss the delinquency charges without prejudice, and
936 release the minor from any custody order related to the pending delinquency proceeding, unless
937 the prosecutor informs the court that commitment proceedings [~~pursuant to Title 62A, Chapter~~
938 ~~5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental~~
939 ~~Health Act, will be initiated. These commitment proceedings]~~ will be initiated pursuant to
940 Title 62A:

941 (A) Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an
942 Intellectual Disability; or

943 (B) Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of
944 Substance Abuse and Mental Health.

945 (ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated
946 within seven days after the court's order, unless the court enlarges the time for good cause

947 shown. [~~The minor may be ordered~~]

948 (iii) The court may order the minor to remain in custody until the commitment
949 proceedings have been concluded.

950 (15) If the court finds the minor not competent to proceed, [~~its~~] the court's order shall
951 contain findings addressing each of the factors in Subsection (7)(b).

952 Section 8. Section **78A-6-1303** is amended to read:

953 **78A-6-1303. Disposition on finding of not competent to proceed -- Subsequent**
954 **hearings -- Notice to prosecuting attorneys.**

955 (1) If the court determines that the minor is not competent to proceed, and there is a
956 substantial likelihood that the minor may attain competency in the foreseeable future, the court
957 shall notify the [~~Department of Human Services~~] department of the finding, and allow the
958 department 30 days to develop [~~a six-month~~] an attainment plan for the minor.

959 (2) The attainment plan shall include:

960 (a) any services or treatment the minor has been or is currently receiving that are
961 necessary to attain competency;

962 (b) any additional services or treatment the minor may require to attain competency
963 [~~within the six-month time period~~];

964 (c) an assessment of the parent, custodian, or guardian's ability to access or provide any
965 recommended treatment or services;

966 (d) any special conditions or supervision that may be necessary for the safety of the
967 minor or others during the attainment period; and

968 (e) the likelihood that the minor will attain competency [~~in a six-month period~~] and the
969 amount of time likely required for the minor to attain competency.

970 (3) The department shall provide the attainment plan to the court, prosecutor, defense
971 attorney, and guardian ad litem at least three days prior to the competency disposition hearing.

972 (4) (a) During the attainment period, the minor shall remain in the least restrictive
973 appropriate setting.

974 ~~[(a)]~~ (b) A finding of not competent to proceed does not grant authority for a court to
975 place a minor in the custody of a division of the department ~~[or any of its divisions]~~, or create
976 eligibility for services from the Division of Services for People With Disabilities.

977 ~~[(b)]~~ (c) If the court orders the minor to be held in detention ~~[or placed outside of the~~
978 ~~home of the parent or guardian]~~ during the attainment period, the court shall make the
979 following findings on the record:

980 (i) the placement is the least restrictive appropriate setting;

981 (ii) the placement is in the best interest of the minor;

982 (iii) the minor will have access to the services and treatment required by the attainment
983 plan in the placement; and

984 (iv) the placement is necessary for the safety of the minor or others.

985 ~~[(5) If the minor is held in detention pending placement in a less restrictive setting, the~~
986 ~~department shall locate and transfer the minor to the alternative placement within 14 days.]~~

987 ~~[(6) The court shall review the case at least once every three months to determine~~
988 ~~whether the placement is still the least restrictive appropriate placement.]~~

989 (d) A court shall terminate an order of detention related to the pending delinquency
990 proceeding for a minor who is not competent to proceed in that matter if:

991 (i) the most severe allegation against the minor if committed by an adult is a class B
992 misdemeanor;

993 (ii) more than 60 days have passed after the day on which the juvenile court
994 adjudicated the minor not competent to proceed; and

995 (iii) the minor has not attained competency.

996 ~~[(7)]~~ (5) (a) At any time that the minor becomes competent to proceed during the
997 attainment period, ~~[the executive director of the Department of Human Services, or its~~
998 ~~designee,]~~ the department shall notify the court, prosecutor, defense attorney, and guardian ad
999 litem.

1000 (b) The court shall hold a hearing with 15 business days of notice from the ~~[executive~~

1001 ~~director]~~ department described in Subsection (5)(a).

1002 ~~[(8)] (6) (a)~~ If at any time during the attainment period the court finds that there is not a
1003 substantial probability that the minor will attain competency in the foreseeable future, the court
1004 shall terminate the competency proceeding, dismiss the delinquency charges without prejudice,
1005 and release the minor from any custody order related to the pending delinquency proceeding,
1006 unless the prosecutor or any other individual informs the court that commitment proceedings
1007 ~~[pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter~~
1008 ~~15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings~~
1009 ~~shall be initiated]~~ will be initiated pursuant to Title 62A:

1010 (i) Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an
1011 Intellectual Disability; or

1012 (ii) Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance
1013 Abuse and Mental Health.

1014 (b) The prosecutor shall initiate the proceedings described in Subsection (6)(a) within
1015 seven days after the court's order, unless the court enlarges the time for good cause shown.
1016 ~~[The minor may be ordered to remain in custody until the commitment proceedings have been~~
1017 ~~concluded.]~~

1018 ~~[(9)] (7)~~ During the attainment period, the court may order a hearing or rehearing at
1019 anytime on its own motion or upon recommendation of any interested party or the ~~[executive~~
1020 ~~director of the Department of Human Services]~~ department.

1021 ~~[(10)] (8) (a)~~ ~~[At the conclusion of the attainment period]~~ Within three months of the
1022 court's approval of the attainment plan, the department shall provide a report on the minor's
1023 progress towards competence.

1024 (b) The report described in Subsection (8)(a) shall address the minor's:

1025 ~~[(a)] (i)~~ (i) compliance with the attainment plan;

1026 ~~[(b)] (ii)~~ (ii) progress towards competency based on the issues identified in the original
1027 competency evaluation; and

1028 ~~[(e)]~~ (iii) current mental ~~[disorder]~~ illness, intellectual disability~~;~~ or related condition,
1029 or developmental immaturity, and need for treatment, if any~~;~~, and ~~[(d)]~~ whether ~~[the minor~~
1030 ~~has attained competency, or the]~~ there is substantial likelihood of the minor attaining
1031 competency ~~[and the amount of time necessary to attain it]~~ within six months.

1032 ~~[(11)]~~ The court on its own motion, or upon motion by either party or by the executive
1033 director, may order an updated juvenile competency evaluation to examine the minor and
1034 advise the court on the minor's current competency status and progress toward competency
1035 restoration.]

1036 ~~[(12)]~~ (9) (a) Within 30 days of receipt of the report, the court shall hold a hearing to
1037 determine the minor's current status.

1038 (b) At the hearing, the burden of proving the minor is competent is on the proponent of
1039 competency.

1040 (c) The court shall determine by a preponderance of the evidence whether the minor is
1041 competent to proceed.

1042 ~~[(13)]~~ (10) If the minor has not attained competency after the initial ~~[six]~~ three month
1043 attainment period but is showing reasonable progress towards attainment of competency, the
1044 court may extend the attainment period up to an additional ~~[six]~~ three months.

1045 (11) The department shall provide an updated juvenile competency evaluation at the
1046 conclusion of the six month attainment period to advise the court on the minor's current
1047 competency status.

1048 ~~[(14)]~~ (12) If the minor does not attain competency within ~~[one year]~~ six months after
1049 the court initially finds the minor not competent to proceed, the court shall terminate the
1050 competency proceedings and dismiss the delinquency charges without prejudice~~[-]~~, unless good
1051 cause is shown that there is a substantial likelihood the minor will attain competency within
1052 one year from the initial finding of not competent to proceed.

1053 (13) In the event a minor has an unauthorized leave lasting more than 24 hours, the
1054 attainment period shall toll until the minor returns.

1055