

**CHILD WELFARE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: Paul Ray

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**LONG TITLE**

**General Description:**

This bill makes amendments to child welfare provisions.

**Highlighted Provisions:**

This bill:

- ▶ clarifies that the division may support a finding of child abuse or neglect and that a judge may substantiate a finding;
- ▶ clarifies language regarding policies and rules;
- ▶ clarifies procedures for the Department of Human Services regarding child pornography;
- ▶ requires the Office of Licensing, within the Department of Human Services, to run a background check on employees of congregate care settings where a child may be placed by the Division of Child and Family Services;
- ▶ defines "threatened harm";
- ▶ outlines requirements for a juvenile court to follow when a child is placed in a residential treatment program;
- ▶ clarifies who may be involved in the development of a child and family plan;
- ▶ clarifies when a court may order the division to provide protective supervision services;
- ▶ modifies provisions relating to who may adopt a child and with whom the division may place a child who is in foster care;
- ▶ modifies provisions relating to a court's consideration of more than one petition for adoption;

- 30           ▶ clarifies that termination of a parent's rights does not prevent a relative of the parent
- 31 from seeking adoption of the parent's child; and
- 32           ▶ makes technical changes.

**33 Money Appropriated in this Bill:**

34           None

**35 Other Special Clauses:**

36           This bill provides a special effective date.

**37 Utah Code Sections Affected:**

38 AMENDS:

- 39           **51-9-405**, as last amended by Laws of Utah 2016, Chapter 144
- 40           **62A-1-118**, as last amended by Laws of Utah 2015, Chapter 255
- 41           **62A-1-122**, as enacted by Laws of Utah 2018, Chapter 285
- 42           **62A-2-120**, as last amended by Laws of Utah 2017, Chapters 78, 181, and 400
- 43           **62A-4a-101**, as last amended by Laws of Utah 2017, Chapters 209, 323, and 459
- 44           **62A-4a-102**, as last amended by Laws of Utah 2015, Chapter 258
- 45           **62A-4a-105.5**, as enacted by Laws of Utah 1994, Chapter 260
- 46           **62A-4a-110**, as last amended by Laws of Utah 2009, Chapter 75
- 47           **62A-4a-112**, as last amended by Laws of Utah 2009, Chapter 75
- 48           **62A-4a-117**, as last amended by Laws of Utah 2016, Chapter 231
- 49           **62A-4a-118**, as last amended by Laws of Utah 2017, Chapter 478
- 50           **62A-4a-201**, as last amended by Laws of Utah 2017, Chapter 330
- 51           **62A-4a-202.6**, as last amended by Laws of Utah 2018, Chapter 415
- 52           **62A-4a-205**, as last amended by Laws of Utah 2017, Chapter 323
- 53           **62A-4a-412**, as last amended by Laws of Utah 2017, Chapters 209 and 459
- 54           **62A-4a-602**, as last amended by Laws of Utah 2017, Chapter 148
- 55           **62A-4a-711**, as enacted by Laws of Utah 2017, Chapter 401
- 56           **62A-4a-905**, as last amended by Laws of Utah 2009, Chapter 75
- 57           **62A-4a-1003**, as last amended by Laws of Utah 2017, Chapter 209

- 58            **63G-4-402**, as last amended by Laws of Utah 2011, Chapter 208
- 59            **76-5-110**, as last amended by Laws of Utah 2011, Chapter 366
- 60            **78A-6-105**, as last amended by Laws of Utah 2018, Chapters 45, 91, 192, 235, 285, and
- 61    415
- 62            **78A-6-117**, as last amended by Laws of Utah 2018, Chapters 117 and 285
- 63            **78A-6-302**, as last amended by Laws of Utah 2018, Chapter 91
- 64            **78A-6-306**, as last amended by Laws of Utah 2018, Chapter 91
- 65            **78A-6-312**, as last amended by Laws of Utah 2018, Chapter 91
- 66            **78A-6-317**, as last amended by Laws of Utah 2014, Chapters 90 and 275
- 67            **78A-6-902**, as last amended by Laws of Utah 2018, Chapter 359
- 68            **78A-6-1103**, as last amended by Laws of Utah 2014, Chapter 265
- 69            **78A-6-1302**, as last amended by Laws of Utah 2017, Chapter 330
- 70            **78B-6-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 71            **78B-6-117**, as last amended by Laws of Utah 2018, Chapter 43 and further amended by
- 72    Revisor Instructions, Laws of Utah 2018, Chapter 446
- 73            **78B-6-133**, as last amended by Laws of Utah 2015, Chapter 194

74    ENACTS:

75            **78A-6-311.5**, Utah Code Annotated 1953



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

78            Section 1. Section **51-9-405** is amended to read:

79            **51-9-405. Substance Abuse Prevention Account established -- Funding -- Uses.**

80            (1) There is created a restricted account within the General Fund known as the  
81    Substance Abuse Prevention Account.

82            (2) (a) The Division of Finance shall allocate to the Substance Abuse Prevention  
83    Account from the collected surcharge established in Section **51-9-401**:

84            (i) 2.5% for the juvenile court, but not to exceed the amount appropriated by the  
85    Legislature; and

86 (ii) 2.5% for the State Board of Education, but not to exceed the amount appropriated  
87 by the Legislature.

88 (b) The juvenile court shall use the allocation to pay for compensatory service  
89 programs required by ~~[Subsection]~~ Section 78A-6-117~~[(2)(m)]~~.

90 (c) The State Board of Education shall use the allocation in public school programs for:

91 (i) substance abuse prevention and education;

92 (ii) substance abuse prevention training for teachers and administrators; and

93 (iii) district and school programs to supplement, not supplant, existing local prevention  
94 efforts in cooperation with local substance abuse authorities.

95 Section 2. Section **62A-1-118** is amended to read:

96 **62A-1-118. Access to abuse and neglect information to screen employees and**  
97 **volunteers.**

98 (1) The department may conduct a background check, pursuant to Subsections  
99 62A-2-120(1) through (4), of department employees and volunteers who have direct access, as  
100 defined in Section 62A-2-101, to a child or a vulnerable adult.

101 (2) In addition to conducting a background check described in Subsection (1), and  
102 subject to the requirements of this section, the department may search the Division of Child  
103 and Family Services' Management Information System described in Section 62A-4a-1003.

104 (3) With respect to department employees and volunteers, the department may only  
105 access information in the systems and databases described in Subsection 62A-2-120(3) and in  
106 the Division of Child and Family Services' Management Information System for the purpose of  
107 determining at the time of hire and each year thereafter whether a department employee or  
108 volunteer has a criminal history, an adjudication of abuse or neglect, or ~~[, since January 1,~~  
109 ~~1994,]~~ a substantiated or supported finding of abuse, neglect, or exploitation ~~[after notice and~~  
110 ~~an opportunity for a hearing consistent with Title 63G, Chapter 4, Administrative Procedures~~  
111 ~~Act, but only if a criminal history or identification as a possible perpetrator of abuse or neglect~~  
112 ~~is directly relevant to the employment or volunteer activities of that person].~~

113 (4) A department employee or volunteer to whom Subsection (1) applies shall submit

114 to the department the employee or volunteer's name, other personal identifying information,  
115 and consent for the background check on a form specified by the department.

116 (5) The department shall make rules in accordance with Title 63G, Chapter 3, Utah  
117 Administrative Rulemaking Act, defining permissible and impermissible work-related  
118 activities for a department employee or volunteer with a criminal history or with one or more  
119 substantiated or supported findings of abuse, neglect, or exploitation.

120 Section 3. Section **62A-1-122** is amended to read:

121 **62A-1-122. Child pornography.**

122 (1) As used in this section:

123 (a) "Child pornography" means the same as that term is defined in Section [76-5b-103](#).

124 (b) "Secure" means to prevent and prohibit access, electronic upload, transmission, or  
125 transfer of an image.

126 (2) The department or a division within the department may not retain child  
127 pornography longer than is necessary to comply with the requirements of this section.

128 (3) When the department or a division within the department obtains child  
129 pornography as a result of an employee unlawfully viewing child pornography, the department  
130 or division shall consult with and follow the guidance of the Department of Human Resource  
131 Management regarding personnel action and local law enforcement regarding retention of the  
132 child pornography.

133 (4) When the department or a division within the department obtains child  
134 pornography as a result of a report or an investigation, the department or division shall~~[(a)~~  
135 ~~document a written description of the child pornography in the appropriate case file; and (b)~~  
136 ~~securely transfer]~~ immediately secure the child pornography ~~[to]~~, or the electronic device if the  
137 child pornography is digital, and contact the law enforcement office that has jurisdiction over  
138 the area where the division's case is located.

139 ~~[(5) When the department or a division within the department transfers child~~  
140 ~~pornography to law enforcement, the law enforcement office shall:]~~

141 ~~[(a) seize and retain the child pornography as evidence, in accordance with Section~~

142 ~~24-2-103;~~]

143 ~~[(b) prohibit the distribution, release, or display of the child pornography, except to the~~  
144 ~~following:]~~

145 ~~[(i) an individual to whom a court has granted access by court order, as described in~~  
146 ~~Subsection (6);]~~

147 ~~[(ii) a department or division investigator, a supervisor of a department, or division~~  
148 ~~investigator or an investigator authorized under Section ~~62A-4a-202.6~~, if necessary for the~~  
149 ~~investigation;]~~

150 ~~[(iii) an administrative law judge employed by the Department of Human Services, if~~  
151 ~~necessary for an adjudication;]~~

152 ~~[(iv) an office of the city attorney, county attorney, district attorney, or attorney~~  
153 ~~general, if necessary for prosecution;]~~

154 ~~[(v) a law enforcement agency, if necessary for an investigation; or]~~

155 ~~[(vi) the guardian ad litem for the child who is the subject of the child pornography;~~  
156 ~~and]~~

157 ~~[(c) when the department determines that the child pornography no longer needs to be~~  
158 ~~held as evidence, dispose of the child pornography under Subsection ~~24-3-103~~(6)(a)(iii).]~~

159 ~~[(6) A court order described in Subsection (5)(b)(i):]~~

160 ~~[(a) shall describe with particularity the individual to whom the child pornography may~~  
161 ~~be released; and]~~

162 ~~[(b) may impose reasonable restrictions on access to the child pornography to protect~~  
163 ~~the privacy of the child victim.]~~

164 Section 4. Section **62A-2-120** is amended to read:

165 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

166 (1) As used in this section:

167 (a) (i) "Applicant" means:

168 ~~[(i) a person described]~~ (A) the same as that term is defined in Section ~~62A-2-101~~;

169 ~~[(ii)]~~ (B) an individual who~~[(A)]~~ is associated with a licensee~~;~~ and ~~[(B)]~~ has or will

170 likely have direct access to a child or a vulnerable adult;

171 ~~[(iii)]~~ (C) an individual who provides respite care to a foster parent or an adoptive  
172 parent on more than one occasion;

173 ~~[(iv)]~~ (D) a department contractor; ~~[or]~~

174 ~~[(v)]~~ (E) a guardian submitting an application on behalf of an individual, other than the  
175 child or vulnerable adult who is receiving the service, if the individual is 12 years of age or  
176 older and~~[(A)]~~ resides in a home, that is licensed or certified by the office, with the child or  
177 vulnerable adult who is receiving services; or

178 ~~[(B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).]~~

179 (F) a guardian submitting an application on behalf of an individual, other than the child  
180 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and  
181 is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

182 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody  
183 of the Division of Child and Family Services or the Division of Juvenile Justice Services.

184 (b) "Application" means a background screening application to the office.

185 (c) "Bureau" means the Bureau of Criminal Identification within the Department of  
186 Public Safety, created in Section 53-10-201.

187 (d) "Incidental care" means occasional care, not in excess of five hours per week and  
188 never overnight, for a foster child.

189 (e) "Personal identifying information" means:

190 (i) current name, former names, nicknames, and aliases;

191 (ii) date of birth;

192 (iii) physical address and email address;

193 (iv) telephone number;

194 (v) driver license or other government-issued identification;

195 (vi) social security number;

196 (vii) only for applicants who are 18 years of age or older, fingerprints, in a form  
197 specified by the office; and

198 (viii) other information specified by the office by rule made in accordance with Title  
199 63G, Chapter 3, Utah Administrative Rulemaking Act.

200 (2) (a) Except as provided in Subsection ~~[13]~~ (13), an applicant shall submit the  
201 following to the office:

202 (i) personal identifying information;

203 (ii) a fee established by the office under Section 63J-1-504; and

204 (iii) a form, specified by the office, for consent for:

205 (A) an initial background check upon submission of the information described under  
206 this Subsection (2)(a);

207 (B) a background check at the applicant's annual renewal;

208 (C) a background check when the office determines that reasonable cause exists; and

209 (D) retention of personal identifying information, including fingerprints, for  
210 monitoring and notification as described in Subsections (3)(d) and (4).

211 (b) In addition to the requirements described in Subsection (2)(a), if an applicant spent  
212 time outside of the United States and its territories during the five years immediately preceding  
213 the day on which the information described in Subsection (2)(a) is submitted to the office, the  
214 office may require the applicant to submit documentation establishing whether the applicant  
215 was convicted of a crime during the time that the applicant spent outside of the United States or  
216 its territories.

217 (3) The office:

218 (a) shall perform the following duties as part of a background check of an applicant:

219 (i) check state and regional criminal background databases for the applicant's criminal  
220 history by:

221 (A) submitting personal identifying information to the ~~[Bureau]~~ bureau for a search; or

222 (B) using the applicant's personal identifying information to search state and regional  
223 criminal background databases as authorized under Section 53-10-108;

224 (ii) submit the applicant's personal identifying information and fingerprints to the  
225 ~~[Bureau]~~ bureau for a criminal history search of applicable national criminal background



226 databases;

227 (iii) search the Department of Human Services, Division of Child and Family Services'

228 Licensing Information System described in Section 62A-4a-1006;

229 (iv) search the Department of Human Services, Division of Aging and Adult Services'

230 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

231 (v) search the juvenile court records for substantiated findings of severe child abuse or

232 neglect described in Section 78A-6-323; and

233 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided

234 under Section 78A-6-209;

235 (b) shall conduct a background check of an applicant for an initial background check

236 upon submission of the information described under Subsection (2)(a);

237 (c) may conduct all or portions of a background check of an applicant, as provided by

238 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative

239 Rulemaking Act:

240 (i) for an annual renewal; or

241 (ii) when the office determines that reasonable cause exists;

242 (d) may submit an applicant's personal identifying information, including fingerprints,

243 to the [Bureau] bureau for checking, retaining, and monitoring of state and national criminal

244 background databases and for notifying the office of new criminal activity associated with the

245 applicant;

246 (e) shall track the status of an approved applicant under this section to ensure that an

247 approved applicant is not required to duplicate the submission of the applicant's fingerprints if

248 the applicant applies for:

249 (i) more than one license;

250 (ii) direct access to a child or a vulnerable adult in more than one human services

251 program; or

252 (iii) direct access to a child or a vulnerable adult under a contract with the department;

253 (f) shall track the status of each license and each individual with direct access to a child

254 or a vulnerable adult and notify the [Bureau] bureau when the license has expired or the  
255 individual's direct access to a child or a vulnerable adult has ceased;

256 (g) shall adopt measures to strictly limit access to personal identifying information  
257 solely to the office employees responsible for processing the applications for background  
258 checks and to protect the security of the personal identifying information the office reviews  
259 under this Subsection (3); ~~and~~

260 (h) as necessary to comply with the federal requirement to check a state's child abuse  
261 and neglect registry regarding any individual working in a program under this section that  
262 serves children, shall:

263 (i) search the Department of Human Services, Division of Child and Family Services'  
264 Licensing Information System described in Section 62A-4a-1006; and

265 (ii) require the child abuse and neglect registry be checked in each state where an  
266 applicant resided at any time during the five years immediately preceding the day on which the  
267 applicant submits the information described in Subsection (2)(a) to the office; and

268 ~~(h)~~ (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah  
269 Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to  
270 background checks.

271 (4) (a) With the personal identifying information the office submits to the [Bureau]  
272 bureau under Subsection (3), the [Bureau] bureau shall check against state and regional  
273 criminal background databases for the applicant's criminal history.

274 (b) With the personal identifying information and fingerprints the office submits to the  
275 [Bureau] bureau under Subsection (3), the [Bureau] bureau shall check against national  
276 criminal background databases for the applicant's criminal history.

277 (c) Upon direction from the office, and with the personal identifying information and  
278 fingerprints the office submits to the [Bureau] bureau under Subsection (3)(d), the [Bureau]  
279 bureau shall:

280 (i) maintain a separate file of the fingerprints for search by future submissions to the  
281 local and regional criminal records databases, including latent prints; and

282 (ii) monitor state and regional criminal background databases and identify criminal  
283 activity associated with the applicant.

284 (d) The [~~Bureau~~] bureau is authorized to submit the fingerprints to the Federal Bureau  
285 of Investigation Next Generation Identification System, to be retained in the Federal Bureau of  
286 Investigation Next Generation Identification System for the purpose of:

287 (i) being searched by future submissions to the national criminal records databases,  
288 including the Federal Bureau of Investigation Next Generation Identification System and latent  
289 prints; and

290 (ii) monitoring national criminal background databases and identifying criminal  
291 activity associated with the applicant.

292 (e) The Bureau shall notify and release to the office all information of criminal activity  
293 associated with the applicant.

294 (f) Upon notice from the office that a license has expired or an individual's direct  
295 access to a child or a vulnerable adult has ceased, the [~~Bureau~~] bureau shall:

296 (i) discard and destroy any retained fingerprints; and

297 (ii) notify the Federal Bureau of Investigation when the license has expired or an  
298 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau  
299 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of  
300 Investigation Next Generation Identification System.

301 (5) (a) After conducting the background check described in Subsections (3) and (4), the  
302 office shall deny an application to an applicant who, within three years before the day on which  
303 the applicant submits information to the office under Subsection (2) for a background check,  
304 has been convicted of any of the following, regardless of whether the offense is a felony, a  
305 misdemeanor, or an infraction:

306 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to  
307 animals, or bestiality;

308 (ii) a violation of any pornography law, including sexual exploitation of a minor;

309 (iii) prostitution;

310 (iv) an offense included in:  
311 (A) Title 76, Chapter 5, Offenses Against the Person;  
312 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or  
313 (C) Title 76, Chapter 7, Offenses Against the Family;  
314 (v) aggravated arson, as described in Section 76-6-103;  
315 (vi) aggravated burglary, as described in Section 76-6-203;  
316 (vii) aggravated robbery, as described in Section 76-6-302;  
317 (viii) identity fraud crime, as described in Section 76-6-1102; or  
318 (ix) a conviction for a felony or misdemeanor offense committed outside of the state  
319 that, if committed in the state, would constitute a violation of an offense described in  
320 Subsections (5)(a)(i) through (viii).

321 (b) If the office denies an application to an applicant based on a conviction described in  
322 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in  
323 Subsection (6).

324 (6) (a) The office shall conduct a comprehensive review of an applicant's background  
325 check if the applicant:

326 (i) has a conviction for any felony offense, not described in Subsection (5)(a),  
327 regardless of the date of the conviction;

328 (ii) has a conviction for a misdemeanor offense, not described in Subsection (5)(a), and  
329 designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative  
330 Rulemaking Act, if the conviction is within five years before the day on which the applicant  
331 submits information to the office under Subsection (2) for a background check;

332 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more  
333 than three years before the day on which the applicant submitted information under Subsection  
334 (2)(a);

335 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense  
336 described in Subsection (5)(a);

337 (v) has a listing in the Department of Human Services, Division of Child and Family

338 Services' Licensing Information System described in Section 62A-4a-1006;

339 (vi) has a listing in the Department of Human Services, Division of Aging and Adult

340 Services' vulnerable adult abuse, neglect, or exploitation database described in Section

341 62A-3-311.1;

342 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse

343 or neglect described in Section 78A-6-323;

344 (viii) has a record of an adjudication in juvenile court for an act that, if committed by

345 an adult, would be a felony or misdemeanor, if the applicant is:

346 (A) under 28 years of age; or

347 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is

348 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor

349 offense described in Subsection (5)(a); or

350 (ix) has a pending charge for an offense described in Subsection (5)(a).

351 (b) The comprehensive review described in Subsection (6)(a) shall include an

352 examination of:

353 (i) the date of the offense or incident;

354 (ii) the nature and seriousness of the offense or incident;

355 (iii) the circumstances under which the offense or incident occurred;

356 (iv) the age of the perpetrator when the offense or incident occurred;

357 (v) whether the offense or incident was an isolated or repeated incident;

358 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable

359 adult, including:

360 (A) actual or threatened, nonaccidental physical or mental harm;

361 (B) sexual abuse;

362 (C) sexual exploitation; or

363 (D) negligent treatment;

364 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric

365 treatment received, or additional academic or vocational schooling completed; and

366 (viii) any other pertinent information.

367 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the  
368 office shall deny an application to an applicant if the office finds that approval would likely  
369 create a risk of harm to a child or a vulnerable adult.

370 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
371 office may make rules, consistent with this chapter, to establish procedures for the  
372 comprehensive review described in this Subsection (6).

373 (7) Subject to Subsection (10), the office shall approve an application to an applicant  
374 who is not denied under Subsection (5), (6), or (13).

375 (8) (a) The office may conditionally approve an application of an applicant, for a  
376 maximum of 60 days after the day on which the office sends written notice to the applicant  
377 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

378 (i) is awaiting the results of the criminal history search of national criminal background  
379 databases; and

380 (ii) would otherwise approve an application of the applicant under Subsection (7).

381 (b) Upon receiving the results of the criminal history search of national criminal  
382 background databases, the office shall approve or deny the application of the applicant in  
383 accordance with Subsections (5) through (7).

384 (9) A licensee or department contractor may not permit an individual to have direct  
385 access to a child or a vulnerable adult unless, subject to Subsection (10):

386 (a) the individual is associated with the licensee or department contractor and:

387 (i) the individual's application is approved by the office under this section;

388 (ii) the individual's application is conditionally approved by the office under

389 Subsection (8); or

390 (iii) (A) the individual has submitted the background check information described in  
391 Subsection (2) to the office;

392 (B) the office has not determined whether to approve the applicant's application; and

393 (C) the individual is directly supervised by an individual who has a current background

394 screening approval issued by the office under this section and is associated with the licensee or  
395 department contractor;

396 (b) (i) the individual is associated with the licensee or department contractor;

397 (ii) the individual has a current background screening approval issued by the office  
398 under this section;

399 (iii) one of the following circumstances, that the office has not yet reviewed under  
400 Subsection (6), applies to the individual:

401 (A) the individual was charged with an offense described in Subsection (5)(a);

402 (B) the individual is listed in the Licensing Information System, described in Section  
403 [62A-4a-1006](#);

404 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation  
405 database, described in Section [62A-3-311.1](#);

406 (D) the individual has a record in the juvenile court of a substantiated finding of severe  
407 child abuse or neglect, described in Section [78A-6-323](#); or

408 (E) the individual has a record of an adjudication in juvenile court for an act that, if  
409 committed by an adult, would be a felony or a misdemeanor; and

410 (iv) the individual is directly supervised by an individual who:

411 (A) has a current background screening approval issued by the office under this  
412 section; and

413 (B) is associated with the licensee or department contractor;

414 (c) the individual:

415 (i) is not associated with the licensee or department contractor; and

416 (ii) is directly supervised by an individual who:

417 (A) has a current background screening approval issued by the office under this  
418 section; and

419 (B) is associated with the licensee or department contractor;

420 (d) the individual is the parent or guardian of the child, or the guardian of the  
421 vulnerable adult;

422 (e) the individual is approved by the parent or guardian of the child, or the guardian of  
423 the vulnerable adult, to have direct access to the child or the vulnerable adult;

424 (f) the individual is only permitted to have direct access to a vulnerable adult who  
425 voluntarily invites the individual to visit; or

426 (g) the individual only provides incidental care for a foster child on behalf of a foster  
427 parent who has used reasonable and prudent judgment to select the individual to provide the  
428 incidental care for the foster child.

429 (10) An individual may not have direct access to a child or a vulnerable adult if the  
430 individual is prohibited by court order from having that access.

431 (11) Notwithstanding any other provision of this section, an individual for whom the  
432 office denies an application may not have supervised or unsupervised direct access to a child or  
433 vulnerable adult unless the office approves a subsequent application by the individual.

434 (12) (a) Within 30 days after the day on which the office receives the background  
435 check information for an applicant, the office shall give written notice to:

436 (i) the applicant, and the licensee or department contractor, of the office's decision  
437 regarding the background check and findings; and

438 (ii) the applicant of any convictions and potentially disqualifying charges and  
439 adjudications found in the search.

440 (b) With the notice described in Subsection (12)(a), the office shall also give the  
441 applicant the details of any comprehensive review conducted under Subsection (6).

442 (c) If the notice under Subsection (12)(a) states that the applicant's application is  
443 denied, the notice shall further advise the applicant that the applicant may, under Subsection  
444 [62A-2-111\(2\)](#), request a hearing in the department's Office of Administrative Hearings, to  
445 challenge the office's decision.

446 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
447 office shall make rules, consistent with this chapter:

448 (i) defining procedures for the challenge of its background check decision described in  
449 Subsection (12)(c); and



450 (ii) expediting the process for renewal of a license under the requirements of this  
451 section and other applicable sections.

452 (13) An individual or a department contractor who provides services in an adults only  
453 substance use disorder program, as defined by rule, is exempt from this section. This  
454 exemption does not extend to a program director or a member, as defined by Section  
455 [62A-2-108](#), of the program.

456 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements  
457 of this section, if the background check of an applicant is being conducted for the purpose of  
458 licensing a prospective foster home or approving a prospective adoptive placement of a child in  
459 state custody, the office shall:

460 (i) check the child abuse and neglect registry in each state where each applicant resided  
461 in the five years immediately preceding the day on which the applicant applied to be a foster  
462 parent or adoptive parent, to determine whether the prospective foster parent or prospective  
463 adoptive parent is listed in the registry as having a substantiated or supported finding of child  
464 abuse or neglect; and

465 (ii) check the child abuse and neglect registry in each state where each adult living in  
466 the home of the applicant described in Subsection (14)(a)(i) resided in the five years  
467 immediately preceding the day on which the applicant applied to be a foster parent or adoptive  
468 parent, to determine whether the adult is listed in the registry as having a substantiated or  
469 supported finding of child abuse or neglect.

470 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

471 (i) federal law or rule permits otherwise; or

472 (ii) the requirements would prohibit the Division of Child and Family Services or a  
473 court from placing a child with:

474 (A) a noncustodial parent under Section [62A-4a-209](#), [78A-6-307](#), or [78A-6-307.5](#); or

475 (B) a relative, other than a noncustodial parent, under Section [62A-4a-209](#), [78A-6-307](#),  
476 or [78A-6-307.5](#), pending completion of the background check described in Subsection (5).

477 (c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a

478 license renewal to a prospective foster parent or a prospective adoptive parent if the applicant  
479 has been convicted of:

480 (i) a felony involving conduct that constitutes any of the following:

481 (A) child abuse, as described in Section 76-5-109;

482 (B) commission of domestic violence in the presence of a child, as described in Section  
483 76-5-109.1;

484 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

485 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

486 (E) aggravated murder, as described in Section 76-5-202;

487 (F) murder, as described in Section 76-5-203;

488 (G) manslaughter, as described in Section 76-5-205;

489 (H) child abuse homicide, as described in Section 76-5-208;

490 (I) homicide by assault, as described in Section 76-5-209;

491 (J) kidnapping, as described in Section 76-5-301;

492 (K) child kidnapping, as described in Section 76-5-301.1;

493 (L) aggravated kidnapping, as described in Section 76-5-302;

494 (M) human trafficking of a child, as described in Section 76-5-308.5;

495 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

496 (O) sexual exploitation of a minor, as described in Section 76-5b-201;

497 (P) aggravated arson, as described in Section 76-6-103;

498 (Q) aggravated burglary, as described in Section 76-6-203;

499 (R) aggravated robbery, as described in Section 76-6-302; or

500 (S) domestic violence, as described in Section 77-36-1; or

501 (ii) an offense committed outside the state that, if committed in the state, would  
502 constitute a violation of an offense described in Subsection (14)(c)(i).

503 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or  
504 license renewal to a prospective foster parent or a prospective adoptive parent if, within the  
505 five years immediately preceding the day on which the individual's application or license would

506 otherwise be approved, the applicant was convicted of a felony involving conduct that  
507 constitutes a violation of any of the following:

- 508 (i) aggravated assault, as described in Section 76-5-103;
- 509 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 510 (iii) mayhem, as described in Section 76-5-105;
- 511 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 512 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 513 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances  
514 Act;

515 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance  
516 Precursor Act; or

517 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

518 (e) In addition to the circumstances described in Subsection (6)(a), the office shall  
519 conduct the comprehensive review of an applicant's background check pursuant to this section  
520 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a  
521 child abuse and neglect registry of another state as having a substantiated or supported finding  
522 of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

523 Section 5. Section 62A-4a-101 is amended to read:

524 **62A-4a-101. Definitions.**

525 As used in this chapter:

526 (1) "Abuse" means the same as that term is defined in Section 78A-6-105.

527 (2) "Adoption services" means:

528 (a) placing children for adoption;

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

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

531 (d) conducting adoption studies;

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

533 (f) providing postadoptive placement services, upon request of a family, for the

534 purpose of stabilizing a possible disruptive placement.

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

537 (4) "Child protection team" means a team consisting of:

538 (a) the caseworker assigned to the case;

539 (b) the caseworker who made the decision to remove the child;

540 (c) a representative of the school or school district where the child attends school;

541 (d) the peace officer who removed the child from the home;

542 (e) a representative of the appropriate Children's Justice Center, if one is established  
543 within the county where the child resides;

544 (f) if appropriate, and known to the division, a therapist or counselor who is familiar  
545 with the child's circumstances;

546 (g) members of a child protection unit; and

547 (h) any other individuals determined appropriate and necessary by the team coordinator  
548 and chair.

549 (5) "Child protection unit" means any unit created by a chief of police or a sheriff of a  
550 city, town, metro township, or county that is composed of at least the following individuals  
551 who are trained in the prevention, identification, and treatment of abuse or neglect:

552 (a) a law enforcement officer, as defined in Section [53-13-103](#); and

553 (b) a child advocate selected by the chief of police or a sheriff.

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

555 (7) "Chronic neglect" means repeated or patterned neglect.

556 (8) "Consult" means an interaction between two persons in which the initiating person:

557 (a) provides information to another person;

558 (b) provides the other person an opportunity to respond; and

559 (c) takes the other person's response, if any, into consideration.

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

562 (10) "Custody," with regard to the division, means the custody of a minor in the  
563 division as of the date of disposition.

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

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

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

568 (i) day-care center;

569 (ii) family group home; or

570 (iii) family child care home.

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

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

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

575 (15) "Domestic violence services" means:

576 (a) temporary shelter, treatment, and related services to:

577 (i) a person who is a victim of abuse, as defined in Section [78B-7-102](#); and

578 (ii) the dependent children of a person [~~described in Subsection (12)(a)(i)~~] who is a  
579 victim of abuse, as defined in Section [78B-7-102](#); and

580 (b) treatment services for a person who is alleged to have committed, has been  
581 convicted of, or has pled guilty to, an act of domestic violence as defined in Section [77-36-1](#).

582 (16) "Harm" means the same as that term is defined in Section [78A-6-105](#).

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

586 (18) "Incest" means the same as that term is defined in Section [78A-6-105](#).

587 (19) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

588 (20) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

589 (21) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of

590 Children:

591 (a) a child; or

592 (b) a person:

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

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

596 (22) "Molestation" means the same as that term is defined in Section [78A-6-105](#).

597 (23) "Mutual case" means a case that has been:

598 (a) opened by the division under the division's discretion and procedures;

599 (b) opened by the law enforcement agency with jurisdiction over the case; and

600 (c) accepted for investigation by the child protection unit established by the chief of  
601 police or sheriff, as applicable.

602 (24) "Natural parent" means a minor's biological or adoptive parent, and includes a  
603 minor's noncustodial parent.

604 (25) "Neglect" means the same as that term is defined in Section [78A-6-105](#).

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

607 (a) the shelter hearing; or

608 (b) the child's return home.

609 (27) "Protective services" means expedited services that are provided:

610 (a) in response to evidence of neglect, abuse, or dependency of a child;

611 (b) to a cohabitant who is neglecting or abusing a child, in order to:

612 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the  
613 causes of neglect or abuse; and

614 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

615 (c) in cases where the child's welfare is endangered:

616 (i) to bring the situation to the attention of the appropriate juvenile court and law  
617 enforcement agency;

618 (ii) to cause a protective order to be issued for the protection of the child, when  
619 appropriate; and

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

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

623 (B) placement in substitute care; and

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

625 (28) "Severe abuse" means the same as that term is defined in Section 78A-6-105.

626 (29) "Severe neglect" means the same as that term is defined in Section 78A-6-105.

627 (30) "Sexual abuse" means the same as that term is defined in Section 78A-6-105.

628 (31) "Sexual exploitation" means the same as that term is defined in Section  
629 78A-6-105.

630 (32) "Shelter care" means the temporary care of a minor in a nonsecure facility.

631 (33) "Sibling" means a child who shares or has shared at least one parent in common  
632 either by blood or adoption.

633 (34) "Sibling visitation" means services provided by the division to facilitate the  
634 interaction between a child in division custody with a sibling of that child.

635 (35) "State" means:

636 (a) a state of the United States;

637 (b) the District of Columbia;

638 (c) the Commonwealth of Puerto Rico;

639 (d) the Virgin Islands;

640 (e) Guam;

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

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

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

645 (37) "Status offense" means a violation of the law that would not be a violation but for

646 the age of the offender.

647 (38) "Substance abuse" means the same as that term is defined in Section [78A-6-105](#).

648 (39) "Substantiated" or "substantiation" means a judicial finding based on a  
649 preponderance of the evidence that abuse or neglect occurred. Each allegation made or  
650 identified in a given case shall be considered separately in determining whether there should be  
651 a finding of substantiated.

652 (40) "Substitute care" means:

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

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

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

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

664 (42) "Temporary custody," with regard to the division, means the custody of a child in  
665 the division from the date of the shelter hearing until disposition.

666 (43) "Threatened harm" means the same as that term is defined in Section [78A-6-105](#).

667 [~~43~~] (44) "Transportation services" means travel assistance given to an individual  
668 with escort service, if necessary, to and from community facilities and resources as part of a  
669 service plan.

670 [~~44~~] (45) "Unsubstantiated" means a judicial finding that there is insufficient  
671 evidence to conclude that abuse or neglect occurred.

672 [~~45~~] (46) "Unsupported" means a finding by the division at the completion of an  
673 investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency



674 occurred. However, a finding of unsupported means also that the division [~~worker~~] did not  
675 conclude that the allegation was without merit.

676 [~~(46)~~] (47) "Without merit" means a finding at the completion of an investigation by  
677 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,  
678 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

679 Section 6. Section **62A-4a-102** is amended to read:

680 **62A-4a-102. Rulemaking responsibilities of division.**

681 (1) The Division of Child and Family Services, created in Section 62A-4a-103, is  
682 responsible for establishing [~~policies for the~~] division[~~, by rule,~~] rules under Title 63G, Chapter  
683 3, Utah Administrative Rulemaking Act, in accordance with the requirements of this chapter  
684 and Title 78A, Chapter 6, Juvenile Court Act, regarding abuse, neglect, and dependency  
685 proceedings, and domestic violence services. The division is responsible to see that the  
686 legislative purposes for the division are carried out.

687 (2) The division shall:

688 (a) approve fee schedules for programs within the division;

689 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
690 establish[~~, by rule, policies~~] rules to ensure that private citizens, consumers, foster parents,  
691 private contract providers, allied state and local agencies, and others are provided with an  
692 opportunity to comment and provide input regarding any new [~~policy~~] rule or proposed revision  
693 of an existing [~~policy~~] rule; and

694 (c) provide a mechanism for:

695 (i) systematic and regular review of existing [~~policies~~] rules, including an annual  
696 review of all division [~~policies~~] rules to ensure that [~~policies~~] rules comply with the Utah Code;  
697 and

698 (ii) consideration of [~~policy~~] rule changes proposed by the persons and agencies  
699 described in Subsection (2)(b).

700 (3) (a) The division shall establish rules for the determination of eligibility for services  
701 offered by the division in accordance with this chapter.

702 (b) The division may, by rule, establish eligibility standards for consumers.

703 (4) The division shall adopt and maintain rules regarding placement for adoption or  
704 foster care that are consistent with, and no more restrictive than, applicable statutory  
705 provisions.

706 Section 7. Section **62A-4a-105.5** is amended to read:

707 **62A-4a-105.5. Employees -- Failure to comply with division policy --**  
708 **Termination.**

709 (1) The director shall ensure that all employees are fully trained to comply with state  
710 ~~[and]~~ law, federal law, administrative rules, and division policy in order to effectively carry out  
711 their assigned duties and functions.

712 (2) If, after training and supervision, the employee consistently fails to comply with  
713 those laws, rules, ~~[and policies, his-]~~ or policies, the individual's employment with the division  
714 shall be terminated.

715 Section 8. Section **62A-4a-110** is amended to read:

716 **62A-4a-110. Receipt of gifts -- Volunteer services.**

717 (1) The division may receive gifts, grants, devises, and donations. These gifts, grants,  
718 devises, donations, or their proceeds shall be credited to the program which the donor  
719 designates and may be used for the purposes requested by the donor, if the request conforms to  
720 state and federal ~~[policy]~~ law. If a donor makes no specific request, the division may use the  
721 gift, grant, devise, or donation for the best interest of the division.

722 (2) The division may:

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

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

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

734 (d) appeal to the public for funds to meet applicants' and consumers' needs which are  
735 not otherwise provided for by law. Those appeals may include Sub-for-Santa Programs,  
736 recreational programs for minors, and requests for household appliances and home repairs,  
737 under rules established by the division.

738 Section 9. Section **62A-4a-112** is amended to read:

739 **62A-4a-112. Request to examine family services payment.**

740 (1) An individual who is a taxpayer and resident of this state and who desires to  
741 examine a payment for services offered by the division in accordance with this chapter, shall  
742 sign a statement using a form prescribed by the division. That statement shall include the  
743 assertion that the individual is a taxpayer and a resident, and shall include a commitment that  
744 any information obtained will not be used for commercial or political purposes. No partial or  
745 complete list of names, addresses, or amounts of payment may be made by any individual  
746 under this subsection, and none of that information may be removed from the offices of the  
747 division.

748 (2) The division shall, after due consideration of the public interest, define the nature  
749 of confidential information to be safeguarded by the division and shall establish [~~policies and~~]  
750 rules to govern the custody and disclosure of confidential information, as well as to provide  
751 access to information regarding payments for services offered by the division.

752 (3) This section does not prohibit the division or its agents, or individuals,  
753 commissions, or agencies duly authorized for the purpose, from making special studies or from  
754 issuing or publishing statistical material and reports of a general character. This section does  
755 not prohibit the division or its representatives or employees from conveying or providing to  
756 local, state, or federal governmental agencies written information that would affect an  
757 individual's eligibility or ineligibility for financial service, or other beneficial programs offered

758 by that governmental agency. Access to the division's program plans, policies, and records, as  
759 well as consumer records and data, is governed by Title 63G, Chapter 2, Government Records  
760 Access and Management Act.

761 (4) Violation of this section is a class B misdemeanor.

762 Section 10. Section **62A-4a-117** is amended to read:

763 **62A-4a-117. Performance monitoring system -- Annual report.**

764 (1) As used in this section:

765 (a) "Council" means the Child Welfare Improvement Council established under  
766 Section [62A-4a-311](#).

767 (b) "Performance indicators" means actual performance in a program, activity, or other  
768 function for which there is a performance standard.

769 (c) (i) "Performance standards" means the targeted or expected level of performance of  
770 each area in the child welfare system, including:

771 (A) child protection services;

772 (B) adoption;

773 (C) foster care; and

774 (D) other substitute care.

775 (ii) "Performance standards" includes the performance goals and measures in effect in  
776 2008 that the division was subject to under federal court oversight, as amended pursuant to  
777 Subsection (2), including:

778 (A) the qualitative case review; and

779 (B) the case process review.

780 (2) (a) The division may not amend the performance standards unless the amendment  
781 is:

782 (i) necessary and proper for the effective administration of the division; or

783 (ii) necessary to comply with, or implement changes in, the law.

784 (b) Before amending the performance standards, the division shall provide written  
785 notice of the proposed amendment to the council.

786 (c) The notice described in Subsection (2)(b) shall include:  
787 (i) the proposed amendment;  
788 (ii) a summary of the reason for the proposed amendment; and  
789 (iii) the proposed effective date of the amendment.

790 (d) Within 45 days after the day on which the division provides the notice described in  
791 Subsection (2)(b) to the council, the council shall provide to the division written comments on  
792 the proposed amendment.

793 (e) The division may not implement a proposed amendment to the performance  
794 standards until the earlier of:

795 (i) seven days after the day on which the division receives the written comments  
796 regarding the proposed change described in Subsection (2)(d); or  
797 (ii) 52 days after the day on which the division provides the notice described in  
798 Subsection (2)(b) to the council.

799 (f) The division shall:

800 (i) give full, fair, and good faith consideration to all comments and objections received  
801 from the council;

802 (ii) notify the council in writing of:

803 (A) the division's decision regarding the proposed amendment; and  
804 (B) the reasons that support the decision;

805 (iii) include complete information on all amendments to the performance standards in  
806 the report described in Subsection (4); and

807 (iv) post the changes on the division's website.

808 (3) The division shall maintain a performance monitoring system to regularly:

809 (a) collect information on performance indicators; and  
810 (b) compare performance indicators to performance standards.

811 (4) Before January 1 each year, the director shall submit a written report to the Child  
812 Welfare Legislative Oversight Panel and the Social Services Appropriations Subcommittee that  
813 includes:

814 (a) a comparison between the performance indicators for the prior fiscal year and the  
815 performance standards;

816 (b) for each performance indicator that does not meet the performance standard:

817 (i) the reason the standard was not met;

818 (ii) the measures that need to be taken to meet the standard; and

819 (iii) the division's plan to comply with the standard for the current fiscal year;

820 (c) data on the extent to which new and experienced division employees have received  
821 training pursuant to statute, administrative rule, and division policy; and

822 (d) an analysis of the use and efficacy of in-home services, both before and after  
823 removal of a child from the child's home.

824 Section 11. Section **62A-4a-118** is amended to read:

825 **62A-4a-118. Annual review of child welfare referrals and cases by executive**  
826 **director -- Accountability to the Legislature -- Review by legislative auditor general.**

827 (1) The division shall use principles of quality management systems, including  
828 statistical measures of processes of service, and the routine reporting of performance data to  
829 employees.

830 (2) (a) In addition to development of quantifiable outcome measures and performance  
831 measures in accordance with Section 62A-4a-117, the executive director, or ~~[his]~~ the executive  
832 director's designee, shall annually review a randomly selected sample of child welfare referrals  
833 to and cases handled by the division. The purpose of that review shall be to assess whether the  
834 division is adequately protecting children and providing appropriate services to families, in  
835 accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title  
836 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination  
837 of Parental Rights Act. The review shall focus directly on the outcome of cases to children and  
838 families, and not simply on procedural compliance with specified criteria.

839 (b) The executive director shall report~~[, regarding his review of those cases,]~~ on the  
840 executive director's review to the legislative auditor general and the Child Welfare Legislative  
841 Oversight Panel.

842 (c) Information obtained as a result of the review shall be provided to caseworkers,  
843 supervisors, and division personnel involved in the respective cases, for purposes of education,  
844 training, and performance evaluation.

845 (3) The executive director's review and report to the ~~[Legislature]~~ legislative auditor  
846 general and the Child Welfare Legislative Oversight Panel shall include:

847 (a) the criteria used by the executive director, or ~~[his]~~ the executive director's designee,  
848 in making the evaluation;

849 (b) findings regarding whether state statutes, division ~~[policy, and]~~ rule, legislative  
850 policy, and division policy were followed in each sample case;

851 (c) findings regarding whether, in each sample case, referrals, removals, or cases were  
852 appropriately handled by the division and its employees, and whether children were adequately  
853 and appropriately protected and appropriate services provided to families, in accordance with  
854 the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78A, Chapter 6, Part  
855 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights  
856 Act, and division ~~[policy]~~ rule;

857 (d) an assessment of the division's intake procedures and decisions, including an  
858 assessment of the appropriateness of decisions not to accept referrals; and

859 (e) an assessment of the appropriateness of the division's assignment of priority.

860 (4) (a) In addition to the executive director's review under Subsection (2), the  
861 legislative auditor general shall audit, subject to the prioritization of the Legislative Audit  
862 Subcommittee, a sample of child welfare referrals to and cases handled by the division and  
863 report the findings to the Child Welfare Legislative Oversight Panel.

864 (b) An audit under Subsection (4)(a) may be initiated by:

865 (i) the Audit Subcommittee of the Legislative Management Committee;

866 (ii) the Child Welfare Legislative Oversight Panel; or

867 (iii) the legislative auditor general, based on the results of the executive director's  
868 review under Subsection (2).

869 (c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor

870 General's report may include:

871 (i) findings regarding whether state statutes, division [~~policy, and~~] rule, legislative  
872 policy, and division policy were followed by the division and its employees;

873 (ii) a determination regarding whether referrals, removals, and cases were appropriately  
874 handled by the division and its employees, and whether children were adequately and  
875 appropriately protected and appropriate services provided for families, in accordance with the  
876 provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78A, Chapter 6, Part 3,  
877 Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act,  
878 and division [~~policy~~] rule;

879 (iii) an assessment of the division's intake procedures and decisions, including an  
880 assessment of the appropriateness of decisions not to accept referrals;

881 (iv) an assessment of the appropriateness of the division's assignment of priority;

882 (v) a determination regarding whether the department's review process is effecting  
883 beneficial change within the division and accomplishing the mission established by the  
884 Legislature and the department for that review process; and

885 (vi) findings regarding any other issues identified by the auditor or others under this  
886 Subsection (4).

887 Section 12. Section **62A-4a-201** is amended to read:

888 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**  
889 **state.**

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



898 (b) The fundamental liberty interest of a parent concerning the care, custody, and  
899 management of the parent's children is recognized, protected, and does not cease to exist  
900 simply because a parent may fail to be a model parent or because the parent's child is placed in  
901 the temporary custody of the state. At all times, a parent retains a vital interest in preventing  
902 the irretrievable destruction of family life. Prior to an adjudication of unfitness, government  
903 action in relation to parents and their children may not exceed the least restrictive means or  
904 alternatives available to accomplish a compelling state interest. Until the state proves parental  
905 unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result,  
906 the child and the child's parents share a vital interest in preventing erroneous termination of  
907 their natural relationship and the state cannot presume that a child and the child's parents are  
908 adversaries.

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

917 (d) The state recognizes that:

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

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

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

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

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

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

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

- 946 (a) when safe and appropriate, return the child to the child's parent; or  
947 (b) as a last resort, pursue another permanency plan.

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

953 (6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe

954 abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or  
955 to, in any other way, attempt to maintain a child in the child's home, provide reunification  
956 services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does  
957 not exempt the division from providing court-ordered services.

958 (7) (a) In accordance with Subsection (1), the division shall strive to achieve  
959 appropriate permanency for children who are abused, neglected, or dependent. The division  
960 shall provide in-home services, where appropriate and safe, in an effort to help a parent to  
961 correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. The  
962 division may pursue a foster placement only if in-home services fail or are otherwise  
963 insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services  
964 and kinship placement fail and cannot be corrected. The division shall also seek qualified  
965 extended family support or a kinship placement to maintain a sense of security and stability for  
966 the child.

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

971 (c) Subject to the parental rights recognized and protected under this section, if,  
972 because of a parent's conduct or condition, the parent is determined to be unfit or incompetent  
973 based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part  
974 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of  
975 paramount importance, and shall be protected in determining whether that parent's rights  
976 should be terminated.

977 (8) The state's right to direct or intervene in the provision of medical or mental health  
978 care for a child is subject to Subsections [78A-6-105\[\(35\)\(d\)\]\(36\)](#) and [78A-6-117\(2\)](#) and  
979 Section [78A-6-301.5](#).

980 Section 13. Section **62A-4a-202.6** is amended to read:

981 **62A-4a-202.6. Conflict child protective services investigations -- Authority of**

982 **investigators.**

983 (1) (a) The division shall contract with an independent child protective service  
984 investigator from the private sector to investigate reports of abuse or neglect of a child that  
985 occur while the child is in the custody of the division.

986 (b) The executive director shall designate an entity within the department, other than  
987 the division, to monitor the contract for the investigators described in Subsection (1)(a).

988 (c) Subject to Subsection (4), when a report is made that a child is abused or neglected  
989 while in the custody of the division:

990 (i) the attorney general may, in accordance with Section 67-5-16, and with the consent  
991 of the division, employ a child protective services investigator to conduct a conflict  
992 investigation of the report; or

993 (ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent  
994 of the division, conduct a conflict investigation of the report.

995 (d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the  
996 consent of the division, conducting a criminal investigation of abuse or neglect under Title 53,  
997 Public Safety Code.

998 (2) The investigators described in Subsections (1)(c) and (d) may also investigate  
999 allegations of abuse or neglect of a child by a department employee or a licensed substitute care  
1000 provider.

1001 (3) The investigators described in Subsection (1), if not [~~peace officers~~] law  
1002 enforcement officers, shall have the same rights, duties, and authority of a child protective  
1003 services investigator employed by the division to:

1004 (a) make a thorough investigation upon receiving either an oral or written report of  
1005 alleged abuse or neglect of a child, with the primary purpose of that investigation being the  
1006 protection of the child;

1007 (b) make an inquiry into the child's home environment, emotional, or mental health, the  
1008 nature and extent of the child's injuries, and the child's physical safety;

1009 (c) make a written report of their investigation, including determination regarding

1010 whether the alleged abuse or neglect was [~~substantiated, unsubstantiated~~] supported,  
1011 unsupported, or without merit, and forward a copy of that report to the division within the time  
1012 mandates for investigations established by the division; and

1013 (d) immediately consult with school authorities to verify the child's status in  
1014 accordance with Sections 53G-6-201 through 53G-6-206 when a report is based upon or  
1015 includes an allegation of educational neglect.

1016 (4) If there is a lapse in the contract with a private child protective service investigator  
1017 and no other investigator is available under Subsection (1)(a) or (c), the department may  
1018 conduct an independent investigation.

1019 Section 14. Section ~~62A-4a-205~~ is amended to read:

1020 **62A-4a-205. Child and family plan -- Parent-time and relative visitation.**

1021 (1) No more than 45 days after a child enters the temporary custody of the division, the  
1022 child's child and family plan shall be finalized.

1023 (2) (a) The division may use an interdisciplinary team approach in developing each  
1024 child and family plan.

1025 (b) The interdisciplinary team described in Subsection (2)(a) may include  
1026 representatives from the following fields:

- 1027 (i) mental health;
- 1028 (ii) education; and
- 1029 (iii) if appropriate, law enforcement.

1030 (3) (a) The division shall involve all of the following in the development of a child's  
1031 child and family plan:

- 1032 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- 1033 (ii) the child;
- 1034 (iii) the child's foster parents; and
- 1035 (iv) if appropriate, the child's stepparent[~~;~~ and].
- 1036 [~~(v) the child's guardian ad litem, if one has been appointed by the court.~~]

1037 (b) Subsection (3)(a) does not prohibit any other party not listed in Subsection (3)(a) or

1038 a party's counsel from being involved in the development of a child's child and family plan if  
1039 the party or counsel's participation is otherwise permitted by law.

1040           ~~[(b)]~~ (c) In relation to all information considered by the division in developing a child  
1041 and family plan, additional weight and attention shall be given to the input of the child's natural  
1042 and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

1043           ~~[(c)]~~ (d) (i) The division shall make a substantial effort to develop a child and family  
1044 plan with which the child's parents agree.

1045           (ii) If a parent does not agree with a child and family plan:

1046           (A) the division shall strive to resolve the disagreement between the division and the  
1047 parent; and

1048           (B) if the disagreement is not resolved, the division shall inform the court of the  
1049 disagreement.

1050           (4) A copy of the child and family plan shall, immediately upon completion, or as soon  
1051 as reasonably possible thereafter, be provided to the:

1052           (a) guardian ad litem;

1053           (b) child's natural parents; and

1054           (c) child's foster parents.

1055           (5) Each child and family plan shall:

1056           (a) specifically provide for the safety of the child, in accordance with federal law; and

1057           (b) clearly define what actions or precautions will, or may be, necessary to provide for  
1058 the health, safety, protection, and welfare of the child.

1059           (6) The child and family plan shall set forth, with specificity, at least the following:

1060           (a) the reason the child entered into the custody of the division;

1061           (b) documentation of the:

1062           (i) reasonable efforts made to prevent placement of the child in the custody of the  
1063 division; or

1064           (ii) emergency situation that existed and that prevented the reasonable efforts described  
1065 in Subsection (6)(b)(i), from being made;

- 1066 (c) the primary permanency plan for the child and the reason for selection of that plan;
- 1067 (d) the concurrent permanency plan for the child and the reason for the selection of that
- 1068 plan;
- 1069 (e) if the plan is for the child to return to the child's family:
- 1070 (i) specifically what the parents must do in order to enable the child to be returned
- 1071 home;
- 1072 (ii) specifically how the requirements described in Subsection (6)(e)(i) may be
- 1073 accomplished; and
- 1074 (iii) how the requirements described in Subsection (6)(e)(i) will be measured;
- 1075 (f) the specific services needed to reduce the problems that necessitated placing the
- 1076 child in the division's custody;
- 1077 (g) the name of the person who will provide for and be responsible for case
- 1078 management;
- 1079 (h) subject to Subsection (10), a parent-time schedule between the natural parent and
- 1080 the child;
- 1081 (i) subject to Subsection (7), the health and mental health care to be provided to
- 1082 address any known or diagnosed mental health needs of the child;
- 1083 (j) if residential treatment rather than a foster home is the proposed placement, a
- 1084 requirement for a specialized assessment of the child's health needs including an assessment of
- 1085 mental illness and behavior and conduct disorders;
- 1086 (k) social summaries that include case history information pertinent to case planning;
- 1087 and
- 1088 (l) subject to Subsection (12), a sibling visitation schedule.
- 1089 (7) (a) Subject to Subsection (7)(b), in addition to the information required under
- 1090 Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental
- 1091 health needs of a child, if the child:
- 1092 (i) is placed in residential treatment; and
- 1093 (ii) has medical or mental health issues that need to be addressed.

1094 (b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate  
1095 medical or mental health diagnosis of the parent's child from a licensed practitioner of the  
1096 parent's choice.

1097 (8) (a) Each child and family plan shall be specific to each child and the child's family,  
1098 rather than general.

1099 (b) The division shall train its workers to develop child and family plans that comply  
1100 with:

1101 (i) federal mandates; and

1102 (ii) the specific needs of the particular child and the child's family.

1103 (c) All child and family plans and expectations shall be individualized and contain  
1104 specific time frames.

1105 (d) Subject to Subsection (8)(h), child and family plans shall address problems that:

1106 (i) keep a child in placement; and

1107 (ii) keep a child from achieving permanence in the child's life.

1108 (e) Each child and family plan shall be designed to minimize disruption to the normal  
1109 activities of the child's family, including employment and school.

1110 (f) In particular, the time, place, and amount of services, hearings, and other  
1111 requirements ordered by the court in the child and family plan shall be designed, as much as  
1112 practicable, to help the child's parents maintain or obtain employment.

1113 (g) The child's natural parents, foster parents, and where appropriate, stepparents, shall  
1114 be kept informed of and supported to participate in important meetings and procedures related  
1115 to the child's placement.

1116 (h) For purposes of Subsection (8)(d), a child and family plan may only include  
1117 requirements that:

1118 (i) address findings made by the court; or

1119 (ii) (A) are requested or consented to by a parent or guardian of the child; and

1120 (B) are agreed to by the division and the guardian ad litem.

1121 (9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three



1122 years of age or younger, if the plan is not to return the child home, the primary permanency  
1123 plan for that child shall be adoption.

1124 (b) Notwithstanding Subsection (9)(a), if the division documents to the court that there  
1125 is a compelling reason that adoption, reunification, guardianship, and a placement described in  
1126 Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another  
1127 planned permanent living arrangement in accordance with federal law.

1128 (10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a  
1129 court order issued pursuant to Subsections 78A-6-312(3), (6), and (7).

1130 (b) Notwithstanding Subsection (10)(a), the person designated by the division or a  
1131 court to supervise a parent-time session may deny parent-time for that session if the supervising  
1132 person determines that, based on the parent's condition, it is necessary to deny parent-time in  
1133 order to:

1134 (i) protect the physical safety of the child;

1135 (ii) protect the life of the child; or

1136 (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by  
1137 contact with the parent.

1138 (c) In determining whether the condition of the parent described in Subsection (10)(b)  
1139 will traumatize a child, the person supervising the parent-time session shall consider the impact  
1140 that the parent's condition will have on the child in light of:

1141 (i) the child's fear of the parent; and

1142 (ii) the nature of the alleged abuse or neglect.

1143 (11) The division shall consider visitation with their grandparents for children in state  
1144 custody if the division determines visitation to be in the best interest of the child and:

1145 (a) there are no safety concerns regarding the behavior or criminal background of the  
1146 grandparents;

1147 (b) allowing visitation would not compete with or undermine the reunification plan;

1148 (c) there is a substantial relationship between the grandparents and children; and

1149 (d) the visitation will not unduly burden the foster parents.

- 1150 (12) The child and family plan shall incorporate reasonable efforts to:
- 1151 (a) provide sibling visitation when:
- 1152 (i) siblings are separated due to foster care or adoptive placement;
- 1153 (ii) visitation is in the best interest of the child for whom the plan is developed; and
- 1154 (iii) the division has consent for sibling visitation from the legal guardian of the
- 1155 sibling; and
- 1156 (b) obtain consent for sibling visitation from the sibling's legal guardian when the
- 1157 criteria of Subsections (12)(a)(i) and (ii) are met.

1158 Section 15. Section ~~62A-4a-412~~ is amended to read:

1159 **~~62A-4a-412. Reports and information confidential.~~**

1160 (1) Except as otherwise provided in this chapter, reports made under this part, as well

1161 as any other information in the possession of the division obtained as the result of a report are

1162 private, protected, or controlled records under Title 63G, Chapter 2, Government Records

1163 Access and Management Act, and may only be made available to:

1164 (a) a police or law enforcement agency investigating a report of known or suspected

1165 abuse or neglect, including members of a child protection unit;

1166 (b) a physician who reasonably believes that a child may be the subject of abuse or

1167 neglect;

1168 (c) an agency that has responsibility or authority to care for, treat, or supervise a minor

1169 who is the subject of a report;

1170 (d) a contract provider that has a written contract with the division to render services to

1171 a minor who is the subject of a report;

1172 (e) except as provided in Subsection [63G-2-202\(10\)](#), a subject of the report, the natural

1173 parents of the child, and the guardian ad litem;

1174 (f) a court, upon a finding that access to the records may be necessary for the

1175 determination of an issue before the court, provided that in a divorce, custody, or related

1176 proceeding between private parties, the record alone is:

1177 (i) limited to objective or undisputed facts that were verified at the time of the

- 1178 investigation; and
- 1179           (ii) devoid of conclusions drawn by the division or any of the division's workers on the
- 1180 ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or
- 1181 neglect of another person;
- 1182           (g) an office of the public prosecutor or its deputies in performing an official duty;
- 1183           (h) a person authorized by a Children's Justice Center, for the purposes described in
- 1184 Section [67-5b-102](#);
- 1185           (i) a person engaged in bona fide research, when approved by the director of the
- 1186 division, if the information does not include names and addresses;
- 1187           (j) the State Board of Education, acting on behalf of itself or on behalf of a school
- 1188 district, for the purpose of evaluating whether an individual should be permitted to obtain or
- 1189 retain a license as an educator or serve as an employee or volunteer in a school, limited to
- 1190 information with substantiated or supported findings involving an alleged sexual offense, an
- 1191 alleged felony or class A misdemeanor drug offense, or any alleged offense against the person
- 1192 under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the
- 1193 office must provide the subject of a report received under Subsection (1)(k) with an
- 1194 opportunity to respond to the report before making a decision concerning licensure or
- 1195 employment;
- 1196           (k) any person identified in the report as a perpetrator or possible perpetrator of abuse
- 1197 or neglect, after being advised of the screening prohibition in Subsection (2);
- 1198           (l) except as provided in Subsection [63G-2-202](#)(10), a person filing a petition for a
- 1199 child protective order on behalf of a child who is the subject of the report;
- 1200           (m) a licensed child-placing agency or person who is performing a preplacement
- 1201 adoptive evaluation in accordance with the requirements of Sections [78B-6-128](#) and
- 1202 [78B-6-130](#); or
- 1203           (n) an Indian tribe to:
- 1204           (i) certify or license a foster home;
- 1205           (ii) render services to a subject of a report; or

1206 (iii) investigate an allegation of abuse, neglect, or dependency.

1207 (2) (a) A person, unless listed in Subsection (1), may not request another person to  
1208 obtain or release a report or any other information in the possession of the division obtained as  
1209 a result of the report that is available under Subsection (1)(k) to screen for potential  
1210 perpetrators of abuse or neglect.

1211 (b) A person who requests information knowing that it is a violation of Subsection  
1212 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

1213 (3) (a) Except as provided in Section [62A-4a-1007](#) and Subsection (3)(b), the division  
1214 and law enforcement officials shall ensure the anonymity of the person or persons making the  
1215 initial report and any others involved in its subsequent investigation.

1216 (b) Notwithstanding any other provision of law, excluding Section [78A-6-317](#), but  
1217 including this chapter and Title 63G, Chapter 2, Government Records Access and Management  
1218 Act, when the division makes a report or other information in its possession available under  
1219 Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from  
1220 the report or other information only the names, addresses, and telephone numbers of  
1221 individuals or specific information that could:

- 1222 (i) identify the referent;
- 1223 (ii) impede a criminal investigation; or
- 1224 (iii) endanger a person's safety.

1225 (4) Any person who wilfully permits, or aides and abets the release of data or  
1226 information obtained as a result of this part, in the possession of the division or contained on  
1227 any part of the Management Information System, in violation of this part or Sections  
1228 [62A-4a-1003](#) through [62A-4a-1007](#), is guilty of a class C misdemeanor.

1229 (5) The physician-patient privilege is not a ground for excluding evidence regarding a  
1230 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in  
1231 good faith pursuant to this part.

1232 (6) A child-placing agency or person who receives a report in connection with a  
1233 preplacement adoptive evaluation pursuant to Sections [78B-6-128](#) and [78B-6-130](#):

- 1234 (a) may provide this report to the person who is the subject of the report; and
- 1235 (b) may provide this report to a person who is performing a preplacement adoptive
- 1236 evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a
- 1237 licensed child-placing agency or to an attorney seeking to facilitate an adoption.

1238 Section 16. Section 62A-4a-602 is amended to read:

1239 **62A-4a-602. Licensure requirements -- Prohibited acts.**

1240 (1) No person may engage in child placing, or solicit money or other assistance for

1241 child placing, without a valid license issued by the Office of Licensing, in accordance with

1242 Chapter 2, Licensure of Programs and Facilities. When a child-placing agency's license is

1243 suspended or revoked in accordance with that chapter, the care, control, or custody of any child

1244 who has been in the care, control, or custody of that agency shall be transferred to the division.

1245 (2) (a) An attorney, physician, or other person may assist a parent in identifying or

1246 locating a person interested in adopting the parent's child, or in identifying or locating a child to

1247 be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of

1248 value of any kind, or promise or agreement to make the same, may be made for that assistance.

1249 (b) An attorney, physician, or other person may not:

1250 (i) issue or cause to be issued to any person a card, sign, or device indicating that he is

1251 available to provide that assistance;

1252 (ii) cause, permit, or allow any sign or marking indicating that he is available to

1253 provide that assistance, on or in any building or structure;

1254 (iii) announce or cause, permit, or allow an announcement indicating that he is

1255 available to provide that assistance, to appear in any newspaper, magazine, directory, or on

1256 radio or television; or

1257 (iv) advertise by any other means that he is available to provide that assistance.

1258 (3) Nothing in this part precludes payment of fees for medical, legal, or other lawful

1259 services rendered in connection with the care of a mother, delivery and care of a child, or

1260 lawful adoption proceedings; and no provision of this part abrogates the right of procedures for

1261 independent adoption as provided by law.

1262 (4) In accordance with federal law, only agents or employees of the division and of  
1263 licensed child placing agencies may certify to the United States Immigration and Naturalization  
1264 Service that a family meets the division's preadoption requirements.

1265 (5) (a) [~~Beginning May 1, 2000, neither~~] Neither a licensed child-placing agency nor  
1266 any attorney practicing in this state may place a child for adoption, either temporarily or  
1267 permanently, with any individual or individuals that would not be qualified for adoptive  
1268 placement pursuant to the provisions of Sections [78B-6-117](#), [78B-6-102](#), and [78B-6-137](#).

1269 (b) [~~Beginning May 1, 2000, the~~] The division, as a licensed child-placing agency, may  
1270 not place a child in foster care with any individual or individuals that would not be qualified  
1271 for adoptive placement pursuant to the provisions of Sections [78B-6-117](#), [78B-6-102](#), and  
1272 [78B-6-137](#). However, nothing in this Subsection (5)(b) limits the placement of a child in foster  
1273 care with the child's biological or adoptive parent[~~-~~], a relative, or in accordance with the Indian  
1274 Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

1275 (c) [~~Beginning May 1, 2000, with~~] With regard to children who are in the custody of  
1276 the state, the division shall establish a [~~policy~~] rule providing that priority for [~~foster care and~~  
1277 ~~adoptive~~] placement shall be provided to families in which both a man and a woman are legally  
1278 married under the laws of this state. However, nothing in this Subsection (5)(c) limits the  
1279 placement of a child with the child's biological or adoptive parent[~~-~~], a relative, or in  
1280 accordance with the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

1281 Section 17. Section **62A-4a-711** is amended to read:

1282 **62A-4a-711. Penalty.**

1283 An individual or entity that knowingly engages in an unregulated custody transfer, as  
1284 defined in [~~Subsection~~] Section [78A-6-105](#)[(56)], is guilty of a class B misdemeanor.

1285 Section 18. Section **62A-4a-905** is amended to read:

1286 **62A-4a-905. Supplemental adoption assistance.**

1287 (1) The division may, based upon annual legislative appropriations for adoption  
1288 assistance and division rules, provide supplemental adoption assistance for [~~children who have~~]  
1289 a child who has a special need. Supplemental adoption assistance shall be provided only after

1290 all other resources for which a child is eligible have been exhausted.

1291 (2) (a) The department shall, by rule, establish in each region at least one advisory  
 1292 committee to review and make recommendations to the division on individual requests for  
 1293 supplemental adoption assistance. The committee shall be comprised of ~~[the following~~  
 1294 ~~members]~~:

- 1295 (i) an adoption expert;
- 1296 (ii) an adoptive parent;
- 1297 (iii) a division representative;
- 1298 (iv) a foster parent; and
- 1299 (v) an adoption caseworker.

1300 (b) The division ~~[policy]~~ rule required in Subsection (1) shall include a provision  
 1301 ~~[which]~~ that establishes a threshold amount for requests for supplemental adoption assistance  
 1302 that require review by the committee established in this Subsection (2).

1303 Section 19. Section **62A-4a-1003** is amended to read:

1304 **62A-4a-1003. Management Information System -- Requirements -- Contents --**  
 1305 **Purpose -- Access.**

1306 (1) (a) The division shall develop and implement a Management Information System  
 1307 that meets the requirements of this section and the requirements of federal law and regulation.

1308 (b) The information and records contained in the Management Information System:

1309 (i) are protected records under Title 63G, Chapter 2, Government Records Access and  
 1310 Management Act; and

1311 (ii) except as provided in Subsections (1)(c) and (d), are available only to a person with  
 1312 statutory authorization under Title 63G, Chapter 2, Government Records Access and  
 1313 Management Act, to review the information and records described in this Subsection (1)(b).

1314 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in  
 1315 Subsection (1)(b) are available to a person:

- 1316 (i) as provided under Subsection (6) or Section **62A-4a-1006**; or
- 1317 (ii) who has specific statutory authorization to access the information or records for the

1318 purpose of assisting the state with state and federal requirements to maintain information solely  
1319 for the purpose of protecting minors and providing services to families in need.

1320 (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in  
1321 Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act,  
1322 be provided by the division:

1323 (i) to comply with abuse and neglect registry checks requested by other states; and

1324 (ii) to the United States Department of Health and Human Services for purposes of  
1325 maintaining an electronic national registry of supported or substantiated cases of abuse and  
1326 neglect.

1327 (2) With regard to all child welfare cases, the Management Information System shall  
1328 provide each caseworker and the department's office of licensing, exclusively for the purposes  
1329 of foster parent licensure and monitoring, with a complete history of each child in that worker's  
1330 caseload, including:

1331 (a) a record of all past action taken by the division with regard to that child and the  
1332 child's siblings;

1333 (b) the complete case history and all reports and information in the control or keeping  
1334 of the division regarding that child and the child's siblings;

1335 (c) the number of times the child has been in the custody of the division;

1336 (d) the cumulative period of time the child has been in the custody of the division;

1337 (e) a record of all reports of abuse or neglect received by the division with regard to  
1338 that child's parent, parents, or guardian including:

1339 (i) for each report, documentation of the:

1340 (A) latest status; or

1341 (B) final outcome or determination; and

1342 (ii) information that indicates whether each report was found to be:

1343 (A) supported;

1344 (B) unsupported;

1345 (C) substantiated [~~by a juvenile court~~];



- 1346 (D) unsubstantiated [~~by a juvenile court~~]; or  
1347 (E) without merit;  
1348 (f) the number of times the child's parent or parents failed any child and family plan;  
1349 and  
1350 (g) the number of different caseworkers who have been assigned to that child in the  
1351 past.
- 1352 (3) The division's Management Information System shall:
- 1353 (a) contain all key elements of each family's current child and family plan, including:  
1354 (i) the dates and number of times the plan has been administratively or judicially  
1355 reviewed;  
1356 (ii) the number of times the parent or parents have failed that child and family plan;  
1357 and  
1358 (iii) the exact length of time the child and family plan has been in effect; and  
1359 (b) alert caseworkers regarding deadlines for completion of and compliance with  
1360 policy, including child and family plans.
- 1361 (4) With regard to all child protective services cases, the Management Information  
1362 System shall:
- 1363 (a) monitor the compliance of each case with:  
1364 (i) division rule [~~and policy~~];  
1365 (ii) state law; and  
1366 (iii) federal law and regulation; and  
1367 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or  
1368 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of  
1369 the alleged perpetrator.
- 1370 (5) Except as provided in Subsection (6) regarding contract providers and Section  
1371 [62A-4a-1006](#) regarding limited access to the Licensing Information System, all information  
1372 contained in the division's Management Information System is available to the department,  
1373 upon the approval of the executive director, on a need-to-know basis.

1374           (6) (a) Subject to this Subsection (6), the division may allow the division's contract  
1375 providers, court clerks designated by the Administrative Office of the Courts, the Office of  
1376 Guardian Ad Litem, or an Indian tribe to have limited access to the Management Information  
1377 System.

1378           (b) A division contract provider or Indian tribe has access only to information about a  
1379 person who is currently receiving services from that specific contract provider or Indian tribe.

1380           (c) (i) Designated court clerks may only have access to information necessary to  
1381 comply with Subsection 78B-7-202(2).

1382           (ii) The Office of Guardian Ad Litem may access only the information that:

1383           (A) relates to children and families where the Office of Guardian Ad Litem is  
1384 appointed by a court to represent the interests of the children; and

1385           (B) except as provided in Subsection (6)(d), is entered into the Management  
1386 Information System on or after July 1, 2004.

1387           (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of Guardian Ad Litem shall  
1388 have access to all abuse and neglect referrals about children and families where the office has  
1389 been appointed by a court to represent the interests of the children, regardless of the date that  
1390 the information is entered into the Management Information System.

1391           (e) Each contract provider, designated representative of the Office of Guardian Ad  
1392 Litem, and Indian tribe who requests access to information contained in the Management  
1393 Information System shall:

1394           (i) take all necessary precautions to safeguard the security of the information contained  
1395 in the Management Information System;

1396           (ii) train its employees regarding:

1397           (A) requirements for protecting the information contained in the Management  
1398 Information System as required by this chapter and under Title 63G, Chapter 2, Government  
1399 Records Access and Management Act; and

1400           (B) the criminal penalties under Sections 62A-4a-412 and 63G-2-801 for improper  
1401 release of information; and

1402 (iii) monitor its employees to ensure that they protect the information contained in the  
1403 Management Information System as required by law.

1404 (f) The division shall take reasonable precautions to ensure that its contract providers  
1405 comply with the requirements of this Subsection (6).

1406 (7) The division shall take all necessary precautions, including password protection and  
1407 other appropriate and available technological techniques, to prevent unauthorized access to or  
1408 release of information contained in the Management Information System.

1409 Section 20. Section **63G-4-402** is amended to read:

1410 **63G-4-402. Judicial review -- Informal adjudicative proceedings.**

1411 (1) (a) The district courts have jurisdiction to review by trial de novo all final agency  
1412 actions resulting from informal adjudicative proceedings, except that the juvenile courts have  
1413 jurisdiction over all [state] final agency actions relating to:

1414 (i) the removal or placement of children in state custody;

1415 (ii) the support of children under Subsection (1)(a)(i) as determined administratively  
1416 under Section **78A-6-1106**; and

1417 (iii) [~~substantiated~~] supported findings of abuse or neglect made by the Division of  
1418 Child and Family Services[~~, after an evidentiary hearing~~].

1419 (b) Venue for judicial review of informal adjudicative proceedings shall be as provided  
1420 in the statute governing the agency or, in the absence of such a venue provision, in the county  
1421 where the petitioner resides or maintains the petitioner's principal place of business.

1422 (2) (a) The petition for judicial review of informal adjudicative proceedings shall be a  
1423 complaint governed by the Utah Rules of Civil Procedure and shall include:

1424 (i) the name and mailing address of the party seeking judicial review;

1425 (ii) the name and mailing address of the respondent agency;

1426 (iii) the title and date of the final agency action to be reviewed, together with a copy,  
1427 summary, or brief description of the agency action;

1428 (iv) identification of the persons who were parties in the informal adjudicative  
1429 proceedings that led to the agency action;

- 1430 (v) a copy of the written agency order from the informal proceeding;
- 1431 (vi) facts demonstrating that the party seeking judicial review is entitled to obtain  
1432 judicial review;
- 1433 (vii) a request for relief, specifying the type and extent of relief requested; and
- 1434 (viii) a statement of the reasons why the petitioner is entitled to relief.
- 1435 (b) All additional pleadings and proceedings in the district court are governed by the  
1436 Utah Rules of Civil Procedure.
- 1437 (3) (a) The court, without a jury, shall determine all questions of fact and law and any  
1438 constitutional issue presented in the pleadings.
- 1439 (b) The Utah Rules of Evidence apply in judicial proceedings under this section.
- 1440 Section 21. Section **76-5-110** is amended to read:
- 1441 **76-5-110. Abuse or neglect of a child with a disability.**
- 1442 (1) As used in this section:
- 1443 (a) "Abuse" means:
- 1444 (i) inflicting physical injury, as that term is defined in Section [76-5-109](#);
- 1445 (ii) having the care or custody of a child with a disability, causing or permitting another  
1446 to inflict physical injury, as that term is defined in Section [76-5-109](#); or
- 1447 (iii) unreasonable confinement.
- 1448 (b) "Caretaker" means:
- 1449 (i) any parent, legal guardian, or other person having under that person's care and  
1450 custody a child with a disability; or
- 1451 (ii) any person, corporation, or public institution that has assumed by contract or court  
1452 order the responsibility to provide food, shelter, clothing, medical, and other necessities to a  
1453 child with a disability.
- 1454 (c) "Child with a disability" means any person under 18 years of age who is impaired  
1455 because of mental illness, mental deficiency, physical illness or disability, or other cause, to the  
1456 extent that the person is unable to care for the person's own personal safety or to provide  
1457 necessities such as food, shelter, clothing, and medical care.

1458 (d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter,  
1459 supervision, or medical care.

1460 (2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a child  
1461 with a disability is guilty of a third degree felony.

1462 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual  
1463 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and  
1464 practices of an established church or religious denomination of which the parent or legal  
1465 guardian is a member or adherent shall not, for that reason alone, be considered to be in  
1466 violation under this section.

1467 (b) Subject to Subsection [78A-6-117\(2\)\(~~n~~\(iii\)\)\(m\)](#), the exception under Subsection  
1468 (3)(a) does not preclude a court from ordering medical services from a physician licensed to  
1469 engage in the practice of medicine to be provided to the child where there is substantial risk of  
1470 harm to the child's health or welfare if the treatment is not provided.

1471 (c) A caretaker of a child with a disability does not violate this section by selecting a  
1472 treatment option for a medical condition of a child with a disability, if the treatment option is  
1473 one that a reasonable caretaker would believe to be in the best interest of the child with a  
1474 disability.

1475 Section 22. Section **78A-6-105** is amended to read:

1476 **78A-6-105. Definitions.**

1477 As used in this chapter:

1478 (1) (a) "Abuse" means:

1479 (i) (A) nonaccidental harm of a child;

1480 (B) threatened harm of a child;

1481 (C) sexual exploitation;

1482 (D) sexual abuse; or

1483 (E) human trafficking of a child in violation of Section [76-5-308.5](#); or

1484 (ii) that a child's natural parent:

1485 (A) intentionally, knowingly, or recklessly causes the death of another parent of the

1486 child;

1487 (B) is identified by a law enforcement agency as the primary suspect in an investigation  
1488 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

1489 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
1490 recklessly causing the death of another parent of the child.

1491 (b) "Abuse" does not include:

1492 (i) reasonable discipline or management of a child, including withholding privileges;

1493 (ii) conduct described in Section 76-2-401; or

1494 (iii) the use of reasonable and necessary physical restraint or force on a child:

1495 (A) in self-defense;

1496 (B) in defense of others;

1497 (C) to protect the child; or

1498 (D) to remove a weapon in the possession of a child for any of the reasons described in  
1499 Subsections (1)(b)(iii)(A) through (C).

1500 (2) "Abused child" means a child who has been subjected to abuse.

1501 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts  
1502 alleged in the petition have been proved. A finding of not competent to proceed pursuant to  
1503 Section 78A-6-1302 is not an adjudication.

1504 (4) "Adult" means an individual 18 years of age or over, except that an individual 18  
1505 years or over under the continuing jurisdiction of the juvenile court pursuant to Section  
1506 78A-6-120 shall be referred to as a minor.

1507 (5) "Board" means the Board of Juvenile Court Judges.

1508 (6) "Child" means an individual under 18 years of age.

1509 (7) "Child placement agency" means:

1510 (a) a private agency licensed to receive a child for placement or adoption under this  
1511 code; or

1512 (b) a private agency that receives a child for placement or adoption in another state,  
1513 which agency is licensed or approved where such license or approval is required by law.

1514 (8) "Clandestine laboratory operation" means the same as that term is defined in  
1515 Section [58-37d-3](#).

1516 (9) "Commit" means, unless specified otherwise:

1517 (a) with respect to a child, to transfer legal custody; and

1518 (b) with respect to a minor who is at least 18 years of age, to transfer custody.

1519 (10) "Court" means the juvenile court.

1520 (11) "Criminogenic risk factors" means evidence-based factors that are associated with  
1521 a minor's likelihood of reoffending.

1522 (12) "Delinquent act" means an act that would constitute a felony or misdemeanor if  
1523 committed by an adult.

1524 (13) "Dependent child" includes a child who is homeless or without proper care  
1525 through no fault of the child's parent, guardian, or custodian.

1526 (14) "Deprivation of custody" means transfer of legal custody by the court from a  
1527 parent or the parents or a previous legal custodian to another person, agency, or institution.

1528 (15) "Detention" means home detention and secure detention as defined in Section  
1529 [62A-7-101](#) for the temporary care of a minor who requires secure custody in a physically  
1530 restricting facility:

1531 (a) pending court disposition or transfer to another jurisdiction; or

1532 (b) while under the continuing jurisdiction of the court.

1533 (16) "Detention risk assessment tool" means an evidence-based tool established under  
1534 Section [78A-6-124](#), on and after July 1, 2018, that assesses a minor's risk of failing to appear in  
1535 court or reoffending pre-adjudication and designed to assist in making detention  
1536 determinations.

1537 (17) "Division" means the Division of Child and Family Services.

1538 (18) "Educational neglect" means that, after receiving a notice of compulsory education  
1539 violation under Section [53G-6-202](#), the parent or guardian fails to make a good faith effort to  
1540 ensure that the child receives an appropriate education.

1541 (19) "Evidence-based" means a program or practice that has had multiple randomized

1542 control studies or a meta-analysis demonstrating that the program or practice is effective for a  
1543 specific population or has been rated as effective by a standardized program evaluation tool.

1544 (20) "Formal probation" means a minor is under field supervision by the probation  
1545 department or other agency designated by the court and subject to return to the court in  
1546 accordance with Section [78A-6-123](#) on and after July 1, 2018.

1547 (21) "Formal referral" means a written report from a peace officer or other person  
1548 informing the court that a minor is or appears to be within the court's jurisdiction and that a  
1549 case must be reviewed.

1550 (22) "Group rehabilitation therapy" means psychological and social counseling of one  
1551 or more individuals in the group, depending upon the recommendation of the therapist.

1552 (23) "Guardianship of the person" includes the authority to consent to:

1553 (a) marriage;

1554 (b) enlistment in the armed forces;

1555 (c) major medical, surgical, or psychiatric treatment; or

1556 (d) legal custody, if legal custody is not vested in another individual, agency, or  
1557 institution.

1558 (24) "Habitual truant" means the same as that term is defined in Section [53G-6-201](#).

1559 (25) "Harm" means:

1560 (a) physical or developmental injury or damage;

1561 (b) emotional damage that results in a serious impairment in the child's growth,  
1562 development, behavior, or psychological functioning;

1563 (c) sexual abuse; or

1564 (d) sexual exploitation.

1565 (26) (a) "Incest" means engaging in sexual intercourse with an individual whom the  
1566 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,  
1567 nephew, niece, or first cousin.

1568 (b) The relationships described in Subsection (26)(a) include:

1569 (i) blood relationships of the whole or half blood, without regard to legitimacy;



- 1570 (ii) relationships of parent and child by adoption; and  
1571 (iii) relationships of stepparent and stepchild while the marriage creating the  
1572 relationship of a stepparent and stepchild exists.
- 1573 (27) "Intake probation" means a period of court monitoring that does not include field  
1574 supervision, but is overseen by a juvenile probation officer, during which a minor is subject to  
1575 return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.
- 1576 (28) "Intellectual disability" means:  
1577 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or  
1578 below on an individually administered IQ test, for infants, a clinical judgment of significantly  
1579 subaverage intellectual functioning;  
1580 (b) concurrent deficits or impairments in present adaptive functioning, regarding the  
1581 individual's effectiveness in meeting the standards expected for the individual's age by the  
1582 individual's cultural group, in at least two of the following areas: communication, self-care,  
1583 home living, social/interpersonal skills, use of community resources, self-direction, functional  
1584 academic skills, work, leisure, health, and safety; and  
1585 (c) the onset is before the individual reaches the age of 18 years.
- 1586 (29) "Legal custody" means a relationship embodying the following rights and duties:  
1587 (a) the right to physical custody of the minor;  
1588 (b) the right and duty to protect, train, and discipline the minor;  
1589 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary  
1590 medical care;  
1591 (d) the right to determine where and with whom the minor shall live; and  
1592 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 1593 (30) "Material loss" means an uninsured:  
1594 (a) property loss;  
1595 (b) out-of-pocket monetary loss;  
1596 (c) lost wages; or  
1597 (d) medical expenses.

1598 (31) "Mental disorder" means a serious emotional and mental disturbance that severely  
1599 limits a minor's development and welfare over a significant period of time.

1600 (32) "Minor" means:

1601 (a) a child; or

1602 (b) an individual who is:

1603 (i) at least 18 years of age and younger than 21 years of age; and

1604 (ii) under the jurisdiction of the juvenile court.

1605 (33) "Mobile crisis outreach team" means a crisis intervention service for minors or  
1606 families of minors experiencing behavioral health or psychiatric emergencies.

1607 (34) "Molestation" means that an individual, with the intent to arouse or gratify the  
1608 sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,  
1609 or the breast of a female child, or takes indecent liberties with a child as defined in Section  
1610 [76-5-416](#).

1611 (35) "Natural parent" means a minor's biological or adoptive parent, and includes the  
1612 minor's noncustodial parent.

1613 (36) (a) "Neglect" means action or inaction causing:

1614 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe  
1615 Relinquishment of a Newborn Child;

1616 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,  
1617 guardian, or custodian;

1618 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary  
1619 subsistence or medical care, or any other care necessary for the child's health, safety, morals, or  
1620 well-being;

1621 (iv) a child to be at risk of being neglected or abused because another child in the same  
1622 home is neglected or abused;

1623 (v) abandonment of a child through an unregulated custody transfer; or

1624 (vi) educational neglect.

1625 (b) "Neglect" does not include:

1626 (i) a parent or guardian legitimately practicing religious beliefs and who, for that  
1627 reason, does not provide specified medical treatment for a child;

1628 (ii) a health care decision made for a child by the child's parent or guardian, unless the  
1629 state or other party to a proceeding shows, by clear and convincing evidence, that the health  
1630 care decision is not reasonable and informed;

1631 (iii) a parent or guardian exercising the right described in Section 78A-6-301.5; or

1632 (iv) permitting a child, whose basic needs are met and who is of sufficient age and  
1633 maturity to avoid harm or unreasonable risk of harm, to engage in independent activities,  
1634 including:

1635 (A) traveling to and from school, including by walking, running, or bicycling;

1636 (B) traveling to and from nearby commercial or recreational facilities;

1637 (C) engaging in outdoor play;

1638 (D) remaining in a vehicle unattended, except under the conditions described in

1639 Subsection 76-10-2202(2);

1640 (E) remaining at home unattended; or

1641 (F) engaging in a similar independent activity.

1642 (37) "Neglected child" means a child who has been subjected to neglect.

1643 (38) "Nonjudicial adjustment" means closure of the case by the assigned probation  
1644 officer without judicial determination upon the consent in writing of:

1645 (a) the assigned probation officer; and

1646 (b) (i) the minor; or

1647 (ii) the minor and the minor's parent, legal guardian, or custodian.

1648 (39) "Not competent to proceed" means that a minor, due to a mental disorder,  
1649 intellectual disability, or related condition as defined, lacks the ability to:

1650 (a) understand the nature of the proceedings against them or of the potential disposition  
1651 for the offense charged; or

1652 (b) consult with counsel and participate in the proceedings against them with a  
1653 reasonable degree of rational understanding.

1654 (40) "Physical abuse" means abuse that results in physical injury or damage to a child.

1655 (41) "Probation" means a legal status created by court order following an adjudication  
1656 on the ground of a violation of law or under Section 78A-6-103, whereby the minor is  
1657 permitted to remain in the minor's home under prescribed conditions.

1658 (42) "Protective supervision" means a legal status created by court order following an  
1659 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to  
1660 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or  
1661 dependency is provided by the probation department or other agency designated by the court.

1662 (43) "Related condition" means a condition closely related to intellectual disability in  
1663 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah  
1664 Administrative Code.

1665 (44) (a) "Residual parental rights and duties" means those rights and duties remaining  
1666 with the parent after legal custody or guardianship, or both, have been vested in another person  
1667 or agency, including:

- 1668 (i) the responsibility for support;
- 1669 (ii) the right to consent to adoption;
- 1670 (iii) the right to determine the child's religious affiliation; and
- 1671 (iv) the right to reasonable parent-time unless restricted by the court.

1672 (b) If no guardian has been appointed, "residual parental rights and duties" also include  
1673 the right to consent to:

- 1674 (i) marriage;
- 1675 (ii) enlistment; and
- 1676 (iii) major medical, surgical, or psychiatric treatment.

1677 (45) "Secure facility" means any facility operated by or under contract with the  
1678 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for  
1679 youth offenders committed to the division for custody and rehabilitation pursuant to Subsection  
1680 78A-6-117(2)(d).

1681 (46) "Severe abuse" means abuse that causes or threatens to cause serious harm to a

1682 child.

1683 (47) "Severe neglect" means neglect that causes or threatens to cause serious harm to a

1684 child.

1685 (48) "Sexual abuse" means:

1686 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an

1687 adult directed towards a child;

1688 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation

1689 committed by a child towards another child if:

1690 (i) there is an indication of force or coercion;

1691 (ii) the children are related, as described in Subsection (26), including siblings by

1692 marriage while the marriage exists or by adoption;

1693 (iii) there have been repeated incidents of sexual contact between the two children,

1694 unless the children are 14 years of age or older; or

1695 (iv) there is a disparity in chronological age of four or more years between the two

1696 children;

1697 (c) engaging in any conduct with a child that would constitute an offense under any of

1698 the following, regardless of whether the individual who engages in the conduct is actually

1699 charged with, or convicted of, the offense:

1700 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the

1701 alleged perpetrator of an offense described in Section 76-5-401 is a minor;

1702 (ii) child bigamy, Section 76-7-101.5;

1703 (iii) incest, Section 76-7-102;

1704 (iv) lewdness, Section 76-9-702;

1705 (v) sexual battery, Section 76-9-702.1;

1706 (vi) lewdness involving a child, Section 76-9-702.5; or

1707 (vii) voyeurism, Section 76-9-702.7; or

1708 (d) subjecting a child to participate in or threatening to subject a child to participate in

1709 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural

1710 marriage.

1711 (49) "Sexual exploitation" means knowingly:

1712 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

1713 (i) pose in the nude for the purpose of sexual arousal of any individual; or

1714 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,  
1715 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

1716 (b) displaying, distributing, possessing for the purpose of distribution, or selling  
1717 material depicting a child:

1718 (i) in the nude, for the purpose of sexual arousal of any individual; or

1719 (ii) engaging in sexual or simulated sexual conduct; or

1720 (c) engaging in any conduct that would constitute an offense under Section [76-5b-201](#),  
1721 sexual exploitation of a minor, regardless of whether the individual who engages in the conduct  
1722 is actually charged with, or convicted of, the offense.

1723 (50) "Shelter" means the temporary care of a child in a physically unrestricted facility  
1724 pending court disposition or transfer to another jurisdiction.

1725 (51) "Status offense" means a violation of the law that would not be a violation but for  
1726 the age of the offender.

1727 (52) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or  
1728 substances.

1729 (53) "Substantiated" means the same as that term is defined in Section [62A-4a-101](#).

1730 (54) "Supported" means the same as that term is defined in Section [62A-4a-101](#).

1731 (55) "Termination of parental rights" means the permanent elimination of all parental  
1732 rights and duties, including residual parental rights and duties, by court order.

1733 (56) "Therapist" means:

1734 (a) an individual employed by a state division or agency for the purpose of conducting  
1735 psychological treatment and counseling of a minor in its custody; or

1736 (b) any other individual licensed or approved by the state for the purpose of conducting  
1737 psychological treatment and counseling.

1738 (57) "Threatened harm" means actions, inactions, or credible verbal threats, indicating  
1739 that the child is at an unreasonable risk of harm or neglect.

1740 [~~(57)~~] (58) "Unregulated custody transfer" means the placement of a child:

1741 (a) with an individual who is not the child's parent, step-parent, grandparent, adult  
1742 sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with  
1743 whom the child is familiar, or a member of the child's federally recognized tribe;

1744 (b) with the intent of severing the child's existing parent-child or guardian-child  
1745 relationship; and

1746 (c) without taking:

1747 (i) reasonable steps to ensure the safety of the child and permanency of the placement;  
1748 and

1749 (ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or  
1750 guardianship to the individual taking custody of the child.

1751 (59) "Unsupported" means the same as that term is defined in Section [62A-4a-101](#).

1752 [~~(58)~~] (60) "Unsubstantiated" means the same as that term is defined in Section  
1753 [62A-4a-101](#).

1754 [~~(59)~~] (61) "Validated risk and needs assessment" means an evidence-based tool that  
1755 assesses a minor's risk of reoffending and a minor's criminogenic needs.

1756 [~~(60)~~] (62) "Without merit" means the same as that term is defined in Section  
1757 [62A-4a-101](#).

1758 Section 23. Section **78A-6-117** is amended to read:

1759 **78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**  
1760 **Enumeration of possible court orders -- Considerations of court.**

1761 (1) (a) When a minor is found to come within Section [78A-6-103](#), the court shall so  
1762 adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over  
1763 the minor. However, in cases within Subsection [78A-6-103\(1\)](#), findings of fact are not  
1764 necessary.

1765 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of

1766 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided  
1767 to the school superintendent of the district in which the minor resides or attends school. Notice  
1768 shall be made to the district superintendent within three days of the adjudication and shall  
1769 include:

1770 (i) the specific offenses for which the minor was adjudicated; and

1771 (ii) if available, if the victim:

1772 (A) resides in the same school district as the minor; or

1773 (B) attends the same school as the minor.

1774 (c) An adjudicated minor shall undergo a risk screening or, if indicated, a validated risk  
1775 and needs assessment. Results of the screening or assessment shall be used to inform  
1776 disposition decisions and case planning. Assessment results, if available, may not be shared  
1777 with the court before adjudication.

1778 (2) Upon adjudication the court may make the following dispositions by court order:

1779 (a) (i) the court may place the minor on probation or under protective supervision in  
1780 the minor's own home and upon conditions determined by the court, including community or  
1781 compensatory service;

1782 (ii) a condition ordered by the court under Subsection (2)(a)(i):

1783 (A) shall be individualized and address a specific risk or need;

1784 (B) shall be based on information provided to the court, including the results of a  
1785 validated risk and needs assessment conducted under Subsection (1)(c); ~~and~~

1786 (C) if the court orders treatment, shall be based on a validated risk and needs  
1787 assessment conducted under Subsection (1)(c); and

1788 (D) if the court orders protective supervision, may not designate the division as the  
1789 provider of protective supervision unless there is a petition regarding abuse, neglect, or  
1790 dependency before the court requesting that the division provide protective supervision;

1791 (iii) a court may not issue a standard order that contains control-oriented conditions;

1792 (iv) prohibitions on weapon possession, where appropriate, shall be specific to the  
1793 minor and not the minor's family;



1794 (v) if the court orders probation, the court may direct that notice of the court's order be  
1795 provided to designated persons in the local law enforcement agency and the school or  
1796 transferee school, if applicable, that the minor attends. The designated persons may receive the  
1797 information for purposes of the minor's supervision and student safety; and

1798 (vi) an employee of the local law enforcement agency and the school that the minor  
1799 attends who discloses the court's order of probation is not:

1800 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as  
1801 provided in Section 63G-7-202; and

1802 (B) civilly or criminally liable except when the disclosure constitutes a knowing  
1803 violation of Section 63G-2-801.

1804 (b) The court may place the minor in the legal custody of a relative or other suitable  
1805 person, with or without probation or other court-specified child welfare services, but the  
1806 juvenile court may not assume the function of developing foster home services.

1807 (c) (i) The court shall only vest legal custody of the minor in the Division of Juvenile  
1808 Justice Services and order the Division of Juvenile Justice Services to provide dispositional  
1809 recommendations and services if:

1810 (A) nonresidential treatment options have been exhausted or nonresidential treatment  
1811 options are not appropriate; and

1812 (B) the minor is adjudicated under this section for a felony offense, a misdemeanor  
1813 when the minor has five prior misdemeanors or felony adjudications arising from separate  
1814 criminal episodes, or a misdemeanor involving the use of a dangerous weapon as defined in  
1815 Section 76-1-601.

1816 (ii) The court may not vest legal custody of a minor in the Division of Juvenile Justice  
1817 Services for:

1818 (A) contempt of court except to the extent permitted under Section 78A-6-1101;

1819 (B) a violation of probation;

1820 (C) failure to pay a fine, fee, restitution, or other financial obligation;

1821 (D) unfinished compensatory or community service hours;

1822 (E) an infraction; or

1823 (F) a status offense.

1824 (iii) (A) A minor who is 18 years old or older, but younger than 21 years old, may  
1825 petition the court to express the minor's desire to be removed from the jurisdiction of the  
1826 juvenile court and from the custody of the Division of Child and Family Services if the minor  
1827 is in the division's custody on grounds of abuse, neglect, or dependency.

1828 (B) If the minor's parent's rights have not been terminated in accordance with Part 5,  
1829 Termination of Parental Rights Act, the minor's petition shall contain a statement from the  
1830 minor's parent or guardian agreeing that the minor should be removed from the custody of the  
1831 Division of Child and Family Services.

1832 (C) The minor and the minor's parent or guardian shall sign the petition.

1833 (D) The court shall review the petition within 14 days.

1834 (E) The court shall remove the minor from the custody of the Division of Child and  
1835 Family Services if the minor and the minor's parent or guardian have met the requirements  
1836 described in Subsections (2)(c)(iii)(B) and (C) and if the court finds, based on input from the  
1837 Division of Child and Family Services, the minor's guardian ad litem, and the Office of the  
1838 Attorney General, that the minor does not pose an imminent threat to self or others.

1839 (F) A minor removed from custody under Subsection (2)(c)(iii)(E) may, within 90 days  
1840 of the date of removal, petition the court to re-enter custody of the Division of Child and  
1841 Family Services.

1842 (G) Upon receiving a petition under Subsection (2)(c)(iii)(F), the court shall order the  
1843 Division of Child and Family Services to take custody of the minor based on the findings the  
1844 court entered when the court originally vested custody in the Division of Child and Family  
1845 Services.

1846 (d) (i) The court shall only commit a minor to the Division of Juvenile Justice Services  
1847 for secure confinement if the court finds that the minor poses a risk of harm to others and is  
1848 adjudicated under this section for:

1849 (A) a felony offense;

1850 (B) a misdemeanor if the minor has five prior misdemeanor or felony adjudications  
1851 arising from separate criminal episodes; or

1852 (C) a misdemeanor involving use of a dangerous weapon as defined in Section  
1853 76-1-601.

1854 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,  
1855 or dependency under Subsection 78A-6-103(1)(b) may not be committed to the Division of  
1856 Juvenile Justice Services.

1857 (iii) The court may not commit a minor to the Division of Juvenile Justice Services for  
1858 secure confinement for:

1859 (A) contempt of court;

1860 (B) a violation of probation;

1861 (C) failure to pay a fine, fee, restitution, or other financial obligation;

1862 (D) unfinished compensatory or community service hours;

1863 (E) an infraction; or

1864 (F) a status offense.

1865 (e) The court may order nonresidential, diagnostic assessment, including substance use  
1866 disorder, mental health, psychological, or sexual behavior risk assessment.

1867 (f) (i) The court may commit a minor to a place of detention or an alternative to  
1868 detention for a period not to exceed 30 cumulative days per adjudication subject to the court  
1869 retaining continuing jurisdiction over the minor. This commitment may not be suspended upon  
1870 conditions ordered by the court.

1871 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

1872 (A) an act which if committed by an adult would be a criminal offense; or

1873 (B) contempt of court under Section 78A-6-1101.

1874 (iii) The court may not commit a minor to a place of detention for:

1875 (A) contempt of court except to the extent allowed under Section 78A-6-1101;

1876 (B) a violation of probation;

1877 (C) failure to pay a fine, fee, restitution, or other financial obligation;

1878 (D) unfinished compensatory or community service hours;

1879 (E) an infraction; or

1880 (F) a status offense.

1881 (iv) (A) Time spent in detention pre-adjudication shall be credited toward the 30  
1882 cumulative days eligible as a disposition under Subsection (2)(f)(i). If the minor spent more  
1883 than 30 days in a place of detention before disposition, the court may not commit a minor to  
1884 detention under this section.

1885 (B) Notwithstanding Subsection (2)(f)(iv)(A), the court may commit a minor for a  
1886 maximum of seven days while a minor is awaiting placement under Subsection (2)(c)(i). Only  
1887 the seven days under this Subsection (2)(f)(iv)(B) may be combined with a nonsecure  
1888 placement.

1889 (v) Notwithstanding Subsection (2)(t), no more than seven days of detention may be  
1890 ordered in combination with an order under Subsection (2)(c)(i).

1891 (g) The court may vest legal custody of an abused, neglected, or dependent minor in  
1892 the Division of Child and Family Services or any other appropriate person in accordance with  
1893 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and  
1894 Dependency Proceedings.

1895 (h) (i) The court may order a minor to repair, replace, or otherwise make restitution for  
1896 material loss caused by the minor's wrongful act or for conduct for which the minor agrees to  
1897 make restitution.

1898 (ii) A victim has the meaning defined under Subsection [77-38a-102](#)(14). A victim of an  
1899 offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity,  
1900 includes any person directly harmed by the minor's delinquency conduct in the course of the  
1901 scheme, conspiracy, or pattern.

1902 (iii) If the victim and the minor agree to participate, the court may refer the case to a  
1903 restorative justice program such as victim offender mediation to address how loss resulting  
1904 from the adjudicated act may be addressed.

1905 (iv) For the purpose of determining whether and how much restitution is appropriate,

1906 the court shall consider the following:

1907 (A) restitution shall only be ordered for the victim's material loss;

1908 (B) restitution may not be ordered if the court finds that the minor is unable to pay or  
1909 acquire the means to pay; and

1910 (C) any amount paid by the minor to the victim in civil penalty shall be credited against  
1911 restitution owed.

1912 (v) Any amount paid to the victim in restitution shall be credited against liability in a  
1913 civil suit.

1914 (vi) The court may also require a minor to reimburse an individual, entity, or  
1915 governmental agency who offered and paid a reward to a person or persons for providing  
1916 information resulting in a court adjudication that the minor is within the jurisdiction of the  
1917 juvenile court due to the commission of a criminal offense.

1918 (vii) If a minor is returned to this state under the Interstate Compact on Juveniles, the  
1919 court may order the minor to make restitution for costs expended by any governmental entity  
1920 for the return.

1921 (viii) The prosecutor shall submit a request for restitution to the court at the time of  
1922 disposition, if feasible, otherwise within three months after disposition.

1923 (ix) A financial disposition ordered shall prioritize the payment of restitution.

1924 (i) The court may issue orders necessary for the collection of restitution and fines  
1925 ordered by the court, including garnishments, wage withholdings, and executions, except for an  
1926 order that changes the custody of the minor, including detention or other secure or nonsecure  
1927 residential placements.

1928 (j) (i) The court may through its probation department encourage the development of  
1929 nonresidential employment or work programs to enable minors to fulfill their obligations under  
1930 Subsection (2)(h) and for other purposes considered desirable by the court.

1931 (ii) Consistent with the order of the court, the probation officer may permit a minor  
1932 found to be within the jurisdiction of the court to participate in a program of work restitution or  
1933 compensatory service in lieu of paying part or all of the fine imposed by the court.

1934 (iii) The court may order the minor to:  
1935 (A) pay a fine, fee, restitution, or other cost; or  
1936 (B) complete service hours.  
1937 (iv) If the court orders a minor to pay a fine, fee, restitution, or other cost, or to  
1938 complete service hours, those dispositions shall be considered collectively to ensure that the  
1939 order is reasonable and prioritizes restitution.  
1940 (v) If the court orders a minor to pay a fine, fee, or other cost, or complete service  
1941 hours, the cumulative order shall be limited per criminal episode as follows:  
1942 (A) for children under age 16 at adjudication, the court may impose up to \$180 or up to  
1943 24 hours of service; and  
1944 (B) for minors 16 and older at adjudication, the court may impose up to \$270 or up to  
1945 36 hours of service.  
1946 (vi) The cumulative order under Subsection (2)(j)(v) does not include restitution.  
1947 (vii) If the court converts a fine, fee, or restitution amount to service hours, the rate of  
1948 conversion shall be no less than the minimum wage.  
1949 (k) (i) In violations of traffic laws within the court's jurisdiction, when the court finds  
1950 that as part of the commission of the violation the minor was in actual physical control of a  
1951 motor vehicle, the court may, in addition to any other disposition authorized by this section:  
1952 (A) restrain the minor from driving for periods of time the court considers necessary;  
1953 and  
1954 (B) take possession of the minor's driver license.  
1955 (ii) The court may enter any other eligible disposition under Subsection (2)(k)(i) except  
1956 for a disposition under Subsection (2)(c), (d), or (f). However, the suspension of driving  
1957 privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.  
1958 (l) (i) The court may order a minor to complete community or compensatory service  
1959 hours in accordance with Subsections (2)(j)(iv) and (v).  
1960 (ii) When community service is ordered, the presumptive service order shall include  
1961 between five and 10 hours of service.

1962 (iii) Satisfactory completion of an approved substance use disorder prevention or  
1963 treatment program or other court-ordered condition may be credited by the court as  
1964 compensatory service hours.

1965 (iv) When a minor is found within the jurisdiction of the juvenile court under Section  
1966 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may  
1967 order the minor to clean up graffiti created by the minor or any other person at a time and place  
1968 within the jurisdiction of the court. Compensatory service ordered under this section may be  
1969 performed in the presence and under the direct supervision of the minor's parent or legal  
1970 guardian. The parent or legal guardian shall report completion of the order to the court. The  
1971 court may also require the minor to perform other alternative forms of restitution or repair to  
1972 the damaged property pursuant to Subsection (2)(h).

1973 (m) (i) Subject to Subsection (2)(m)(iii), the court may order that a minor:

1974 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

1975 (B) receive other special care.

1976 (ii) For purposes of receiving the examination, treatment, or care described in  
1977 Subsection (2)(m)(i), the court may place the minor in a hospital or other suitable facility that is  
1978 not a secure facility or secure detention.

1979 (iii) In determining whether to order the examination, treatment, or care described in  
1980 Subsection (2)(m)(i), the court shall consider:

1981 (A) the desires of the minor;

1982 (B) if the minor is under the age of 18, the desires of the parents or guardian of the  
1983 minor; and

1984 (C) whether the potential benefits of the examination, treatment, or care outweigh the  
1985 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain  
1986 function impairment, or emotional or physical harm resulting from the compulsory nature of  
1987 the examination, treatment, or care.

1988 (iv) The Division of Child and Family Services shall take reasonable measures to  
1989 notify a parent or guardian of any non-emergency health treatment or care scheduled for a

1990 child, shall include the parent or guardian as fully as possible in making health care decisions  
1991 for the child, and shall defer to the parent's or guardian's reasonable and informed decisions  
1992 regarding the child's health care to the extent that the child's health and well being are not  
1993 unreasonably compromised by the parent's or guardian's decision.

1994 (v) The Division of Child and Family Services shall notify the parent or guardian of a  
1995 child within five business days after a child in the custody of the Division of Child and Family  
1996 Services receives emergency health care or treatment.

1997 (vi) The Division of Child and Family Services shall use the least restrictive means to  
1998 accomplish a compelling interest in the care and treatment of a child described in this  
1999 Subsection (2)(m).

2000 (n) (i) The court may appoint a guardian for the minor if it appears necessary in the  
2001 interest of the minor, and may appoint as guardian a public or private institution or agency, but  
2002 not a nonsecure residential placement provider, in which legal custody of the minor is vested.

2003 (ii) In placing a minor under the guardianship or legal custody of an individual or of a  
2004 private agency or institution, the court shall give primary consideration to the welfare of the  
2005 minor. When practicable, the court may take into consideration the religious preferences of the  
2006 minor and of a child's parents.

2007 (o) (i) In support of a decree under Section [78A-6-103](#), the court may order reasonable  
2008 conditions to be complied with by a minor's parents or guardian, a minor's custodian, or any  
2009 other person who has been made a party to the proceedings. Conditions may include:

2010 (A) parent-time by the parents or one parent;

2011 (B) restrictions on the minor's associates;

2012 (C) restrictions on the minor's occupation and other activities; and

2013 (D) requirements to be observed by the parents or custodian.

2014 (ii) A minor whose parents or guardians successfully complete a family or other  
2015 counseling program may be credited by the court for detention, confinement, or probation time.

2016 (p) The court may order the child to be committed to the physical custody of a local  
2017 mental health authority, in accordance with the procedures and requirements of Title 62A,



2018 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and  
2019 Mental Health.

2020 (q) (i) The court may make an order committing a minor within the court's jurisdiction  
2021 to the Utah State Developmental Center if the minor has an intellectual disability in accordance  
2022 with Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with  
2023 an Intellectual Disability.

2024 (ii) The court shall follow the procedure applicable in the district courts with respect to  
2025 judicial commitments to the Utah State Developmental Center when ordering a commitment  
2026 under Subsection (2)(q)(i).

2027 (r) The court may terminate all parental rights upon a finding of compliance with Title  
2028 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

2029 (s) The court may make other reasonable orders for the best interest of the minor and as  
2030 required for the protection of the public, except that a child may not be committed to jail,  
2031 prison, secure detention, or the custody of the Division of Juvenile Justice Services under  
2032 Subsections (2)(c) and (d).

2033 (t) The court may combine the dispositions listed in this section if it is permissible and  
2034 they are compatible.

2035 (u) Before depriving any parent of custody, the court shall give due consideration to the  
2036 rights of parents concerning their child. The court may transfer custody of a minor to another  
2037 person, agency, or institution in accordance with the requirements and procedures of Title 78A,  
2038 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

2039 (v) Except as provided in Subsection (2)(x)(i), an order under this section for probation  
2040 or placement of a minor with an individual or an agency shall include a date certain for a  
2041 review and presumptive termination of the case by the court in accordance with Subsection (6)  
2042 and Section [62A-7-404](#). A new date shall be set upon each review.

2043 (w) In reviewing foster home placements, special attention shall be given to making  
2044 adoptable children available for adoption without delay.

2045 (x) (i) The juvenile court may enter an order of permanent custody and guardianship

2046 with an individual or relative of a child where the court has previously acquired jurisdiction as  
2047 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an  
2048 order for child support on behalf of the child against the natural or adoptive parents of the  
2049 child.

2050 (ii) Orders under Subsection (2)(x)(i):

2051 (A) shall remain in effect until the child reaches majority;

2052 (B) are not subject to review under Section 78A-6-118; and

2053 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

2054 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and  
2055 permanent orders of custody and guardianship do not expire with a termination of jurisdiction  
2056 of the juvenile court.

2057 (3) In addition to the dispositions described in Subsection (2), when a minor comes  
2058 within the court's jurisdiction, the minor may be given a choice by the court to serve in the  
2059 National Guard in lieu of other sanctions, provided:

2060 (a) the minor meets the current entrance qualifications for service in the National  
2061 Guard as determined by a recruiter, whose determination is final;

2062 (b) the minor is not under the jurisdiction of the court for any act that:

2063 (i) would be a felony if committed by an adult;

2064 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

2065 (iii) was committed with a weapon; and

2066 (c) the court retains jurisdiction over the minor under conditions set by the court and  
2067 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

2068 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction  
2069 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by  
2070 designated employees of the court or, if the minor is in the legal custody of the Division of  
2071 Juvenile Justice Services, then by designated employees of the division under Subsection  
2072 53-10-404(5)(b).

2073 (b) The responsible agency shall ensure that employees designated to collect the saliva

2074 DNA specimens receive appropriate training and that the specimens are obtained in accordance  
2075 with accepted protocol.

2076 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA  
2077 Specimen Restricted Account created in Section 53-10-407.

2078 (d) Payment of the reimbursement is second in priority to payments the minor is  
2079 ordered to make for restitution under this section and treatment under Section 78A-6-321.

2080 (5) (a) A disposition made by the court pursuant to this section may not be suspended,  
2081 except for the following:

2082 (i) If a minor qualifies for commitment to the Division of Juvenile Justice Services  
2083 under Subsection (2)(c) or (d), the court may suspend a custody order pursuant to Subsection  
2084 (2)(c) or (d) in lieu of immediate commitment, upon the condition that the minor commit no  
2085 new misdemeanor or felony offense during the three months following the day of disposition.

2086 (ii) The duration of a suspended custody order made under Subsection (5)(a)(i) may not  
2087 exceed three months post-disposition and may not be extended under any circumstance.

2088 (iii) The court may only impose a custody order suspended under Subsection (5)(a)(i)  
2089 following adjudication of a new misdemeanor or felony offense committed by the minor during  
2090 the period of suspension set out under Subsection (5)(a)(ii) or if a new assessment or  
2091 evaluation has been completed and recommends that a higher level of care is needed and  
2092 nonresidential treatment options have been exhausted or nonresidential treatment options are  
2093 not appropriate.

2094 (iv) A suspended custody order may not be imposed without notice to the minor, notice  
2095 to counsel, and a hearing.

2096 (b) The court pursuant to Subsection (5)(a) shall terminate jurisdiction over the minor  
2097 at the end of the presumptive time frame unless at least one the following circumstances exists:

2098 (i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a  
2099 program determined to be necessary by the results of a validated risk and needs assessment  
2100 with completion found by the court after considering the recommendation of a licensed service  
2101 provider on the basis of the minor completing the goals of the necessary treatment program;

- 2102 (ii) the minor commits a new misdemeanor or felony offense;
- 2103 (iii) service hours have not been completed; or
- 2104 (iv) there is an outstanding fine.

2105 (6) When the court places a minor on probation under Subsection (2)(a) or vests legal  
2106 custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the  
2107 court shall do so for a defined period of time pursuant to this section.

2108 (a) For the purposes of placing a minor on probation under Subsection (2)(a), the court  
2109 shall establish a presumptive term of probation as specified in this Subsection (6):

2110 (i) the presumptive maximum length of intake probation may not exceed three months;  
2111 and

2112 (ii) the presumptive maximum length of formal probation may not exceed four to six  
2113 months.

2114 (b) For the purposes of vesting legal custody of the minor in the Division of Juvenile  
2115 Justice Services under Subsection (2)(c), the court shall establish a maximum term of custody  
2116 and a maximum term of aftercare as specified in this Subsection (6):

2117 (i) the presumptive maximum length of out-of-home placement may not exceed three  
2118 to six months; and

2119 (ii) the presumptive maximum length of aftercare supervision, for those previously  
2120 placed out-of-home, may not exceed three to four months, and minors may serve the term of  
2121 aftercare in the home of a qualifying relative or guardian or at an independent living program  
2122 contracted or operated by the Division of Juvenile Justice Services.

2123 (c) The court pursuant to Subsections (6)(a) and (b), and the Youth Parole Authority  
2124 pursuant to Subsection (6)(b), shall terminate jurisdiction over the minor at the end of the  
2125 presumptive time frame unless at least one of the following circumstances exists:

2126 (i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a  
2127 court ordered program determined to be necessary by the results of a validated assessment, with  
2128 completion found by the court after considering the recommendations of a licensed service  
2129 provider or facilitator of court ordered treatment or intervention program on the basis of the

2130 minor completing the goals of the necessary treatment program;

2131       (ii) termination pursuant to Subsection (6)(a)(i) or (6)(b) would interrupt the

2132 completion of a program determined to be necessary by the results of a validated assessment,

2133 with completion determined on the basis of whether the minor has regularly and consistently

2134 attended the treatment program and completed the goals of the necessary treatment program as

2135 determined by the court or Youth Parole Authority after considering the recommendation of a

2136 licensed service provider or facilitator of court ordered treatment or intervention program;

2137       (iii) the minor commits a new misdemeanor or felony offense;

2138       (iv) service hours have not been completed; or

2139       (v) there is an outstanding fine.

2140       (d) (i) Subject to Subsection (6)(g), if one of the circumstances under Subsection

2141 (6)(c)(i), (ii), (iii), or (iv) exists, the court may extend jurisdiction for the time needed to

2142 address the specific circumstance.

2143       (ii) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i),

2144 (ii), (iii), or (iv) exists, and the Youth Parole Authority has jurisdiction, the Youth Parole

2145 Authority may extend jurisdiction for the time needed to address the specific circumstance.

2146       (e) If the circumstance under Subsection (6)(c)(iv) exists, the court, or the Youth

2147 Parole Authority if the Youth Parole Authority has jurisdiction, may extend jurisdiction one

2148 time for up to three months.

2149       (f) Grounds for extension of the presumptive length of supervision or placement and

2150 the length of any extension shall be recorded in the court record or records of the Youth Parole

2151 Authority if the Youth Parole Authority has jurisdiction, and tracked in the data system used by

2152 the Administrative Office of the Courts and the Division of Juvenile Justice Services.

2153       (g) (i) For a minor who is under the supervision of the juvenile court and whose

2154 supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may

2155 only be continued under the supervision of intake probation.

2156       (ii) For a minor who is under the jurisdiction of the Youth Parole Authority whose

2157 supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may

2158 only be continued on parole and not in secure confinement.

2159 (h) In the event of an unauthorized leave lasting more than 24 hours, the supervision  
2160 period shall toll until the minor returns.

2161 (7) Subsection (6) does not apply to any minor adjudicated under this section for:

2162 (a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

2163 (b) Section 76-5-202, attempted aggravated murder;

2164 (c) Section 76-5-203, murder or attempted murder;

2165 (d) Section 76-5-302, aggravated kidnapping;

2166 (e) Section 76-5-405, aggravated sexual assault;

2167 (f) a felony violation of Section 76-6-103, aggravated arson;

2168 (g) Section 76-6-203, aggravated burglary;

2169 (h) Section 76-6-302, aggravated robbery;

2170 (i) Section 76-10-508.1, felony discharge of a firearm; or

2171 (j) an offense other than those listed in Subsections (7)(a) through (i) involving the use  
2172 of a dangerous weapon, as defined in Section 76-1-601, that is a felony, and the minor has been  
2173 previously adjudicated or convicted of an offense involving the use of a dangerous weapon.

2174 Section 24. Section 78A-6-302 is amended to read:

2175 **78A-6-302. Court-ordered protective custody of a child following petition filing --**  
2176 **Grounds.**

2177 (1) After a petition has been filed under Section 78A-6-304, if the child who is the  
2178 subject of the petition is not in the protective custody of the division, a court may order that the  
2179 child be removed from the child's home or otherwise taken into protective custody if the court  
2180 finds, by a preponderance of the evidence, that any one or more of the following circumstances  
2181 exist:

2182 (a) (i) there is an imminent danger to the physical health or safety of the child; and

2183 (ii) the child's physical health or safety may not be protected without removing the  
2184 child from the custody of the child's parent or guardian;

2185 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct

2186 that causes the child to suffer harm; and

2187       (ii) there are no less restrictive means available by which the child's emotional health

2188 may be protected without removing the child from the custody of the child's parent or guardian;

2189       (c) the child or another child residing in the same household has been, or is considered

2190 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a

2191 parent or guardian, a member of the parent's or guardian's household, or other person known to

2192 the parent or guardian;

2193       (d) the parent or guardian is unwilling to have physical custody of the child;

2194       (e) the child is abandoned or left without any provision for the child's support;

2195       (f) a parent or guardian who has been incarcerated or institutionalized has not arranged

2196 or cannot arrange for safe and appropriate care for the child;

2197       (g) (i) a relative or other adult custodian with whom the child is left by the parent or

2198 guardian is unwilling or unable to provide care or support for the child;

2199       (ii) the whereabouts of the parent or guardian are unknown; and

2200       (iii) reasonable efforts to locate the parent or guardian are unsuccessful;

2201       (h) subject to Subsections [78A-6-105](#)~~[(35)(c)(i) through (iii)]~~[\(36\)](#) and [78A-6-117\(2\)](#)

2202 and Section [78A-6-301.5](#), the child is in immediate need of medical care;

2203       (i) (i) a parent's or guardian's actions, omissions, or habitual action create an

2204 environment that poses a serious risk to the child's health or safety for which immediate

2205 remedial or preventive action is necessary; or

2206       (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose

2207 a threat to the child's health or safety;

2208       (j) the child or another child residing in the same household has been neglected;

2209       (k) the child's natural parent:

2210       (i) intentionally, knowingly, or recklessly causes the death of another parent of the

2211 child;

2212       (ii) is identified by a law enforcement agency as the primary suspect in an investigation

2213 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

2214 (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or  
2215 recklessly causing the death of another parent of the child;

2216 (l) an infant has been abandoned, as defined in Section 78A-6-316;

2217 (m) (i) the parent or guardian, or an adult residing in the same household as the parent  
2218 or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab  
2219 Act; and

2220 (ii) any clandestine laboratory operation was located in the residence or on the property  
2221 where the child resided; or

2222 (n) the child's welfare is otherwise endangered.

2223 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as  
2224 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency  
2225 occurs involving the same substantiated abuser or under similar circumstance as the previous  
2226 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the  
2227 custody of the child's parent.

2228 (b) For purposes of Subsection (1)(c):

2229 (i) another child residing in the same household may not be removed from the home  
2230 unless that child is considered to be at substantial risk of being physically abused, sexually  
2231 abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

2232 (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse,  
2233 or sexual exploitation by a person known to the parent has occurred, and there is evidence that  
2234 the parent or guardian failed to protect the child, after having received the notice, by allowing  
2235 the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie  
2236 evidence that the child is at substantial risk of being physically abused, sexually abused, or  
2237 sexually exploited.

2238 (3) (a) For purposes of Subsection (1), if the division files a petition under Section  
2239 78A-6-304, the court shall consider the division's safety and risk assessments described in  
2240 Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the  
2241 child's parent or guardian or should otherwise be taken into protective custody.



2242 (b) The division shall make a diligent effort to provide the safety and risk assessments  
2243 described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or  
2244 guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

2245 (4) In the absence of one of the factors described in Subsection (1), a court may not  
2246 remove a child from the parent's or guardian's custody on the basis of:

2247 (a) educational neglect, truancy, or failure to comply with a court order to attend  
2248 school;

2249 (b) mental illness or poverty of the parent or guardian; or

2250 (c) disability of the parent or guardian, as defined in Section 57-21-2.

2251 (5) A child removed from the custody of the child's parent or guardian under this  
2252 section may not be placed or kept in a secure detention facility pending further court  
2253 proceedings unless the child is detainable based on guidelines promulgated by the Division of  
2254 Juvenile Justice Services.

2255 (6) This section does not preclude removal of a child from the child's home without a  
2256 warrant or court order under Section 62A-4a-202.1.

2257 (7) (a) Except as provided in Subsection (7)(b), a court or the Division of Child and  
2258 Family Services may not remove a child from the custody of the child's parent or guardian on  
2259 the sole or primary basis that the parent or guardian refuses to consent to:

2260 (i) the administration of a psychotropic medication to a child;

2261 (ii) a psychiatric, psychological, or behavioral treatment for a child; or

2262 (iii) a psychiatric or behavioral health evaluation of a child.

2263 (b) Notwithstanding Subsection (7)(a), a court or the Division of Child and Family  
2264 Services may remove a child under conditions that would otherwise be prohibited under  
2265 Subsection (7)(a) if failure to take an action described under Subsection (7)(a) would present a  
2266 serious, imminent risk to the child's physical safety or the physical safety of others.

2267 Section 25. Section 78A-6-306 is amended to read:

2268 **78A-6-306. Shelter hearing.**

2269 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays

2270 after any one or all of the following occur:

- 2271 (a) removal of the child from the child's home by the division;
- 2272 (b) placement of the child in the protective custody of the division;
- 2273 (c) emergency placement under Subsection [62A-4a-202.1\(4\)](#);
- 2274 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
- 2275 at the request of the division; or
- 2276 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
- 2277 Subsection [78A-6-106\(4\)](#).

2278 (2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the

2279 division shall issue a notice that contains all of the following:

- 2280 (a) the name and address of the person to whom the notice is directed;
- 2281 (b) the date, time, and place of the shelter hearing;
- 2282 (c) the name of the child on whose behalf a petition is being brought;
- 2283 (d) a concise statement regarding:
  - 2284 (i) the reasons for removal or other action of the division under Subsection (1); and
  - 2285 (ii) the allegations and code sections under which the proceeding has been instituted;
- 2286 (e) a statement that the parent or guardian to whom notice is given, and the child, are
- 2287 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
- 2288 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
- 2289 provided in accordance with the provisions of Section [78A-6-1111](#); and
- 2290 (f) a statement that the parent or guardian is liable for the cost of support of the child in
- 2291 the protective custody, temporary custody, and custody of the division, and the cost for legal
- 2292 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
- 2293 ability of the parent or guardian.

2294 (3) The notice described in Subsection (2) shall be personally served as soon as

2295 possible, but no later than one business day after removal of the child from the child's home, or

2296 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection

2297 [78A-6-106\(4\)](#), on:

- 2298 (a) the appropriate guardian ad litem; and
- 2299 (b) both parents and any guardian of the child, unless the parents or guardians cannot
- 2300 be located.
- 2301 (4) The following persons shall be present at the shelter hearing:
- 2302 (a) the child, unless it would be detrimental for the child;
- 2303 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
- 2304 fail to appear in response to the notice;
- 2305 (c) counsel for the parents, if one is requested;
- 2306 (d) the child's guardian ad litem;
- 2307 (e) the caseworker from the division who is assigned to the case; and
- 2308 (f) the attorney from the attorney general's office who is representing the division.
- 2309 (5) (a) At the shelter hearing, the court shall:
- 2310 (i) provide an opportunity to provide relevant testimony to:
- 2311 (A) the child's parent or guardian, if present; and
- 2312 (B) any other person having relevant knowledge; and
- 2313 (ii) subject to Section [78A-6-305](#), provide an opportunity for the child to testify.
- 2314 (b) The court:
- 2315 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
- 2316 Procedure;
- 2317 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
- 2318 the requesting party, or their counsel; and
- 2319 (iii) may in its discretion limit testimony and evidence to only that which goes to the
- 2320 issues of removal and the child's need for continued protection.
- 2321 (6) If the child is in the protective custody of the division, the division shall report to
- 2322 the court:
- 2323 (a) the reason why the child was removed from the parent's or guardian's custody;
- 2324 (b) any services provided to the child and the child's family in an effort to prevent
- 2325 removal;

2326 (c) the need, if any, for continued shelter;

2327 (d) the available services that could facilitate the return of the child to the custody of  
2328 the child's parent or guardian; and

2329 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the  
2330 child or friends of the child's parents may be able and willing to accept temporary placement of  
2331 the child.

2332 (7) The court shall consider all relevant evidence provided by persons or entities  
2333 authorized to present relevant evidence pursuant to this section.

2334 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good  
2335 cause shown, the court may grant no more than one continuance, not to exceed five judicial  
2336 days.

2337 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for  
2338 a continuance under Subsection (8)(a).

2339 (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice  
2340 described in Subsection (2) within the time described in Subsection (3), the court may grant the  
2341 request of a parent or guardian for a continuance, not to exceed five judicial days.

2342 (9) (a) If the child is in the protective custody of the division, the court shall order that  
2343 the child be returned to the custody of the parent or guardian unless it finds, by a  
2344 preponderance of the evidence, consistent with the protections and requirements provided in  
2345 Subsection 62A-4a-201(1), that any one of the following exists:

2346 (i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or  
2347 safety of the child and the child's physical health or safety may not be protected without  
2348 removing the child from the custody of the child's parent;

2349 (ii) (A) the child is suffering emotional damage that results in a serious impairment in  
2350 the child's growth, development, behavior, or psychological functioning;

2351 (B) the parent or guardian is unwilling or unable to make reasonable changes that  
2352 would sufficiently prevent future damage; and

2353 (C) there are no reasonable means available by which the child's emotional health may

2354 be protected without removing the child from the custody of the child's parent or guardian;

2355 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is  
2356 not removed from the custody of the child's parent or guardian;

2357 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same  
2358 household has been, or is considered to be at substantial risk of being, physically abused,  
2359 sexually abused, or sexually exploited by a:

2360 (A) parent or guardian;

2361 (B) member of the parent's household or the guardian's household; or

2362 (C) person known to the parent or guardian;

2363 (v) the parent or guardian is unwilling to have physical custody of the child;

2364 (vi) the child is without any provision for the child's support;

2365 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe  
2366 and appropriate care for the child;

2367 (viii) (A) a relative or other adult custodian with whom the child is left by the parent or  
2368 guardian is unwilling or unable to provide care or support for the child;

2369 (B) the whereabouts of the parent or guardian are unknown; and

2370 (C) reasonable efforts to locate the parent or guardian are unsuccessful;

2371 (ix) subject to Subsections [78A-6-105](#)~~[(35)(c)(i) through (iii)]~~[\(36\)](#) and [78A-6-117](#)(2)  
2372 and Section [78A-6-301.5](#), the child is in immediate need of medical care;

2373 (x) (A) the physical environment or the fact that the child is left unattended beyond a  
2374 reasonable period of time poses a threat to the child's health or safety; and

2375 (B) the parent or guardian is unwilling or unable to make reasonable changes that  
2376 would remove the threat;

2377 (xi) (A) the child or a minor residing in the same household has been neglected; and

2378 (B) the parent or guardian is unwilling or unable to make reasonable changes that  
2379 would prevent the neglect;

2380 (xii) the parent, guardian, or an adult residing in the same household as the parent or  
2381 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act,

2382 and any clandestine laboratory operation was located in the residence or on the property where  
2383 the child resided;

2384 (xiii) (A) the child's welfare is substantially endangered; and

2385 (B) the parent or guardian is unwilling or unable to make reasonable changes that  
2386 would remove the danger; or

2387 (xiv) the child's natural parent:

2388 (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
2389 child;

2390 (B) is identified by a law enforcement agency as the primary suspect in an investigation  
2391 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

2392 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
2393 recklessly causing the death of another parent of the child.

2394 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is  
2395 established if:

2396 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency  
2397 involving the parent; and

2398 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

2399 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly  
2400 allowed the child to be in the physical care of a person after the parent received actual notice  
2401 that the person physically abused, sexually abused, or sexually exploited the child, that fact  
2402 constitutes prima facie evidence that there is a substantial risk that the child will be physically  
2403 abused, sexually abused, or sexually exploited.

2404 (10) (a) (i) The court shall also make a determination on the record as to whether  
2405 reasonable efforts were made to prevent or eliminate the need for removal of the child from the  
2406 child's home and whether there are available services that would prevent the need for continued  
2407 removal.

2408 (ii) If the court finds that the child can be safely returned to the custody of the child's  
2409 parent or guardian through the provision of those services, the court shall place the child with

2410 the child's parent or guardian and order that those services be provided by the division.

2411 (b) In making the determination described in Subsection (10)(a), and in ordering and  
2412 providing services, the child's health, safety, and welfare shall be the paramount concern, in  
2413 accordance with federal law.

2414 (11) Where the division's first contact with the family occurred during an emergency  
2415 situation in which the child could not safely remain at home, the court shall make a finding that  
2416 any lack of preplacement preventive efforts was appropriate.

2417 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe  
2418 abuse, or severe neglect are involved, neither the division nor the court has any duty to make  
2419 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,  
2420 return a child to the child's home, provide reunification services, or attempt to rehabilitate the  
2421 offending parent or parents.

2422 (13) The court may not order continued removal of a child solely on the basis of  
2423 educational neglect as [~~described in Subsection 78A-6-105(35)(b)~~] defined in Section  
2424 78A-6-105, truancy, or failure to comply with a court order to attend school.

2425 (14) (a) Whenever a court orders continued removal of a child under this section, the  
2426 court shall state the facts on which that decision is based.

2427 (b) If no continued removal is ordered and the child is returned home, the court shall  
2428 state the facts on which that decision is based.

2429 (15) If the court finds that continued removal and temporary custody are necessary for  
2430 the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal  
2431 regardless of:

2432 (a) any error in the initial removal of the child;

2433 (b) the failure of a party to comply with notice provisions; or

2434 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child  
2435 and Family Services.

2436 Section 26. Section **78A-6-311.5** is enacted to read:

2437 **78A-6-311.5. Placement in a qualified residential treatment program -- Review**

2438 **hearings.**

2439 (1) As used in this section:

2440 (a) "Qualified individual" means the same as that term is defined in 42 U.S.C. Sec.

2441 675a.

2442 (b) "Qualified residential treatment program" means the same as that term is defined in

2443 42 U.S.C. Sec. 672.

2444 (2) Within 60 days of the date when a child is placed in a qualified residential

2445 treatment program, the court shall:

2446 (a) review the assessment, determination, and documentation made by a qualified

2447 individual regarding the child;

2448 (b) determine whether the needs of the child can be met through placement in a foster

2449 home;

2450 (c) if the child's needs cannot be met through placement in a foster home, determine

2451 whether:

2452 (i) placement of the child in a qualified residential treatment program provides the

2453 most effective and appropriate level of care for the child in the least restrictive environment;

2454 and

2455 (ii) placement in a qualified residential treatment program is consistent with the

2456 short-term and long-term goals for the child, as specified in the permanency plan for the child;

2457 and

2458 (d) approve or disapprove of the child's placement in a qualified residential treatment

2459 program.

2460 (3) As long as a child remains placed in a qualified residential treatment program, the

2461 court shall review the placement decision at each subsequent hearing held with respect to the

2462 child.

2463 (4) When the court conducts a review described in Subsection (3), the court shall

2464 review evidence submitted by the custodial division to:

2465 (a) demonstrate an ongoing assessment of the strengths and needs of the child such that



2466 the child's needs cannot be met through placement in a foster home;

2467 (b) demonstrate that placement in a qualified residential treatment program provides

2468 the most effective and appropriate level of care for the child in the least restrictive

2469 environment;

2470 (c) demonstrate that placement in the qualified residential treatment program is

2471 consistent with the short-term and long-term goals for the child, as specified by the permanency

2472 plan for the child;

2473 (d) document the specific treatment or service needs that will be met for the child in

2474 the placement;

2475 (e) document the length of time the child is expected to need the treatment or services;

2476 and

2477 (f) document the efforts made by the custodial division to prepare the child to return

2478 home or transition to another setting, such as with a relative, with a friend of the child, with a

2479 legal guardian, with an adoptive parent, a foster home, or independent living.

2480 Section 27. Section **78A-6-312** is amended to read:

2481 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

2482 (1) The court may:

2483 (a) make any of the dispositions described in Section [78A-6-117](#);

2484 (b) place the minor in the custody or guardianship of any:

2485 (i) individual; or

2486 (ii) public or private entity or agency; or

2487 (c) order:

2488 (i) protective supervision;

2489 (ii) family preservation;

2490 (iii) subject to Subsections (12)(b), ~~[78A-6-105(35)(c)(i) through (iii)]~~ [78A-6-105\(36\)](#),

2491 and [78A-6-117\(2\)](#) and Section [78A-6-301.5](#), medical or mental health treatment;

2492 (iv) sibling visitation; or

2493 (v) other services.

2494 (2) Whenever the court orders continued removal at the dispositional hearing, and that  
2495 the minor remain in the custody of the division, the court shall first:

2496 (a) establish a primary permanency plan for the minor; and

2497 (b) determine whether, in view of the primary permanency plan, reunification services  
2498 are appropriate for the minor and the minor's family, pursuant to Subsections (21) through (23).

2499 (3) Subject to Subsections (6) and (7), if the court determines that reunification  
2500 services are appropriate for the minor and the minor's family, the court shall provide for  
2501 reasonable parent-time with the parent or parents from whose custody the minor was removed,  
2502 unless parent-time is not in the best interest of the minor.

2503 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe  
2504 abuse, or severe neglect are involved, neither the division nor the court has any duty to make  
2505 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to  
2506 attempt to rehabilitate the offending parent or parents.

2507 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount  
2508 concern in determining whether reasonable efforts to reunify should be made.

2509 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless  
2510 the court makes a finding that it is necessary to deny parent-time in order to:

2511 (a) protect the physical safety of the minor;

2512 (b) protect the life of the minor; or

2513 (c) prevent the minor from being traumatized by contact with the parent due to the  
2514 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

2515 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a  
2516 parent's failure to:

2517 (a) prove that the parent has not used legal or illegal substances; or

2518 (b) comply with an aspect of the child and family plan that is ordered by the court.

2519 (8) (a) In addition to the primary permanency plan, the court shall establish a  
2520 concurrent permanency plan that shall include:

2521 (i) a representative list of the conditions under which the primary permanency plan will

2522 be abandoned in favor of the concurrent permanency plan; and

2523 (ii) an explanation of the effect of abandoning or modifying the primary permanency  
2524 plan.

2525 (b) In determining the primary permanency plan and concurrent permanency plan, the  
2526 court shall consider:

2527 (i) the preference for kinship placement over nonkinship placement;

2528 (ii) the potential for a guardianship placement if the parent-child relationship is legally  
2529 terminated and no appropriate adoption placement is available; and

2530 (iii) the use of an individualized permanency plan, only as a last resort.

2531 (9) A permanency hearing shall be conducted in accordance with Subsection  
2532 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if  
2533 something other than reunification is initially established as a minor's primary permanency  
2534 plan.

2535 (10) (a) The court may amend a minor's primary permanency plan before the  
2536 establishment of a final permanency plan under Section 78A-6-314.

2537 (b) The court is not limited to the terms of the concurrent permanency plan in the event  
2538 that the primary permanency plan is abandoned.

2539 (c) If, at any time, the court determines that reunification is no longer a minor's primary  
2540 permanency plan, the court shall conduct a permanency hearing in accordance with Section  
2541 78A-6-314 on or before the earlier of:

2542 (i) 30 days after the day on which the court makes the determination described in this  
2543 Subsection (10)(c); or

2544 (ii) the day on which the provision of reunification services, described in Section  
2545 78A-6-314, ends.

2546 (11) (a) If the court determines that reunification services are appropriate, the court  
2547 shall order that the division make reasonable efforts to provide services to the minor and the  
2548 minor's parent for the purpose of facilitating reunification of the family, for a specified period  
2549 of time.

2550 (b) In providing the services described in Subsection (11)(a), the minor's health, safety,  
2551 and welfare shall be the division's paramount concern, and the court shall so order.

2552 (12) (a) The court shall:

2553 (i) determine whether the services offered or provided by the division under the child  
2554 and family plan constitute "reasonable efforts" on the part of the division;

2555 (ii) determine and define the responsibilities of the parent under the child and family  
2556 plan in accordance with Subsection 62A-4a-205(6)(e); and

2557 (iii) identify verbally on the record, or in a written document provided to the parties,  
2558 the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future  
2559 determination regarding the provision of reasonable efforts, in accordance with state and  
2560 federal law.

2561 (b) If the parent is in a substance use disorder treatment program, other than a certified  
2562 drug court program:

2563 (i) the court may order the parent to submit to supplementary drug or alcohol testing in  
2564 addition to the testing recommended by the parent's substance use disorder program based on a  
2565 finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

2566 (ii) the court may order the parent to provide the results of drug or alcohol testing  
2567 recommended by the substance use disorder program to the court or division.

2568 (13) (a) The time period for reunification services may not exceed 12 months from the  
2569 date that the minor was initially removed from the minor's home, unless the time period is  
2570 extended under Subsection 78A-6-314(7).

2571 (b) Nothing in this section may be construed to entitle any parent to an entire 12  
2572 months of reunification services.

2573 (14) (a) If reunification services are ordered, the court may terminate those services at  
2574 any time.

2575 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined  
2576 to be inconsistent with the final permanency plan for the minor established pursuant to Section  
2577 78A-6-314, then measures shall be taken, in a timely manner, to:

2578 (i) place the minor in accordance with the permanency plan; and  
2579 (ii) complete whatever steps are necessary to finalize the permanent placement of the  
2580 minor.

2581 (15) Any physical custody of the minor by the parent or a relative during the period  
2582 described in Subsections (11) through (14) does not interrupt the running of the period.

2583 (16) (a) If reunification services are ordered, a permanency hearing shall be conducted  
2584 by the court in accordance with Section 78A-6-314 at the expiration of the time period for  
2585 reunification services.

2586 (b) The permanency hearing shall be held no later than 12 months after the original  
2587 removal of the minor.

2588 (c) If reunification services are not ordered, a permanency hearing shall be conducted  
2589 within 30 days, in accordance with Section 78A-6-314.

2590 (17) With regard to a minor in the custody of the division whose parent or parents are  
2591 ordered to receive reunification services but who have abandoned that minor for a period of six  
2592 months from the date that reunification services were ordered:

2593 (a) the court shall terminate reunification services; and  
2594 (b) the division shall petition the court for termination of parental rights.

2595 (18) When a court conducts a permanency hearing for a minor under Section  
2596 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the  
2597 sibling group together is:

2598 (a) practicable; and  
2599 (b) in accordance with the best interest of the minor.

2600 (19) When a child is under the custody of the division and has been separated from a  
2601 sibling due to foster care or adoptive placement, a court may order sibling visitation, subject to  
2602 the division obtaining consent from the sibling's legal guardian, according to the court's  
2603 determination of the best interests of the child for whom the hearing is held.

2604 (20) (a) Because of the state's interest in and responsibility to protect and provide  
2605 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a

2606 parent's interest in receiving reunification services is limited.

2607 (b) The court may determine that:

2608 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,  
2609 based on the individual circumstances; and

2610 (ii) reunification services should not be provided.

2611 (c) In determining "reasonable efforts" to be made with respect to a minor, and in  
2612 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount  
2613 concern.

2614 (21) There is a presumption that reunification services should not be provided to a  
2615 parent if the court finds, by clear and convincing evidence, that any of the following  
2616 circumstances exist:

2617 (a) the whereabouts of the parents are unknown, based upon a verified affidavit  
2618 indicating that a reasonably diligent search has failed to locate the parent;

2619 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such  
2620 magnitude that it renders the parent incapable of utilizing reunification services;

2621 (c) the minor was previously adjudicated as an abused child due to physical abuse,  
2622 sexual abuse, or sexual exploitation, and following the adjudication the minor:

2623 (i) was removed from the custody of the minor's parent;

2624 (ii) was subsequently returned to the custody of the parent; and

2625 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual  
2626 exploitation;

2627 (d) the parent:

2628 (i) caused the death of another minor through abuse or neglect;

2629 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

2630 (A) murder or manslaughter of a child; or

2631 (B) child abuse homicide;

2632 (iii) committed sexual abuse against the child;

2633 (iv) is a registered sex offender or required to register as a sex offender; or

2634 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the  
2635 child;

2636 (B) is identified by a law enforcement agency as the primary suspect in an investigation  
2637 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

2638 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or  
2639 recklessly causing the death of another parent of the child;

2640 (e) the minor suffered severe abuse by the parent or by any person known by the  
2641 parent, if the parent knew or reasonably should have known that the person was abusing the  
2642 minor;

2643 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,  
2644 and the court finds that it would not benefit the minor to pursue reunification services with the  
2645 offending parent;

2646 (g) the parent's rights are terminated with regard to any other minor;

2647 (h) the minor was removed from the minor's home on at least two previous occasions  
2648 and reunification services were offered or provided to the family at those times;

2649 (i) the parent has abandoned the minor for a period of six months or longer;

2650 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a  
2651 location where the parent knew or should have known that a clandestine laboratory operation  
2652 was located;

2653 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's  
2654 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was  
2655 exposed to an illegal or prescription drug that was abused by the child's mother while the child  
2656 was in utero, if the child was taken into division custody for that reason, unless the mother  
2657 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a  
2658 substance use disorder treatment program approved by the department; or

2659 (l) any other circumstance that the court determines should preclude reunification  
2660 efforts or services.

2661 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence

2662 from at least two medical or mental health professionals, who are not associates, establishing  
2663 that, even with the provision of services, the parent is not likely to be capable of adequately  
2664 caring for the minor within 12 months after the day on which the court finding is made.

2665 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under  
2666 the circumstances of the case, that the substance use disorder treatment described in Subsection  
2667 (21)(k) is not warranted.

2668 (23) In determining whether reunification services are appropriate, the court shall take  
2669 into consideration:

2670 (a) failure of the parent to respond to previous services or comply with a previous child  
2671 and family plan;

2672 (b) the fact that the minor was abused while the parent was under the influence of  
2673 drugs or alcohol;

2674 (c) any history of violent behavior directed at the child or an immediate family  
2675 member;

2676 (d) whether a parent continues to live with an individual who abused the minor;

2677 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

2678 (f) testimony by a competent professional that the parent's behavior is unlikely to be  
2679 successful; and

2680 (g) whether the parent has expressed an interest in reunification with the minor.

2681 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through  
2682 (22), and the whereabouts of a parent become known within six months after the day on which  
2683 the out-of-home placement of the minor is made, the court may order the division to provide  
2684 reunification services.

2685 (b) The time limits described in Subsections (2) through (18) are not tolled by the  
2686 parent's absence.

2687 (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable  
2688 services unless the court determines that those services would be detrimental to the minor.

2689 (b) In making the determination described in Subsection (25)(a), the court shall



2690 consider:

- 2691 (i) the age of the minor;
- 2692 (ii) the degree of parent-child bonding;
- 2693 (iii) the length of the sentence;
- 2694 (iv) the nature of the treatment;
- 2695 (v) the nature of the crime or illness;
- 2696 (vi) the degree of detriment to the minor if services are not offered;
- 2697 (vii) for a minor 10 years old or older, the minor's attitude toward the implementation
- 2698 of family reunification services; and
- 2699 (viii) any other appropriate factors.

2700 (c) Reunification services for an incarcerated parent are subject to the time limitations  
2701 imposed in Subsections (2) through (18).

2702 (d) Reunification services for an institutionalized parent are subject to the time  
2703 limitations imposed in Subsections (2) through (18), unless the court determines that continued  
2704 reunification services would be in the minor's best interest.

2705 (26) If, pursuant to Subsections (21)(b) through (l), the court does not order  
2706 reunification services, a permanency hearing shall be conducted within 30 days, in accordance  
2707 with Section [78A-6-314](#).

2708 Section 28. Section **78A-6-317** is amended to read:

2709 **78A-6-317. All proceedings -- Persons entitled to be present -- Legal**  
2710 **representation -- Records sharing.**

2711 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice  
2712 pursuant to Section [78A-6-306](#) or [78A-6-310](#), preadoptive parents, foster parents, and any  
2713 relative providing care for the child, are:

2714 (a) entitled to notice of, and to be present at, each hearing and proceeding held under  
2715 this part, including administrative reviews; and

2716 (b) have a right to be heard at each hearing and proceeding described in Subsection  
2717 (1)(a).

2718 (2) A child shall be represented at each hearing by the guardian ad litem appointed to  
2719 the child's case by the court. The child has a right to be present at each hearing, subject to the  
2720 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

2721 (3) (a) The parent or guardian of a child who is the subject of a petition under this part  
2722 has the right to be represented by counsel, and to present evidence, at each hearing.

2723 (b) When it appears to the court that a parent or guardian of the child desires counsel  
2724 but is financially unable to afford and cannot for that reason employ counsel, the court shall  
2725 appoint counsel as provided in Section 78A-6-1111.

2726 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court  
2727 shall order that the child be represented by a guardian ad litem, in accordance with Section  
2728 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance  
2729 with the requirements of that section, at the shelter hearing and at all subsequent court and  
2730 administrative proceedings, including any proceeding for termination of parental rights in  
2731 accordance with Part 5, Termination of Parental Rights Act.

2732 (5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other  
2733 provision of law:

2734 (i) counsel for all parties to the action shall be given access to all records, maintained  
2735 by the division or any other state or local public agency, that are relevant to the abuse, neglect,  
2736 or dependency proceeding under this chapter; and

2737 (ii) if the natural parent of a child is not represented by counsel, the natural parent shall  
2738 have access to the records described in Subsection (5)(a)(i).

2739 (b) The disclosures described in Subsection (5)(a) are not required in the following  
2740 circumstances:

2741 (i) subject to Subsection (5)(c), the division or other state or local public agency did not  
2742 originally create the record being requested;

2743 (ii) disclosure of the record would jeopardize the life or physical safety of a child who  
2744 has been a victim of abuse or neglect, or any person who provided substitute care for the child;

2745 (iii) disclosure of the record would jeopardize the anonymity of the person or persons

2746 making the initial report of abuse or neglect or any others involved in the subsequent  
2747 investigation;

2748 (iv) disclosure of the record would jeopardize the life or physical safety of [~~a person~~]  
2749 an individual who has been a victim of domestic violence;

2750 (v) the record is a report maintained in the Management Information System, for which  
2751 a finding of unsubstantiated, unsupported, or without merit has been made, unless the person  
2752 requesting the information is the alleged perpetrator in the report or counsel for the alleged  
2753 perpetrator in the report; or

2754 (vi) the record is a Children's Justice Center interview, including a video or audio  
2755 recording, and a transcript of the recording, the release of which is governed by Section  
2756 [77-37-4](#).

2757 (c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the  
2758 person making the request of the following:

2759 (i) the existence of all records in the possession of the division or any other state or  
2760 local public agency;

2761 (ii) the name and address of the person or agency that originally created the record; and

2762 (iii) that the requesting person must seek access to the record from the person or  
2763 agency that originally created the record.

2764 Section 29. Section **78A-6-902** is amended to read:

2765 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**  
2766 **responsibilities -- Training -- Trained staff and court-appointed special advocate**  
2767 **volunteers -- Costs -- Immunity -- Annual report.**

2768 (1) (a) The court:

2769 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor  
2770 involved in any case before the court; and

2771 (ii) shall consider the best interest of a minor, consistent with the provisions of Section  
2772 [62A-4a-201](#), in determining whether to appoint a guardian ad litem.

2773 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a

2774 finding that establishes the necessity of the appointment.

2775 (2) An attorney guardian ad litem shall represent the best interest of each child who  
2776 may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of  
2777 the day that:

2778 (a) the child is removed from the child's home by the division; or

2779 (b) the petition is filed.

2780 (3) The director shall ensure that each attorney guardian ad litem employed by the  
2781 office:

2782 (a) represents the best interest of each client of the office in all venues, including:

2783 (i) court proceedings; and

2784 (ii) meetings to develop, review, or modify the child and family plan with the Division  
2785 of Child and Family Services in accordance with Section [62A-4a-205](#);

2786 (b) prior to representing any minor before the court, be trained in:

2787 (i) applicable statutory, regulatory, and case law; and

2788 (ii) nationally recognized standards for an attorney guardian ad litem;

2789 (c) conducts or supervises an ongoing, independent investigation in order to obtain,  
2790 first-hand, a clear understanding of the situation and needs of the minor;

2791 (d) (i) personally meets with the minor, unless:

2792 (A) the minor is outside of the state; or

2793 (B) meeting with the minor would be detrimental to the minor;

2794 (ii) personally interviews the minor, unless:

2795 (A) the minor is not old enough to communicate;

2796 (B) the minor lacks the capacity to participate in a meaningful interview; or

2797 (C) the interview would be detrimental to the minor; and

2798 (iii) if the minor is placed in an out-of-home placement, or is being considered for  
2799 placement in an out-of-home placement, unless it would be detrimental to the minor:

2800 (A) to the extent possible, determines the minor's goals and concerns regarding  
2801 placement; and

2802 (B) personally assesses or supervises an assessment of the appropriateness and safety  
2803 of the minor's environment in each placement;

2804 (e) personally attends all review hearings pertaining to the minor's case;

2805 (f) participates in all appeals, unless excused by order of the court;

2806 (g) is familiar with local experts who can provide consultation and testimony regarding  
2807 the reasonableness and appropriateness of efforts made by the Division of Child and Family  
2808 Services to:

2809 (i) maintain a minor in the minor's home; or

2810 (ii) reunify a child with the child's parent;

2811 (h) to the extent possible, and unless it would be detrimental to the minor, personally  
2812 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

2813 (i) the status of the minor's case;

2814 (ii) all court and administrative proceedings;

2815 (iii) discussions with, and proposals made by, other parties;

2816 (iv) court action; and

2817 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be  
2818 provided to the minor;

2819 (i) in cases where a child and family plan is required, personally or through a trained  
2820 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and  
2821 family plan and any dispositional orders to:

2822 (i) determine whether services ordered by the court:

2823 (A) are actually provided; and

2824 (B) are provided in a timely manner; and

2825 (ii) attempt to assess whether services ordered by the court are accomplishing the  
2826 intended goal of the services; and

2827 (j) makes all necessary court filings to advance the guardian ad litem's position  
2828 regarding the best interest of the child.

2829 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use

2830 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers  
2831 Act, trained paralegals, and other trained staff to assist in investigation and preparation of  
2832 information regarding the cases of individual minors before the court.

2833 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained  
2834 in and follow, at a minimum, the guidelines established by the United States Department of  
2835 Justice Court Appointed Special Advocate Association.

2836 (5) The attorney guardian ad litem shall continue to represent the best interest of the  
2837 minor until released from that duty by the court.

2838 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

2839 (i) all costs resulting from the appointment of an attorney guardian ad litem; and

2840 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

2841 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem  
2842 program to cover the costs described in Subsection (6)(a).

2843 (c) (i) When the court appoints an attorney guardian ad litem under this section, the  
2844 court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer  
2845 expenses against the child's parents, parent, or legal guardian in a proportion that the court  
2846 determines to be just and appropriate, taking into consideration costs already borne by the  
2847 parents, parent, or legal guardian, including:

2848 (A) private attorney fees;

2849 (B) counseling for the child;

2850 (C) counseling for the parent, if mandated by the court or recommended by the  
2851 Division of Child and Family Services; and

2852 (D) any other cost the court determines to be relevant.

2853 (ii) The court may not assess those fees or costs against:

2854 (A) a legal guardian, when that guardian is the state; or

2855 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

2856 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the  
2857 court shall:

2858 (i) require that person to submit an affidavit of impecuniosity as provided in Section  
2859 78A-2-302; and

2860 (ii) follow the procedures and make the determinations as provided in Section  
2861 78A-2-304.

2862 (e) The child's parents, parent, or legal guardian may appeal the court's determination,  
2863 under Subsection (6)(c), of fees, costs, and expenses.

2864 (7) An attorney guardian ad litem appointed under this section, when serving in the  
2865 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee  
2866 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental  
2867 Immunity Act of Utah.

2868 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

2869 (b) If the minor's wishes differ from the attorney's determination of the minor's best  
2870 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in  
2871 addition to presenting the attorney's determination of the minor's best interest.

2872 (c) A difference between the minor's wishes and the attorney's determination of best  
2873 interest may not be considered a conflict of interest for the attorney.

2874 (d) The guardian ad litem shall disclose the wishes of the child unless the child:

2875 (i) instructs the guardian ad litem to not disclose the child's wishes; or

2876 (ii) has not expressed any wishes.

2877 (e) The court may appoint one attorney guardian ad litem to represent the best interests  
2878 of more than one child of a marriage.

2879 (9) An attorney guardian ad litem shall be provided access to all Division of Child and  
2880 Family Services records regarding the minor at issue and the minor's family.

2881 (10) (a) An attorney guardian ad litem shall conduct an independent investigation  
2882 regarding the minor at issue, the minor's family, and what constitutes the best interest of the  
2883 minor.

2884 (b) An attorney guardian ad litem may interview the minor's Division of Child and  
2885 Family Services caseworker, but may not:

2886 (i) rely exclusively on the conclusions and findings of the Division of Child and Family  
2887 Services; or

2888 (ii) except as provided in Subsection (10)(c), conduct a visit with the client in  
2889 conjunction with the visit of a Division of Child and Family Services caseworker.

2890 (c) (i) [~~A~~] An attorney guardian ad litem may meet with a client during a team meeting,  
2891 court hearing, or similar venue when a Division of Child and Family Services caseworker is  
2892 present for a purpose other than the attorney guardian ad litem's [visit] meeting with the client.

2893 (ii) A party and the party's counsel may attend a team meeting in accordance with the  
2894 Utah Rules of Professional Conduct.

2895 (11) (a) An attorney guardian ad litem shall maintain current and accurate records  
2896 regarding:

2897 (i) the number of times the attorney has had contact with each minor; and

2898 (ii) the actions the attorney has taken in representation of the minor's best interest.

2899 (b) In every hearing where the attorney guardian ad litem makes a recommendation  
2900 regarding the best interest of the child, the court shall require the attorney guardian ad litem to  
2901 disclose the factors that form the basis of the recommendation.

2902 (12) (a) Except as provided in Subsection (12)(b), all records of an attorney guardian  
2903 ad litem are confidential and may not be released or made public upon subpoena, search  
2904 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter  
2905 2, Government Records Access and Management Act.

2906 (b) Consistent with Subsection (12)(d), all records of an attorney guardian ad litem:

2907 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative  
2908 Subpoena Powers; and

2909 (ii) shall be released to the Legislature.

2910 (c) (i) Except as provided in Subsection (12)(c)(ii), records released in accordance with  
2911 Subsection (12)(b) shall be maintained as confidential by the Legislature.

2912 (ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor  
2913 General may include summary data and nonidentifying information in its audits and reports to



2914 the Legislature.

2915 (d) (i) Subsection (12)(b) constitutes an exception to Rules of Professional Conduct,  
2916 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

2917 (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

2918 (B) the state's role and responsibility:

2919 (I) to provide a guardian ad litem program; and

2920 (II) as parens patriae, to protect minors.

2921 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney  
2922 guardian ad litem by the Legislature, through legislative subpoena.

2923 Section 30. Section **78A-6-1103** is amended to read:

2924 **78A-6-1103. Modification or termination of custody order or decree -- Grounds --**  
2925 **Procedure.**

2926 (1) A parent or guardian of any child whose legal custody has been transferred by the  
2927 court to an individual, agency, or institution, except a secure youth corrections facility, may  
2928 petition the court for restoration of custody or other modification or revocation of the court's  
2929 order, on the ground that a change of circumstances has occurred which requires such  
2930 modification or revocation in the best interest of the child or the public.

2931 (2) The court shall make a preliminary investigation. If the court finds that the alleged  
2932 change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If  
2933 the court finds that a further examination of the facts is needed, or if the court on its own  
2934 motion determines that the decree should be reviewed, it shall conduct a hearing. Notice shall  
2935 be given to all persons concerned. At the hearing, the court may enter an order continuing,  
2936 modifying, or terminating the decree.

2937 (3) (a) A parent may not file a petition under this section after the parent's parental  
2938 rights have been terminated in accordance with Part 5, Termination of Parental Rights Act.

2939 (b) A parent may not file a petition for restoration of custody under this section during  
2940 the existence of a permanent guardianship established for the child under Subsection  
2941 **78A-6-117(2)(~~y~~)(x).**

2942 (4) An individual, agency, or institution vested with legal custody of a child may  
2943 petition the court for a modification of the custody order on the ground that the change is  
2944 necessary for the welfare of the child or in the public interest. The court shall proceed upon the  
2945 petition in accordance with Subsections (1) and (2).

2946 Section 31. Section **78A-6-1302** is amended to read:

2947 **78A-6-1302. Procedure -- Standard.**

2948 (1) When a motion is filed pursuant to Section **78A-6-1301** raising the issue of a  
2949 minor's competency to proceed, or when the court raises the issue of a minor's competency to  
2950 proceed, the juvenile court in which proceedings are pending shall stay all delinquency  
2951 proceedings.

2952 (2) If a motion for inquiry is opposed by either party, the court shall, prior to granting  
2953 or denying the motion, hold a limited hearing solely for the purpose of determining the  
2954 sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona  
2955 fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of  
2956 the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's  
2957 competency.

2958 (3) After the granting of a motion, and prior to a full competency hearing, the court  
2959 may order the Department of Human Services to evaluate the minor and to report to the court  
2960 concerning the minor's mental condition.

2961 (4) The minor shall be evaluated by a mental health examiner with experience in  
2962 juvenile forensic evaluations and juvenile brain development, who is not involved in the  
2963 current treatment of the minor. If it becomes apparent that the minor may be not competent  
2964 due to an intellectual disability or related condition, the examiner shall be experienced in  
2965 intellectual disability or related condition evaluations of minors.

2966 (5) The petitioner or other party, as directed by the court, shall provide all information  
2967 and materials to the examiners relevant to a determination of the minor's competency  
2968 including:

2969 (a) the motion;

- 2970 (b) the arrest or incident reports pertaining to the charged offense;
- 2971 (c) the minor's known delinquency history information;
- 2972 (d) known prior mental health evaluations and treatments; and
- 2973 (e) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the
- 2974 minor's education.
- 2975 (6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad
- 2976 litem, shall cooperate in providing the relevant information and materials to the examiners.
- 2977 (7) In conducting the evaluation and in the report determining if a minor is competent
- 2978 to proceed as defined in [~~Subsection 78A-6-105(38)~~] Section 78A-6-105, the examiner shall
- 2979 consider the impact of a mental disorder, intellectual disability, or related condition on a
- 2980 minor's present capacity to:
- 2981 (a) comprehend and appreciate the charges or allegations;
- 2982 (b) disclose to counsel pertinent facts, events, or states of mind;
- 2983 (c) comprehend and appreciate the range and nature of possible penalties, if applicable,
- 2984 that may be imposed in the proceedings against the minor;
- 2985 (d) engage in reasoned choice of legal strategies and options;
- 2986 (e) understand the adversarial nature of the proceedings;
- 2987 (f) manifest appropriate courtroom behavior; and
- 2988 (g) testify relevantly, if applicable.
- 2989 (8) In addition to the requirements of Subsection (7), the examiner's written report
- 2990 shall:
- 2991 (a) identify the specific matters referred for evaluation;
- 2992 (b) describe the procedures, techniques, and tests used in the evaluation and the
- 2993 purpose or purposes for each;
- 2994 (c) state the examiner's clinical observations, findings, and opinions on each issue
- 2995 referred for evaluation by the court, and indicate specifically those issues, if any, on which the
- 2996 examiner could not give an opinion;
- 2997 (d) state the likelihood that the minor will attain competency and the amount of time

2998 estimated to achieve it; and

2999 (e) identify the sources of information used by the examiner and present the basis for  
3000 the examiner's clinical findings and opinions.

3001 (9) The examiner shall provide an initial report to the court, the prosecuting and  
3002 defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the  
3003 court's order. If the examiner informs the court that additional time is needed, the court may  
3004 grant, taking into consideration the custody status of the minor, up to an additional 30 days to  
3005 provide the report to the court and counsel. The examiner must provide the report within 60  
3006 days from the receipt of the court's order unless, for good cause shown, the court authorizes an  
3007 additional period of time to complete the evaluation and provide the report. The report shall  
3008 inform the court of the examiner's opinion concerning the competency and the likelihood of the  
3009 minor to attain competency within a year. In the alternative, the examiner may inform the court  
3010 in writing that additional time is needed to complete the report.

3011 (10) Any statement made by the minor in the course of any competency evaluation,  
3012 whether the evaluation is with or without the consent of the minor, any testimony by the  
3013 examiner based upon any statement, and any other fruits of the statement may not be admitted  
3014 in evidence against the minor in any delinquency or criminal proceeding except on an issue  
3015 respecting the mental condition on which the minor has introduced evidence. The evidence  
3016 may be admitted, however, where relevant to a determination of the minor's competency.

3017 (11) Before evaluating the minor, examiners shall specifically advise the minor and the  
3018 parents or guardian of the limits of confidentiality as provided under Subsection (10).

3019 (12) When the report is received the court shall set a date for a competency hearing that  
3020 shall be held in not less than five and not more than 15 days, unless the court enlarges the time  
3021 for good cause.

3022 (13) A minor shall be presumed competent unless the court, by a preponderance of the  
3023 evidence, finds the minor not competent to proceed. The burden of proof is upon the  
3024 proponent of incompetency to proceed.

3025 (14) (a) Following the hearing, the court shall determine by a preponderance of

3026 evidence whether the minor is:

3027 (i) competent to proceed;

3028 (ii) not competent to proceed with a substantial probability that the minor may attain  
3029 competency in the foreseeable future; or

3030 (iii) not competent to proceed without a substantial probability that the minor may  
3031 attain competency in the foreseeable future.

3032 (b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall  
3033 proceed with the delinquency proceedings.

3034 (c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall  
3035 proceed consistent with Section [78A-6-1303](#).

3036 (d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall  
3037 terminate the competency proceeding, dismiss the delinquency charges without prejudice, and  
3038 release the minor from any custody order related to the pending delinquency proceeding, unless  
3039 the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter  
3040 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental  
3041 Health Act, will be initiated. These commitment proceedings shall be initiated within seven  
3042 days after the court's order, unless the court enlarges the time for good cause shown. The  
3043 minor may be ordered to remain in custody until the commitment proceedings have been  
3044 concluded.

3045 (15) If the court finds the minor not competent to proceed, its order shall contain  
3046 findings addressing each of the factors in Subsection (7).

3047 Section 32. Section **78B-6-102** is amended to read:

3048 **78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of**  
3049 **each party.**

3050 (1) It is the intent and desire of the Legislature that in every adoption the best interest  
3051 of the child should govern and be of foremost concern in the court's determination.

3052 (2) The court shall make a specific finding regarding the best interest of the child,  
3053 taking into consideration information provided to the court pursuant to the requirements of this

3054 chapter relating to the health, safety, and welfare of the child and the moral climate of the  
3055 potential adoptive placement.

3056 (3) The Legislature finds that the rights and interests of all parties affected by an  
3057 adoption proceeding must be considered and balanced in determining what constitutional  
3058 protections and processes are necessary and appropriate.

3059 (4) The Legislature specifically finds that it is not in a child's best interest to be adopted  
3060 by a person or persons who are cohabiting in a relationship that is not a legally valid and  
3061 binding marriage under the laws of this state. Nothing in this section limits or prohibits the  
3062 court's placement of a child with a single adult who is not cohabiting [~~as defined in this part.~~]  
3063 or a person who is a relative of the child or a recognized placement under the Indian Child  
3064 Welfare Act, 25 U.S.C. Sec. 1901 et seq.

3065 (5) The Legislature also finds that:

3066 (a) the state has a compelling interest in providing stable and permanent homes for  
3067 adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and  
3068 in holding parents accountable for meeting the needs of children;

3069 (b) an unmarried mother, faced with the responsibility of making crucial decisions  
3070 about the future of a newborn child, is entitled to privacy, and has the right to make timely and  
3071 appropriate decisions regarding her future and the future of the child, and is entitled to  
3072 assurance regarding the permanence of an adoptive placement;

3073 (c) adoptive children have a right to permanence and stability in adoptive placements;

3074 (d) adoptive parents have a constitutionally protected liberty and privacy interest in  
3075 retaining custody of an adopted child;

3076 (e) an unmarried biological father has an inchoate interest that acquires constitutional  
3077 protection only when he demonstrates a timely and full commitment to the responsibilities of  
3078 parenthood, both during pregnancy and upon the child's birth; and

3079 (f) the state has a compelling interest in requiring unmarried biological fathers to  
3080 demonstrate commitment by providing appropriate medical care and financial support and by  
3081 establishing legal paternity, in accordance with the requirements of this chapter.

3082           (6) (a) In enacting this chapter, the Legislature has prescribed the conditions for  
3083 determining whether an unmarried biological father's action is sufficiently prompt and  
3084 substantial to require constitutional protection.

3085           (b) If an unmarried biological father fails to grasp the opportunities to establish a  
3086 relationship with his child that are available to him, his biological parental interest may be lost  
3087 entirely, or greatly diminished in constitutional significance by his failure to timely exercise it,  
3088 or by his failure to strictly comply with the available legal steps to substantiate it.

3089           (c) A certain degree of finality is necessary in order to facilitate the state's compelling  
3090 interest. The Legislature finds that the interests of the state, the mother, the child, and the  
3091 adoptive parents described in this section outweigh the interest of an unmarried biological  
3092 father who does not timely grasp the opportunity to establish and demonstrate a relationship  
3093 with his child in accordance with the requirements of this chapter.

3094           (d) The Legislature finds no practical way to remove all risk of fraud or  
3095 misrepresentation in adoption proceedings, and has provided a method for absolute protection  
3096 of an unmarried biological father's rights by compliance with the provisions of this chapter. In  
3097 balancing the rights and interests of the state, and of all parties affected by fraud, specifically  
3098 the child, the adoptive parents, and the unmarried biological father, the Legislature has  
3099 determined that the unmarried biological father is in the best position to prevent or ameliorate  
3100 the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

3101           (e) An unmarried biological father has the primary responsibility to protect his rights.

3102           (f) An unmarried biological father is presumed to know that the child may be adopted  
3103 without his consent unless he strictly complies with the provisions of this chapter, manifests a  
3104 prompt and full commitment to his parental responsibilities, and establishes paternity.

3105           (7) The Legislature finds that an unmarried mother has a right of privacy with regard to  
3106 her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity  
3107 of an unmarried biological father prior to or during an adoption proceeding, and has no  
3108 obligation to volunteer information to the court with respect to the father.

3109           Section 33. Section **78B-6-117** is amended to read:

3110 **78B-6-117. Who may adopt -- Adoption of minor.**

3111 (1) A minor child may be adopted by an adult person, in accordance with this section  
3112 and this part.

3113 (2) A child may be adopted by:

3114 (a) adults who are legally married to each other in accordance with the laws of this  
3115 state, including adoption by a stepparent; or

3116 (b) subject to [~~Subsection (4)~~] Subsections (3) and (4), a single adult[~~, except as~~  
3117 ~~provided in Subsection (3)~~].

3118 (3) A child may not be adopted by a person who is cohabiting in a relationship that is  
3119 not a legally valid and binding marriage under the laws of this state[-] unless the person is a  
3120 relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C.  
3121 Sec. 1901 et seq.

3122 (4) To provide a child who is in the custody of the division with the most beneficial  
3123 family structure, when a child in the custody of the division is placed for adoption, the division  
3124 or child-placing agency shall place the child with a man and a woman who are married to each  
3125 other, unless:

3126 (a) there are no qualified married couples who:

3127 (i) have applied to adopt a child;

3128 (ii) are willing to adopt the child; and

3129 (iii) are an appropriate placement for the child;

3130 (b) the child is placed with a relative of the child;

3131 (c) the child is placed with a person who has already developed a substantial  
3132 relationship with the child;

3133 (d) the child is placed with a person who:

3134 (i) is selected by a parent or former parent of the child, if the parent or former parent  
3135 consented to the adoption of the child; and

3136 (ii) the parent or former parent described in Subsection (4)(d)(i):

3137 (A) knew the person with whom the child is placed before the parent consented to the



3138 adoption; or

3139 (B) became aware of the person with whom the child is placed through a source other  
3140 than the division or the child-placing agency that assists with the adoption of the child; or

3141 (e) it is in the best interests of the child to place the child with a single ~~[person]~~ adult.

3142 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before  
3143 adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest  
3144 to a felony or attempted felony involving conduct that constitutes any of the following:

3145 (a) child abuse, as described in Section 76-5-109;

3146 (b) child abuse homicide, as described in Section 76-5-208;

3147 (c) child kidnapping, as described in Section 76-5-301.1;

3148 (d) human trafficking of a child, as described in Section 76-5-308.5;

3149 (e) sexual abuse of a minor, as described in Section 76-5-401.1;

3150 (f) rape of a child, as described in Section 76-5-402.1;

3151 (g) object rape of a child, as described in Section 76-5-402.3;

3152 (h) sodomy on a child, as described in Section 76-5-403.1;

3153 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in  
3154 Section 76-5-404.1;

3155 (j) sexual exploitation of a minor, as described in Section 76-5b-201; or

3156 (k) an offense in another state that, if committed in this state, would constitute an  
3157 offense described in this Subsection (5).

3158 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense  
3159 listed in Subsection (5) that prevents a court from considering a person for adoption of a child  
3160 except as provided in this Subsection (6).

3161 (b) A person described in Subsection (5) may only be considered for adoption of a  
3162 child if the following criteria are met by clear and convincing evidence:

3163 (i) at least 10 years have elapsed from the day on which the person is successfully  
3164 released from prison, jail, parole, or probation related to a disqualifying offense;

3165 (ii) during the 10 years before the day on which the person files a petition with the

3166 court seeking adoption, the person has not been convicted, pleaded guilty, or pleaded no  
3167 contest to an offense greater than an infraction or traffic violation that would likely impact the  
3168 health, safety, or well-being of the child;

3169 (iii) the person can provide evidence of successful treatment or rehabilitation directly  
3170 related to the disqualifying offense;

3171 (iv) the court determines that the risk related to the disqualifying offense is unlikely to  
3172 cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any  
3173 time in the future when considering all of the following:

3174 (A) the child's age;

3175 (B) the child's gender;

3176 (C) the child's development;

3177 (D) the nature and seriousness of the disqualifying offense;

3178 (E) the preferences of a child 12 years of age or older;

3179 (F) any available assessments, including custody evaluations, home studies,  
3180 pre-placement adoptive evaluations, parenting assessments, psychological or mental health  
3181 assessments, and bonding assessments; and

3182 (G) any other relevant information;

3183 (v) the person can provide evidence of all of the following:

3184 (A) the relationship with the child is of long duration;

3185 (B) that an emotional bond exists with the child; and

3186 (C) that adoption by the person who has committed the disqualifying offense ensures  
3187 the best interests of the child are met; and

3188 (vi) the adoption is by:

3189 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or

3190 (B) subject to Subsection (6)(d), a relative of the child as defined in Section 78A-6-307

3191 and there is not another relative without a disqualifying offense filing an adoption petition.

3192 (c) The person with the disqualifying offense bears the burden of proof regarding why  
3193 adoption with that person is in the best interest of the child over another responsible relative or

3194 equally situated person who does not have a disqualifying offense.

3195 (d) If there is an alternative responsible relative who does not have a disqualifying  
3196 offense filing an adoption petition, the following applies:

3197 (i) preference for adoption shall be given to a relative who does not have a  
3198 disqualifying offense; and

3199 (ii) before the court may grant adoption to the person who has the disqualifying offense  
3200 over another responsible, willing, and able relative:

3201 (A) an impartial custody evaluation shall be completed; and

3202 (B) a guardian ad litem shall be assigned.

3203 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017<sub>2</sub> for which a  
3204 final decision on adoption has not been made and to a case filed on or after March 25, 2017.

3205 Section 34. Section **78B-6-133** is amended to read:

3206 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

3207 (1) If a person whose consent for an adoption is required pursuant to Subsection  
3208 **78B-6-120**(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether  
3209 proper grounds exist for the termination of that person's rights pursuant to the provisions of this  
3210 chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

3211 (2) (a) If there are proper grounds to terminate the person's parental rights, the court  
3212 shall order that the person's rights be terminated.

3213 (b) If there are not proper grounds to terminate the person's parental rights, the court  
3214 shall:

3215 (i) dismiss the adoption petition;

3216 (ii) conduct an evidentiary hearing to determine who should have custody of the child;

3217 and

3218 (iii) award custody of the child in accordance with the child's best interest.

3219 (c) Termination of a person's parental rights does not terminate the right of a relative of  
3220 the parent to seek adoption of the child.

3221 (3) Evidence considered at the custody hearing may include:

3222 (a) evidence of psychological or emotional bonds that the child has formed with a third  
3223 person, including the prospective adoptive parent; and

3224 (b) any detriment that a change in custody may cause the child.

3225 (4) If the court dismisses the adoption petition, the fact that a person relinquished a  
3226 child for adoption or consented to the adoption may not be considered as evidence in a custody  
3227 proceeding described in this section, or in any subsequent custody proceeding, that it is not in  
3228 the child's best interest for custody to be awarded to such person or that:

3229 (a) the person is unfit or incompetent to be a parent;

3230 (b) the person has neglected or abandoned the child;

3231 (c) the person is not interested in having custody of the child; or

3232 (d) the person has forfeited the person's parental presumption.

3233 (5) Any custody order entered pursuant to this section may also:

3234 (a) include provisions for:

3235 (i) parent-time; or

3236 (ii) visitation by an interested third party; and

3237 (b) provide for the financial support of the child.

3238 (6) (a) If a person or entity whose consent is required for an adoption under Subsection  
3239 [78B-6-120\(1\)\(a\)](#) or (g) refuses to consent, the court shall proceed with an evidentiary hearing  
3240 and award custody as set forth in Subsection (2).

3241 (b) The court may also finalize the adoption if doing so is in the best interest of the  
3242 child.

3243 (7) (a) A person may not contest an adoption after the final decree of adoption is  
3244 entered, if that person:

3245 (i) was a party to the adoption proceeding;

3246 (ii) was served with notice of the adoption proceeding; or

3247 (iii) executed a consent to the adoption or relinquishment for adoption.

3248 (b) No person may contest an adoption after one year from the day on which the final  
3249 decree of adoption is entered.

3250 (c) The limitations on contesting an adoption action, described in this Subsection (7),  
3251 apply to all attempts to contest an adoption:

- 3252 (i) regardless of whether the adoption is contested directly or collaterally; and
- 3253 (ii) regardless of the basis for contesting the adoption, including claims of fraud,  
3254 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of  
3255 jurisdiction.

3256 (d) The limitations on contesting an adoption action, described in this Subsection (7),  
3257 do not prohibit a timely appeal of:

- 3258 (i) a final decree of adoption; or
- 3259 (ii) a decision in an action challenging an adoption, if the action was brought within the  
3260 time limitations described in Subsections (7)(a) and (b).

3261 (8) A court that has jurisdiction over a child for whom more than one petition for  
3262 adoption is filed shall grant a hearing only under the following circumstances:

- 3263 (a) to a petitioner:
  - 3264 (i) with whom the child is placed;
  - 3265 (ii) who has custody or guardianship of the child;
  - 3266 (iii) who has filed a written statement with the court within 120 days after the day on  
3267 which the shelter hearing is held:

- 3268 (A) requesting immediate placement of the child with the petitioner; and

- 3269 (B) expressing the petitioner's intention of adopting the child; [~~or~~]

- 3270 (iv) who is a relative[~~:(A)~~] with whom the child has a significant and substantial  
3271 relationship[~~;~~] and [~~(B)~~] who was unaware, within the first 120 days after the day on which the  
3272 shelter hearing is held, of the child's removal from the child's parent; or

- 3273 (v) who is a relative with whom the child has a significant and substantial relationship  
3274 and, in a case where the child is not placed with a relative or is placed with a relative that is  
3275 unable or unwilling to adopt the child:

- 3276 (A) was actively involved in the child's child welfare case with the division or the  
3277 juvenile court while the child's parent engaged in reunification services; and

3278 (B) filed a written statement with the court that includes the information described in  
3279 Subsections (8)(a)(iii)(A) and (B) within 30 days after the day on which the court terminated  
3280 reunification services;

3281 (b) if the child:

3282 (i) has been in the current placement for less than 180 days before the day on which the  
3283 petitioner files the petition for adoption; or

3284 (ii) is placed with, or is in the custody or guardianship of, an individual who previously  
3285 informed the division or the court that the individual is unwilling or unable to adopt the child.

3286 (9) (a) If the court grants a hearing on more than one petition for adoption, there is a  
3287 rebuttable presumption that it is in the best interest of a child to be placed for adoption with a  
3288 petitioner:

3289 (i) who has fulfilled the requirements described in Title 78B, Chapter 6, Part 1, Utah  
3290 Adoption Act; and

3291 (ii) (A) with whom the child has continuously resided for six months;

3292 (B) who has filed a written statement with the court within 120 days after the day on  
3293 which the shelter hearing is held, as described in Subsection (8)(a)(iii); or

3294 (C) who is a relative described in Subsection (8)(a)(iv).

3295 (b) The court may consider other factors relevant to the best interest of the child to  
3296 determine whether the presumption is rebutted.

3297 (c) The court shall weigh the best interest of the child uniformly between petitioners if  
3298 more than one petitioner satisfies a rebuttable presumption condition described in Subsection  
3299 (9)(a).

3300 (10) Nothing in this section shall be construed to prevent the division or the child's  
3301 guardian ad litem from appearing or participating in any proceeding for a petition for adoption.

3302 ~~[(11) Neither the court nor the division is obligated to inform a petitioner of the~~  
3303 ~~petitioner's rights or duties under this section]~~

3304 (11) The division shall use best efforts to provide a known relative with timely  
3305 information relating to the relative's rights or duties under this section.

3306           Section 35. **Effective date.**

3307           This bill takes effect on May 14, 2019, except that Section [78A-6-311.5](#) takes effect on  
3308 October 1, 2019.