

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

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: David L. Thomas

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with S.B. 7 by providing technical amendments.

Utah Code Sections Affected:

AMENDS:

- 58-37-6**, as last amended by Chapter 248, Laws of Utah 2005
- 62A-4a-101**, as last amended by Chapter 95, Laws of Utah 2005
- 62A-4a-105**, as last amended by Chapter 81, Laws of Utah 2005

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

58 78-3a-306, as last amended by Chapters 131 and 267, Laws of Utah 2003
59 78-3a-307, as last amended by Chapter 356, Laws of Utah 2004
60 78-3a-309, as last amended by Chapter 318, Laws of Utah 1996
61 78-3a-313.5, as last amended by Chapter 286, Laws of Utah 2005
62 78-3a-316.1, as enacted by Chapter 329, Laws of Utah 1997
63 78-3a-321, as enacted by Chapter 189, Laws of Utah 2004
64 78-3a-350, as last amended by Chapter 168, Laws of Utah 2002
65 78-3a-407, as last amended by Chapter 286, Laws of Utah 2005
66 78-3a-415, as last amended by Chapter 76, Laws of Utah 2004
67 78-3a-502, as last amended by Chapter 212, Laws of Utah 2002
68 78-3a-503, as last amended by Chapter 90, Laws of Utah 2004
69 78-3a-602, as last amended by Chapter 171, Laws of Utah 2003
70 78-3a-903, as last amended by Chapter 274, Laws of Utah 1998
71 78-3a-904, as last amended by Chapter 171, Laws of Utah 2003
72 78-3a-905, as last amended by Chapter 171, Laws of Utah 2003
73 78-3a-906, as last amended by Chapter 176, Laws of Utah 2003
74 78-3a-908, as enacted by Chapter 1, Laws of Utah 1996
75 78-3a-909, as last amended by Chapter 93, Laws of Utah 2004
76 78-3a-911, as last amended by Chapter 94, Laws of Utah 2003
77 78-3a-912, as last amended by Chapters 102, 286 and 304, Laws of Utah 2005
78 78-3a-913, as last amended by Chapters 93 and 356, Laws of Utah 2004

79
80 *Be it enacted by the Legislature of the state of Utah:*

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

82 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
83 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
84 **required -- Prescriptions.**

85 (1) (a) The division may adopt rules relating to the licensing and control of the

86 manufacture, distribution, production, prescription, administration, dispensing, conducting of
87 research with, and performing of laboratory analysis upon controlled substances within this
88 state.

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

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

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

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

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

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

113 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or

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114 warehouseman, who possesses any controlled substance in the usual course of his business or
115 employment; and

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

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

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

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

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

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

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

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

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

139 (v) established effective controls against diversion; and

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

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

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

(ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this act in another capacity.

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

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

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

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

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

(4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed

on probation, or revoked by the division upon finding that the applicant or licensee has:

- (i) materially falsified any application filed or required pursuant to this chapter;
- (ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;
- (iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;
- (iv) had a federal license denied, suspended, or revoked by competent federal authority and is no longer authorized to engage in the manufacturing, distribution, or dispensing of controlled substances;
- (v) had his license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;
- (vi) violated any division rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;
- (vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or
- (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:
 - (A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of his professional practice; or
 - (B) improve performance in any form of human exercise, sport, or game.
- (b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.
- (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.
- (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and

198 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
199 except where the division is designated by law to perform those functions, or, when not
200 designated by law, is designated by the executive director of the Department of Commerce to
201 conduct the proceedings.

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

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

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

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

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

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

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

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

224 (ii) A person using small quantities or solutions or other preparations of those drugs for
225 local application has complied with this Subsection (5)(b) if he keeps a record of the quantity,

226 character, and potency of those solutions or preparations purchased or prepared by him, and of
227 the dates when purchased or prepared.

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

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

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

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

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

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

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

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

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

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

- 254 (i) the name, address, and registry number of the prescriber;
255 (ii) the name, address, and age of the person to whom or for whom the prescription is
256 issued;
257 (iii) the date of issuance of the prescription; and
258 (iv) the name, quantity, and specific directions for use by the ultimate user of the
259 controlled substance.
- 260 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
261 controlled substance.
- 262 (f) Except when administered directly to an ultimate user by a licensed practitioner,
263 controlled substances are subject to the following restrictions:
- 264 (i) (A) A prescription for a Schedule II substance may not be refilled.
265 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a
266 one-month's supply, as directed on the daily dosage rate of the prescriptions.
- 267 (ii) A Schedule III or IV controlled substance may be filled only within six months of
268 issuance, and may not be refilled more than six months after the date of its original issuance or
269 be refilled more than five times after the date of the prescription unless renewed by the
270 practitioner.
- 271 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's
272 prescription directs, but they may not be refilled one year after the date the prescription was
273 issued unless renewed by the practitioner.
- 274 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not
275 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
276 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
277 specified separately from the date of issue.
- 278 (v) A practitioner may issue more than one prescription at the same time for the same
279 Schedule II controlled substance, but only under the following conditions:
- 280 (A) no more than three prescriptions for the same Schedule II controlled substance may
281 be issued at the same time;

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

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

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

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

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

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

298 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
299 practitioner designates the quantity ordered;

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

303 (iv) filled and dispensed by a pharmacist practicing his profession within the physical
304 structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital
305 and the amount taken from the supply is administered directly to the patient authorized to
306 receive it.

307 (h) A practitioner licensed under this chapter may not prescribe, administer, or
308 dispense a controlled substance to a [~~minor~~] child, without first obtaining the consent required
309 in Section 78-14-5 of a parent, guardian, or person standing in loco parentis of the [~~minor~~]

310 child except in cases of an emergency. For purposes of this Subsection (7)(h), [~~"minor"~~]
311 "child" has the same meaning as defined in Section 78-3a-103, and "emergency" means any
312 physical condition requiring the administration of a controlled substance for immediate relief
313 of pain or suffering.

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

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

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

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

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

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

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

334 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
335 violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a penalty not to
336 exceed \$5,000. The division shall determine the procedure for adjudication of any violations in
337 accordance with Sections 58-1-106 and 58-1-108.

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

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

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

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

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

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

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

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

62A-4a-101. Definitions.

As used in this chapter:

(1) "Abuse" means:

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

(b) negligent treatment;

(c) sexual exploitation; or

(d) any sexual abuse.

(2) "Adoption services" means:

(a) placing children for adoption;

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

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

(d) conducting adoption studies;

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

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

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

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

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

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

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

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

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

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

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

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

(i) day-care center;

(ii) family group home; or

(iii) family child care home.

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

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

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

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

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

394 (ii) treatment services for domestic violence perpetrators.

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

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

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

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

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

406 (a) a child; or

407 (b) a person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the shelter hearing; or
- (b) the child's return home.

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

- (a) in response to evidence of neglect, abuse, or dependency of a minor child;
- (b) to a cohabitant who is neglecting or abusing a child, in order to:
 - (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and
 - (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- (c) in cases where the child's welfare is endangered:
 - (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

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

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

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

455 (B) placement in substitute care; and

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

457 (21) "Services to unwed parents" means social, educational, and medical services
458 arranged for or provided to unwed parents to help them plan for themselves and the unborn
459 child.

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

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

464 (24) "State" means:

465 (a) a state of the United States;

466 (b) the District of Columbia;

467 (c) the Commonwealth of Puerto Rico;

468 (d) the Virgin Islands;

469 (e) Guam;

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

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

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

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

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

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

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

484 (30) "Substitute care" means:

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

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

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

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

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

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

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

503 (35) "Unsupported" means a finding at the completion of an investigation that there is
504 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a
505 finding of unsupported means also that the division worker did not conclude that the allegation

506 was without merit.

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

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

511 **62A-4a-105. Division responsibilities.**

512 The division shall:

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

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

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

520 (4) provide for the compilation of relevant information, statistics, and reports on child
521 and family service matters in the state;

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

525 (6) promote and enforce state and federal laws enacted for the protection of abused,
526 neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in
527 accordance with the requirements of this chapter, unless administration is expressly vested in
528 another division or department of the state. In carrying out the provisions of this Subsection

529 (6), the division shall cooperate with the juvenile courts, the Division of Juvenile Justice
530 Services, and with all public and private licensed child welfare agencies and institutions to
531 develop and administer a broad range of services and supports. The division shall take the
532 initiative in all matters involving the protection of abused or neglected children if adequate
533 provisions have not been made or are not likely to be made, and shall make expenditures

534 necessary for the care and protection of those children, within the division's budget;
535 (7) provide substitute care for dependent, abused, neglected, and delinquent children,
536 establish standards for substitute care facilities, and approve those facilities;
537 (8) provide adoption assistance to persons adopting children with special needs under
538 Part 9, Adoption Assistance, of this chapter. The financial support provided under this
539 Subsection (8) may not exceed the amounts the division would provide for the child as a legal
540 ward of the state;
541 (9) cooperate with the Employment Development Division in the Department of
542 Workforce Services in meeting social and economic needs of individuals eligible for public
543 assistance;
544 (10) conduct court-ordered home evaluations for the district and juvenile courts with
545 regard to child custody issues. The court shall order either or both parties to reimburse the
546 division for the cost of that evaluation, in accordance with the community rate for that service
547 or with the department's fee schedule rate;
548 (11) provide noncustodial and in-home preventive services, designed to prevent family
549 breakup, family preservation services, and reunification services to families whose children are
550 in substitute care in accordance with the requirements of this chapter and Title 78, Chapter 3a,
551 Juvenile Court Act of 1996;
552 (12) provide protective supervision of a family, upon court order, in an effort to
553 eliminate abuse or neglect of a child in that family;
554 (13) establish programs and provide services to minors who have been placed in the
555 custody of the division for reasons other than abuse or neglect, pursuant to Section
556 62A-4a-250;
557 (14) provide shelter care in accordance with the requirements of this chapter and Title
558 78, Chapter 3a, Juvenile Court Act of 1996;
559 (15) provide social studies and reports for the juvenile court in accordance with Section
560 78-3a-505;
561 (16) arrange for and provide training for staff and providers involved in the

administration and delivery of services offered by the division in accordance with this chapter;

(17) provide domestic violence services in accordance with the requirements of federal law, and establish standards for all direct or contract providers of domestic violence services.

Within appropriations from the Legislature, the division shall provide or contract for a variety of domestic violence services and treatment methods;

(18) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who have a permanency goal of adoption, or for whom a final plan of termination of parental rights has been approved, pursuant to Section 78-3a-312, and promote adoption of those children;

(19) provide protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings;

(20) refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for court-ordered drug screening test. The court shall order the individual to pay all costs of the tests unless:

(a) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(b) the individual is a participant in a drug court; or

(c) the court finds that the individual is impecunious;

(21) have authority to contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

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

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

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

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

grant, devise, or donation for the best interest of the division.

(2) The division may:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

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

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse; or

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

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

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

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

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

(b) a person's conduct that:

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

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

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

646 state or other party to the proceeding shows, by clear and convincing evidence, that the health
647 care decision is not reasonable and informed.

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

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

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

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

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

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

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

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

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

- 670 (i) the department;
- 671 (ii) a human services licensee;
- 672 (iii) a child care provider or program; and
- 673 (iv) a covered health care facility;

674 (f) the alleged perpetrator has the rights described in Subsection (6); and

675 (g) failure to take either action described in Subsection (6)(a) within one year after
676 service of the notice will result in the action described in Subsection (6)(b).

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

679 (i) file a written request asking the division to review the findings under Subsection
680 (2);

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

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

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

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

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

698 (7) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall make
699 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
700 78-3a-320(1) and (2).

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

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

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

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

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

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

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

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

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

(c) adoptive families.

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

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

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

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

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

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

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

(b) there exist exigent circumstances.

(2) A child welfare worker within the division may take action under Subsection (1)

730 accompanied by a peace officer, or without a peace officer when a peace officer is not
731 reasonably available.

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

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

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

745 (i) a shelter facility; or

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

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

748 **62A-4a-202.2. Notice to parents upon removal of child -- Locating noncustodial**
749 **parent -- Written statement of procedural rights and preliminary proceedings.**

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

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

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

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

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

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

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

(a) the conditions under which a [minor] child may be released, hearings that may be required, and the means by which the parent may access further specific information about a [minor's] child's case and conditions of protective and temporary custody; and

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

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

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

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

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

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

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

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

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

792 (i) the same child;

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

794 (iii) the alleged perpetrator;

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

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

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

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

801 (d) an interview with the person who reported the abuse, unless the report was made
802 anonymously;

803 (e) where possible and appropriate, interviews with other third parties who have had
804 direct contact with the child, including:

805 (i) school personnel; and

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

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

808 (i) the division has reasonable cause to believe that the reported abuse was committed
809 by a person who:

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

811 (B) does not:

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

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

- 814 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
815 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
816 failure to meet the child's medical needs, a medical examination, obtained no later than 24
817 hours after the child is placed in protective custody.
- 818 (3) The division may rely on a written report of a prior interview rather than
819 conducting an additional interview, if:
- 820 (a) law enforcement:
- 821 (i) previously conducted a timely and thorough investigation regarding the alleged
822 abuse, neglect, or dependency; and
- 823 (ii) produced a written report;
- 824 (b) the investigation described in Subsection (3)(a)(i) included one or more of the
825 interviews required by Subsection (2); and
- 826 (c) the division finds that an additional interview is not in the best interest of the child.
- 827 (4) (a) The division's determination of whether a report is supported or unsupported
828 may be based on the child's statements alone.
- 829 (b) Inability to identify or locate the perpetrator may not be used by the division as a
830 basis for:
- 831 (i) determining that a report is unsupported; or
- 832 (ii) closing the case.
- 833 (c) The division may not determine a case to be unsupported or identify a case as
834 unsupported solely because the perpetrator was an out-of-home perpetrator.
- 835 (d) Decisions regarding whether a report is supported, unsupported, or without merit
836 shall be based on the facts of the case at the time the report was made.
- 837 (5) The division should maintain protective custody of the child if it finds that one or
838 more of the following conditions exist:
- 839 (a) the [minor] child does not have a natural parent, guardian, or responsible relative
840 who is able and willing to provide safe and appropriate care for the [minor] child;
- 841 (b) (i) shelter of the [minor] child is a matter of necessity for the protection of the

842 [minor] child; and

843 (ii) there are no reasonable means by which the [minor] child can be protected in:

844 (A) the [minor's] child's home; or

845 (B) the home of a responsible relative;

846 (c) there is substantial evidence that the parent or guardian is likely to flee the
847 jurisdiction of the court; or

848 (d) the [minor] child has left a previously court ordered placement.

849 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding
850 weekends and holidays, the division shall:

851 (i) convene a child protection team to review the circumstances regarding removal of
852 the child from the child's home or school; and

853 (ii) prepare the testimony and evidence that will be required of the division at the
854 shelter hearing, in accordance with Section 78-3a-306.

855 (b) The child protection team described in Subsection (6)(a)(i) shall include:

856 (i) the caseworker assigned to the case;

857 (ii) the caseworker who made the decision to remove the child;

858 (iii) a representative of the school or school district where the child attends school;

859 (iv) the peace officer who removed the child from the home;

860 (v) a representative of the appropriate Children's Justice Center, if one is established
861 within the county where the child resides;

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

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

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

869 (7) (a) After receipt of a child into protective custody and prior to the adjudication

870 hearing, all investigative interviews with the child that are initiated by the division shall be:

871 (i) audio or video taped; and

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

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

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

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

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

882 (b) contacting local schools;

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

884 (d) checking public assistance records.

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

886 **62A-4a-402. Definitions.**

887 As used in this part:

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

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

893 [~~(3)~~] (2) "Child abuse or neglect" means causing harm or threatened harm to a child's
894 health or welfare.

895 [~~(4)~~] (3) "Harm or threatened harm" means damage or threatened damage to the
896 physical or emotional health and welfare of a child through neglect or abuse, and includes but
897 is not limited to:

898 (a) causing nonaccidental physical or mental injury;

899 (b) incest;

900 (c) sexual abuse;

901 (d) sexual exploitation;

902 (e) molestation; or

903 (f) repeated negligent treatment or maltreatment.

904 [~~(5)~~] (4) "Incest" means having sexual intercourse with a person whom the perpetrator
905 knows to be his or her ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first
906 cousin. The relationships referred to in this subsection include blood relationships of the whole
907 or half blood without regard to legitimacy, and include relationships of parent and child by
908 adoption, and relationships of stepparent and stepchild while the marriage creating the
909 relationship of a stepparent and stepchild exists.

910 [~~(6)~~] (5) "Molestation" means touching the anus or any part of the genitals of a child or
911 otherwise taking indecent liberties with a child, or causing a child to take indecent liberties
912 with the perpetrator or another with the intent to arouse or gratify the sexual desire of any
913 person.

914 [~~(7)~~] (6) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or
915 molestation directed towards a child.

916 [~~(8)~~] (7) "Sexual exploitation of [~~minors~~] a child" means knowingly employing, using,
917 persuading, inducing, enticing, or coercing any [~~minor~~] child to pose in the nude for the
918 purpose of sexual arousal of any person or for profit, or to engage in any sexual or simulated
919 sexual conduct for the purpose of photographing, filming, recording, or displaying in any way
920 the sexual or simulated sexual conduct, and includes displaying, distributing, possessing for the
921 purpose of distribution, or selling material depicting [~~minors~~] a child in the nude or engaging in
922 sexual or simulated sexual conduct.

923 [~~(9)~~] (8) "Subject" or "subject of the report" means any person reported under this part,
924 including, but not limited to, a child, parent, guardian, or other person responsible for a child's
925 care.

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

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

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

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

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

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

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

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

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

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

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

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

(h) a person authorized by a Children's Justice Center, for the purposes described in

Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the

954 division, if the information does not include names and addresses;

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

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

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

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

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

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

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

978 (b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but
979 including this chapter and Title 63, Chapter 2, Government Records Access and Management
980 Act, when the division makes a report or other information in its possession available under
981 Subsection (1)(e) to a subject of the report or a parent of a [minor] child, the division shall

982 remove from the report or other information only the names, addresses, and telephone numbers
983 of individuals or specific information that could:

- 984 (i) identify the referent;
985 (ii) impede a criminal investigation; or
986 (iii) endanger a person's safety.

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

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

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

- 996 (a) may provide this report to the person who is the subject of the report; and
997 (b) may provide this report to a person who is performing a preplacement adoptive
998 evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed
999 child-placing agency or to an attorney seeking to facilitate an adoption.

1000 Section 12. Section **62A-4a-601** is amended to read:

1001 **62A-4a-601. Definitions.**

1002 For purposes of this part:

1003 [~~(1) "Child" means a person under 18 years of age.~~]

1004 [~~(2)~~] (1) "Child placing" means:

1005 (a) receiving, accepting, or providing custody or care for a child, temporarily or
1006 permanently, for the purpose of finding a person to adopt the child; or

1007 (b) placing a child, temporarily or permanently, in a home for adoption or substitute
1008 care.

1009 [~~(3)~~] (2) "Child placing agency" means an individual, agency, firm, corporation,

association, or group children's home that engages in child placing.

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

78-3a-102. Establishment of juvenile court -- Organization and status of court --

Purpose.

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

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

(3) The juvenile court is of equal status with the district courts of the state.

(4) The juvenile court is established as a forum for the resolution of all matters properly brought before it, consistent with applicable constitutional and statutory requirements of due process.

(5) The purpose of the court under this chapter is to:

(a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law;

(b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;

(c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction;

(d) adjudicate matters that relate to minors who are beyond parental or adult control and to establish appropriate authority over these minors by means of placement and control orders;

(e) adjudicate matters that relate to abused, neglected, and dependent ~~[minors]~~ children and to provide care and protection for ~~[these]~~ minors by placement, protection, and custody orders;

(f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and

(g) consistent with the ends of justice, act in the best interests of the minor in all cases

1038 and preserve and strengthen family ties.

1039 Section 14. Section **78-3a-103** is amended to read:

1040 **78-3a-103. Definitions.**

1041 (1) As used in this chapter:

1042 (a) "Abused child" includes a ~~[minor less than 18 years of age]~~ child who:

1043 (i) has suffered or been threatened with nonaccidental physical or mental harm,
1044 negligent treatment, or sexual exploitation; or

1045 (ii) has been the victim of any sexual abuse.

1046 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
1047 alleged in the petition have been proved.

1048 (c) "Adult" means a person 18 years of age or over, except that ~~[persons]~~ a person 18
1049 years or over under the continuing jurisdiction of the juvenile court pursuant to Section
1050 78-3a-121 shall be referred to as ~~[minors]~~ a minor.

1051 (d) "Board" means the Board of Juvenile Court Judges.

1052 (e) "Child" means a person under 18 years of age.

1053 ~~[(e)]~~ (f) "Child placement agency" means:

1054 (i) a private agency licensed to receive ~~[minors]~~ a child for placement or adoption
1055 under this code; or

1056 (ii) a private agency ~~[receiving minors]~~ that receives a child for placement or adoption
1057 in another state, which agency is licensed or approved where such license or approval is
1058 required by law.

1059 ~~[(f)]~~ (g) "Commit" means, unless specified otherwise:

1060 (i) with respect to a child, to transfer legal custody[-]; and

1061 (ii) with respect to a minor who is at least 18 years of age, to transfer custody.

1062 ~~[(g)]~~ (h) "Court" means the juvenile court.

1063 ~~[(h)]~~ (i) "Dependent child" includes a [minor] child who is homeless or without proper
1064 care through no fault of the [minor's] child's parent, guardian, or custodian.

1065 ~~[(i)]~~ (j) "Deprivation of custody" means transfer of legal custody by the court from a

parent or the parents or a previous legal custodian to another person, agency, or institution.

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

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

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

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

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

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

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

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

~~(i) has received;~~

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

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

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

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

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

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

(iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary

1094 medical care;

1095 (iv) the right to determine where and with whom the minor shall live; and

1096 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1097 ~~[(q)(i)]~~ (r) "Minor" means ~~[a person under the age of 18 years.];~~

1098 ~~[(ii) "Minor" includes the term "child" as used in other parts of this chapter.]~~

1099 (i) a child; or

1100 (ii) a person who is:

1101 (A) at least 18 years of age and younger than 21 years of age; and

1102 (B) under the jurisdiction of the juvenile court.

1103 ~~[(r)]~~ (s) "Natural parent" means a minor's biological or adoptive parent, and includes

1104 the minor's noncustodial parent.

1105 ~~[(s)]~~ (t) (i) "Neglected child" means a ~~[minor]~~ child:

1106 (A) whose parent, guardian, or custodian has abandoned the ~~[minor]~~ child, except as

1107 provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

1108 (B) whose parent, guardian, or custodian has subjected the ~~[minor]~~ child to

1109 mistreatment or abuse;

1110 (C) who lacks proper parental care by reason of the fault or habits of the parent,

1111 guardian, or custodian;

1112 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary

1113 subsistence, education, or medical care, including surgery or psychiatric services when

1114 required, or any other care necessary for health, safety, morals, or well-being; or

1115 (E) who is at risk of being a neglected or abused child as defined in this chapter

1116 because another ~~[minor]~~ child in the same home is a neglected or abused child as defined in

1117 this chapter.

1118 (ii) The aspect of neglect related to education, described in Subsection ~~[(1)(s)(i)(D)]~~

1119 ~~(1)(t)(i)(D)~~, means that, after receiving notice that a ~~[minor]~~ child has been frequently absent

1120 from school without good cause, or that the ~~[minor]~~ child has failed to cooperate with school

1121 authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to

1122 ensure that the [minor] child receives an appropriate education.

1123 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that
1124 reason, does not provide specified medical treatment for a [minor] child, is not guilty of
1125 neglect.

1126 (iv) Notwithstanding Subsection [~~(t)~~(s)(i)] (1)(t)(i), a health care decision made for a
1127 child by the child's parent or guardian does not constitute neglect unless the state or other party
1128 to the proceeding shows, by clear and convincing evidence, that the health care decision is not
1129 reasonable and informed.

1130 (v) Nothing in Subsection [~~(t)~~(s)(iv)] (1)(t)(iv) may prohibit a parent or guardian from
1131 exercising the right to obtain a second health care opinion.

1132 [(t)] (u) "Nonjudicial adjustment" means closure of the case by the assigned probation
1133 officer without judicial determination upon the consent in writing of:

1134 (i) the assigned probation officer; and

1135 (ii) (A) the minor; or

1136 (B) the minor[, the] and the minor's parent, legal guardian, or custodian[, and the
B7 assigned probation officer].

1138 [(t)] (v) "Probation" means a legal status created by court order following an
1139 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
1140 minor is permitted to remain in the minor's home under prescribed conditions and under
1141 supervision by the probation department or other agency designated by the court, subject to
1142 return to the court for violation of any of the conditions prescribed.

1143 [(v)] (w) "Protective supervision" means a legal status created by court order following
1144 an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted
1145 to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
1146 dependency is provided by the probation department or other agency designated by the court.

1147 [(w)] (x) (i) "Residual parental rights and duties" means those rights and duties
1148 remaining with the parent after legal custody or guardianship, or both, have been vested in
1149 another person or agency, including:

- 1150 (A) the responsibility for support;
- 1151 (B) the right to consent to adoption;
- 1152 (C) the right to determine the child's religious affiliation; and
- 1153 (D) the right to reasonable parent-time unless restricted by the court.
- 1154 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
- 1155 the right to consent to:
- 1156 (A) marriage;
- 1157 (B) enlistment; and
- 1158 (C) major medical, surgical, or psychiatric treatment.
- 1159 ~~[(x)]~~ (y) "Secure facility" means any facility operated by or under contract with the
- 1160 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
- 1161 youth offenders committed to the division for custody and rehabilitation.
- 1162 ~~[(y)]~~ (z) "Shelter" means the temporary care of ~~[minors in]~~ a child in a physically
- 1163 unrestricted ~~[facilities]~~ facility pending court disposition or transfer to another jurisdiction.
- 1164 ~~[(z)]~~ (aa) "State supervision" means a disposition that provides a more intensive level
- 1165 of intervention than standard probation but is less intensive or restrictive than a community
- 1166 placement with the Division of Juvenile Justice Services.
- 1167 ~~[(aa)]~~ (bb) "Substantiated" has the same meaning as defined in Subsection
- 1168 62A-4a-101(29).
- 1169 ~~[(bb)]~~ (cc) "Supported" has the same meaning as defined in Subsection
- 1170 62A-4a-101(31).
- 1171 ~~[(cc)]~~ (dd) "Termination of parental rights" means the permanent elimination of all
- 1172 parental rights and duties, including residual parental rights and duties, by court order.
- 1173 ~~[(dd)]~~ (ee) "Therapist" means a person employed by a state division or agency for the
- 1174 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
- 1175 other person licensed or approved by the state for the purpose of conducting psychological
- 1176 treatment and counseling.
- 1177 ~~[(ee)]~~ (ff) "Unsubstantiated" has the same meaning as defined in Subsection

1178 62A-4a-101(34).

1179 ~~[(ff)]~~ (gg) "Without merit" has the same meaning as defined in Subsection

1180 62A-4a-101(36).

1181 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
1182 Division of Child and Family Services:

1183 (a) "Custody" means the custody of a minor in the Division of Child and Family
1184 Services as of the date of disposition.

1185 (b) "Protective custody" means the shelter of a ~~[minor]~~ child by the Division of Child
1186 and Family Services from the time the ~~[minor]~~ child is removed from home until the earlier of:

1187 (i) the shelter hearing; or

1188 (ii) the ~~[minor's]~~ child's return home.

1189 (c) "Temporary custody" means the custody of a ~~[minor]~~ child in the Division of Child
1190 and Family Services from the date of the shelter hearing until disposition.

1191 Section 15. Section **78-3a-104** is amended to read:

1192 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

1193 (1) Except as otherwise provided by law, the juvenile court has exclusive original
1194 jurisdiction in proceedings concerning:

1195 (a) a ~~[minor]~~ child who has violated any federal, state, or local law or municipal
1196 ordinance or a person younger than 21 years of age who has violated any law or ordinance
1197 before becoming 18 years of age, regardless of where the violation occurred, excluding traffic
1198 laws and boating and ordinances;

1199 (b) a person 21 years of age or older who has failed or refused to comply with an order
1200 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's
1201 21st birthday; however, the continuing jurisdiction is limited to causing compliance with
1202 existing orders;

1203 (c) a ~~[minor]~~ child who is an abused child, neglected child, or dependent child, as those
1204 terms are defined in Section 78-3a-103;

1205 (d) a protective order for a ~~[minor]~~ child pursuant to the provisions of Title 78, Chapter

1206 3h, Child Protective Orders, which the juvenile court may transfer to the district court if the
1207 juvenile court has entered an ex parte protective order and finds that:

1208 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step
1209 parent of the child who is the object of the petition;

1210 (ii) the district court has a petition pending or an order related to custody or parent-time
1211 entered under Title 30, Chapter 3, Divorce, Title 30, Chapter 6, Cohabitant Abuse Act, or Title
1212 78, Chapter [45a] 45g, Uniform Parentage Act [~~on Paternity~~], in which the petitioner and the
1213 respondent are parties; and

1214 (iii) the best interests of the child will be better served in the district court;

1215 (e) appointment of a guardian of the person or other guardian of a minor who comes
1216 within the court's jurisdiction under other provisions of this section;

1217 (f) the termination of the legal parent-child relationship in accordance with Part 4,
1218 Termination of Parental Rights Act, including termination of residual parental rights and
1219 duties;

1220 (g) the treatment or commitment of a mentally retarded minor;

1221 (h) a minor who is a habitual truant from school;

1222 (i) the judicial consent to the marriage of a [~~minor~~] child under age 16 upon a
1223 determination of voluntariness or where otherwise required by law, employment, or enlistment
1224 of a [~~minor~~] child when consent is required by law;

1225 (j) any parent or parents of a [~~minor~~] child committed to a secure youth corrections
1226 facility, to order, at the discretion of the court and on the recommendation of a secure [~~youth~~
1227 ~~corrections~~] facility, the parent or parents of a [~~minor~~] child committed to a secure [~~youth~~
1228 ~~corrections~~] facility for a custodial term, to undergo group rehabilitation therapy under the
1229 direction of a secure [~~youth-corrections~~] facility therapist, who has supervision of that parent's
1230 or parents' [~~minor~~] child, or any other therapist the court may direct, for a period directed by the
1231 court as recommended by a secure [~~youth-corrections~~] facility;

1232 (k) a minor under Title 55, Chapter 12, Interstate Compact [~~on~~] for Juveniles;

1233 (l) the treatment or commitment of a mentally ill child. The court may commit a child

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

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

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

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

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

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

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

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

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

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

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

(4) The juvenile court has jurisdiction over an ungovernable or runaway [minor] child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that [minor] child where, despite

1262 earnest and persistent efforts by the division or agency, the [minor] child has demonstrated that
1263 ~~[he]~~ the child:

1264 (a) is beyond the control of [his] the child's parent, guardian, lawful custodian, or
1265 school authorities to the extent that [his] the child's behavior or condition endangers [his] the
1266 child's own welfare or the welfare of others; or

1267 (b) has run away from home.

1268 (5) This section does not restrict the right of access to the juvenile court by private
1269 agencies or other persons.

1270 (6) The juvenile court has jurisdiction of all magistrate functions relative to cases
1271 arising under Section 78-3a-602.

1272 (7) The juvenile court has jurisdiction to make a finding of substantiated,
1273 unsubstantiated, or without merit, in accordance with Section 78-3a-320.

1274 Section 16. Section **78-3a-105** is amended to read:

1275 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

1276 (1) The district court or other court has concurrent jurisdiction with the juvenile court
1277 as follows:

1278 (a) when a person who is 18 years of age or older and who is under the continuing
1279 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local
1280 law or municipal ordinance; and

1281 (b) in establishing paternity and ordering testing for the purposes of establishing
1282 paternity, in accordance with Title 78, Chapter ~~[45a]~~ 45g, Uniform Parentage Act ~~[on~~
1283 Paternity], with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency
1284 Proceedings, or Part 4, Termination of Parental Rights Act.

1285 (2) The juvenile court has jurisdiction over petitions to modify a minor's birth
1286 certificate if the court otherwise has jurisdiction over the minor.

1287 (3) This section does not deprive the district court of jurisdiction to appoint a guardian
1288 for a [minor] child, or to determine the support, custody, and parent-time of a [minor] child
1289 upon writ of habeas corpus or when the question of support, custody, and parent-time is

1290 incidental to the determination of a cause in the district court.

1291 (4) (a) Where a support, custody, or parent-time award has been made by a district
1292 court in a divorce action or other proceeding, and the jurisdiction of the district court in the
1293 case is continuing, the juvenile court may acquire jurisdiction in a case involving the same
1294 [minor] child if the [minor] child is dependent, abused, neglected, or otherwise comes within
1295 the jurisdiction of the juvenile court under Section 78-3a-104.

1296 (b) The juvenile court may, by order, change the custody, subject to Subsection
1297 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as
1298 necessary to implement the order of the juvenile court for the safety and welfare of the [minor]
1299 child. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court
1300 continues.

1301 (c) When a copy of the findings and order of the juvenile court has been filed with the
1302 district court, the findings and order of the juvenile court are binding on the parties to the
1303 divorce action as though entered in the district court.

1304 (5) The juvenile court has jurisdiction over questions of custody, support, and
1305 parent-time, of a minor who comes within the court's jurisdiction under this section or Section
1306 78-3a-104.

1307 Section 17. Section **78-3a-106** is amended to read:

1308 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

1309 (1) The court has authority to issue search warrants, subpoenas, or investigative
1310 subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for
1311 the same purposes, in the same manner and pursuant to the same procedures set forth in the
1312 code of criminal procedure for the issuance of search warrants, subpoenas, or investigative
1313 subpoenas in other trial courts in the state.

1314 (2) (a) The court may issue a warrant authorizing a child protective services worker or
1315 peace officer to search for a child and take the child into protective custody if it appears to the
1316 court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace
1317 officer or any other person, and upon the examination of other witnesses, if required by the

1598 division warrant pursuant to Section 62A-7-504.

1599 (d) If a minor taken to detention does not qualify for admission under the guidelines
1600 established by the division under ~~[Sections]~~ Section 62A-7-104 ~~[and 62A-7-205]~~, detention
1601 staff shall arrange appropriate placement.

1602 (e) If a minor is taken into custody and admitted to a secure detention or shelter
1603 facility, facility staff shall:

1604 (i) immediately notify the minor's parents, guardian, or custodian; and ~~[shall]~~

1605 (ii) promptly notify the court of the placement.

1606 (f) If the minor is admitted to a secure detention or shelter facility outside the county of
1607 ~~[his]~~ the minor's residence and it is determined in the hearing held under Subsection
1608 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of
1609 the county of the minor's residence to transport the minor to a detention or shelter facility as
1610 provided in this section.

1611 (6) A person may be taken into custody by a peace officer without a court order if the
1612 person is in apparent violation of a protective order or if there is reason to believe that a
1613 ~~[minor]~~ child is being abused by the person and any of the situations outlined in Section 77-7-2
1614 exist.

1615 Section 22. Section **78-3a-114** is amended to read:

1616 **78-3a-114. Placement of minor in detention or shelter facility -- Grounds --**
1617 **Detention hearings -- Period of detention -- Notice -- Confinement for criminal**
1618 **proceedings -- Bail laws inapplicable, exception.**

1619 (1) (a) A minor may not be placed or kept in a secure detention facility pending court
1620 proceedings unless it is unsafe for the public to leave the minor with ~~[his]~~ the minor's parents,
1621 guardian, or custodian and the minor is detainable based on guidelines promulgated by the
1622 Division of Juvenile Justice Services.

1623 (b) A ~~[minor]~~ child who must be taken from ~~[his]~~ the child's home but who does not
1624 require physical restriction shall be given temporary care in a shelter facility and may not be
1625 placed in a detention facility.

1346 (a) the name, age, and residence of the minor;

1347 (b) the names and residences of the minor's parents;

1348 (c) the name and residence of the guardian, if there is one;

1349 (d) the name and address of the nearest known relative, if no parent or guardian of a

1350 minor is known; and

1351 (e) the name and residence of the person having physical custody of the minor. If any
1352 of the facts required are not known by the petitioner, the petition shall so state.

1353 (5) At any time after a petition is filed, the court may make an order providing for
1354 temporary custody of the minor.

1355 (6) The court may order that a minor concerning whom a petition has been filed shall
1356 be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a
1357 hospital or other facility for examination. After notice and a hearing set for the specific
1358 purpose, the court may order a similar examination of a parent or guardian whose ability to care
1359 for a minor is at issue, if the court finds from the evidence presented at the hearing that the
1360 parent's or guardian's physical, mental, or emotional condition may be a factor in causing the
1361 neglect, dependency, or delinquency of the minor.

1362 (7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted
1363 pursuant to Subsection (6) are not privileged communications, but are exempt from the general
1364 rule of privilege.

1365 (8) The court may dismiss a petition at any stage of the proceedings.

1366 (9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is
1367 referred to the court under Subsection 78-3a-105(5):

1368 (a) the court may require the parties to participate in mediation in accordance with Title
1369 78, Chapter 31b, Alternative Dispute Resolution; and

1370 (b) the Division of Child and Family Services or a party to the petition may request and
1371 the court may order the parties to participate in a family unity conference under the authority of
1372 the Division of Child and Family Services in accordance with Subsection (10).

1373 (10) (a) A family unity conference may be ordered by the court for any of the following

purposes:

- (i) discussing and reviewing the case history;
- (ii) designing a service plan for the child and family, including concurrent planning;
- (iii) discussing a visitation schedule and rules for visitation;
- (iv) identifying possible kinship placements under the requirements of Subsection 78-3a-307(5), and designing services to support the kinship placement;
- (v) conflict resolution between the family and Division of Child and Family Services staff;
- (vi) discussing child custody issues; or
- (vii) crisis clinical intervention to reduce trauma to the child and family.

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

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

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

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

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

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

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

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

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

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

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

(2) The summons shall contain:

(a) the name of the court;

(b) the title of the proceedings; and

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

(3) A published summons shall state:

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

(b) an adjudication will be made.

(4) The summons shall require the person or persons who have physical custody of the minor to appear personally and bring the minor before the court at a time and place stated. If the person or persons summoned are not the parent, parents, or guardian of the minor, the summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing.

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

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

(7) Upon the sworn testimony of one or more reputable physicians, the court may order emergency medical or surgical treatment that is immediately necessary for a minor concerning

whom a petition has been filed pending the service of summons upon ~~[his]~~ the minor's parents, guardian, or custodian.

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

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

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

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

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

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

(a) If the address of the parent or guardian is known, due notice is given by sending him a copy of the summons by registered mail with a return receipt to be signed by the addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil

1458 Procedure. Service by registered mail shall be complete upon return to the court of the signed
1459 receipt.

1460 (b) If the address or whereabouts of the parent or guardian outside the state cannot after
1461 diligent inquiry be ascertained, due notice is given by publishing a summons in a newspaper
1462 having general circulation in the county in which the proceeding is pending. The summons
1463 shall be published once a week for four successive weeks. Service shall be complete on the
1464 day of the last publication.

1465 (c) Service of summons as provided in this subsection shall vest the court with
1466 jurisdiction over the parent or guardian served in the same manner and to the same extent as if
1467 the person served was served personally within the state.

1468 (14) In the case of service in the state, service completed not less than 48 hours before
1469 the time set in the summons for the appearance of the person served, shall be sufficient to
1470 confer jurisdiction. In the case of service outside the state, service completed not less than five
1471 days before the time set in the summons for appearance of the person served, shall be sufficient
1472 to confer jurisdiction.

1473 (15) Computation of periods of time under this chapter shall be made in accordance
1474 with the Utah Rules of Civil Procedure.

1475 Section 20. Section **78-3a-112** is amended to read:

1476 **78-3a-112. Appearances -- Parents to appear with child -- Failure to appear --**
1477 **Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off --**
1478 **Appointment of guardian ad litem.**

1479 (1) Any person required to appear who, without reasonable cause, fails to appear may
1480 be proceeded against for contempt of court, and the court may cause a bench warrant to issue to
1481 produce the person in court.

1482 (2) In all cases when a minor is required to appear in court, the parents, guardian, or
1483 other person with legal custody of the minor shall appear with the minor unless excused by the
1484 judge.

1485 (a) An employee may request permission to leave the workplace for the purpose of

1486 attending court if the employee has been notified by the juvenile court that his minor is
1487 required to appear before the court.

1488 (b) An employer must grant permission to leave the workplace with or without pay if
1489 the employee has requested permission at least seven days in advance or within 24 hours of the
1490 employee receiving notice of the hearing.

1491 (3) If a parent or other person who signed a written promise to appear and bring the
1492 ~~[minor]~~ child to court under Section 78-3a-113 or 78-3a-114, fails to appear and bring the
1493 ~~[minor]~~ child to court on the date set in the promise, or, if the date was to be set, after
1494 notification by the court, a warrant may be issued for the apprehension of that person or the
1495 ~~[minor]~~ child, or both.

1496 (4) Willful failure to perform the promise is a misdemeanor if, at the time of the
1497 execution of the promise, the promisor is given a copy of the promise which clearly states that
1498 failure to appear and have the ~~[minor]~~ child appear as promised is a misdemeanor. The
1499 juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings
1500 pursuant to Part 8, Adult Offenses.

1501 (5) The court shall endeavor, through use of the warrant of arrest if necessary, as
1502 provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or
1503 both parents or of the guardian of ~~[the minor]~~ a child. If neither a parent nor guardian is
1504 present at the court proceedings, the court may appoint a guardian ad litem to protect the
1505 interest of ~~[the]~~ a minor. A guardian ad litem may also be appointed whenever necessary for
1506 the welfare of ~~[the]~~ a minor, whether or not a parent or guardian is present.

1507 (6) A warrant may be issued for ~~[the]~~ a parent, ~~[the]~~ a guardian, ~~[the]~~ a custodian, or
1508 ~~[the]~~ a minor if:

1509 (a) a summons is issued but cannot be served;

1510 (b) it is made to appear to the court that the person to be served will not obey the
1511 summons;

1512 (c) serving the summons will be ineffectual; or

1513 (d) the welfare of the minor requires that he be brought immediately into the custody of

the court.

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

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

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

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

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

(c) the minor:

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

(B) seriously endangers others~~[-]~~; and

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

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

(e) there is reason to believe that the minor is:

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

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

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

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

(3) (a) (i) If an officer or other person takes a minor into temporary custody, he shall

1542 without unnecessary delay notify the parents, guardian, or custodian.

1543 (ii) The minor shall then be released to the care of ~~[his]~~ the minor's parent or other
1544 responsible adult, unless ~~[his]~~ the minor's immediate welfare or the protection of the
1545 community requires ~~[his]~~ the minor's detention.

1546 (b) If the minor is taken into custody or detention for a violent felony, as defined in
1547 Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the
1548 officer or other law enforcement agent taking the minor into custody shall, as soon as
1549 practicable or as established under Subsection 53A-11-1001(2), notify the school
1550 superintendent of the district in which the minor resides or attends school for the purposes of
1551 the minor's supervision and student safety.

1552 (i) The notice shall disclose only:

1553 (A) the name of the minor;

1554 (B) the offense for which the minor was taken into custody or detention; and

1555 (C) if available, the name of the victim, if the victim:

1556 (I) resides in the same school district as the minor; or

1557 (II) attends the same school as the minor.

1558 (ii) The notice shall be classified as a protected record under Section 63-2-304.

1559 (iii) All other records disclosures are governed by Title 63, Chapter 2, Government
1560 Records Access and Management Act and the Federal Family Educational Rights and Privacy
1561 Act.

1562 (c) Employees of a governmental agency are immune from any criminal liability for
1563 providing or failing to provide the information required by this section unless the person acts or
1564 fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

1565 (d) Before the minor is released, the parent or other person to whom the minor is
1566 released shall be required to sign a written promise on forms supplied by the court to bring the
1567 minor to the court at a time set or to be set by the court.

1568 (4) (a) A ~~[minor]~~ child may not be held in temporary custody by law enforcement any
1569 longer than is reasonably necessary to obtain ~~[his]~~ the child's name, age, residence, and other

1570 necessary information and to contact ~~[his]~~ the child's parents, guardian, or custodian.

1571 (b) If the minor is not released under Subsection (3), ~~[he]~~ the minor shall be taken to a
1572 place of detention or shelter without unnecessary delay.

1573 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly
1574 file with the detention or shelter facility a written report on a form provided by the division
1575 stating the details of the presently alleged offense, the facts which bring the minor within the
1576 jurisdiction of the juvenile court, and the reason the minor was not released by law
1577 enforcement.

1578 (b) (i) The designated youth corrections facility staff person shall immediately review
1579 the form and determine, based on the guidelines for detention admissions established by the
1580 Division of Juvenile Justice Services under Section 62A-7-202, whether to admit the minor to
1581 secure detention, admit the minor to home detention, place the minor in a placement other than
1582 detention, or return the minor home upon written promise to bring the minor to the court at a
1583 time set, or without restriction.

1584 (ii) If the designated youth corrections facility staff person determines to admit the
1585 minor to home detention, that staff person shall notify the juvenile court of that determination.
1586 The court shall order that notice be provided to the designated persons in the local law
1587 enforcement agency and the school or transferee school, if applicable, which the minor attends
1588 of the home detention. The designated persons may receive the information for purposes of the
1589 minor's supervision and student safety.

1590 (iii) Any employee of the local law enforcement agency and the school which the
1591 minor attends who discloses the notification of home detention is not:

1592 (A) civilly liable except when disclosure constitutes fraud or willful misconduct as
1593 provided in Section 63-30d-202; and

1594 (B) civilly or criminally liable except when disclosure constitutes a knowing violation
1595 of Section 63-2-801.

1596 (c) A minor may not be admitted to detention unless the minor is detainable based on
1597 the guidelines or the minor has been brought to detention pursuant to a judicial order or

division warrant pursuant to Section 62A-7-504.

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

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

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

(ii) promptly notify the court of the placement.

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

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

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

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

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

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

1626 (c) A ~~[minor]~~ child may not be placed or kept in a shelter facility pending court
1627 proceedings unless it is unsafe ~~[for the minor to leave him with his]~~ to leave the child with the
1628 child's parents, guardian, or custodian.

1629 (2) After admission of a child to a detention facility pursuant to the guidelines
1630 established by the Division of Juvenile Justice Services and immediate investigation by an
1631 authorized officer of the court, the judge or the officer shall order the release of the ~~[minor to~~
1632 ~~his]~~ child to the child's parents, guardian, or custodian if it is found ~~[he]~~ the child can be safely
1633 returned to their care, either upon written promise to bring the ~~[minor]~~ child to the court at a
1634 time set or without restriction.

1635 (a) If ~~[the minor's]~~ a child's parent, guardian, or custodian fails to retrieve the ~~[minor]~~
1636 child from a facility within 24 hours after notification of release, the parent, guardian, or
1637 custodian is responsible for the cost of care for the time the ~~[minor]~~ child remains in the
1638 facility.

1639 (b) The facility shall determine the cost of care.

1640 (c) Any money collected under this Subsection (2) shall be retained by the Division of
1641 Juvenile Justice Services to recover the cost of care for the time the ~~[minor]~~ child remains in
1642 the facility.

1643 (3) (a) When a ~~[minor]~~ child is detained in a detention or shelter facility, the parents or
1644 guardian shall be informed by the person in charge of the facility that they have the right to a
1645 prompt hearing in court to determine whether the ~~[minor]~~ child is to be further detained or
1646 released.

1647 (b) When a minor is detained in a detention facility, the minor shall be informed by the
1648 person in charge of the facility that the minor has the right to a prompt hearing in court to
1649 determine whether the minor is to be further detained or released.

1650 ~~[(b)]~~ (c) Detention hearings shall be held by the judge or by a commissioner.

1651 ~~[(c)]~~ (d) The court may, at any time, order the release of the minor, whether a detention
1652 hearing is held or not.

1653 ~~[(d)]~~ (e) If ~~[the minor]~~ a child is released, and the ~~[minor]~~ child remains in the facility,

1654 because the parents, guardian, or custodian fails to retrieve the [minor] child, the parents,
1655 guardian, or custodian shall be responsible for the cost of care as provided in Subsections
1656 (2)(a), (b), and (c).

1657 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a
1658 detention hearing, excluding weekends and holidays, unless the court has entered an order for
1659 continued detention.

1660 (b) A [minor] child may not be held in a shelter facility longer than 48 hours prior to a
1661 shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has
1662 been entered by the court after notice to all parties described in Section 78-3a-306.

1663 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide
1664 the court with all information received from the person who brought the minor to the detention
1665 facility.

1666 (d) If the court finds at a detention hearing that it is not safe to release the minor, the
1667 judge or commissioner may order the minor to be held in the facility or be placed in another
1668 appropriate facility, subject to further order of the court.

1669 (e) (i) After a detention hearing has been held, only the court may release a minor from
1670 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to
1671 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued
1672 detention is necessary.

1673 (ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or
1674 an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that
1675 notice of its decision, including any disposition, order, or no contact orders, be provided to
1676 designated persons in the appropriate local law enforcement agency and district superintendent
1677 or the school or transferee school, if applicable, [~~which~~] that the minor attends. The designated
1678 persons may receive the information for purposes of the minor's supervision and student safety.

1679 (iii) Any employee of the local law enforcement agency, school district, and the school
1680 [~~which~~] that the minor attends who discloses the court's order of probation is not:

1681 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as

provided in Section 63-30d-202; and

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

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

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

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

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

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

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

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

(9) A sheriff, warden, or other official in charge of a jail or other facility for the

1710 detention of adult offenders or persons charged with crime shall immediately notify the
1711 juvenile court when a [~~minor~~] person who is or appears to be under 18 years of age is received
1712 at the facility and shall make arrangements for the transfer of the [~~minor~~] person to a detention
1713 facility, unless otherwise ordered by the juvenile court.

1714 (10) This section does not apply to a minor who is brought to the adult facility under
1715 charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal
1716 proceedings in the district court under Section 78-3a-603.

1717 (11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may
1718 be detained in a jail or other place of detention used for adults charged with crime.

1719 (12) Provisions of law regarding bail are not applicable to minors detained or taken
1720 into custody under this chapter, except that bail may be allowed:

1721 (a) if a minor who need not be detained lives outside this state; or

1722 (b) when a minor who need not be detained comes within one of the classes in
1723 Subsection 78-3a-503(11).

1724 (13) Section 76-8-418 is applicable to a [~~minor~~] child who willfully and intentionally
1725 commits an act against a jail or other place of confinement, including a Division of Juvenile
1726 Justice Services detention, shelter, or secure confinement facility which would be a third
1727 degree felony if committed by an adult.

1728 Section 23. Section **78-3a-115** is amended to read:

1729 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
1730 **cases heard separately from adult cases -- Minor or parents or custodian heard**
1731 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
1732 **one minor.**

1733 (1) Hearings in minor's cases shall be held before the court without a jury and may be
1734 conducted in an informal manner.

1735 (a) In abuse, neglect, and dependency cases in all districts other than pilot districts
1736 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude the
1737 general public from hearings held prior to July 1, 2004.

1738 (b) In delinquency cases the court shall admit all persons who have a direct interest in
1739 the case and may admit persons requested by the parent or legal guardian to be present. The
1740 court shall exclude all other persons except as provided in Subsection (1)(c).

1741 (c) In delinquency cases in which the minor charged is 14 years of age or older, the
1742 court shall admit any person unless the hearing is closed by the court upon findings on the
1743 record for good cause if:

1744 (i) the minor has been charged with an offense which would be a felony if committed
1745 by an adult; or

1746 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if
1747 committed by an adult, and the minor has been previously charged with an offense which
1748 would be a misdemeanor or felony if committed by an adult.

1749 (d) The victim of any act charged in a petition or information involving an offense
1750 committed by a minor which if committed by an adult would be a felony or a class A or class B
1751 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
1752 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
1753 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not
1754 apply to important juvenile justice hearings as defined in Section 77-38-2.

1755 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right
1756 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

1757 (i) the scheduling of any court hearings on the petition;

1758 (ii) any findings made by the court; and

1759 (iii) any sentence or decree imposed by the court.

1760 (2) Minor's cases shall be heard separately from adult cases. The minor or the
1761 [minor's] parents or custodian of a minor may be heard separately when considered necessary
1762 by the court. The hearing may be continued from time to time to a date specified by court
1763 order.

1764 (3) When more than one [minor] child is involved in a home situation which may be
1765 found to constitute neglect or dependency, or when more than one minor is alleged to be

involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) petitions for termination of parental rights.

(c) The attorney general shall represent the Division of Child and Family Services in actions involving ~~[minors who have not been]~~ a minor who is not adjudicated as abused or neglected, but who ~~[are]~~ is otherwise committed to the custody of that division by the juvenile court, and who ~~[are]~~ is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.

Nothing in this Subsection (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

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

(4) (a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require

that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

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

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

- (i) plans to report to the court at the proceeding; or
- (ii) could reasonably expect would be requested of the party by the court at the proceeding.

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

- (i) for dispositional hearings under Sections 78-3a-310 and 78-3a-311, no less than five days before the proceeding;
- (ii) for proceedings under Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and
- (iii) for all other proceedings, no less than five days before the proceeding.

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

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

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

1850 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
1851 may, in its discretion, consider evidence of statements made by a [~~minor~~] child under eight
1852 years of age to a person in a trust relationship.

1853 Section 25. Section **78-3a-117** is amended to read:

1854 **78-3a-117. Minor's cases considered civil proceedings -- Adjudication of**
1855 **jurisdiction by juvenile court not conviction of crime, exceptions -- Minor not to be**
1856 **charged with crime, exception -- Traffic violation cases, abstracts to Department of**
1857 **Public Safety.**

1858 (1) Except as provided in Sections 78-3a-602 and 78-3a-603, proceedings in a minor's
1859 [~~cases~~] case shall be regarded as a civil [~~proceedings~~] proceeding with the court exercising
1860 equitable powers.

1861 (2) An adjudication by a juvenile court that a minor is within its jurisdiction under
1862 Section 78-3a-104 is not considered a conviction of a crime, except in cases involving traffic
1863 violations. An adjudication may not operate to impose any civil disabilities upon the minor nor
1864 to disqualify the minor for any civil service or military service or appointment.

1865 (3) A minor may not be charged with a crime or convicted in any court except as
1866 provided in Sections 78-3a-602 and 78-3a-603, and in cases involving traffic violations. When
1867 a petition has been filed in the juvenile court, the minor may not later be subjected to criminal
1868 prosecution based on the same facts except as provided in Section 78-3a-602 or 78-3a-603.

1869 (4) An adjudication by a juvenile court that a minor is within its jurisdiction under
1870 Section 78-3a-104 is considered a conviction for the purposes of determining the level of
1871 offense for which a [~~juvenile~~] minor may be charged and enhancing the level of an offense in
1872 the juvenile court. A prior adjudication may be used to enhance the level or degree of an
1873 offense committed by an adult only as otherwise specifically provided.

1874 (5) Abstracts of court records for all adjudications of traffic violations shall be
1875 submitted to the Department of Public Safety as provided in Section 53-3-218.

1876 (6) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution
1877 may be forwarded to employers, financial institutions, law enforcement, constables, the Office

1878 of Recovery Services, or other agencies for purposes of enforcing the order as provided in
1879 Section 78-3a-118.

1880 Section 26. Section **78-3a-118** is amended to read:

1881 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
1882 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**
1883 **sample.**

1884 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
1885 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
1886 jurisdiction over the minor. However, in cases within the provisions of Subsection
1887 78-3a-104(1), findings of fact are not necessary.

1888 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
1889 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
1890 to the school superintendent of the district in which the minor resides or attends school. Notice
1891 shall be made to the district superintendent within three days of the adjudication and shall
1892 include:

1893 (i) the specific offenses for which the minor was adjudicated; and

1894 (ii) if available, if the victim:

1895 (A) resides in the same school district as the minor; or

1896 (B) attends the same school as the minor.

1897 (2) Upon adjudication the court may make the following dispositions by court order:

1898 (a) (i) The court may place the minor on probation or under protective supervision in
1899 the minor's own home and upon conditions determined by the court, including compensatory
1900 service as provided in Section 78-11-20.7.

1901 (ii) The court may place the minor in state supervision with the probation department
1902 of the court, under the legal custody of:

1903 (A) ~~his~~ the minor's parent or guardian;

1904 (B) the Division of Juvenile Justice Services; or

1905 (C) the Division of Child and Family Services.

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

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

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

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

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

(c) (i) The court may:

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

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

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

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

(B) Prior to the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide

1934 the division with notice of the hearing no later than five days before the time specified for the
1935 hearing so the division may attend the hearing.

1936 (C) Prior to committing a [~~minor~~] child to the custody of the Division of Child and
1937 Family Services, the court shall make a finding as to what reasonable efforts have been
1938 attempted to prevent the [~~minor's~~] child's removal from [~~his~~] the child's home.

1939 (d) (i) The court may commit [~~the~~] a minor to the Division of Juvenile Justice Services
1940 for secure confinement.

1941 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
1942 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
1943 Juvenile Justice Services.

1944 (e) The court may commit [~~the~~] a minor, subject to the court retaining continuing
1945 jurisdiction over [~~him~~] the minor, to the temporary custody of the Division of Juvenile Justice
1946 Services for observation and evaluation for a period not to exceed 45 days, which period may
1947 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
1948 Services.

1949 (f) (i) The court may commit [~~the~~] a minor to a place of detention or an alternative to
1950 detention for a period not to exceed 30 days subject to the court retaining continuing
1951 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
1952 ordered by the court.

1953 (ii) This Subsection (2)(f) applies only to [~~those minors~~] a minor adjudicated for:

1954 (A) an act which if committed by an adult would be a criminal offense; or

1955 (B) contempt of court under Section 78-3a-901.

1956 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
1957 the Division of Child and Family Services or any other appropriate person in accordance with
1958 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
1959 Dependency Proceedings.

1960 (h) The court may place [~~the~~] a minor on a ranch or forestry camp, or similar facility
1961 for care and also for work, if possible, if the person, agency, or association operating the

1962 facility has been approved or has otherwise complied with all applicable state and local laws.

1963 A minor placed in a forestry camp or similar facility may be required to work on fire
1964 prevention, forestation and reforestation, recreational works, forest roads, and on other works
1965 on or off the grounds of the facility and may be paid wages, subject to the approval of and
1966 under conditions set by the court.

1967 (i) (i) The court may order ~~[the]~~ a minor to repair, replace, or otherwise make
1968 restitution for damage or loss caused by the minor's wrongful act, including costs of treatment
1969 as stated in Section 78-3a-318 and impose fines in limited amounts.

1970 (ii) The court may also require ~~[the]~~ a minor to reimburse an individual, entity, or
1971 governmental agency who offered and paid a reward to a person or persons for providing
1972 information resulting in a court adjudication that the minor is within the jurisdiction of the
1973 juvenile court due to the commission of a criminal offense.

1974 (iii) If a minor ~~[has been]~~ is returned to this state under the Interstate Compact on
1975 Juveniles, the court may order the minor to make restitution for costs expended by any
1976 governmental entity for the return.

1977 (j) The court may issue orders necessary for the collection of restitution and fines
1978 ordered by the court, including garnishments, wage withholdings, and executions.

1979 (k) (i) The court may through its probation department encourage the development of
1980 employment or work programs to enable minors to fulfill their obligations under Subsection
1981 (2)(i) and for other purposes considered desirable by the court.

1982 (ii) Consistent with the order of the court, the probation officer may permit ~~[the]~~ a
1983 minor found to be within the jurisdiction of the court to participate in a program of work
1984 restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

1985 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
1986 addition to any other disposition authorized by this section:

1987 (A) restrain the minor from driving for periods of time the court considers necessary;
1988 and

1989 (B) take possession of the minor's driver license.

1990 (ii) The court may enter any other disposition under Subsection (2)(1)(i); however, the
1991 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by
1992 Section 78-3a-506.

1993 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
1994 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
1995 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
1996 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
1997 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
1998 completion of an approved substance abuse prevention or treatment program may be credited
1999 by the court as compensatory service hours.

2000 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
2001 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
2002 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
2003 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
2004 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
2005 approved substance abuse prevention or treatment program may be credited by the court as
2006 compensatory service hours.

2007 (n) The court may order that ~~[the]~~ a minor be examined or treated by a physician,
2008 surgeon, psychiatrist, or psychologist or that ~~[he]~~ the minor receive other special care. For
2009 these purposes the court may place the minor in a hospital or other suitable facility.

2010 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
2011 interest of the minor, and may appoint as guardian a public or private institution or agency in
2012 which legal custody of the minor is vested.

2013 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
2014 private agency or institution, the court shall give primary consideration to the welfare of the
2015 minor. When practicable, the court may take into consideration the religious preferences of the
2016 minor and of ~~[the minor's]~~ a child's parents.

2017 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable

conditions to be complied with by ~~[the]~~ a minor's parents or guardian, ~~[the]~~ a minor, ~~[the]~~ a minor's custodian, or any other person who has been made a party to the proceedings.

Conditions may include:

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

(B) restrictions on the minor's associates;

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

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

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

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

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

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

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

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

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

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their ~~[minor]~~ child. The court may transfer custody of a minor to

another person, agency, or institution in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

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

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

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

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

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

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

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

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

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

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

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

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

2074 (c) the court retains jurisdiction over the minor under conditions set by the court and
2075 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

2076 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
2077 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
2078 designated employees of the court or, if the minor is in the legal custody of the Division of
2079 Juvenile Justice Services, then by designated employees of the division under Subsection
2080 53-10-404(5)(b).

2081 (b) The responsible agency shall ensure that employees designated to collect the saliva
2082 DNA specimens receive appropriate training and that the specimens are obtained in accordance
2083 with accepted protocol.

2084 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
2085 Specimen Restricted Account created in Section 53-10-407.

2086 (d) Payment of the reimbursement is second in priority to payments the minor is
2087 ordered to make for restitution under this section and treatment under Section 78-3a-318.

2088 Section 27. Section **78-3a-120** is amended to read:

2089 **78-3a-120. Modification of order or decree -- Requirements for changing or**
2090 **terminating custody, probation, or protective supervision.**

2091 (1) The court may modify or set aside any order or decree made by it, however a
2092 modification of an order placing a minor on probation may not be made upon an alleged
2093 violation of the terms of probation unless there has been a hearing in accordance with the
2094 procedures in Section 78-3a-903.

2095 (2) Notice of the hearing shall be required in any case in which the effect of modifying
2096 or setting aside an order or decree may be to make any change in the minor's legal custody.

2097 (3) (a) Notice of an order terminating probation or protective supervision of a child
2098 shall be given to the child's:

2099 (i) parents[;];

2100 (ii) guardian[;];

2101 (iii) custodian[;]; and[;]

2102 (iv) where appropriate, to the [minor] child.

2103 (b) Notice of an order terminating probation or protective supervision of a minor who
2104 is at least 18 years of age shall be given to the minor.

2105 Section 28. Section **78-3a-206** is amended to read:

2106 **78-3a-206. Court records -- Inspection.**

2107 (1) The court and the probation department shall keep records as required by the board
2108 and the presiding judge.

2109 (2) Court records shall be open to inspection by:

2110 (a) the parents or guardian of a child, a minor who is at least 18 years of age, other
2111 parties in the case, the attorneys, and agencies to which custody of a minor has been
2112 transferred;

2113 (b) for information relating to adult offenders alleged to have committed a sexual
2114 offense, a felony or class A misdemeanor drug offense, or an offense against the person under
2115 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose
2116 of evaluating whether an individual should be permitted to obtain or retain a license as an
2117 educator or serve as an employee or volunteer in a school, with the understanding that the
2118 office must provide the individual with an opportunity to respond to any information gathered
2119 from its inspection of the records before it makes a decision concerning licensure or
2120 employment;

2121 (c) the ~~[Division of]~~ Criminal Investigations and Technical Services Division,
2122 established in Section 53-10-103, for the purpose of a criminal history background check for
2123 the purchase of a firearm and establishing good character for issuance of a concealed firearm
2124 permit as provided in Section 53-5-704; and

2125 (d) the Division of Child and Family Services for the purpose of Child Protective
2126 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and
2127 administrative hearings in accordance with Section 62A-4a-116.5.

2128 (3) With the consent of the judge, court records may be inspected by the [minor] child,
2129 by persons having a legitimate interest in the proceedings, and by persons conducting pertinent

research studies.

(4) If a petition is filed charging a minor 14 years of age or older with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

(5) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.

(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.

(c) The court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 29. Section **78-3a-301** is amended to read:

78-3a-301. Court-ordered protective custody of a child following petition filing --

Grounds.

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

(a) there is an imminent danger to the physical health or safety of the [minor] child and the [minor's] child's physical health or safety may not be protected without removing the [minor] child from the custody of the [minor's] child's parent or guardian;

(b) a parent or guardian engages in or threatens the [minor] child with unreasonable conduct that causes the [minor] child to suffer emotional damage and there are no reasonable

2158 means available by which the [minor's] child's emotional health may be protected without
2159 removing the [minor] child from the custody of the [minor's] child's parent or guardian;

2160 (c) the [minor] child or another [minor] child residing in the same household has been
2161 physically or sexually abused, or is considered to be at substantial risk of being physically or
2162 sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or
2163 other person known to the parent or guardian;

2164 (d) the parent or guardian is unwilling to have physical custody of the [minor] child;

2165 (e) the ~~[minor has been]~~ child is abandoned or left without any provision for the
2166 [minor's] child's support;

2167 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
2168 or cannot arrange for safe and appropriate care for the [minor] child;

2169 (g) a relative or other adult custodian with whom the ~~[minor has been]~~ child is left by
2170 the parent or guardian is unwilling or unable to provide care or support for the [minor] child,
2171 the whereabouts of the parent or guardian are unknown, and reasonable efforts to locate the
2172 parent or guardian ~~[have been]~~ are unsuccessful;

2173 (h) the [minor] child is in immediate need of medical care;

2174 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
2175 environment that poses a threat to the [minor's] child's health or safety; or

2176 (ii) a parent's or guardian's action in leaving a [minor] child unattended would
2177 reasonably pose a threat to the [minor's] child's health or safety;

2178 (j) the [minor] child or another [minor] child residing in the same household has been
2179 neglected;

2180 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

2181 (l) the parent or guardian, or an adult residing in the same household as the parent or
2182 guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
2183 Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in
2184 the residence or on the property where the minor resided; or

2185 (m) the [minor's] child's welfare is otherwise endangered.

2186 (2) (a) For purposes of Subsection (1)(a), if a [minor] child has previously been
2187 adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or
2188 dependency ~~[has occurred]~~ occurs involving the same substantiated abuser or under similar
2189 circumstance as the previous abuse, that fact constitutes prima facie evidence that the [minor]
2190 child cannot safely remain in the custody of the [minor's] child's parent.

2191 (b) For purposes of Subsection (1)(c):

2192 (i) another [minor] child residing in the same household may not be removed from the
2193 home unless that [minor] child is considered to be at substantial risk of being physically or
2194 sexually abused as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

2195 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
2196 person known to the parent has occurred, and there is evidence that the parent or guardian
2197 failed to protect the [minor] child, after having received the notice, by allowing the [minor]
2198 child to be in the physical presence of the alleged abuser, that fact constitutes prima facie
2199 evidence that the [minor] child is at substantial risk of being physically or sexually abused.

2200 (3) In the absence of one of the factors described in Subsection (1), a court may not
2201 remove a [minor] child from the parent's or guardian's custody on the basis of:

2202 (a) educational neglect;

2203 (b) mental illness or poverty of the parent or guardian; or

2204 (c) disability of the parent or guardian, as defined in Subsection ~~[57-21-3]~~ 57-21-2(9).

2205 (4) A [minor] child removed from the custody of the [minor's] child's parent or
2206 guardian under this section may not be placed or kept in a secure detention facility pending
2207 further court proceedings unless the [minor] child is detainable based on guidelines
2208 promulgated by the Division of Juvenile Justice Services.

2209 (5) This section does not preclude removal of a [minor] child from the [minor's] child's
2210 home without a warrant or court order under Section 62A-4a-202.1.

2211 Section 30. Section **78-3a-305** is amended to read:

2212 **78-3a-305. Petition filed -- Protective orders.**

2213 (1) Any interested person may file a petition to commence proceedings in the juvenile

2214 court alleging that a [~~minor~~] child is abused, neglected, or dependent. The person shall first
2215 make a referral with the division.

2216 (2) (a) If the child who is the subject of a petition was removed from [~~his~~] the child's
2217 home by the Division of Child and Family Services that petition shall be filed on or before the
2218 date of the initial shelter hearing described in Section 78-3a-306.

2219 (b) If a petition is requested by the division, the attorney general shall file the petition
2220 within 72 hours of the completion of the investigation and request, excluding weekends and
2221 holidays, if:

2222 (i) the child who is the subject of the requested petition has not been removed from
2223 [~~his~~] the child's home by the division; and

2224 (ii) without an expedited hearing and services ordered under the protective supervision
2225 of the court, the child will likely be taken into protective custody.

2226 (3) The petition shall be verified, and contain all of the following:

2227 (a) the name, age, and address, if any, of the [~~minor~~] child upon whose behalf the
2228 petition is brought;

2229 (b) the names and addresses, if known to the petitioner, of both parents and any
2230 guardian of the [~~minor~~] child;

2231 (c) a concise statement of facts, separately stated, to support the conclusion that the
2232 [~~minor~~] child upon whose behalf the petition is being brought is abused, neglected, or
2233 dependent; and

2234 (d) a statement regarding whether the [~~minor~~] child is in protective custody, and if so,
2235 the date and precise time the [~~minor~~] child was taken into protective custody.

2236 Section 31. Section **78-3a-306** is amended to read:

2237 **78-3a-306. Shelter hearing.**

2238 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
2239 after any one or all of the following occur:

2240 (a) removal of the child from [~~his~~] the child's home by the Division of Child and
2241 Family Services;

(b) placement of the child in the protective custody of the Division of Child and Family Services;

(c) emergency kinship placement under Subsection 62A-4a-202.1(4); or
(d) as an alternative to removal of the child, a parent has entered a domestic violence shelter at the request of the Division of Child and Family Services.

(2) Upon the occurrence of any of the circumstances described in Subsections (1)(a) through (1)(d), the division shall issue a notice that contains all of the following:

(a) the name and address of the person to whom the notice is directed;
(b) the date, time, and place of the shelter hearing;
(c) the name of the [minor] child on whose behalf a petition is being brought;
(d) a concise statement regarding:
(i) the reasons for removal or other action of the division under Subsection (1); and
(ii) the allegations and code sections under which the proceeding has been instituted;
(e) a statement that the parent or guardian to whom notice is given, and the [minor] child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and

(f) a statement that the parent or guardian is liable for the cost of support of the [minor] child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to [his] the parent's or guardian's financial ability.

(3) That notice shall be personally served as soon as possible, but no later than one business day after removal of a child from [his] the child's home, on:

(a) the appropriate guardian ad litem; and
(b) both parents and any guardian of the [minor] child, unless [they] the parents or guardians cannot be located.

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

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

2270 (b) the child's parents or guardian, unless ~~[they]~~ the parents or guardian cannot be
2271 located, or fail to appear in response to the notice;

2272 (c) counsel for the parents, if one has been requested;

2273 (d) the child's guardian ad litem;

2274 (e) the caseworker from the Division of Child and Family Services who has been
2275 assigned to the case; and

2276 (f) the attorney from the attorney general's office who is representing the division.

2277 (5) (a) At the shelter hearing, the court shall provide an opportunity for the ~~[minor's]~~

2278 child's parent or guardian, if present, and any other person having relevant knowledge, to

2279 provide relevant testimony. The court may also provide an opportunity for the ~~[minor]~~ child to
2280 testify.

2281 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
2282 Juvenile Procedure. The court shall hear relevant evidence presented by the ~~[minor]~~ child,
2283 ~~[his]~~ the child's parent or guardian, the requesting party, or their counsel, but may in its
2284 discretion limit testimony and evidence to only that which goes to the issues of removal and the
2285 child's need for continued protection.

2286 (6) If the child is in the protective custody of the division, the division shall report to
2287 the court:

2288 (a) the reasons why the ~~[minor]~~ child was removed from the parent's or guardian's
2289 custody;

2290 (b) any services provided to the child and ~~[his]~~ the child's family in an effort to prevent
2291 removal;

2292 (c) the need, if any, for continued shelter;

2293 (d) the available services that could facilitate the return of the ~~[minor]~~ child to the
2294 custody of ~~[his]~~ the child's parent or guardian; and

2295 (e) whether the child has any relatives who may be able and willing to take temporary
2296 custody.

2297 (7) The court shall consider all relevant evidence provided by persons or entities

authorized to present relevant evidence pursuant to this section.

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

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

(a) there is a substantial danger to the physical health or safety of the [minor] child and the [minor's] child's physical health or safety may not be protected without removing [him] the child from [his-parent's] the custody of the child's parent. If a [minor] child has previously been adjudicated as abused, neglected, or dependent and a subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of [his] the child's parent;

(b) the [minor] child is suffering emotional damage, as may be indicated by, but is not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others, and there are no reasonable means available by which the [minor's] child's emotional health may be protected without removing the [minor] child from the custody of [his] the child's parent;

(c) the [minor] child or another [minor] child residing in the same household has been physically or sexually abused, or is considered to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent. If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent has allowed the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically or sexually abused;

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

(e) the [minor] child has been left without any provision for [his] the child's support;

(f) a parent who has been incarcerated or institutionalized has not or cannot arrange for

2326 safe and appropriate care for the [minor] child;

2327 (g) a relative or other adult custodian with whom the ~~[minor has been]~~ child is left by
2328 the parent is unwilling or unable to provide care or support for the [minor] child, the
2329 whereabouts of the parent are unknown, and reasonable efforts to locate ~~[him]~~ the parent have
2330 been unsuccessful;

2331 (h) the [minor] child is in immediate need of medical care;

2332 (i) the physical environment or the fact that the child is left unattended poses a threat to
2333 the child's health or safety;

2334 (j) the [minor] child or ~~[another]~~ a minor residing in the same household has been
2335 neglected;

2336 (k) the parent, or an adult residing in the same household as the parent, has been
2337 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any
2338 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence
2339 or on the property where the child resided; or

2340 (l) the child's welfare is otherwise endangered.

2341 (10) (a) The court shall also make a determination on the record as to whether
2342 reasonable efforts were made to prevent or eliminate the need for removal of the [minor] child
2343 from ~~[his]~~ the child's home and whether there are available services that would prevent the
2344 need for continued removal. If the court finds that the [minor] child can be safely returned to
2345 the custody of ~~[his]~~ the child's parent or guardian through the provision of those services, it
2346 shall place the [minor] child with ~~[his]~~ the child's parent or guardian and order that those
2347 services be provided by the division.

2348 (b) In making that determination, and in ordering and providing services, the child's
2349 health, safety, and welfare shall be the paramount concern, in accordance with federal law.

2350 (11) Where the division's first contact with the family occurred during an emergency
2351 situation in which the child could not safely remain at home, the court shall make a finding that
2352 any lack of preplacement preventive efforts was appropriate.

2353 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or

neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in ~~his~~ the child's home, return a child to ~~his~~ the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

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

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

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

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if ~~he~~ the child were returned home, it shall order continued removal regardless of any error in the initial removal of the child, or the failure of a party to comply with notice provisions, or any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 32. Section **78-3a-307** is amended to read:

78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative -- DCFS custody.

(1) (a) At the shelter hearing, when the court orders that a child be removed from the custody of ~~his~~ the child's parent in accordance with the requirements of Section 78-3a-306, the court shall first determine whether there is another natural parent as defined in Subsection (1)(b), with whom the child was not residing at the time the events or conditions that brought ~~him~~ the child within the court's jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody, the court shall place the ~~minor~~ child with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the provisions of Subsection (8)(b).

(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a

biological father who was married to the child's biological mother at the time the child was conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the custodial parent. This definition applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long term goal for the child.

(c) (i) The court shall make a specific finding regarding the fitness of that parent to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

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

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

(2) If the court orders placement with a parent under Subsection (1), the child and the parent are under the continuing jurisdiction of the court. The court may order that the parent assume custody subject to the supervision of the court, and order that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both. The court shall also provide for reasonable parent-time with the parent from whose custody the child was removed, unless parent-time is not in the best interest of the child. The court's order shall be periodically reviewed to determine whether:

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

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

(c) the child should be placed with a relative, pursuant to Subsection (5); or

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

(3) The time limitations described in Section 78-3a-311 with regard to reunification

efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (1).

(4) Legal custody of the child is not affected by an order entered under Subsection (1) or (2). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.

(5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of [his] the child's parent and is not placed in the custody of his other parent, the court shall, at that time, determine whether there is a relative who is able and willing to care for the child.

(ii) The court may order the Division of Child and Family Services to conduct a reasonable search to determine whether there are relatives of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The court shall order the parents to cooperate with the division, within five working days, to provide information regarding relatives who may be able and willing to care for the child.

(iii) The child may be placed in the temporary custody of the division pending the determination under Subsection (5)(a)(ii).

(iv) This section may not be construed as a guarantee that an identified relative will receive custody of the child. However, preferential consideration shall be given to a relative's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.

(b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make a specific finding regarding the fitness of that relative to assume custody, and the safety and appropriateness of placement with that relative. In order to be considered a "willing relative" under this section, the relative shall be willing to cooperate if the child's permanency goal is reunification with his parent or parents, and be willing to adopt or take permanent custody of the child if that is determined to be in the best interest of the child.

(ii) The court shall, at a minimum, order the division to conduct criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check

2438 the division's management information system for any previous reports of abuse or neglect
2439 regarding the relative at issue, report its findings in writing to the court, and provide sufficient
2440 information so that the court may determine whether:

2441 (A) the relative has any history of abusive or neglectful behavior toward other children
2442 that may indicate or present a danger to this child;

2443 (B) the child is comfortable with the relative;

2444 (C) the relative recognizes the parent's history of abuse and is determined to protect the
2445 child;

2446 (D) the relative is strong enough to resist inappropriate requests by the parent for
2447 access to the child, in accordance with court orders;

2448 (E) the relative is committed to caring for the child as long as necessary; and

2449 (F) the relative can provide a secure and stable environment for the child.

2450 (iii) The court may order the Division of Child and Family Services to conduct any
2451 further investigation regarding the safety and appropriateness of the placement.

2452 (iv) The division shall complete and file its assessment regarding placement with a
2453 relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

2454 (c) The court may place the child in the temporary custody of the division, pending the
2455 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding
2456 that placement. The court shall ultimately base its determination regarding placement with a
2457 relative on the best interest of the child.

2458 (d) For purposes of this section, "relative" means an adult who is a grandparent, great
2459 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first
2460 cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under
2461 the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended
2462 family member" as defined by that statute.

2463 (6) (a) When the court vests physical custody of a child with a relative pursuant to
2464 Subsection (5), it shall order that the relative assume custody subject to the continuing
2465 supervision of the court, and shall order that any necessary services be provided to the [minor]

child and the relative. That child is not within the temporary custody or custody of the Division of Child and Family Services. The child and any relative with whom the child is placed are under the continuing jurisdiction of the court. The court may enter any order that it considers necessary for the protection and best interest of the child. The court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed unless parent-time is not in the best interest of the child.

(b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed by the court, no less often than every six months, to determine whether:

(A) placement with the relative continues to be in the child's best interest;

(B) the child should be returned home; or

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

(ii) No later than 12 months after placement with a relative the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(iii) The time limitations described in Section 78-3a-311, with regard to reunification efforts, apply to children placed with a relative pursuant to Subsection (5).

(7) When the court orders that a child be removed from the custody of ~~his~~ the child's parent and does not vest custody in another parent or relative under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

(8) (a) Any preferential consideration that a relative is initially granted pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.

(b) When the time period described in Subsection (8)(a) has expired, the preferential consideration which is initially granted to a natural parent in accordance with Subsection (1), is limited. After that time the court shall base its custody decision on the best interest of the

2494 child.

2495 Section 33. Section **78-3a-309** is amended to read:

2496 **78-3a-309. Notice of adjudication hearing.**

2497 (1) Upon the filing of a petition pursuant to Section 78-3a-305, the petitioner shall
2498 cause the petition and notice to be served on:

2499 (a) the guardian ad litem;

2500 (b) both parents and any guardian of the [minor] child; and

2501 (c) the child's foster parents.

2502 (2) The notice shall contain all of the following:

2503 (a) the name and address of the person to whom the notice is directed;

2504 (b) the date, time, and place of the hearing on the petition;

2505 (c) the name of the [minor] child on whose behalf the petition has been brought;

2506 (d) a statement that the parent or guardian to whom notice is given, and the [minor]

2507 child, are entitled to have an attorney present at the hearing on the petition, and that if the

2508 parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an

2509 attorney, one will be provided; and

2510 (e) a statement that the parent or legal guardian is liable for the cost of support of the

2511 [minor] child in the protective custody, temporary custody, and custody of the division, and for

2512 legal counsel appointed for the parent or guardian under Subsection (2)(d), according to [his]

2513 the parent's or guardian's financial ability.

2514 (3) Notice and a copy of the petition shall be served on all persons required to receive
2515 notice under Subsection (1) as soon as possible after the petition is filed and at least five days
2516 prior to the time set for the hearing.

2517 Section 34. Section **78-3a-313.5** is amended to read:

2518 **78-3a-313.5. Mandatory petition for termination of parental rights.**

2519 (1) For purposes of this section, "abandoned infant" means a [minor] child who is 12
2520 months of age or younger whose parent or parents:

2521 (a) although having legal custody of the [minor] child, fail to maintain physical custody

of the [minor] child without making arrangements for the care of the [minor] child;

(b) have failed to:

(i) maintain physical custody; and

(ii) exhibit the normal interest of a natural parent without just cause; or

(c) are unwilling to have physical custody of the [minor] child.

(2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition for termination of parental rights with regard to:

(a) an abandoned infant; or

(b) the [minor] child of a parent, whenever a court has determined that the parent has:

(i) committed murder or child abuse homicide of another [minor] child of that parent;

(ii) committed manslaughter of another [minor] child of that parent;

(iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another [minor] child of that parent; or

(iv) committed a felony assault or abuse that results in serious physical injury to:

(A) another [minor] child of that parent; or

(B) the other parent of the [minor] child.

(3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:

(a) the [minor] child is being cared for by a relative;

(b) the division has:

(i) documented in the [minor's] child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the [minor's] child's best interest; and

(ii) made that child and family plan available to the court for its review; or

(c) (i) the court has previously determined, in accordance with the provisions and limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable efforts to reunify the [minor] child with the [minor's] child's parent or parents were required;

2550 and

2551 (ii) the division has not provided, within the time period specified in the child and
2552 family plan, services that had been determined to be necessary for the safe return of the [minor]
2553 child.

2554 Section 35. Section **78-3a-316.1** is amended to read:

2555 **78-3a-316.1. Proceedings arising from failure to attend public school.**

2556 (1) When a proceeding arises from a [minor's] child's failure to attend public school
2557 based upon the assertion of a constitutional or statutory right or duty, raised either by the
2558 [minor] child or by [his] the child's custodial parent, guardian, or custodian, the court shall hear
2559 the petition and resolve the issues associated with the asserted constitutional or statutory claims
2560 within 15 days after the petition is filed. The parties may waive the time limitation described
2561 in this subsection.

2562 (2) Absent an emergency situation or other exigent circumstances, the court may not
2563 enter any order changing the educational status of the [minor] child that existed at the time the
2564 petition was filed, until the hearing described in Subsection (1) [~~has been~~] is concluded.

2565 (3) Parties proceeding under this section shall, insofar as it is possible, provide the
2566 court with factual stipulations and make all other efforts that are reasonably available to
2567 minimize the time required to hear the claims described in Subsection (1).

2568 Section 36. Section **78-3a-321** is amended to read:

2569 **78-3a-321. Mental health therapists.**

2570 (1) When a mental health practitioner is appointed in any juvenile court proceeding to
2571 evaluate the mental health of a parent or a minor, or to provide mental health services to a
2572 parent or minor, the court:

2573 (a) may appoint any mental health therapist, as defined in Section 58-60-102, which the
2574 court finds to be qualified; and

2575 (b) may not refuse to appoint a mental health therapist for the reason that the therapist's
2576 recommendations in another case have not followed the recommendations of the Division of
2577 Child and Family Services.

(2) This section applies to all juvenile court proceedings involving:

(a) parents and ~~[minor children]~~ minors; or

(b) the Division of Child and Family Services.

Section 37. Section **78-3a-350** is amended to read:

78-3a-350. Separate procedures for minors committed to the Division of Child and Family Services on grounds other than abuse or neglect -- Attorney general responsibility.

(1) The processes and procedures described in Part 3, Abuse, Neglect, and Dependency Proceedings, designed to meet the needs of minors who are abused or neglected, are not applicable to a minor who is committed to the custody of the Division of Child and Family Services on a basis other than abuse or neglect and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.

(2) The procedures described in Subsection 78-3a-119(2)(a) are applicable to ~~[the minors]~~ a minor described in Subsection (1).

(3) The court may appoint a guardian ad litem to represent the interests of a minor described in Subsection (1), upon request of the minor or the minor's parent or guardian.

(4) As of July 1, 1998, the attorney general's office shall represent the Division of Child and Family Services with regard to actions involving ~~[minors who have]~~ a minor who has not been adjudicated as abused or neglected, but who ~~[are]~~ is otherwise committed to the custody of the division by the juvenile court, and who ~~[are]~~ is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in Subsection (3) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Section 78-3a-116.

Section 38. Section **78-3a-407** is amended to read:

78-3a-407. Grounds for termination of parental rights -- Findings regarding reasonable efforts.

2606 (1) The court may terminate all parental rights with respect to a parent if the court finds
2607 any one of the following:

2608 (a) that the parent has abandoned the [minor] child;

2609 (b) that the parent has neglected or abused the [minor] child;

2610 (c) that the parent is unfit or incompetent;

2611 (d) (i) that the [minor] child is being cared for in an out-of-home placement under the
2612 supervision of the court or the division;

2613 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or
2614 unwilling to remedy the circumstances that cause the [minor] child to be in an out-of-home
2615 placement; and

2616 (iii) that there is a substantial likelihood that the parent will not be capable of
2617 exercising proper and effective parental care in the near future;

2618 (e) failure of parental adjustment, as defined in this chapter;

2619 (f) that only token efforts have been made by the parent:

2620 (i) to support or communicate with the [minor] child;

2621 (ii) to prevent neglect of the [minor] child;

2622 (iii) to eliminate the risk of serious physical, mental, or emotional abuse of the [minor]
2623 child; or

2624 (iv) to avoid being an unfit parent;

2625 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the
2626 [minor] child; and

2627 (ii) that termination is in the [minor's] child's best interest;

2628 (h) that, after a period of trial during which the [minor] child was returned to live in the
2629 [minor's] child's own home, the parent substantially and continuously or repeatedly refused or
2630 failed to give the [minor] child proper parental care and protection; or

2631 (i) the terms and conditions of safe relinquishment of a newborn child have been
2632 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
2633 Child.

(2) The court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

(3) (a) Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

(b) Notwithstanding Subsection (3)(a), the court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred subsequent to adjudication; or

(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law.

Section 39. Section **78-3a-415** is amended to read:

78-3a-415. Mental health therapist.

(1) When a mental health practitioner is to be appointed in a parental rights action to evaluate the mental health of a parent or a ~~[minor]~~ child, or to provide mental health services to a parent or a ~~[minor]~~ child, the court:

(a) may appoint any mental health therapist, as defined in Section 58-60-102, which the court finds to be qualified;

(b) may not refuse to appoint a mental health therapist for the reason that the therapist's recommendations in another case have not followed the recommendations of the Division of Child and Family Services or the Office of the Guardian Ad Litem; and

(c) shall give strong consideration to the parent's or guardian's wishes regarding the selection of a mental health therapist.

(2) This section applies to all juvenile court proceedings involving:

(a) parents and ~~[minor]~~ children; or

(b) the Division of Child and Family Services.

Section 40. Section **78-3a-502** is amended to read:

78-3a-502. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal referral -- Citation -- Failure to appear.

(1) [~~Proceedings in minor's cases are~~] A proceeding in a minor's case is commenced by petition.

(2) (a) A peace officer or any public official of the state, any county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the juvenile court within ten days of ~~[the]~~ a minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. There shall be no requirement to file a formal referral with the juvenile court on an offense that would be a class B misdemeanor or less if committed by an adult.

(b) When the court is informed by a peace officer or other person that a minor is or appears to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to determine whether the interests of the public or of the minor require that further action be taken.

(c) Based on the preliminary inquiry, the court may authorize the filing of or request that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 file a petition. In its discretion, the court may, through its probation department, enter into a written consent agreement with the minor and, if the minor is a child, the minor's parent, guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for a period of more than two months without leave of a judge of the court, who may extend the period for an additional two months. The probation department may not in connection with any nonjudicial adjustment compel any person to appear at any conference, produce any papers, or visit any place.

(d) The nonjudicial adjustment of a case may include conditions agreed upon as part of the nonjudicial closure:

(i) payment of a financial penalty of not more than \$100 to the Juvenile Court;

- (ii) payment of victim restitution;
- (iii) satisfactory completion of compensatory service;
- (iv) referral to an appropriate provider for counseling or treatment;
- (v) attendance at substance abuse programs or counseling programs;
- (vi) compliance with specified restrictions on activities and associations; and
- (vii) other reasonable actions that are in the interest of the child or minor and the community.

(e) Proceedings involving offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile Court shall include a minimum fine or penalty of \$60 and participation in a court-approved tobacco education program, which may include a participation fee.

(3) Except as provided in Section 78-3a-602, in the case of a minor 14 years of age or older, the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

(4) (a) In cases of violations of fish and game laws, boating laws, class B and class C misdemeanors, other infractions or misdemeanors as designated by general order of the Board of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court, a petition is not required and the issuance of a citation as provided in Section 78-3a-503 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not required unless requested by the court.

(b) Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.

Section 41. Section **78-3a-503** is amended to read:

78-3a-503. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to appear.

(1) As used in this section, "citation" means an abbreviated referral and is sufficient to

2718 invoke the jurisdiction of the court in lieu of a petition.

2719 (2) A citation shall be submitted to the court within five days of its issuance.

2720 (3) Each copy of the citation shall contain:

2721 (a) the name and address of the juvenile court before which the minor is to appear;

2722 (b) the name of the minor cited;

2723 (c) the statute or local ordinance that is alleged to have been violated;

2724 (d) a brief description of the offense charged;

2725 (e) the date, time, and location at which the offense is alleged to have occurred;

2726 (f) the date the citation was issued;

2727 (g) the name and badge or identification number of the peace officer or public official

2728 who issued the citation;

2729 (h) the name of the arresting person if an arrest was made by a private party and the

2730 citation was issued in lieu of taking the arrested minor into custody as provided in Section

2731 78-3a-113;

2732 (i) the date and time when the minor is to appear, or a statement that the minor and

2733 parent or legal guardian are to appear when notified by the juvenile court; and

2734 (j) the signature of the minor and the parent or legal guardian, if present, agreeing to

2735 appear at the juvenile court as designated on the citation.

2736 (4) Each copy of the citation shall contain space for the following information to be

2737 entered if known:

2738 (a) the minor's address;

2739 (b) the minor's date of birth;

2740 (c) the name and address of the [minor's] child's custodial parent or legal guardian, if

2741 different from the [minor] child; and

2742 (d) if there is a victim, the victim's name, address, and an estimate of loss, except that

2743 this information shall be removed from the documents the minor receives.

2744 (5) A citation received by the court beyond the time designated in Subsection (2) shall

2745 include a written explanation for the delay.

(6) The following offenses may be sent to the juvenile court as a citation:

(a) violations of fish and game laws;

(b) violations of boating laws;

(c) violations of curfew laws;

(d) any class B misdemeanor or less traffic violations where the person is under the age of 16;

(e) any class B or class C misdemeanor or infraction;

(f) any other infraction or misdemeanor as designated by general order of the Board of Juvenile Court Judges; and

(g) violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court.

(7) A preliminary inquiry is not required unless requested by the court.

(8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or habitually truant ~~minor~~ child.

(9) In the case of Section 76-10-105 violations committed on school property when a citation is issued under this section, the peace officer, public official, or compliance officer shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and file a duplicate with the juvenile court specified in the citation within five days.

(10) (a) A minor receiving a citation described in this section shall appear at the juvenile court designated in the citation on the time and date specified in the citation or when notified by the juvenile court.

(b) A citation may not require a minor to appear sooner than five days following its issuance.

(11) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation is subject to arrest and may be found in contempt of court. The court may proceed against the minor as provided in Section 78-3a-901 regardless of the disposition of the offense upon which the minor was originally cited.

(12) When a citation is issued under this section, bail may be posted and forfeited under Subsection 78-3a-114(12) with the consent of:

2774 (a) the court; and
2775 (b) if the minor is a child, the parent or legal guardian of the [minor] child cited.

2776 Section 42. Section **78-3a-602** is amended to read:

2777 **78-3a-602. Serious youth offender -- Procedure.**

2778 (1) Any action filed by a county attorney, district attorney, or attorney general charging
2779 a minor 16 years of age or older with a felony shall be by criminal information and filed in the
2780 juvenile court if the information charges any of the following offenses:

2781 (a) any felony violation of:

2782 (i) Section 76-6-103, aggravated arson;

2783 (ii) Subsection 76-5-103(1)(a), aggravated assault, involving intentionally causing
2784 serious bodily injury to another;

2785 (iii) Section 76-5-302, aggravated kidnaping;

2786 (iv) Section 76-6-203, aggravated burglary;

2787 (v) Section 76-6-302, aggravated robbery;

2788 (vi) Section 76-5-405, aggravated sexual assault;

2789 (vii) Section 76-10-508, discharge of a firearm from a vehicle;

2790 (viii) Section 76-5-202, attempted aggravated murder; or

2791 (ix) Section 76-5-203, attempted murder; or

2792 (b) an offense other than those listed in Subsection (1)(a) involving the use of a
2793 dangerous weapon which would be a felony if committed by an adult, and the minor has been
2794 previously adjudicated or convicted of an offense involving the use of a dangerous weapon
2795 which also would have been a felony if committed by an adult.

2796 (2) All proceedings before the juvenile court related to charges filed under Subsection
2797 (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

2798 (3) (a) If the information alleges the violation of a felony listed in Subsection (1), the
2799 state shall have the burden of going forward with its case and the burden of proof to establish
2800 probable cause to believe that one of the crimes listed in Subsection (1) has been committed
2801 and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have

the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that all of the following conditions exist:

(i) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

(ii) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants; and

(iii) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner.

(c) Once the state has met its burden under this Subsection (3) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions.

(d) If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) If an indictment is returned by a grand jury charging a violation under this section,

the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(7) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(8) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury, is not entitled to a preliminary examination in the district court.

(9) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(10) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(11) The juvenile court under Section 78-3a-104 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the [juvenile] minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Section 43. Section **78-3a-903** is amended to read:

78-3a-903. Modification or termination of custody order or decree -- Grounds -- Procedure.

(1) A parent, guardian, or next friend of a [minor] child whose legal custody has been transferred by the court to an individual, agency, or institution, except a secure youth corrections facility, may petition the court for restoration of custody or other modification or revocation of the court's order, on the ground that a change of circumstances has occurred which requires such modification or revocation in the best interest of the [minor] child or the public.

(2) The court shall make a preliminary investigation. If the court finds that the alleged change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If the court finds that a further examination of the facts is needed, or if the court on its own motion determines that the decree should be reviewed, it shall conduct a hearing. Notice shall be given to all persons concerned. At the hearing, the court may enter an order continuing, modifying, or terminating the decree.

(3) A petition by a parent may not be filed under this section after ~~[his or her]~~ the parent's parental rights have been terminated in accordance with Part 4, Termination of Parental Rights Act.

(4) An individual, agency, or institution vested with legal custody of a [minor] child may petition the court for a modification of the custody order on the ground that the change is necessary for the welfare of the [minor] child or in the public interest. The court shall proceed upon the petition in accordance with Subsections (1) and (2).

Section 44. Section **78-3a-904** is amended to read:

78-3a-904. When photographs, fingerprints, or HIV infection tests may be taken -- Distribution -- Expungement.

(1) Photographs may be taken of a minor 14 years of age or older who:

(a) is taken into custody for the alleged commission of an offense under Sections 78-3a-104, 78-3a-601, and 78-3a-602 that would also be an offense if the minor were 18 years of age or older; or

(b) has been determined to be a serious habitual offender for tracking under Section 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of

2886 Juvenile Justice Services.

2887 (2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

2888 (i) is taken into custody for the alleged commission of an offense that would be a
2889 felony if the minor were 18 years of age or older;

2890 (ii) has been determined to be a serious habitual offender for tracking under Section
2891 63-92-2 and is under the continuing jurisdiction of the Juvenile Court or the Division of
2892 Juvenile Justice Services; or

2893 (iii) is required to provide a DNA specimen under Section 53-10-403.

2894 (b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be
2895 stored by electronic medium.

2896 (3) HIV testing may be conducted on a minor who is taken into custody after having
2897 been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter
2898 5, Part 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a [minor]
2899 child victim.

2900 (4) HIV tests, photographs, and fingerprints may not be taken of a [minor] child
2901 younger than 14 years of age without the consent of the court.

2902 (5) (a) Photographs may be distributed or disbursed to individuals or agencies other
2903 than state or local law enforcement agencies only when a minor 14 years of age or older is
2904 charged with an offense which would be a felony if committed by an adult.

2905 (b) Fingerprints may be distributed or disbursed to individuals or agencies other than
2906 state or local law enforcement agencies.

2907 (6) When a minor's juvenile record is expunged, all photographs and other records as
2908 ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records
2909 may not be destroyed.

2910 Section 45. Section **78-3a-905** is amended to read:

2911 **78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.**

2912 (1) (a) A person who has been adjudicated under this chapter may petition the court for
2913 the expungement of [his] the person's record in the juvenile court if:

2914 (i) ~~[he]~~ the person has reached 18 years of age; and

2915 (ii) one year has elapsed from the date of termination of the continuing jurisdiction of
2916 the juvenile court or, ~~[in case he]~~ if the person was committed to a secure youth corrections
2917 facility, one year from the date of ~~[his]~~ the person's unconditional release from the custody of
2918 the Division of Juvenile Justice Services.

2919 (b) The court may waive the requirements in Subsection (1)(a), if the court finds, and
2920 states on the record, the reason why the waiver is appropriate.

2921 (c) The petitioner shall include with ~~[his]~~ the petition the original criminal history
2922 report obtained from the Bureau of Criminal Identification in accordance with the provisions of
2923 Subsection 53-10-108(8).

2924 (d) The petitioner shall send a copy of the petition to the county attorney or, if within a
2925 prosecution district, the district attorney.

2926 (e) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall
2927 notify the county attorney or district attorney, and the agency with custody of the records of the
2928 pendency of the petition and of the date of the hearing. Notice shall be given at least 30 days
2929 prior to the hearing.

2930 (ii) The court shall provide a victim with the opportunity to request notice of a petition
2931 for expungement. A victim shall receive notice of a petition for expungement at least 30 days
2932 prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a
2933 ~~[minor]~~ child or a person who is incapacitated or deceased, the victim's next of kin or
2934 authorized representative, submits a written and signed request for notice to the court in the
2935 judicial district in which the crime occurred or judgment was entered. The notice shall include
2936 a copy of the petition and statutes and rules applicable to the petition.

2937 (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other
2938 person who may have relevant information about the petitioner may testify.

2939 (b) In deciding whether to grant a petition for expungement, the court shall consider
2940 whether the rehabilitation of the petitioner has been attained to the satisfaction of the court,
2941 taking into consideration the petitioner's response to programs and treatment, ~~[his]~~ the

2942 petitioner's behavior subsequent to adjudication, and the nature and seriousness of the conduct.

2943 (c) The court may order sealed all petitioner's records under the control of the juvenile
2944 court and any of petitioner's records under the control of any other agency or official pertaining
2945 to the petitioner's adjudicated juvenile court cases if the court finds that:

2946 (i) the petitioner has not, since the termination of the court's jurisdiction or his
2947 unconditional release from the Division of Juvenile Justice Services, been convicted of a:

2948 (A) felony; or

2949 (B) misdemeanor involving moral turpitude; and

2950 (ii) no proceeding involving a felony or misdemeanor is pending or being instituted
2951 against ~~[him]~~ the petitioner.

2952 (3) The petitioner shall be responsible for service of the order of expungement to all
2953 affected state, county, and local entities, agencies, and officials. To avoid destruction or
2954 sealing of the records in whole or in part, the agency or entity receiving the expungement order
2955 shall only expunge all references to the petitioner's name in the records pertaining to the
2956 petitioner's adjudicated juvenile court cases.

2957 (4) Upon the entry of the order, the proceedings in the petitioner's case shall be
2958 considered never to have occurred and the petitioner may properly reply accordingly upon any
2959 inquiry in the matter. Inspection of the records may thereafter only be permitted by the court
2960 upon petition by the person who is the subject of the records, and only to persons named in the
2961 petition.

2962 (5) The court may not expunge a juvenile court record if the record contains an
2963 adjudication of:

2964 (a) Section 76-5-202, aggravated murder; or

2965 (b) Section 76-5-203, murder.

2966 (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments
2967 as provided in Section 78-3a-502 may petition the court for expungement of ~~[his]~~ the person's
2968 record if the person:

2969 (i) has reached 18 years of age; and

2970 (ii) has completed the conditions of the nonjudicial adjustments.

2971 (b) The court shall, without a hearing, order sealed all petitioner's records under the
2972 control of the juvenile court and any of petitioner's records under the control of any other
2973 agency or official pertaining to the petitioner's nonjudicial adjustments.

2974 Section 46. Section **78-3a-906** is amended to read:

2975 **78-3a-906. Child support obligation when custody of a child is vested in an**
2976 **individual or institution.**

2977 (1) When legal custody of a [~~minor~~] child is vested by the court in a secure youth
2978 corrections facility or any other state department, division, or agency other than [~~his~~] the child's
2979 parents, or if the guardianship of the child has been granted to another party and an agreement
2980 for a guardianship subsidy has been signed by the guardian, the court shall order the parents, a
2981 parent, or any other obligated person to pay child support for each month the child is in
2982 custody. In the same proceeding the court shall inform the parents, a parent, or any other
2983 obligated person, verbally and in writing, of the requirement to pay child support in accordance
2984 with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

35 (2) If legal custody of a [~~minor~~] child is vested by the court in a secure youth
2986 corrections facility, or any other state department, division, or agency, the court may refer the
2987 establishment of a child support order to the Office of Recovery Services. The referral shall be
2988 sent to the Office of Recovery Services within three working days of the hearing. Support
2989 obligation amounts shall be set by the Office of Recovery Services in accordance with Title 78,
2990 Chapter 45, Uniform Civil Liability for Support Act.

2991 (3) If referred to the Office of Recovery Services pursuant to Subsection (2), the court
2992 shall also inform the parties that they are required to contact the Office of Recovery Services
2993 within 30 days of the date of the hearing to establish a child support order and the penalty in
2994 Subsection (5) for failing to do so. If there is no existing child support order for the child, the
2995 liability for support shall accrue beginning on the 61st day following the hearing that occurs the
2996 first time the court vests custody of the child in a secure youth corrections facility, or any other
2997 state department, division, or agency other than his parents.

2998 (4) If a child is returned home and legal custody is subsequently vested by the court in
2999 a secure youth corrections facility or any other state department, division, or agency other than
3000 his parents, the liability for support shall accrue from the date the [minor] child is subsequently
3001 removed from the home, including time spent in detention or sheltered care.

3002 (5) (a) If the parents, parent, or other obligated person meets with the Office of
3003 Recovery Services within 30 days of the date of the hearing, the child support order may not
3004 include a judgment for past due support for more than two months.

3005 (b) Notwithstanding Subsection (5)(a), the court may order the liability of support to
3006 begin to accrue from the date of the proceeding referenced in Subsection (1) if:

3007 (i) the parents, parent, or any other person obligated fails to meet with the Office of
3008 Recovery Services within 30 days after being informed orally and in writing by the court of that
3009 requirement; and

3010 (ii) the Office of Recovery Services took reasonable steps under the circumstances to
3011 contact the parents, parent, or other person obligated within the subsequent 30-day period to
3012 facilitate the establishment of the child support order.

3013 (c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be
3014 presumed to have taken reasonable steps if the office:

3015 (i) has a signed, returned receipt for a certified letter mailed to the address of the
3016 parents, parent, or other obligated person regarding the requirement that a child support order
3017 be established; or

3018 (ii) has had a documented conversation, whether by telephone or in person, with the
3019 parents, parent, or other obligated person regarding the requirement that a child support order
3020 be established.

3021 (6) In collecting arrears, the Office of Recovery Services shall comply with Section
3022 62A-11-320 in setting a payment schedule or demanding payment in full.

3023 (7) Unless otherwise ordered, the parents or other person shall pay the child support to
3024 the Office of Recovery Services. The clerk of the court, the Office of Recovery Services, or the
3025 Department of Human Services and its divisions shall have authority to receive periodic

3026 payments for the care and maintenance of the [minor] child, such as Social Security payments
3027 or railroad retirement payments made in the name of or for the benefit of the [minor] child.

3028 (8) No court order under this section against a parent or other person shall be entered,
3029 unless notice of hearing has been served within the state, a voluntary appearance is made, or a
3030 waiver of service given. The notice shall specify that a hearing with respect to the financial
3031 support of the [minor] child will be held.

3032 (9) An existing child support order payable to a parent or other obligated person shall
3033 be assigned to the Department of Human Services as provided in Section 62A-1-117.

3034 (10) (a) Subsections (3) through (9) shall not apply if legal custody of a [minor] child is
3035 vested by the court in an individual.

3036 (b) If legal custody of a [minor] child is vested by the court in an individual, the court
3037 may order the parents, a parent, or any other obligated person to pay child support to the
3038 individual. In the same proceeding the court shall inform the parents, a parent, or any other
3039 obligated person, verbally and in writing, of the requirement to pay child support in accordance
3040 with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

41 Section 47. Section **78-3a-908** is amended to read:

3042 **78-3a-908. New hearings authorized -- Grounds and procedure.**

3043 (1) A parent, guardian, custodian, or next friend of any [minor] child adjudicated under
3044 this chapter, or any minor who is at least 18 years old, or adult affected by a decree in a
3045 proceeding under this chapter, may at any time petition the court for a new hearing on the
3046 ground that new evidence which was not known and could not with due diligence have been
3047 made available at the original hearing and which might affect the decree, has been discovered.

3048 (2) If it appears to the court that there is new evidence which might affect its decree, it
3049 shall order a new hearing, enter a decree, and make any disposition of the case warranted by all
3050 the facts and circumstances and the best interests of the minor.

3051 (3) This section does not apply to a minor's [cases] case handled under the provisions
3052 of Section 78-3a-602.

3053 Section 48. Section **78-3a-909** is amended to read:

3054 **78-3a-909. Appeals.**

3055 (1) An appeal to the Court of Appeals may be taken from any order, decree, or
3056 judgment of the juvenile court.

3057 (2) Appeals of right from juvenile court orders related to abuse, neglect, dependency,
3058 termination, and adoption proceedings, shall be taken within 15 days from entry of the order,
3059 decree, or judgment appealed from. In addition, the notice of appeal must be signed by
3060 appellant's counsel, if any, and by appellant, unless the appellant is a [minor] child or state
3061 agency. If an appellant fails to timely sign a notice of appeal, the appeal shall be dismissed.

3062 (3) If the parties are present in the courtroom, the court shall inform them of:

3063 (a) their right to appeal within the specified time limits;

3064 (b) the need for their signature on a notice of appeal in appeals from juvenile court
3065 orders related to abuse, neglect, dependency, termination, and adoption proceedings; and

3066 (c) the need for parties to maintain regular contact with their counsel and to keep all
3067 other parties and the appellate court informed of their whereabouts.

3068 (4) If the parties are not present in the courtroom, the court shall mail a written
3069 statement containing the information provided in Subsection (3) to the parties at their last
3070 known address.

3071 (5) (a) The court shall inform the parties' counsel at the conclusion of the proceedings
3072 that, if an appeal is filed, they must represent their clients throughout the appellate process
3073 unless relieved of that obligation by the juvenile court upon a showing of extraordinary
3074 circumstances.

3075 (b) Until the petition on appeal is filed, claims of ineffective assistance of counsel do
3076 not constitute extraordinary circumstances. If a claim is raised by trial counsel or a party, it
3077 must be included in the petition on appeal.

3078 (6) During the pendency of an appeal from juvenile court orders related to abuse,
3079 neglect, dependency, termination, and adoption proceedings, parties shall maintain regular
3080 contact with their counsel, if any, and keep all other parties and the appellate court informed of
3081 their whereabouts.

(7) In all other appeals of right, the appeal shall be taken within 30 days from the entry of the order, decree, or judgment appealed from and the notice of appeal must be signed by appellant's counsel, if any, or by appellant. The attorney general shall represent the state in all appeals under this chapter.

(8) Unless the juvenile court stays its order, the pendency of an appeal does not stay the order or decree appealed from in a minor's case, unless otherwise ordered by the Court of Appeals, if suitable provision for the care and custody of the minor involved is made pending the appeal.

(9) The name of the minor may not appear on the record on appeal.

Section 49. Section **78-3a-911** is amended to read:

78-3a-911. Office of Guardian Ad Litem Director -- Appointment of director -- Duties of director -- Contracts in second, third, and fourth districts.

(1) There is hereby created the Office of Guardian Ad Litem Director under the direct supervision of the Judicial Council in accordance with Subsection 78-3-21(13).

(2) (a) The Judicial Council shall appoint one person to serve full time as the guardian ad litem director for the state. The guardian ad litem director shall serve at the pleasure of the Judicial Council.

(b) The director shall be an attorney licensed to practice law in this state and selected on the basis of:

- (i) professional ability;
- (ii) experience in abuse, neglect, and dependency proceedings;
- (iii) familiarity with the role, purpose, and function of guardians ad litem in both juvenile and district courts; and
- (iv) ability to develop training curricula and reliable methods for data collection and evaluation.

(c) The director shall be trained in the United States Department of Justice National Court Appointed Special Advocate program prior to or immediately after [his] the director's appointment.

- 3110 (3) The guardian ad litem director shall:
- 3111 (a) establish policy and procedure for the management of a statewide guardian ad litem
- 3112 program;
- 3113 (b) manage the guardian ad litem program to assure that minors receive qualified
- 3114 guardian ad litem services in abuse, neglect, and dependency proceedings in accordance with
- 3115 state and federal law and policy;
- 3116 (c) develop standards for contracts of employment and contracts with independent
- 3117 contractors, and employ or contract with attorneys licensed to practice law in this state, to act
- 3118 as attorney guardians ad litem in accordance with Section 78-3a-912;
- 3119 (d) develop and provide training programs for attorney guardians ad litem and
- 3120 volunteers in accordance with the United States Department of Justice National Court
- 3121 Appointed Special Advocates Association standards;
- 3122 (e) update and develop the guardian ad litem manual, combining elements of the
- 3123 National Court Appointed Special Advocates Association manual with specific information
- 3124 about the law and policy of this state;
- 3125 (f) develop and provide a library of materials for the continuing education of attorney
- 3126 guardians ad litem and volunteers;
- 3127 (g) educate court personnel regarding the role and function of guardians ad litem;
- 3128 (h) develop needs assessment strategies, perform needs assessment surveys, and ensure
- 3129 that guardian ad litem training programs correspond with actual and perceived needs for
- 3130 training;
- 3131 (i) design and implement evaluation tools based on specific objectives targeted in the
- 3132 needs assessments described in Subsection (3)(h);
- 3133 (j) prepare and submit an annual report to the Judicial Council and the Child Welfare
- 3134 Legislative Oversight Panel regarding the development, policy, and management of the
- 3135 statewide guardian ad litem program, and the training and evaluation of attorney guardians ad
- 3136 litem and volunteers;
- 3137 (k) hire, train, and supervise investigators; and

(l) administer the program of private guardians ad litem established by Section 78-7-45.

(4) A contract of employment or independent contract described under Subsection (3)(c) shall provide that attorney guardians ad litem in the second, third, and fourth judicial districts devote their full time and attention to the role of attorney guardian ad litem, having no clients other than the ~~[children]~~ minors whose interest they represent within the guardian ad litem program.

Section 50. Section **78-3a-912** is amended to read:

78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.

(1) (a) The court:

(i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and

(ii) shall consider the best interest of a minor, consistent with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

(b) In all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment.

(2) An attorney guardian ad litem shall represent the best interest of each ~~[minor]~~ child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that:

(a) the ~~[minor]~~ child is removed from the ~~[minor's]~~ child's home by the division; or

(b) the petition is filed.

(3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad litem, shall:

(a) represent the best interest of the minor in all proceedings;

(b) prior to representing any minor before the court, be trained in:

(i) applicable statutory, regulatory, and case law; and

3166 (ii) accordance with the United States Department of Justice National Court Appointed
3167 Special Advocate Association guidelines;

3168 (c) conduct or supervise an independent investigation in order to obtain first-hand, a
3169 clear understanding of the situation and needs of the minor;

3170 (d) (i) personally meet with the minor;

3171 (ii) personally interview the minor if the minor is old enough to communicate;

3172 (iii) determine the minor's goals and concerns regarding placement; and

3173 (iv) personally assess or supervise an assessment of the appropriateness and safety of
3174 the minor's environment in each placement;

3175 (e) file written motions, responses, or objections at all stages of a proceeding when
3176 necessary to protect the best interest of a minor;

3177 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all
3178 administrative and foster care citizen review board hearings pertaining to the minor's case;

3179 (g) participate in all appeals unless excused by order of the court;

3180 (h) be familiar with local experts who can provide consultation and testimony
3181 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
3182 Family Services to:

3183 (i) maintain a minor in the minor's home; or

3184 (ii) reunify a [~~minor~~] child with the [~~minor's~~] child's parent;

3185 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
3186 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of:

3187 (i) the status of the minor's case;

3188 (ii) all court and administrative proceedings;

3189 (iii) discussions with, and proposals made by, other parties;

3190 (iv) court action; and

3191 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be
3192 provided to the minor;

3193 (j) review proposed orders for, and as requested by the court;

3194 (k) prepare proposed orders with clear and specific directions regarding services,
3195 treatment, evaluation, assessment, and protection of the minor and the minor's family; and

3196 (l) personally or through a trained volunteer, paralegal, or other trained staff, monitor
3197 implementation of a minor's child and family plan and any dispositional orders to:

3198 (i) determine whether services ordered by the court:

3199 (A) are actually provided; and

3200 (B) are provided in a timely manner; and

3201 (ii) attempt to assess whether services ordered by the court are accomplishing the
3202 intended goal of the services.

3203 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use
3204 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers
3205 Act, trained paralegals, and other trained staff to assist in investigation and preparation of
3206 information regarding the cases of individual minors before the court.

3207 (b) The attorney guardian ad litem described in Subsection (4)(a) may not delegate the
3208 attorney's responsibilities described in Subsection (3).

3209 (c) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
3210 in and follow, at a minimum, the guidelines established by the United States Department of
3211 Justice Court Appointed Special Advocate Association.

3212 (d) The court may use volunteers trained in accordance with the requirements of
3213 Subsection (4)(c) to assist in investigation and preparation of information regarding the cases
3214 of individual minors within the jurisdiction.

3215 (e) When possible and appropriate, the court may use a volunteer who is a peer of the
3216 minor appearing before the court, in order to provide assistance to that minor, under the
3217 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or
3218 other trained staff.

3219 (5) The attorney guardian ad litem shall continue to represent the best interest of the
3220 minor until released from that duty by the court.

3221 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

3222 (i) all costs resulting from the appointment of an attorney guardian ad litem; and
3223 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

3224 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem
3225 program to cover the costs described in Subsection (6)(a).

3226 (c) (i) When the court appoints an attorney guardian ad litem under this section, the
3227 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer
3228 expenses against the ~~[minor's]~~ child's parents, parent, or legal guardian in a proportion that the
3229 court determines to be just and appropriate.

3230 (ii) The court may not assess those fees or costs against:

3231 (A) a legal guardian, when that guardian is the state; or

3232 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

3233 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the
3234 court shall:

3235 (i) require that person to submit an affidavit of impecuniosity as provided in Section
3236 78-7-36; and

3237 (ii) follow the procedures and make the determinations as provided in Section 78-7-37.

3238 (7) An attorney guardian ad litem appointed under this section, when serving in the
3239 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee
3240 of the state for purposes of indemnification under Title 63, Chapter 30d, Governmental
3241 Immunity Act of Utah.

3242 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

3243 (b) If the minor's wishes differ from the attorney's determination of the minor's best
3244 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
3245 addition to presenting the attorney's determination of the minor's best interest.

3246 (c) A difference between the minor's wishes and the attorney's determination of best
3247 interest may not be considered a conflict of interest for the attorney.

3248 (d) The court may appoint one attorney guardian ad litem to represent the best interests
3249 of more than one ~~[minor]~~ child of a marriage.

(9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family.

(10) An attorney guardian ad litem shall maintain current and accurate records regarding:

- (a) the number of times the attorney has had contact with each minor; and
- (b) the actions the attorney has taken in representation of the minor's best interest.

(11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2, Government Records Access and Management Act.

(b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:

- (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and
- (ii) shall be released to the Legislature.

(c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature.

(ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor General may include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

- (A) the unique role of an attorney guardian ad litem described in Subsection (8); and
- (B) the state's role and responsibility:
 - (I) to provide a guardian ad litem program; and
 - (II) as parens patriae, to protect minors.

(ii) A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

(e) The Office of the Guardian Ad Litem shall present an annual report to the Child

3278 Welfare Legislative Oversight Panel detailing:

3279 (i) the development, policy, and management of the statewide guardian ad litem
3280 program;

3281 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

3282 (iii) the number of [~~children~~] minors served by the Office of the Guardian Ad Litem.

3283 Section 51. Section **78-3a-913** is amended to read:

3284 **78-3a-913. Right to counsel -- Appointment of counsel for indigent -- Cost --**

3285 **Court hearing to determine compelling reason to appoint a noncontracting attorney --**

3286 **Rate of pay.**

3287 (1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed
3288 that they have the right to be represented by counsel at every stage of the proceedings. They
3289 have the right to employ counsel of their own choice and if any of them requests an attorney
3290 and is found by the court to be indigent, counsel shall be appointed by the court as provided in
3291 Subsection (3). The court may appoint counsel without a request if it considers representation
3292 by counsel necessary to protect the interest of the minor or of other parties.

3293 (b) The cost of appointed counsel for an indigent minor or other indigent party,
3294 including the cost of counsel and expense of appeal, shall be paid by the county in which the
3295 trial court proceedings are held. Counties may levy and collect taxes for these purposes.

3296 (c) The court shall take into account the income and financial ability to retain counsel
3297 of the parents or guardian of a [~~minor~~] child in determining the indigency of the [~~minor~~] child.

3298 (2) If the state or county responsible to provide legal counsel for an indigent under
3299 Subsection (1)(b) has arranged by contract to provide services, the court if it has received
3300 notice or a copy of such contract shall appoint the contracting attorney as legal counsel to
3301 represent that indigent.

3302 (3) In the absence of contrary contractual provisions regarding the selection and
3303 appointment of parental defense counsel, the court shall select and appoint the attorney or
3304 attorneys if:

3305 (a) the contract for indigent legal services is with multiple attorneys; or

3306 (b) the contract is with an additional attorney or attorneys in the event of a conflict of
3307 interest.

3308 (4) If the court considers the appointment of a noncontracting attorney to provide legal
3309 services to an indigent, despite the existence of an indigent legal services contract and the court
3310 has a copy or notice of such contract, before the court may make the appointment, it shall:

3311 (a) set the matter for a hearing;

3312 (b) give proper notice to the attorney general and the Office of Child Welfare Parental
3313 Defense created in Section 63A-11-103; and

3314 (c) make findings that there is a compelling reason to appoint a noncontracting attorney
3315 before it may make such appointment.

3316 (5) The indigent's mere preference for other counsel shall not be considered a
3317 compelling reason justifying the appointment of a noncontracting attorney.

3318 (6) The court may order a minor, parent, guardian, or custodian for whom counsel is
3319 appointed and the parents or guardian of any [minor] child for whom counsel is appointed to
3320 reimburse the county for the cost of appointed counsel.

3321 Section 52. **Coordinating H.B. 103 with S.B. 7 -- Technical amendments.**

3322 If this H.B. 103 and S.B. 7, Child Protection Amendments, both pass, it is the intent of
3323 the Legislature that the Office of Legislative Research and General Counsel shall prepare the
3324 Utah Code database for publication by combining the amendments made by this bill and S.B. 7
3325 to Subsection 62A-4a-202.1(3), so that Subsection 62A-4a-202.1(3) reads as follows:

3326 "(3) (a) If possible, consistent with the [minor's] child's safety and welfare, before
3327 taking a [minor] child into protective custody, the child welfare worker shall also determine
3328 whether there are services reasonably available [~~to the worker which~~] that, if provided to [the
3329 minor's] a parent or [~~to the minor~~] guardian of the child, would eliminate the need to remove
3330 the [minor] child from the custody of the [minor's] child's parent or guardian.

3331 (b) If [~~those~~] the services described in Subsection (3)(a) are reasonably available, they
3332 shall be utilized.

3333 (c) In determining whether the services described in Subsection (3)(a) are reasonably

3334 available, and in making reasonable efforts to provide those services, the ~~[minor's]~~ child's
3335 health, safety, and welfare shall be the child welfare worker's paramount concern."