

JUVENILE CODE RECODIFICATION CROSS REFERENCES

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill makes technical cross reference changes to provisions related to juveniles.

Highlighted Provisions:

This bill:

- ▶ makes technical cross reference changes to provisions related to juveniles; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

17-18a-404, as last amended by Laws of Utah 2020, Chapters 214 and 312

26-2-22 (Superseded 11/01/21), as last amended by Laws of Utah 2020, Chapter 201

26-2-22 (Effective 11/01/21), as last amended by Laws of Utah 2020, Chapters 201 and

323

26-8a-310, as last amended by Laws of Utah 2020, Chapter 150

26-10-9, as last amended by Laws of Utah 2018, Chapter 415

26-21-204, as last amended by Laws of Utah 2018, Chapter 47

30-5a-103, as last amended by Laws of Utah 2020, Chapter 48



28 **32B-4-409**, as last amended by Laws of Utah 2017, Chapter 330
29 **32B-4-410**, as last amended by Laws of Utah 2017, Chapters 330 and 455
30 **32B-4-411**, as last amended by Laws of Utah 2017, Chapter 330
31 **51-9-401**, as last amended by Laws of Utah 2020, Chapter 230
32 **51-9-408**, as last amended by Laws of Utah 2019, Chapter 136
33 **53-3-204**, as last amended by Laws of Utah 2015, Chapter 422
34 **53-3-219**, as last amended by Laws of Utah 2019, Chapter 136
35 **53-3-220**, as last amended by Laws of Utah 2020, Chapter 177
36 **53-10-404**, as last amended by Laws of Utah 2020, Chapter 108
37 **53-10-407**, as last amended by Laws of Utah 2018, Chapter 86
38 **53B-8d-102**, as last amended by Laws of Utah 2017, Chapter 382
39 **53E-3-513**, as last amended by Laws of Utah 2019, Chapter 186
40 **53E-9-305**, as last amended by Laws of Utah 2020, Chapter 388
41 **53G-4-402**, as last amended by Laws of Utah 2020, Chapter 347
42 **53G-6-206**, as last amended by Laws of Utah 2020, Chapter 20
43 **53G-6-208**, as last amended by Laws of Utah 2020, Chapter 20
44 **53G-8-211**, as last amended by Laws of Utah 2020, Chapters 20 and 214
45 **53G-8-212**, as last amended by Laws of Utah 2019, Chapter 293
46 **53G-8-402**, as last amended by Laws of Utah 2020, Chapter 354
47 **53G-8-405**, as last amended by Laws of Utah 2020, Chapter 354
48 **53G-9-209**, as enacted by Laws of Utah 2018, Chapter 285
49 **53G-11-410**, as last amended by Laws of Utah 2018, Chapter 70 and renumbered and
50 amended by Laws of Utah 2018, Chapter 3
51 **58-37-6**, as last amended by Laws of Utah 2020, Chapter 81
52 **62A-1-108.5**, as last amended by Laws of Utah 2018, Chapter 147
53 **62A-1-111**, as last amended by Laws of Utah 2020, Chapter 303
54 **62A-2-108.8**, as enacted by Laws of Utah 2014, Chapter 312
55 **62A-2-117.5**, as last amended by Laws of Utah 2008, Chapter 3
56 **62A-2-120**, as last amended by Laws of Utah 2020, Chapters 176, 225, 250 and last
57 amended by Coordination Clause, Laws of Utah 2020, Chapter 225
58 **62A-2-121**, as last amended by Laws of Utah 2016, Chapter 348

59 **62A-4a-102**, as last amended by Laws of Utah 2019, Chapter 335
60 **62A-4a-103**, as last amended by Laws of Utah 2017, Chapter 323
61 **62A-4a-105**, as last amended by Laws of Utah 2020, Chapters 108 and 250
62 **62A-4a-113**, as last amended by Laws of Utah 2020, Chapter 250
63 **62A-4a-114**, as last amended by Laws of Utah 2013, Chapter 416
64 **62A-4a-118**, as last amended by Laws of Utah 2019, Chapter 335
65 **62A-4a-201**, as last amended by Laws of Utah 2020, Chapter 214
66 **62A-4a-202.3**, as last amended by Laws of Utah 2017, Chapter 459
67 **62A-4a-202.4**, as last amended by Laws of Utah 2009, Chapter 32
68 **62A-4a-202.8**, as last amended by Laws of Utah 2017, Chapter 459
69 **62A-4a-203**, as last amended by Laws of Utah 2008, Chapters 3 and 299
70 **62A-4a-205**, as last amended by Laws of Utah 2019, Chapter 335
71 **62A-4a-205.5**, as last amended by Laws of Utah 2010, Chapter 237
72 **62A-4a-205.6**, as last amended by Laws of Utah 2017, Chapter 148
73 **62A-4a-206**, as last amended by Laws of Utah 2018, Chapter 285
74 **62A-4a-206.5**, as enacted by Laws of Utah 2018, Chapter 285
75 **62A-4a-207**, as last amended by Laws of Utah 2014, Chapter 387
76 **62A-4a-209**, as last amended by Laws of Utah 2020, Chapter 250
77 **62A-4a-409**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20
78 **62A-4a-412**, as last amended by Laws of Utah 2020, Chapters 193 and 258
79 **62A-4a-607**, as last amended by Laws of Utah 2017, Chapter 148
80 **62A-4a-711**, as last amended by Laws of Utah 2019, Chapters 335 and 388
81 **62A-4a-802**, as last amended by Laws of Utah 2020, Chapter 170
82 **62A-4a-1005**, as last amended by Laws of Utah 2008, Chapters 3, 59, and 299
83 **62A-4a-1006**, as last amended by Laws of Utah 2020, Chapter 66
84 **62A-4a-1009**, as last amended by Laws of Utah 2008, Chapters 87, 299, and 382
85 **62A-4a-1010**, as last amended by Laws of Utah 2011, Chapter 366
86 **62A-11-304.2**, as last amended by Laws of Utah 2008, Chapters 3 and 382
87 **62A-15-204**, as last amended by Laws of Utah 2008, Chapter 3
88 **62A-15-626**, as last amended by Laws of Utah 2019, Chapter 419
89 **62A-15-703**, as last amended by Laws of Utah 2019, Chapter 256

90 **63G-4-402**, as last amended by Laws of Utah 2019, Chapter 335
91 **63M-7-208**, as enacted by Laws of Utah 2017, Chapter 330
92 **67-25-201**, as last amended by Laws of Utah 2013, Chapter 433
93 **75-5-209**, as last amended by Laws of Utah 2008, Chapter 3
94 **76-3-406**, as last amended by Laws of Utah 2020, Chapter 214
95 **76-5-107.1**, as enacted by Laws of Utah 2020, Chapter 426
96 **76-5-108**, as last amended by Laws of Utah 2020, Chapter 142
97 **76-5-110**, as last amended by Laws of Utah 2019, Chapters 136 and 335
98 **76-5-401.3**, as last amended by Laws of Utah 2020, Chapter 214
99 **76-5-413**, as last amended by Laws of Utah 2019, Chapter 211
100 **76-5b-201**, as last amended by Laws of Utah 2020, Chapter 296
101 **76-7-301**, as last amended by Laws of Utah 2019, Chapters 124 and 208
102 **76-7a-101 (Contingently Effective)**, as enacted by Laws of Utah 2020, Chapter 279
103 **76-8-306**, as last amended by Laws of Utah 2009, Chapter 213
104 **76-9-701**, as last amended by Laws of Utah 2017, Chapter 330
105 **76-10-105**, as last amended by Laws of Utah 2020, Chapters 214, 302, 312, 347 and
106 last amended by Coordination Clause, Laws of Utah 2020, Chapter 214
107 **76-10-503**, as last amended by Laws of Utah 2017, Chapter 288
108 **76-10-1315**, as enacted by Laws of Utah 2020, Chapter 108
109 **77-2-9**, as last amended by Laws of Utah 2020, Chapter 214
110 **77-16b-102**, as last amended by Laws of Utah 2014, Chapter 121
111 **77-37-3**, as last amended by Laws of Utah 2014, Chapter 232
112 **77-38-5**, as last amended by Laws of Utah 2008, Chapter 3
113 **77-38-14**, as last amended by Laws of Utah 2020, Chapters 54 and 218
114 **77-38a-102**, as last amended by Laws of Utah 2020, Chapter 214
115 **77-40-101.5**, as enacted by Laws of Utah 2020, Chapter 218
116 **77-41-112**, as last amended by Laws of Utah 2019, Chapter 382
117 **78A-2-104**, as last amended by Laws of Utah 2020, Chapter 389
118 **78A-2-301**, as last amended by Laws of Utah 2020, Chapter 230
119 **78A-2-601**, as last amended by Laws of Utah 2020, Chapter 230
120 **78A-2-702**, as enacted by Laws of Utah 2014, Chapter 267

121 **78A-5-102**, as last amended by Laws of Utah 2020, Chapter 214
122 **78A-7-106**, as last amended by Laws of Utah 2020, Chapters 214 and 312
123 **78B-3-406**, as last amended by Laws of Utah 2019, Chapter 346
124 **78B-6-112**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
125 **78B-6-117**, as last amended by Laws of Utah 2020, Chapter 250
126 **78B-6-121**, as last amended by Laws of Utah 2015, Chapter 194
127 **78B-6-131**, as last amended by Laws of Utah 2012, Chapter 293
128 **78B-6-133**, as last amended by Laws of Utah 2020, Chapter 354
129 **78B-6-138**, as last amended by Laws of Utah 2018, Chapter 43
130 **78B-6-141 (Superseded 11/01/21)**, as last amended by Laws of Utah 2018, Chapter 30
131 **78B-6-141 (Effective 11/01/21)**, as last amended by Laws of Utah 2020, Chapter 323
132 **78B-6-203**, as renumbered and amended by Laws of Utah 2008, Chapter 3
133 **78B-6-207**, as renumbered and amended by Laws of Utah 2008, Chapter 3
134 **78B-7-102**, as last amended by Laws of Utah 2020, Chapters 142 and 287
135 **78B-7-108**, as last amended by Laws of Utah 2018, Chapter 255
136 **78B-7-201**, as last amended by Laws of Utah 2020, Chapter 142
137 **78B-7-202**, as last amended by Laws of Utah 2020, Chapter 142
138 **78B-7-203**, as last amended by Laws of Utah 2020, Chapter 142
139 **78B-7-204**, as last amended by Laws of Utah 2020, Chapter 142
140 **78B-7-409**, as last amended by Laws of Utah 2020, Chapter 142
141 **78B-7-603**, as renumbered and amended by Laws of Utah 2020, Chapter 142
142 **78B-7-702**, as renumbered and amended by Laws of Utah 2020, Chapter 142
143 **78B-11-121**, as renumbered and amended by Laws of Utah 2008, Chapter 3
144 **78B-12-219**, as renumbered and amended by Laws of Utah 2008, Chapter 3
145 **78B-15-612**, as last amended by Laws of Utah 2015, Chapter 258
146 **78B-22-102**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
147 **78B-22-201**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
148 **78B-22-406**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
149 **78B-22-801**, as enacted by Laws of Utah 2020, Chapter 395
150 **78B-22-803**, as renumbered and amended by Laws of Utah 2020, Chapter 395 and last
151 amended by Coordination Clause, Laws of Utah 2020, Chapter 395

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

Section 1. Section **17-18a-404** is amended to read:

17-18a-404. Juvenile proceedings.

For a proceeding involving an offense committed by a minor as defined in Section ~~[78A-6-105, a]~~ 80-1-102, a public prosecutor shall:

(1) review cases in accordance with ~~[Sections 78A-6-602, 78A-6-602.5, and 78A-6-603]~~ Title 80, Chapter 6, Juvenile Justice; and

(2) appear and prosecute for the state in the juvenile court of the county.

Section 2. Section **26-2-22 (Superseded 11/01/21)** is amended to read:

26-2-22 (Superseded 11/01/21). Inspection of vital records.

(1) As used in this section:

(a) "Designated legal representative" means an attorney, physician, funeral service director, genealogist, or other agent of the subject, or an immediate family member of the subject, who has been delegated the authority to access vital records.

(b) "Drug use intervention or suicide prevention effort" means a program that studies or promotes the prevention of drug overdose deaths or suicides in the state.

(c) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.

(2) (a) The vital records shall be open to inspection, but only in compliance with the provisions of this chapter, department rules, and Sections 78B-6-141 and 78B-6-144.

(b) It is unlawful for any state or local officer or employee to disclose data contained in vital records contrary to this chapter, department rule, Section 78B-6-141, or Section 78B-6-144.

(c) (i) An adoption document is open to inspection as provided in Section 78B-6-141 or Section 78B-6-144.

(ii) A birth parent may not access an adoption document under Subsection 78B-6-141(3).

(d) A custodian of vital records may permit inspection of a vital record or issue a certified copy of a record or a part of a record when the custodian is satisfied that the applicant has demonstrated a direct, tangible, and legitimate interest.

(3) Except as provided in Subsection (4), a direct, tangible, and legitimate interest in a vital record is present only if:

(a) the request is from:

(i) the subject;

(ii) an immediate family member of the subject;

(iii) the guardian of the subject;

(iv) a designated legal representative of the subject; or

(v) a person, including a child-placing agency as defined in Section 78B-6-103, with whom a child has been placed pending finalization of an adoption of the child;

(b) the request involves a personal or property right of the subject of the record;

(c) the request is for official purposes of a public health authority or a state, local, or federal governmental agency;

(d) the request is for a drug use intervention or suicide prevention effort or a statistical or medical research program and prior consent has been obtained from the state registrar; or

(e) the request is a certified copy of an order of a court of record specifying the record to be examined or copied.

(4) (a) Except as provided in Title 78B, Chapter 6, Part 1, Utah Adoption Act, a parent, or an immediate family member of a parent, who does not have legal or physical custody of or visitation or parent-time rights for a child because of the termination of parental rights ~~[pursuant to Title 78A, Chapter 6, Juvenile Court Act]~~ under Title 80, Chapter 4, Termination and Restoration of Parental Rights, or by virtue of consenting to or relinquishing a child for adoption pursuant to Title 78B, Chapter 6, Part 1, Utah Adoption Act, may not be considered as having a direct, tangible, and legitimate interest under this section.

(b) Except as provided in Subsection (2)(d), a commercial firm or agency requesting names, addresses, or similar information may not be considered as having a direct, tangible, and legitimate interest under this section.

(5) Upon payment of a fee established in accordance with Section 63J-1-504, the office shall make the following records available to the public:

(a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding confidential information collected for medical and health use, if 100 years or more have passed since the date of birth;

(b) a death record if 50 years or more have passed since the date of death; and

(c) a vital record not subject to Subsection (5)(a) or (b) if 75 years or more have passed since the date of the event upon which the record is based.

(6) Upon payment of a fee established in accordance with Section 63J-1-504, the office shall make an adoption document available as provided in Sections 78B-6-141 and 78B-6-144.

(7) The office shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing procedures and the content of forms as follows:

(a) for a birth parent's election to permit identifying information about the birth parent to be made available under Section 78B-6-141;

(b) for the release of information by the mutual-consent, voluntary adoption registry, under Section 78B-6-144;

(c) for collecting fees and donations under Section 78B-6-144.5; and

(d) for the review and approval of a request described in Subsection (3)(d).

Section 3. Section 26-2-22 (Effective 11/01/21) is amended to read:

26-2-22 (Effective 11/01/21). Inspection of vital records.

(1) As used in this section:

(a) "Designated legal representative" means an attorney, physician, funeral service director, genealogist, or other agent of the subject, or an immediate family member of the subject, who has been delegated the authority to access vital records.

(b) "Drug use intervention or suicide prevention effort" means a program that studies or promotes the prevention of drug overdose deaths or suicides in the state.

(c) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.

(2) (a) The vital records shall be open to inspection, but only in compliance with the provisions of this chapter, department rules, and Sections 78B-6-141 and 78B-6-144.

(b) It is unlawful for any state or local officer or employee to disclose data contained in vital records contrary to this chapter, department rule, Section 78B-6-141, or Section 78B-6-144.

(c) (i) An adoption document is open to inspection as provided in Section 78B-6-141 or Section 78B-6-144.

(ii) A birth parent may not access an adoption document under Subsection

245 78B-6-141(3).

246 (d) A custodian of vital records may permit inspection of a vital record or issue a
247 certified copy of a record or a part of a record when the custodian is satisfied that the applicant
248 has demonstrated a direct, tangible, and legitimate interest.

249 (3) Except as provided in Subsection (4), a direct, tangible, and legitimate interest in a
250 vital record is present only if:

251 (a) the request is from:

252 (i) the subject;

253 (ii) an immediate family member of the subject;

254 (iii) the guardian of the subject;

255 (iv) a designated legal representative of the subject; or

256 (v) a person, including a child-placing agency as defined in Section 78B-6-103, with
257 whom a child has been placed pending finalization of an adoption of the child;

258 (b) the request involves a personal or property right of the subject of the record;

259 (c) the request is for official purposes of a public health authority or a state, local, or
260 federal governmental agency;

261 (d) the request is for a drug use intervention or suicide prevention effort or a statistical
262 or medical research program and prior consent has been obtained from the state registrar; or

263 (e) the request is a certified copy of an order of a court of record specifying the record
264 to be examined or copied.

265 (4) (a) Except as provided in Title 78B, Chapter 6, Part 1, Utah Adoption Act, a parent,
266 or an immediate family member of a parent, who does not have legal or physical custody of or
267 visitation or parent-time rights for a child because of the termination of parental rights
268 ~~[pursuant to Title 78A, Chapter 6, Juvenile Court Act]~~ under Title 80, Chapter 4, Termination
269 and Restoration of Parental Rights, or by virtue of consenting to or relinquishing a child for
270 adoption pursuant to Title 78B, Chapter 6, Part 1, Utah Adoption Act, may not be considered
271 as having a direct, tangible, and legitimate interest under this section.

272 (b) Except as provided in Subsection (2)(d), a commercial firm or agency requesting
273 names, addresses, or similar information may not be considered as having a direct, tangible,
274 and legitimate interest under this section.

275 (5) Upon payment of a fee established in accordance with Section 63J-1-504, the office

shall make the following records available to the public:

(a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding confidential information collected for medical and health use, if 100 years or more have passed since the date of birth;

(b) a death record if 50 years or more have passed since the date of death; and

(c) a vital record not subject to Subsection (5)(a) or (b) if 75 years or more have passed since the date of the event upon which the record is based.

(6) Upon payment of a fee established in accordance with Section 63J-1-504, the office shall make an adoption document available as provided in Sections 78B-6-141 and 78B-6-144.

(7) The office shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing procedures and the content of forms as follows:

(a) for the inspection of adoption documents under Subsection 78B-6-141(4);

(b) for a birth parent's election to permit identifying information about the birth parent to be made available, under Section 78B-6-141;

(c) for the release of information by the mutual-consent, voluntary adoption registry, under Section 78B-6-144;

(d) for collecting fees and donations under Section 78B-6-144.5; and

(e) for the review and approval of a request described in Subsection (3)(d).

Section 4. Section 26-8a-310 is amended to read:

26-8a-310. Background clearance for emergency medical service personnel.

(1) The department shall determine whether to grant background clearance for an individual seeking licensure under Section 26-8a-302 from whom it receives:

(a) the individual's social security number, fingerprints, and other personal identification information specified by the department under Subsection (4); and

(b) any fees established by the department under Subsection (10).

(2) The department shall determine whether to deny or revoke background clearance for individuals for whom it has previously granted background clearance.

(3) The department shall determine whether to grant, deny, or revoke background clearance for an individual based on an initial and ongoing evaluation of information the department obtains under Subsections (5) and (11), which, at a minimum, shall include an initial criminal background check of state, regional, and national databases using the

individual's fingerprints.

(4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that specify:

(a) the criteria the department will use under Subsection (3) to determine whether to grant, deny, or revoke background clearance; and

(b) the other personal identification information an individual seeking licensure under Section ~~26-8a-302~~ must submit under Subsection (1).

(5) To determine whether to grant, deny, or revoke background clearance, the department may access and evaluate any of the following:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) adjudications by a juvenile court of committing an act that if committed by an adult would be a felony or misdemeanor, if:

(i) the applicant is under 28 years ~~[of age]~~ old; or

(ii) the applicant:

(A) is over 28 years ~~[of age]~~ old; and

(B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor;

(c) juvenile court arrest, adjudication, and disposition records, other than those under Subsection (5)(b), as allowed under Section ~~78A-6-209~~;

(d) child abuse or neglect findings described in Section ~~[78A-6-323]~~ 80-3-404;

(e) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section ~~62A-4a-1006~~;

(f) the Department of Human Services' Division of Aging and Adult Services database of reports of vulnerable adult abuse, neglect, or exploitation, described in Section ~~62A-3-311.1~~;

(g) Division of Occupational and Professional Licensing records of licensing and certification under Title 58, Occupations and Professions;

(h) records in other federal criminal background databases available to the state; and

(i) any other records of arrests, warrants for arrest, convictions, pleas in abeyance, pending diversion agreements, or dispositions.

(6) Except for the Department of Public Safety, an agency may not charge the department for information accessed under Subsection (5).

(7) When evaluating information under Subsection (3), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.

(8) The department shall adopt measures to protect the security of information it accesses under Subsection (5), which shall include limiting access by department employees to those responsible for acquiring, evaluating, or otherwise processing the information.

(9) The department may disclose personal identification information it receives under Subsection (1) to the Department of Human Services to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (5)(d) through (f).

(10) The department may charge fees, in accordance with Section 63J-1-504, to pay for:

(a) the cost of obtaining, storing, and evaluating information needed under Subsection (3), both initially and on an ongoing basis, to determine whether to grant, deny, or revoke background clearance; and

(b) other department costs related to granting, denying, or revoking background clearance.

(11) The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:

(a) retain, separate from other division records, personal information under Subsection (1), including any fingerprints sent to it by the Department of Health; and

(b) notify the Department of Health upon receiving notice that an individual for whom personal information has been retained is the subject of:

(i) a warrant for arrest;

(ii) an arrest;

(iii) a conviction, including a plea in abeyance; or

(iv) a pending diversion agreement.

(12) The department shall use the Direct Access Clearance System database created under Section 26-21-209 to manage information about the background clearance status of each

individual for whom the department is required to make a determination under Subsection (1).

(13) Clearance granted for an individual licensed under Section 26-8a-302 is valid until two years after the day on which the individual is no longer licensed in Utah as emergency medical service personnel.

Section 5. Section 26-10-9 is amended to read:

26-10-9. Immunizations -- Consent of minor to treatment.

(1) This section:

(a) is not intended to interfere with the integrity of the family or to minimize the rights of parents or children; and

(b) applies to a minor, who at the time care is sought is:

(i) married or has been married;

(ii) emancipated as provided for in Section ~~78A-6-805~~ 80-7-105;

(iii) a parent with custody of a minor child; or

(iv) pregnant.

(2) (a) A minor described in Subsections (1)(b)(i) and (ii) may consent to:

(i) vaccinations against epidemic infections and communicable diseases as defined in Section 26-6-2; and

(ii) examinations and vaccinations required to attend school as provided in Title 53G, Public Education System -- Local Administration.

(b) A minor described in Subsections (1)(b)(iii) and (iv) may consent to the vaccinations described in Subsections (2)(a)(i) and (ii), and the vaccine for human papillomavirus only if:

(i) the minor represents to the health care provider that the minor is an abandoned minor as defined in Section 76-5-109; and

(ii) the health care provider makes a notation in the minor's chart that the minor represented to the health care provider that the minor is an abandoned minor under Section 76-5-109.

(c) Nothing in Subsection (2)(a) or (b) requires a health care provider to immunize a minor.

(3) The consent of the minor pursuant to this section:

(a) is not subject to later disaffirmance because of the minority of the person receiving

the medical services;

(b) is not voidable because of minority at the time the medical services were provided;

(c) has the same legal effect upon the minor and the same legal obligations with regard to the giving of consent as consent given by a person of full age and capacity; and

(d) does not require the consent of any other person or persons to authorize the medical services described in Subsections (2)(a) and (b).

(4) A health care provider who provides medical services to a minor in accordance with the provisions of this section is not subject to civil or criminal liability for providing the services described in Subsections (2)(a) and (b) without obtaining the consent of another person prior to rendering the medical services.

(5) This section does not remove the requirement for parental consent or notice when required by Section 76-7-304 or 76-7-304.5.

(6) The parents, parent, or legal guardian of a minor who receives medical services pursuant to Subsections (2)(a) and (b) are not liable for the payment for those services unless the parents, parent, or legal guardian consented to the medical services.

Section 6. Section 26-21-204 is amended to read:

26-21-204. Clearance.

(1) The department shall determine whether to grant clearance for each applicant for whom it receives:

(a) the personal identification information specified by the department under Subsection 26-21-204(4)(b); and

(b) any fees established by the department under Subsection 26-21-204(9).

(2) The department shall establish a procedure for obtaining and evaluating relevant information concerning covered individuals, including fingerprinting the applicant and submitting the prints to the Criminal Investigations and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files.

(3) The department may review the following sources to determine whether an individual should be granted or retain clearance, which may include:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including

information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section [78A-6-209](#);

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section [62A-4a-1006](#);

(e) child abuse or neglect findings described in Section ~~[78A-6-323]~~ [80-3-404](#);

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section [62A-3-311.1](#);

(g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(4) The department shall adopt rules that:

(a) specify the criteria the department will use to determine whether an individual is granted or retains clearance:

(i) based on an initial evaluation and ongoing review of information under Subsection (3); and

(ii) including consideration of the relationship the following may have to patient and resident protection:

(A) warrants for arrest;

(B) arrests;

(C) convictions, including pleas in abeyance;

(D) pending diversion agreements;

(E) adjudications by a juvenile court ~~[of committing an act that if committed by an adult would be a felony or misdemeanor,]~~ under Section [80-6-701](#) if the individual is over 28 years ~~[of age]~~ old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or the individual is under 28 years ~~[of age]~~ old; and

462 (F) any other findings under Subsection (3); and
463 (b) specify the personal identification information that must be submitted by an
464 individual or covered body with an application for clearance, including:
465 (i) the applicant's Social Security number; and
466 (ii) fingerprints.

467 (5) For purposes of Subsection (4)(a), the department shall classify a crime committed
468 in another state according to the closest matching crime under Utah law, regardless of how the
469 crime is classified in the state where the crime was committed.

470 (6) The Department of Public Safety, the Administrative Office of the Courts, the
471 Department of Human Services, the Division of Occupational and Professional Licensing, and
472 any other state agency or political subdivision of the state:
473 (a) shall allow the department to review the information the department may review
474 under Subsection (3); and
475 (b) except for the Department of Public Safety, may not charge the department for
476 access to the information.

477 (7) The department shall adopt measures to protect the security of the information it
478 reviews under Subsection (3) and strictly limit access to the information to department
479 employees responsible for processing an application for clearance.

480 (8) The department may disclose personal identification information specified under
481 Subsection (4)(b) to the Department of Human Services to verify that the subject of the
482 information is not identified as a perpetrator or offender in the information sources described in
483 Subsections (3)(d) through (f).

484 (9) The department may establish fees, in accordance with Section [63J-1-504](#), for an
485 application for clearance, which may include:
486 (a) the cost of obtaining and reviewing information under Subsection (3);
487 (b) a portion of the cost of creating and maintaining the Direct Access Clearance
488 System database under Section [26-21-209](#); and
489 (c) other department costs related to the processing of the application and the ongoing
490 review of information pursuant to Subsection (4)(a) to determine whether clearance should be
491 retained.

492 Section 7. Section **30-5a-103** is amended to read:

30-5a-103. Custody and visitation for individuals other than a parent.

(1) (a) In accordance with Section [62A-4a-201](#), it is the public policy of this state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's children.

(b) There is a rebuttable presumption that a parent's decisions are in the child's best interests.

(2) A court may find the presumption in Subsection (1) rebutted and grant custodial or visitation rights to an individual other than a parent who, by clear and convincing evidence, establishes that:

(a) the individual has intentionally assumed the role and obligations of a parent;

(b) the individual and the child have formed a substantial emotional bond and created a parent-child type relationship;

(c) the individual substantially contributed emotionally or financially to the child's well being;

(d) the assumption of the parental role is not the result of a financially compensated surrogate care arrangement;

(e) the continuation of the relationship between the individual and the child is in the child's best interest;

(f) the loss or cessation of the relationship between the individual and the child would substantially harm the child; and

(g) the parent:

(i) is absent; or

(ii) is found by a court to have abused or neglected the child.

(3) A proceeding under this chapter may be commenced by filing a verified petition, or petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district court in the county where the child:

(a) currently resides; or

(b) lived with a parent or an individual other than a parent who acted as a parent within six months before the commencement of the action.

(4) A proceeding under this chapter may be filed in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court involving custody of or

visitation with a child.

(5) The petition shall include detailed facts supporting the petitioner's right to file the petition including the criteria set forth in Subsection (2) and residency information as set forth in Section 78B-13-209.

(6) A proceeding under this chapter may not be filed against a parent who is actively serving outside the state in any branch of the military.

(7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the rules of civil procedure on all of the following:

- (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;
- (b) any individual who has court-ordered custody or visitation rights;
- (c) the child's guardian;
- (d) the guardian ad litem, if one has been appointed;
- (e) an individual or agency that has physical custody of the child or that claims to have custody or visitation rights; and
- (f) any other individual or agency that has previously appeared in any action regarding custody of or visitation with the child.

(8) The court may order a custody evaluation to be conducted in any action brought under this chapter.

(9) The court may enter temporary orders in an action brought under this chapter pending the entry of final orders.

(10) Except as provided in Subsection (11), a court may not grant custody of a child under this section to an individual who is not the parent of the child and who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony involving conduct that constitutes any of the following:

- (a) child abuse, as described in Section 76-5-109;
- (b) child abuse homicide, as described in Section 76-5-208;
- (c) child kidnapping, as described in Section 76-5-301.1;
- (d) human trafficking of a child, as described in Section 76-5-308.5;
- (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- (f) rape of a child, as described in Section 76-5-402.1;
- (g) object rape of a child, as described in Section 76-5-402.3;

- 555 (h) sodomy on a child, as described in Section [76-5-403.1](#);
- 556 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
- 557 Section [76-5-404.1](#);
- 558 (j) sexual exploitation of a minor, as described in Section [76-5b-201](#); or
- 559 (k) an offense in another state that, if committed in this state, would constitute an
- 560 offense described in this Subsection (10).
- 561 (11) (a) As used in this Subsection (11), "disqualifying offense" means an offense
- 562 listed in Subsection (10) that prevents a court from granting custody except as provided in this
- 563 Subsection (11).
- 564 (b) An individual described in Subsection (10) may only be considered for custody of a
- 565 child if the following criteria are met by clear and convincing evidence:
- 566 (i) the individual is a relative, as defined in Section [~~78A-6-307~~] [80-3-102](#), of the child;
- 567 (ii) at least 10 years have elapsed from the day on which the individual is successfully
- 568 released from prison, jail, parole, or probation related to a disqualifying offense;
- 569 (iii) during the 10 years before the day on which the individual files a petition with the
- 570 court seeking custody the individual has not been convicted, plead guilty, or plead no contest to
- 571 an offense greater than an infraction or traffic violation that would likely impact the health,
- 572 safety, or well-being of the child;
- 573 (iv) the individual can provide evidence of successful treatment or rehabilitation
- 574 directly related to the disqualifying offense;
- 575 (v) the court determines that the risk related to the disqualifying offense is unlikely to
- 576 cause harm, as defined in Section [~~78A-6-105~~] [80-1-102](#), or potential harm to the child
- 577 currently or at any time in the future when considering all of the following:
- 578 (A) the child's age;
- 579 (B) the child's gender;
- 580 (C) the child's development;
- 581 (D) the nature and seriousness of the disqualifying offense;
- 582 (E) the preferences of a child 12 years old or older;
- 583 (F) any available assessments, including custody evaluations, parenting assessments,
- 584 psychological or mental health assessments, and bonding assessments; and
- 585 (G) any other relevant information;

(vi) the individual can provide evidence of the following:

(A) the relationship with the child is of long duration;

(B) that an emotional bond exists with the child; and

(C) that custody by the individual who has committed the disqualifying offense ensures the best interests of the child are met;

(vii) (A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the child and does not have a disqualifying offense; or

(B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and

(viii) that the continuation of the relationship between the individual with the disqualifying offense and the child could not be sufficiently maintained through any type of visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).

(c) The individual with the disqualifying offense bears the burden of proof regarding why placement with that individual is in the best interest of the child over another responsible relative or equally situated individual who does not have a disqualifying offense.

(d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:

(i) preference for custody is given to a relative who does not have a disqualifying offense; and

(ii) before the court may place custody with the individual who has the disqualifying offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

(12) Subsections (10) and (11) apply to a case pending on March 25, 2017, for which a final decision on custody has not been made and to a case filed on or after March 25, 2017.

Section 8. Section **32B-4-409** is amended to read:

32B-4-409. Unlawful purchase, possession, consumption by minor -- Measurable amounts in body.

(1) Unless specifically authorized by this title, it is unlawful for a minor to:

(a) purchase an alcoholic product;

- 617 (b) attempt to purchase an alcoholic product;
- 618 (c) solicit another person to purchase an alcoholic product;
- 619 (d) possess an alcoholic product;
- 620 (e) consume an alcoholic product; or
- 621 (f) have measurable blood, breath, or urine alcohol concentration in the minor's body.
- 622 (2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic
- 623 product for a minor for:
- 624 (a) a minor to misrepresent the minor's age; or
- 625 (b) any other person to misrepresent the age of a minor.
- 626 (3) It is unlawful for a minor to possess or consume an alcoholic product while riding
- 627 in a limousine or chartered bus.
- 628 (4) (a) If a minor is found by a court to have violated this section and the violation is
- 629 the minor's first violation of this section, the court may:
- 630 (i) order the minor to complete a screening as defined in Section 41-6a-501;
- 631 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the
- 632 screening indicates an assessment to be appropriate; and
- 633 (iii) order the minor to complete an educational series as defined in Section 41-6a-501
- 634 or substance use disorder treatment as indicated by an assessment.
- 635 (b) If a minor is found by a court to have violated this section and the violation is the
- 636 minor's second or subsequent violation of this section, the court shall:
- 637 (i) order the minor to complete a screening as defined in Section 41-6a-501;
- 638 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the
- 639 screening indicates an assessment to be appropriate; and
- 640 (iii) order the minor to complete an educational series as defined in Section 41-6a-501
- 641 or substance use disorder treatment as indicated by an assessment.
- 642 (5) (a) When a minor who is at least 18 years old, but younger than 21 years old, is
- 643 found by a court to have violated this section, except as provided in Section 32B-4-411, the
- 644 court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.
- 645 (b) Notwithstanding the provision in Subsection (5)(a), the court may reduce the
- 646 suspension period required under Section 53-3-219 if:
- 647 (i) the violation is the minor's first violation of this section; and

648 (ii) (A) the minor completes an educational series as defined in Section [41-6a-501](#); or
649 (B) the minor demonstrates substantial progress in substance use disorder treatment.
650 (c) Notwithstanding the requirement in Subsection (5)(a) and in accordance with the
651 requirements of Section [53-3-219](#), the court may reduce the suspension period required under
652 Section [53-3-219](#) if:

653 (i) the violation is the minor's second or subsequent violation of this section;
654 (ii) the minor has completed an educational series as defined in Section [41-6a-501](#) or
655 demonstrated substantial progress in substance use disorder treatment; and

656 (iii) (A) the person is 18 years [~~of age~~] old or older and provides a sworn statement to
657 the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year
658 consecutive period during the suspension period imposed under Subsection (5)(a); or

659 (B) the person is under 18 years [~~of age~~] old and has the person's parent or legal
660 guardian provide an affidavit or sworn statement to the court certifying that to the parent or
661 legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at
662 least a one-year consecutive period during the suspension period imposed under Subsection
663 (5)(a).

664 (6) When a minor who is younger than 18 years old is found by the court to have
665 violated this section, Section [~~78A-6-606~~] [80-6-707](#) applies to the violation.

666 (7) Notwithstanding Subsections (5)(a) and (b), if a minor is adjudicated under Section
667 [~~78A-6-117~~] [80-6-701](#), the court may only order substance use disorder treatment or an
668 educational series if the minor has an assessed need for the intervention on the basis of the
669 results of a validated assessment.

670 (8) When a court issues an order suspending a person's driving privileges for a
671 violation of this section, the Driver License Division shall suspend the person's license under
672 Section [53-3-219](#).

673 (9) When the Department of Public Safety receives the arrest or conviction record of a
674 person for a driving offense committed while the person's license is suspended pursuant to this
675 section, the Department of Public Safety shall extend the suspension for an additional like
676 period of time.

677 (10) This section does not apply to a minor's consumption of an alcoholic product in
678 accordance with this title:

(a) for medicinal purposes if:

(i) the minor is at least 18 years old; or

(ii) the alcoholic product is furnished by:

(A) the parent or guardian of the minor; or

(B) the minor's health care practitioner, if the health care practitioner is authorized by law to write a prescription; or

(b) as part of a religious organization's religious services.

Section 9. Section **32B-4-410** is amended to read:

32B-4-410. Unlawful admittance or attempt to gain admittance by minor.

(1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the premises of:

(a) a tavern; or

(b) a bar licensee, except to the extent authorized by Section [32B-6-406.1](#).

(2) A minor who violates this section is guilty of a class C misdemeanor.

(3) (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

(i) order the minor to complete a screening as defined in Section [41-6a-501](#);

(ii) order the minor to complete an assessment as defined in Section [41-6a-501](#) if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section [41-6a-501](#) or substance use disorder treatment as indicated by an assessment.

(b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:

(i) order the minor to complete a screening as defined in Section [41-6a-501](#);

(ii) order the minor to complete an assessment as defined in Section [41-6a-501](#) if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section [41-6a-501](#) or substance use disorder treatment as indicated by an assessment.

(4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section [32B-4-411](#), the court hearing the case shall suspend the minor's driving privileges under Section [53-3-219](#).

(b) Notwithstanding Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's first violation of this section; and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance use disorder treatment.

(c) Notwithstanding Subsection (4)(a) and in accordance with Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's second or subsequent violation of this section;

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance use disorder treatment; and

(iii) (A) the person is 18 years ~~[of age]~~ old or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a); or

(B) the person is under 18 years ~~[of age]~~ old and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a).

(5) When a minor who is younger than 18 years old is found by a court to have violated this section, Section ~~[78A-6-606]~~ 80-6-707 applies to the violation.

(6) Notwithstanding Subsections (3)(a) and (b), if a minor is adjudicated under Section ~~[78A-6-117]~~ 80-6-701, the court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated assessment.

(7) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.

(8) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

Section 10. Section **32B-4-411** is amended to read:

32B-4-411. Minor's unlawful use of proof of age.

(1) As used in this section, "proof of age violation" means a violation by a minor of:

(a) Chapter 1, Part 4, Proof of Age Act; or

(b) if as part of the violation the minor uses a proof of age in violation of Chapter 1, Part 4, Proof of Age Act:

(i) Section [32B-4-409](#); or

(ii) Section [32B-4-410](#).

(2) If a court finds a minor engaged in a proof of age violation, notwithstanding the penalties provided for in Subsection (1):

(a) (i) for a first violation, the minor is guilty of a class B misdemeanor;

(ii) for a second violation, the minor is guilty of a class A misdemeanor; and

(iii) for a third or subsequent violation, the minor is guilty of a class A misdemeanor, except that the court may impose:

(A) a fine of up to \$5,000;

(B) screening, assessment, or substance use disorder treatment, as defined in Section [41-6a-501](#);

(C) an educational series, as defined in Section [41-6a-501](#);

(D) alcoholic product related community service or compensatory service work program hours;

(E) fees for restitution and treatment costs;

(F) defensive driver education courses; or

(G) a combination of these penalties;[~~and~~]

(b) (i) for a minor who is younger than 18 years old:

(A) the court may forward to the Driver License Division a record of an adjudication under [~~Title 78A, Chapter 6, Juvenile Court Act~~] Section [80-6-701](#), for a violation under this section; and

(B) the provisions regarding suspension of a driver license under Section [~~78A-6-606~~] [80-6-707](#) apply; and

(ii) for a minor who is at least 18 years old, but younger than 21 years old:

(A) the court shall forward to the Driver License Division a record of conviction for a

violation under this section; and

(B) the Driver License Division shall suspend the person's license under Section ~~53-3-220~~; and

(c) ~~Notwithstanding~~ notwithstanding Subsection (2)(a), if a minor is adjudicated under Section ~~[78A-6-117]~~ 80-6-701, the court may order:

(i) substance use disorder treatment or an educational series only if the minor has an assessed need for the intervention based on the results of a validated assessment; and

(ii) a fine, fee, service hours, or costs in accordance with Section ~~[78A-6-117]~~ 80-6-709.

(3) (a) Notwithstanding Subsection (2)(b), the court may reduce the suspension period under Subsection ~~53-3-220~~(1)(e) or ~~[78A-6-606(4)(d)]~~ 80-6-707(4)(a)(ii)(A) if:

(i) the violation is the minor's first violation of this section; and

(ii) (A) the minor completes an educational series as defined in Section ~~41-6a-501~~; or

(B) the minor demonstrates substantial progress in substance use disorder treatment.

(b) Notwithstanding the requirement in Subsection (2)(b), the court may reduce the suspension period under Subsection ~~53-3-220~~(1)(e) or ~~[78A-6-606(4)(d)]~~ 80-6-707(4)(a)(ii)(B) if:

(i) the violation is the minor's second or subsequent violation of this section;

(ii) the person has completed an educational series as defined in Section ~~41-6a-501~~ or demonstrated substantial progress in substance use disorder treatment; and

(iii) (A) the person is 18 years ~~[of age]~~ old or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection ~~53-3-220~~(1)(e) or ~~[78A-6-606(4)(d)]~~ 80-6-707(4)(b)(iii)(A); or

(B) the minor is under 18 years ~~[of age]~~ old and has the minor's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the minor has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection ~~53-3-220~~(1)(e) or ~~[78A-6-606(4)(d)]~~ 80-6-707(4)(b)(iii)(B).

(4) When the Department of Public Safety receives the arrest or conviction record of an individual for a driving offense committed while the individual's license is suspended pursuant

to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

(5) A court may not fail to enter a judgment of conviction under this section under a plea in abeyance agreement.

Section 11. Section **51-9-401** is amended to read:

51-9-401. Surcharge -- Application.

(1) (a) A surcharge shall be paid on all criminal fines, penalties, and forfeitures imposed by the courts.

(b) The surcharge shall be:

(i) 90% upon conviction of a:

(A) felony;

(B) class A misdemeanor;

(C) violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; or

(D) class B misdemeanor not classified within Title 41, Motor Vehicles, including violation of comparable county or municipal ordinances; or

(ii) 35% upon conviction of any other offense, including violation of county or municipal ordinances not subject to the 90% surcharge.

(c) The Division of Finance shall deposit into the General Fund an amount equal to the amount that the state retains under Section [~~51-9-402~~] 80-6-304.

(2) The surcharge may not be imposed:

(a) upon nonmoving traffic violations;

(b) upon court orders when the offender is ordered to perform compensatory service work in lieu of paying a fine; and

(c) upon penalties assessed by the juvenile court as part of the nonjudicial adjustment of a case under Section 78A-6-602.

(3) (a) The surcharge and the exceptions under Subsections (1) and (2) apply to all fines, penalties, and forfeitures imposed on juveniles for conduct that would be criminal if committed by an adult.

(b) Notwithstanding Subsection (3)(a), the surcharge does not include amounts assessed or collected separately by juvenile courts for the Juvenile Restitution Account, which is

independent of this part and does not affect the imposition or collection of the surcharge.

(4) The surcharge under this section shall be imposed in addition to the fine charged for a civil or criminal offense, and no reduction may be made in the fine charged due to the surcharge imposition.

(5) Fees, assessments, and surcharges related to criminal or traffic offenses shall be authorized and managed by this part rather than attached to particular offenses.

Section 12. Section **51-9-408** is amended to read:

51-9-408. Children's Legal Defense Account.

(1) There is created a restricted account within the General Fund known as the Children's Legal Defense Account.

(2) The purpose of the Children's Legal Defense Account is to provide for programs that protect and defend the rights, safety, and quality of life of children.

(3) (a) The Legislature shall appropriate money from the account for the administrative and related costs of the following programs:

(i) implementing the Mandatory Educational Course on Children's Needs for Divorcing Parents relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-10.3, 30-3-11.3, and the Mediation Program - Child Custody or Parent-time;

(ii) implementing the use of guardians ad litem ~~[as provided]~~ in accordance with Sections 78A-2-703, 78A-2-705, ~~[78A-6-902]~~ 78A-2-803, and 78B-3-102;

(iii) the training of attorney guardians ad litem and volunteers as provided in Section ~~[78A-6-902]~~; and termination of parental rights as provided in Sections ~~78A-6-117~~ and ~~78A-6-118~~, and Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act. This account may not be used to supplant funding for the guardian ad litem program in the juvenile court as provided in Section ~~78A-6-902]~~ 78A-2-803;

(iv) implementing and administering the Expedited Parent-time Enforcement Program as provided in Section 30-3-38; and

(v) implementing and administering the Divorce Education for Children Program.

(b) The Children's Legal Defense Account may not be used to supplant funding for the guardian ad litem program under Section 78A-2-803.

(4) The following withheld fees shall be allocated only to the Children's Legal Defense Account and used only for the purposes provided in Subsections (3)(a)(i) through ~~(v)~~ (v):

(a) the additional \$10 fee withheld on every marriage license issued in the state of Utah as provided in Section 17-16-21; and

(b) a fee of \$4 shall be withheld from the existing civil filing fee collected on any complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

(5) The Division of Finance shall allocate the money described in Subsection (4) from the General Fund to the Children's Legal Defense Account.

(6) Any funds in excess of \$200,000 remaining in the restricted account as of June 30 of any fiscal year shall lapse into the General Fund.

Section 13. Section 53-3-204 is amended to read:

53-3-204. Persons who may not be licensed.

(1) (a) The division may not license a person who:

(i) is younger than 16 years [~~of age~~] old;

(ii) if the person is 18 years [~~of age~~] old or younger, has not completed a course in driver training approved by the commissioner;

(iii) if the person is 19 years [~~of age~~] old or older has not completed:

(A) a course in driver training approved by the commissioner; or

(B) the requirements under Subsection 53-3-210.5(6)(c);

(iv) if the person is a minor as defined in Section 53-3-211, has not completed the driving requirement under Section 53-3-211;

(v) is not a resident of the state, unless the person:

(A) is issued a temporary CDL under Subsection 53-3-407(2)(b) prior to July 1, 2015;

or

(B) qualifies for a non-domiciled CDL as defined in 49 C.F.R. Part 383;

(vi) if the person is 17 years [~~of age~~] old or younger, has not held a learner permit issued under Section 53-3-210.5 or an equivalent by another state or branch of the United States Armed Forces for six months; or

(vii) is younger than 18 years [~~of age~~] old and applying for a CDL under 49 C.F.R. Part 383.

(b) Subsections (1)(a)(i), (ii), (iii), (iv), and (vi) do not apply to a person:

(i) who has been licensed before July 1, 1967; or

(ii) who is 16 years [~~of age~~] old or older making application for a license who has been

896 licensed in another state or country.

897 (2) The division may not issue a license certificate to a person:

898 (a) whose license has been suspended, denied, cancelled, or disqualified during the
899 period of suspension, denial, cancellation, or disqualification;

900 (b) whose privilege has been revoked, except as provided in Section 53-3-225;

901 (c) who has previously been adjudged mentally incompetent and who has not at the
902 time of application been restored to competency as provided by law;

903 (d) who is required by this chapter to take an examination unless the person
904 successfully passes the examination;

905 (e) whose driving privileges have been denied or suspended under:

906 (i) Section ~~[78A-6-606]~~ 80-6-707 by an order of the juvenile court; or

907 (ii) Section 53-3-231; or

908 (f) beginning on or after July 1, 2012, who holds an unexpired Utah identification card
909 issued under Part 8, Identification Card Act, unless:

910 (i) the Utah identification card is canceled; and

911 (ii) if the Utah identification card is in the person's possession, the Utah identification
912 card is surrendered to the division.

913 (3) (a) Except as provided in Subsection (3)(c), the division may not grant a motorcycle
914 endorsement to a person who:

915 (i) has not been granted an original or provisional class D license, a CDL, or an
916 out-of-state equivalent to an original or provisional class D license or a CDL; and

917 (ii) if the person is under 19 years ~~[of age]~~ old, has not held a motorcycle learner
918 permit for two months unless Subsection (3)(b) applies.

919 (b) The division may waive the two month motorcycle learner permit holding period
920 requirement under Subsection (3)(a)(ii) if the person proves to the satisfaction of the division
921 that the person has completed a motorcycle rider education program that meets the
922 requirements under Section 53-3-903.

923 (c) The division may grant a motorcycle endorsement to a person under 19 years ~~[of~~
924 ~~age]~~ old who has not held a motorcycle learner permit for two months if the person was issued
925 a motorcycle endorsement prior to July 1, 2008.

926 (4) The division may grant a class D license to a person whose commercial license is

disqualified under Part 4, Uniform Commercial Driver License Act, if the person is not otherwise sanctioned under this chapter.

Section 14. Section **53-3-219** is amended to read:

53-3-219. Suspension of minor's driving privileges.

(1) The division shall immediately suspend all driving privileges of any person upon receipt of an order suspending driving privileges under Section [32B-4-409](#), Section [32B-4-410](#), Subsection [76-9-701](#)(1), or Section ~~[[78A-6-606](#)]~~ [80-6-707](#).

(2) (a) (i) Upon receipt of the first order suspending a person's driving privileges under Section [32B-4-409](#), Section [32B-4-410](#), Subsection [76-9-701](#)(1), or Section ~~[[78A-6-606](#)]~~ [80-6-707](#), the division shall:

(A) impose a suspension for a period of one year;

(B) if the person has not been issued an operator license, deny the person's application for a license or learner's permit for a period of one year; or

(C) if the person is under the age of eligibility for a driver license, deny the person's application for a license or learner's permit beginning on the date of conviction and continuing for one year beginning on the date of eligibility for a driver license.

(ii) Upon receipt of the first order suspending a person's driving privileges under this section, the division shall reduce the suspension period under Subsection (2)(a)(i)(A), (B), or (C) if ordered by the court in accordance with Subsection [32B-4-409](#)(5)(b), [32B-4-410](#)(4)(b), [76-9-701](#)(4)(b), or ~~[[78A-6-606](#)(4)(b)]~~ [80-6-707](#)(3)(a).

(b) (i) Upon receipt of a second or subsequent order suspending a person's driving privileges under Section [32B-4-409](#), Section [32B-4-410](#), Subsection [76-9-701](#)(1), or ~~[Section [78A-6-606](#)]~~ Subsection [80-4-707](#)(3)(b), the division shall:

(A) impose a suspension for a period of two years;

(B) if the person has not been issued an operator license or is under the age of eligibility for a driver license, deny the person's application for a license or learner's permit for a period of two years; or

(C) if the person is under the age of eligibility for a driver license, deny the person's application for a license or learner's permit beginning on the date of conviction and continuing for two years beginning on the date of eligibility for a driver license.

(ii) Upon receipt of the second or subsequent order suspending a person's driving

privileges under Section 32B-4-409, Section 32B-4-410, Subsection 76-9-701(1), or Section [78A-6-606] 80-6-707, the division shall reduce the suspension period if ordered by the court in accordance with Subsection 32B-4-409(5)(c), 32B-4-410(4)(c), 76-9-701(4)(c), or [78A-6-606(4)(c)] 80-6-707(3)(b).

(3) The Driver License Division shall subtract from any suspension or revocation period for a conviction of a violation of Section 32B-4-409 the number of days for which a license was previously suspended under Section 53-3-231, if the previous sanction was based on the same occurrence upon which the record of conviction is based.

(4) After reinstatement of the license described in Subsection (1), a report authorized under Section 53-3-104 may not contain evidence of the suspension of a minor's license under this section if the minor has not been convicted of any other offense for which the suspension under Subsection (1) may be extended.

Section 15. Section 53-3-220 is amended to read:

53-3-220. Offenses requiring mandatory revocation, denial, suspension, or disqualification of license -- Offense requiring an extension of period -- Hearing -- Limited driving privileges.

(1) (a) The division shall immediately revoke or, when this chapter, Title 41, Chapter 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or disqualification, the division shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's conviction for:

(i) manslaughter or negligent homicide resulting from driving a motor vehicle, or automobile homicide under Section 76-5-207 or 76-5-207.5;

(ii) driving or being in actual physical control of a motor vehicle while under the influence of alcohol, any drug, or combination of them to a degree that renders the person incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

(iii) driving or being in actual physical control of a motor vehicle while having a blood or breath alcohol content as prohibited in Section 41-6a-502 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

(iv) perjury or the making of a false affidavit to the division under this chapter, Title 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or

regulating driving on highways;

(v) any felony under the motor vehicle laws of this state;

(vi) any other felony in which a motor vehicle is used to facilitate the offense;

(vii) failure to stop and render aid as required under the laws of this state if a motor vehicle accident results in the death or personal injury of another;

(viii) two charges of reckless driving, impaired driving, or any combination of reckless driving and impaired driving committed within a period of 12 months; but if upon a first conviction of reckless driving or impaired driving the judge or justice recommends suspension of the convicted person's license, the division may after a hearing suspend the license for a period of three months;

(ix) failure to bring a motor vehicle to a stop at the command of a law enforcement officer as required in Section 41-6a-210;

(x) any offense specified in Part 4, Uniform Commercial Driver License Act, that requires disqualification;

(xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or allowing the discharge of a firearm from a vehicle;

(xii) using, allowing the use of, or causing to be used any explosive, chemical, or incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);

(xiii) operating or being in actual physical control of a motor vehicle while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517;

(xiv) operating or being in actual physical control of a motor vehicle while having any measurable or detectable amount of alcohol in the person's body in violation of Section 41-6a-530;

(xv) engaging in a motor vehicle speed contest or exhibition of speed on a highway in violation of Section 41-6a-606;

(xvi) operating or being in actual physical control of a motor vehicle in this state without an ignition interlock system in violation of Section 41-6a-518.2;

(xvii) custodial interference, under:

(A) Subsection 76-5-303(3), which suspension shall be for a period of 30 days, unless the court provides the division with an order of suspension for a shorter period of time;

(B) Subsection 76-5-303(4), which suspension shall be for a period of 90 days, unless the court provides the division with an order of suspension for a shorter period of time; or

(C) Subsection 76-5-303(5), which suspension shall be for a period of 180 days, unless the court provides the division with an order of suspension for a shorter period of time; or

(xviii) refusal of a chemical test under Subsection 41-6a-520(7).

(b) The division shall immediately revoke the license of a person upon receiving a record of an adjudication under [~~Title 78A, Chapter 6, Juvenile Court Act,~~] Section 80-6-701 for:

(i) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or allowing the discharge of a firearm from a vehicle; or

(ii) using, allowing the use of, or causing to be used any explosive, chemical, or incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).

(c) Except when action is taken under Section 53-3-219 for the same offense, upon receiving a record of conviction, the division shall immediately suspend for six months the license of the convicted person if the person was convicted of one of the following offenses while the person was an operator of a motor vehicle:

(i) any violation of:

(A) Title 58, Chapter 37, Utah Controlled Substances Act;

(B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

(ii) any criminal offense that prohibits:

(A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance that is prohibited under the acts described in Subsection (1)(c)(i); or

(B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

(d) (i) The division shall immediately suspend a person's driver license for conviction of the offense of theft of motor vehicle fuel under Section 76-6-404.7 if the division receives:

(A) an order from the sentencing court requiring that the person's driver license be suspended; and

1051 (B) a record of the conviction.

1052 (ii) An order of suspension under this section is at the discretion of the sentencing

1053 court, and may not be for more than 90 days for each offense.

1054 (e) (i) The division shall immediately suspend for one year the license of a person upon

1055 receiving a record of:

1056 (A) conviction for the first time for a violation under Section [32B-4-411](#); or

1057 (B) an adjudication under [~~Title 78A, Chapter 6, Juvenile Court Act,~~] [Section 80-6-701](#)

1058 for a violation under Section [32B-4-411](#).

1059 (ii) The division shall immediately suspend for a period of two years the license of a

1060 person upon receiving a record of:

1061 (A) (I) conviction for a second or subsequent violation under Section [32B-4-411](#); and

1062 (II) the violation described in Subsection (1)(e)(ii)(A)(I) is within 10 years of a prior

1063 conviction for a violation under Section [32B-4-411](#); or

1064 (B) (I) a second or subsequent adjudication under [~~Title 78A, Chapter 6, Juvenile Court~~

1065 ~~Act of 1996,~~] [Section 80-6-701](#) for a violation under Section [32B-4-411](#); and

1066 (II) the adjudication described in Subsection (1)(e)(ii)(B)(I) is within 10 years of a prior

1067 adjudication under [~~Title 78A, Chapter 6, Juvenile Court Act of 1996,~~] [Section 80-6-701](#) for a

1068 violation under Section [32B-4-411](#).

1069 (iii) Upon receipt of a record under Subsection (1)(e)(i) or (ii), the division shall:

1070 (A) for a conviction or adjudication described in Subsection (1)(e)(i):

1071 (I) impose a suspension for one year beginning on the date of conviction; or

1072 (II) if the person is under the age of eligibility for a driver license, impose a suspension

1073 that begins on the date of conviction and continues for one year beginning on the date of

1074 eligibility for a driver license; or

1075 (B) for a conviction or adjudication described in Subsection (1)(e)(ii):

1076 (I) impose a suspension for a period of two years; or

1077 (II) if the person is under the age of eligibility for a driver license, impose a suspension

1078 that begins on the date of conviction and continues for two years beginning on the date of

1079 eligibility for a driver license.

1080 (iv) Upon receipt of the first order suspending a person's driving privileges under

1081 Section [32B-4-411](#), the division shall reduce the suspension period under Subsection (1)(e)(i) if

ordered by the court in accordance with Subsection 32B-4-411(3)(a).

(v) Upon receipt of the second or subsequent order suspending a person's driving privileges under Section 32B-4-411, the division shall reduce the suspension period under Subsection (1)(e)(ii) if ordered by the court in accordance with Subsection 32B-4-411(3)(b).

(2) The division shall extend the period of the first denial, suspension, revocation, or disqualification for an additional like period, to a maximum of one year for each subsequent occurrence, upon receiving:

(a) a record of the conviction of any person on a charge of driving a motor vehicle while the person's license is denied, suspended, revoked, or disqualified;

(b) a record of a conviction of the person for any violation of the motor vehicle law in which the person was involved as a driver;

(c) a report of an arrest of the person for any violation of the motor vehicle law in which the person was involved as a driver; or

(d) a report of an accident in which the person was involved as a driver.

(3) When the division receives a report under Subsection (2)(c) or (d) that a person is driving while the person's license is denied, suspended, disqualified, or revoked, the person is entitled to a hearing regarding the extension of the time of denial, suspension, disqualification, or revocation originally imposed under Section 53-3-221.

(4) (a) The division may extend to a person the limited privilege of driving a motor vehicle to and from the person's place of employment or within other specified limits on recommendation of the judge in any case where a person is convicted of any of the offenses referred to in Subsections (1) and (2) except:

(i) automobile homicide under Subsection (1)(a)(i);

(ii) those offenses referred to in Subsections (1)(a)(ii), (iii), (xi), (xii), (xiii), (1)(b), and (1)(c); and

(iii) those offenses referred to in Subsection (2) when the original denial, suspension, revocation, or disqualification was imposed because of a violation of Section 41-6a-502, 41-6a-517, a local ordinance which complies with the requirements of Subsection 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of these sections or ordinances, unless:

1113 (A) the person has had the period of the first denial, suspension, revocation, or
1114 disqualification extended for a period of at least three years;

1115 (B) the division receives written verification from the person's primary care physician
1116 that:

1117 (I) to the physician's knowledge the person has not used any narcotic drug or other
1118 controlled substance except as prescribed by a licensed medical practitioner within the last
1119 three years; and

1120 (II) the physician is not aware of any physical, emotional, or mental impairment that
1121 would affect the person's ability to operate a motor vehicle safely; and

1122 (C) for a period of one year prior to the date of the request for a limited driving
1123 privilege:

1124 (I) the person has not been convicted of a violation of any motor vehicle law in which
1125 the person was involved as the operator of the vehicle;

1126 (II) the division has not received a report of an arrest for a violation of any motor
1127 vehicle law in which the person was involved as the operator of the vehicle; and

1128 (III) the division has not received a report of an accident in which the person was
1129 involved as an operator of a vehicle.

1130 (b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege
1131 authorized in this Subsection (4):

1132 (A) is limited to when undue hardship would result from a failure to grant the
1133 privilege; and

1134 (B) may be granted only once to any person during any single period of denial,
1135 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,
1136 or disqualification.

1137 (ii) The discretionary privilege authorized in Subsection (4)(a)(iii):

1138 (A) is limited to when the limited privilege is necessary for the person to commute to
1139 school or work; and

1140 (B) may be granted only once to any person during any single period of denial,
1141 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,
1142 or disqualification.

1143 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform

Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or denied under this chapter.

Section 16. Section **53-10-404** is amended to read:

53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.

(1) As used in this section, "person" refers to any person as described under Section **53-10-403**.

(2) (a) A person under Section **53-10-403** or any person required to register as a sex offender under Title 77, Chapter 41, Sex and Kidnap Offender Registry, shall provide a DNA specimen and shall reimburse the agency responsible for obtaining the DNA specimen \$150 for the cost of obtaining the DNA specimen unless:

(i) the person was booked under Section **53-10-403** and is not required to reimburse the agency under Section **53-10-404.5**; or

(ii) the agency determines the person lacks the ability to pay.

(b) (i) (A) The responsible agencies shall establish guidelines and procedures for determining if the person is able to pay the fee.

(B) An agency's implementation of Subsection (2)(b)(i) meets an agency's obligation to determine an inmate's ability to pay.

(ii) An agency's guidelines and procedures may provide for the assessment of \$150 on the inmate's county trust fund account and may allow a negative balance in the account until the \$150 is paid in full.

(3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA Specimen Restricted Account created in Section **53-10-407**, except that the agency collecting the fee may retain not more than \$25 per individual specimen for the costs of obtaining the saliva DNA specimen.

(ii) The agency collecting the \$150 fee may not retain from each separate fee more than \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

(b) The responsible agency shall determine the method of collecting the DNA specimen. Unless the responsible agency determines there are substantial reasons for using a different method of collection or the person refuses to cooperate with the collection, the preferred method of collection shall be obtaining a saliva specimen.

(c) The responsible agency may use reasonable force, as established by its guidelines

and procedures, to collect the DNA sample if the person refuses to cooperate with the collection.

(d) If the judgment places the person on probation, the person shall submit to the obtaining of a DNA specimen as a condition of the probation.

(e) (i) Under this section a person is required to provide one DNA specimen and pay the collection fee as required under this section.

(ii) The person shall provide an additional DNA specimen only if the DNA specimen previously provided is not adequate for analysis.

(iii) The collection fee is not imposed for a second or subsequent DNA specimen collected under this section.

(f) Any agency that is authorized to obtain a DNA specimen under this part may collect any outstanding amount of a fee due under this section from any person who owes any portion of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section 53-10-407.

(4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as possible and transferred to the Department of Public Safety:

(i) after a conviction or a finding of jurisdiction by the juvenile court;

(ii) on and after January 1, 2011, through December 31, 2014, after the booking of a person for any offense under Subsection 53-10-403(1)(c); and

(iii) on and after January 1, 2015, after the booking of a person for any felony offense, as provided under Subsection 53-10-403(1)(d)(ii).

(b) On and after May 13, 2014, through December 31, 2014, the responsible agency may cause a DNA specimen to be obtained and transferred to the Department of Public Safety after the booking of a person for any felony offense, as provided under Subsection 53-10-403(1)(d)(i).

(c) If notified by the Department of Public Safety that a DNA specimen is not adequate for analysis, the agency shall, as soon as possible:

(i) obtain and transmit an additional DNA specimen; or

(ii) request that another agency that has direct access to the person and that is authorized to collect DNA specimens under this section collect the necessary second DNA specimen and transmit it to the Department of Public Safety.

1206 (d) Each agency that is responsible for collecting DNA specimens under this section
1207 shall establish:

1208 (i) a tracking procedure to record the handling and transfer of each DNA specimen it
1209 obtains; and

1210 (ii) a procedure to account for the management of all fees it collects under this section.

1211 (5) (a) The Department of Corrections is the responsible agency whenever the person is
1212 committed to the custody of or is under the supervision of the Department of Corrections.

1213 (b) The juvenile court is the responsible agency regarding a minor under Subsection
1214 [53-10-403](#)(3), but if the minor has been committed to the legal custody of the Division of
1215 Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the
1216 minor has not previously been obtained by the juvenile court under Section [\[78A-6-117\]](#)
1217 [80-6-608](#).

1218 (c) The sheriff operating a county jail is the responsible agency regarding the collection
1219 of DNA specimens from persons who:

1220 (i) have pled guilty to or have been convicted of an offense listed under Subsection
1221 [53-10-403](#)(2) but who have not been committed to the custody of or are not under the
1222 supervision of the Department of Corrections;

1223 (ii) are incarcerated in the county jail:

1224 (A) as a condition of probation for a felony offense; or

1225 (B) for a misdemeanor offense for which collection of a DNA specimen is required;

1226 (iii) on and after January 1, 2011, through May 12, 2014, are booked at the county jail
1227 for any offense under Subsection [53-10-403](#)(1)(c).; and

1228 (iv) are booked at the county jail:

1229 (A) by a law enforcement agency that is obtaining a DNA specimen for any felony
1230 offense on or after May 13, 2014, through December 31, 2014, under Subsection

1231 [53-10-404](#)(4)(b); or

1232 (B) on or after January 1, 2015, for any felony offense.

1233 (d) Each agency required to collect a DNA specimen under this section shall:

1234 (i) designate employees to obtain the saliva DNA specimens required under this
1235 section; and

1236 (ii) ensure that employees designated to collect the DNA specimens receive appropriate

training and that the specimens are obtained in accordance with generally accepted protocol.

(6) (a) As used in this Subsection (6), "department" means the Department of Corrections.

(b) Priority of obtaining DNA specimens by the department is:

(i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody of or under the supervision of the department before these persons are released from incarceration, parole, or probation, if their release date is prior to that of persons under Subsection (6)(b)(ii), but in no case later than July 1, 2004; and

(ii) second, the department shall obtain DNA specimens from persons who are committed to the custody of the department or who are placed under the supervision of the department after July 1, 2002, within 120 days after the commitment, if possible, but not later than prior to release from incarceration if the person is imprisoned, or prior to the termination of probation if the person is placed on probation.

(c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii) is:

(i) first, persons on probation;

(ii) second, persons on parole; and

(iii) third, incarcerated persons.

(d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA specimens from persons in the custody of or under the supervision of the Department of Corrections as of July 1, 2002, prior to their release.

(7) (a) As used in this Subsection (7):

(i) "Court" means the juvenile court.

(ii) "Division" means the Division of Juvenile Justice Services.

(b) Priority of obtaining DNA specimens by the court from minors under Section 53-10-403 ~~[who are under the jurisdiction of the court]~~ whose cases are under the jurisdiction of the court but who are not in the legal custody of the division shall be:

(i) first, to obtain specimens from minors ~~[who as of July 1, 2002, are within the court's jurisdiction, prior to termination of the court's jurisdiction over these minors]~~ whose cases, as of July 1, 2002, are under the court's jurisdiction, before the court's jurisdiction over the minors'

cases terminates; and

(ii) second, to obtain specimens from minors ~~[who are found to be within the court's jurisdiction]~~ whose cases are under the jurisdiction of the court after July 1, 2002, within 120 days of the minor's case being found to be within the court's jurisdiction, if possible, but ~~[not]~~ no later than [prior to termination of the court's jurisdiction over the minor.] before the court's jurisdiction over the minor's case terminates.

(c) Priority of obtaining DNA specimens by the division from minors under Section 53-10-403 who are committed to the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the division's legal custody and who have not previously provided a DNA specimen under this section, ~~[prior to]~~ before termination of the division's legal custody of these minors; and

(ii) second, to obtain specimens from minors who are placed in the legal custody of the division after July 1, 2002, within 120 days of the minor's being placed in the custody of the division, if possible, but ~~[not later than prior to]~~ no later than before the termination of the court's jurisdiction over the ~~[minor]~~ minor's case.

(8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile Justice Services, and all law enforcement agencies in the state shall by policy establish procedures for obtaining saliva DNA specimens, and shall provide training for employees designated to collect saliva DNA specimens.

(b) (i) The department may designate correctional officers, including those employed by the adult probation and parole section of the department, to obtain the saliva DNA specimens required under this section.

(ii) The department shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

Section 17. Section 53-10-407 is amended to read:

53-10-407. DNA Specimen Restricted Account.

(1) There is created the DNA Specimen Restricted Account, which is referred to in this section as "the account."

(2) The sources of money for the account are:

(a) DNA collection fees paid under Section 53-10-404;

(b) any appropriations made to the account by the Legislature; and
(c) all federal money provided to the state for the purpose of funding the collection or analysis of DNA specimens collected under Section 53-10-403.

(3) The account shall earn interest, and this interest shall be deposited in the account.

(4) The Legislature may appropriate money from the account solely for the following purposes:

(a) to the Department of Corrections for the costs of collecting DNA specimens as required under Section 53-10-403;

(b) to the juvenile court for the costs of collecting DNA specimens as required under Sections 53-10-403 and ~~[78A-6-117]~~ 80-6-608;

(c) to the Division of Juvenile Justice Services for the costs of collecting DNA specimens as required under Sections 53-10-403 and ~~[62A-7-104]~~ 80-5-201; and

(d) to the Department of Public Safety for the costs of:

(i) storing and analyzing DNA specimens in accordance with the requirements of this part;

(ii) DNA testing which cannot be performed by the Utah State Crime Lab, as provided in Subsection 78B-9-301(7); and

(iii) reimbursing sheriffs for collecting the DNA specimens as provided under Sections 53-10-404 and 53-10-404.5.

(5) Appropriations from the account to the Department of Corrections, the juvenile court, the Division of Juvenile Justice Services, and to the Department of Public Safety are nonlapsing.

Section 18. Section 53B-8d-102 is amended to read:

53B-8d-102. Definitions.

As used in this chapter:

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

(2) "Long-term foster care" means an individual who remains in the custody of the division, whether or not the individual resides:

(a) with licensed foster parents; or

(b) in independent living arrangements under the supervision of the division.

(3) "State institution of higher education" means:

1330 (a) an institution designated in Section 53B-1-102; or
1331 (b) a public institution that offers postsecondary education in consideration of the
1332 payment of tuition or fees for the attainment of educational or vocational objectives leading to
1333 a degree or certificate, including:

1334 (i) a business school;
1335 (ii) a technical school;
1336 (iii) a trade school; or
1337 (iv) an institution offering related apprenticeship programs.

1338 (4) "Tuition" means tuition at the rate for residents of the state.

1339 (5) "Ward of the state" means an individual:

1340 (a) who is:

1341 (i) at least 17 years ~~[of age]~~ old; and

1342 (ii) not older than 26 years ~~[of age]~~ old;

1343 (b) who had a permanency goal in the individual's child and family plan, as described
1344 in Sections 62A-4a-205 and ~~[78A-6-314]~~ 80-3-409, of long-term foster care while in the
1345 custody of the division; and

1346 (c) for whom the custody of the division was not terminated as a result of adoption.

1347 Section 19. Section 53E-3-513 is amended to read:

1348 **53E-3-513. Parental permission required for specified in-home programs --**
1349 **Exceptions.**

1350 (1) The state board, local school boards, school districts, and public schools are
1351 prohibited from requiring infant or preschool in-home literacy or other educational or parenting
1352 programs without obtaining parental permission in each individual case.

1353 (2) This section does not prohibit the Division of Child and Family Services, within the
1354 Department of Human Services, from providing or arranging for family preservation or other
1355 statutorily provided services in accordance with Title 62A, Chapter 4a, Child and Family
1356 Services, or any other in-home services that have been court ordered, ~~[pursuant to]~~ in
1357 accordance with Title 62A, Chapter 4a, Child and Family Services, or ~~[Title 78A, Chapter 6,~~
1358 ~~Juvenile Court Act]~~ Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, or
1359 Chapter 4, Termination and Restoration of Parental Rights.

1360 Section 20. Section 53E-9-305 is amended to read:

53E-9-305. Collecting student data -- Prohibition -- Student data collection notice
-- Written consent.

(1) An education entity may not collect a student's:

(a) social security number; or

(b) except as required in Section ~~[78A-6-112]~~ 80-6-103, criminal record.

(2) Except as provided in Subsection (3), an education entity that collects student data shall, in accordance with this section, prepare and distribute to parents and students a student data collection notice statement that:

(a) is a prominent, stand-alone document;

(b) is annually updated and published on the education entity's website;

(c) states the student data that the education entity collects;

(d) states that the education entity will not collect the student data described in Subsection (1);

(e) states the student data described in Section 53E-9-308 that the education entity may not share without written consent;

(f) includes the following statement:

"The collection, use, and sharing of student data has both benefits and risks. Parents and students should learn about these benefits and risks and make choices regarding student data accordingly.";

(g) describes in general terms how the education entity stores and protects student data; and

(h) states a student's rights under this part.

(3) The state board may publicly post the state board's collection notice described in Subsection (2).

(4) An education entity may collect the necessary student data of a student if the education entity provides a student data collection notice to:

(a) the student, if the student is an adult student; or

(b) the student's parent, if the student is not an adult student.

(5) An education entity may collect optional student data if the education entity:

(a) provides, to an individual described in Subsection (4), a student data collection notice that includes a description of:

- 1392 (i) the optional student data to be collected; and
1393 (ii) how the education entity will use the optional student data; and
1394 (b) obtains written consent to collect the optional student data from an individual
1395 described in Subsection (4).
- 1396 (6) An education entity may collect a student's biometric identifier or biometric
1397 information if the education entity:
- 1398 (a) provides, to an individual described in Subsection (4), a biometric information
1399 collection notice that is separate from a student data collection notice, which states:
- 1400 (i) the biometric identifier or biometric information to be collected;
1401 (ii) the purpose of collecting the biometric identifier or biometric information; and
1402 (iii) how the education entity will use and store the biometric identifier or biometric
1403 information; and
- 1404 (b) obtains written consent to collect the biometric identifier or biometric information
1405 from an individual described in Subsection (4).
- 1406 (7) Except under the circumstances described in Subsection 53G-8-211(2), an
1407 education entity may not refer a student to an evidence-based alternative intervention described
1408 in Subsection 53G-8-211(3) without written consent.
- 1409 (8) Nothing in this section prohibits an education entity from including additional
1410 information related to student and parent privacy in the notice described in Subsection (2).
- 1411 Section 21. Section 53G-4-402 is amended to read:
- 1412 **53G-4-402. Powers and duties generally.**
- 1413 (1) A local school board shall:
- 1414 (a) implement the core standards for Utah public schools using instructional materials
1415 that best correlate to the core standards for Utah public schools and graduation requirements;
1416 (b) administer tests, required by the state board, which measure the progress of each
1417 student, and coordinate with the state superintendent and state board to assess results and create
1418 plans to improve the student's progress, which shall be submitted to the state board for
1419 approval;
- 1420 (c) use progress-based assessments as part of a plan to identify schools, teachers, and
1421 students that need remediation and determine the type and amount of federal, state, and local
1422 resources to implement remediation;

- 1423 (d) develop early warning systems for students or classes failing to make progress;
1424 (e) work with the state board to establish a library of documented best practices,
1425 consistent with state and federal regulations, for use by the local districts;
1426 (f) implement training programs for school administrators, including basic
1427 management training, best practices in instructional methods, budget training, staff
1428 management, managing for learning results and continuous improvement, and how to help
1429 every child achieve optimal learning in basic academic subjects; and
1430 (g) ensure that the local school board meets the data collection and reporting standards
1431 described in Section 53E-3-501.
- 1432 (2) Local school boards shall spend Minimum School Program funds for programs and
1433 activities for which the state board has established minimum standards or rules under Section
1434 53E-3-501.
- 1435 (3) (a) A local school board may purchase, sell, and make improvements on school
1436 sites, buildings, and equipment and construct, erect, and furnish school buildings.
- 1437 (b) School sites or buildings may only be conveyed or sold on local school board
1438 resolution affirmed by at least two-thirds of the members.
- 1439 (4) (a) A local school board may participate in the joint construction or operation of a
1440 school attended by children residing within the district and children residing in other districts
1441 either within or outside the state.
- 1442 (b) Any agreement for the joint operation or construction of a school shall:
- 1443 (i) be signed by the president of the local school board of each participating district;
1444 (ii) include a mutually agreed upon pro rata cost; and
1445 (iii) be filed with the state board.
- 1446 (5) A local school board may establish, locate, and maintain elementary, secondary,
1447 and applied technology schools.
- 1448 (6) Except as provided in Section 53E-3-905, a local school board may enroll children
1449 in school who are at least five years ~~[of age]~~ old before September 2 of the year in which
1450 admission is sought.
- 1451 (7) A local school board may establish and support school libraries.
- 1452 (8) A local school board may collect damages for the loss, injury, or destruction of
1453 school property.

1454 (9) A local school board may authorize guidance and counseling services for children
1455 and their parents before, during, or following enrollment of the children in schools.

1456 (10) (a) A local school board shall administer and implement federal educational
1457 programs in accordance with Title 53E, Chapter 3, Part 8, Implementing Federal or National
1458 Education Programs.

1459 (b) Federal funds are not considered funds within the school district budget under
1460 Chapter 7, Part 3, Budgets.

1461 (11) (a) A local school board may organize school safety patrols and adopt policies
1462 under which the patrols promote student safety.

1463 (b) A student appointed to a safety patrol shall be at least 10 years old and have written
1464 parental consent for the appointment.

1465 (c) Safety patrol members may not direct vehicular traffic or be stationed in a portion
1466 of a highway intended for vehicular traffic use.

1467 (d) Liability may not attach to a school district, its employees, officers, or agents or to a
1468 safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting
1469 the program by virtue of the organization, maintenance, or operation of a school safety patrol.

1470 (12) (a) A local school board may on its own behalf, or on behalf of an educational
1471 institution for which the local school board is the direct governing body, accept private grants,
1472 loans, gifts, endowments, devises, or bequests that are made for educational purposes.

1473 (b) These contributions are not subject to appropriation by the Legislature.

1474 (13) (a) A local school board may appoint and fix the compensation of a compliance
1475 officer to issue citations for violations of Subsection 76-10-105(2)(b).

1476 (b) A person may not be appointed to serve as a compliance officer without the
1477 person's consent.

1478 (c) A teacher or student may not be appointed as a compliance officer.

1479 (14) A local school board shall adopt bylaws and policies for the local school board's
1480 own procedures.

1481 (15) (a) A local school board shall make and enforce policies necessary for the control
1482 and management of the district schools.

1483 (b) Local school board policies shall be in writing, filed, and referenced for public
1484 access.

- 1485 (16) A local school board may hold school on legal holidays other than Sundays.
- 1486 (17) (a) A local school board shall establish for each school year a school traffic safety
1487 committee to implement this Subsection (17).
- 1488 (b) The committee shall be composed of one representative of:
- 1489 (i) the schools within the district;
- 1490 (ii) the Parent Teachers' Association of the schools within the district;
- 1491 (iii) the municipality or county;
- 1492 (iv) state or local law enforcement; and
- 1493 (v) state or local traffic safety engineering.
- 1494 (c) The committee shall:
- 1495 (i) receive suggestions from school community councils, parents, teachers, and others
1496 and recommend school traffic safety improvements, boundary changes to enhance safety, and
1497 school traffic safety program measures;
- 1498 (ii) review and submit annually to the Department of Transportation and affected
1499 municipalities and counties a child access routing plan for each elementary, middle, and junior
1500 high school within the district;
- 1501 (iii) consult the Utah Safety Council and the Division of Family Health Services and
1502 provide training to all school children in kindergarten through grade 6, within the district, on
1503 school crossing safety and use; and
- 1504 (iv) help ensure the district's compliance with rules made by the Department of
1505 Transportation under Section [41-6a-303](#).
- 1506 (d) The committee may establish subcommittees as needed to assist in accomplishing
1507 its duties under Subsection (17)(c).
- 1508 (18) (a) A local school board shall adopt and implement a comprehensive emergency
1509 response plan to prevent and combat violence in the local school board's public schools, on
1510 school grounds, on its school vehicles, and in connection with school-related activities or
1511 events.
- 1512 (b) The plan shall:
- 1513 (i) include prevention, intervention, and response components;
- 1514 (ii) be consistent with the student conduct and discipline policies required for school
1515 districts under Chapter 11, Part 2, Miscellaneous Requirements;

(iii) require professional learning for all district and school building staff on what their roles are in the emergency response plan;

(iv) provide for coordination with local law enforcement and other public safety representatives in preventing, intervening, and responding to violence in the areas and activities referred to in Subsection (18)(a); and

(v) include procedures to notify a student, to the extent practicable, who is off campus at the time of a school violence emergency because the student is:

(A) participating in a school-related activity; or

(B) excused from school for a period of time during the regular school day to participate in religious instruction at the request of the student's parent.

(c) The state board, through the state superintendent, shall develop comprehensive emergency response plan models that local school boards may use, where appropriate, to comply with Subsection (18)(a).

(d) A local school board shall, by July 1 of each year, certify to the state board that its plan has been practiced at the school level and presented to and reviewed by its teachers, administrators, students, and their parents and local law enforcement and public safety representatives.

(19) (a) A local school board may adopt an emergency response plan for the treatment of sports-related injuries that occur during school sports practices and events.

(b) The plan may be implemented by each secondary school in the district that has a sports program for students.

(c) The plan may:

(i) include emergency personnel, emergency communication, and emergency equipment components;

(ii) require professional learning on the emergency response plan for school personnel who are involved in sports programs in the district's secondary schools; and

(iii) provide for coordination with individuals and agency representatives who:

(A) are not employees of the school district; and

(B) would be involved in providing emergency services to students injured while participating in sports events.

(d) The local school board, in collaboration with the schools referred to in Subsection

(19)(b), may review the plan each year and make revisions when required to improve or enhance the plan.

(e) The state board, through the state superintendent, shall provide local school boards with an emergency plan response model that local school boards may use to comply with the requirements of this Subsection (19).

(20) A local school board shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education.

(21) (a) Before closing a school or changing the boundaries of a school, a local school board shall:

(i) at least 120 days before approving the school closure or school boundary change, provide notice to the following that the local school board is considering the closure or boundary change:

(A) parents of students enrolled in the school, using the same form of communication the local school board regularly uses to communicate with parents;

(B) parents of students enrolled in other schools within the school district that may be affected by the closure or boundary change, using the same form of communication the local school board regularly uses to communicate with parents; and

(C) the governing council and the mayor of the municipality in which the school is located;

(ii) provide an opportunity for public comment on the proposed school closure or school boundary change during at least two public local school board meetings; and

(iii) hold a public hearing as defined in Section 10-9a-103 and provide public notice of the public hearing as described in Subsection (21)(b).

(b) The notice of a public hearing required under Subsection (21)(a)(iii) shall:

(i) indicate the:

(A) school or schools under consideration for closure or boundary change; and

(B) the date, time, and location of the public hearing;

(ii) at least 10 days before the public hearing, be:

(A) published:

(I) in a newspaper of general circulation in the area; and

(II) on the Utah Public Notice Website created in Section 63F-1-701; and

(B) posted in at least three public locations within the municipality in which the school is located on the school district's official website, and prominently at the school; and

(iii) at least 30 days before the public hearing described in Subsection (21)(a)(iii), be provided as described in Subsections (21)(a)(i)(A), (B), and (C).

(22) A local school board may implement a facility energy efficiency program established under Title 11, Chapter 44, Performance Efficiency Act.

(23) A local school board may establish or partner with a certified youth court ~~[program, in accordance with Section 78A-6-1203,]~~ in accordance with Section 80-6-902 or establish or partner with a comparable restorative justice program, in coordination with schools in that district. A school may refer a student to a youth court or a comparable restorative justice program in accordance with Section 53G-8-211.

Section 22. Section 53G-6-206 is amended to read:

53G-6-206. Duties of a local school board, charter school governing board, or school district in resolving attendance problems -- Parental involvement -- Liability not imposed -- Report to state board.

(1) (a) Subject to Subsection (1)(b), a local school board, charter school governing board, or school district shall make efforts to resolve the school attendance problems of each school-age child who is, or should be, enrolled in the school district.

(b) A school-age child exempt from school attendance under Section 53G-6-204 or 53G-6-702 is not considered to be a school-age child who is or should be enrolled in a school district or charter school under Subsection (1)(a).

(2) The efforts described in Subsection (1) shall include, as reasonably feasible:

(a) counseling of the school-age child by school authorities;

(b) (i) issuing a notice of truancy to the school-age child in accordance with Section 53G-6-203; or

(ii) issuing a notice of compulsory education violation to the school-age child's parent in accordance with Section 53G-6-202;

(c) making any necessary adjustment to the curriculum and schedule to meet special needs of the school-age child;

(d) considering alternatives proposed by the school-age child's parent;

(e) monitoring school attendance of the school-age child;

(f) voluntary participation in truancy mediation, if available; and
(g) providing the school-age child's parent, upon request, with a list of resources available to assist the parent in resolving the school-age child's attendance problems.

(3) In addition to the efforts described in Subsection (2), the local school board, charter school governing board, or school district may enlist the assistance of community and law enforcement agencies as appropriate and reasonably feasible in accordance with Section [53G-8-211](#).

(4) This section does not impose civil liability on boards of education, local school boards, charter school governing boards, school districts, or their employees.

(5) Proceedings initiated under this part do not obligate or preclude action by the Division of Child and Family Services under Section ~~[78A-6-319]~~ [53G-6-210](#).

(6) Each LEA shall annually report the following data separately to the state board:

- (a) absences with a valid excuse; and
- (b) absences without a valid excuse.

Section 23. Section **53G-6-208** is amended to read:

**53G-6-208. Taking custody of a person believed to be a truant minor --
Disposition -- Reports -- Immunity from liability.**

(1) A peace officer or public school administrator may take a minor into temporary custody if there is reason to believe the minor is a truant minor.

(2) An individual taking a presumed truant minor into custody under Subsection (1) shall, without unnecessary delay, release the minor to:

- (a) the principal of the minor's school;
- (b) a person who has been designated by the local school board or charter school governing board to receive and return the minor to school; or
- (c) a truancy center established under Subsection (5).

(3) If the minor refuses to return to school or go to the truancy center, the officer or administrator shall, without unnecessary delay, notify the minor's parents and release the minor to their custody.

(4) If the parents cannot be reached or are unable or unwilling to accept custody and none of the options in Subsection (2) are available, the minor shall be referred to the Division of Child and Family Services.

(5) (a) (i) A local school board or charter school governing board, singly or jointly with another school board, may establish or designate truancy centers within existing school buildings and staff the centers with existing teachers or staff to provide educational guidance and counseling for truant minors.

(ii) Upon receipt of a truant minor, the center shall, without unnecessary delay, notify and direct the minor's parents to come to the center, pick up the minor, and return the minor to the school in which the minor is enrolled.

(b) (i) If the parents cannot be reached or are unable or unwilling to comply with the request within a reasonable time, the center shall take such steps as are reasonably necessary to insure the safety and well being of the minor, including, when appropriate, returning the minor to school or referring the minor to the Division of Child and Family Services.

(ii) A minor taken into custody under this section may not be placed in a detention center or other secure confinement facility.

(6) (a) Action taken under this section shall be reported to the appropriate school district.

(b) The district shall promptly notify the minor's parents of the action taken.

(7) The Utah Governmental Immunity Act applies to all actions taken under this section.

(8) Nothing in this section may be construed to grant authority to a public school administrator to place a minor in the custody of the Division of Child and Family Services, without complying with Title 62A, Chapter 4a, Part 2, Child Welfare Services, and ~~[Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings]~~ Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings.

Section 24. Section **53G-8-211** is amended to read:

53G-8-211. Responses to school-based behavior.

(1) As used in this section:

(a) "Evidence-based" means a program or practice that has:

(i) had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population;

(ii) been rated as effective by a standardized program evaluation tool; or

(iii) been approved by the state board.

- 1671 (b) "Habitual truant" means a school-age child who:
- 1672 (i) is in grade 7 or above, unless the school-age child is less than 12 years old;
- 1673 (ii) is subject to the requirements of Section [53G-6-202](#); and
- 1674 (iii) (A) is truant at least 10 times during one school year; or
- 1675 (B) fails to cooperate with efforts on the part of school authorities to resolve the
- 1676 school-age child's attendance problem as required under Section [53G-6-206](#).
- 1677 (c) "Minor" means the same as that term is defined in Section ~~[[78A-6-105](#)]~~ [80-1-102](#).
- 1678 (d) "Mobile crisis outreach team" means the same as that term is defined in Section
- 1679 ~~[[78A-6-105](#)]~~ [62A-15-102](#).
- 1680 (e) "Prosecuting attorney" means the same as that term is defined in Subsections
- 1681 ~~[[78A-6-105](#)(46)(b) and (c)]~~ [80-1-102](#)(58)(b) and (c).
- 1682 (f) "Restorative justice program" means a school-based program or a program used or
- 1683 adopted by a local education agency that is designed:
- 1684 (i) to enhance school safety, reduce school suspensions, and limit referrals to law
- 1685 enforcement agencies and courts; and
- 1686 (ii) to help minors take responsibility for and repair harmful behavior that occurs in
- 1687 school.
- 1688 (g) "School administrator" means a principal of a school.
- 1689 (h) "School is in session" means a day during which the school conducts instruction for
- 1690 which student attendance is counted toward calculating average daily membership.
- 1691 (i) "School resource officer" means a law enforcement officer, as defined in Section
- 1692 [53-13-103](#), who contracts with, is employed by, or whose law enforcement agency contracts
- 1693 with a local education agency to provide law enforcement services for the local education
- 1694 agency.
- 1695 (j) "School-age child" means the same as that term is defined in Section [53G-6-201](#).
- 1696 (k) (i) "School-sponsored activity" means an activity, fundraising event, club, camp,
- 1697 clinic, or other event or activity that is authorized by a specific local education agency or public
- 1698 school, according to LEA governing board policy, and satisfies at least one of the following
- 1699 conditions:
- 1700 (A) the activity is managed or supervised by a local education agency or public school,
- 1701 or local education agency or public school employee;

(B) the activity uses the local education agency's or public school's facilities, equipment, or other school resources; or

(C) the activity is supported or subsidized, more than inconsequentially, by public funds, including the public school's activity funds or Minimum School Program dollars.

(ii) "School-sponsored activity" includes preparation for and involvement in a public performance, contest, athletic competition, demonstration, display, or club activity.

(l) (i) "Status offense" means an offense that would not be an offense but for the age of the offender.

(ii) "Status offense" does not mean an offense that by statute is a misdemeanor or felony.

(2) This section applies to a minor enrolled in school who is alleged to have committed an offense at the school where the student is enrolled:

(a) on school property where the student is enrolled:

(i) when school is in session; or

(ii) during a school-sponsored activity; or

(b) that is truancy.

(3) (a) Except as provided in Subsections (3)(e) and (5), if a minor is alleged to have committed an offense that is a class C misdemeanor, an infraction, a status offense on school property, or an offense that is truancy:

(i) a school district or school may not refer the minor to a law enforcement officer or agency or a court; and

(ii) a law enforcement officer or agency may not refer the minor to a prosecuting attorney or a court.

(b) Except as provided in Subsection (3)(e), if a minor is alleged to have committed an offense that is a class C misdemeanor, an infraction, a status offense on school property, or an offense that is truancy, a school district, school, or law enforcement officer or agency may refer the minor to evidence-based alternative interventions, including:

(i) a mobile crisis outreach team~~[as defined in Section 78A-6-105];~~

(ii) a youth services center ~~[operated by the Division of Juvenile Justice Services in accordance with Section 62A-7-104]~~ as defined in Section 80-5-102;

(iii) a youth court or comparable restorative justice program;

(iv) evidence-based interventions created and developed by the school or school district; and

(v) other evidence-based interventions that may be jointly created and developed by a local education agency, the state board, the juvenile court, local counties and municipalities, the Department of Health, or the Department of Human Services.

(c) Notwithstanding Subsection (3)(a), a school resource officer may:

(i) investigate possible criminal offenses and conduct, including conducting probable cause searches;

(ii) consult with school administration about the conduct of a minor enrolled in a school;

(iii) transport a minor enrolled in a school to a location if the location is permitted by law;

(iv) take temporary custody of a minor in accordance with ~~[Subsection]~~ Section [78A-6-112(1)] 80-6-201; or

(v) protect the safety of students and the school community, including the use of reasonable and necessary physical force when appropriate based on the totality of the circumstances.

(d) Notwithstanding other provisions of this section, if a law enforcement officer has cause to believe a minor has committed an offense on school property when school is not in session and not during a school-sponsored activity, the law enforcement officer may refer the minor to:

(i) a prosecuting attorney or a court; or

(ii) evidence-based alternative interventions at the discretion of the law enforcement officer.

(e) If a minor is alleged to have committed a traffic offense that is an infraction, a school district, a school, or a law enforcement officer or agency may refer the minor to a prosecuting attorney or a court for the traffic offense.

(4) A school district or school shall refer a minor for prevention and early intervention youth services, as described in Section ~~[62A-7-104]~~ 80-5-201, by the Division of Juvenile Justice Services for a class C misdemeanor committed on school property or for being a habitual truant if the minor refuses to participate in an evidence-based alternative intervention

described in Subsection (3)(b).

(5) A school district or school may refer a minor to a court or a law enforcement officer or agency for an alleged class C misdemeanor committed on school property or for allegedly being a habitual truant~~[, as defined in Section 53G-6-201,]~~ if the minor:

(a) refuses to participate in an evidence-based alternative intervention under Subsection (3)(b); and

(b) fails to participate in prevention and early intervention youth services provided by the Division of Juvenile Justice Services under Subsection (4).

(6) (a) If a minor is referred to a court or a law enforcement officer or agency under Subsection (5), the school shall appoint a school representative to continue to engage with the minor and the minor's family through the court process.

(b) A school representative appointed under Subsection (6)(a) may not be a school resource officer.

(c) A school district or school shall include the following in the school district's or school's referral to the court or the law enforcement officer or agency:

(i) attendance records for the minor;

(ii) a report of evidence-based alternative interventions used by the school before the referral, including outcomes;

(iii) the name and contact information of the school representative assigned to actively participate in the court process with the minor and the minor's family;

(iv) a report from the Division of Juvenile Justice Services that demonstrates the minor's failure to complete or participate in prevention and early intervention youth services under Subsection (4); and

(v) any other information that the school district or school considers relevant.

(d) A minor referred to a court under Subsection (5) may not be ordered to or placed in secure detention, including for a contempt charge or violation of a valid court order under Section ~~[78A-6-110]~~ [78A-6-353](#), when the underlying offense is a class C misdemeanor occurring on school property or habitual truancy.

(e) If a minor is referred to a court under Subsection (5), the court may use, when available, the resources of the Division of Juvenile Justice Services or the Division of Substance Abuse and Mental Health to address the minor.

(7) If the alleged offense is a class B misdemeanor or a class A misdemeanor, the school administrator, the school administrator's designee, or a school resource officer may refer the minor directly to a juvenile court or to the evidence-based alternative interventions in Subsection (3)(b).

Section 25. Section **53G-8-212** is amended to read:

53G-8-212. Defacing or damaging school property -- Student's liability -- Work program alternative.

(1) A student who willfully defaces or otherwise damages any school property may be suspended or otherwise disciplined.

(2) (a) If a school's property has been lost or willfully cut, defaced, or otherwise damaged, the school may withhold the issuance of an official written grade report, diploma, or transcript of the student responsible for the damage or loss until the student or the student's parent has paid for the damages.

(b) The student's parent is liable for damages as otherwise provided in Section ~~[78A-6-1113]~~ [80-6-610](#).

(3) (a) If the student and the student's parent are unable to pay for the damages or if it is determined by the school in consultation with the student's parent that the student's interests would not be served if the parent were to pay for the damages, the school shall provide for a program of work the student may complete in lieu of the payment.

(b) The school shall release the official grades, diploma, and transcripts of the student upon completion of the work.

(4) Before any penalties are assessed under this section, the school shall adopt procedures to ensure that the student's right to due process is protected.

(5) No penalty may be assessed for damages which may be reasonably attributed to normal wear and tear.

(6) If the Department of Human Services or a licensed child-placing agency has been granted custody of the student, the student's records, if requested by the department or agency, may not be withheld from the department or agency for nonpayment of damages under this section.

Section 26. Section **53G-8-402** is amended to read:

53G-8-402. Notification by juvenile court and law enforcement agencies.

(1) Notifications received from the juvenile court or law enforcement agencies by the school district [~~pursuant to Subsections 78A-6-112(3)(b) and 78A-6-117(1)(c)~~] under Section 80-6-103 are governed by this part.

(2) School districts may enter into agreements with law enforcement agencies for notification under Subsection (1).

Section 27. Section **53G-8-405** is amended to read:

53G-8-405. Liability for release of information.

(1) The district superintendent, principal, and any staff member notified by the principal may not be held liable for information which may become public knowledge unless it can be shown by clear and convincing evidence that the information became public knowledge through an intentional act of the superintendent, principal, or a staff member.

(2) A person receiving information under [~~Subsection 78A-6-112(3)(b) or 78A-6-117(1)(c), or~~] Section **53G-8-403** or 80-6-103 is immune from any liability, civil or criminal, for acting or failing to act in response to the information unless the person acts or fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

Section 28. Section **53G-9-209** is amended to read:

53G-9-209. Child abuse or neglect reporting requirement.

(1) As used in this section:

(a) "Educational neglect" means the same as that term is defined in Section [~~78A-6-105~~] 80-1-102.

(b) "School personnel" means the same as that term is defined in Section **53G-9-203**.

(2) School personnel shall comply with the child abuse and neglect reporting requirements described in Section **62A-4a-403**.

(3) When school personnel have reason to believe that a child may be subject to educational neglect, school personnel shall submit the report described in Subsection **53G-6-202(8)** to the Division of Child and Family Services.

(4) When school personnel have reason to believe that a child is subject to both educational neglect and another form of neglect or abuse, school personnel may not wait to report the other form of neglect or abuse pending preparation of a report regarding educational neglect.

(5) School personnel shall cooperate with the Division of Child and Family Services

and share all information with the division that is relevant to the division's investigation of an allegation of abuse or neglect.

Section 29. Section **53G-11-410** is amended to read:

53G-11-410. Reference check requirements for LEA applicants and volunteers.

(1) As used in this section:

(a) "Child" means an individual who is younger than 18 years old.

(b) "LEA applicant" means an applicant for employment by an LEA.

(c) "Physical abuse" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

(d) "Potential volunteer" means an individual who:

(i) has volunteered for but not yet fulfilled an unsupervised volunteer assignment; and

(ii) during the last three years, has worked in a qualifying position.

(e) "Qualifying position" means paid employment that requires the employee to directly care for, supervise, control, or have custody of a child.

(f) "Sexual abuse" means the same as that term is defined in Section ~~[78A-6-105]~~ 80-1-102.

(g) "Student" means an individual who:

(i) is enrolled in an LEA in any grade from preschool through grade 12; or

(ii) receives special education services from an LEA under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(h) "Unsupervised volunteer assignment" means a volunteer assignment at an LEA that allows the volunteer significant unsupervised access to a student.

(2) (a) Before hiring an LEA applicant or giving an unsupervised volunteer assignment to a potential volunteer, an LEA shall:

(i) require the LEA applicant or potential volunteer to sign a release authorizing the LEA applicant or potential volunteer's previous qualifying position employers to disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the LEA applicant or potential volunteer;

(ii) for an LEA applicant, request that the LEA applicant's most recent qualifying position employer disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the LEA applicant;

(iii) for a potential volunteer, request that the potential volunteer's most recent qualifying position employer disclose information regarding any employment action taken or discipline imposed for the physical abuse or sexual abuse of a child or student by the potential volunteer; and

(iv) document the efforts taken to make a request described in Subsection (2)(a)(ii) or (iii).

(b) An LEA may not hire an LEA applicant who does not sign a release described in Subsection (2)(a)(i).

(c) An LEA may not give an unsupervised volunteer assignment to a potential volunteer who does not sign a release described in Subsection (2)(a)(i).

(d) An LEA shall request information under Subsection (2)(a)(ii) or (iii) before:

(i) hiring an LEA applicant; or

(ii) giving an unsupervised volunteer assignment to a potential volunteer.

(e) In accordance with state and federal law, an LEA may request from an LEA applicant or potential volunteer other information the LEA determines is relevant.

(3) (a) An LEA that receives a request described in Subsection (2)(a)(ii) or (iii) shall respond to the request within 20 business days after the day on which the LEA received the request.

(b) If an LEA or other employer in good faith discloses information that is within the scope of a request described in Subsection (2)(a)(ii) or (iii), the LEA or other employer is immune from civil and criminal liability for the disclosure.

Section 30. Section **58-37-6** is amended to read:

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

(1) (a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section [63J-1-504](#).

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

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

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

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II through V under this section:

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

(ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman, who possesses a controlled substance in the usual course of the person's business or employment; and

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

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

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

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

(3) (a) (i) Upon proper application, the division shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest.

(ii) The division may not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance except under Subsection (3)(a)(i).

(iii) In determining public interest under this Subsection (3)(a), the division shall consider whether the applicant has:

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

(B) complied with applicable state and local law;

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

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

(E) established effective controls against diversion; and

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

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

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

(ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is

1981 already licensed under this chapter in another capacity.

1982 (iii) With respect to research involving narcotic substances in Schedules II through V,
1983 or where the division by rule requires a separate license for research of nonnarcotic substances
1984 in Schedules II through V, a practitioner shall apply to the division prior to conducting
1985 research.

1986 (iv) Licensing for purposes of bona fide research with controlled substances by a
1987 practitioner considered qualified may be denied only on a ground specified in Subsection (4),
1988 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard
1989 adequately the practitioner's supply of substances against diversion from medical or scientific
1990 use.

1991 (v) Practitioners registered under federal law to conduct research in Schedule I
1992 substances may conduct research in Schedule I substances within this state upon providing the
1993 division with evidence of federal registration.

1994 (d) Compliance by manufacturers, producers, and distributors with the provisions of
1995 federal law respecting registration, excluding fees, entitles them to be licensed under this
1996 chapter.

1997 (e) The division shall initially license those persons who own or operate an
1998 establishment engaged in the manufacture, production, distribution, dispensation, or
1999 administration of controlled substances prior to April 3, 1980, and who are licensed by the
2000 state.

2001 (4) (a) Any license issued pursuant to Subsection (2) or (3) may be denied, suspended,
2002 placed on probation, or revoked by the division upon finding that the applicant or licensee has:

2003 (i) materially falsified any application filed or required pursuant to this chapter;

2004 (ii) been convicted of an offense under this chapter or any law of the United States, or
2005 any state, relating to any substance defined as a controlled substance;

2006 (iii) been convicted of a felony under any other law of the United States or any state
2007 within five years of the date of the issuance of the license;

2008 (iv) had a federal registration or license denied, suspended, or revoked by competent
2009 federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense
2010 controlled substances;

2011 (v) had the licensee's license suspended or revoked by competent authority of another

state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;

(vi) violated any division rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;

(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or

(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:

(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of the practitioner's professional practice; or

(B) improve performance in any form of human exercise, sport, or game.

(b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.

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

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

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

2043 division.

2044 (ii) Disposition may not be made of substances under seal until the time for taking an
2045 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,
2046 orders the sale of perishable substances and the proceeds deposited with the court.

2047 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

2048 (f) The division shall notify promptly the Drug Enforcement Administration of all
2049 orders suspending or revoking a license and all forfeitures of controlled substances.

2050 (g) If an individual's Drug Enforcement Administration registration is denied, revoked,
2051 surrendered, or suspended, the division shall immediately suspend the individual's controlled
2052 substance license, which shall only be reinstated by the division upon reinstatement of the
2053 federal registration, unless the division has taken further administrative action under
2054 Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled
2055 substance license.

2056 (5) (a) A person licensed under Subsection (2) or (3) shall maintain records and
2057 inventories in conformance with the record keeping and inventory requirements of federal and
2058 state law and any additional rules issued by the division.

2059 (b) (i) A physician, dentist, naturopathic physician, veterinarian, practitioner, or other
2060 individual who is authorized to administer or professionally use a controlled substance shall
2061 keep a record of the drugs received by the individual and a record of all drugs administered,
2062 dispensed, or professionally used by the individual otherwise than by a prescription.

2063 (ii) An individual using small quantities or solutions or other preparations of those
2064 drugs for local application has complied with this Subsection (5)(b) if the individual keeps a
2065 record of the quantity, character, and potency of those solutions or preparations purchased or
2066 prepared by the individual, and of the dates when purchased or prepared.

2067 (6) Controlled substances in Schedules I through V may be distributed only by a
2068 licensee and pursuant to an order form prepared in compliance with division rules or a lawful
2069 order under the rules and regulations of the United States.

2070 (7) (a) An individual may not write or authorize a prescription for a controlled
2071 substance unless the individual is:

2072 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state
2073 or under the laws of another state having similar standards; and

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

(b) An individual other than a pharmacist licensed under the laws of this state, or the pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

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

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

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

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

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

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(i) the individual who writes the prescription is licensed under Subsection (2); and

(ii) the prescribed controlled substance is to be used in research.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the restrictions of this Subsection (7)(f).

- 2105 (i) A prescription for a Schedule II substance may not be refilled.
- 2106 (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a
- 2107 one-month's supply, as directed on the daily dosage rate of the prescriptions.
- 2108 (iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II
- 2109 or Schedule III controlled substance that is an opiate and that is issued for an acute condition
- 2110 shall be completely or partially filled in a quantity not to exceed a seven-day supply as directed
- 2111 on the daily dosage rate of the prescription.
- 2112 (B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when
- 2113 the practitioner determined that a quantity exceeding seven days is needed, in which case the
- 2114 practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the
- 2115 practitioner.
- 2116 (C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or
- 2117 chronic conditions which are documented as being complex or chronic in the medical record.
- 2118 (D) A pharmacist is not required to verify that a prescription is in compliance with
- 2119 Subsection (7)(f)(iii).
- 2120 (iv) A Schedule III or IV controlled substance may be filled only within six months of
- 2121 issuance, and may not be refilled more than six months after the date of its original issuance or
- 2122 be refilled more than five times after the date of the prescription unless renewed by the
- 2123 practitioner.
- 2124 (v) All other controlled substances in Schedule V may be refilled as the prescriber's
- 2125 prescription directs, but they may not be refilled one year after the date the prescription was
- 2126 issued unless renewed by the practitioner.
- 2127 (vi) Any prescription for a Schedule II substance may not be dispensed if it is not
- 2128 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
- 2129 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
- 2130 specified separately from the date of issue.
- 2131 (vii) A practitioner may issue more than one prescription at the same time for the same
- 2132 Schedule II controlled substance, but only under the following conditions:
- 2133 (A) no more than three prescriptions for the same Schedule II controlled substance may
- 2134 be issued at the same time;
- 2135 (B) no one prescription may exceed a 30-day supply; and

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

(g) (i) Beginning January 1, 2022, each prescription issued for a controlled substance shall be transmitted electronically as an electronic prescription unless the prescription is:

(A) for a patient residing in an assisted living facility as that term is defined in Section 26-21-2, a long-term care facility as that term is defined in Section 58-31b-102, or a correctional facility as that term is defined in Section 64-13-1;

(B) issued by a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act;

(C) dispensed by a Department of Veterans Affairs pharmacy;

(D) issued during a temporary technical or electronic failure at the practitioner's or pharmacy's location; or

(E) issued in an emergency situation.

(ii) The division, in collaboration with the appropriate boards that govern the licensure of the licensees who are authorized by the division to prescribe or to dispense controlled substances, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act to:

(A) require that controlled substances prescribed or dispensed under Subsection (7)(g)(i)(D) indicate on the prescription that the prescribing practitioner or the pharmacy is experiencing a technical difficulty or an electronic failure;

(B) define an emergency situation for purposes of Subsection (7)(g)(i)(E);

(C) establish additional exemptions to the electronic prescription requirements established in this Subsection (7)(g);

(D) establish guidelines under which a prescribing practitioner or a pharmacy may obtain an extension of up to two additional years to comply with Subsection (7)(g)(i);

(E) establish a protocol to follow if the pharmacy that receives the electronic prescription is not able to fill the prescription; and

(F) establish requirements that comply with federal laws and regulations for software used to issue and dispense electronic prescriptions.

(h) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this

Subsection (7) if the order is:

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

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

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

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

(i) A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a child, without first obtaining the consent required in Section [78B-3-406](#) of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of Subsection (7)(i), "child" has the same meaning as defined in Section [[78A-6-105](#)] [80-1-102](#), and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

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

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

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

(m) A person licensed under this chapter may not omit, remove, alter, or obliterate a

symbol required by this chapter or by a rule issued under this chapter.

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

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

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

(8) (a) (i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(iii) The director may collect a penalty that is not paid by:

(A) referring the matter to a collection agency; or

(B) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(iv) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(v) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j) or Subsection (10) is:

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

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

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

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

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

(10) A person holding a valid license under this chapter who is engaged in medical research may produce, possess, administer, prescribe, or dispense a controlled substance for research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense a controlled substance listed in Section [58-37-4.2](#).

Section 31. Section **62A-1-108.5** is amended to read:

**62A-1-108.5. Mental illness and intellectual disability examinations --
Responsibilities of the department.**

(1) In accomplishing the department's duties to conduct a competency evaluation under Title 77, Utah Code of Criminal Procedure, and a juvenile competency evaluation under Title ~~[78A, Chapter 6, Juvenile Court Act]~~ [Section 80-6-402](#), the department shall proceed as outlined in this section and within appropriations authorized by the Legislature.

(2) When the department is ordered by a court to conduct a competency evaluation, the department shall designate a forensic evaluator, selected under Subsection (4), to evaluate the defendant in the defendant's current custody or status.

(3) When the department is ordered by the juvenile court to conduct a juvenile competency evaluation under ~~[Title 78A, Chapter 6, Juvenile Court Act]~~ [Section 80-6-402](#), the department shall:

(a) designate an examiner selected pursuant to Subsection (4) to evaluate the minor;
and

(b) upon a finding of good cause and order of the court, designate a second examiner to evaluate the minor.

(4) The department shall establish criteria, in consultation with the Commission on Criminal and Juvenile Justice, and shall contract with persons to conduct competency evaluations and juvenile competency evaluations under Subsections (2) and (3)(b). In making this selection, the department shall follow the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

(5) Nothing in this section prohibits the department, at the request of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of Criminal

2260 Procedure, and for good cause shown, from proposing a person who has not been previously
2261 selected under Subsection (4) to contract with the department to conduct the evaluation. In
2262 selecting that person, the criteria of the department established under Subsection (4) and the
2263 provisions of Title 63G, Chapter 6a, Utah Procurement Code, shall be met.

2264 Section 32. Section **62A-1-111** is amended to read:

2265 **62A-1-111. Department authority.**

2266 The department may, in addition to all other authority and responsibility granted to the
2267 department by law:

2268 (1) adopt rules, not inconsistent with law, as the department may consider necessary or
2269 desirable for providing social services to the people of this state;

2270 (2) establish and manage client trust accounts in the department's institutions and
2271 community programs, at the request of the client or the client's legal guardian or representative,
2272 or in accordance with federal law;

2273 (3) purchase, as authorized or required by law, services that the department is
2274 responsible to provide for legally eligible persons;

2275 (4) conduct adjudicative proceedings for clients and providers in accordance with the
2276 procedures of Title 63G, Chapter 4, Administrative Procedures Act;

2277 (5) establish eligibility standards for its programs, not inconsistent with state or federal
2278 law or regulations;

2279 (6) take necessary steps, including legal action, to recover money or the monetary value
2280 of services provided to a recipient who was not eligible;

2281 (7) set and collect fees for the department's services;

2282 (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited,
2283 or limited by law;

2284 (9) acquire, manage, and dispose of any real or personal property needed or owned by
2285 the department, not inconsistent with state law;

2286 (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or
2287 the proceeds thereof, may be credited to the program designated by the donor, and may be used
2288 for the purposes requested by the donor, as long as the request conforms to state and federal
2289 policy; all donated funds shall be considered private, nonlapsing funds and may be invested
2290 under guidelines established by the state treasurer;

2291 (11) accept and employ volunteer labor or services; the department is authorized to
2292 reimburse volunteers for necessary expenses, when the department considers that
2293 reimbursement to be appropriate;

2294 (12) carry out the responsibility assigned in the workforce services plan by the State
2295 Workforce Development Board;

2296 (13) carry out the responsibility assigned by Section 35A-8-602 with respect to
2297 coordination of services for the homeless;

2298 (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to
2299 coordination of services for students with a disability;

2300 (15) provide training and educational opportunities for the department's staff;

2301 (16) collect child support payments and any other money due to the department;

2302 (17) apply the provisions of Title 78B, Chapter 12, Utah Child Support Act, to parents
2303 whose child lives out of the home in a department licensed or certified setting;

2304 (18) establish policy and procedures, within appropriations authorized by the
2305 Legislature, in cases where ~~[the department]~~ the Division of Child and Family Services or the
2306 Division of Juvenile Justice Services is given custody of a minor by the juvenile court under
2307 ~~[Section 78A-6-117]~~ Title 80, Utah Juvenile Code, or the department is ordered to prepare an
2308 attainment plan for a minor found not competent to proceed under Section ~~[78A-6-1301]~~
2309 80-6-403; any policy and procedures shall include:

2310 (a) designation of interagency teams for each juvenile court district in the state;

2311 (b) delineation of assessment criteria and procedures;

2312 (c) minimum requirements, and timeframes, for the development and implementation
2313 of a collaborative service plan for each minor placed in department custody; and

2314 (d) provisions for submittal of the plan and periodic progress reports to the court;

2315 (19) carry out the responsibilities assigned to the department by statute;

2316 (20) examine and audit the expenditures of any public funds provided to local
2317 substance abuse authorities, local mental health authorities, local area agencies on aging, and
2318 any person, agency, or organization that contracts with or receives funds from those authorities
2319 or agencies. Those local authorities, area agencies, and any person or entity that contracts with
2320 or receives funds from those authorities or area agencies, shall provide the department with any
2321 information the department considers necessary. The department is further authorized to issue

directives resulting from any examination or audit to local authorities, area agencies, and persons or entities that contract with or receive funds from those authorities with regard to any public funds. If the department determines that it is necessary to withhold funds from a local mental health authority or local substance abuse authority based on failure to comply with state or federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of services. For purposes of this Subsection (20) "public funds" means the same as that term is defined in Section [62A-15-102](#);

(21) pursuant to Subsection [62A-2-106](#)(1)(d), accredit one or more agencies and persons to provide intercountry adoption services;

(22) within appropriations authorized by the Legislature, promote and develop a system of care and stabilization services:

(a) in compliance with Title 63G, Chapter 6a, Utah Procurement Code; and

(b) that encompasses the department, department contractors, and the divisions, offices, or institutions within the department, to:

(i) navigate services, funding resources, and relationships to the benefit of the children and families whom the department serves;

(ii) centralize department operations, including procurement and contracting;

(iii) develop policies that govern business operations and that facilitate a system of care approach to service delivery;

(iv) allocate resources that may be used for the children and families served by the department or the divisions, offices, or institutions within the department, subject to the restrictions in Section [63J-1-206](#);

(v) create performance-based measures for the provision of services; and

(vi) centralize other business operations, including data matching and sharing among the department's divisions, offices, and institutions; and

(23) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section [63G-22-102](#), complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:

(a) under this title;

(b) by the department; or

(c) by an agency or division within the department.

2353 Section 33. Section **62A-2-108.8** is amended to read:

2354 **62A-2-108.8. Residential support program -- Temporary homeless youth shelter.**

2355 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2356 office shall make rules that establish age-appropriate and gender-appropriate sleeping quarters
2357 in temporary homeless youth shelters, as defined in Section [~~62A-4a-501~~] 80-5-102, that
2358 provide overnight shelter to minors.

2359 Section 34. Section **62A-2-117.5** is amended to read:

2360 **62A-2-117.5. Foster care by a child's relative.**

2361 (1) In accordance with state and federal law, the division shall provide for licensure of
2362 a child's relative for foster or substitute care, when the child is in the temporary custody or
2363 custody of the Division of Child and Family Services. If it is determined that, under federal
2364 law, allowance is made for an approval process requiring less than full foster parent licensure
2365 proceedings for a child's relative, the division shall establish an approval process to accomplish
2366 that purpose.

2367 (2) For purposes of this section:

2368 (a) "Custody" and "temporary custody" mean the same as those terms are defined in
2369 Section 62A-4a-101.

2370 (b) "Relative" means the same as that term is defined in Section [~~78A-6-307~~] 80-3-102.

2371 Section 35. Section **62A-2-120** is amended to read:

2372 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

2373 (1) As used in this section:

2374 (a) (i) "Applicant" means:

2375 (A) the same as that term is defined in Section 62A-2-101;

2376 (B) an individual who is associated with a licensee and has or will likely have direct
2377 access to a child or a vulnerable adult;

2378 (C) an individual who provides respite care to a foster parent or an adoptive parent on
2379 more than one occasion;

2380 (D) a department contractor;

2381 (E) a guardian submitting an application on behalf of an individual, other than the child
2382 or vulnerable adult who is receiving the service, if the individual is 12 years [~~of age~~] old or
2383 older and resides in a home, that is licensed or certified by the office, with the child or

2384 vulnerable adult who is receiving services; or

2385 (F) a guardian submitting an application on behalf of an individual, other than the child
2386 or vulnerable adult who is receiving the service, if the individual is 12 years [~~of age~~] old or
2387 older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

2388 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
2389 of the Division of Child and Family Services or the Division of Juvenile Justice Services.

2390 (b) "Application" means a background screening application to the office.

2391 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
2392 Public Safety, created in Section [53-10-201](#).

2393 (d) "Incidental care" means occasional care, not in excess of five hours per week and
2394 never overnight, for a foster child.

2395 (e) "Personal identifying information" means:

2396 (i) current name, former names, nicknames, and aliases;

2397 (ii) date of birth;

2398 (iii) physical address and email address;

2399 (iv) telephone number;

2400 (v) driver license or other government-issued identification;

2401 (vi) social security number;

2402 (vii) only for applicants who are 18 years [~~of age~~] old or older, fingerprints, in a form
2403 specified by the office; and

2404 (viii) other information specified by the office by rule made in accordance with Title
2405 63G, Chapter 3, Utah Administrative Rulemaking Act.

2406 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
2407 submit the following to the office:

2408 (i) personal identifying information;

2409 (ii) a fee established by the office under Section [63J-1-504](#); and

2410 (iii) a disclosure form, specified by the office, for consent for:

2411 (A) an initial background check upon submission of the information described under
2412 this Subsection (2)(a);

2413 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
2414 licensee for 90 days;

(C) a background check when the office determines that reasonable cause exists; and
(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).

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

(3) The office:

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

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

(A) submitting personal identifying information to the bureau for a search; or

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

(ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal history search of applicable national criminal background databases;

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

(iv) search the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(v) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section [78A-6-323] 80-6-404; and

(vi) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

(b) shall conduct a background check of an applicant for an initial background check upon submission of the information described under Subsection (2)(a);

(c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

2446 (i) for an annual renewal; or
2447 (ii) when the office determines that reasonable cause exists;
2448 (d) may submit an applicant's personal identifying information, including fingerprints,
2449 to the bureau for checking, retaining, and monitoring of state and national criminal background
2450 databases and for notifying the office of new criminal activity associated with the applicant;
2451 (e) shall track the status of an approved applicant under this section to ensure that an
2452 approved applicant is not required to duplicate the submission of the applicant's fingerprints if
2453 the applicant applies for:
2454 (i) more than one license;
2455 (ii) direct access to a child or a vulnerable adult in more than one human services
2456 program; or
2457 (iii) direct access to a child or a vulnerable adult under a contract with the department;
2458 (f) shall track the status of each license and each individual with direct access to a child
2459 or a vulnerable adult and notify the bureau within 90 days after the day on which the license
2460 expires or the individual's direct access to a child or a vulnerable adult ceases;
2461 (g) shall adopt measures to strictly limit access to personal identifying information
2462 solely to the individuals responsible for processing and entering the applications for
2463 background checks and to protect the security of the personal identifying information the office
2464 reviews under this Subsection (3);
2465 (h) as necessary to comply with the federal requirement to check a state's child abuse
2466 and neglect registry regarding any individual working in a congregate care setting that serves
2467 children, shall:
2468 (i) search the Department of Human Services, Division of Child and Family Services'
2469 Licensing Information System described in Section [62A-4a-1006](#); and
2470 (ii) require the child abuse and neglect registry be checked in each state where an
2471 applicant resided at any time during the five years immediately preceding the day on which the
2472 applicant submits the information described in Subsection (2)(a) to the office; and
2473 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
2474 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
2475 checks.
2476 (4) (a) With the personal identifying information the office submits to the bureau under

2477 Subsection (3), the bureau shall check against state and regional criminal background databases
2478 for the applicant's criminal history.

2479 (b) With the personal identifying information and fingerprints the office submits to the
2480 bureau under Subsection (3), the bureau shall check against national criminal background
2481 databases for the applicant's criminal history.

2482 (c) Upon direction from the office, and with the personal identifying information and
2483 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

2484 (i) maintain a separate file of the fingerprints for search by future submissions to the
2485 local and regional criminal records databases, including latent prints; and

2486 (ii) monitor state and regional criminal background databases and identify criminal
2487 activity associated with the applicant.

2488 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
2489 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
2490 Investigation Next Generation Identification System for the purpose of:

2491 (i) being searched by future submissions to the national criminal records databases,
2492 including the Federal Bureau of Investigation Next Generation Identification System and latent
2493 prints; and

2494 (ii) monitoring national criminal background databases and identifying criminal
2495 activity associated with the applicant.

2496 (e) The Bureau shall notify and release to the office all information of criminal activity
2497 associated with the applicant.

2498 (f) Upon notice from the office that a license has expired or an individual's direct
2499 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

2500 (i) discard and destroy any retained fingerprints; and

2501 (ii) notify the Federal Bureau of Investigation when the license has expired or an
2502 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
2503 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
2504 Investigation Next Generation Identification System.

2505 (5) (a) After conducting the background check described in Subsections (3) and (4), the
2506 office shall deny an application to an applicant who, within three years before the day on which
2507 the applicant submits information to the office under Subsection (2) for a background check,

2508 has been convicted of any of the following, regardless of whether the offense is a felony, a
2509 misdemeanor, or an infraction:

2510 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
2511 animals, or bestiality;

2512 (ii) a violation of any pornography law, including sexual exploitation of a minor;

2513 (iii) prostitution;

2514 (iv) an offense included in:

2515 (A) Title 76, Chapter 5, Offenses Against the Person;

2516 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

2517 (C) Title 76, Chapter 7, Offenses Against the Family;

2518 (v) aggravated arson, as described in Section 76-6-103;

2519 (vi) aggravated burglary, as described in Section 76-6-203;

2520 (vii) aggravated robbery, as described in Section 76-6-302;

2521 (viii) identity fraud crime, as described in Section 76-6-1102; or

2522 (ix) a felony or misdemeanor offense committed outside of the state that, if committed

2523 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)

2524 through (viii).

2525 (b) If the office denies an application to an applicant based on a conviction described in

2526 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in

2527 Subsection (6).

2528 (c) If the applicant will be working in a program serving only adults whose only

2529 impairment is a mental health diagnosis, including that of a serious mental health disorder,

2530 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)

2531 do not apply, and the office shall conduct a comprehensive review as described in Subsection

2532 (6).

2533 (6) (a) The office shall conduct a comprehensive review of an applicant's background

2534 check if the applicant:

2535 (i) has an open court case or a conviction for any felony offense, not described in

2536 Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on

2537 which the applicant submits the application;

2538 (ii) has an open court case or a conviction for a misdemeanor offense, not described in

2539 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
2540 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day
2541 on which the applicant submits information to the office under Subsection (2) for a background
2542 check;

2543 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
2544 than three years before the day on which the applicant submitted information under Subsection
2545 (2)(a);

2546 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
2547 described in Subsection (5)(a);

2548 (v) has a listing in the Department of Human Services, Division of Child and Family
2549 Services' Licensing Information System described in Section [62A-4a-1006](#);

2550 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
2551 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
2552 [62A-3-311.1](#);

2553 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
2554 or neglect described in Section [[78A-6-323](#)] [80-3-404](#);

2555 (viii) has a record of an adjudication in juvenile court for an act that, if committed by
2556 an adult, would be a felony or misdemeanor, if the applicant is:

2557 (A) under 28 years [~~of age~~] old; or

2558 (B) 28 years [~~of age~~] old or older and has been convicted of, has pleaded no contest to,
2559 or is currently subject to a plea in abeyance or diversion agreement for a felony or a
2560 misdemeanor offense described in Subsection (5)(a);

2561 (ix) has a pending charge for an offense described in Subsection (5)(a); or

2562 (x) is an applicant described in Subsection (5)(c).

2563 (b) The comprehensive review described in Subsection (6)(a) shall include an
2564 examination of:

2565 (i) the date of the offense or incident;

2566 (ii) the nature and seriousness of the offense or incident;

2567 (iii) the circumstances under which the offense or incident occurred;

2568 (iv) the age of the perpetrator when the offense or incident occurred;

2569 (v) whether the offense or incident was an isolated or repeated incident;

2570 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
2571 adult, including:

2572 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
2573 (B) sexual abuse;
2574 (C) sexual exploitation; or
2575 (D) negligent treatment;

2576 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
2577 treatment received, or additional academic or vocational schooling completed;

2578 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
2579 which the applicant is applying; and

2580 (ix) any other pertinent information presented to or publicly available to the committee
2581 members.

2582 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
2583 office shall deny an application to an applicant if the office finds that approval would likely
2584 create a risk of harm to a child or a vulnerable adult.

2585 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
2586 office may not deny an application to an applicant solely because the applicant was convicted
2587 of an offense that occurred 10 or more years before the day on which the applicant submitted
2588 the information required under Subsection (2)(a) if:

2589 (i) the applicant has not committed another misdemeanor or felony offense after the
2590 day on which the conviction occurred; and

2591 (ii) the applicant has never been convicted of an offense described in Subsection
2592 (14)(c).

2593 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2594 office may make rules, consistent with this chapter, to establish procedures for the
2595 comprehensive review described in this Subsection (6).

2596 (7) Subject to Subsection (10), the office shall approve an application to an applicant
2597 who is not denied under Subsection (5), (6), or (13).

2598 (8) (a) The office may conditionally approve an application of an applicant, for a
2599 maximum of 60 days after the day on which the office sends written notice to the applicant
2600 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

2601 (i) is awaiting the results of the criminal history search of national criminal background
2602 databases; and

2603 (ii) would otherwise approve an application of the applicant under Subsection (7).

2604 (b) The office may conditionally approve an application of an applicant, for a
2605 maximum of one year after the day on which the office sends written notice to the applicant
2606 under Subsection (12), without requiring that the applicant be directly supervised if the office:

2607 (i) is awaiting the results of an out-of-state registry for providers other than foster and
2608 adoptive parents; and

2609 (ii) would otherwise approve an application of the applicant under Subsection (7).

2610 (c) Upon receiving the results of the criminal history search of a national criminal
2611 background database, the office shall approve or deny the application of the applicant in
2612 accordance with Subsections (5) through (7).

2613 (9) A licensee or department contractor may not permit an individual to have direct
2614 access to a child or a vulnerable adult unless, subject to Subsection (10):

2615 (a) the individual is associated with the licensee or department contractor and:

2616 (i) the individual's application is approved by the office under this section;

2617 (ii) the individual's application is conditionally approved by the office under
2618 Subsection (8); or

2619 (iii) (A) the individual has submitted the background check information described in
2620 Subsection (2) to the office;

2621 (B) the office has not determined whether to approve the applicant's application; and

2622 (C) the individual is directly supervised by an individual who has a current background
2623 screening approval issued by the office under this section and is associated with the licensee or
2624 department contractor;

2625 (b) (i) the individual is associated with the licensee or department contractor;

2626 (ii) the individual has a current background screening approval issued by the office
2627 under this section;

2628 (iii) one of the following circumstances, that the office has not yet reviewed under
2629 Subsection (6), applies to the individual:

2630 (A) the individual was charged with an offense described in Subsection (5)(a);

2631 (B) the individual is listed in the Licensing Information System, described in Section

2632 62A-4a-1006;

2633 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
2634 database, described in Section 62A-3-311.1;

2635 (D) the individual has a record in the juvenile court of a substantiated finding of severe
2636 child abuse or neglect, described in Section ~~78A-6-323~~ 80-3-404; or

2637 (E) the individual has a record of an adjudication in juvenile court for an act that, if
2638 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)
2639 or (6); and

2640 (iv) the individual is directly supervised by an individual who:

2641 (A) has a current background screening approval issued by the office under this
2642 section; and

2643 (B) is associated with the licensee or department contractor;

2644 (c) the individual:

2645 (i) is not associated with the licensee or department contractor; and

2646 (ii) is directly supervised by an individual who:

2647 (A) has a current background screening approval issued by the office under this
2648 section; and

2649 (B) is associated with the licensee or department contractor;

2650 (d) the individual is the parent or guardian of the child, or the guardian of the
2651 vulnerable adult;

2652 (e) the individual is approved by the parent or guardian of the child, or the guardian of
2653 the vulnerable adult, to have direct access to the child or the vulnerable adult;

2654 (f) the individual is only permitted to have direct access to a vulnerable adult who
2655 voluntarily invites the individual to visit; or

2656 (g) the individual only provides incidental care for a foster child on behalf of a foster
2657 parent who has used reasonable and prudent judgment to select the individual to provide the
2658 incidental care for the foster child.

2659 (10) An individual may not have direct access to a child or a vulnerable adult if the
2660 individual is prohibited by court order from having that access.

2661 (11) Notwithstanding any other provision of this section, an individual for whom the
2662 office denies an application may not have direct access to a child or vulnerable adult unless the

office approves a subsequent application by the individual.

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

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

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

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

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

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

(i) defining procedures for the challenge of the office's background check decision described in Subsection (12)(c); and

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

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

(14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of giving clearance status to an applicant seeking a position in a congregate care facility, an applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or an applicant seeking to provide a prospective adoptive home, the office shall:

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective

2694 adoptive parent is listed in the registry as having a substantiated or supported finding of child
2695 abuse or neglect; and

2696 (ii) check the child abuse and neglect registry in each state where each adult living in
2697 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
2698 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
2699 parent, to determine whether the adult is listed in the registry as having a substantiated or
2700 supported finding of child abuse or neglect.

2701 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

2702 (i) federal law or rule permits otherwise; or

2703 (ii) the requirements would prohibit the Division of Child and Family Services or a
2704 court from placing a child with:

2705 (A) a noncustodial parent under Section 62A-4a-209, [~~78A-6-307~~, or ~~78A-6-307.5~~]
2706 80-3-302, or 80-3-303; or

2707 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209,
2708 [~~78A-6-307~~, or ~~78A-6-307.5~~] 80-3-302, or 80-3-303, pending completion of the background
2709 check described in Subsection (5).

2710 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an
2711 applicant seeking a position in a congregate care facility, an applicant for a one-time adoption,
2712 an applicant to become a prospective foster parent, or an applicant to become a prospective
2713 adoptive parent if the applicant has been convicted of:

2714 (i) a felony involving conduct that constitutes any of the following:

2715 (A) child abuse, as described in Section 76-5-109;

2716 (B) commission of domestic violence in the presence of a child, as described in Section
2717 76-5-109.1;

2718 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

2719 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

2720 (E) aggravated murder, as described in Section 76-5-202;

2721 (F) murder, as described in Section 76-5-203;

2722 (G) manslaughter, as described in Section 76-5-205;

2723 (H) child abuse homicide, as described in Section 76-5-208;

2724 (I) homicide by assault, as described in Section 76-5-209;

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

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

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

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

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

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

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

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

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

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

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

(d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

(iii) mayhem, as described in Section 76-5-105;

(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

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

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

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding

2756 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

2757 Section 36. Section **62A-2-121** is amended to read:

2758 **62A-2-121. Access to abuse and neglect information.**

2759 (1) [~~For purposes of this section~~] As used in this section:

2760 (a) "Direct service worker" means the same as that term is defined in Section
2761 [62A-5-101](#).

2762 (b) "Personal care attendant" means the same as that term is defined in Section
2763 [62A-3-101](#).

2764 (2) With respect to a licensee, a direct service worker, or a personal care attendant, the
2765 department may access only the Licensing Information System of the Division of Child and
2766 Family Services created by Section [62A-4a-1006](#) and juvenile court records under Subsection
2767 [~~78A-6-323~~] [80-3-404](#)(6), for the purpose of:

2768 (a) (i) determining whether a person associated with a licensee, with direct access to
2769 children:

2770 (A) is listed in the Licensing Information System; or

2771 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
2772 neglect under Subsections [~~78A-6-323~~] [80-3-404](#)(1) and (2); and

2773 (ii) informing a licensee that a person associated with the licensee:

2774 (A) is listed in the Licensing Information System; or

2775 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
2776 neglect under Subsections [~~78A-6-323~~] [80-3-404](#)(1) and (2);

2777 (b) (i) determining whether a direct service worker:

2778 (A) is listed in the Licensing Information System; or

2779 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
2780 neglect under Subsections [~~78A-6-323~~] [80-3-404](#)(1) and (2); and

2781 (ii) informing a direct service worker or the direct service worker's employer that the
2782 direct service worker:

2783 (A) is listed in the Licensing Information System; or

2784 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
2785 neglect under Subsections [~~78A-6-323~~] [80-3-404](#)(1) and (2); or

2786 (c) (i) determining whether a personal care attendant:

- 2787 (A) is listed in the Licensing Information System; or
- 2788 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
- 2789 neglect under Subsections ~~[78A-6-323]~~ 80-3-404(1) and (2); and
- 2790 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
- 2791 personal care attendant:
- 2792 (A) is listed in the Licensing Information System; or
- 2793 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
- 2794 neglect under Subsections ~~[78A-6-323]~~ 80-3-404(1) and (2).
- 2795 (3) Notwithstanding Subsection (2), the department may access the Division of Child
- 2796 and Family Services' Management Information System under Section 62A-4a-1003:
- 2797 (a) for the purpose of licensing and monitoring foster parents;
- 2798 (b) for the purposes described in Subsection 62A-4a-1003(1)(d); and
- 2799 (c) for the purpose described in Section 62A-1-118.
- 2800 (4) The department shall receive and process personal identifying information under
- 2801 Subsection 62A-2-120(1) for the purposes described in Subsection (2).
- 2802 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
- 2803 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
- 2804 may have direct access or provide services to children when:
- 2805 (a) the person is listed in the Licensing Information System of the Division of Child
- 2806 and Family Services created by Section 62A-4a-1006; or
- 2807 (b) juvenile court records show that a court made a substantiated finding under Section
- 2808 ~~[78A-6-323]~~ 80-3-404, that the person committed a severe type of child abuse or neglect.
- 2809 Section 37. Section **62A-4a-102** is amended to read:
- 2810 **62A-4a-102. Rulemaking responsibilities of division.**
- 2811 (1) The Division of Child and Family Services, created in Section 62A-4a-103, is
- 2812 responsible for establishing division rules under Title 63G, Chapter 3, Utah Administrative
- 2813 Rulemaking Act, in accordance with the requirements of this chapter and ~~[Title 78A, Chapter~~
- 2814 ~~6, Juvenile Court Act]~~ Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings,
- 2815 regarding abuse, neglect, and dependency proceedings, and domestic violence services. The
- 2816 division is responsible to see that the legislative purposes for the division are carried out.
- 2817 (2) The division shall:

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

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

(c) provide a mechanism for:

(i) systematic and regular review of existing rules, including an annual review of all division rules to ensure that rules comply with the Utah Code; and

(ii) consideration of rule changes proposed by the persons and agencies described in Subsection (2)(b).

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

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

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

Section 38. Section **62A-4a-103** is amended to read:

62A-4a-103. Division -- Creation -- Purpose.

(1) (a) There is created the Division of Child and Family Services within the department, under the administration and general supervision of the executive director.

(b) The division is the child, youth, and family services authority of the state and has all functions, powers, duties, rights, and responsibilities created in accordance with this chapter, except those assumed by the department.

(2) (a) The primary purpose of the division is to provide child welfare services.

(b) The division shall, when possible and appropriate, provide in-home services for the preservation of families in an effort to protect the child from the trauma of separation from the child's family, protect the integrity of the family, and the constitutional rights of parents. In keeping with its ultimate goal and purpose of protecting children, however, when a child's welfare is endangered or reasonable efforts to maintain or reunify a child with the child's family have failed, the division shall act in a timely fashion in accordance with the requirements of

this chapter and [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings~~]
Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, to provide the child with a
stable, permanent environment.

(3) The division shall also provide domestic violence services in accordance with
federal law.

Section 39. Section **62A-4a-105** is amended to read:

62A-4a-105. Division responsibilities.

(1) The division shall:

(a) administer services to minors and families, including:

(i) child welfare services;

(ii) domestic violence services; and

(iii) all other responsibilities that the Legislature or the executive director may assign to
the division;

(b) provide the following services:

(i) financial and other assistance to an individual adopting a child with special needs
under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the
child as a legal ward of the state;

(ii) non-custodial and in-home services, including:

(A) services designed to prevent family break-up; and

(B) family preservation services;

(iii) reunification services to families whose children are in substitute care in
accordance with the requirements of this chapter and [~~Title 78A, Chapter 6, Juvenile Court
Act~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings;

(iv) protective supervision of a family, upon court order, in an effort to eliminate abuse
or neglect of a child in that family;

(v) shelter care in accordance with the requirements of this chapter and [~~Title 78A,
Chapter 6, Juvenile Court Act~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency
Proceedings;

(vi) domestic violence services, in accordance with the requirements of federal law;

(vii) protective services to victims of domestic violence, as defined in Section 77-36-1,
and their children, in accordance with the provisions of this chapter and [~~Title 78A, Chapter 6,~~

2880 Part] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings;
2881 (viii) substitute care for dependent, abused, and neglected children;
2882 (ix) services for minors who are victims of human trafficking or human smuggling as
2883 described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual
2884 solicitation as defined in Sections 76-10-1302 and 76-10-1313; and
2885 (x) training for staff and providers involved in the administration and delivery of
2886 services offered by the division in accordance with this chapter;
2887 (c) establish standards for all:
2888 (i) contract providers of out-of-home care for minors and families;
2889 (ii) facilities that provide substitute care for dependent, abused, and neglected children
2890 placed in the custody of the division; and
2891 (iii) direct or contract providers of domestic violence services described in Subsection
2892 (1)(b)(vi);
2893 (d) have authority to:
2894 (i) contract with a private, nonprofit organization to recruit and train foster care
2895 families and child welfare volunteers in accordance with Section 62A-4a-107.5; and
2896 (ii) approve facilities that meet the standards established under Subsection (1)(c) to
2897 provide substitute care for dependent, abused, and neglected children placed in the custody of
2898 the division;
2899 (e) cooperate with the federal government in the administration of child welfare and
2900 domestic violence programs and other human service activities assigned by the department;
2901 (f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of
2902 division records to the same extent that the division is required to protect division records,
2903 cooperate with and share all appropriate information in the division's possession regarding an
2904 Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child
2905 with the Indian tribe that is affiliated with the Indian child;
2906 (g) in accordance with Subsection (2)(a), promote and enforce state and federal laws
2907 enacted for the protection of abused, neglected, and dependent children, in accordance with the
2908 requirements of this chapter, unless administration is expressly vested in another division or
2909 department of the state;
2910 (h) cooperate with the Workforce Development Division within the Department of

2911 Workforce Services in meeting the social and economic needs of an individual who is eligible
2912 for public assistance;

2913 (i) compile relevant information, statistics, and reports on child and family service
2914 matters in the state;

2915 (j) prepare and submit to the department, the governor, and the Legislature reports of
2916 the operation and administration of the division in accordance with the requirements of
2917 Sections [62A-4a-117](#) and [62A-4a-118](#);

2918 (k) within appropriations from the Legislature, provide or contract for a variety of
2919 domestic violence services and treatment methods;

2920 (l) ensure regular, periodic publication, including electronic publication, regarding the
2921 number of children in the custody of the division who:

2922 (i) have a permanency goal of adoption; or

2923 (ii) have a final plan of termination of parental rights, pursuant to Section [[78A-6-314](#)]
2924 [80-3-409](#), and promote adoption of those children;

2925 (m) subject to Subsection (2)(b), refer an individual receiving services from the
2926 division to the local substance abuse authority or other private or public resource for a
2927 court-ordered drug screening test;

2928 (n) report before November 30, 2020, and every third year thereafter, to the Social
2929 Services Appropriations Subcommittee regarding:

2930 (i) the daily reimbursement rate that is provided to licensed foster parents based on
2931 level of care;

2932 (ii) the amount of money spent on daily reimbursements for licensed foster parents in
2933 the state during the previous fiscal year; and

2934 (iii) any recommended changes to the division's budget to support the daily
2935 reimbursement rates described in Subsection (1)(n)(i); and

2936 (o) perform other duties and functions required by law.

2937 (2) (a) In carrying out the requirements of Subsection (1)(g), the division shall:

2938 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
2939 with all public and private licensed child welfare agencies and institutions to develop and
2940 administer a broad range of services and support;

2941 (ii) take the initiative in all matters involving the protection of abused or neglected

children, if adequate provisions have not been made or are not likely to be made; and

(iii) make expenditures necessary for the care and protection of the children described in this Subsection (2)(a), within the division's budget.

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)(m), the court shall order the individual to pay all costs of the tests unless:

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

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

(iii) the court finds that the individual is impecunious.

(3) Except to the extent provided by rule, the division is not responsible for investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

(4) The division may not require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo.

Section 40. Section 62A-4a-113 is amended to read:

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

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

(2) (a) Subject to Section 67-5-17 and the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all provisions of this chapter, in addition to the requirements of [~~Title 78A, Chapter 6, Juvenile Court Act of 1996,~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights, relating to protection, custody, and parental rights termination for abused, neglected, or dependent minors.

(b) The attorney general may contract with the local county attorney to enforce the provisions of this chapter and [~~Title 78A, Chapter 6, Juvenile Court Act of 1996~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights.

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

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

(ii) represent the division in all court and administrative proceedings related to abuse, neglect, and dependency including, but not limited to, shelter hearings, dispositional hearings, dispositional review hearings, periodic review hearings, and petitions for termination of parental rights; and

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

(d) (i) The attorney general shall designate no less than 16 full-time attorneys to advise and represent the division in abuse, neglect, and dependency proceedings, including petitions for termination of parental rights.

(ii) The attorneys described in Subsection (2)(d)(i) shall devote their full time and attention to the representation described in Subsection (2)(d)(i) and, insofar as it is practicable, shall be housed in or near various offices of the division statewide.

(3) (a) The attorney general's office shall represent the division with regard to actions involving minors who have not been adjudicated as abused or neglected, but who are otherwise committed to the custody of the division by the juvenile court, and who are placed in custody of the division primarily on the basis of delinquent behavior or a status offense.

(b) Nothing in this section may be construed to affect the responsibility of the county attorney or district attorney to represent the state in the matters described in Subsection (3)(a) in accordance with [~~Section 78A-6-115~~] [Sections 80-3-104 and 80-4-106](#).

Section 41. Section **62A-4a-114** is amended to read:

62A-4a-114. Financial reimbursement by parent or legal guardian.

(1) Except as provided in Subsection (5), the division shall seek reimbursement of funds it has expended on behalf of a child in the protective custody, temporary custody, or custody of the division, from the child's parents or legal guardians in accordance with an order for child support under Section [~~78A-6-1106~~] [78A-6-356](#).

(2) A parent or any other obligated person is not responsible for support for periods of time that a child is removed upon a finding by the juvenile court that there were insufficient grounds for that removal and that child is returned to the home of the parent, parents, or legal guardians based upon that finding.

(3) In the event that the juvenile court finds that there were insufficient grounds for the initial removal, but that the child is to remain in the custody of the state, the juvenile court shall order that the parents or any other obligated persons are responsible for support from the point

at which it became improper to return the child to the home of the child's parent, parents, or legal guardians.

(4) The attorney general shall represent the division in any legal action taken to enforce this section.

(5) (a) A parent or any other obligated person is not responsible for support if:

(i) the parent or other obligated person's only source of income is a government-issued disability benefit; and

(ii) the benefit described in Subsection (5)(a)(i) is issued because of the parent or other person's disability, and not the child's disability.

(b) A person who seeks to be excused from providing support under Subsection (5)(a) shall provide the division and the Office of Recovery Services with evidence that the person meets the requirements of Subsection (5)(a).

Section 42. Section **62A-4a-118** is amended to read:

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

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

(2) (a) In addition to development of quantifiable outcome measures and performance measures in accordance with Section [62A-4a-117](#), the executive director, or the executive director's designee, shall annually review a randomly selected sample of child welfare referrals to and cases handled by the division. The purpose of that review shall be to assess whether the division is adequately protecting children and providing appropriate services to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights. The review shall focus directly on the outcome of cases to children and families, and not simply on procedural compliance with specified criteria.

(b) The executive director shall report on the executive director's review to the legislative auditor general and the Child Welfare Legislative Oversight Panel.

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

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

(a) the criteria used by the executive director, or the executive director's designee, in making the evaluation;

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

(c) findings regarding whether, in each sample case, referrals, removals, or cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights, and division rule;

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

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

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

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

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

(ii) the Child Welfare Legislative Oversight Panel; or

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

(c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor General's report may include:

(i) findings regarding whether state statutes, division rule, legislative policy, and

division policy were followed by the division and its employees;

(ii) a determination regarding whether referrals, removals, and cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided for families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights, and division rule;

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

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

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

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

Section 43. Section **62A-4a-201** is amended to read:

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

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

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the

irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

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

(d) The state recognizes that:

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

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

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

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

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

parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

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

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned, temporary period and place the child in a safe environment, subject to the requirements of this section and in accordance with the requirements of [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and:

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

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

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

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

(7) (a) In accordance with Subsection (1), the division shall strive to achieve appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, where appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. The division may pursue a foster placement only if in-home services fail or are otherwise

insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected. The division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child.

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

(c) Subject to the parental rights recognized and protected under this section, if, because of a parent's conduct or condition, the parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, the continuing welfare and best interest of the child is of paramount importance, and shall be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental health care for a child is subject to [~~Subsections 78A-6-105(4)(b)(i) through (iii) and 78A-6-117(2) and Section 78A-6-301.5.~~] Subsection 80-1-102(51)(b)(i) through (iii) and Sections 80-3-109 and 80-3-304.

Section 44. Section **62A-4a-202.3** is amended to read:

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

(1) When a child is taken into protective custody in accordance with Section 62A-4a-202.1 [~~, 78A-6-106, or 78A-6-302,~~] or 80-3-204 or when the division takes any other action that would require a shelter hearing under Subsection [~~78A-6-306~~] 80-3-301(1), the division shall immediately initiate an investigation of the:

(a) circumstances of the child; and
(b) grounds upon which the decision to place the child into protective custody was made.

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

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

3190 (i) the same child;
3191 (ii) any sibling or other child residing in the same household as the child; and
3192 (iii) the alleged perpetrator;
3193 (b) with regard to a child who is five years ~~[of age]~~ old or older, a personal interview
3194 with the child:
3195 (i) outside of the presence of the alleged perpetrator; and
3196 (ii) conducted in accordance with the requirements of Subsection (7);
3197 (c) if a parent or guardian can be located, an interview with at least one of the child's
3198 parents or guardian;
3199 (d) an interview with the person who reported the abuse, unless the report was made
3200 anonymously;
3201 (e) where possible and appropriate, interviews with other third parties who have had
3202 direct contact with the child, including:
3203 (i) school personnel; and
3204 (ii) the child's health care provider;
3205 (f) an unscheduled visit to the child's home, unless:
3206 (i) there is a reasonable basis to believe that the reported abuse was committed by a
3207 person who:
3208 (A) is not the child's parent; and
3209 (B) does not:
3210 (I) live in the child's home; or
3211 (II) otherwise have access to the child in the child's home; or
3212 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
3213 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
3214 failure to meet the child's medical needs, a medical examination, obtained no later than 24
3215 hours after the child is placed in protective custody.
3216 (3) The division may rely on a written report of a prior interview rather than conducting
3217 an additional interview, if:
3218 (a) law enforcement:
3219 (i) previously conducted a timely and thorough investigation regarding the alleged
3220 abuse, neglect, or dependency; and

3221 (ii) produced a written report;

3222 (b) the investigation described in Subsection (3)(a)(i) included one or more of the

3223 interviews required by Subsection (2); and

3224 (c) the division finds that an additional interview is not in the best interest of the child.

3225 (4) (a) The division's determination of whether a report is supported or unsupported

3226 may be based on the child's statements alone.

3227 (b) Inability to identify or locate the perpetrator may not be used by the division as a

3228 basis for:

3229 (i) determining that a report is unsupported; or

3230 (ii) closing the case.

3231 (c) The division may not determine a case to be unsupported or identify a case as

3232 unsupported solely because the perpetrator was an out-of-home perpetrator.

3233 (d) Decisions regarding whether a report is supported, unsupported, or without merit

3234 shall be based on the facts of the case at the time the report was made.

3235 (5) The division should maintain protective custody of the child if it finds that one or

3236 more of the following conditions exist:

3237 (a) the child does not have a natural parent, guardian, or responsible relative who is

3238 able and willing to provide safe and appropriate care for the child;

3239 (b) (i) shelter of the child is a matter of necessity for the protection of the child; and

3240 (ii) there are no reasonable means by which the child can be protected in:

3241 (A) the child's home; or

3242 (B) the home of a responsible relative;

3243 (c) there is substantial evidence that the parent or guardian is likely to flee the

3244 jurisdiction of the court; or

3245 (d) the child has left a previously court ordered placement.

3246 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding

3247 weekends and holidays, the division shall:

3248 (i) convene a child protection team to review the circumstances regarding removal of

3249 the child from the child's home or school; and

3250 (ii) prepare the testimony and evidence that will be required of the division at the

3251 shelter hearing, in accordance with Section ~~[78A-6-306]~~ [80-3-301](#).

3252 (b) The child protection team may include members of a child protection unit.

3253 (c) At the 24-hour meeting, the division shall have available for review and
3254 consideration the complete child protective services and foster care history of the child and the
3255 child's parents and siblings.

3256 (7) (a) After receipt of a child into protective custody and prior to the adjudication
3257 hearing, all investigative interviews with the child that are initiated by the division shall be:

3258 (i) except as provided in Subsection (7)(b), audio or video taped; and

3259 (ii) except as provided in Subsection (7)(c), conducted with a support person of the
3260 child's choice present.

3261 (b) (i) Subject to Subsection (7)(b)(ii), an interview described in Subsection (7)(a) may
3262 be conducted without being taped if the child:

3263 (A) is at least nine years old;

3264 (B) refuses to have the interview audio taped; and

3265 (C) refuses to have the interview video taped.

3266 (ii) If, pursuant to Subsection (7)(b)(i), an interview is conducted without being taped,
3267 the child's refusal shall be documented, as follows:

3268 (A) the interviewer shall attempt to get the child's refusal on tape, including the reasons
3269 for the refusal; or

3270 (B) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the
3271 interviewer shall:

3272 (I) state on the tape that the child is present, but has refused to have the interview,
3273 refusal, or the reasons for the refusal taped; or

3274 (II) if complying with Subsection (7)(b)(ii)(B)(I) will result in the child, who would
3275 otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall
3276 document, in writing, that the child refused to allow the interview to be taped and the reasons
3277 for that refusal.

3278 (iii) The division shall track the number of interviews under this Subsection (7) that are
3279 not taped, and the number of refusals that are not taped, for each interviewer, in order to
3280 determine whether a particular interviewer has a higher incidence of refusals, or taped refusals,
3281 than other interviewers.

3282 (c) (i) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an

interview of a child may not be an alleged perpetrator.

(ii) Subsection (7)(a)(ii) does not apply if the child refuses to have a support person present during the interview.

(iii) If a child described in Subsection (7)(c)(ii) refuses to have a support person present in the interview, the interviewer shall document, in writing, the refusal and the reasons for the refusal.

(iv) The division shall track the number of interviews under this Subsection (7) where a child refuses to have a support person present for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals than other interviewers.

(8) The division shall cooperate with law enforcement investigations and with a child protection unit, if applicable, regarding the alleged perpetrator.

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

- (a) visiting the home at times other than normal work hours;
- (b) contacting local schools;
- (c) contacting local, county, and state law enforcement agencies; and
- (d) checking public assistance records.

Section 45. Section **62A-4a-202.4** is amended to read:

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

(1) For purposes of background screening and investigation of abuse or neglect under this chapter and [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings,~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

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

Section 46. Section **62A-4a-202.8** is amended to read:

62A-4a-202.8. Child protection team meeting -- Timing.

(1) Subject to Subsection (2), if the division files a petition under Section [~~78A-6-304~~]

3314 [80-3-201](#), the division shall convene a child protection team meeting to:

3315 (a) review the circumstances of the filing of the petition; and

3316 (b) develop or review implementation of a safety plan to protect the child from further
3317 abuse, neglect, or dependency.

3318 (2) The child protection team meeting required under Subsection (1) shall be held
3319 within the shorter of:

3320 (a) 14 days of the day on which the petition is filed under Section [~~78A-6-304~~]

3321 [80-3-201](#) if the conditions of Subsection (2)(b) or (c) are not met;

3322 (b) 24 hours of the filing of the petition under Section [~~78A-6-304~~] [80-3-201](#),
3323 excluding weekends and holidays, if the child who is the subject of the petition will likely be
3324 taken into protective custody unless there is an expedited hearing and services ordered under
3325 the protective supervision of the court; or

3326 (c) 24 hours after receipt of a child into protective custody, excluding weekends and
3327 holidays, if the child is taken into protective custody as provided in Section [62A-4a-202.3](#).

3328 (3) The child protection team may include members of a child protection unit.

3329 (4) At its meeting the child protection team shall review the complete child protective
3330 services and foster care history of the child and the child's parents and siblings.

3331 Section 47. Section **62A-4a-203** is amended to read:

3332 **62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain**
3333 **child in home -- Exception -- Reasonable efforts for reunification.**

3334 (1) Because removal of a child from the child's home affects protected, constitutional
3335 rights of the parent and has a dramatic, long-term impact on a child, the division shall:

3336 (a) when possible and appropriate, without danger to the child's welfare, make
3337 reasonable efforts to prevent or eliminate the need for removal of a child from the child's home
3338 prior to placement in substitute care;

3339 (b) determine whether there is substantial cause to believe that a child has been or is in
3340 danger of abuse or neglect, in accordance with the guidelines described in [~~Title 78A, Chapter~~
3341 ~~6, Part 3, Abuse, Neglect, and Dependency Proceedings, prior to~~] Title 80, Chapter 3, Abuse,
3342 Neglect, and Dependency Proceedings, before removing the child from the child's home; and

3343 (c) when it is possible and appropriate, and in accordance with the limitations and
3344 requirements of Sections [~~78A-6-312 and 78A-6-314~~] [80-3-406](#) and [80-3-409](#), make reasonable

3345 efforts to make it possible for a child in substitute care to return to the child's home.

3346 (2) (a) In determining the reasonableness of efforts needed to maintain a child in the
3347 child's home or to return a child to the child's home, in accordance with Subsection (1)(a) or
3348 (c), the child's health, safety, and welfare shall be the paramount concern.

3349 (b) The division shall consider whether the efforts described in Subsections (1) and (2)
3350 are likely to prevent abuse or continued neglect of the child.

3351 (3) When removal and placement in substitute care is necessary to protect a child, the
3352 efforts described in Subsections (1) and (2):

3353 (a) are not reasonable or appropriate; and

3354 (b) should not be utilized.

3355 (4) Subject to Subsection (5), in cases where sexual abuse, sexual exploitation,
3356 abandonment, severe abuse, or severe neglect are involved, the state has no duty to make
3357 reasonable efforts to, in any way, attempt to:

3358 (a) maintain a child in the child's home;

3359 (b) provide reunification services; or

3360 (c) rehabilitate the offending parent or parents.

3361 (5) Nothing in Subsection (4) exempts the division from providing court ordered
3362 services.

3363 Section 48. Section **62A-4a-205** is amended to read:

3364 **62A-4a-205. Child and family plan -- Parent-time and relative visitation.**

3365 (1) No more than 45 days after a child enters the temporary custody of the division, the
3366 child's child and family plan shall be finalized.

3367 (2) (a) The division may use an interdisciplinary team approach in developing each
3368 child and family plan.

3369 (b) The interdisciplinary team described in Subsection (2)(a) may include
3370 representatives from the following fields:

3371 (i) mental health;

3372 (ii) education; and

3373 (iii) if appropriate, law enforcement.

3374 (3) (a) The division shall involve all of the following in the development of a child's
3375 child and family plan:

3376 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
3377 (ii) the child;
3378 (iii) the child's foster parents; and
3379 (iv) if appropriate, the child's stepparent.

3380 (b) Subsection (3)(a) does not prohibit any other party not listed in Subsection (3)(a) or
3381 a party's counsel from being involved in the development of a child's child and family plan if
3382 the party or counsel's participation is otherwise permitted by law.

3383 (c) In relation to all information considered by the division in developing a child and
3384 family plan, additional weight and attention shall be given to the input of the child's natural and
3385 foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

3386 (d) (i) The division shall make a substantial effort to develop a child and family plan
3387 with which the child's parents agree.

3388 (ii) If a parent does not agree with a child and family plan:

3389 (A) the division shall strive to resolve the disagreement between the division and the
3390 parent; and

3391 (B) if the disagreement is not resolved, the division shall inform the court of the
3392 disagreement.

3393 (4) A copy of the child and family plan shall, immediately upon completion, or as soon
3394 as reasonably possible thereafter, be provided to the:

3395 (a) guardian ad litem;

3396 (b) child's natural parents; and

3397 (c) child's foster parents.

3398 (5) Each child and family plan shall:

3399 (a) specifically provide for the safety of the child, in accordance with federal law; and

3400 (b) clearly define what actions or precautions will, or may be, necessary to provide for
3401 the health, safety, protection, and welfare of the child.

3402 (6) The child and family plan shall set forth, with specificity, at least the following:

3403 (a) the reason the child entered into the custody of the division;

3404 (b) documentation of the:

3405 (i) reasonable efforts made to prevent placement of the child in the custody of the
3406 division; or

3407 (ii) emergency situation that existed and that prevented the reasonable efforts described
3408 in Subsection (6)(b)(i), from being made;

3409 (c) the primary permanency plan for the child and the reason for selection of that plan;

3410 (d) the concurrent permanency plan for the child and the reason for the selection of that
3411 plan;

3412 (e) if the plan is for the child to return to the child's family:

3413 (i) specifically what the parents must do in order to enable the child to be returned
3414 home;

3415 (ii) specifically how the requirements described in Subsection (6)(e)(i) may be
3416 accomplished; and

3417 (iii) how the requirements described in Subsection (6)(e)(i) will be measured;

3418 (f) the specific services needed to reduce the problems that necessitated placing the
3419 child in the division's custody;

3420 (g) the name of the person who will provide for and be responsible for case
3421 management;

3422 (h) subject to Subsection (10), a parent-time schedule between the natural parent and
3423 the child;

3424 (i) subject to Subsection (7), the health and mental health care to be provided to
3425 address any known or diagnosed mental health needs of the child;

3426 (j) if residential treatment rather than a foster home is the proposed placement, a
3427 requirement for a specialized assessment of the child's health needs including an assessment of
3428 mental illness and behavior and conduct disorders;

3429 (k) social summaries that include case history information pertinent to case planning;
3430 and

3431 (l) subject to Subsection (12), a sibling visitation schedule.

3432 (7) (a) Subject to Subsection (7)(b), in addition to the information required under
3433 Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental
3434 health needs of a child, if the child:

3435 (i) is placed in residential treatment; and

3436 (ii) has medical or mental health issues that need to be addressed.

3437 (b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate

3438 medical or mental health diagnosis of the parent's child from a licensed practitioner of the
3439 parent's choice.

3440 (8) (a) Each child and family plan shall be specific to each child and the child's family,
3441 rather than general.

3442 (b) The division shall train its workers to develop child and family plans that comply
3443 with:

3444 (i) federal mandates; and

3445 (ii) the specific needs of the particular child and the child's family.

3446 (c) All child and family plans and expectations shall be individualized and contain
3447 specific time frames.

3448 (d) Subject to Subsection (8)(h), child and family plans shall address problems that:

3449 (i) keep a child in placement; and

3450 (ii) keep a child from achieving permanence in the child's life.

3451 (e) Each child and family plan shall be designed to minimize disruption to the normal
3452 activities of the child's family, including employment and school.

3453 (f) In particular, the time, place, and amount of services, hearings, and other
3454 requirements ordered by the court in the child and family plan shall be designed, as much as
3455 practicable, to help the child's parents maintain or obtain employment.

3456 (g) The child's natural parents, foster parents, and where appropriate, stepparents, shall
3457 be kept informed of and supported to participate in important meetings and procedures related
3458 to the child's placement.

3459 (h) For purposes of Subsection (8)(d), a child and family plan may only include
3460 requirements that:

3461 (i) address findings made by the court; or

3462 (ii) (A) are requested or consented to by a parent or guardian of the child; and

3463 (B) are agreed to by the division and the guardian ad litem.

3464 (9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three
3465 years ~~[of age]~~ old or younger, if the plan is not to return the child home, the primary
3466 permanency plan for that child shall be adoption.

3467 (b) Notwithstanding Subsection (9)(a), if the division documents to the court that there
3468 is a compelling reason that adoption, reunification, guardianship, and a placement described in

Subsection [~~78A-6-306~~] 80-3-301(6)(e) are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.

(10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued [~~pursuant to Subsections 78A-6-312(3), (6), and (7)~~] in accordance with Subsection 80-3-406(9).

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

- (i) protect the physical safety of the child;
- (ii) protect the life of the child; or
- (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

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

- (i) the child's fear of the parent; and
- (ii) the nature of the alleged abuse or neglect.

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

- (a) there are no safety concerns regarding the behavior or criminal background of the grandparents;
- (b) allowing visitation would not compete with or undermine the reunification plan;
- (c) there is a substantial relationship between the grandparents and children; and
- (d) the visitation will not unduly burden the foster parents.

(12) The child and family plan shall incorporate reasonable efforts to:

- (a) provide sibling visitation when:
 - (i) siblings are separated due to foster care or adoptive placement;
 - (ii) visitation is in the best interest of the child for whom the plan is developed; and
 - (iii) the division has consent for sibling visitation from the legal guardian of the sibling; and

(b) obtain consent for sibling visitation from the sibling's legal guardian when the criteria of Subsections (12)(a)(i) and (ii) are met.

Section 49. Section **62A-4a-205.5** is amended to read:

62A-4a-205.5. Prohibition of discrimination based on race, color, or ethnicity.

(1) As used in this section, "adoptable children" means children:

(a) who are in the custody of the division; and

(b) (i) who have permanency goals of adoption; or

(ii) for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section ~~[78A-6-314]~~ 80-3-409.

(2) Except as required under the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, the division may not base its decision for placement of adoptable children on the race, color, ethnicity, or national origin of either the child or the prospective adoptive parents.

(3) The basis of a decision for placement of an adoptable child shall be the best interest of the child.

Section 50. Section **62A-4a-205.6** is amended to read:

62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.

(1) With regard to a child who has a primary permanency plan of adoption or for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section ~~[78A-6-314]~~ 80-3-409, the division shall make intensive efforts to place the child in an adoptive home within 30 days of the earlier of:

(a) approval of the final plan; or

(b) establishment of the primary permanency plan.

(2) If within the time periods described in Subsection (1) the division is unable to locate a suitable adoptive home, it shall contract with licensed child-placing agencies to search for an appropriate adoptive home for the child, and to place the child for adoption. The division shall comply with the requirements of Section ~~62A-4a-607~~ and contract with a variety of child placing agencies licensed under ~~[Title 62A, Chapter 4a,]~~ Part 6, Child Placing. In accordance with federal law, the division shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

(3) The division shall ensure that children who are adopted and were previously in its custody, continue to receive the medical and mental health coverage that they are entitled to

under state and federal law.

(4) The division may not consider a prospective adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with the prospective adoptive parent.

Section 51. Section 62A-4a-206 is amended to read:

62A-4a-206. Process for removal of a child from foster family -- Procedural due process.

(1) (a) The Legislature finds that, except with regard to a child's natural parent or legal guardian, a foster family has a very limited but recognized interest in its familial relationship with a foster child who has been in the care and custody of that family. In making determinations regarding removal of a child from a foster home, the division may not dismiss the foster family as a mere collection of unrelated individuals.

(b) The Legislature finds that children in the temporary custody and custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

(c) For the reasons described in Subsections (1)(a) and (b), the division shall provide procedural due process for a foster family prior to removal of a foster child from their home, regardless of the length of time the child has been in that home, unless removal is for the purpose of:

(i) returning the child to the child's natural parent or legal guardian;

(ii) immediately placing the child in an approved adoptive home;

(iii) placing the child with a relative, as defined in ~~[Subsection 78A-6-307(1)]~~ Section 80-3-102, who obtained custody or asserted an interest in the child within the preference period described in Subsection ~~[78A-6-307(18)(a)]~~ 80-3-302(8); or

(iv) placing an Indian child in accordance with ~~[preplacement]~~ placement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

(2) (a) The division shall maintain and utilize due process procedures for removal of a foster child from a foster home, in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(b) Those procedures shall include requirements for:

(i) personal communication with, and a written explanation of the reasons for the removal to, the foster parents prior to removal of the child; and

(ii) an opportunity for foster parents to present their information and concerns to the division and to:

(A) request a review, to be held before removal of the child, by a third party neutral fact finder; or

(B) if the child has been placed with the foster parents for a period of at least two years, request a review, to be held before removal of the child, by:

(I) the juvenile court judge currently assigned to the child's case; or

(II) if the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

(c) If the division determines that there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, it shall place the child in emergency foster care during the pendency of the procedures described in this subsection, instead of making another foster care placement.

(3) If the division removes a child from a foster home based upon the child's statement alone, the division shall initiate and expedite the processes described in Subsection (2). The division may take no formal action with regard to that foster parent's license until after those processes, in addition to any other procedure or hearing required by law, have been completed.

(4) When a complaint is made to the division by a foster child against a foster parent, the division shall, within 30 business days, provide the foster parent with information regarding the specific nature of the complaint, the time and place of the alleged incident, and who was alleged to have been involved.

(5) Whenever the division places a child in a foster home, it shall provide the foster parents with:

(a) notification of the requirements of this section;

(b) a written description of the procedures enacted by the division pursuant to Subsection (2) and how to access those processes; and

(c) written notification of the foster parents' ability to petition the juvenile court directly for review of a decision to remove a foster child who has been in their custody for 12 months or longer, in accordance with the limitations and requirements of Section [78A-6-318]

[80-3-502](#).

(6) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that removal.

(7) It is unlawful for a person, with the intent to avoid compliance with the requirements of this section, to:

(a) take action, or encourage another to take action, against the license of a foster parent; or

(b) remove a child from a foster home before the child has been placed with the foster parents for two years.

(8) The division may not remove a foster child from a foster parent who is a relative, as defined in ~~[Subsection 78A-6-307(1)]~~ [Section 80-3-102](#), of the child on the basis of the age or health of the foster parent without determining by:

(a) clear and convincing evidence that the foster parent is incapable of caring for the foster child, if the alternative foster parent would not be another relative of the child; or

(b) a preponderance of the evidence that the foster parent is incapable of caring for the foster child, if the alternative foster parent would be another relative of the child.

Section 52. Section **62A-4a-206.5** is amended to read:

62A-4a-206.5. Child missing from state custody.

(1) When the division receives information that a child in the custody of the division is missing, has been abducted, or has run away, the division shall:

(a) within 24 hours after the time when the division has reason to believe that the information is accurate, notify the National Center for Missing and Exploited Children; and

(b) pursue a warrant under Subsection ~~[78A-6-106(6)]~~ [62A-4a-202.1\(8\)](#).

(2) When the division locates a child described in Subsection (1), the division shall:

(a) determine the primary factors that caused or contributed to the child's absence from care;

(b) determine the child's experiences while absent from care, including screening the child to determine if the child is a sex trafficking victim;

(c) to the extent possible, select a placement for the child that accommodates the child's needs and takes into consideration the factors and experiences described in Subsections (2)(a) and (b); and

(d) follow the requirements in Section [~~78A-6-307.5~~] 80-3-303 for determining an ongoing placement of the child.

Section 53. Section **62A-4a-207** is amended to read:

62A-4a-207. Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

(3) The panel shall follow the interim committee rules established by the Legislature.

(4) The panel shall:

(a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;

(b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system, including the division, other offices and agencies within the department, the attorney general's office, the Office of Guardian Ad Litem, and school districts;

(c) before October 1 of each year, receive a report from the judicial branch identifying the cases not in compliance with the time limits established in the following sections, and the reasons for noncompliance:

(i) Subsection [~~78A-6-306(1)(a)~~] 80-3-301(1), regarding shelter hearings;

- 3655 (ii) Section [~~78A-6-309~~] [80-3-401](#), regarding pretrial and adjudication hearings;
- 3656 (iii) Section [~~78A-6-312~~] [80-3-406](#), regarding dispositional hearings and reunification
- 3657 services; and
- 3658 (iv) Section [~~78A-6-314~~] [80-3-409](#), regarding permanency hearings and petitions for
- 3659 termination;
- 3660 (d) receive recommendations from, and make recommendations to the governor, the
- 3661 Legislature, the attorney general, the division, the Office of Guardian Ad Litem, the juvenile
- 3662 court, and the public;
- 3663 (e) (i) receive reports from the executive branch and the judicial branch on budgetary
- 3664 issues impacting the child welfare system; and
- 3665 (ii) recommend, as the panel considers advisable, budgetary proposals to the Social
- 3666 Services Appropriations Subcommittee and the Executive Offices and Criminal Justice
- 3667 Appropriations Subcommittee, which recommendation should be made before December 1 of
- 3668 each year;
- 3669 (f) study and recommend proposed changes to laws governing the child welfare
- 3670 system;
- 3671 (g) study actions the state can take to preserve, unify, and strengthen the child's family
- 3672 ties whenever possible in the child's best interest, including recognizing the constitutional
- 3673 rights and claims of parents whenever those family ties are severed or infringed;
- 3674 (h) perform such other duties related to the oversight of the child welfare system as the
- 3675 panel considers appropriate; and
- 3676 (i) annually report the panel's findings and recommendations to the president of the
- 3677 Senate, the speaker of the House of Representatives, the Health and Human Services Interim
- 3678 Committee, and the Judiciary Interim Committee.
- 3679 (5) (a) The panel has authority to review and discuss individual cases.
- 3680 (b) When an individual case is discussed, the panel's meeting may be closed pursuant
- 3681 to Title 52, Chapter 4, Open and Public Meetings Act.
- 3682 (c) When discussing an individual case, the panel shall make reasonable efforts to
- 3683 identify and consider the concerns of all parties to the case.
- 3684 (6) (a) The panel has authority to make recommendations to the Legislature, the
- 3685 governor, the Board of Juvenile Court Judges, the division, and any other statutorily created

entity related to the policies and procedures of the child welfare system. The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to appear and present their views regarding the child welfare system in this state.

(7) (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The panel shall have access to all of the division's records, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Compensation and expenses of a member of the panel who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Section 54. Section 62A-4a-209 is amended to read:

62A-4a-209. Emergency placement.

(1) As used in this section:

(a) "Friend" means the same as that term is defined in ~~Subsection 78A-6-307(1)]~~
Section 80-3-102.

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

(c) "Relative" means the same as that term is defined in ~~Subsection 78A-6-307(1)]~~

3717 Section 80-3-102.

3718 (2) The division may use an emergency placement under Subsection

3719 62A-4a-202.1[(4)(b)(ii)](7)(b) when:

3720 (a) the case worker has made the determination that:

3721 (i) the child's home is unsafe;

3722 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

3723 (iii) the child's custodial parent or guardian will agree to not remove the child from the

3724 home of the individual that serves as the placement and not have any contact with the child

3725 until after the shelter hearing required by Section [~~78A-6-306~~] 80-3-301;

3726 (b) an individual, with preference being given in accordance with Subsection (4), can

3727 be identified who has the ability and is willing to provide care for the child who would

3728 otherwise be placed in shelter care, including:

3729 (i) taking the child to medical, mental health, dental, and educational appointments at

3730 the request of the division; and

3731 (ii) making the child available to division services and the guardian ad litem; and

3732 (c) the individual described in Subsection (2)(b) agrees to care for the child on an

3733 emergency basis under the following conditions:

3734 (i) the individual meets the criteria for an emergency placement under Subsection (3);

3735 (ii) the individual agrees to not allow the custodial parent or guardian to have any

3736 contact with the child until after the shelter hearing unless authorized by the division in writing;

3737 (iii) the individual agrees to contact law enforcement and the division if the custodial

3738 parent or guardian attempts to make unauthorized contact with the child;

3739 (iv) the individual agrees to allow the division and the child's guardian ad litem to have

3740 access to the child;

3741 (v) the individual has been informed and understands that the division may continue to

3742 search for other possible placements for long-term care, if needed;

3743 (vi) the individual is willing to assist the custodial parent or guardian in reunification

3744 efforts at the request of the division, and to follow all court orders; and

3745 (vii) the child is comfortable with the individual.

3746 (3) Except as otherwise provided in Subsection (5), before the division places a child in

3747 an emergency placement, the division:

3748 (a) may request the name of a reference and may contact the reference to determine the
3749 answer to the following questions:

3750 (i) would the individual identified as a reference place a child in the home of the
3751 emergency placement; and

3752 (ii) are there any other relatives or friends to consider as a possible emergency or
3753 long-term placement for the child;

3754 (b) shall have the custodial parent or guardian sign an emergency placement agreement
3755 form during the investigation;

3756 (c) (i) if the emergency placement will be with a relative, shall comply with the
3757 background check provisions described in Subsection (7); or

3758 (ii) if the emergency placement will be with an individual other than a noncustodial
3759 parent or a relative, shall comply with the background check provisions described in
3760 Subsection (8) for adults living in the household where the child will be placed;

3761 (d) shall complete a limited home inspection of the home where the emergency
3762 placement is made; and

3763 (e) shall have the emergency placement approved by a family service specialist.

3764 (4) (a) The following order of preference shall be applied when determining the
3765 individual with whom a child will be placed in an emergency placement described in this
3766 section, provided that the individual is willing, and has the ability, to care for the child:

3767 (i) a noncustodial parent of the child in accordance with Section ~~[78A-6-307]~~
3768 [80-3-302](#);

3769 (ii) a relative;

3770 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent, guardian,
3771 or the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a
3772 placement;

3773 (iv) a former foster placement designated by the division;

3774 (v) a foster placement, that is not a former foster placement, designated by the division;
3775 and

3776 (vi) a shelter facility designated by the division.

3777 (b) In determining whether a friend is a willing and appropriate temporary emergency
3778 placement for a child, the division:

(i) subject to Subsections (4)(b)(ii) through (iv), shall consider the child's preferences or level of comfort with the friend;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) respond to the emergency placement's calls within one hour if the custodial parents

or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section ~~[78A-6-306]~~ [80-3-301](#);

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

(d) complete the placement procedures required in Section ~~[78A-6-307]~~ [80-3-302](#); and

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

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

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

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

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

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

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

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

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

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

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

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

(d) (i) Within 15 calendar days of the name-based background checks, the division shall require an individual to provide a complete set of fingerprints with written permission to

the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

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

Section 55. Section **62A-4a-409** is amended to read:

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

(1) (a) Except as provided in Subsection (1)(c), the division shall conduct a thorough preremoval investigation upon receiving either an oral or written report of alleged abuse or neglect, or an oral or written report under Subsection **62A-4a-404**(2), when there is reasonable cause to suspect that a situation of abuse, neglect, or the circumstances described under Subsection **62A-4a-404**(2) exist.

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

(c) The division is not required to conduct an investigation under Subsection (1)(a) if the division determines the person responsible for the child's care:

- (i) is not the alleged perpetrator; and
- (ii) is willing and able to ensure the alleged perpetrator does not have access to the child.

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

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

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

(b) The division shall convene a child protection team to assist the division in the division's protective, diagnostic, assessment, treatment, and coordination services.

(c) The division may include members of a child protection unit in the division's protective, diagnostic, assessment, treatment, and coordination services.

(d) A representative of the division shall serve as the team's coordinator and chair.

3872 Members of the team shall serve at the coordinator's invitation. Whenever possible, the team
3873 shall include representatives of:

- 3874 (i) health, mental health, education, and law enforcement agencies;
- 3875 (ii) the child;
- 3876 (iii) parent and family support groups unless the parent is alleged to be the perpetrator;
- 3877 and
- 3878 (iv) other appropriate agencies or individuals.

3879 (5) If a report of neglect is based upon or includes an allegation of educational neglect,
3880 the division shall immediately consult with school authorities to verify the child's status in
3881 accordance with Sections [53G-6-201](#) through [53G-6-206](#).

3882 (6) When the division completes the division's initial investigation under this part, the
3883 division shall give notice of that completion to the person who made the initial report.

3884 (7) Division workers or other child protection team members have authority to enter
3885 upon public or private premises, using appropriate legal processes, to investigate reports of
3886 alleged abuse or neglect, upon notice to parents of their rights under the Child Abuse
3887 Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

3888 (8) With regard to any interview of a child prior to removal of that child from the
3889 child's home:

3890 (a) except as provided in Subsection (8)(b) or (c), the division shall inform a parent of
3891 the child prior to the interview of:

- 3892 (i) the specific allegations concerning the child; and
- 3893 (ii) the time and place of the interview;

3894 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
3895 alleged perpetrator, the division is not required to comply with Subsection (8)(a);

3896 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
3897 is unknown, the division may conduct a minimal interview or conversation, not to exceed 15
3898 minutes, with the child prior to complying with Subsection (8)(a);

3899 (d) in all cases described in Subsection (8)(b) or (c), a parent of the child shall be
3900 notified as soon as practicable after the child has been interviewed, but in no case later than 24
3901 hours after the interview has taken place;

3902 (e) a child's parents shall be notified of the time and place of all subsequent interviews

3903 with the child; and

3904 (f) the child shall be allowed to have a support person of the child's choice present,
3905 who:

3906 (i) may include:

3907 (A) a school teacher;

3908 (B) an administrator;

3909 (C) a guidance counselor;

3910 (D) a child care provider;

3911 (E) a family member;

3912 (F) a family advocate; or

3913 (G) a member of the clergy; and

3914 (ii) may not be an individual who is alleged to be, or potentially may be, the
3915 perpetrator.

3916 (9) In accordance with the procedures and requirements of Sections [62A-4a-202.1](#)
3917 through [62A-4a-202.3](#), a division worker or child protection team member may take a child
3918 into protective custody and deliver the child to a law enforcement officer, or place the child in
3919 an emergency shelter facility approved by the juvenile court, at the earliest opportunity
3920 subsequent to the child's removal from the child's original environment. Control and
3921 jurisdiction over the child is determined by the provisions of [~~Title 78A, Chapter 6, Juvenile~~
3922 ~~Court Act~~] Title 78A, Chapter 6, Juvenile Court, and Title 80, Utah Juvenile Code, and as
3923 otherwise provided by law.

3924 (10) With regard to cases in which law enforcement has or is conducting an
3925 investigation of alleged abuse or neglect of a child:

3926 (a) the division shall coordinate with law enforcement to ensure that there is an
3927 adequate safety plan to protect the child from further abuse or neglect; and

3928 (b) the division is not required to duplicate an aspect of the investigation that, in the
3929 division's determination, has been satisfactorily completed by law enforcement.

3930 (11) With regard to a mutual case in which a child protection unit was involved in the
3931 investigation of alleged abuse or neglect of a child, the division shall consult with the child
3932 protection unit before closing the case.

3933 Section 56. Section **62A-4a-412** is amended to read:

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

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

(a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect, including members of a child protection unit;

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

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

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

(e) except as provided in Subsection [63G-2-202](#)(10), a subject of the report, the natural parents of the child, and the guardian ad litem;

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

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

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

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

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

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

(j) the State Board of Education, acting on behalf of itself or on behalf of a local education agency, as defined in Section [63J-5-102](#), for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an

employee or volunteer in a school, limited to information with substantiated or supported findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

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

(l) except as provided in Subsection 63G-2-202(10), a person filing a petition for a child protective order on behalf of a child who is the subject of the report;

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

(n) an Indian tribe to:

(i) certify or license a foster home;

(ii) render services to a subject of a report; or

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

(o) the Division of Substance Abuse and Mental Health, the Department of Health, or a local substance abuse authority, described in Section 17-43-201, for the purpose of providing substance abuse treatment to a pregnant woman, or the services described in Subsection 62A-15-103(2)(o).

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

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

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

(b) Notwithstanding any other provision of law, excluding Section [78A-6-317]

[80-3-107](#), but including this chapter and Title 63G, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in the division's possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

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

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

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

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

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

Section 57. Section [62A-4a-607](#) is amended to read:

[62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive parents.](#)

(1) (a) The division and all child-placing agencies licensed under this part shall promote adoption when that is a possible and appropriate alternative for a child. Specifically, in accordance with Section [62A-4a-205.6](#), the division shall actively promote the adoption of all children in its custody who have a final plan for termination of parental rights pursuant to Section [~~78A-6-314~~] [80-3-409](#) or a primary permanency plan of adoption.

(b) Beginning May 1, 2000, the division may not place a child for adoption, either temporarily or permanently, with any individual or individuals who do not qualify for adoptive

4027 placement pursuant to the requirements of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

4028 (2) The division shall obtain or conduct research of prior adoptive families to
4029 determine what families may do to be successful with their adoptive children and shall make
4030 this research available to potential adoptive parents.

4031 (3) (a) A child-placing agency licensed under this part shall inform each potential
4032 adoptive parent with whom it is working that:

4033 (i) children in the custody of the state are available for adoption;

4034 (ii) Medicaid coverage for medical, dental, and mental health services may be available
4035 for these children;

4036 (iii) tax benefits, including the tax credit provided for in Section 59-10-1104, and
4037 financial assistance may be available to defray the costs of adopting these children;

4038 (iv) training and ongoing support may be available to the adoptive parents of these
4039 children; and

4040 (v) information about individual children may be obtained by contacting the division's
4041 offices or its Internet site as explained by the child-placing agency.

4042 (b) A child-placing agency shall:

4043 (i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity;
4044 and

4045 (ii) simultaneously distribute a copy of the pamphlet prepared by the division in
4046 accordance with Subsection (3)(d).

4047 (c) As a condition of licensure, the child-placing agency shall certify to the Office of
4048 Licensing at the time of license renewal that it has complied with the provisions of this section.

4049 (d) Before July 1, 2000, the division shall:

4050 (i) prepare a pamphlet that explains the information that is required by Subsection
4051 (3)(a); and

4052 (ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to
4053 child-placing agencies.

4054 (e) The division shall respond to any inquiry made as a result of the notice provided in
4055 Subsection (3)(a).

4056 Section 58. Section 62A-4a-711 is amended to read:

4057 **62A-4a-711. Penalty.**

An individual or entity that knowingly engages in an unregulated custody transfer, as defined in Section ~~[78A-6-105]~~ 80-1-102, is guilty of a class B misdemeanor.

Section 59. Section **62A-4a-802** is amended to read:

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

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

(b) Safe relinquishment of a newborn child who has not otherwise been subject to abuse or neglect shall not, in and of itself, constitute neglect ~~[as defined in Section 78A-6-105]~~, and the newborn child shall not be considered a neglected child, as defined in Section ~~[78A-6-105]~~ 80-1-102, so long as the relinquishment is carried out in substantial compliance with the provisions of this part.

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

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

(c) If the newborn child's parent or the parent's designee provides the person receiving the newborn child with any of the information described in Subsection (2)(b) or any other personal items, the person shall provide the information or personal items to the division.

(d) Personnel employed by the hospital shall:

(i) provide any necessary medical care to the newborn child;

(ii) notify the division of receipt of the newborn child as soon as possible, but no later than 24 hours after receipt of the newborn child; and

(iii) prepare a birth certificate or foundling birth certificate if parentage is unknown for the newborn child and file the certificate with the Office of Vital Records and Statistics within the Department of Health.

(e) A hospital and personnel employed by a hospital are immune from any civil or criminal liability arising from accepting a newborn child if the personnel employed by the hospital substantially comply with the provisions of this part and medical treatment is

4089 administered according to standard medical practice.

4090 (3) The division shall assume care and custody of the newborn child immediately upon
4091 notice from the hospital.

4092 (4) So long as the division determines there is no abuse or neglect of the newborn
4093 child, neither the newborn child nor the child's parents are subject to:

4094 (a) the provisions of Part 2, Child Welfare Services;

4095 (b) the investigation provisions contained in Section 62A-4a-409; or

4096 (c) the provisions of [~~Title 78A, Chapter 6, Part~~] Title 80, Chapter 3, Abuse, Neglect,
4097 and Dependency Proceedings.

4098 (5) (a) Unless identifying information relating to the nonrelinquishing parent of the
4099 newborn child has been provided, the division shall:

4100 (i) work with local law enforcement and the Bureau of Criminal Identification within
4101 the Department of Public Safety in an effort to ensure that the newborn child has not been
4102 identified as a missing child;

4103 (ii) immediately place or contract for placement of the newborn child in a potential
4104 adoptive home and, within 10 days after the day on which the child is received, file a petition
4105 for termination of parental rights in accordance with [~~Title 78A, Chapter 6, Part 5, Termination~~
4106 ~~of Parental Rights Act~~] Title 80, Chapter 4, Termination and Restoration of Parental Rights;

4107 (iii) direct the Office of Vital Records and Statistics within the Department of Health to
4108 conduct a search for:

4109 (A) a birth certificate for the newborn child; and

4110 (B) unmarried biological fathers in the registry maintained by the Office of Vital
4111 Records and Statistics in accordance with Title 78B, Chapter 15, Part 4, Registry; and

4112 (iv) provide notice to each potential father identified on the registry described in
4113 Subsection (5)(a)(iii) in accordance with Title 78B, Chapter 15, Part 4, Registry.

4114 (b) (i) If no individual has affirmatively identified himself or herself within two weeks
4115 after the day on which notice under Subsection (5)(a)(iv) is complete and established paternity
4116 by scientific testing within as expeditious a time frame as practicable, a hearing on the petition
4117 for termination of parental rights shall be scheduled and notice provided in accordance with
4118 [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 4,
4119 Termination and Restoration of Parental Rights.

(ii) If a nonrelinquishing parent is not identified, relinquishment of a newborn child pursuant to the provisions of this part shall be considered grounds for termination of parental rights of both the relinquishing and nonrelinquishing parents under Section ~~[78A-6-507]~~ [80-4-301](#).

(6) If at any time prior to the adoption, a court finds it is in the best interest of the newborn child, the court shall deny the petition for termination of parental rights.

(7) The division shall provide for, or contract with a licensed child-placing agency to provide for expeditious adoption of the newborn child.

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

Section 60. Section **62A-4a-1005** is amended to read:

62A-4a-1005. Supported finding of a severe type of child abuse or neglect -- Notation in Licensing Information System -- Juvenile court petition or notice to alleged perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.

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

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

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

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

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

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

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

(a) shall state that:

(i) the division has conducted an investigation regarding alleged abuse or neglect;

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

4151 (iii) facts gathered by the division support the supported finding;
4152 (iv) as a result of the supported finding, the alleged perpetrator's name and other
4153 identifying information have been listed in the Licensing Information System in accordance
4154 with Subsection (1)(b);
4155 (v) the alleged perpetrator may be disqualified from adopting a child, receiving state
4156 funds as a child care provider, or being licensed by:
4157 (A) the department;
4158 (B) a human services licensee;
4159 (C) a child care provider or program; or
4160 (D) a covered health care facility;
4161 (vi) the alleged perpetrator has the rights described in Subsection (3); and
4162 (vii) failure to take either action described in Subsection (3)(a) within one year after
4163 service of the notice will result in the action described in Subsection (3)(b);
4164 (b) shall include a general statement of the nature of the findings; and
4165 (c) may not include:
4166 (i) the name of a victim or witness; or
4167 (ii) any privacy information related to the victim or a witness.
4168 (3) (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator
4169 has the right to:
4170 (i) file a written request asking the division to review the findings made under
4171 Subsection (1);
4172 (ii) except as provided in Subsection (3)(c), immediately petition the juvenile court
4173 under Section [~~78A-6-323~~] [80-3-404](#); or
4174 (iii) sign a written consent to:
4175 (A) the supported finding made under Subsection (1); and
4176 (B) entry into the Licensing Information System of:
4177 (I) the alleged perpetrator's name; and
4178 (II) other information regarding the supported finding made under Subsection (1).
4179 (b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the
4180 information described in Subsection (1)(b) shall remain in the Licensing Information System:
4181 (i) if the alleged perpetrator fails to take the action described in Subsection (3)(a)

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

(ii) during the time that the division awaits a response from the alleged perpetrator pursuant to Subsection (3)(a); and

(iii) until a court determines that the severe type of child abuse or neglect upon which the Licensing Information System entry was based is unsubstantiated or without merit.

(c) The alleged perpetrator has no right to petition the juvenile court under Subsection (3)(a)(ii) if the court previously held a hearing on the same alleged incident of abuse or neglect pursuant to the filing of a petition under Section ~~[78A-6-304]~~ 80-3-201 by some other party.

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

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

(i) the division shall remove an alleged perpetrator's name and the information described in Subsection (1)(b) from the Licensing Information System if the severe type of child abuse or neglect upon which the Licensing Information System entry was based:

(A) is found to be unsubstantiated or without merit by the juvenile court under Section ~~[78A-6-323]~~ 80-3-404; or

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

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

(4) Upon the filing of a petition under Subsection (1)(c), the juvenile court shall make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections ~~[78A-6-323]~~ 80-3-404(1) and (2).

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

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

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

Section 61. Section **62A-4a-1006** is amended to read:

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

4213 (1) (a) The division shall maintain a sub-part of the Management Information System
4214 established pursuant to Section 62A-4a-1003, to be known as the Licensing Information
4215 System, to be used:

4216 (i) for licensing purposes; or

4217 (ii) as otherwise specifically provided for by law.

4218 (b) The Licensing Information System shall include only the following information:

4219 (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

4220 (ii) consented-to supported findings by alleged perpetrators under Subsection

4221 62A-4a-1005(3)(a)(iii); and

4222 (iii) the information in the licensing part of the division's Management Information

4223 System as of May 6, 2002.

4224 (2) Notwithstanding Subsection (1), the department's access to information in the
4225 Management Information System for the licensure and monitoring of foster parents is governed
4226 by Sections 62A-4a-1003 and 62A-2-121.

4227 (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the
4228 juvenile court under Section [~~78A-6-323~~] 80-3-404, the division shall:

4229 (a) promptly amend the Licensing Information System; and

4230 (b) enter the information in the Management Information System.

4231 (4) (a) Information contained in the Licensing Information System is classified as a
4232 protected record under Title 63G, Chapter 2, Government Records Access and Management
4233 Act.

4234 (b) Notwithstanding the disclosure provisions of Title 63G, Chapter 2, Government
4235 Records Access and Management Act, the information contained in the Licensing Information
4236 System may only be used or disclosed as specifically provided in this chapter and Section
4237 62A-2-121.

4238 (c) The information described in Subsection (4)(b) is accessible only to:

4239 (i) the Office of Licensing within the department:

4240 (A) for licensing purposes; or

4241 (B) as otherwise specifically provided for by law;

4242 (ii) the division to:

4243 (A) screen an individual at the request of the Office of Guardian Ad Litem:

4244 (I) at the time that individual seeks a paid or voluntary position with the Office of
4245 Guardian Ad Litem; and

4246 (II) on an annual basis, throughout the time that the individual remains with the Office
4247 of Guardian Ad Litem; and

4248 (B) respond to a request for information from a person whose name is listed in the
4249 Licensing Information System;

4250 (iii) persons designated by the Department of Health and approved by the Department
4251 of Human Services, only for the following purposes:

4252 (A) licensing a child care program or provider;

4253 (B) determining whether an individual associated with a child care facility, program, or
4254 provider, who is exempt from being licensed or certified by the Department of Health under
4255 Title 26, Chapter 39, Utah Child Care Licensing Act, has a supported finding of a severe type
4256 of child abuse or neglect; or

4257 (C) determining whether an individual who is seeking an emergency medical services
4258 license has a supported finding of a severe type of child abuse or neglect;

4259 (iv) persons designated by the Department of Workforce Services and approved by the
4260 Department of Human Services for the purpose of qualifying child care providers under Section
4261 [35A-3-310.5](#); and

4262 (v) the department, as specifically provided in this chapter.

4263 (5) The persons designated by the Department of Health under Subsection (4)(c)(iii)
4264 and the persons designated by the Department of Workforce Services under Subsection
4265 (4)(c)(iv) shall adopt measures to:

4266 (a) protect the security of the Licensing Information System; and

4267 (b) strictly limit access to the Licensing Information System to those persons
4268 designated by statute.

4269 (6) All persons designated by statute as having access to information contained in the
4270 Licensing Information System shall be approved by the Department of Human Services and
4271 receive training from the department with respect to:

4272 (a) accessing the Licensing Information System;

4273 (b) maintaining strict security; and

4274 (c) the criminal provisions of Sections [62A-4a-412](#) and [63G-2-801](#) pertaining to the

4275 improper release of information.

4276 (7) (a) A person, except those authorized by this chapter, may not request another
4277 person to obtain or release any other information in the Licensing Information System to screen
4278 for potential perpetrators of abuse or neglect.

4279 (b) A person who requests information knowing that the request is a violation of this
4280 Subsection (7) is subject to the criminal penalty described in Sections [62A-4a-412](#) and
4281 [63G-2-801](#).

4282 Section 62. Section **62A-4a-1009** is amended to read:

4283 **62A-4a-1009. Notice and opportunity to challenge supported finding in**
4284 **Management Information System -- Right of judicial review.**

4285 (1) (a) Except as provided in Subsection (2), the division shall send a notice of agency
4286 action to a person with respect to whom the division makes a supported finding. In addition, if
4287 the alleged perpetrator is under the age of 18, the division shall:

4288 (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

4289 (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that
4290 lives at a different address, unless there is good cause, as defined by rule, for not sending a
4291 notice to a parent or guardian.

4292 (b) Nothing in this section may be construed as affecting:

4293 (i) the manner in which the division conducts an investigation; or

4294 (ii) the use or effect, in any other setting, of a supported finding by the division at the
4295 completion of an investigation for any purpose other than for notification under Subsection (1)
4296 (a).

4297 (2) Subsection (1) does not apply to a person who has been served with notice under
4298 Subsection [62A-4a-1005](#)(1)(a).

4299 (3) The notice described in Subsection (1) shall state:

4300 (a) that the division has conducted an investigation regarding alleged abuse, neglect, or
4301 dependency;

4302 (b) that the division has made a supported finding of abuse, neglect, or dependency;

4303 (c) that facts gathered by the division support the supported finding;

4304 (d) that the person has the right to request:

4305 (i) a copy of the report; and

4306 (ii) an opportunity to challenge the supported finding by the division; and
4307 (e) that failure to request an opportunity to challenge the supported finding within 30
4308 days of receiving the notice will result in an unappealable supported finding of abuse, neglect,
4309 or dependency unless the person can show good cause for why compliance within the 30-day
4310 requirement was virtually impossible or unreasonably burdensome.

4311 (4) (a) A person may make a request to challenge a supported finding within 30 days of
4312 a notice being received under this section.

4313 (b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative
4314 Hearings shall hold an adjudicative proceeding pursuant to Title 63G, Chapter 4,
4315 Administrative Procedures Act.

4316 (5) (a) In an adjudicative proceeding held pursuant to this section, the division shall
4317 have the burden of proving, by a preponderance of the evidence, that abuse, neglect, or
4318 dependency occurred and that the alleged perpetrator was substantially responsible for the
4319 abuse or neglect that occurred.

4320 (b) Any party shall have the right of judicial review of final agency action, in
4321 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

4322 (c) Proceedings for judicial review of a final agency action under this section shall be
4323 closed to the public.

4324 (d) The Judicial Council shall make rules that ensure the confidentiality of the
4325 proceedings described in Subsection (5)(c) and the records related to the proceedings.

4326 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after
4327 receiving notice, fails to challenge a supported finding in accordance with this section:

4328 (a) may not further challenge the finding; and

4329 (b) shall have no right to:

4330 (i) agency review of the finding;

4331 (ii) an adjudicative hearing on the finding; or

4332 (iii) judicial review of the finding.

4333 (7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a
4334 request under Subsection (4) to challenge a supported finding if a court of competent
4335 jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that
4336 the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which

4337 was also the subject of the supported finding.

4338 (b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

4339 (c) An adjudicative proceeding under Subsection (5) may be stayed during the time a
4340 judicial action on the same matter is pending.

4341 (8) Pursuant to Section [~~78A-6-323~~] 80-3-404, an adjudicative proceeding on a
4342 supported finding of a type of abuse or neglect that does not constitute a severe type of child
4343 abuse or neglect may be joined in the juvenile court with an adjudicative proceeding on a
4344 supported finding of a severe type of child abuse or neglect.

4345 Section 63. Section **62A-4a-1010** is amended to read:

4346 **62A-4a-1010. Notice and opportunity for court hearing for persons listed in**
4347 **Licensing Information System.**

4348 (1) Persons whose names were listed on the Licensing Information System as of May 6,
4349 2002 and who have not been the subject of a court determination with respect to the alleged
4350 incident of abuse or neglect may at any time:

4351 (a) request review by the division of their case and removal of their name from the
4352 Licensing Information System pursuant to Subsection (3); or

4353 (b) file a petition for an evidentiary hearing and a request for a finding of
4354 unsubstantiated or without merit.

4355 (2) Subsection (1) does not apply to an individual who has been the subject of any of
4356 the following court determinations with respect to the alleged incident of abuse or neglect:

4357 (a) conviction;

4358 (b) adjudication under [~~Title 78A, Chapter 6, Juvenile Court Act of 1996~~] Section
4359 80-3-402 or 80-6-701;

4360 (c) plea of guilty;

4361 (d) plea of guilty with a mental illness; or

4362 (e) no contest.

4363 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,
4364 2002, requests removal of the alleged perpetrator's name from the Licensing Information
4365 System, the division shall, within 30 days:

4366 (a) (i) review the case to determine whether the incident of alleged abuse or neglect
4367 qualifies as:

4368 (A) a severe type of child abuse or neglect;
4369 (B) chronic abuse; or
4370 (C) chronic neglect; and
4371 (ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect
4372 described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from
4373 the Licensing Information System; or
4374 (b) determine whether to file a petition for substantiation.
4375 (4) If the division decides to file a petition, that petition must be filed no more than 14
4376 days after the decision.
4377 (5) The juvenile court shall act on the petition as provided in Subsection [~~78A-6-323~~]
4378 [80-3-404](#)(3).
4379 (6) If a person whose name appears on the Licensing Information System prior to May
4380 6, 2002 files a petition pursuant to Section [~~78A-6-323~~] [80-3-404](#) during the time that an
4381 alleged perpetrator's application for clearance to work with children or vulnerable adults is
4382 pending, the court shall hear the matter on an expedited basis.
4383 Section 64. Section **62A-11-304.2** is amended to read:
4384 **62A-11-304.2. Issuance or modification of administrative order -- Compliance**
4385 **with court order -- Authority of office -- Stipulated agreements -- Notification**
4386 **requirements.**
4387 (1) Through an adjudicative proceeding the office may issue or modify an
4388 administrative order that:
4389 (a) determines paternity;
4390 (b) determines whether an obligor owes support;
4391 (c) determines temporary orders of child support upon clear and convincing evidence
4392 of paternity in the form of genetic test results or other evidence;
4393 (d) requires an obligor to pay a specific or determinable amount of present and future
4394 support;
4395 (e) determines the amount of past-due support;
4396 (f) orders an obligor who owes past-due support and is obligated to support a child
4397 receiving public assistance to participate in appropriate work activities if the obligor is
4398 unemployed and is not otherwise incapacitated;

4399 (g) imposes a penalty authorized under this chapter;
4400 (h) determines an issue that may be specifically contested under this chapter by a party
4401 who timely files a written request for an adjudicative proceeding with the office; and
4402 (i) renews an administrative judgment.

4403 (2) (a) An abstract of a final administrative order issued under this section or a notice
4404 of judgment-lien under Section [62A-11-312.5](#) may be filed with the clerk of any district court.

4405 (b) Upon a filing under Subsection (2)(a), the clerk of the court shall:
4406 (i) docket the abstract or notice in the judgment docket of the court and note the time of
4407 receipt on the abstract or notice and in the judgment docket; and
4408 (ii) at the request of the office, place a copy of the abstract or notice in the file of a
4409 child support action involving the same parties.

4410 (3) If a judicial order has been issued, the office may not issue an order under
4411 Subsection (1) that is not based on the judicial order, except:

4412 (a) the office may establish a new obligation in those cases in which the juvenile court
4413 has ordered the parties to meet with the office to determine the support pursuant to Section
4414 [\[78A-6-1106\]](#) [78A-6-356](#); or

4415 (b) the office may issue an order of current support in accordance with the child support
4416 guidelines if the conditions of Subsection [78B-14-207\(2\)\(c\)](#) are met.

4417 (4) The office may proceed under this section in the name of this state, another state
4418 under Section [62A-11-305](#), any department of this state, the office, or the obligee.

4419 (5) The office may accept voluntary acknowledgment of a support obligation and enter
4420 into stipulated agreements providing for the issuance of an administrative order under this part.

4421 (6) The office may act in the name of the obligee in endorsing and cashing any drafts,
4422 checks, money orders, or other negotiable instruments received by the office for support.

4423 (7) The obligor shall, after a notice of agency action has been served on the obligor in
4424 accordance with Section [63G-4-201](#), keep the office informed of:

4425 (a) the obligor's current address;
4426 (b) the name and address of current payors of income;
4427 (c) availability of or access to health insurance coverage; and
4428 (d) applicable health insurance policy information.

4429 Section 65. Section **62A-15-204** is amended to read:

62A-15-204. Court order to attend substance abuse school -- Assessments.

(1) In addition to any other disposition ordered by the juvenile court [~~pursuant to Section 78A-6-117~~] under Section 80-3-405 or 80-6-701, the court may order a juvenile and his parents or legal guardians to attend a teen substance abuse school, and order payment of an assessment in addition to any other fine imposed.

(2) All assessments collected shall be forwarded to the county treasurer of the county where the juvenile resides, to be used exclusively for the operation of a teen substance abuse program.

Section 66. Section **62A-15-626** is amended to read:

62A-15-626. Release from commitment.

(1) (a) Subject to Subsection (1)(b), a local mental health authority or the mental health authority's designee shall release from commitment any individual who, in the opinion of the local mental health authority or the mental health authority's designee, has recovered or no longer meets the criteria specified in Section 62A-15-631.

(b) A local mental health authority's inability to locate a committed individual may not be the basis for the individual's release, unless the court orders the release of the individual after a hearing.

(2) A local mental health authority or the mental health authority's designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by [~~Section 78A-6-120~~] Section 62A-15-705, but an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be provided.

(3) When a patient has been committed to a local mental health authority by judicial process, the local mental health authority shall follow the procedures described in Sections 62A-15-636 and 62A-15-637.

Section 67. Section **62A-15-703** is amended to read:

62A-15-703. Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

(a) shall be a designated examiner, as defined in Section 62A-15-602; and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by a fact finder that the following circumstances clearly exist, the fact finder may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in Section 62A-15-602;

(b) the child demonstrates a reasonable fear of the risk of substantial danger to self or others;

(c) the child will benefit from care and treatment by the local mental health authority; and

(d) there is no appropriate less-restrictive alternative.

(5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the petitioner, and a representative of the appropriate local mental health authority:

(i) shall receive informal notice of the date and time of the proceeding; and

(ii) may appear and address the petition for commitment.

(c) The neutral and detached fact finder may, in the fact finder's discretion, receive the testimony of any other person.

(d) The fact finder may allow a child to waive the child's right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health

authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) At the conclusion of the hearing and subsequently in writing, when a decision for commitment is made, the neutral and detached fact finder shall inform the child and the child's parent or legal guardian of that decision and of the reasons for ordering commitment.

(iii) The neutral and detached fact finder shall state in writing the basis of the decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) A child may be temporarily committed for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays, to the physical custody of a local mental health authority in accordance with the procedures described in Section 62A-15-629 and upon satisfaction of the risk factors described in Subsection (4). A child who is temporarily committed shall be released at the expiration of the 72 hours unless the procedures and findings required by this section for the commitment of a child are satisfied.

(7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child,

unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition or on petition of the child's parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with

4554 the following information, as it relates to the period of current admission:

4555 (i) the original petition for commitment;

4556 (ii) admission notes;

4557 (iii) diagnosis;

4558 (iv) physicians' orders;

4559 (v) progress notes;

4560 (vi) nursing notes; and

4561 (vii) medication records.

4562 (d) Both the neutral and detached fact finder and the designated examiner appointed for
4563 the appeal hearing shall be provided with an opportunity to review the most current information
4564 described in Subsection (10)(c) prior to the appeal hearing.

4565 (e) The child, the child's parent or legal guardian, the person who submitted the
4566 original petition for commitment, and a representative of the appropriate local mental health
4567 authority shall be notified by the court of the date and time of the appeal hearing. Those
4568 persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the
4569 court shall review the record and findings of the neutral and detached fact finder, the report of
4570 the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion,
4571 allow or require the testimony of the neutral and detached fact finder, the designated examiner,
4572 the child, the child's parent or legal guardian, the person who brought the initial petition for
4573 commitment, or any other person whose testimony the court deems relevant. The court may
4574 allow the child to waive the right to appear at the appeal hearing, for good cause shown. If that
4575 waiver is granted, the purpose shall be made a part of the court's record.

4576 (11) Each local mental health authority has an affirmative duty to conduct periodic
4577 evaluations of the mental health and treatment progress of every child committed to its physical
4578 custody under this section, and to release any child who has sufficiently improved so that the
4579 criteria justifying commitment no longer exist.

4580 (12) (a) A local mental health authority or its designee, in conjunction with the child's
4581 current treating mental health professional may release an improved child to a less restrictive
4582 environment, as they determine appropriate. Whenever the local mental health authority or its
4583 designee, and the child's current treating mental health professional, determine that the
4584 conditions justifying commitment no longer exist, the child shall be discharged and released to

the child's parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating the child's mental illness, or increasing the risk of harm to self or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport the child to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, the child's parent or legal guardian, the administrator of the more restrictive environment, or the administrator's designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or the child's representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:

(i) the less restrictive environment in which the child has been placed is exacerbating the child's mental illness or increasing the risk of harm to self or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating the child's mental illness or increasing the risk of harm to self or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.

(e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.

(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section ~~[78A-6-120]~~ [62A-15-705](#). The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.

(14) Even though a child has been committed to the physical custody of a local mental health authority under this section, the child is still entitled to additional due process proceedings, in accordance with Section [62A-15-704](#), before any treatment that may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

Section 68. Section **63G-4-402** is amended to read:

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

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

- (i) the removal or placement of children in state custody;
- (ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section ~~[78A-6-1106]~~ [78A-6-356](#); and
- (iii) supported findings of abuse or neglect made by the Division of Child and Family Services.

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

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

- (i) the name and mailing address of the party seeking judicial review;
- (ii) the name and mailing address of the respondent agency;
- (iii) the title and date of the final agency action to be reviewed, together with a copy, summary, or brief description of the agency action;

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

(v) a copy of the written agency order from the informal proceeding;

(vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;

(vii) a request for relief, specifying the type and extent of relief requested; and

(viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Section 69. Section **63M-7-208** is amended to read:

63M-7-208. Juvenile justice oversight -- Delegation -- Effective dates.

(1) The Commission on Criminal and Juvenile Justice shall:

(a) support implementation and expansion of evidence-based juvenile justice programs and practices, including assistance regarding implementation fidelity, quality assurance, and ongoing evaluation;

(b) examine and make recommendations on the use of third-party entities or an intermediary organization to assist with implementation and to support the performance-based contracting system authorized in Subsection (1)(m);

(c) oversee the development of performance measures to track juvenile justice reforms, and ensure early and ongoing stakeholder engagement in identifying the relevant performance measures;

(d) evaluate currently collected data elements throughout the juvenile justice system and contract reporting requirements to streamline reporting, reduce redundancies, eliminate inefficiencies, and ensure a focus on recidivism reduction;

(e) review averted costs from reductions in out-of-home placements for juvenile justice youth placed with the Division of Juvenile Justice Services and the Division of Child and Family Services, and make recommendations to prioritize the reinvestment and realignment of resources into community-based programs for youth living at home, including the following:

4678 (i) statewide expansion of:
4679 (A) juvenile receiving centers, as defined in Section 80-1-102;
4680 (B) mobile crisis outreach teams, as defined in Section ~~[78A-6-105]~~ 62A-15-102;
4681 (C) youth courts; and
4682 (D) victim-offender mediation;
4683 (ii) statewide implementation of nonresidential diagnostic assessment;
4684 (iii) statewide availability of evidence-based programs and practices including
4685 cognitive behavioral and family therapy programs for minors assessed by a validated risk and
4686 needs assessment as moderate or high risk;
4687 (iv) implementation and infrastructure to support the sustainability and fidelity of
4688 evidence-based juvenile justice programs, including resources for staffing, transportation, and
4689 flexible funds; and
4690 (v) early intervention programs such as family strengthening programs, family
4691 wraparound services, and proven truancy interventions;
4692 (f) assist the Administrative Office of the Courts in the development of a statewide
4693 sliding scale for the assessment of fines, fees, and restitution, based on the ability of the minor's
4694 family to pay;
4695 (g) analyze the alignment of resources and the roles and responsibilities of agencies,
4696 such as the operation of early intervention services, receiving centers, and diversion, and make
4697 recommendations to reallocate functions as appropriate, in accordance with Section
4698 ~~[62A-7-601]~~ 80-5-401;
4699 (h) ensure that data reporting is expanded and routinely review data in additional areas,
4700 including:
4701 (i) referral and disposition data by judicial district;
4702 (ii) data on the length of time minors spend in the juvenile justice system, including the
4703 total time spent under court jurisdiction, on community supervision, and in each out-of-home
4704 placement;
4705 (iii) recidivism data for ~~[diversion types pursuant to Section 78A-6-602 and disposition~~
4706 ~~types pursuant to Section 78A-6-117]~~ minors who are diverted to a nonjudicial adjustment
4707 under Section 80-6-304 and minors for whom dispositions are ordered under Section 80-6-701,
4708 including tracking minors into the adult corrections system;

(iv) change in aggregate risk levels from the time minors receive services, are under supervision, and are in out-of-home placement; and

(v) dosage of programming;

(i) develop a reasonable timeline within which all programming delivered to minors in the juvenile justice system must be evidence-based or consist of practices that are rated as effective for reducing recidivism by a standardized program evaluation tool;

(j) provide guidelines to be considered by the Administrative Office of the Courts and the Division of Juvenile Justice Services in developing tools considered by the Administrative Office of the Courts and the Division of Juvenile Justice Services in developing or selecting tools to be used for the evaluation of juvenile justice programs;

(k) develop a timeline to support improvements to juvenile justice programs to achieve reductions in recidivism and review reports from relevant state agencies on progress toward reaching that timeline;

(l) subject to Subsection (2), assist in the development of training for juvenile justice stakeholders, including educators, law enforcement officers, probation staff, judges, Division of Juvenile Justice Services staff, Division of Child and Family Services staff, and program providers;

(m) subject to Subsection (3), assist in the development of a performance-based contracting system, which shall be developed by the Administrative Office of the Courts and the Division of Juvenile Justice Services for contracted services in the community and contracted out-of-home placement providers;

(n) assist in the development of a validated detention risk assessment tool that shall be developed or adopted and validated by the Administrative Office of the Courts and the Division of Juvenile Justice Services as provided in Section ~~[78A-6-124]~~ 80-5-203 on and after July 1, 2018; and

(o) annually issue and make public a report to the governor, president of the Senate, speaker of the House of Representatives, and chief justice of the Utah Supreme Court on the progress of the reforms and any additional areas in need of review.

(2) Training described in Subsection (1)(l) should include instruction on evidence-based programs and principles of juvenile justice, such as risk, needs, responsiveness, and fidelity, and shall be supplemented by the following topics:

- 4740 (a) adolescent development;
4741 (b) identifying and using local behavioral health resources;
4742 (c) implicit bias;
4743 (d) cultural competency;
4744 (e) graduated responses;
4745 (f) Utah juvenile justice system data and outcomes; and
4746 (g) gangs.
- 4747 (3) The system described in Subsection (1)(m) shall provide incentives for:
4748 (a) the use of evidence-based juvenile justice programs and practices rated as effective
4749 by the tools selected in accordance with Subsection (1)(j);
4750 (b) the use of three-month timelines for program completion; and
4751 (c) evidence-based programs and practices for minors living at home in rural areas.
- 4752 (4) The Commission on Criminal and Juvenile Justice may delegate the duties imposed
4753 under this section to a subcommittee or board established by the Commission on Criminal and
4754 Juvenile Justice in accordance with Subsection [63M-7-204\(2\)](#).
- 4755 (5) Subsections (1)(a) through (c) take effect August 1, 2017. The remainder of this
4756 section takes effect July 1, 2018.
- 4757 Section 70. Section **67-25-201** is amended to read:
4758 **67-25-201. State agency work week.**
- 4759 (1) Except as provided in Subsection (2), and subject to Subsection (3):
4760 (a) a state agency with five or more employees shall, at least nine hours per day on
4761 Monday, Tuesday, Wednesday, Thursday, and Friday to provide a service required by statute to
4762 another entity of the state, a political subdivision, or the public:
4763 (i) in person;
4764 (ii) online; or
4765 (iii) by telephone; and
4766 (b) a state agency with fewer than five employees shall, at least eight hours per day on
4767 Monday, Tuesday, Wednesday, Thursday, and Friday, provide a service required by statute to
4768 another entity of the state, a political subdivision, or the public:
4769 (i) in person;
4770 (ii) online; or

4771 (iii) by telephone.

4772 (2) (a) Subsection (1) does not require a state agency to operate a physical location, or
4773 provide a service, on a holiday established under Section [63G-1-301](#).

4774 (b) Except for a legal holiday established under Section [63G-1-301](#), the following state
4775 agencies shall operate at least one physical location, and as many physical locations as
4776 necessary, at least nine hours per day on Monday, Tuesday, Wednesday, Thursday, and Friday
4777 to provide a service required by statute to another entity of the state, a political subdivision, or
4778 the public:

4779 (i) the Department of Technology Services, created in Section [63F-1-103](#);

4780 (ii) the Division of Child and Family Services, created in Section [62A-4a-103](#); and

4781 (iii) the Office of Guardian Ad Litem, created in Section [\[78A-6-901\]](#) [78A-2-802](#).

4782 (3) A state agency shall make staff available, as necessary, to provide:

4783 (a) services incidental to a court or administrative proceeding, during the hours of
4784 operation of a court or administrative body, including:

4785 (i) testifying;

4786 (ii) the production of records or evidence; and

4787 (iii) other services normally available to a court or administrative body;

4788 (b) security services; and

4789 (c) emergency services.

4790 (4) This section does not limit the days or hours a state agency may operate.

4791 (5) To provide a service as required by Subsection (1), the chief administrative officer
4792 of a state agency may determine:

4793 (a) the number of physical locations, if any are required by this section, operating each
4794 day;

4795 (b) the daily hours of operation of a physical location;

4796 (c) the number of state agency employees who work per day; and

4797 (d) the hours a state agency employee works per day.

4798 (6) To provide a service as required by Subsection (2)(b), the chief administrative
4799 officer of a state agency, or a person otherwise designated by law, may determine:

4800 (a) the number of physical locations operating each day;

4801 (b) the daily hours of operation, as required by Subsection (2)(b), of each physical

4802 location;

4803 (c) the number of state agency employees who work per day; and

4804 (d) the hours a state agency employee works per day.

4805 (7) A state agency shall:

4806 (a) provide information, accessible from a conspicuous link on the home page of the
4807 state agency's website, on a method that a person may use to schedule an in-person meeting
4808 with a representative of the state agency; and

4809 (b) except as provided in Subsection (8), as soon as reasonably possible:

4810 (i) contact a person who makes a request for an in-person meeting; and

4811 (ii) when appropriate, schedule and hold an in-person meeting with the person that
4812 requests an in-person meeting.

4813 (8) A state agency is not required to comply with Subsection (7)(b) to the extent that
4814 the contact or meeting:

4815 (a) would constitute a conflict of interest;

4816 (b) would conflict or interfere with a procurement governed by Title 63G, Chapter 6a,
4817 Utah Procurement Code;

4818 (c) would violate an ethical requirement of the state agency or an employee of the state
4819 agency; or

4820 (d) would constitute a violation of law.

4821 Section 71. Section **75-5-209** is amended to read:

4822 **75-5-209. Powers and duties of guardian of minor -- Residual parental rights and**
4823 **duties -- Adoption of a ward.**

4824 (1) For purposes of this section, "residual parental rights and duties" is as defined in
4825 Section ~~[78A-6-105]~~ [80-1-102](#).

4826 (2) Except as provided in Subsection (4)(a), a guardian of a minor has the powers and
4827 responsibilities of a parent who has not been deprived of custody of the parent's unemancipated
4828 minor, including the powers and responsibilities described in Subsection (3).

4829 (3) A guardian of a minor:

4830 (a) must take reasonable care of the personal effects of the guardian's ward;

4831 (b) must commence protective proceedings if necessary to protect other property of the
4832 guardian's ward;

4833 (c) subject to Subsection (4)(b), may receive money payable for the support of the ward
4834 to the ward's parent, guardian, or custodian under the terms of a:

- 4835 (i) statutory benefit or insurance system;
- 4836 (ii) private contract;
- 4837 (iii) devise;
- 4838 (iv) trust;
- 4839 (v) conservatorship; or
- 4840 (vi) custodianship;

4841 (d) subject to Subsection (4)(b), may receive money or property of the ward paid or
4842 delivered by virtue of Section [75-5-102](#);

4843 (e) except as provided in Subsection (4)(c), must exercise due care to conserve any
4844 excess money or property described in Subsection (3)(d) for the ward's future needs;

4845 (f) unless otherwise provided by statute, may institute proceedings to compel the
4846 performance by any person of a duty to:

- 4847 (i) support the ward; or
- 4848 (ii) pay sums for the welfare of the ward;
- 4849 (g) is empowered to:
- 4850 (i) facilitate the ward's education, social, or other activities; and
- 4851 (ii) subject to Subsection (4)(d), authorize medical or other professional care,
4852 treatment, or advice;
- 4853 (h) may consent to the:
- 4854 (i) marriage of the guardian's ward, if specifically authorized by a court to give this
4855 consent; or
- 4856 (ii) adoption of the guardian's ward if the:
- 4857 (A) guardian of the ward is specifically authorized by a court to give this consent; and
- 4858 (B) parental rights of the ward's parents have been terminated; and
- 4859 (i) must report the condition of the minor and of the minor's estate that has been subject
4860 to the guardian's possession or control:
- 4861 (i) as ordered by court on petition of any person interested in the minor's welfare; or
- 4862 (ii) as required by court rule.

4863 (4) (a) Notwithstanding Subsection (2), a guardian of a minor is not:

- (i) legally obligated to provide from the guardian's own funds for the ward; and
(ii) liable to third persons by reason of the guardian's relationship for acts of the ward.

(b) Sums received under Subsection (3)(c) or (d):

- (i) may not be used for compensation for the services of a guardian, except as:

(A) approved by court order; or

(B) determined by a duly appointed conservator other than the guardian; and

- (ii) shall be applied to the ward's current needs for support, care, and education.

(c) Notwithstanding Subsection (3)(e), if a conservator is appointed for the estate of the ward, the excess shall be paid over at least annually to the conservator.

(d) A guardian of a minor is not, by reason of giving the authorization described in Subsection (3)(g)(ii), liable for injury to the minor resulting from the negligence or acts of third persons, unless it would have been illegal for a parent to have given the authorization.

(5) A parent of a minor for whom a guardian is appointed retains residual parental rights and duties.

(6) If a parent of a minor for whom a guardian is appointed consents to the adoption of the minor, the guardian is entitled to:

(a) receive notice of the adoption proceeding pursuant to Section 78B-6-110;

(b) intervene in the adoption; and

(c) present evidence to the court relevant to the best interest of the child pursuant to Subsection 78B-6-110(11).

(7) If a minor for whom a guardian is appointed is adopted subsequent to the appointment, the guardianship shall terminate when the adoption is finalized.

Section 72. Section 76-3-406 is amended to read:

76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.

(1) Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation may not be granted, the execution or imposition of sentence may not be suspended, the court may not enter a judgment for a lower category of offense, and hospitalization may not be ordered, the effect of which would in any way shorten the prison sentence for an individual who commits a capital felony or a first degree felony involving:

- 4895 (a) Section 76-5-202, aggravated murder;
- 4896 (b) Section 76-5-203, murder;
- 4897 (c) Section 76-5-301.1, child kidnaping;
- 4898 (d) Section 76-5-302, aggravated kidnaping;
- 4899 (e) Section 76-5-402, rape, if the individual is sentenced under Subsection
- 4900 76-5-402(3)(b), (3)(c), or (4);
- 4901 (f) Section 76-5-402.1, rape of a child;
- 4902 (g) Section 76-5-402.2, object rape, if the individual is sentenced under Subsection
- 4903 76-5-402.2(1)(b), (1)(c), or (2);
- 4904 (h) Section 76-5-402.3, object rape of a child;
- 4905 (i) Section 76-5-403, forcible sodomy, if the individual is sentenced under Subsection
- 4906 76-5-403(3)(b), (3)(c), or (4);
- 4907 (j) Section 76-5-403.1, sodomy on a child;
- 4908 (k) Section 76-5-404, forcible sexual abuse, if the individual is sentenced under
- 4909 Subsection 76-5-404(2)(b) or (3);
- 4910 (l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- 4911 (m) Section 76-5-405, aggravated sexual assault; or
- 4912 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
- 4913 (2) Except for an offense before the district court in accordance with Section
- 4914 ~~[78A-6-703.2 or 78A-6-703.5]~~ 80-6-502 or 80-6-504, the provisions of this section do not
- 4915 apply if the sentencing court finds that the defendant:
- 4916 (a) was under 18 years old at the time of the offense; and
- 4917 (b) could have been adjudicated in the juvenile court but for the delayed reporting or
- 4918 delayed filing of the information.
- 4919 Section 73. Section 76-5-107.1 is amended to read:
- 4920 **76-5-107.1. Threats against schools.**
- 4921 (1) As used in this section, "school" means a preschool or a public or private
- 4922 elementary or secondary school.
- 4923 (2) An individual is guilty of making a threat against a school if the individual
- 4924 threatens in person or via electronic means, either with real intent or as an intentional hoax, to
- 4925 commit any offense involving bodily injury, death, or substantial property damage, and:

(a) threatens the use of a firearm or weapon or hoax weapon of mass destruction, as defined in Section [76-10-401](#);

(b) acts with intent to:

(i) disrupt the regular schedule of the school or influence or affect the conduct of students, employees, or the general public at the school;

(ii) prevent or interrupt the occupancy of the school or a portion of the school, or a facility or vehicle used by the school; or

(iii) intimidate or coerce students or employees of the school; or

(c) causes an official or volunteer agency organized to deal with emergencies to take action due to the risk to the school or general public.

(3) (a) A violation of Subsection (2)(a), (b)(i), or (b)(iii) is a class A misdemeanor.

(b) A violation of Subsection (2)(b)(ii) is a class B misdemeanor.

(c) A violation of Subsection (2)(c) is a class C misdemeanor.

(4) Counseling for the minor and the minor's family may be made available through state and local health department programs.

(5) It is not a defense to this section that the individual did not attempt to carry out or was incapable of carrying out the threat.

(6) In addition to any other penalty authorized by law, a court shall order an individual convicted of a violation of this section to pay restitution to any federal, state, or local unit of government, or any private business, organization, individual, or entity for expenses and losses incurred in responding to the threat, unless the court states on the record the reasons why the reimbursement would be inappropriate. Restitution ordered in the case of a minor adjudicated for a violation of this section shall be determined in accordance with ~~[Subsection 78A-6-117(2)(j)]~~ [Section 80-6-710](#).

(7) A violation of this section shall be reported to the local law enforcement agency. If the individual alleged to have violated this section is a minor, the minor may be referred to the juvenile court.

Section 74. Section **76-5-108** is amended to read:

76-5-108. Protective orders restraining abuse of another -- Violation.

(1) Any person who is the respondent or defendant subject to a protective order, child protective order, ex parte protective order, or ex parte child protective order issued under the

following who intentionally or knowingly violates that order after having been properly served or having been present, in person or through court video conferencing, when the order was issued, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act:

(a) [~~Title 78A, Chapter 6, Juvenile Court Act~~] Title 80, Utah Juvenile Code;

(b) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders;

(c) Title 78B, Chapter 7, Part 8, Criminal Protective Orders; or

(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section [77-36-1](#) and subject to increased penalties in accordance with Section [77-36-1.1](#).

Section 75. Section **76-5-110** is amended to read:

76-5-110. Abuse or neglect of a child with a disability.

(1) As used in this section:

(a) "Abuse" means:

(i) inflicting physical injury, as that term is defined in Section [76-5-109](#);

(ii) having the care or custody of a child with a disability, causing or permitting another to inflict physical injury, as that term is defined in Section [76-5-109](#); or

(iii) unreasonable confinement.

(b) "Caretaker" means:

(i) any parent, legal guardian, or other person having under that person's care and custody a child with a disability; or

(ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a child with a disability.

(c) "Child with a disability" means any person under 18 years ~~[of age]~~ old who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person is unable to care for the person's own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

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

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

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

(b) Subject to ~~Subsection 78A-6-117(2)(m)]~~ Section 80-3-109, the exception under Subsection (3)(a) does not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare if the treatment is not provided.

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

Section 76. Section **76-5-401.3** is amended to read:

76-5-401.3. Unlawful adolescent sexual activity.

(1) As used in this section:

(a) "Adolescent" means an individual in the transitional phase of human physical and psychological growth and development between childhood and adulthood who is 12 years old or older, but under 18 years old.

(b) "Unlawful adolescent sexual activity" means sexual activity between adolescents under circumstances not amounting to:

- (i) rape, in violation of Section 76-5-402;
- (ii) rape of a child, in violation of Section 76-5-402.1;
- (iii) object rape, in violation of Section 76-5-402.2;
- (iv) object rape of a child, in violation of Section 76-5-402.3;
- (v) forcible sodomy, in violation of Section 76-5-403;
- (vi) sodomy on a child, in violation of Section 76-5-403.1;
- (vii) sexual abuse of a child, in violation of Section 76-5-404;
- (viii) aggravated sexual assault, in violation of Section 76-5-405; or

- 5019 (ix) incest, in violation of Section [76-7-102](#).
- 5020 (2) Unlawful adolescent sexual activity is punishable as a:
- 5021 (a) third degree felony if an adolescent who is 17 years old engages in unlawful
- 5022 adolescent sexual activity with an adolescent who is 12 or 13 years old;
- 5023 (b) third degree felony if an adolescent who is 16 years old engages in unlawful
- 5024 adolescent sexual activity with an adolescent who is 12 years old;
- 5025 (c) class A misdemeanor if an adolescent who is 16 years old engages in unlawful
- 5026 adolescent sexual activity with an adolescent who is 13 years old;
- 5027 (d) class A misdemeanor if an adolescent who is 14 or 15 years old engages in
- 5028 unlawful adolescent sexual activity with an adolescent who is 12 years old;
- 5029 (e) class B misdemeanor if an adolescent who is 17 years old engages in unlawful
- 5030 adolescent sexual activity with an adolescent who is 14 years old;
- 5031 (f) class B misdemeanor if an adolescent who is 15 years old engages in unlawful
- 5032 adolescent sexual activity with an adolescent who is 13 years old;
- 5033 (g) class C misdemeanor if an adolescent who is 12 or 13 years old engages in unlawful
- 5034 adolescent sexual activity with an adolescent who is 12 or 13 years old; and
- 5035 (h) class C misdemeanor if an adolescent who is 14 years old engages in unlawful
- 5036 adolescent sexual activity with an adolescent who is 13 years old.
- 5037 (3) An offense under this section is not eligible for a nonjudicial adjustment under
- 5038 Section [~~78A-6-602~~] [80-6-304](#) or a referral to a youth court under Section [~~78A-6-1203~~]
- 5039 [80-6-902](#).
- 5040 (4) Except for an offense that is transferred to a district court by the juvenile court in
- 5041 accordance with Section [~~78A-6-703.5~~] [80-6-504](#), the district court may enter any sentence or
- 5042 combination of sentences that would have been available in juvenile court but for the delayed
- 5043 reporting or delayed filing of the information in the district court.
- 5044 (5) An offense under this section is not subject to registration under Subsection
- 5045 [77-41-102](#)(17).
- 5046 Section 77. Section **76-5-413** is amended to read:
- 5047 **76-5-413. Custodial sexual relations or misconduct with youth receiving state**
- 5048 **services -- Definitions -- Penalties -- Defenses.**
- 5049 (1) As used in this section:

- 5050 (a) "Actor" means:
- 5051 (i) an individual employed by the Department of Human Services, as created in Section
- 5052 [62A-1-102](#), or an employee of a private provider or contractor; or
- 5053 (ii) an individual employed by the juvenile court of the state, or an employee of a
- 5054 private provider or contractor.
- 5055 (b) "Department" means the Department of Human Services created in Section
- 5056 [62A-1-102](#).
- 5057 (c) "Juvenile court" means the juvenile court of the state created in Section [78A-6-102](#).
- 5058 (d) "Private provider or contractor" means any individual or entity that contracts with
- 5059 the:
- 5060 (i) department to provide services or functions that are part of the operation of the
- 5061 department; or
- 5062 (ii) juvenile court to provide services or functions that are part of the operation of the
- 5063 juvenile court.
- 5064 (e) "Youth receiving state services" means an individual:
- 5065 (i) younger than 18 years ~~[of age]~~ old, except as provided under Subsection (1)(e)(ii),
- 5066 who is:
- 5067 (A) in the custody of the department under ~~[Subsection [78A-6-117\(2\)\(e\)](#)]~~ Section
- 5068 [80-6-703](#); or
- 5069 (B) receiving services from any division of the department if any portion of the costs of
- 5070 these services is covered by public money; or
- 5071 (ii) younger than 21 years ~~[of age who is]~~ old:
- 5072 (A) who is in the custody of the Division of Juvenile Justice Services, or the Division
- 5073 of Child and Family Services; or
- 5074 (B) whose case is under the jurisdiction of the juvenile court.
- 5075 (2) (a) An actor commits custodial sexual relations with a youth receiving state services
- 5076 if the actor commits any of the acts under Subsection (3):
- 5077 (i) under circumstances not amounting to commission of, or an attempt to commit, an
- 5078 offense under Subsection (6); and
- 5079 (ii) (A) the actor knows that the individual is a youth receiving state services; or
- 5080 (B) a reasonable person in the actor's position should have known under the

5081 circumstances that the individual was a youth receiving state services.

5082 (b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving
5083 state services is younger than 18 years [~~of age~~] old, a violation of Subsection (2)(a) is a second
5084 degree felony.

5085 (c) If the act committed under this Subsection (2) amounts to an offense subject to a
5086 greater penalty under another provision of state law than is provided under this Subsection (2),
5087 this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

5088 (3) Acts referred to in Subsection (2)(a) are:

5089 (a) having sexual intercourse with a youth receiving state services;

5090 (b) engaging in any sexual act with a youth receiving state services involving the
5091 genitals of one individual and the mouth or anus of another individual, regardless of the sex of
5092 either participant; or

5093 (c) causing the penetration, however slight, of the genital or anal opening of a youth
5094 receiving state services by any foreign object, substance, instrument, or device, including a part
5095 of the human body, with the intent to cause substantial emotional or bodily pain to any
5096 individual, regardless of the sex of any participant or with the intent to arouse or gratify the
5097 sexual desire of any individual, regardless of the sex of any participant.

5098 (4) (a) An actor commits custodial sexual misconduct with a youth receiving state
5099 services if the actor commits any of the acts under Subsection (5):

5100 (i) under circumstances not amounting to commission of, or an attempt to commit, an
5101 offense under Subsection (6); and

5102 (ii) (A) the actor knows that the individual is a youth receiving state services; or

5103 (B) a reasonable person in the actor's position should have known under the
5104 circumstances that the individual was a youth receiving state services.

5105 (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth
5106 receiving state services is younger than 18 years [~~of age~~] old, a violation of Subsection (4)(a) is
5107 a third degree felony.

5108 (c) If the act committed under this Subsection (4) amounts to an offense subject to a
5109 greater penalty under another provision of state law than is provided under this Subsection (4),
5110 this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

5111 (5) Acts referred to in Subsection (4)(a) are the following acts when committed with

the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual, regardless of the sex of any participant:

(a) touching the anus, buttocks, pubic area, or any part of the genitals of a youth receiving state services;

(b) touching the breast of a female youth receiving state services; or

(c) otherwise taking indecent liberties with a youth receiving state services.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years ~~[of age]~~ old, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years ~~[of age]~~ old or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 78. Section 76-5b-201 is amended to read:

76-5b-201. Sexual exploitation of a minor -- Offenses.

5143 (1) A person is guilty of sexual exploitation of a minor:
5144 (a) when the person:
5145 (i) knowingly produces, possesses, or possesses with intent to distribute child
5146 pornography; or
5147 (ii) intentionally distributes or views child pornography; or
5148 (b) if the person is a minor's parent or legal guardian and knowingly consents to or
5149 permits the minor to be sexually exploited as described in Subsection (1)(a).
5150 (2) (a) Except as provided in Subsection (2)(b), sexual exploitation of a minor is a
5151 second degree felony.
5152 (b) A violation of Subsection (1) for knowingly producing child pornography is a first
5153 degree felony if the person produces original child pornography depicting a first degree felony
5154 that involves:
5155 (i) the person or another person engaging in conduct with the minor that is a violation
5156 of:
5157 (A) Section 76-5-402.1, rape of a child;
5158 (B) Section 76-5-402.3, object rape of a child;
5159 (C) Section 76-5-403.1, sodomy on a child; or
5160 (D) Section 76-5-404.1, aggravated sexual abuse of a child; or
5161 (ii) the minor being physically abused, as defined in Section [78A-6-105] 80-1-102.
5162 (3) It is a separate offense under this section:
5163 (a) for each minor depicted in the child pornography; and
5164 (b) for each time the same minor is depicted in different child pornography.
5165 (4) (a) It is an affirmative defense to a charge of violating this section that no minor
5166 was actually depicted in the visual depiction or used in producing or advertising the visual
5167 depiction.
5168 (b) For a charge of violating this section for knowingly possessing or intentionally
5169 viewing child pornography, it is an affirmative defense that:
5170 (i) the defendant:
5171 (A) did not solicit the child pornography from the minor depicted in the child
5172 pornography;
5173 (B) is not more than two years older than the minor depicted in the child pornography;

5174 and

5175 (C) upon request of a law enforcement agent or the minor depicted in the child
5176 pornography, removes from an electronic device or destroys the child pornography and all
5177 copies of the child pornography in the defendant's possession; and

5178 (ii) the child pornography does not depict an offense under Title 76, Chapter 5, Part 4,
5179 Sexual Offenses.

5180 (5) In proving a violation of this section in relation to an identifiable minor, proof of
5181 the actual identity of the identifiable minor is not required.

5182 (6) This section may not be construed to impose criminal or civil liability on:

5183 (a) an entity or an employee, director, officer, or agent of an entity when acting within
5184 the scope of employment, for the good faith performance of:

5185 (i) reporting or data preservation duties required under federal or state law; or

5186 (ii) implementing a policy of attempting to prevent the presence of child pornography
5187 on tangible or intangible property, or of detecting and reporting the presence of child
5188 pornography on the property;

5189 (b) a law enforcement officer acting within the scope of a criminal investigation;

5190 (c) an employee of a court who may be required to view child pornography during the
5191 course of and within the scope of the employee's employment;

5192 (d) a juror who may be required to view child pornography during the course of the
5193 individual's service as a juror;

5194 (e) an attorney or employee of an attorney who is required to view child pornography
5195 during the course of a judicial process and while acting within the scope of employment;

5196 (f) an employee of the Department of Human Services who is required to view child
5197 pornography within the scope of the employee's employment; or

5198 (g) an attorney who is required to view child pornography within the scope of the
5199 attorney's responsibility to represent the Department of Human Services, including the
5200 divisions and offices within the Department of Human Services.

5201 Section 79. Section **76-7-301** is amended to read:

5202 **76-7-301. Definitions.**

5203 As used in this part:

5204 (1) (a) "Abortion" means:

- 5205 (i) the intentional termination or attempted termination of human pregnancy after
5206 implantation of a fertilized ovum through a medical procedure carried out by a physician or
5207 through a substance used under the direction of a physician;
- 5208 (ii) the intentional killing or attempted killing of a live unborn child through a medical
5209 procedure carried out by a physician or through a substance used under the direction of a
5210 physician; or
- 5211 (iii) the intentional causing or attempted causing of a miscarriage through a medical
5212 procedure carried out by a physician or through a substance used under the direction of a
5213 physician.
- 5214 (b) "Abortion" does not include:
- 5215 (i) removal of a dead unborn child;
- 5216 (ii) removal of an ectopic pregnancy; or
- 5217 (iii) the killing or attempted killing of an unborn child without the consent of the
5218 pregnant woman, unless:
- 5219 (A) the killing or attempted killing is done through a medical procedure carried out by
5220 a physician or through a substance used under the direction of a physician; and
- 5221 (B) the physician is unable to obtain the consent due to a medical emergency.
- 5222 (2) "Abortion clinic" means the same as that term is defined in Section [26-21-2](#).
- 5223 (3) "Abuse" means the same as that term is defined in Section [\[78A-6-105\] 80-1-102](#).
- 5224 (4) "Department" means the Department of Health.
- 5225 (5) "Down syndrome" means a genetic condition associated with an extra chromosome
5226 21, in whole or in part, or an effective trisomy for chromosome 21.
- 5227 (6) "Gestational age" means the age of an unborn child as calculated from the first day
5228 of the last menstrual period of the pregnant woman.
- 5229 (7) "Hospital" means:
- 5230 (a) a general hospital licensed by the department according to Title 26, Chapter 21,
5231 Health Care Facility Licensing and Inspection Act; and
- 5232 (b) a clinic or other medical facility to the extent that such clinic or other medical
5233 facility is certified by the department as providing equipment and personnel sufficient in
5234 quantity and quality to provide the same degree of safety to the pregnant woman and the
5235 unborn child as would be provided for the particular medical procedures undertaken by a

5236 general hospital licensed by the department.

5237 (8) "Information module" means the pregnancy termination information module
5238 prepared by the department.

5239 (9) "Medical emergency" means that condition which, on the basis of the physician's
5240 good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the
5241 immediate abortion of her pregnancy to avert her death, or for which a delay will create serious
5242 risk of substantial and irreversible impairment of major bodily function.

5243 (10) "Minor" means an individual who is:

5244 (a) under 18 years [~~of age~~] old;

5245 (b) unmarried; and

5246 (c) not emancipated.

5247 (11) (a) "Partial birth abortion" means an abortion in which the person performing the
5248 abortion:

5249 (i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a
5250 head first presentation, the entire fetal head is outside the body of the mother, or, in the case of
5251 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother,
5252 for the purpose of performing an overt act that the person knows will kill the partially delivered
5253 living fetus; and

5254 (ii) performs the overt act, other than completion of delivery, that kills the partially
5255 living fetus.

5256 (b) "Partial birth abortion" does not include the dilation and evacuation procedure
5257 involving dismemberment prior to removal, the suction curettage procedure, or the suction
5258 aspiration procedure for abortion.

5259 (12) "Physician" means:

5260 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
5261 67, Utah Medical Practice Act;

5262 (b) an osteopathic physician licensed to practice osteopathic medicine under Title 58,
5263 Chapter 68, Utah Osteopathic Medical Practice Act; or

5264 (c) a physician employed by the federal government who has qualifications similar to a
5265 person described in Subsection (12)(a) or (b).

5266 (13) (a) "Severe brain abnormality" means a malformation or defect that causes an

5267 individual to live in a mentally vegetative state.

5268 (b) "Severe brain abnormality" does not include:

5269 (i) Down syndrome;

5270 (ii) spina bifida;

5271 (iii) cerebral palsy; or

5272 (iv) any other malformation, defect, or condition that does not cause an individual to
5273 live in a mentally vegetative state.

5274 Section 80. Section **76-7a-101 (Contingently Effective)** is amended to read:

5275 **76-7a-101 (Contingently Effective). Definitions.**

5276 As used in this chapter:

5277 (1) (a) "Abortion" means:

5278 (i) the intentional termination or attempted termination of human pregnancy after
5279 implantation of a fertilized ovum through a medical procedure carried out by a physician or
5280 through a substance used under the direction of a physician;

5281 (ii) the intentional killing or attempted killing of a live unborn child through a medical
5282 procedure carried out by a physician or through a substance used under the direction of a
5283 physician; or

5284 (iii) the intentional causing or attempted causing of a miscarriage through a medical
5285 procedure carried out by a physician or through a substance used under the direction of a
5286 physician.

5287 (b) "Abortion" does not include:

5288 (i) removal of a dead unborn child;

5289 (ii) removal of an ectopic pregnancy; or

5290 (iii) the killing or attempted killing of an unborn child without the consent of the
5291 pregnant woman, unless:

5292 (A) the killing or attempted killing is done through a medical procedure carried out by
5293 a physician or through a substance used under the direction of a physician; and

5294 (B) the physician is unable to obtain the consent due to a medical emergency.

5295 (2) "Abortion clinic" means a type I abortion clinic licensed by the state or a type II
5296 abortion clinic licensed by the state.

5297 (3) "Department" means the Department of Health.

5298 (4) "Down syndrome" means a genetic condition associated with an extra chromosome
5299 21, in whole or in part, or an effective trisomy for chromosome 21.

5300 (5) "Hospital" means:

5301 (a) a general hospital licensed by the department; or

5302 (b) a clinic or other medical facility to the extent the clinic or other medical facility is
5303 certified by the department as providing equipment and personnel sufficient in quantity and
5304 quality to provide the same degree of safety to a pregnant woman and an unborn child as would
5305 be provided for the particular medical procedure undertaken by a general hospital licensed by
5306 the department.

5307 (6) "Incest" means the same as that term is defined in [~~Title 78A, Chapter 6, Juvenile~~
5308 ~~Court Act~~] Section 80-1-102.

5309 (7) "Medical emergency" means a condition which, on the basis of the physician's good
5310 faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the
5311 immediate abortion of her pregnancy to avert her death, or for which a delay will create serious
5312 risk of substantial and irreversible impairment of major bodily function.

5313 (8) "Physician" means:

5314 (a) a medical doctor licensed to practice medicine and surgery in the state;

5315 (b) an osteopathic physician licensed to practice osteopathic medicine in the state; or

5316 (c) a physician employed by the federal government who has qualifications similar to
5317 an individual described in Subsection (8)(a) or (b).

5318 (9) "Rape" means the same as that term is defined in Title 76, Utah Criminal Code.

5319 (10) (a) "Severe brain abnormality" means a malformation or defect that causes an
5320 individual to live in a mentally vegetative state.

5321 (b) "Severe brain abnormality" does not include:

5322 (i) Down syndrome;

5323 (ii) spina bifida;

5324 (iii) cerebral palsy; or

5325 (iv) any other malformation, defect, or condition that does not cause an individual to
5326 live in a mentally vegetative state.

5327 Section 81. Section **76-8-306** is amended to read:

5328 **76-8-306. Obstruction of justice in criminal investigations or proceedings --**

Elements -- Penalties -- Exceptions.

(1) An actor commits obstruction of justice if the actor, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense:

(a) provides any person with a weapon;

(b) prevents by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person;

(c) alters, destroys, conceals, or removes any item or other thing;

(d) makes, presents, or uses any item or thing known by the actor to be false;

(e) harbors or conceals a person;

(f) provides a person with transportation, disguise, or other means of avoiding discovery or apprehension;

(g) warns any person of impending discovery or apprehension;

(h) warns any person of an order authorizing the interception of wire communications or of a pending application for an order authorizing the interception of wire communications;

(i) conceals information that is not privileged and that concerns the offense, after a judge or magistrate has ordered the actor to provide the information; or

(j) provides false information regarding a suspect, a witness, the conduct constituting an offense, or any other material aspect of the investigation.

(2) (a) As used in this section, "conduct that constitutes a criminal offense" means conduct that would be punishable as a crime and is separate from a violation of this section, and includes:

(i) any violation of a criminal statute or ordinance of this state, its political subdivisions, any other state, or any district, possession, or territory of the United States; and

(ii) conduct committed by a juvenile which would be a crime if committed by an adult.

(b) A violation of a criminal statute that is committed in another state, or any district, possession, or territory of the United States, is a:

(i) capital felony if the penalty provided includes death or life imprisonment without parole;

(ii) a first degree felony if the penalty provided includes life imprisonment with parole

5360 or a maximum term of imprisonment exceeding 15 years;
5361 (iii) a second degree felony if the penalty provided exceeds five years;
5362 (iv) a third degree felony if the penalty provided includes imprisonment for any period
5363 exceeding one year; and
5364 (v) a misdemeanor if the penalty provided includes imprisonment for any period of one
5365 year or less.
5366 (3) Obstruction of justice is:
5367 (a) a second degree felony if the conduct which constitutes an offense would be a
5368 capital felony or first degree felony;
5369 (b) a third degree felony if:
5370 (i) the conduct that constitutes an offense would be a second or third degree felony and
5371 the actor violates Subsection (1)(b), (c), (d), (e), or (f);
5372 (ii) the conduct that constitutes an offense would be any offense other than a capital or
5373 first degree felony and the actor violates Subsection (1)(a);
5374 (iii) the obstruction of justice is presented or committed before a court of law; or
5375 (iv) a violation of Subsection (1)(h); or
5376 (c) a class A misdemeanor for any violation of this section that is not enumerated under
5377 Subsection (3)(a) or (b).
5378 (4) It is not a defense that the actor was unaware of the level of penalty for the conduct
5379 constituting an offense.
5380 (5) Subsection (1)(e) does not apply to harboring ~~a youth offender, which is governed~~
5381 ~~by Section 62A-7-402~~ a juvenile offender, as defined in Section [80-1-102](#), which is governed
5382 by Section [76-8-311.5](#).
5383 (6) Subsection (1)(b) does not apply to:
5384 (a) tampering with a juror, which is governed by Section [76-8-508.5](#);
5385 (b) influencing, impeding, or retaliating against a judge or member of the Board of
5386 Pardons and Parole, which is governed by Section [76-8-316](#);
5387 (c) tampering with a witness or soliciting or receiving a bribe, which is governed by
5388 Section [76-8-508](#);
5389 (d) retaliation against a witness, victim, or informant, which is governed by Section
5390 [76-8-508.3](#); or

5391 (e) extortion or bribery to dismiss a criminal proceeding, which is governed by Section
5392 76-8-509.

5393 (7) Notwithstanding Subsection (1), (2), or (3), an actor commits a third degree felony
5394 if the actor harbors or conceals an offender who has escaped from official custody as defined in
5395 Section 76-8-309.

5396 Section 82. Section 76-9-701 is amended to read:

5397 **76-9-701. Intoxication -- Release of arrested person or placement in detoxification**
5398 **center.**

5399 (1) A person is guilty of intoxication if the person is under the influence of alcohol, a
5400 controlled substance, or any substance having the property of releasing toxic vapors, to a
5401 degree that the person may endanger the person or another, in a public place or in a private
5402 place where the person unreasonably disturbs other persons.

5403 (2) (a) A peace officer or a magistrate may release from custody a person arrested
5404 under this section if the peace officer or magistrate believes imprisonment is unnecessary for
5405 the protection of the person or another.

5406 (b) A peace officer may take the arrested person to a detoxification center or other
5407 special facility as an alternative to incarceration or release from custody.

5408 (3) (a) If a minor is found by a court to have violated this section and the violation is
5409 the minor's first violation of this section, the court may:

5410 (i) order the minor to complete a screening as defined in Section 41-6a-501;

5411 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the
5412 screening indicates an assessment to be appropriate; and

5413 (iii) order the minor to complete an educational series as defined in Section 41-6a-501
5414 or substance use disorder treatment as indicated by an assessment.

5415 (b) If a minor is found by a court to have violated this section and the violation is the
5416 minor's second or subsequent violation of this section, the court shall:

5417 (i) order the minor to complete a screening as defined in Section 41-6a-501;

5418 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the
5419 screening indicates an assessment to be appropriate; and

5420 (iii) order the minor to complete an educational series as defined in Section 41-6a-501
5421 or substance use disorder treatment as indicated by an assessment.

(4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.

(b) Notwithstanding the requirement in Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's first violation of this section; and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance use disorder treatment.

(c) Notwithstanding the requirement in Subsection (4)(a) and in accordance with the requirements of Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's second or subsequent violation of this section;

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance use disorder treatment; and

(iii) (A) the person is 18 years ~~[of age]~~ old or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a); or

(B) the person is under 18 years ~~[of age]~~ old and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a).

(5) When a person who is younger than 18 years old is found by a court to have violated this section, the provisions regarding suspension of the driver's license under Section ~~[78A-6-606]~~ 80-6-707 apply to the violation.

(6) Notwithstanding Subsections (3)(a) and (b), if a minor is adjudicated under Section ~~[78A-6-117]~~ 80-6-701, the court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention based on the results of a validated assessment.

(7) When the court issues an order suspending a person's driving privileges for a violation of this section, the person's driver license shall be suspended under Section 53-3-219.

5453 (8) An offense under this section is a class C misdemeanor.

5454 Section 83. Section **76-10-105** is amended to read:

5455 **76-10-105. Buying or possessing a tobacco product or an electronic cigarette**
5456 **product by a minor -- Penalty -- Compliance officer authority -- Juvenile court**
5457 **jurisdiction.**

5458 (1) An individual who is 18 years old or older, but younger than 21 years old, and who
5459 buys or attempts to buy, accepts, or has in the individual's possession a tobacco product, an
5460 electronic cigarette product, or a nicotine product is:

5461 (a) guilty of an infraction; and

5462 (b) subject to:

5463 (i) a minimum fine or penalty of \$60; and

5464 (ii) participation in a court-approved tobacco education or cessation program, which
5465 may include a participation fee.

5466 (2) (a) An individual who is under 18 years old and who buys or attempts to buy,
5467 accepts, or has in the individual's possession a tobacco product, an electronic cigarette product,
5468 or a nicotine product is subject to a citation under Section ~~[78A-6-603]~~ [80-6-302](#), unless the
5469 violation is committed on school property under Section [53G-8-211](#).

5470 (b) If a violation under this section is adjudicated under Section ~~[78A-6-117]~~ [80-6-701](#),
5471 the minor may be subject to the following:

5472 (i) a fine or penalty, in accordance with Section ~~[78A-6-117]~~ [80-6-709](#); and

5473 (ii) participation in a court-approved tobacco education program, which may include a
5474 participation fee.

5475 (3) (a) A compliance officer appointed by a board of education under Section
5476 [53G-4-402](#) may not issue a citation for a violation of this section committed on school
5477 property.

5478 (b) A cited violation committed on school property shall be addressed in accordance
5479 with Section [53G-8-211](#).

5480 Section 84. Section **76-10-503** is amended to read:

5481 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
5482 **dangerous weapons by certain persons -- Exceptions.**

5483 (1) For purposes of this section:

5484 (a) A Category I restricted person is a person who:
5485 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;
5486 (ii) is on probation or parole for any felony;
5487 (iii) is on parole from ~~[a secure facility as defined in Section 62A-7-101]~~ secure care,
5488 as defined in Section 80-1-102;
5489 (iv) within the last 10 years has been adjudicated ~~[delinquent]~~ under Section 80-6-701
5490 for an offense which if committed by an adult would have been a violent felony as defined in
5491 Section 76-3-203.5;
5492 (v) is an alien who is illegally or unlawfully in the United States; or
5493 (vi) is on probation for a conviction of possessing:
5494 (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;
5495 (B) a controlled substance analog; or
5496 (C) a substance listed in Section 58-37-4.2.
5497 (b) A Category II restricted person is a person who:
5498 (i) has been convicted of any felony;
5499 (ii) within the last seven years has been adjudicated delinquent for an offense which if
5500 committed by an adult would have been a felony;
5501 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;
5502 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in
5503 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;
5504 (v) has been found not guilty by reason of insanity for a felony offense;
5505 (vi) has been found mentally incompetent to stand trial for a felony offense;
5506 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
5507 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
5508 to a mental institution;
5509 (viii) has been dishonorably discharged from the armed forces;
5510 (ix) has renounced the individual's citizenship after having been a citizen of the United
5511 States;
5512 (x) is a respondent or defendant subject to a protective order or child protective order
5513 that is issued after a hearing for which the respondent or defendant received actual notice and at
5514 which the respondent or defendant has an opportunity to participate, that restrains the

respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate partner, and that:

(A) includes a finding that the respondent or defendant represents a credible threat to the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C. Sec. 921 or the child of the individual; or

(B) explicitly prohibits the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily harm against an intimate partner or the child of an intimate partner; or

(xi) has been convicted of the commission or attempted commission of assault under Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or former spouse, parent, guardian, individual with whom the restricted person shares a child in common, individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent, or guardian, or against an individual similarly situated to a spouse, parent, or guardian of the restricted person.

(c) As used in this section, a conviction of a felony or adjudication of delinquency for an offense which would be a felony if committed by an adult does not include:

(i) a conviction or an adjudication [~~of delinquency~~] under Section 80-6-701 for an offense pertaining to antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to the regulation of business practices not involving theft or fraud; or

(ii) a conviction or an adjudication [~~of delinquency~~] under Section 80-6-701 which, according to the law of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by court order, pardoned or regarding which the person's civil rights have been restored unless the pardon, reduction, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(d) It is the burden of the defendant in a criminal case to provide evidence that a conviction or [~~adjudication of delinquency~~] an adjudication under Section 80-6-701 is subject to an exception provided in Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the conviction or the adjudication [~~of delinquency~~] is not subject to that exception.

(2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a second degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a third degree felony.

(3) A Category II restricted person who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a third degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

(4) A person may be subject to the restrictions of both categories at the same time.

(5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or

(b) otherwise authorized by law to possess the substance.

(7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

(i) was possessed by the person or was under the person's custody or control before the person became a restricted person;

(ii) was not used in or possessed during the commission of a crime or subject to disposition under Section [24-3-103](#);

(iii) is not being held as evidence by a court or law enforcement agency;

(iv) was transferred to a person not legally prohibited from possessing the weapon; and

(v) unless a different time is ordered by the court, was transferred within 10 days of the person becoming a restricted person.

(b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person

5577 of a firearm or other dangerous weapon by a restricted person.

5578 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
5579 dangerous weapon to any person, knowing that the recipient is a person described in Subsection
5580 (1)(a) or (b).

5581 (b) A person who violates Subsection (8)(a) when the recipient is:

5582 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is
5583 guilty of a second degree felony;

5584 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous
5585 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
5586 the weapon for any unlawful purpose, is guilty of a third degree felony;

5587 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is
5588 guilty of a third degree felony; or

5589 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous
5590 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
5591 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

5592 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
5593 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
5594 circumstances which the person knows would be a violation of the law.

5595 (b) A person may not provide to a dealer or other person any information that the
5596 person knows to be materially false information with intent to deceive the dealer or other
5597 person about the legality of a sale, transfer or other disposition of a firearm or dangerous
5598 weapon.

5599 (c) "Materially false information" means information that portrays an illegal transaction
5600 as legal or a legal transaction as illegal.

5601 (d) A person who violates this Subsection (9) is guilty of:

5602 (i) a third degree felony if the transaction involved a firearm; or

5603 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
5604 firearm.

5605 Section 85. Section **76-10-1315** is amended to read:

5606 **76-10-1315. Safe harbor for children as victims in commercial sex or sexual**
5607 **solicitation.**

5608 (1) As used in this section:

5609 (a) "Child engaged in commercial sex" means a child who:

5610 (i) engages, offers, or agrees to engage in any sexual activity with another individual
5611 for a fee, or the functional equivalent of a fee;

5612 (ii) takes steps in arranging a meeting through any form of advertising, agreeing to
5613 meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee
5614 or the functional equivalent of a fee; or

5615 (iii) loiters in or within view of any public place for the purpose of being hired to
5616 engage in sexual activity.

5617 (b) "Child engaged in sexual solicitation" means a child who offers or agrees to
5618 commit or engage in any sexual activity with another person for a fee or the functional
5619 equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

5620 (c) "Division" means the Division of Child and Family Services created in Section
5621 62A-4a-103.

5622 (d) [~~"Receiving"~~] "Juvenile receiving center" means the same as that term is defined in
5623 Section [~~62A-7-101~~] 80-1-102.

5624 (2) Upon encountering a child engaged in commercial sex or sexual solicitation, a law
5625 enforcement officer shall:

5626 (a) conduct an investigation regarding possible human trafficking of the child pursuant
5627 to Sections 76-5-308 and 76-5-308.5;

5628 (b) refer the child to the division;

5629 (c) bring the child to a juvenile receiving center, if available; and

5630 (d) contact the child's parent or guardian, if practicable.

5631 (3) When law enforcement refers a child to the division under Subsection (2)(b) the
5632 division shall provide services to the child under Title 62A, Chapter 4a, Child and Family
5633 Services.

5634 (4) A child may not be subjected to delinquency proceedings for prostitution under
5635 Section 76-10-1302, or sex solicitation under Section 76-10-1313.

5636 Section 86. Section 77-2-9 is amended to read:

5637 **77-2-9. Offenses ineligible for diversion.**

5638 (1) A magistrate may not grant a diversion for:

- 5639 (a) a capital felony;
- 5640 (b) a felony in the first degree;
- 5641 (c) any case involving a sexual offense against a victim who is under 14 years old;
- 5642 (d) any motor vehicle related offense involving alcohol or drugs;
- 5643 (e) any case involving using a motor vehicle in the commission of a felony;
- 5644 (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended
- 5645 license;
- 5646 (g) any case involving operating a commercial motor vehicle in a negligent manner
- 5647 causing the death of another including the offenses of:
- 5648 (i) manslaughter under Section [76-5-205](#); or
- 5649 (ii) negligent homicide under Section [76-5-206](#); or
- 5650 (h) a crime of domestic violence as defined in Section [77-36-1](#).
- 5651 (2) When an individual is alleged to have committed any violation of Title 76, Chapter
- 5652 5, Part 4, Sexual Offenses, while under 16 years old, the court may enter a diversion in the
- 5653 matter if the court enters on the record the court's findings that:
- 5654 (a) the offenses could have been adjudicated in juvenile court but for the delayed
- 5655 reporting or delayed filing of the information in the district court, unless the offenses are before
- 5656 the court in accordance with Section [~~[78A-6-703.2](#) or [78A-6-703.5](#)~~] [80-6-502](#) or [80-6-504](#);
- 5657 (b) the individual did not use coercion or force;
- 5658 (c) there is no more than three years' difference between the ages of the participants;
- 5659 and
- 5660 (d) it would be in the best interest of the person to grant diversion.
- 5661 Section 87. Section **77-16b-102** is amended to read:
- 5662 **77-16b-102. Definitions.**
- 5663 As used in this chapter:
- 5664 (1) "Correctional facility" means:
- 5665 (a) a county jail;
- 5666 (b) a secure correctional facility as defined by Section [64-13-1](#); or
- 5667 (c) a secure [~~facility as defined by Section [62A-7-101](#)~~] care facility as defined in
- 5668 Section [80-1-102](#).
- 5669 (2) "Correctional facility administrator" means:

- 5670 (a) a county sheriff in charge of a county jail;
5671 (b) a designee of the executive director of the Utah Department of Corrections; or
5672 (c) a designee of the director of the Division of Juvenile Justice Services.

5673 (3) "Medical supervision" means under the direction of a licensed physician, physician
5674 assistant, or nurse practitioner.

5675 (4) "Mental health therapist" ~~[has the same definition as]~~ means the same as that term
5676 is defined in Section 58-60-102.

5677 (5) "Prisoner" means:

5678 (a) any ~~[person]~~ individual who is a pretrial detainee or who has been committed to the
5679 custody of a sheriff or the Utah Department of Corrections, and who is physically in a
5680 correctional facility; and

5681 (b) any ~~[person older than 18 years of age and younger than 21 years of age]~~ individual
5682 who is 18 years old or older and younger than 21 years old, and who has been committed to the
5683 custody of the Division of Juvenile Justice Services.

5684 Section 88. Section ~~77-37-3~~ is amended to read:

5685 **77-37-3. Bill of rights.**

5686 (1) The bill of rights for victims and witnesses is:

5687 (a) Victims and witnesses have a right to be informed as to the level of protection from
5688 intimidation and harm available to them, and from what sources, as they participate in criminal
5689 justice proceedings as designated by Section ~~76-8-508~~, regarding witness tampering, and
5690 Section ~~76-8-509~~, regarding threats against a victim. Law enforcement, prosecution, and
5691 corrections personnel have the duty to timely provide this information in a form which is useful
5692 to the victim.

5693 (b) Victims and witnesses, including children and their guardians, have a right to be
5694 informed and assisted as to their role in the criminal justice process. All criminal justice
5695 agencies have the duty to provide this information and assistance.

5696 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
5697 proceedings; these explanations shall be appropriate to the age of child victims and witnesses.
5698 All criminal justice agencies have the duty to provide these explanations.

5699 (d) Victims and witnesses should have a secure waiting area that does not require them
5700 to be in close proximity to defendants or the family and friends of defendants. Agencies

controlling facilities shall, whenever possible, provide this area.

(e) Victims may seek restitution or reparations, including medical costs, as provided in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections [~~62A-7-109.5;~~ 77-38a-302, ~~and~~ 77-27-6, and 80-6-710]. State and local government agencies that serve victims have the duty to have a functional knowledge of the procedures established by the Crime Victim Reparations Board and to inform victims of these procedures.

(f) Victims and witnesses have a right to have any personal property returned as provided in Sections 77-24a-1 through 77-24a-5. Criminal justice agencies shall expeditiously return the property when it is no longer needed for court law enforcement or prosecution purposes.

(g) Victims and witnesses have the right to reasonable employer intercession services, including pursuing employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process. Officers of the court shall provide these services and shall consider victims' and witnesses' schedules so that activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible agency intercede with employers or other parties.

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.

(i) Victims and witnesses have the right to timely notice of judicial proceedings they are to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the duty to provide these notifications. Defense counsel and others have the duty to provide timely notice to prosecution of any continuances or other changes that may be required.

(j) Victims of sexual offenses have the following rights:

(i) the right to request voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory testing of the alleged sexual offender for HIV infection as provided in Section 76-5-502;

(ii) the right to be informed whether a DNA profile was obtained from the testing of the rape kit evidence or from other crime scene evidence;

(iii) the right to be informed whether a DNA profile developed from the rape kit evidence or other crime scene evidence has been entered into the Utah Combined DNA Index

5732 System;

5733 (iv) the right to be informed whether there is a match between a DNA profile
5734 developed from the rape kit evidence or other crime scene evidence and a DNA profile
5735 contained in the Utah Combined DNA Index System, provided that disclosure would not
5736 impede or compromise an ongoing investigation; and

5737 (v) the right to designate a person of the victim's choosing to act as a recipient of the
5738 information provided under this Subsection (1)(j) and under Subsections (2) and (3).

5739 (k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency
5740 communicate with the victim or the victim's designee regarding the status of DNA testing,
5741 absent a specific request received from the victim or the victim's designee.

5742 (2) The law enforcement agency investigating a sexual offense may:

5743 (a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the
5744 request of a victim or the victim's designee and is the designated agency to provide that
5745 information to the victim or the victim's designee;

5746 (b) require that the victim's request be in writing; and

5747 (c) respond to the victim's request with verbal communication, written communication,
5748 or by email, if an email address is available.

5749 (3) The law enforcement agency investigating a sexual offense has the following
5750 authority and responsibilities:

5751 (a) If the law enforcement agency determines that DNA evidence will not be analyzed
5752 in a case where the identity of the perpetrator has not been confirmed, the law enforcement
5753 agency shall notify the victim or the victim's designee.

5754 (b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence
5755 or other crime scene evidence from an unsolved sexual assault case, the law enforcement
5756 agency shall provide written notification of that intention and information on how to appeal the
5757 decision to the victim or the victim's designee of that intention.

5758 (ii) Written notification under this Subsection (3) shall be made not fewer than 60 days
5759 prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

5760 (c) A law enforcement agency responsible for providing information under Subsections
5761 (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the
5762 victim or the victim's designee, shall advise the victim or the victim's designee of any

significant changes in the information of which the law enforcement agency is aware.

(d) The law enforcement agency investigating the sexual offense is responsible for informing the victim or the victim's designee of the rights established under Subsections (1)(j)(ii) through (iv) and (2), and this Subsection (3).

(4) Informational rights of the victim under this chapter are based upon the victim providing the current name, address, telephone number, and email address, if an email address is available, of the person to whom the information should be provided to the criminal justice agencies involved in the case.

Section 89. Section **77-38-5** is amended to read:

77-38-5. Application to felonies and misdemeanors of the declaration of the rights of crime victims.

The provisions of this chapter shall apply to:

(1) any felony filed in the courts of the state;

(2) to any class A and class B misdemeanor filed in the courts of the state; and

(3) to cases in the juvenile court as provided in Section ~~[78A-6-114]~~ 80-6-604.

Section 90. Section **77-38-14** is amended to read:

77-38-14. Notice of expungement petition -- Victim's right to object.

(1) (a) The Department of Corrections or the Juvenile Probation Department shall prepare a document explaining the right of a victim or a victim's representative to object to a petition for expungement under Section 77-40-107 or ~~[78A-6-1503]~~ 80-6-1004 and the procedures for obtaining notice of the petition.

(b) The department or division shall provide each trial court a copy of the document that has jurisdiction over delinquencies or criminal offenses subject to expungement.

(2) The prosecuting attorney in any case leading to a conviction, a charge dismissed in accordance with a plea in abeyance agreement, or an adjudication subject to expungement shall provide a copy of the document to each person who would be entitled to notice of a petition for expungement under Sections 77-40-107 and ~~[78A-6-1503]~~ 80-6-1004.

Section 91. Section **77-38a-102** is amended to read:

77-38a-102. Definitions.

As used in this chapter:

(1) "Conviction" includes a:

- 5794 (a) judgment of guilt;
5795 (b) a plea of guilty; or
5796 (c) a plea of no contest.
- 5797 (2) "Criminal activities" means:
5798 (a) any misdemeanor or felony offense of which the defendant is convicted; or
5799 (b) any other criminal conduct for which the defendant admits responsibility to the
5800 sentencing court with or without an admission of committing the criminal conduct.
- 5801 (3) (a) "Defendant" means an individual who has been convicted of, or entered into a
5802 plea disposition for, a criminal activity.
5803 (b) "Defendant" does not include a minor, as defined in Section [~~78A-6-105~~] [80-1-102](#),
5804 who is adjudicated, or enters into a nonjudicial adjustment, for any offense under [~~Title 78A,~~
5805 ~~Chapter 6, Juvenile Court Act~~] Title 80, Chapter 6, Juvenile Justice.
- 5806 (4) "Department" means the Department of Corrections.
- 5807 (5) "Diversion" means suspending criminal proceedings prior to conviction on the
5808 condition that a defendant agree to participate in a rehabilitation program, make restitution to
5809 the victim, or fulfill some other condition.
- 5810 (6) "Party" means the prosecutor, defendant, or department involved in a prosecution.
- 5811 (7) "Pecuniary damages" means all demonstrable economic injury, whether or not yet
5812 incurred, including those which a person could recover in a civil action arising out of the facts
5813 or events constituting the defendant's criminal activities and includes the fair market value of
5814 property taken, destroyed, broken, or otherwise harmed, and losses, including lost earnings,
5815 including those and other travel expenses reasonably incurred as a result of participation in
5816 criminal proceedings, and medical and other expenses, but excludes punitive or exemplary
5817 damages and pain and suffering.
- 5818 (8) "Plea agreement" means an agreement entered between the prosecution and
5819 defendant setting forth the special terms and conditions and criminal charges upon which the
5820 defendant will enter a plea of guilty or no contest.
- 5821 (9) "Plea disposition" means an agreement entered into between the prosecution and
5822 defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement
5823 by which the defendant may enter a plea in any other jurisdiction or where charges are
5824 dismissed without a plea.

(10) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(11) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(12) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

(13) (a) "Reward" means a sum of money:

(i) offered to the public for information leading to the arrest and conviction of an offender; and

(ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) "Reward" does not include any amount paid in excess of the sum offered to the public.

(14) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(15) (a) "Victim" means an individual or entity, including the Utah Office for Victims of Crime, that the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(b) "Victim" may not include a codefendant or accomplice.

Section 92. Section **77-40-101.5** is amended to read:

77-40-101.5. Applicability to juvenile court records.

This chapter does not apply to an expungement of a record for an adjudication under Section [80-6-701](#) or a nonjudicial adjustment, as that term is defined in Section [~~78A-6-105~~ [80-1-102](#)], of an offense in the juvenile court.

Section 93. Section **77-41-112** is amended to read:

77-41-112. Removal from registry -- Requirements -- Procedure.

(1) An offender who is required to register with the Sex and Kidnap Offender Registry may petition the court for an order removing the offender from the Sex and Kidnap Offender Registry if:

- (a) (i) the offender is convicted of an offense described in Subsection (2);
 - (ii) at least five years have passed after the day on which the offender's sentence for the offense terminates;
 - (iii) the offense is the only offense for which the offender is required to register;
 - (iv) the offender is not convicted of another offense, excluding a traffic offense, after the day on which the offender is convicted of the offense for which the offender is required to register, as evidenced by a certificate of eligibility issued by the bureau;
 - (v) the offender successfully completes all treatment ordered by the court or the Board of Pardons and Parole relating to the offense;
 - (vi) the offender pays all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; and
 - (vii) the offender complies with all registration requirements required under this chapter at all times; or
- (b) (i) if the offender is required to register in accordance with Subsection [77-41-105\(3\)\(a\)](#);
- (ii) at least 10 years have passed after the later of:
 - (A) the day on which the offender is placed on probation;
 - (B) the day on which the offender is released from incarceration to parole;
 - (C) the day on which the offender's sentence is terminated without parole;
 - (D) the day on which the offender enters a community-based residential program; or
 - (E) for a minor, as defined in Section [\[78A-6-105\]](#) [80-1-102](#), the day on which the division's custody of the offender is terminated;
 - (iii) the offender is not convicted of another offense that is a class A misdemeanor, felony, or capital felony within the most recent 10-year period after the date described in Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the bureau;
 - (iv) the offender successfully completes all treatment ordered by the court or the Board of Pardons and Parole relating to the offense;

(v) the offender pays all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; and

(vi) the offender complies with all registration requirements required under this chapter at all times.

(2) The offenses referred to in Subsection (1)(a)(i) are:

(a) Section 76-4-401, enticing a minor, if the offense is a class A misdemeanor;

(b) Section 76-5-301, kidnapping;

(c) Section 76-5-304, unlawful detention, if the conviction of violating Section 76-5-304 is the only conviction for which the offender is required to register;

(d) Section 76-5-401, unlawful sexual activity with a minor if, at the time of the offense, the offender is not more than 10 years older than the victim;

(e) Section 76-5-401.1, sexual abuse of a minor, if, at the time of the offense, the offender is not more than 10 years older than the victim;

(f) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old, and at the time of the offense, the offender is not more than 15 years older than the victim; or

(g) Section 76-9-702.7, voyeurism, if the offense is a class A misdemeanor.

(3) (a) (i) An offender seeking removal from the Sex and Kidnap Offender Registry under this section shall apply for a certificate of eligibility from the bureau.

(ii) An offender who intentionally or knowingly provides false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.

(iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate of eligibility to an offender who provides false information on an application.

(b) (i) The bureau shall perform a check of records of governmental agencies, including national criminal databases, to determine whether an offender is eligible to receive a certificate of eligibility.

(ii) If the offender meets the requirements described in Subsection (1)(a) or (b), the bureau shall issue a certificate of eligibility to the offender, which is valid for a period of 90 days after the day on which the bureau issues the certificate.

(iii) The bureau shall request information from the department regarding whether the offender meets the requirements.

(iv) Upon request from the bureau under Subsection (3)(b)(iii), the department shall issue a document that states whether the offender meets the requirements described in Subsection (1)(a) or (b), which may be used by the bureau to determine if a certificate of eligibility is appropriate.

(v) The bureau shall provide a copy of the document provided to the bureau under Subsection (3)(b)(iv) to the offender upon issuance of a certificate of eligibility.

(4) (a) (i) The bureau shall charge application and issuance fees for a certificate of eligibility in accordance with the process in Section 63J-1-504.

(ii) The application fee shall be paid at the time the offender submits an application for a certificate of eligibility to the bureau.

(iii) If the bureau determines that the issuance of a certificate of eligibility is appropriate, the offender will be charged an additional fee for the issuance of a certificate of eligibility.

(b) Funds generated under this Subsection (4) shall be deposited into the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

(5) (a) The offender shall file the petition, including original information, the court docket, the certificate of eligibility from the bureau, and the document from the department described in Subsection (3)(b)(iv) with the court, and deliver a copy of the petition to the office of the prosecutor.

(b) Upon receipt of a petition for removal from the Sex and Kidnap Offender Registry, the office of the prosecutor shall provide notice of the petition by first-class mail to the victim at the most recent address of record on file or, if the victim is still a minor under 18 years ~~of age~~ old, to the parent or guardian of the victim.

(c) The notice described in Subsection (5)(b) shall include a copy of the petition, state that the victim has a right to object to the removal of the offender from the registry, and provide instructions for registering an objection with the court.

(d) The office of the prosecutor shall provide the following, if available, to the court within 30 days after the day on which the office receives the petition:

(i) presentencing report;

(ii) an evaluation done as part of sentencing; and

(iii) any other information the office of the prosecutor feels the court should consider.

(e) The victim, or the victim's parent or guardian if the victim is a minor under 18 years of age, may respond to the petition by filing a recommendation or objection with the court within 45 days after the day on which the petition is mailed to the victim.

(6) (a) The court shall:

(i) review the petition and all documents submitted with the petition; and

(ii) hold a hearing if requested by the prosecutor or the victim.

(b) The court may grant the petition and order removal of the offender from the registry if the court determines that the offender has met the requirements described in Subsection (1)(a) or (b) and removal is not contrary to the interests of the public.

(c) If the court grants the petition, the court shall forward a copy of the order directing removal of the offender from the registry to the department and the office of the prosecutor.

(d) If the court denies the petition, the offender may not submit another petition for three years.

(7) The court shall notify the victim and the Sex and Kidnap Offender Registry office in the department of the court's decision within three days after the day on which the court issues the court's decision in the same manner described in Subsection (5).

Section 94. Section **78A-2-104** is amended to read:

78A-2-104. Judicial Council -- Creation -- Members -- Terms and election -- Responsibilities -- Reports -- Guardian Ad Litem Oversight Committee.

(1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution, shall be composed of:

(a) the chief justice of the Supreme Court;

(b) one member elected by the justices of the Supreme Court;

(c) one member elected by the judges of the Court of Appeals;

(d) six members elected by the judges of the district courts;

(e) three members elected by the judges of the juvenile courts;

(f) three members elected by the justice court judges; and

(g) a member or ex officio member of the Board of Commissioners of the Utah State Bar who is an active member of the Bar in good standing at the time of election by the Board of Commissioners.

(2) The Judicial Council shall have a seal.

(3) (a) The chief justice of the Supreme Court shall act as presiding officer of the council and chief administrative officer for the courts. The chief justice shall vote only in the case of a tie.

(b) All members of the council shall serve for three-year terms.

(i) If a council member should die, resign, retire, or otherwise fail to complete a term of office, the appropriate constituent group shall elect a member to complete the term of office.

(ii) In courts having more than one member, the members shall be elected to staggered terms.

(iii) The person elected by the Board of Commissioners may complete a three-year term of office on the Judicial Council even though the person ceases to be a member or ex officio member of the Board of Commissioners. The person shall be an active member of the Bar in good standing for the entire term of the Judicial Council.

(c) Elections shall be held under rules made by the Judicial Council.

(4) The council is responsible for the development of uniform administrative policy for the courts throughout the state. The presiding officer of the Judicial Council is responsible for the implementation of the policies developed by the council and for the general management of the courts, with the aid of the state court administrator. The council has authority and responsibility to:

(a) establish and assure compliance with policies for the operation of the courts, including uniform rules and forms; and

(b) publish and submit to the governor, the chief justice of the Supreme Court, and the Legislature an annual report of the operations of the courts, which shall include financial and statistical data and may include suggestions and recommendations for legislation.

(5) The council shall establish standards for the operation of the courts of the state including, but not limited to, facilities, court security, support services, and staff levels for judicial and support personnel.

(6) The council shall by rule establish the time and manner for destroying court records, including computer records, and shall establish retention periods for these records.

(7) (a) Consistent with the requirements of judicial office and security policies, the council shall establish procedures to govern the assignment of state vehicles to public officers of the judicial branch.

6011 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and
6012 may be assigned for unlimited use, within the state only.

6013 (8) (a) The council shall advise judicial officers and employees concerning ethical
6014 issues and shall establish procedures for issuing informal and formal advisory opinions on
6015 these issues.

6016 (b) Compliance with an informal opinion is evidence of good faith compliance with the
6017 Code of Judicial Conduct.

6018 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial
6019 Conduct.

6020 (9) (a) The council shall establish written procedures authorizing the presiding officer
6021 of the council to appoint judges of courts of record by special or general assignment to serve
6022 temporarily in another level of court in a specific court or generally within that level. The
6023 appointment shall be for a specific period and shall be reported to the council.

6024 (b) These procedures shall be developed in accordance with Subsection 78A-2-107(10)
6025 regarding temporary appointment of judges.

6026 (10) The Judicial Council may by rule designate municipalities in addition to those
6027 designated by statute as a location of a trial court of record. There shall be at least one court
6028 clerk's office open during regular court hours in each county. Any trial court of record may hold
6029 court in any municipality designated as a location of a court of record.

6030 (11) The Judicial Council shall by rule determine whether the administration of a court
6031 shall be the obligation of the Administrative Office of the Courts or whether the Administrative
6032 Office of the Courts should contract with local government for court support services.

6033 (12) The Judicial Council may by rule direct that a district court location be
6034 administered from another court location within the county.

6035 (13) (a) The Judicial Council shall:

6036 (i) establish the Office of Guardian Ad Litem, in accordance with Title 78A, [Chapter
6037 ~~6, Part 9~~] Chapter 2, Part 8, Guardian Ad Litem; and

6038 (ii) establish and supervise a Guardian Ad Litem Oversight Committee.

6039 (b) The Guardian Ad Litem Oversight Committee described in Subsection (13)(a)(ii)
6040 shall oversee the Office of Guardian Ad Litem, established under Subsection (13)(a)(i), and
6041 assure that the Office of Guardian Ad Litem complies with state and federal law, regulation,

6042 policy, and court rules.

6043 (14) The Judicial Council shall establish and maintain, in cooperation with the Office
6044 of Recovery Services within the Department of Human Services, the part of the state case
6045 registry that contains records of each support order established or modified in the state on or
6046 after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
6047 654a.

6048 Section 95. Section **78A-2-301** is amended to read:

6049 **78A-2-301. Civil fees of the courts of record -- Courts complex design.**

6050 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
6051 court of record not governed by another subsection is \$375.

6052 (b) The fee for filing a complaint or petition is:

6053 (i) \$90 if the claim for damages or amount in interpleader exclusive of court costs,
6054 interest, and attorney fees is \$2,000 or less;

6055 (ii) \$200 if the claim for damages or amount in interpleader exclusive of court costs,
6056 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

6057 (iii) \$375 if the claim for damages or amount in interpleader is \$10,000 or more;

6058 (iv) \$325 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
6059 4, Separate Maintenance;

6060 (v) \$35 for a motion for temporary separation order filed under Section [30-3-4.5](#);

6061 (vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender
6062 Registry under Section [77-41-112](#); and

6063 (vii) \$35 if the petition is for guardianship and the prospective ward is the biological or
6064 adoptive child of the petitioner.

6065 (c) The fee for filing a small claims affidavit is:

6066 (i) \$60 if the claim for damages or amount in interpleader exclusive of court costs,
6067 interest, and attorney fees is \$2,000 or less;

6068 (ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs,
6069 interest, and attorney fees is greater than \$2,000, but less than \$7,500; and

6070 (iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs,
6071 interest, and attorney fees is \$7,500 or more.

6072 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party

6073 complaint, or other claim for relief against an existing or joined party other than the original
6074 complaint or petition is:

6075 (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is
6076 \$2,000 or less;

6077 (ii) \$165 if the claim for relief exclusive of court costs, interest, and attorney fees is
6078 greater than \$2,000 and less than \$10,000;

6079 (iii) \$170 if the original petition is filed under Subsection (1)(a), the claim for relief is
6080 \$10,000 or more, or the party seeks relief other than monetary damages; and

6081 (iv) \$130 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
6082 Chapter 4, Separate Maintenance.

6083 (e) The fee for filing a small claims counter affidavit is:

6084 (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
6085 \$2,000 or less;

6086 (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is
6087 greater than \$2,000, but less than \$7,500; and

6088 (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is
6089 \$7,500 or more.

6090 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
6091 action already before the court is determined under Subsection (1)(b) based on the amount
6092 deposited.

6093 (g) The fee for filing a petition is:

6094 (i) \$240 for trial de novo of an adjudication of the justice court or of the small claims
6095 department; and

6096 (ii) \$80 for an appeal of a municipal administrative determination in accordance with
6097 Section 10-3-703.7.

6098 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
6099 petition for writ of certiorari is \$240.

6100 (i) The fee for filing a petition for expungement is \$150.

6101 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
6102 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
6103 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'

6104 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
6105 Act.

6106 (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be
6107 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
6108 Defense Account, as provided in Section 51-9-408.

6109 (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g),
6110 and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided
6111 in Section 78B-6-209.

6112 (iv) Thirty dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
6113 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
6114 deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

6115 (v) Twenty dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii)
6116 and (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account,
6117 Court Security Account, as provided in Section 78A-2-602.

6118 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
6119 United States is \$35.

6120 (l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is
6121 50% of the fee for filing an original action seeking the same relief.

6122 (m) The fee for filing probate or child custody documents from another state is \$35.

6123 (n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
6124 State Tax Commission is \$30.

6125 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
6126 or a judgment, order, or decree of an administrative agency, commission, board, council, or
6127 hearing officer of this state or of its political subdivisions other than the State Tax
6128 Commission, is \$50.

6129 (o) The fee for filing a judgment by confession without action under Section
6130 78B-5-205 is \$35.

6131 (p) The fee for filing an award of arbitration for confirmation, modification, or vacation
6132 under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before
6133 the court is \$35.

6134 (q) The fee for filing a petition or counter-petition to modify a domestic relations order

- 6135 other than a protective order or stalking injunction is \$100.
- 6136 (r) The fee for filing any accounting required by law is:
- 6137 (i) \$15 for an estate valued at \$50,000 or less;
- 6138 (ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;
- 6139 (iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;
- 6140 (iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and
- 6141 (v) \$175 for an estate valued at more than \$168,000.
- 6142 (s) The fee for filing a demand for a civil jury is \$250.
- 6143 (t) The fee for filing a notice of deposition in this state concerning an action pending in
- 6144 another state under Utah Rules of Civil Procedure, Rule 30 is \$35.
- 6145 (u) The fee for filing documents that require judicial approval but are not part of an
- 6146 action before the court is \$35.
- 6147 (v) The fee for a petition to open a sealed record is \$35.
- 6148 (w) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in
- 6149 addition to any fee for a complaint or petition.
- 6150 (x) (i) The fee for a petition for authorization for a minor to marry required by Section
- 6151 [30-1-9](#) is \$5.
- 6152 (ii) The fee for a petition for emancipation of a minor provided in [~~Title 78A, Chapter~~
- 6153 ~~6, Part 8, Emancipation~~] Title 80, Chapter 7, Emancipation, is \$50.
- 6154 (y) The fee for a certificate issued under Section [26-2-25](#) is \$8.
- 6155 (z) The fee for a certified copy of a document is \$4 per document plus 50 cents per
- 6156 page.
- 6157 (aa) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
- 6158 per page.
- 6159 (bb) The Judicial Council shall by rule establish a schedule of fees for copies of
- 6160 documents and forms and for the search and retrieval of records under Title 63G, Chapter 2,
- 6161 Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall be
- 6162 credited to the court as a reimbursement of expenditures.
- 6163 (cc) There is no fee for services or the filing of documents not listed in this section or
- 6164 otherwise provided by law.
- 6165 (dd) Except as provided in this section, all fees collected under this section are paid to

the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

(ee) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this Subsection (1)(ee) shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

(2) (a) (i) From March 17, 1994, until June 30, 1998, the state court administrator shall transfer all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities Construction and Management Capital Projects Fund.

(ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities Construction and Management shall use up to \$3,750,000 of the revenue deposited in the Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the development of a courts complex in Salt Lake City.

(B) If the Legislature approves funding for construction of a courts complex in Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited in the Capital Projects Fund under this Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.

(C) After the courts complex is completed and all bills connected with its construction have been paid, the Division of Facilities Construction and Management shall use any money remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal District Court building.

(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).

(iv) The Division of Facilities Construction and Management shall:

(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and

(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for

under this Subsection (2).

(b) After June 30, 1998, the state court administrator shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.

(c) The Division of Finance shall deposit all revenues received from the state court administrator into the restricted account created by this section.

(d) (i) From May 1, 1995, until June 30, 1998, the state court administrator shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(ii) After June 30, 1998, the state court administrator or a municipality shall transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.

(b) The Legislature may appropriate money from the restricted account to the state court administrator for the following purposes only:

- (i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and
- (ii) to cover operations and maintenance costs on the court complex.

Section 96. Section 78A-2-601 is amended to read:

78A-2-601. Security surcharge -- Application and exemptions -- Deposit in restricted account.

(1) In addition to any fine, penalty, forfeiture, or other surcharge, a security surcharge of \$53 shall be assessed in all courts of record on all criminal convictions and juvenile delinquency judgments.

(2) The security surcharge may not be imposed upon:

6228 (a) nonmoving traffic violations;
6229 (b) community service; and
6230 (c) penalties assessed by the juvenile court as part of the nonjudicial adjustment of a
6231 case under Section ~~[78A-6-602]~~ [80-6-304](#).

6232 (3) The security surcharge shall be collected after the surcharge under Section
6233 [51-9-401](#), but before any fine, and deposited with the state treasurer. A fine that would
6234 otherwise have been charged may not be reduced due to the imposition of the security
6235 surcharge.

6236 (4) The state treasurer shall deposit the collected security surcharge in the restricted
6237 account, Court Security Account, as provided in Section [78A-2-602](#).

6238 Section 97. Section **78A-2-702** is amended to read:

6239 **78A-2-702. Definitions.**

6240 As used in this part:

6241 (1) "Attorney guardian ad litem" means an attorney employed by the office.

6242 (2) "Director" means the director of the office.

6243 (3) "Guardian ad litem" means ~~[either]~~ an attorney guardian ad litem or a private
6244 attorney guardian ad litem.

6245 (4) "Office" means the Office of Guardian ad Litem, created in Section ~~[78A-6-901]~~
6246 [78A-2-802](#).

6247 (5) "Private attorney guardian ad litem" means an attorney designated by the office
6248 ~~[pursuant to]~~ in accordance with Section [78A-2-705](#) who is not an employee of the office.

6249 Section 98. Section **78A-5-102** is amended to read:

6250 **78A-5-102. Jurisdiction -- Appeals.**

6251 (1) As used in this section:

6252 (a) "Qualifying offense" means an offense described in Subsection ~~[78A-6-703.2]~~
6253 [80-6-502](#)(1)(b).

6254 (b) "Separate offense" means any offense that is not a qualifying offense.

6255 (c) "Single criminal episode" means the same as that term is defined in Section
6256 [76-1-401](#).

6257 (2) Except as otherwise provided by the Utah Constitution or by statute, the district
6258 court has original jurisdiction in all matters civil and criminal.

(3) A district court judge may issue all extraordinary writs and other writs necessary to carry into effect the district court judge's orders, judgments, and decrees.

(4) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(5) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(6) The district court has appellate jurisdiction over judgments and orders of the justice court as outlined in Section 78A-7-118 and small claims appeals filed in accordance with Section 78A-8-106.

(7) Jurisdiction over appeals from the final orders, judgments, and decrees of the district court is described in Sections 78A-3-102 and 78A-4-103.

(8) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63G, Chapter 4, Administrative Procedures Act, and shall comply with the requirements of that chapter in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section 10-3-703.7.

(9) Notwithstanding Section 78A-7-106, the district court has original jurisdiction over:

(a) a class B misdemeanor, a class C misdemeanor, an infraction, or a violation of an ordinance for which a justice court has original jurisdiction under Section 78A-7-106 if:

(i) there is no justice court with territorial jurisdiction;

(ii) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed, or has not formed and then dissolved, a justice court; or

(iii) the offense is included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor by an individual who is 18 years old or older; or

(b) a qualifying offense committed by an individual who is 16 or 17 years old.

(10) (a) Notwithstanding Subsection 78A-7-106(2), the district court has exclusive jurisdiction over any separate offense:

(i) committed by an individual who is 16 or 17 years old; and

(ii) arising from a single criminal episode containing a qualifying offense for which the district court has original jurisdiction under Subsection (9)(b).

(b) If an individual who is charged with a qualifying offense enters a plea to, or is found guilty of, a separate offense other than the qualifying offense, the district court shall have jurisdiction over the separate offense.

(c) If an individual who is 16 or 17 years old is charged with a qualifying offense and the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal, the exclusive jurisdiction of the district court over any separate offense is terminated.

(11) If a district court has jurisdiction in accordance with Subsection (6), (9)(a)(i), or (9)(a)(ii), the district court has jurisdiction over an offense listed in Subsection [78A-7-106\(2\)](#) even if the offense is committed by an individual who is 16 or 17 years old.

(12) The district court has subject matter jurisdiction over an offense for which the juvenile court has original jurisdiction if the juvenile court transfers jurisdiction over the offense to the district court in accordance with Section [\[78A-6-703.5\]](#) [80-6-504](#).

(13) The district court has subject matter jurisdiction over an action under Title 78B, Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the action to the district court.

Section 99. Section **78A-7-106** is amended to read:

78A-7-106. Jurisdiction.

(1) Except as otherwise provided by Subsection [78A-5-102\(8\)](#), a justice court has original jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within the justice court's territorial jurisdiction by an individual who is 18 years old or older.

(2) Except for an offense for which the juvenile court or the district court has exclusive jurisdiction under Subsection [78A-5-102\(10\)](#) or [\[78A-6-103\(3\)\]](#) [Section 78A-6-103.5](#), a justice court has original jurisdiction over the following offenses committed within the justice court's territorial jurisdiction by an individual who is 16 or 17 years old:

(a) class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver Licensing Act; and

(b) class B and C misdemeanor and infraction violations of:

(i) Title 23, Wildlife Resources Code of Utah;

- 6321 (ii) Title 41, Chapter 1a, Motor Vehicle Act;
- 6322 (iii) Title 41, Chapter 6a, Traffic Code, except Title 41, Chapter 6a, Part 5, Driving
- 6323 Under the Influence and Reckless Driving;
- 6324 (iv) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and
- 6325 Operators Act;
- 6326 (v) Title 41, Chapter 22, Off-Highway Vehicles;
- 6327 (vi) Title 73, Chapter 18, State Boating Act, except Section 73-18-12;
- 6328 (vii) Title 73, Chapter 18a, Boating - Litter and Pollution Control;
- 6329 (viii) Title 73, Chapter 18b, Water Safety; and
- 6330 (ix) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and
- 6331 Operators Act.
- 6332 (3) An offense is committed within the territorial jurisdiction of a justice court if:
- 6333 (a) conduct constituting an element of the offense or a result constituting an element of
- 6334 the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is
- 6335 itself unlawful;
- 6336 (b) either an individual committing an offense or a victim of an offense is located
- 6337 within the court's jurisdiction at the time the offense is committed;
- 6338 (c) either a cause of injury occurs within the court's jurisdiction or the injury occurs
- 6339 within the court's jurisdiction;
- 6340 (d) an individual commits any act constituting an element of an inchoate offense within
- 6341 the court's jurisdiction, including an agreement in a conspiracy;
- 6342 (e) an individual solicits, aids, or abets, or attempts to solicit, aid, or abet another
- 6343 individual in the planning or commission of an offense within the court's jurisdiction;
- 6344 (f) the investigation of the offense does not readily indicate in which court's jurisdiction
- 6345 the offense occurred, and:
- 6346 (i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft
- 6347 passing within the court's jurisdiction;
- 6348 (ii) (A) the offense is committed on or in any body of water bordering on or within this
- 6349 state if the territorial limits of the justice court are adjacent to the body of water; and
- 6350 (B) as used in Subsection (3)(f)(ii)(A), "body of water" includes any stream, river, lake,
- 6351 or reservoir, whether natural or man-made;

- 6352 (iii) an individual who commits theft exercises control over the affected property
6353 within the court's jurisdiction; or
6354 (iv) the offense is committed on or near the boundary of the court's jurisdiction;
6355 (g) the offense consists of an unlawful communication that was initiated or received
6356 within the court's jurisdiction; or
6357 (h) jurisdiction is otherwise specifically provided by law.

6358 (4) If in a criminal case the defendant is 16 or 17 years old, a justice court judge may
6359 transfer the case to the juvenile court for further proceedings if the justice court judge
6360 determines and the juvenile court concurs that the best interests of the defendant would be
6361 served by the continuing jurisdiction of the juvenile court.

6362 (5) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8,
6363 Small Claims Courts, if a defendant resides in or the debt arose within the territorial
6364 jurisdiction of the justice court.

6365 Section 100. Section **78B-3-406** is amended to read:

6366 **78B-3-406. Failure to obtain informed consent -- Proof required of patient --**
6367 **Defenses -- Consent to health care.**

6368 (1) (a) When a person submits to health care rendered by a health care provider, it is
6369 presumed that actions taken by the health care provider are either expressly or impliedly
6370 authorized to be done.

6371 (b) For a patient to recover damages from a health care provider in an action based
6372 upon the provider's failure to obtain informed consent, the patient must prove the following:

- 6373 (i) that a provider-patient relationship existed between the patient and health care
6374 provider;
6375 (ii) the health care provider rendered health care to the patient;
6376 (iii) the patient suffered personal injuries arising out of the health care rendered;
6377 (iv) the health care rendered carried with it a substantial and significant risk of causing
6378 the patient serious harm;
6379 (v) the patient was not informed of the substantial and significant risk;
6380 (vi) a reasonable, prudent person in the patient's position would not have consented to
6381 the health care rendered after having been fully informed as to all facts relevant to the decision
6382 to give consent; and

(vii) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal injuries alleged to have arisen from said health care.

(3) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters to which he would be entitled to be informed;

(d) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or

(e) the patient or the patient's representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained the patient's condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or the patient's representative.

(4) The written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing evidence that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(5) This act may not be construed to prevent any person 18 years ~~[of age]~~ old or over

6414 from refusing to consent to health care for the patient's own person upon personal or religious
6415 grounds.

6416 (6) Except as provided in Section [76-7-304.5](#), the following persons are authorized and
6417 empowered to consent to any health care not prohibited by law:

6418 (a) any parent, whether an adult or a minor, for the parent's minor child;

6419 (b) any married person, for a spouse;

6420 (c) any person temporarily standing in loco parentis, whether formally serving or not,
6421 for the minor under that person's care and any guardian for the guardian's ward;

6422 (d) any person 18 years ~~[of age]~~ old or over for that person's parent who is unable by
6423 reason of age, physical or mental condition, to provide such consent;

6424 (e) any patient 18 years ~~[of age]~~ old or over;

6425 (f) any female regardless of age or marital status, when given in connection with her
6426 pregnancy or childbirth;

6427 (g) in the absence of a parent, any adult for the adult's minor brother or sister;

6428 (h) in the absence of a parent, any grandparent for the grandparent's minor grandchild;

6429 (i) an emancipated minor as provided in Section ~~[78A-6-805]~~ [80-7-105](#);

6430 (j) a minor who has contracted a lawful marriage; and

6431 (k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento
6432 Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years ~~[of age]~~ old or
6433 older.

6434 (7) A person who in good faith consents or authorizes health care treatment or
6435 procedures for another as provided by this act may not be subject to civil liability.

6436 (8) Notwithstanding any other provision of this section, if a health care provider fails to
6437 comply with the requirement in Section [58-1-509](#), the health care provider is presumed to have
6438 lacked informed consent with respect to the patient examination, as defined in Section
6439 [58-1-509](#).

6440 Section 101. Section **78B-6-112** is amended to read:

6441 **78B-6-112. District court jurisdiction over termination of parental rights**
6442 **proceedings.**

6443 (1) A district court has jurisdiction to terminate parental rights in a child if the party
6444 that filed the petition is seeking to terminate parental rights in the child for the purpose of

6445 facilitating the adoption of the child.

6446 (2) A petition to terminate parental rights under this section may be:

6447 (a) joined with a proceeding on an adoption petition; or

6448 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

6449 (3) A court may enter a final order terminating parental rights before a final decree of
6450 adoption is entered.

6451 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
6452 proceedings to terminate parental rights as described in Section 78A-6-103.

6453 (b) This section does not grant jurisdiction to a district court to terminate parental
6454 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
6455 neglect, dependency, or termination of parental rights proceeding.

6456 (5) The district court may terminate an individual's parental rights in a child if:

6457 (a) the individual executes a voluntary consent to adoption, or relinquishment for
6458 adoption, of the child, in accordance with:

6459 (i) the requirements of this chapter; or

6460 (ii) the laws of another state or country, if the consent is valid and irrevocable;

6461 (b) the individual is an unmarried biological father who is not entitled to consent to
6462 adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;

6463 (c) the individual:

6464 (i) received notice of the adoption proceeding relating to the child under Section
6465 78B-6-110; and

6466 (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days
6467 after the day on which the individual was served with notice of the adoption proceeding;

6468 (d) the court finds, under Section 78B-15-607, that the individual is not a parent of the
6469 child; or

6470 (e) the individual's parental rights are terminated on grounds described in [~~Title 78A,~~
6471 ~~Chapter 6, Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 4, Termination and
6472 Restoration of Parental Rights, and termination is in the best interests of the child.

6473 (6) The court shall appoint an indigent defense service provider in accordance with
6474 Title 78B, Chapter 22, Indigent Defense Act, to represent an individual who faces any action
6475 initiated by a private party under [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights~~

Act,] Title 80, Chapter 4, Termination and Restoration of Parental Rights, or whose parental rights are subject to termination under this section.

(7) If a county incurs expenses in providing indigent defense services to an indigent individual facing any action initiated by a private party under [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act,~~] Title 80, Chapter 4, Termination and Restoration of Parental Rights, or termination of parental rights under this section, the county may apply for reimbursement from the Utah Indigent Defense Commission in accordance with Section [78B-22-406](#).

(8) A petition filed under this section is subject to the procedural requirements of this chapter.

Section 102. Section **78B-6-117** is amended to read:

78B-6-117. Who may adopt -- Adoption of minor.

(1) A minor child may be adopted by an adult individual, in accordance with this section and this part.

(2) A child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) subject to Subsections (3) and (4), a single adult.

(3) A child may not be adopted by an individual who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state unless the individual is a relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

(4) To provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a married couple, unless:

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

(b) the child is placed with a relative of the child;

(c) the child is placed with an individual who has already developed a substantial

6507 relationship with the child;

6508 (d) the child is placed with an individual who:

6509 (i) is selected by a parent or former parent of the child, if the parent or former parent
6510 consented to the adoption of the child; and

6511 (ii) the parent or former parent described in Subsection (4)(d)(i):

6512 (A) knew the individual with whom the child is placed before the parent consented to
6513 the adoption; or

6514 (B) became aware of the individual with whom the child is placed through a source
6515 other than the division or the child-placing agency that assists with the adoption of the child; or

6516 (e) it is in the best interests of the child to place the child with a single adult.

6517 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before
6518 adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest
6519 to a felony or attempted felony involving conduct that constitutes any of the following:

6520 (a) child abuse, as described in Section 76-5-109;

6521 (b) child abuse homicide, as described in Section 76-5-208;

6522 (c) child kidnapping, as described in Section 76-5-301.1;

6523 (d) human trafficking of a child, as described in Section 76-5-308.5;

6524 (e) sexual abuse of a minor, as described in Section 76-5-401.1;

6525 (f) rape of a child, as described in Section 76-5-402.1;

6526 (g) object rape of a child, as described in Section 76-5-402.3;

6527 (h) sodomy on a child, as described in Section 76-5-403.1;

6528 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section
6529 76-5-404.1;

6530 (j) sexual exploitation of a minor, as described in Section 76-5b-201; or

6531 (k) an offense in another state that, if committed in this state, would constitute an
6532 offense described in this Subsection (5).

6533 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense
6534 listed in Subsection (5) that prevents a court from considering an individual for adoption of a
6535 child except as provided in this Subsection (6).

6536 (b) An individual described in Subsection (5) may only be considered for adoption of a
6537 child if the following criteria are met by clear and convincing evidence:

(i) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;

(ii) during the 10 years before the day on which the individual files a petition with the court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;

(iii) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

(iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section ~~[78A-6-105]~~ [80-1-102](#), or potential harm to the child currently or at any time in the future when considering all of the following:

(A) the child's age;

(B) the child's gender;

(C) the child's development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a child 12 years ~~[of age]~~ old or older;

(F) any available assessments, including custody evaluations, home studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(v) the individual can provide evidence of all of the following:

(A) the relationship with the child is of long duration;

(B) that an emotional bond exists with the child; and

(C) that adoption by the individual who has committed the disqualifying offense ensures the best interests of the child are met; and

(vi) the adoption is by:

(A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or

(B) subject to Subsection (6)(d), a relative of the child as defined in Section ~~[78A-6-307]~~ [80-3-102](#) and there is not another relative without a disqualifying offense filing an adoption petition.

(c) The individual with the disqualifying offense bears the burden of proof regarding

why adoption with that individual is in the best interest of the child over another responsible relative or equally situated individual who does not have a disqualifying offense.

(d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition, the following applies:

(i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and

(ii) before the court may grant adoption to the individual who has the disqualifying offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

(7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a final decision on adoption has not been made and to a case filed on or after March 25, 2017.

Section 103. Section **78B-6-121** is amended to read:

78B-6-121. Consent of unmarried biological father.

(1) Except as provided in Subsections (2)(a) and **78B-6-122(1)**, and subject to Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:

(a) (i) developed a substantial relationship with the child by:

(A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or

(B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;

(ii) took some measure of responsibility for the child and the child's future; and

(iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability; or

(b) (i) openly lived with the child:

(A) (I) for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with prospective adoptive parents; or

(II) if the child is less than one year old, for a period of at least six months during the period of time beginning on the day on which the child is born and ending on the day on which

the child is placed with prospective adoptive parents; and

(B) immediately preceding placement of the child with prospective adoptive parents; and

(ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).

(2) (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.

(b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).

(3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months ~~[of age]~~ old or less at the time the child is placed with prospective adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:

(a) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act;

(b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

(i) stating that he is fully able and willing to have full custody of the child;

(ii) setting forth his plans for care of the child; and

(iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

(d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:

6631 (i) he did not have actual knowledge of the pregnancy;
6632 (ii) he was prevented from paying the expenses by the person or authorized agency
6633 having lawful custody of the child; or
6634 (iii) the mother refused to accept the unmarried biological father's offer to pay the
6635 expenses described in this Subsection (3)(d).

6636 (4) (a) The notice described in Subsection (3)(c) is considered filed when received by
6637 the state registrar of vital statistics.

6638 (b) If the unmarried biological father fully complies with the requirements of
6639 Subsection (3), and an adoption of the child is not completed, the unmarried biological father
6640 shall, without any order of the court, be legally obligated for a reasonable amount of child
6641 support, pregnancy expenses, and child birth expenses, in accordance with his financial ability.

6642 (5) Unless his ability to assert the right to consent has been lost for failure to comply
6643 with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological
6644 father shall have at least one business day after the child's birth to fully and strictly comply with
6645 the requirements of Subsection (3).

6646 (6) Consent of an unmarried biological father is not required under this section if:

6647 (a) the court determines, in accordance with the requirements and procedures of [Title
6648 ~~78A, Chapter 6, Part 5, Termination of Parental Rights Act,~~ Title 80, Chapter 4, Termination
6649 and Restoration of Parental Rights, that the unmarried biological father's rights should be
6650 terminated, based on the petition of any interested party;

6651 (b) (i) a declaration of paternity declaring the unmarried biological father to be the
6652 father of the child is rescinded under Section 78B-15-306; and

6653 (ii) the unmarried biological father fails to comply with Subsection (3) within 10
6654 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is
6655 mailed by the Office of Vital Records within the Department of Health as provided in Section
6656 78B-15-306; or

6657 (c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to
6658 preserve his rights in accordance with the requirements of that section.

6659 (7) Unless the adoptee is conceived or born within a marriage, the petitioner in an
6660 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a
6661 certificate from the state registrar of vital statistics within the Department of Health, stating:

(a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3)(d); and

(b) (i) that no filing has been found pertaining to the father of the child in question; or
(ii) if a filing is found, the name of the putative father and the time and date of filing.

Section 104. Section **78B-6-131** is amended to read:

78B-6-131. Child in custody of state -- Placement.

(1) Notwithstanding Sections [78B-6-128](#) through [78B-6-130](#), and except as provided in Subsection (2), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:

(a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent, prospective adoptive parent, and any other adult residing in the household;

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

(c) the Department of Human Services conducts a check of the child abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (1)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(d) each person required to undergo a background check described in this section passes the background check, pursuant to the provisions of Section [62A-2-120](#).

(2) The requirements under Subsection (1) do not apply to the extent that:

(a) federal law or rule permits otherwise; or

(b) the requirements would prohibit the division or a court from placing a child with:

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

6693 [80-3-302](#), or [80-3-303](#); or

6694 (ii) a relative, under Section [62A-4a-209](#), [~~[78A-6-307](#)~~, or ~~[78A-6-307.5](#)~~] [80-3-302](#), or
6695 [80-3-303](#), pending completion of the background check described in Subsection (1).

6696 Section 105. Section **78B-6-133** is amended to read:

6697 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

6698 (1) If a person whose consent for an adoption is required pursuant to Subsection
6699 [78B-6-120](#)(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether
6700 proper grounds exist for the termination of that person's rights pursuant to the provisions of this
6701 chapter or [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act~~] Title 80, Chapter
6702 4, Termination and Restoration of Parental Rights.

6703 (2) (a) If there are proper grounds to terminate the person's parental rights, the court
6704 shall order that the person's rights be terminated.

6705 (b) If there are not proper grounds to terminate the person's parental rights, the court
6706 shall:

6707 (i) dismiss the adoption petition;

6708 (ii) conduct an evidentiary hearing to determine who should have custody of the child;

6709 and

6710 (iii) award custody of the child in accordance with the child's best interest.

6711 (c) Termination of a person's parental rights does not terminate the right of a relative of
6712 the parent to seek adoption of the child.

6713 (3) Evidence considered at the custody hearing may include:

6714 (a) evidence of psychological or emotional bonds that the child has formed with a third
6715 person, including the prospective adoptive parent; and

6716 (b) any detriment that a change in custody may cause the child.

6717 (4) If the court dismisses the adoption petition, the fact that a person relinquished a
6718 child for adoption or consented to the adoption may not be considered as evidence in a custody
6719 proceeding described in this section, or in any subsequent custody proceeding, that it is not in
6720 the child's best interest for custody to be awarded to such person or that:

6721 (a) the person is unfit or incompetent to be a parent;

6722 (b) the person has neglected or abandoned the child;

6723 (c) the person is not interested in having custody of the child; or

6724 (d) the person has forfeited the person's parental presumption.
6725 (5) Any custody order entered pursuant to this section may also:
6726 (a) include provisions for:
6727 (i) parent-time; or
6728 (ii) visitation by an interested third party; and
6729 (b) provide for the financial support of the child.
6730 (6) (a) If a person or entity whose consent is required for an adoption under Subsection
6731 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing
6732 and award custody as set forth in Subsection (2).
6733 (b) The court may also finalize the adoption if doing so is in the best interest of the
6734 child.
6735 (7) (a) A person may not contest an adoption after the final decree of adoption is
6736 entered, if that person:
6737 (i) was a party to the adoption proceeding;
6738 (ii) was served with notice of the adoption proceeding; or
6739 (iii) executed a consent to the adoption or relinquishment for adoption.
6740 (b) No person may contest an adoption after one year from the day on which the final
6741 decree of adoption is entered.
6742 (c) The limitations on contesting an adoption action, described in this Subsection (7),
6743 apply to all attempts to contest an adoption:
6744 (i) regardless of whether the adoption is contested directly or collaterally; and
6745 (ii) regardless of the basis for contesting the adoption, including claims of fraud,
6746 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of
6747 jurisdiction.
6748 (d) The limitations on contesting an adoption action, described in this Subsection (7),
6749 do not prohibit a timely appeal of:
6750 (i) a final decree of adoption; or
6751 (ii) a decision in an action challenging an adoption, if the action was brought within the
6752 time limitations described in Subsections (7)(a) and (b).
6753 (8) A court that has jurisdiction over a child for whom more than one petition for
6754 adoption is filed shall grant a hearing only under the following circumstances:

6755 (a) to a petitioner:
6756 (i) with whom the child is placed;
6757 (ii) who has custody or guardianship of the child;
6758 (iii) who has filed a written statement with the court within 120 days after the day on
6759 which the shelter hearing is held:
6760 (A) requesting immediate placement of the child with the petitioner; and
6761 (B) expressing the petitioner's intention of adopting the child;
6762 (iv) who is a relative with whom the child has a significant and substantial relationship
6763 and who was unaware, within the first 120 days after the day on which the shelter hearing is
6764 held, of the child's removal from the child's parent; or
6765 (v) who is a relative with whom the child has a significant and substantial relationship
6766 and, in a case where the child is not placed with a relative or is placed with a relative that is
6767 unable or unwilling to adopt the child:
6768 (A) was actively involved in the child's child welfare case with the division or the
6769 juvenile court while the child's parent engaged in reunification services; and
6770 (B) filed a written statement with the court that includes the information described in
6771 Subsections (8)(a)(iii)(A) and (B) within 30 days after the day on which the court terminated
6772 reunification services; or
6773 (b) if the child:
6774 (i) has been in the current placement for less than 180 days before the day on which the
6775 petitioner files the petition for adoption; or
6776 (ii) is placed with, or is in the custody or guardianship of, an individual who previously
6777 informed the division or the court that the individual is unwilling or unable to adopt the child.
6778 (9) (a) If the court grants a hearing on more than one petition for adoption, there is a
6779 rebuttable presumption that it is in the best interest of a child to be placed for adoption with a
6780 petitioner:
6781 (i) who has fulfilled the requirements described in Title 78B, Chapter 6, Part 1, Utah
6782 Adoption Act; and
6783 (ii) (A) with whom the child has continuously resided for six months;
6784 (B) who has filed a written statement with the court within 120 days after the day on
6785 which the shelter hearing is held, as described in Subsection (8)(a)(iii); or

(C) who is a relative described in Subsection (8)(a)(iv).

(b) The court may consider other factors relevant to the best interest of the child to determine whether the presumption is rebutted.

(c) The court shall weigh the best interest of the child uniformly between petitioners if more than one petitioner satisfies a rebuttable presumption condition described in Subsection (9)(a).

(10) Nothing in this section shall be construed to prevent the division or the child's guardian ad litem from appearing or participating in any proceeding for a petition for adoption.

(11) The division shall use best efforts to provide a known relative with timely information relating to the relative's rights or duties under this section.

Section 106. Section **78B-6-138** is amended to read:

78B-6-138. Pre-existing parent's rights and duties dissolved.

(1) A pre-existing parent of an adopted child is released from all parental rights and duties toward and all responsibilities for the adopted child, including residual parental rights and duties, as defined in Section ~~[78A-6-105]~~ [80-1-102](#), and has no further parental rights or duties with regard to that adopted child at the earlier of:

(a) the time the pre-existing parent's parental rights are terminated; or

(b) except as provided in Subsection (2), and subject to Subsections (3) and (4), the time the final decree of adoption is entered.

(2) The parental rights and duties of a pre-existing parent who, at the time the child is adopted, is lawfully married to the person adopting the child are not released under Subsection (1)(b).

(3) The parental rights and duties of a pre-existing parent who, at the time the child is adopted, is not lawfully married to the person adopting the child are released under Subsection (1)(b).

(4) (a) Notwithstanding the provisions of this section, the court may allow a prospective adoptive parent to adopt a child without releasing the pre-existing parent from parental rights and duties under Subsection (1)(b), if:

(i) the pre-existing parent and the prospective adoptive parent were lawfully married at some time during the child's life;

(ii) the pre-existing parent consents to the prospective adoptive parent's adoption of the

child, or is unable to consent because the pre-existing parent is deceased or incapacitated;

(iii) notice of the adoption proceeding is provided in accordance with Section [78B-6-110](#);

(iv) consent to the adoption is provided in accordance with Section [78B-6-120](#); and

(v) the court finds that it is in the best interest of the child to grant the adoption without releasing the pre-existing parent from parental rights and duties.

(b) This Subsection (4) does not permit a child to have more than two natural parents, as that term is defined in Section [\[78A-6-105\]](#) [80-1-102](#).

(5) This section may not be construed as terminating any child support obligation of a parent incurred before the adoption.

Section 107. Section **78B-6-141 (Superseded 11/01/21)** is amended to read:

78B-6-141 (Superseded 11/01/21). Court hearings may be closed -- Petition and documents sealed -- Exceptions.

(1) Notwithstanding Section [\[78A-6-114\]](#) [80-4-106](#), court hearings in adoption cases may be closed to the public upon request of a party to the adoption petition and upon court approval. In a closed hearing, only the following individuals may be admitted:

(a) a party to the proceeding;

(b) the adoptee;

(c) a representative of an agency having custody of the adoptee;

(d) in a hearing to relinquish parental rights, the individual whose rights are to be relinquished and invitees of that individual to provide emotional support;

(e) in a hearing on the termination of parental rights, the individual whose rights may be terminated;

(f) in a hearing on a petition to intervene, the proposed intervenor;

(g) in a hearing to finalize an adoption, invitees of the petitioner; and

(h) other individuals for good cause, upon order of the court.

(2) An adoption document and any other documents filed in connection with a petition for adoption are sealed.

(3) The documents described in Subsection (2) may only be open to inspection and copying:

(a) in accordance with Subsection (5)(a), by a party to the adoption proceeding;

- 6848 (i) while the proceeding is pending; or
6849 (ii) within six months after the day on which the adoption decree is entered;
6850 (b) subject to Subsection (5)(b), if a court enters an order permitting access to the
6851 documents by an individual who has appealed the denial of that individual's motion to
6852 intervene;
6853 (c) upon order of the court expressly permitting inspection or copying, after good cause
6854 has been shown;
6855 (d) as provided under Section 78B-6-144;
6856 (e) when the adoption document becomes public on the one hundredth anniversary of
6857 the date the final decree of adoption was entered;
6858 (f) when the birth certificate becomes public on the one hundredth anniversary of the
6859 date of birth;
6860 (g) to a mature adoptee or a parent who adopted the mature adoptee, without a court
6861 order, unless the final decree of adoption is entered by the juvenile court under Subsection
6862 78B-6-115(3)(b); or
6863 (h) to an adult adoptee, to the extent permitted under Subsection (4).
6864 (4) (a) For an adoption finalized on or after January 1, 2016, a birth parent may elect,
6865 on a written consent form provided by the office, to permit identifying information about the
6866 birth parent to be made available for inspection by an adult adoptee.
6867 (b) A birth parent may, at any time, file a written document with the office to:
6868 (i) change the election described in Subsection (4)(a); or
6869 (ii) elect to make other information about the birth parent, including an updated
6870 medical history, available for inspection by an adult adoptee.
6871 (c) A birth parent may not access any identifying information or an adoption document
6872 under this Subsection (4).
6873 (5) (a) An individual who files a motion to intervene in an adoption proceeding:
6874 (i) is not a party to the adoption proceeding, unless the motion to intervene is granted;
6875 and
6876 (ii) may not be granted access to the documents described in Subsection (2), unless the
6877 motion to intervene is granted.
6878 (b) An order described in Subsection (3)(b) shall:

(i) prohibit the individual described in Subsection (3)(b) from inspecting a document described in Subsection (2) that contains identifying information of the adoptive or prospective adoptive parent; and

(ii) permit the individual described in Subsection (5)(b)(i) to review a copy of a document described in Subsection (5)(b)(i) after the identifying information described in Subsection (5)(b)(i) is redacted from the document.

Section 108. Section **78B-6-141 (Effective 11/01/21)** is amended to read:

78B-6-141 (Effective 11/01/21). Court hearings may be closed -- Petition and documents sealed -- Exceptions.

(1) (a) Notwithstanding Section [~~78A-6-114~~] 80-4-106, court hearings in adoption cases may be closed to the public upon request of a party to the adoption petition and upon court approval.

(b) In a closed hearing, only the following individuals may be admitted:

- (i) a party to the proceeding;
- (ii) the adoptee;
- (iii) a representative of an agency having custody of the adoptee;
- (iv) in a hearing to relinquish parental rights, the individual whose rights are to be relinquished and invitees of that individual to provide emotional support;
- (v) in a hearing on the termination of parental rights, the individual whose rights may be terminated;
- (vi) in a hearing on a petition to intervene, the proposed intervenor;
- (vii) in a hearing to finalize an adoption, invitees of the petitioner; and
- (viii) other individuals for good cause, upon order of the court.

(2) An adoption document and any other documents filed in connection with a petition for adoption are sealed.

(3) The documents described in Subsection (2) may only be open to inspection and copying:

(a) in accordance with Subsection (5)(a), by a party to the adoption proceeding:

- (i) while the proceeding is pending; or
 - (ii) within six months after the day on which the adoption decree is entered;
- (b) subject to Subsection (5)(b), if a court enters an order permitting access to the

6910 documents by an individual who has appealed the denial of that individual's motion to
6911 intervene;

6912 (c) upon order of the court expressly permitting inspection or copying, after good cause
6913 has been shown;

6914 (d) as provided under Section 78B-6-144;

6915 (e) when the adoption document becomes public on the one hundredth anniversary of
6916 the date the final decree of adoption was entered;

6917 (f) when the birth certificate becomes public on the one hundredth anniversary of the
6918 date of birth;

6919 (g) to a mature adoptee or a parent who adopted the mature adoptee, without a court
6920 order, unless the final decree of adoption is entered by the juvenile court under Subsection
6921 78B-6-115(3)(b); or

6922 (h) to an adult adoptee, to the extent permitted under Subsection (4).

6923 (4) (a) An adult adoptee that was born in the state may access an adoption document
6924 associated with the adult adoptee's adoption without a court order:

6925 (i) to the extent that a birth parent consents under Subsection (4)(b); or
6926 (ii) if the birth parents listed on the original birth certificate are deceased.

6927 (b) A birth parent may:

6928 (i) provide consent to allow the access described in Subsection (4)(a) by electing,
6929 electronically or on a written form provided by the office, allowing the birth parent to elect to:

6930 (A) allow the office to provide the adult adoptee with the contact information of the
6931 birth parent that the birth parent indicates;

6932 (B) allow the office to provide the adult adoptee with the contact information of an
6933 intermediary that the birth parent indicates;

6934 (C) prohibit the office from providing any contact information to the adult adoptee;

6935 (D) allow the office to provide the adult adoptee with a noncertified copy of the
6936 original birth certificate; and

6937 (ii) at any time, file, electronically or on a written document with the office, to:

6938 (A) change the election described in Subsection (4)(b); or
6939 (B) elect to make other information about the birth parent, including an updated
6940 medical history, available for inspection by an adult adoptee.

(c) A birth parent may not access any identifying information or an adoption document under this Subsection (4).

(d) If two birth parents are listed on the original birth certificate and only one birth parent consents under Subsection (4)(b) or is deceased, the office may redact the name of the other birth parent.

(5) (a) An individual who files a motion to intervene in an adoption proceeding:

(i) is not a party to the adoption proceeding, unless the motion to intervene is granted; and

(ii) may not be granted access to the documents described in Subsection (2), unless the motion to intervene is granted.

(b) An order described in Subsection (3)(b) shall:

(i) prohibit the individual described in Subsection (3)(b) from inspecting a document described in Subsection (2) that contains identifying information of the adoptive or prospective adoptive parent; and

(ii) permit the individual described in Subsection (5)(b)(i) to review a copy of a document described in Subsection (5)(b)(i) after the identifying information described in Subsection (5)(b)(i) is redacted from the document.

Section 109. Section **78B-6-203** is amended to read:

78B-6-203. Purpose and findings.

(1) The purpose of this part is to offer an alternative or supplement to the formal processes associated with a court trial and to promote the efficient and effective operation of the courts of this state by authorizing and encouraging the use of alternative methods of dispute resolution to secure the just, speedy, and inexpensive determination of civil actions filed in the courts of this state.

(2) The Legislature finds that:

(a) the use of alternative methods of dispute resolution authorized by this part will secure the purposes of Article I, Section 11, Utah Constitution, by providing supplemental or complementary means for the just, speedy, and inexpensive resolution of disputes;

(b) preservation of the confidentiality of ADR procedures will significantly aid the successful resolution of civil actions in a just, speedy, and inexpensive manner;

(c) ADR procedures will reduce the need for judicial resources and the time and

expense of the parties;

(d) mediation has, in pilot programs, resulted in the just and equitable settlement of petitions for the protection of children under Section ~~[78A-6-304]~~ 80-3-201 and petitions for the terminations of parental rights under Section ~~[78A-6-505]~~ 80-4-201; and

(e) the purpose of this part will be promoted by authorizing the Judicial Council to establish rules to promote the use of ADR procedures by the courts of this state as an alternative or supplement to court trial.

Section 110. Section **78B-6-207** is amended to read:

78B-6-207. Minimum procedures for mediation.

(1) A judge or court commissioner may refer to mediation any case for which the Judicial Council and Supreme Court have established a program or procedures. A party may file with the court an objection to the referral which may be granted for good cause.

(2) (a) Unless all parties and the neutral or neutrals agree only parties, their representatives, and the neutral may attend the mediation sessions.

(b) If the mediation session is ~~[pursuant to]~~ in accordance with a referral under ~~[Subsection 78A-6-108(9)]~~ Section 80-3-206 or 80-4-206, the ADR provider or ADR organization shall notify all parties to the proceeding and any person designated by a party. The ADR provider may notify any person whose rights may be affected by the mediated agreement or who may be able to contribute to the agreement. A party may request notice be provided to a person who is not a party.

(3) (a) Except as provided in Subsection (3)(b), any settlement agreement between the parties as a result of mediation may be executed in writing, filed with the clerk of the court, and enforceable as a judgment of the court. If the parties stipulate to dismiss the action, any agreement to dismiss shall not be filed with the court.

(b) With regard to mediation affecting any petition filed under Section ~~[78A-6-304 or 78A-6-505]~~ 80-3-201 or 80-4-201:

(i) all settlement agreements and stipulations of the parties shall be filed with the court;

(ii) all timelines, requirements, and procedures described in ~~[Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act,]~~ Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights, and in Title 62A, Chapter 4a, Child and

Family Services, shall be complied with; and

(iii) the parties to the mediation may not agree to a result that could not have been ordered by the court in accordance with the procedures and requirements of [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings and Part 5, Termination of Parental Rights Act,~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights, and Title 62A, Chapter 4a, Child and Family Services.

Section 111. Section **78B-7-102** is amended to read:

78B-7-102. Definitions.

As used in this chapter:

(1) "Abuse" means, except as provided in Section **78B-7-201**, intentionally or knowingly causing or attempting to cause another individual physical harm or intentionally or knowingly placing another individual in reasonable fear of imminent physical harm.

(2) "Affinity" means the same as that term is defined in Section **76-1-601**.

(3) "Civil protective order" means an order issued, subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice, under:

(a) Part 2, Child Protective Orders;

(b) Part 4, Dating Violence Protective Orders;

(c) Part 5, Sexual Violence Protective Orders; or

(d) Part 6, Cohabitant Abuse Protective Orders.

(4) "Civil stalking injunction" means a stalking injunction issued under Part 7, Civil Stalking Injunctions.

(5) (a) "Cohabitant" means an emancipated individual under Section **15-2-1** or an individual who is 16 years ~~[of age]~~ old or older who:

(i) is or was a spouse of the other party;

(ii) is or was living as if a spouse of the other party;

(iii) is related by blood or marriage to the other party as the individual's parent, grandparent, sibling, or any other individual related to the individual by consanguinity or affinity to the second degree;

(iv) has or had one or more children in common with the other party;

(v) is the biological parent of the other party's unborn child;

- 7034 (vi) resides or has resided in the same residence as the other party; or
7035 (vii) is or was in a consensual sexual relationship with the other party.
7036 (b) "Cohabitant" does not include:
7037 (i) the relationship of natural parent, adoptive parent, or step-parent to a minor; or
7038 (ii) the relationship between natural, adoptive, step, or foster siblings who are under 18
7039 years ~~[of age]~~ old.
7040 (6) "Consanguinity" means the same as that term is defined in Section 76-1-601.
7041 (7) "Criminal protective order" means an order issued under Part 8, Criminal Protective
7042 Orders.
7043 (8) "Criminal stalking injunction" means a stalking injunction issued under Part 9,
7044 Criminal Stalking Injunctions.
7045 (9) "Court clerk" means a district court clerk.
7046 (10) (a) "Dating partner" means an individual who:
7047 (i) (A) is an emancipated individual under Section 15-2-1 or ~~[Title 78A, Chapter 6,~~
7048 ~~Part 8, Emancipation]~~ Title 80, Chapter 7, Emancipation; or
7049 (B) is 18 years ~~[of age]~~ old or older; and
7050 (ii) is, or has been, in a dating relationship with the other party.
7051 (b) "Dating partner" does not include an intimate partner.
7052 (11) (a) "Dating relationship" means a social relationship of a romantic or intimate
7053 nature, or a relationship which has romance or intimacy as a goal by one or both parties,
7054 regardless of whether the relationship involves sexual intimacy.
7055 (b) "Dating relationship" does not include casual fraternization in a business,
7056 educational, or social context.
7057 (c) In determining, based on a totality of the circumstances, whether a dating
7058 relationship exists:
7059 (i) all relevant factors shall be considered, including:
7060 (A) whether the parties developed interpersonal bonding above a mere casual
7061 fraternization;
7062 (B) the length of the parties' relationship;
7063 (C) the nature and the frequency of the parties' interactions, including communications
7064 indicating that the parties intended to begin a dating relationship;

(D) the ongoing expectations of the parties, individual or jointly, with respect to the relationship;

(E) whether, by statement or conduct, the parties demonstrated an affirmation of their relationship to others; and

(F) whether other reasons exist that support or detract from a finding that a dating relationship exists; and

(ii) it is not necessary that all, or a particular number, of the factors described in Subsection (11)(c)(i) are found to support the existence of a dating relationship.

(12) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(13) "Ex parte civil protective order" means an order issued without notice to the respondent under:

(a) Part 2, Child Protective Orders;

(b) Part 4, Dating Violence Protective Orders;

(c) Part 5, Sexual Violence Protective Orders; or

(d) Part 6, Cohabitant Abuse Protective Orders.

(14) "Ex parte civil stalking injunction" means a stalking injunction issued without notice to the respondent under Part 7, Civil Stalking Injunctions.

(15) "Foreign protection order" means the same as that term is defined in Section 78B-7-302.

(16) "Intimate partner" means the same as that term is defined in 18 U.S.C. Sec. 921.

(17) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

(18) "Peace officer" means those individuals specified in Title 53, Chapter 13, Peace Officer Classifications.

(19) "Qualifying domestic violence offense" means the same as that term is defined in Section 77-36-1.1.

(20) "Respondent" means the individual against whom enforcement of a protective order is sought.

(21) "Stalking" means the same as that term is defined in Section 76-5-106.5.

Section 112. Section 78B-7-108 is amended to read:

78B-7-108. Mutual protective orders.

(1) A court may not grant a mutual order or mutual orders for protection to opposing parties, unless each party:

(a) files an independent petition against the other for a protective order, and both petitions are served;

(b) makes a showing at a due process protective order hearing of abuse or domestic violence committed by the other party; and

(c) demonstrates the abuse or domestic violence did not occur in self-defense.

(2) If the court issues mutual protective orders, the court shall include specific findings of all elements of Subsection (1) in the court order justifying the entry of the court order.

(3) A court may not grant an order for protection to a civil petitioner who is the respondent or defendant subject to a protective order, child protective order, or ex parte child protective order:

(a) issued under:

(i) a foreign protection order enforceable under Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act;

(ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

(iii) ~~[Title 78A, Chapter 6, Juvenile Court Act]~~ Title 80, Utah Juvenile Code; or

(iv) Chapter 7, Part 1, Cohabitant Abuse Act; and

(b) unless the court determines that the requirements of Subsection (1) are met, and:

(i) the same court issued the order for protection against the respondent; or

(ii) if the matter is before a subsequent court, the subsequent court:

(A) determines it would be impractical for the original court to consider the matter; or

(B) confers with the court that issued the order for protection.

Section 113. Section **78B-7-201** is amended to read:

78B-7-201. Definitions.

As used in this chapter:

(1) "Abuse" means:

(a) physical abuse;

(b) sexual abuse;

(c) any sexual offense described in Title 76, Chapter 5b, Part 2, Sexual Exploitation; or

7127 (d) human trafficking of a child for sexual exploitation under Section [76-5-308.5](#).

7128 (2) "Child protective order" means an order issued under this part after a hearing on the
7129 petition, of which the petitioner and respondent have been given notice.

7130 (3) "Court" means the district court or juvenile court.

7131 (4) "Ex parte child protective order" means an order issued without notice to the
7132 respondent under this part.

7133 (5) "Protective order" means:

7134 (a) a child protective order; or

7135 (b) an ex parte child protective order.

7136 (6) All other terms have the same meaning as defined in Section [~~78A-6-105~~]
7137 [80-1-102](#).

7138 Section 114. Section **78B-7-202** is amended to read:

7139 **78B-7-202. Abuse or danger of abuse -- Child protective orders -- Ex parte child**
7140 **protective orders -- Guardian ad litem -- Referral to division.**

7141 (1) (a) Any interested person may file a petition for a protective order:

7142 (i) on behalf of a child who is being abused or is in imminent danger of being abused
7143 by any individual; or

7144 (ii) on behalf of a child who has been abused by an individual who is not the child's
7145 parent, stepparent, guardian, or custodian.

7146 (b) Before filing a petition under Subsection (1)(a), the interested person shall make a
7147 referral to the division.

7148 (2) Upon the filing of a petition described in Subsection (1), the clerk of the court shall:

7149 (a) review the records of the juvenile court, the district court, and the management
7150 information system of the division to find any petitions, orders, or investigations related to the
7151 child or the parties to the case;

7152 (b) request the records of any law enforcement agency identified by the petitioner as
7153 having investigated abuse of the child; and

7154 (c) identify and obtain any other background information that may be of assistance to
7155 the court.

7156 (3) If it appears from a petition for a protective order filed under Subsection (1)(a)(i)
7157 that the child is being abused or is in imminent danger of being abused, or it appears from a

petition for a protective order filed under Subsection (1)(a)(ii) that the child has been abused, the court may:

(a) without notice, immediately issue an ex parte child protective order against the respondent if necessary to protect the child; or

(b) upon notice to the respondent, issue a child protective order after a hearing in accordance with Subsection [78B-7-203](#)(5).

(4) The court may appoint an attorney guardian ad litem under Sections [78A-2-703](#) and [\[78A-6-902\] 78A-2-803](#).

(5) This section does not prohibit a protective order from being issued against a respondent who is a child.

Section 115. Section **78B-7-203** is amended to read:

78B-7-203. Hearings.

(1) If an ex parte child protective order is granted, the court shall schedule a hearing to be held within 20 days after the day on which the court makes the ex parte determination. If an ex parte child protective order is denied, the court, upon the request of the petitioner made within five days after the day on which the court makes the ex parte determination, shall schedule a hearing to be held within 20 days after the day on which the petitioner makes the request.

(2) The petition, ex parte child protective order, and notice of hearing shall be served on the respondent, the child's parent or guardian, and, if appointed, the guardian ad litem. The notice shall contain:

(a) the name and address of the individual to whom the notice is directed;

(b) the date, time, and place of the hearing;

(c) the name of the child on whose behalf a petition is being brought; and

(d) a statement that an individual is entitled to have an attorney present at the hearing.

(3) The court shall provide an opportunity for any person having relevant knowledge to present evidence or information and may hear statements by counsel.

(4) An agent of the division served with a subpoena in compliance with the Utah Rules of Civil Procedure shall testify in accordance with the Utah Rules of Evidence.

(5) The court shall issue a child protective order if the court determines, based on a preponderance of the evidence, that:

(a) for a petition for a child protective order filed under Subsection 78B-7-202(1)(a)(i), the child is being abused or is in imminent danger of being abused; or

(b) for a petition for a protective order filed under Subsection 78B-7-202(1)(a)(ii), the child has been abused and the child protective order is necessary to protect the child.

(6) With the exception of the provisions of Section [78A-6-323] 80-3-404, a child protective order is not an adjudication of abuse, neglect, or dependency under [Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings.

Section 116. Section 78B-7-204 is amended to read:

78B-7-204. Content of orders -- Modification of orders -- Penalties.

(1) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is a class A misdemeanor under Section 76-5-108:

(a) enjoin the respondent from threatening to commit or committing abuse of the child;

(b) prohibit the respondent from harassing, telephoning, contacting, or otherwise communicating with the child, directly or indirectly;

(c) prohibit the respondent from entering or remaining upon the residence, school, or place of employment of the child and the premises of any of these or any specified place frequented by the child;

(d) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the child, prohibit the respondent from purchasing, using, or possessing a firearm or other specified weapon; and

(e) determine ownership and possession of personal property and direct the appropriate law enforcement officer to attend and supervise the petitioner's or respondent's removal of personal property.

(2) A child protective order or an ex parte child protective order may contain the following provisions the violation of which is contempt of court:

(a) determine temporary custody of the child who is the subject of the petition;

(b) determine parent-time with the child who is the subject of the petition, including denial of parent-time if necessary to protect the safety of the child, and require supervision of parent-time by a third party;

(c) determine support in accordance with Title 78B, Chapter 12, Utah Child Support

7220 Act; and

7221 (d) order any further relief the court considers necessary to provide for the safety and
7222 welfare of the child.

7223 (3) (a) If the child who is the subject of the child protective order attends the same
7224 school or place of worship as the respondent, or is employed at the same place of employment
7225 as the respondent, the court:

7226 (i) may not enter an order under Subsection (1)(c) that excludes the respondent from
7227 the respondent's school, place of worship, or place of employment; and

7228 (ii) may enter an order governing the respondent's conduct at the respondent's school,
7229 place of worship, or place of employment.

7230 (b) A violation of an order under Subsection (3)(a) is contempt of court.

7231 (4) (a) A respondent may petition the court to modify or vacate a child protective order
7232 after notice and a hearing.

7233 (b) At the hearing described in Subsection (4)(a):

7234 (i) the respondent shall have the burden of proving by clear and convincing evidence
7235 that modification or vacation of the child protective order is in the best interest of the child; and

7236 (ii) the court shall consider:

7237 (A) the nature and duration of the abuse;

7238 (B) the pain and trauma inflicted on the child as a result of the abuse;

7239 (C) if the respondent is a parent of the child, any reunification services provided in
7240 accordance with [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings~~]
7241 Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings; and

7242 (D) any other evidence the court finds relevant to the determination of the child's best
7243 interests, including recommendations by the other parent or a guardian of the child, or a mental
7244 health professional.

7245 (c) The child is not required to attend the hearing described in Subsection (4)(a).

7246 Section 117. Section **78B-7-409** is amended to read:

7247 **78B-7-409. Mutual dating violence protective orders.**

7248 (1) A court may not grant a mutual order or mutual dating violence protective orders to
7249 opposing parties, unless each party:

7250 (a) files an independent petition against the other for a dating violence protective order,

7251 and both petitions are served;

7252 (b) makes a showing at a due process dating violence protective order hearing of abuse
7253 or dating violence committed by the other party; and

7254 (c) demonstrates the abuse or dating violence did not occur in self-defense.

7255 (2) If the court issues mutual dating violence protective orders, the court shall include
7256 specific findings of all elements of Subsection (1) in the court order justifying the entry of the
7257 court order.

7258 (3) (a) Except as provided in Subsection (3)(b), a court may not grant a protective order
7259 to a civil petitioner who is the respondent or defendant subject to:

7260 (i) a civil protective order that is issued under:

7261 (A) this part;

7262 (B) Part 2, Child Protective Orders;

7263 (C) Part 6, Cohabitant Abuse Protective Orders;

7264 (D) Part 8, Criminal Protective Orders; or

7265 (E) [~~Title 78A, Chapter 6, Juvenile Court Act~~] Title 80, Utah Juvenile Code;

7266 (ii) an ex parte civil protective order issued under Part 2, Child Protective Orders; or

7267 (iii) a foreign protection order enforceable under Part 3, Uniform Interstate
7268 Enforcement of Domestic Violence Protection Orders Act.

7269 (b) The court may issue a protective order to a civil petitioner described in Subsection
7270 (3)(a) if:

7271 (i) the court determines that the requirements of Subsection (1) are met; and

7272 (ii) (A) the same court issued the protective order against the respondent; or

7273 (B) the subsequent court determines it would be impractical for the original court to
7274 consider the matter or confers with the court that issued the protective order described in
7275 Subsection (3)(a)(i) or (ii).

7276 Section 118. Section **78B-7-603** is amended to read:

7277 **78B-7-603. Cohabitant abuse protective orders -- Ex parte cohabitant abuse**
7278 **protective orders -- Modification of orders -- Service of process -- Duties of the court.**

7279 (1) If it appears from a petition for a protective order or a petition to modify a
7280 protective order that domestic violence or abuse has occurred, that there is a substantial
7281 likelihood domestic violence or abuse will occur, or that a modification of a protective order is

7282 required, a court may:

7283 (a) without notice, immediately issue an ex parte cohabitant abuse protective order or
7284 modify a protective order ex parte as the court considers necessary to protect the petitioner and
7285 all parties named to be protected in the petition; or

7286 (b) upon notice, issue a protective order or modify an order after a hearing, regardless
7287 of whether the respondent appears.

7288 (2) A court may grant the following relief without notice in a protective order or a
7289 modification issued ex parte:

7290 (a) enjoin the respondent from threatening to commit domestic violence or abuse,
7291 committing domestic violence or abuse, or harassing the petitioner or any designated family or
7292 household member;

7293 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating
7294 with the petitioner or any designated family or household member, directly or indirectly, with
7295 the exception of any parent-time provisions in the ex parte order;

7296 (c) subject to Subsection (2)(e), prohibit the respondent from being within a specified
7297 distance of the petitioner;

7298 (d) subject to Subsection (2)(e), order that the respondent is excluded from and is to
7299 stay away from the following places and their premises:

7300 (i) the petitioner's residence or any designated family or household member's residence;

7301 (ii) the petitioner's school or any designated family or household member's school;

7302 (iii) the petitioner's or any designated family or household member's place of
7303 employment;

7304 (iv) the petitioner's place of worship or any designated family or household member's
7305 place of worship; or

7306 (v) any specified place frequented by the petitioner or any designated family or
7307 household member;

7308 (e) if the petitioner or designated family or household member attends the same school
7309 as the respondent, is employed at the same place of employment as the respondent, or attends
7310 the same place of worship, the court:

7311 (i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent
7312 from the respondent's school, place of employment, or place of worship; and

(ii) may enter an order governing the respondent's conduct at the respondent's school, place of employment, or place of worship;

(f) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;

(g) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(h) order the respondent to maintain an existing wireless telephone contract or account;

(i) grant to the petitioner or someone other than the respondent temporary custody of a minor child of the parties;

(j) order the appointment of an attorney guardian ad litem under Sections [78A-2-703](#) and [\[78A-6-902\] 78A-2-803](#);

(k) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and

(l) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.

(3) A court may grant the following relief in a cohabitant abuse protective order or a modification of an order after notice and hearing, regardless of whether the respondent appears:

(a) grant the relief described in Subsection (2); and

(b) specify arrangements for parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny parent-time if necessary to protect the safety of the petitioner or child.

(4) In addition to the relief granted under Subsection (3), the court may order the transfer of a wireless telephone number in accordance with Section [78B-7-117](#).

(5) Following the cohabitant abuse protective order hearing, the court shall:

(a) as soon as possible, deliver the order to the county sheriff for service of process;

(b) make reasonable efforts to ensure that the cohabitant abuse protective order is understood by the petitioner, and the respondent, if present;

(c) transmit electronically, by the end of the next business day after the order is issued, a copy of the cohabitant abuse protective order to the local law enforcement agency or agencies designated by the petitioner;

(d) transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113; and

(e) if the individual is a respondent or defendant subject to a court order that meets the qualifications outlined in 18 U.S.C. Sec. 922(g)(8), transmit within 48 hours, excluding Saturdays, Sundays, and legal holidays, a record of the order to the Bureau of Criminal Identification that includes:

(i) an agency record identifier;

(ii) the individual's name, sex, race, and date of birth;

(iii) the issue date, conditions, and expiration date for the protective order; and

(iv) if available, the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

(6) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows:

(a) criminal offenses are those under Subsections (2)(a) through (g), and under Subsection (3)(a) as it refers to Subsections (2)(a) through (g); and

(b) civil offenses are those under Subsections (2)(h), (j), (k), and (l), and Subsection (3)(a) as it refers to Subsections (2)(h), (j), (k), and (l).

(7) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.

(8) (a) The county sheriff that receives the order from the court, under Subsection (6), shall provide expedited service for protective orders issued in accordance with this part, and shall transmit verification of service of process, when the order has been served, to the

7375 statewide domestic violence network described in Section 78B-7-113.

7376 (b) This section does not prohibit any law enforcement agency from providing service
7377 of process if that law enforcement agency:

7378 (i) has contact with the respondent and service by that law enforcement agency is
7379 possible; or

7380 (ii) determines that under the circumstances, providing service of process on the
7381 respondent is in the best interests of the petitioner.

7382 (9) (a) When an order is served on a respondent in a jail or other holding facility, the
7383 law enforcement agency managing the facility shall make a reasonable effort to provide notice
7384 to the petitioner at the time the respondent is released from incarceration.

7385 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
7386 provide notification, including mailing a copy of the notification to the last-known address of
7387 the victim.

7388 (10) A court may modify or vacate a protective order or any provisions in the
7389 protective order after notice and hearing, except that the criminal provisions of a cohabitant
7390 abuse protective order may not be vacated within two years of issuance unless the petitioner:

7391 (a) is personally served with notice of the hearing, as provided in the Utah Rules of
7392 Civil Procedure, and the petitioner personally appears, in person or through court video
7393 conferencing, before the court and gives specific consent to the vacation of the criminal
7394 provisions of the cohabitant abuse protective order; or

7395 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
7396 provisions of the cohabitant abuse protective order.

7397 (11) A protective order may be modified without a showing of substantial and material
7398 change in circumstances.

7399 (12) A civil provision of a cohabitant abuse protective order described in Subsection
7400 (6) may be modified in a divorce proceeding that is pending between the parties to the
7401 cohabitant abuse protective order action after 150 days after the day on which the cohabitant
7402 abuse protective order is issued if:

7403 (a) the parties stipulate in writing or on the record to dismiss a civil provision of the
7404 cohabitant abuse protective order; or

7405 (b) the court in the divorce proceeding finds good cause to modify the civil provision.

7406 Section 119. Section **78B-7-702** is amended to read:

7407 **78B-7-702. Mutual civil stalking injunctions.**

7408 (1) A court may not grant a mutual order or mutual civil stalking injunction to
7409 opposing parties, unless each party:

7410 (a) files an independent petition against the other for a civil stalking injunction, and
7411 both petitions are served;

7412 (b) makes a showing at an evidentiary hearing on the civil stalking injunction that
7413 stalking has occurred by the other party; and

7414 (c) demonstrates the alleged act did not occur in self-defense.

7415 (2) If the court issues mutual civil stalking injunctions, the court shall include specific
7416 findings of all elements of Subsection (1) in the court order justifying the entry of the court
7417 orders.

7418 (3) (a) Except as provided in Subsection (3)(b), a court may not grant a protective order
7419 to a civil petitioner who is the respondent or defendant subject to:

7420 (i) a civil stalking injunction;

7421 (ii) a civil protective order that is issued under:

7422 (A) this part;

7423 (B) Part 2, Child Protective Orders;

7424 (C) Part 6, Cohabitant Abuse Protective Orders;

7425 (D) Part 8, Criminal Protective Orders; or

7426 (E) [~~Title 78A, Chapter 6, Juvenile Court Act~~] Title 80, Utah Juvenile Code;

7427 (iii) an ex parte civil protective order issued under Part 2, Child Protective Orders; or

7428 (iv) a foreign protection order enforceable under Part 3, Uniform Interstate

7429 Enforcement of Domestic Violence Protection Orders Act.

7430 (b) The court may issue a protective order to a civil petitioner described in Subsection
7431 (3)(a) if:

7432 (i) the court determines that the requirements of Subsection (1) are met; and

7433 (ii) (A) the same court issued the protective order against the respondent; or

7434 (B) the subsequent court determines it would be impractical for the original court to
7435 consider the matter or confers with the court that issued the protective order described in
7436 Subsection (3)(a)(ii) or (iii).

7437 Section 120. Section **78B-11-121** is amended to read:

7438 **78B-11-121. Change of award by arbitrator.**

7439 (1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may
7440 modify or correct an award:

7441 (a) on any grounds stated in Subsection [78B-11-125](#)(1)(a) or (c);

7442 (b) if the arbitrator has not made a final and definite award upon a claim submitted by
7443 the parties to the arbitration proceeding; or

7444 (c) to clarify the award.

7445 (2) A motion under Subsection (1) must be made and notice given to all parties within
7446 20 days after the movant receives notice of the award.

7447 (3) A party to the arbitration proceeding must give notice of any objection to the
7448 motion within 10 days after receipt of the notice.

7449 (4) If a motion to the court is pending under Section [78B-11-123](#), [78B-11-124](#), or
7450 [78B-11-125](#), the court may submit the claim to the arbitrator to consider whether to modify or
7451 correct the award:

7452 (a) on any grounds stated in Subsection [78B-11-125](#)(1)(a) or (c);

7453 (b) if the arbitrator has not made a final and definite award upon a claim submitted by
7454 the parties to the arbitration proceeding; or

7455 (c) to clarify the award.

7456 (5) An award modified or corrected pursuant to this section is subject to [~~Subsection~~
7457 ~~[78A-6-119](#)(1) and~~] Sections [78A-6-357](#), [78B-11-123](#), [78B-11-124](#), and [78B-11-125](#).

7458 Section 121. Section **78B-12-219** is amended to read:

7459 **78B-12-219. Adjustment when child becomes emancipated.**

7460 (1) When a child becomes 18 years [~~of age~~] old or graduates from high school during
7461 the child's normal and expected year of graduation, whichever occurs later, or if the child dies,
7462 marries, becomes a member of the armed forces of the United States, or is emancipated in
7463 accordance with [~~Title 78A, Chapter 6, Part 8, Emancipation~~] Title 80, Chapter 7,
7464 Emancipation, the base child support award is automatically adjusted to the base combined
7465 child support obligation for the remaining number of children due child support, shown in the
7466 table that was used to establish the most recent order, using the incomes of the parties as
7467 specified in that order or the worksheets, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

(3) If the incomes of the parties are not specified in the most recent order or the worksheets, the information regarding the incomes is not consistent, or the order deviates from the guidelines, automatic adjustment of the order does not apply and the order will continue until modified by the issuing tribunal. If the order is deviated and the parties subsequently obtain a judicial order that adjusts the support back to the date of the emancipation of the child, the Office of Recovery Services may not be required to repay any difference in the support collected during the interim.

Section 122. Section **78B-15-612** is amended to read:

78B-15-612. Minor as party -- Representation.

(1) A minor is a permissible party, but is not a necessary party to a proceeding under this part.

(2) The tribunal may appoint an attorney guardian ad litem under Sections [78A-2-703](#) and [~~78A-6-902~~] [78A-2-803](#), or a private attorney guardian ad litem under Section [78A-2-705](#), to represent a minor or incapacitated child if the child is a party.

Section 123. Section **78B-22-102** is amended to read:

78B-22-102. Definitions.

As used in this chapter:

(1) "Account" means the Indigent Defense Resources Restricted Account created in Section [78B-22-405](#).

(2) "Board" means the Indigent Defense Funds Board created in Section [78B-22-501](#).

(3) "Commission" means the Utah Indigent Defense Commission created in Section [78B-22-401](#).

(4) "Director" means the director of the Office of Indigent Defense Services, created in Section [78B-22-451](#), who is appointed in accordance with Section [78B-22-453](#).

(5) (a) "Indigent defense resources" means the resources necessary to provide an effective defense for an indigent individual, including the costs for a competent investigator, expert witness, scientific or medical testing, transcripts, and printing briefs.

(b) "Indigent defense resources" does not include an indigent defense service provider.

(6) "Indigent defense service provider" means an attorney or entity appointed to

7499 represent an indigent individual pursuant to:

7500 (a) a contract with an indigent defense system to provide indigent defense services; or

7501 (b) an order issued by the court under Subsection [78B-22-203\(2\)\(a\)](#).

7502 (7) "Indigent defense services" means:

7503 (a) the representation of an indigent individual by an indigent defense service provider;

7504 and

7505 (b) the provision of indigent defense resources for an indigent individual.

7506 (8) "Indigent defense system" means:

7507 (a) a city or town that is responsible for providing indigent defense services;

7508 (b) a county that is responsible for providing indigent defense services in the district

7509 court, juvenile court, and the county's justice courts; or

7510 (c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation

7511 Act, that is responsible for providing indigent defense services according to the terms of an

7512 agreement between a county, city, or town.

7513 (9) "Indigent individual" means:

7514 (a) a minor who is:

7515 (i) arrested and admitted into detention for an offense under Section [78A-6-103](#);

7516 (ii) charged by petition or information in the juvenile or district court; or

7517 (iii) described in this Subsection (9)(a), who is appealing an adjudication or other final

7518 court action; and

7519 (b) an individual listed in Subsection [78B-22-201\(1\)](#) who is found indigent pursuant to

7520 Section [78B-22-202](#).

7521 (10) "Minor" means the same as that term is defined in Section [~~78A-6-105~~] [80-1-102](#).

7522 (11) "Office" means the Office of Indigent Defense Services created in Section

7523 [78B-22-451](#).

7524 (12) "Participating county" means a county that complies with this chapter for

7525 participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections

7526 [78B-22-702](#) and [78B-22-703](#).

7527 Section 124. Section **78B-22-201** is amended to read:

7528 **78B-22-201. Right to counsel.**

7529 (1) A court shall advise the following of the individual's right to counsel when the

7530 individual first appears before the court:

7531 (a) an adult charged with a criminal offense the penalty for which includes the
7532 possibility of incarceration regardless of whether actually imposed;

7533 (b) a parent or legal guardian facing an action initiated by the state under:

7534 ~~[(i) Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;]~~

7535 ~~[(ii) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or]~~

7536 ~~[(iii) Title 78A, Chapter 6, Part 10, Adult Offenses;]~~

7537 (i) Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings;

7538 (ii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or

7539 (iii) Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;

7540 (c) a parent or legal guardian facing an action initiated by any party under:

7541 ~~[(i) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or]~~

7542 (i) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or

7543 (ii) Section 78B-6-112; or

7544 (d) an individual described in this Subsection (1), who is appealing a conviction or
7545 other final court action.

7546 (2) If an individual described in Subsection (1) does not knowingly and voluntarily
7547 waive the right to counsel, the court shall determine whether the individual is indigent under
7548 Section 78B-22-202.

7549 Section 125. Section 78B-22-406 is amended to read:

7550 **78B-22-406. Indigent defense services grant program.**

7551 (1) The commission may award grants:

7552 (a) to supplement local spending by an indigent defense system for indigent defense
7553 services; and

7554 (b) for contracts to provide indigent defense services for appeals from juvenile court
7555 proceedings in a county of the third, fourth, fifth, or sixth class.

7556 (2) The commission may use grant money:

7557 (a) to assist an indigent defense system to provide indigent defense services that meet
7558 the commission's core principles for the effective representation of indigent individuals;

7559 (b) to establish and maintain local indigent defense data collection systems;

7560 (c) to provide indigent defense services in addition to indigent defense services that are

currently being provided by an indigent defense system;

(d) to provide training and continuing legal education for indigent defense service providers;

(e) to assist indigent defense systems with appeals from juvenile court proceedings;

(f) to pay for indigent defense resources and costs and expenses for parental defense attorneys as described in Subsection 78B-22-804(2); and

(g) to reimburse an indigent defense system for the cost of providing indigent defense services in an action initiated by a private party under [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights~~] Title 80, Chapter 4, Termination and Restoration of Parental Rights, if the indigent defense system has complied with the commission's policies and procedures for reimbursement.

(3) To receive a grant from the commission, an indigent defense system shall demonstrate to the commission's satisfaction that:

(a) the indigent defense system has incurred or reasonably anticipates incurring expenses for indigent defense services that are in addition to the indigent defense system's average annual spending on indigent defense services in the three fiscal years immediately preceding the grant application; and

(b) a grant from the commission is necessary for the indigent defense system to meet the commission's core principles for the effective representation of indigent individuals.

(4) The commission may revoke a grant if an indigent defense system fails to meet requirements of the grant or any of the commission's core principles for the effective representation of indigent individuals.

Section 126. Section 78B-22-801 is amended to read:

78B-22-801. Definitions.

As used in this part:

(1) "Child welfare case" means a proceeding under [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 3, Abuse, Neglect, or Dependency Proceedings, or Chapter 4, Termination and Restoration of Parental Rights.

(2) "Contracted parental defense attorney" means an attorney who represents an indigent individual who is a parent in a child welfare case under a contract with the office or a

contributing county.

(3) "Contributing county" means a county that complies with this part for participation in the Child Welfare Parental Defense Fund described in Section [78B-22-804](#).

(4) "Fund" means the Child Welfare Parental Defense Fund created in Section [78B-22-804](#).

(5) "Program" means the Child Welfare Parental Defense Program created in Section [78B-22-802](#).

Section 127. Section **78B-22-803** is amended to read:

78B-22-803. Child welfare parental defense contracts.

(1) (a) The office may enter into a contract with an attorney to provide indigent defense services for a parent who is the subject of a petition alleging abuse, neglect, or dependency, and requires indigent defense services under Section [~~78A-6-111~~] [80-3-104](#).

(b) The office shall make payment for the representation, costs, and expenses of a contracted parental defense attorney from the Child Welfare Parental Defense Fund in accordance with Section [78B-22-804](#).

(2) (a) Except as provided in Subsection (2)(b), a contracted parental defense attorney shall:

(i) complete a basic training course provided by the office;

(ii) provide parental defense services consistent with the commission's core principles described in Section [78B-22-404](#);

(iii) have experience in child welfare cases; and

(iv) participate each calendar year in continuing legal education courses providing no fewer than eight hours of instruction in child welfare law.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, by rule, exempt from the requirements of Subsection (2)(a) an attorney who has equivalent training or adequate experience.

Section 128. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on July 1, 2021.

(2) Sections [26-2-22](#) (Effective 11/01/21) and [78B-6-141](#) (Effective 11/01/21) in this bill, take effect on November 1, 2021.