

JUVENILE CODE RECODIFICATION CROSS REFERENCES

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd D. Weiler

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.

This bill provides coordination clauses.

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26-2-22 (Superseded 11/01/21), as last amended by Laws of Utah 2020, Chapter 201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

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

56 **62A-2-117.5**, as last amended by Laws of Utah 2008, Chapter 3
57 **62A-2-120**, as last amended by Laws of Utah 2020, Chapters 176, 225, 250 and last
58 amended by Coordination Clause, Laws of Utah 2020, Chapter 225
59 **62A-2-121**, as last amended by Laws of Utah 2016, Chapter 348
60 **62A-4a-102**, as last amended by Laws of Utah 2019, Chapter 335
61 **62A-4a-103**, as last amended by Laws of Utah 2017, Chapter 323
62 **62A-4a-105**, as last amended by Laws of Utah 2020, Chapters 108 and 250
63 **62A-4a-113**, as last amended by Laws of Utah 2020, Chapter 250
64 **62A-4a-114**, as last amended by Laws of Utah 2013, Chapter 416
65 **62A-4a-118**, as last amended by Laws of Utah 2019, Chapter 335
66 **62A-4a-201**, as last amended by Laws of Utah 2020, Chapter 214
67 **62A-4a-202.3**, as last amended by Laws of Utah 2017, Chapter 459
68 **62A-4a-202.4**, as last amended by Laws of Utah 2009, Chapter 32
69 **62A-4a-202.8**, as last amended by Laws of Utah 2017, Chapter 459
70 **62A-4a-203**, as last amended by Laws of Utah 2008, Chapters 3 and 299
71 **62A-4a-205**, as last amended by Laws of Utah 2019, Chapter 335
72 **62A-4a-205.5**, as last amended by Laws of Utah 2010, Chapter 237
73 **62A-4a-205.6**, as last amended by Laws of Utah 2017, Chapter 148
74 **62A-4a-206**, as last amended by Laws of Utah 2018, Chapter 285
75 **62A-4a-206.5**, as enacted by Laws of Utah 2018, Chapter 285
76 **62A-4a-207**, as last amended by Laws of Utah 2014, Chapter 387
77 **62A-4a-209**, as last amended by Laws of Utah 2020, Chapter 250
78 **62A-4a-409**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20
79 **62A-4a-412**, as last amended by Laws of Utah 2020, Chapters 193 and 258
80 **62A-4a-607**, as last amended by Laws of Utah 2017, Chapter 148
81 **62A-4a-711**, as last amended by Laws of Utah 2019, Chapters 335 and 388
82 **62A-4a-802**, as last amended by Laws of Utah 2020, Chapter 170

83 **62A-4a-1005**, as last amended by Laws of Utah 2008, Chapters 3, 59, and 299
84 **62A-4a-1006**, as last amended by Laws of Utah 2020, Chapter 66
85 **62A-4a-1009**, as last amended by Laws of Utah 2008, Chapters 87, 299, and 382
86 **62A-4a-1010**, as last amended by Laws of Utah 2011, Chapter 366
87 **62A-11-304.2**, as last amended by Laws of Utah 2008, Chapters 3 and 382
88 **62A-15-204**, as last amended by Laws of Utah 2008, Chapter 3
89 **62A-15-626**, as last amended by Laws of Utah 2019, Chapter 419
90 **62A-15-703**, as last amended by Laws of Utah 2019, Chapter 256
91 **63G-4-402**, as last amended by Laws of Utah 2019, Chapter 335
92 **63M-7-208**, as enacted by Laws of Utah 2017, Chapter 330
93 **67-25-201**, as last amended by Laws of Utah 2013, Chapter 433
94 **75-5-209**, as last amended by Laws of Utah 2008, Chapter 3
95 **76-3-406**, as last amended by Laws of Utah 2020, Chapter 214
96 **76-5-107.1**, as enacted by Laws of Utah 2020, Chapter 426
97 **76-5-108**, as last amended by Laws of Utah 2020, Chapter 142
98 **76-5-110**, as last amended by Laws of Utah 2019, Chapters 136 and 335
99 **76-5-401.3**, as last amended by Laws of Utah 2020, Chapter 214
100 **76-5-413**, as last amended by Laws of Utah 2019, Chapter 211
101 **76-5b-201**, as last amended by Laws of Utah 2020, Chapter 296
102 **76-7-301**, as last amended by Laws of Utah 2019, Chapters 124 and 208
103 **76-7a-101 (Contingently Effective)**, as enacted by Laws of Utah 2020, Chapter 279
104 **76-8-306**, as last amended by Laws of Utah 2009, Chapter 213
105 **76-9-701**, as last amended by Laws of Utah 2017, Chapter 330
106 **76-10-105**, as last amended by Laws of Utah 2020, Chapters 214, 302, 312, 347 and
107 last amended by Coordination Clause, Laws of Utah 2020, Chapter 214
108 **76-10-503**, as last amended by Laws of Utah 2017, Chapter 288
109 **76-10-1315**, as enacted by Laws of Utah 2020, Chapter 108

110 77-2-9, as last amended by Laws of Utah 2020, Chapter 214
111 77-16b-102, as last amended by Laws of Utah 2014, Chapter 121
112 77-37-3, as last amended by Laws of Utah 2014, Chapter 232
113 77-38-5, as last amended by Laws of Utah 2008, Chapter 3
114 77-38-14, as last amended by Laws of Utah 2020, Chapters 54 and 218
115 77-38a-102, as last amended by Laws of Utah 2020, Chapter 214
116 77-40-101.5, as enacted by Laws of Utah 2020, Chapter 218
117 77-41-112, as last amended by Laws of Utah 2019, Chapter 382
118 78A-2-104, as last amended by Laws of Utah 2020, Chapter 389
119 78A-2-301, as last amended by Laws of Utah 2020, Chapter 230
120 78A-2-601, as last amended by Laws of Utah 2020, Chapter 230
121 78A-2-702, as enacted by Laws of Utah 2014, Chapter 267
122 78A-5-102, as last amended by Laws of Utah 2020, Chapter 214
123 78A-7-106, as last amended by Laws of Utah 2020, Chapters 214 and 312
124 78B-3-406, as last amended by Laws of Utah 2019, Chapter 346
125 78B-6-112, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
126 78B-6-117, as last amended by Laws of Utah 2020, Chapter 250
127 78B-6-121, as last amended by Laws of Utah 2015, Chapter 194
128 78B-6-131, as last amended by Laws of Utah 2012, Chapter 293
129 78B-6-133, as last amended by Laws of Utah 2020, Chapter 354
130 78B-6-138, as last amended by Laws of Utah 2018, Chapter 43
131 78B-6-141 (Superseded 11/01/21), as last amended by Laws of Utah 2018, Chapter 30
132 78B-6-141 (Effective 11/01/21), as last amended by Laws of Utah 2020, Chapter 323
133 78B-6-203, as renumbered and amended by Laws of Utah 2008, Chapter 3
134 78B-6-207, as renumbered and amended by Laws of Utah 2008, Chapter 3
135 78B-7-102, as last amended by Laws of Utah 2020, Chapters 142 and 287
136 78B-7-108, as last amended by Laws of Utah 2018, Chapter 255

137 **78B-7-201**, as last amended by Laws of Utah 2020, Chapter 142
138 **78B-7-202**, as last amended by Laws of Utah 2020, Chapter 142
139 **78B-7-203**, as last amended by Laws of Utah 2020, Chapter 142
140 **78B-7-204**, as last amended by Laws of Utah 2020, Chapter 142
141 **78B-7-409**, as last amended by Laws of Utah 2020, Chapter 142
142 **78B-7-603**, as renumbered and amended by Laws of Utah 2020, Chapter 142
143 **78B-7-702**, as renumbered and amended by Laws of Utah 2020, Chapter 142
144 **78B-11-121**, as renumbered and amended by Laws of Utah 2008, Chapter 3
145 **78B-12-219**, as renumbered and amended by Laws of Utah 2008, Chapter 3
146 **78B-15-612**, as last amended by Laws of Utah 2015, Chapter 258
147 **78B-22-102**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
148 **78B-22-201**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
149 **78B-22-406**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
150 **78B-22-801**, as enacted by Laws of Utah 2020, Chapter 395
151 **78B-22-803**, as renumbered and amended by Laws of Utah 2020, Chapter 395 and last
152 amended by Coordination Clause, Laws of Utah 2020, Chapter 395
153 **Utah Code Sections Affected by Coordination Clause:**
154 **77-37-3**, as last amended by Laws of Utah 2014, Chapter 232
155 **78B-22-102**, as last amended by Laws of Utah 2020, Chapters 371, 392, and 395
156 **78B-22-801**, as enacted by Laws of Utah 2020, Chapter 395

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

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

160 **17-18a-404. Juvenile proceedings.**

161 For a proceeding involving an offense committed by a minor as defined in Section

162 [~~78A-6-105, a~~] 80-1-102, a public prosecutor shall:

163 (1) review cases in accordance with [~~Sections 78A-6-602, 78A-6-602.5, and~~

164 ~~78A-6-603~~] Title 80, Chapter 6, Juvenile Justice; and

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

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

167 **26-2-22 (Superseded 11/01/21). Inspection of vital records.**

168 (1) As used in this section:

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

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

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

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

178 (b) It is unlawful for any state or local officer or employee to disclose data contained in
179 vital records contrary to this chapter, department rule, Section ~~78B-6-141~~, or Section
180 ~~78B-6-144~~.

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

183 (ii) A birth parent may not access an adoption document under Subsection
184 ~~78B-6-141~~(3).

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

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

190 (a) the request is from:

- 191 (i) the subject;
- 192 (ii) an immediate family member of the subject;
- 193 (iii) the guardian of the subject;
- 194 (iv) a designated legal representative of the subject; or
- 195 (v) a person, including a child-placing agency as defined in Section 78B-6-103, with
- 196 whom a child has been placed pending finalization of an adoption of the child;
- 197 (b) the request involves a personal or property right of the subject of the record;
- 198 (c) the request is for official purposes of a public health authority or a state, local, or
- 199 federal governmental agency;
- 200 (d) the request is for a drug use intervention or suicide prevention effort or a statistical
- 201 or medical research program and prior consent has been obtained from the state registrar; or
- 202 (e) the request is a certified copy of an order of a court of record specifying the record
- 203 to be examined or copied.
- 204 (4) (a) Except as provided in Title 78B, Chapter 6, Part 1, Utah Adoption Act, a parent,
- 205 or an immediate family member of a parent, who does not have legal or physical custody of or
- 206 visitation or parent-time rights for a child because of the termination of parental rights
- 207 ~~[pursuant to Title 78A, Chapter 6, Juvenile Court Act]~~ under Title 80, Chapter 4, Termination
- 208 and Restoration of Parental Rights, or by virtue of consenting to or relinquishing a child for
- 209 adoption pursuant to Title 78B, Chapter 6, Part 1, Utah Adoption Act, may not be considered
- 210 as having a direct, tangible, and legitimate interest under this section.
- 211 (b) Except as provided in Subsection (2)(d), a commercial firm or agency requesting
- 212 names, addresses, or similar information may not be considered as having a direct, tangible,
- 213 and legitimate interest under this section.
- 214 (5) Upon payment of a fee established in accordance with Section 63J-1-504, the office
- 215 shall make the following records available to the public:
- 216 (a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding
- 217 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 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 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:

- 326 (i) the applicant is under 28 years [~~of age~~] old; or
- 327 (ii) the applicant:
- 328 (A) is over 28 years [~~of age~~] old; and
- 329 (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in
- 330 abeyance or diversion agreement for a felony or misdemeanor;
- 331 (c) juvenile court arrest, adjudication, and disposition records, other than those under
- 332 Subsection (5)(b), as allowed under Section [78A-6-209](#);
- 333 (d) child abuse or neglect findings described in Section [~~78A-6-323~~] [80-3-404](#);
- 334 (e) the Department of Human Services' Division of Child and Family Services
- 335 Licensing Information System described in Section [62A-4a-1006](#);
- 336 (f) the Department of Human Services' Division of Aging and Adult Services database
- 337 of reports of vulnerable adult abuse, neglect, or exploitation, described in Section [62A-3-311.1](#);
- 338 (g) Division of Occupational and Professional Licensing records of licensing and
- 339 certification under Title 58, Occupations and Professions;
- 340 (h) records in other federal criminal background databases available to the state; and
- 341 (i) any other records of arrests, warrants for arrest, convictions, pleas in abeyance,
- 342 pending diversion agreements, or dispositions.
- 343 (6) Except for the Department of Public Safety, an agency may not charge the
- 344 department for information accessed under Subsection (5).
- 345 (7) When evaluating information under Subsection (3), the department shall classify a
- 346 crime committed in another state according to the closest matching crime under Utah law,
- 347 regardless of how the crime is classified in the state where the crime was committed.
- 348 (8) The department shall adopt measures to protect the security of information it
- 349 accesses under Subsection (5), which shall include limiting access by department employees to
- 350 those responsible for acquiring, evaluating, or otherwise processing the information.
- 351 (9) The department may disclose personal identification information it receives under
- 352 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

(F) any other findings under Subsection (3); and

(b) specify the personal identification information that must be submitted by an individual or covered body with an application for clearance, including:

(i) the applicant's Social Security number; and

(ii) fingerprints.

(5) For purposes of Subsection (4)(a), 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.

(6) The Department of Public Safety, the Administrative Office of the Courts, the Department of Human Services, the Division of Occupational and Professional Licensing, and any other state agency or political subdivision of the state:

(a) shall allow the department to review the information the department may review under Subsection (3); and

(b) except for the Department of Public Safety, may not charge the department for access to the information.

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

(8) The department may disclose personal identification information specified under Subsection (4)(b) 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 (3)(d) through (f).

(9) The department may establish fees, in accordance with Section 63J-1-504, for an application for clearance, which may include:

(a) the cost of obtaining and reviewing information under Subsection (3);

(b) a portion of the cost of creating and maintaining the Direct Access Clearance System database under Section 26-21-209; and

(c) other department costs related to the processing of the application and the ongoing review of information pursuant to Subsection (4)(a) to determine whether clearance should be retained.

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

515 child's best interest;

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

518 (g) the parent:

519 (i) is absent; or

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

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

524 (a) currently resides; or

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

527 (4) A proceeding under this chapter may be filed in a pending divorce, parentage
528 action, or other proceeding, including a proceeding in the juvenile court involving custody of or
529 visitation with a child.

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

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

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

537 (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

538 (b) any individual who has court-ordered custody or visitation rights;

539 (c) the child's guardian;

540 (d) the guardian ad litem, if one has been appointed;

541 (e) an individual or agency that has physical custody of the child or that claims to have

542 custody or visitation rights; and

543 (f) any other individual or agency that has previously appeared in any action regarding
544 custody of or visitation with the child.

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

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

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

553 (a) child abuse, as described in Section 76-5-109;

554 (b) child abuse homicide, as described in Section 76-5-208;

555 (c) child kidnapping, as described in Section 76-5-301.1;

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

557 (e) sexual abuse of a minor, as described in Section 76-5-401.1;

558 (f) rape of a child, as described in Section 76-5-402.1;

559 (g) object rape of a child, as described in Section 76-5-402.3;

560 (h) sodomy on a child, as described in Section 76-5-403.1;

561 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
562 Section 76-5-404.1;

563 (j) sexual exploitation of a minor, as described in Section 76-5b-201; or

564 (k) an offense in another state that, if committed in this state, would constitute an
565 offense described in this Subsection (10).

566 (11) (a) As used in this Subsection (11), "disqualifying offense" means an offense
567 listed in Subsection (10) that prevents a court from granting custody except as provided in this
568 Subsection (11).

(b) An individual described in Subsection (10) may only be considered for custody of a child if the following criteria are met by clear and convincing evidence:

(i) the individual is a relative, as defined in Section [~~78A-6-307~~] 80-3-102, of the child;

(ii) 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;

(iii) during the 10 years before the day on which the individual files a petition with the court seeking custody the individual has not been convicted, plead guilty, or plead 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;

(iv) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

(v) 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 old or older;

(F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(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;

(b) attempt to purchase an alcoholic product;

- (c) solicit another person to purchase an alcoholic product;
- (d) possess an alcoholic product;
- (e) consume an alcoholic product; or
- (f) have measurable blood, breath, or urine alcohol concentration in the minor's body.

(2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic product for a minor for:

- (a) a minor to misrepresent the minor's age; or
- (b) any other person to misrepresent the age of a minor.

(3) It is unlawful for a minor to possess or consume an alcoholic product while riding in a limousine or chartered bus.

(4) (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.

(5) (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 the provision in Subsection (5)(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 (5)(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 (5)(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 (5)(a).

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

(7) Notwithstanding Subsections (5)(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.

(8) 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.

(9) 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.

(10) This section does not apply to a minor's consumption of an alcoholic product in 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:

~~[(a)]~~ (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;

~~[(b)]~~ (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;

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

~~[(d)]~~ (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 licensed in another state or country.

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

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

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

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

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

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

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

(ii) Section [53-3-231](#); or

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

(i) the Utah identification card is canceled; and

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

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

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

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

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

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

(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

1055 suspended; and

1056 (B) a record of the conviction.

1057 (ii) An order of suspension under this section is at the discretion of the sentencing
1058 court, and may not be for more than 90 days for each offense.

1059 (e) (i) The division shall immediately suspend for one year the license of a person upon
1060 receiving a record of:

1061 (A) conviction for the first time for a violation under Section [32B-4-411](#); or

1062 (B) an adjudication under [~~Title 78A, Chapter 6, Juvenile Court Act,~~] [Section 80-6-701](#)
1063 for a violation under Section [32B-4-411](#).

1064 (ii) The division shall immediately suspend for a period of two years the license of a
1065 person upon receiving a record of:

1066 (A) (I) conviction for a second or subsequent violation under Section [32B-4-411](#); and

1067 (II) the violation described in Subsection (1)(e)(ii)(A)(I) is within 10 years of a prior
1068 conviction for a violation under Section [32B-4-411](#); or

1069 (B) (I) a second or subsequent adjudication under [~~Title 78A, Chapter 6, Juvenile Court~~
1070 ~~Act of 1996,~~] [Section 80-6-701](#) for a violation under Section [32B-4-411](#); and

1071 (II) the adjudication described in Subsection (1)(e)(ii)(B)(I) is within 10 years of a prior
1072 adjudication under [~~Title 78A, Chapter 6, Juvenile Court Act of 1996,~~] [Section 80-6-701](#) for a
1073 violation under Section [32B-4-411](#).

1074 (iii) Upon receipt of a record under Subsection (1)(e)(i) or (ii), the division shall:

1075 (A) for a conviction or adjudication described in Subsection (1)(e)(i):

1076 (I) impose a suspension for one year beginning on the date of conviction; 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 one year beginning on the date of
1079 eligibility for a driver license; or

1080 (B) for a conviction or adjudication described in Subsection (1)(e)(ii):

1081 (I) impose a suspension for a period of two years; or

(II) if the person is under the age of eligibility for a driver license, impose a suspension that begins on the date of conviction and continues for two years beginning on the date of eligibility for a driver license.

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

1109 (i) automobile homicide under Subsection (1)(a)(i);
1110 (ii) those offenses referred to in Subsections (1)(a)(ii), (iii), (xi), (xii), (xiii), (1)(b), and
1111 (1)(c); and
1112 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
1113 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,
1114 41-6a-517, a local ordinance which complies with the requirements of Subsection
1115 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person
1116 was charged with violating as a result of a plea bargain after having been originally charged
1117 with violating one or more of these sections or ordinances, unless:
1118 (A) the person has had the period of the first denial, suspension, revocation, or
1119 disqualification extended for a period of at least three years;
1120 (B) the division receives written verification from the person's primary care physician
1121 that:
1122 (I) to the physician's knowledge the person has not used any narcotic drug or other
1123 controlled substance except as prescribed by a licensed medical practitioner within the last
1124 three years; and
1125 (II) the physician is not aware of any physical, emotional, or mental impairment that
1126 would affect the person's ability to operate a motor vehicle safely; and
1127 (C) for a period of one year prior to the date of the request for a limited driving
1128 privilege:
1129 (I) the person has not been convicted of a violation of any motor vehicle law in which
1130 the person was involved as the operator of the vehicle;
1131 (II) the division has not received a report of an arrest for a violation of any motor
1132 vehicle law in which the person was involved as the operator of the vehicle; and
1133 (III) the division has not received a report of an accident in which the person was
1134 involved as an operator of a vehicle.
1135 (b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege

1136 authorized in this Subsection (4):

1137 (A) is limited to when undue hardship would result from a failure to grant the
1138 privilege; and

1139 (B) may be granted only once to any person during any single period of denial,
1140 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,
1141 or disqualification.

1142 (ii) The discretionary privilege authorized in Subsection (4)(a)(iii):

1143 (A) is limited to when the limited privilege is necessary for the person to commute to
1144 school or work; and

1145 (B) may be granted only once to any person during any single period of denial,
1146 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,
1147 or disqualification.

1148 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform
1149 Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or
1150 denied under this chapter.

1151 Section 16. Section **53-10-404** is amended to read:

1152 **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

1153 (1) As used in this section, "person" refers to any person as described under Section
1154 [53-10-403](#).

1155 (2) (a) A person under Section [53-10-403](#) or any person required to register as a sex
1156 offender under Title 77, Chapter 41, Sex and Kidnap Offender Registry, shall provide a DNA
1157 specimen and shall reimburse the agency responsible for obtaining the DNA specimen \$150 for
1158 the cost of obtaining the DNA specimen unless:

1159 (i) the person was booked under Section [53-10-403](#) and is not required to reimburse the
1160 agency under Section [53-10-404.5](#); or

1161 (ii) the agency determines the person lacks the ability to pay.

1162 (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.

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

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

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

(5) (a) The Department of Corrections is the responsible agency whenever the person is

committed to the custody of or is under the supervision of the Department of Corrections.

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

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

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

(ii) are incarcerated in the county jail:

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

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

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

(iv) are booked at the county jail:

(A) by a law enforcement agency that is obtaining a DNA specimen for any felony offense on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b); or

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

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

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

(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

1244 Corrections.

1245 (b) Priority of obtaining DNA specimens by the department is:

1246 (i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody
1247 of or under the supervision of the department before these persons are released from
1248 incarceration, parole, or probation, if their release date is prior to that of persons under
1249 Subsection (6)(b)(ii), but in no case later than July 1, 2004; and

1250 (ii) second, the department shall obtain DNA specimens from persons who are
1251 committed to the custody of the department or who are placed under the supervision of the
1252 department after July 1, 2002, within 120 days after the commitment, if possible, but not later
1253 than prior to release from incarceration if the person is imprisoned, or prior to the termination
1254 of probation if the person is placed on probation.

1255 (c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii)
1256 is:

1257 (i) first, persons on probation;

1258 (ii) second, persons on parole; and

1259 (iii) third, incarcerated persons.

1260 (d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the
1261 priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA
1262 specimens from persons in the custody of or under the supervision of the Department of
1263 Corrections as of July 1, 2002, prior to their release.

1264 (7) (a) As used in this Subsection (7):

1265 (i) "Court" means the juvenile court.

1266 (ii) "Division" means the Division of Juvenile Justice Services.

1267 (b) Priority of obtaining DNA specimens by the court from minors under Section
1268 53-10-403 ~~[who are under the jurisdiction of the court]~~ whose cases are under the jurisdiction
1269 of the court but who are not in the legal custody of the division shall be:

1270 (i) first, to obtain specimens from minors ~~[who as of July 1, 2002, are within the court's~~

1271 ~~jurisdiction, prior to termination of the court's jurisdiction over these minors]~~ whose cases, as
1272 of July 1, 2002, are under the court's jurisdiction, before the court's jurisdiction over the minors'
1273 cases terminates; and

1274 (ii) second, to obtain specimens from minors [~~who are found to be within the court's~~
1275 ~~jurisdiction]~~ whose cases are under the jurisdiction of the court after July 1, 2002, within 120
1276 days of the minor's case being found to be within the court's jurisdiction, if possible, but [~~not~~
1277 ~~no~~ later than [~~prior to termination of the court's jurisdiction over the minor.]~~ before the court's
1278 jurisdiction over the minor's case terminates.

1279 (c) Priority of obtaining DNA specimens by the division from minors under Section
1280 53-10-403 who are committed to the legal custody of the division shall be:

1281 (i) first, to obtain specimens from minors who as of July 1, 2002, are within the
1282 division's legal custody and who have not previously provided a DNA specimen under this
1283 section, [~~prior to~~] before termination of the division's legal custody of these minors; and

1284 (ii) second, to obtain specimens from minors who are placed in the legal custody of the
1285 division after July 1, 2002, within 120 days of the minor's being placed in the custody of the
1286 division, if possible, but [~~not later than prior to~~] no later than before the termination of the
1287 court's jurisdiction over the [~~minor~~] minor's case.

1288 (8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile
1289 Justice Services, and all law enforcement agencies in the state shall by policy establish
1290 procedures for obtaining saliva DNA specimens, and shall provide training for employees
1291 designated to collect saliva DNA specimens.

1292 (b) (i) The department may designate correctional officers, including those employed
1293 by the adult probation and parole section of the department, to obtain the saliva DNA
1294 specimens required under this section.

1295 (ii) The department shall ensure that the designated employees receive appropriate
1296 training and that the specimens are obtained in accordance with accepted protocol.

1297 (c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

1298 Section 17. Section **53-10-407** is amended to read:

1299 **53-10-407. DNA Specimen Restricted Account.**

1300 (1) There is created the DNA Specimen Restricted Account, which is referred to in this
1301 section as "the account."

1302 (2) The sources of money for the account are:

1303 (a) DNA collection fees paid under Section [53-10-404](#);

1304 (b) any appropriations made to the account by the Legislature; and

1305 (c) all federal money provided to the state for the purpose of funding the collection or
1306 analysis of DNA specimens collected under Section [53-10-403](#).

1307 (3) The account shall earn interest, and this interest shall be deposited in the account.

1308 (4) The Legislature may appropriate money from the account solely for the following
1309 purposes:

1310 (a) to the Department of Corrections for the costs of collecting DNA specimens as
1311 required under Section [53-10-403](#);

1312 (b) to the juvenile court for the costs of collecting DNA specimens as required under
1313 Sections [53-10-403](#) and [~~78A-6-117~~] [80-6-608](#);

1314 (c) to the Division of Juvenile Justice Services for the costs of collecting DNA
1315 specimens as required under Sections [53-10-403](#) and [~~62A-7-104~~] [80-5-201](#); and

1316 (d) to the Department of Public Safety for the costs of:

1317 (i) storing and analyzing DNA specimens in accordance with the requirements of this
1318 part;

1319 (ii) DNA testing which cannot be performed by the Utah State Crime Lab, as provided
1320 in Subsection [78B-9-301\(7\)](#); and

1321 (iii) reimbursing sheriffs for collecting the DNA specimens as provided under Sections
1322 [53-10-404](#) and [53-10-404.5](#).

1323 (5) Appropriations from the account to the Department of Corrections, the juvenile
1324 court, the Division of Juvenile Justice Services, and to the Department of Public Safety are

1325 nonlapsing.

1326 Section 18. Section **53B-8d-102** is amended to read:

1327 **53B-8d-102. Definitions.**

1328 As used in this chapter:

1329 (1) "Division" means the Division of Child and Family Services.

1330 (2) "Long-term foster care" means an individual who remains in the custody of the
1331 division, whether or not the individual resides:

1332 (a) with licensed foster parents; or

1333 (b) in independent living arrangements under the supervision of the division.

1334 (3) "State institution of higher education" means:

1335 (a) an institution designated in Section **53B-1-102**; or

1336 (b) a public institution that offers postsecondary education in consideration of the
1337 payment of tuition or fees for the attainment of educational or vocational objectives leading to
1338 a degree or certificate, including:

1339 (i) a business school;

1340 (ii) a technical school;

1341 (iii) a trade school; or

1342 (iv) an institution offering related apprenticeship programs.

1343 (4) "Tuition" means tuition at the rate for residents of the state.

1344 (5) "Ward of the state" means an individual:

1345 (a) who is:

1346 (i) at least 17 years ~~[of age]~~ old; and

1347 (ii) not older than 26 years ~~[of age]~~ old;

1348 (b) who had a permanency goal in the individual's child and family plan, as described
1349 in Sections **62A-4a-205** and ~~[78A-6-314]~~ **80-3-409**, of long-term foster care while in the
1350 custody of the division; and

1351 (c) for whom the custody of the division was not terminated as a result of adoption.

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

53E-3-513. Parental permission required for specified in-home programs --

Exceptions.

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

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

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);

1379 (e) states the student data described in Section 53E-9-308 that the education entity may
1380 not share without written consent;

1381 (f) includes the following statement:

1382 "The collection, use, and sharing of student data has both benefits and risks. Parents
1383 and students should learn about these benefits and risks and make choices regarding student
1384 data accordingly.";

1385 (g) describes in general terms how the education entity stores and protects student data;
1386 and

1387 (h) states a student's rights under this part.

1388 (3) The state board may publicly post the state board's collection notice described in
1389 Subsection (2).

1390 (4) An education entity may collect the necessary student data of a student if the
1391 education entity provides a student data collection notice to:

1392 (a) the student, if the student is an adult student; or

1393 (b) the student's parent, if the student is not an adult student.

1394 (5) An education entity may collect optional student data if the education entity:

1395 (a) provides, to an individual described in Subsection (4), a student data collection
1396 notice that includes a description of:

1397 (i) the optional student data to be collected; and

1398 (ii) how the education entity will use the optional student data; and

1399 (b) obtains written consent to collect the optional student data from an individual
1400 described in Subsection (4).

1401 (6) An education entity may collect a student's biometric identifier or biometric
1402 information if the education entity:

1403 (a) provides, to an individual described in Subsection (4), a biometric information
1404 collection notice that is separate from a student data collection notice, which states:

1405 (i) the biometric identifier or biometric information to be collected;

(ii) the purpose of collecting the biometric identifier or biometric information; and
(iii) how the education entity will use and store the biometric identifier or biometric information; and

(b) obtains written consent to collect the biometric identifier or biometric information from an individual described in Subsection (4).

(7) Except under the circumstances described in Subsection 53G-8-211(2), an education entity may not refer a student to an evidence-based alternative intervention described in Subsection 53G-8-211(3) without written consent.

(8) Nothing in this section prohibits an education entity from including additional information related to student and parent privacy in the notice described in Subsection (2).

Section 21. Section 53G-4-402 is amended to read:

53G-4-402. Powers and duties generally.

(1) A local school board shall:

(a) implement the core standards for Utah public schools using instructional materials that best correlate to the core standards for Utah public schools and graduation requirements;

(b) administer tests, required by the state board, which measure the progress of each student, and coordinate with the state superintendent and state board to assess results and create plans to improve the student's progress, which shall be submitted to the state board for approval;

(c) use progress-based assessments as part of a plan to identify schools, teachers, and students that need remediation and determine the type and amount of federal, state, and local resources to implement remediation;

(d) develop early warning systems for students or classes failing to make progress;

(e) work with the state board to establish a library of documented best practices, consistent with state and federal regulations, for use by the local districts;

(f) implement training programs for school administrators, including basic management training, best practices in instructional methods, budget training, staff

1433 management, managing for learning results and continuous improvement, and how to help
1434 every child achieve optimal learning in basic academic subjects; and
1435 (g) ensure that the local school board meets the data collection and reporting standards
1436 described in Section 53E-3-501.

1437 (2) Local school boards shall spend Minimum School Program funds for programs and
1438 activities for which the state board has established minimum standards or rules under Section
1439 53E-3-501.

1440 (3) (a) A local school board may purchase, sell, and make improvements on school
1441 sites, buildings, and equipment and construct, erect, and furnish school buildings.

1442 (b) School sites or buildings may only be conveyed or sold on local school board
1443 resolution affirmed by at least two-thirds of the members.

1444 (4) (a) A local school board may participate in the joint construction or operation of a
1445 school attended by children residing within the district and children residing in other districts
1446 either within or outside the state.

1447 (b) Any agreement for the joint operation or construction of a school shall:

1448 (i) be signed by the president of the local school board of each participating district;
1449 (ii) include a mutually agreed upon pro rata cost; and
1450 (iii) be filed with the state board.

1451 (5) A local school board may establish, locate, and maintain elementary, secondary,
1452 and applied technology schools.

1453 (6) Except as provided in Section 53E-3-905, a local school board may enroll children
1454 in school who are at least five years ~~[of age]~~ old before September 2 of the year in which
1455 admission is sought.

1456 (7) A local school board may establish and support school libraries.

1457 (8) A local school board may collect damages for the loss, injury, or destruction of
1458 school property.

1459 (9) A local school board may authorize guidance and counseling services for children

1460 and their parents before, during, or following enrollment of the children in schools.

1461 (10) (a) A local school board shall administer and implement federal educational
1462 programs in accordance with Title 53E, Chapter 3, Part 8, Implementing Federal or National
1463 Education Programs.

1464 (b) Federal funds are not considered funds within the school district budget under
1465 Chapter 7, Part 3, Budgets.

1466 (11) (a) A local school board may organize school safety patrols and adopt policies
1467 under which the patrols promote student safety.

1468 (b) A student appointed to a safety patrol shall be at least 10 years old and have written
1469 parental consent for the appointment.

1470 (c) Safety patrol members may not direct vehicular traffic or be stationed in a portion
1471 of a highway intended for vehicular traffic use.

1472 (d) Liability may not attach to a school district, its employees, officers, or agents or to a
1473 safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting
1474 the program by virtue of the organization, maintenance, or operation of a school safety patrol.

1475 (12) (a) A local school board may on its own behalf, or on behalf of an educational
1476 institution for which the local school board is the direct governing body, accept private grants,
1477 loans, gifts, endowments, devises, or bequests that are made for educational purposes.

1478 (b) These contributions are not subject to appropriation by the Legislature.

1479 (13) (a) A local school board may appoint and fix the compensation of a compliance
1480 officer to issue citations for violations of Subsection 76-10-105(2)(b).

1481 (b) A person may not be appointed to serve as a compliance officer without the
1482 person's consent.

1483 (c) A teacher or student may not be appointed as a compliance officer.

1484 (14) A local school board shall adopt bylaws and policies for the local school board's
1485 own procedures.

1486 (15) (a) A local school board shall make and enforce policies necessary for the control

1487 and management of the district schools.

1488 (b) Local school board policies shall be in writing, filed, and referenced for public
1489 access.

1490 (16) A local school board may hold school on legal holidays other than Sundays.

1491 (17) (a) A local school board shall establish for each school year a school traffic safety
1492 committee to implement this Subsection (17).

1493 (b) The committee shall be composed of one representative of:

1494 (i) the schools within the district;

1495 (ii) the Parent Teachers' Association of the schools within the district;

1496 (iii) the municipality or county;

1497 (iv) state or local law enforcement; and

1498 (v) state or local traffic safety engineering.

1499 (c) The committee shall:

1500 (i) receive suggestions from school community councils, parents, teachers, and others
1501 and recommend school traffic safety improvements, boundary changes to enhance safety, and
1502 school traffic safety program measures;

1503 (ii) review and submit annually to the Department of Transportation and affected
1504 municipalities and counties a child access routing plan for each elementary, middle, and junior
1505 high school within the district;

1506 (iii) consult the Utah Safety Council and the Division of Family Health Services and
1507 provide training to all school children in kindergarten through grade 6, within the district, on
1508 school crossing safety and use; and

1509 (iv) help ensure the district's compliance with rules made by the Department of
1510 Transportation under Section [41-6a-303](#).

1511 (d) The committee may establish subcommittees as needed to assist in accomplishing
1512 its duties under Subsection (17)(c).

1513 (18) (a) A local school board shall adopt and implement a comprehensive emergency

response plan to prevent and combat violence in the local school board's public schools, on school grounds, on its school vehicles, and in connection with school-related activities or events.

(b) The plan shall:

(i) include prevention, intervention, and response components;

(ii) be consistent with the student conduct and discipline policies required for school 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

1541 sports program for students.

1542 (c) The plan may:

1543 (i) include emergency personnel, emergency communication, and emergency
1544 equipment components;

1545 (ii) require professional learning on the emergency response plan for school personnel
1546 who are involved in sports programs in the district's secondary schools; and

1547 (iii) provide for coordination with individuals and agency representatives who:

1548 (A) are not employees of the school district; and

1549 (B) would be involved in providing emergency services to students injured while
1550 participating in sports events.

1551 (d) The local school board, in collaboration with the schools referred to in Subsection
1552 (19)(b), may review the plan each year and make revisions when required to improve or
1553 enhance the plan.

1554 (e) The state board, through the state superintendent, shall provide local school boards
1555 with an emergency plan response model that local school boards may use to comply with the
1556 requirements of this Subsection (19).

1557 (20) A local school board shall do all other things necessary for the maintenance,
1558 prosperity, and success of the schools and the promotion of education.

1559 (21) (a) Before closing a school or changing the boundaries of a school, a local school
1560 board shall:

1561 (i) at least 120 days before approving the school closure or school boundary change,
1562 provide notice to the following that the local school board is considering the closure or
1563 boundary change:

1564 (A) parents of students enrolled in the school, using the same form of communication
1565 the local school board regularly uses to communicate with parents;

1566 (B) parents of students enrolled in other schools within the school district that may be
1567 affected by the closure or boundary change, using the same form of communication the local

1568 school board regularly uses to communicate with parents; and

1569 (C) the governing council and the mayor of the municipality in which the school is
1570 located;

1571 (ii) provide an opportunity for public comment on the proposed school closure or
1572 school boundary change during at least two public local school board meetings; and

1573 (iii) hold a public hearing as defined in Section 10-9a-103 and provide public notice of
1574 the public hearing as described in Subsection (21)(b).

1575 (b) The notice of a public hearing required under Subsection (21)(a)(iii) shall:

1576 (i) indicate the:

1577 (A) school or schools under consideration for closure or boundary change; and

1578 (B) the date, time, and location of the public hearing;

1579 (ii) at least 10 days before the public hearing, be:

1580 (A) published:

1581 (I) in a newspaper of general circulation in the area; and

1582 (II) on the Utah Public Notice Website created in Section 63F-1-701; and

1583 (B) posted in at least three public locations within the municipality in which the school
1584 is located on the school district's official website, and prominently at the school; and

1585 (iii) at least 30 days before the public hearing described in Subsection (21)(a)(iii), be
1586 provided as described in Subsections (21)(a)(i)(A), (B), and (C).

1587 (22) A local school board may implement a facility energy efficiency program
1588 established under Title 11, Chapter 44, Performance Efficiency Act.

1589 (23) A local school board may establish or partner with a certified youth court
1590 ~~[program, in accordance with Section 78A-6-1203,]~~ in accordance with Section 80-6-902 or
1591 establish or partner with a comparable restorative justice program, in coordination with schools
1592 in that district. A school may refer a student to a youth court or a comparable restorative justice
1593 program in accordance with Section 53G-8-211.

1594 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.

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

1703 school, according to LEA governing board policy, and satisfies at least one of the following
1704 conditions:

1705 (A) the activity is managed or supervised by a local education agency or public school,
1706 or local education agency or public school employee;

1707 (B) the activity uses the local education agency's or public school's facilities,
1708 equipment, or other school resources; or

1709 (C) the activity is supported or subsidized, more than inconsequentially, by public
1710 funds, including the public school's activity funds or Minimum School Program dollars.

1711 (ii) "School-sponsored activity" includes preparation for and involvement in a public
1712 performance, contest, athletic competition, demonstration, display, or club activity.

1713 (l) (i) "Status offense" means an offense that would not be an offense but for the age of
1714 the offender.

1715 (ii) "Status offense" does not mean an offense that by statute is a misdemeanor or
1716 felony.

1717 (2) This section applies to a minor enrolled in school who is alleged to have committed
1718 an offense at the school where the student is enrolled:

1719 (a) on school property where the student is enrolled:

1720 (i) when school is in session; or

1721 (ii) during a school-sponsored activity; or

1722 (b) that is truancy.

1723 (3) (a) Except as provided in Subsections (3)(e) and (5), if a minor is alleged to have
1724 committed an offense that is a class C misdemeanor, an infraction, a status offense on school
1725 property, or an offense that is truancy:

1726 (i) a school district or school may not refer the minor to a law enforcement officer or
1727 agency or a court; and

1728 (ii) a law enforcement officer or agency may not refer the minor to a prosecuting
1729 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 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-6-1101]~~ [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-6-113~~ 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

1919 manufacture, distribution, production, prescription, administration, dispensing, conducting of
1920 research with, and performing of laboratory analysis upon controlled substances within this
1921 state.

1922 (b) The division may assess reasonable fees to defray the cost of issuing original and
1923 renewal licenses under this chapter pursuant to Section [63J-1-504](#).

1924 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
1925 administers, conducts research with, or performs laboratory analysis upon any controlled
1926 substance in Schedules I through V within this state, or who proposes to engage in
1927 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting
1928 research with, or performing laboratory analysis upon controlled substances included in
1929 Schedules I through V within this state shall obtain a license issued by the division.

1930 (ii) The division shall issue each license under this chapter in accordance with a
1931 two-year renewal cycle established by rule. The division may by rule extend or shorten a
1932 renewal period by as much as one year to stagger the renewal cycles it administers.

1933 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
1934 administer, conduct research with, or perform laboratory analysis upon controlled substances in
1935 Schedules I through V within this state may possess, manufacture, produce, distribute,
1936 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
1937 those substances to the extent authorized by their license and in conformity with this chapter.

1938 (c) The following persons are not required to obtain a license and may lawfully possess
1939 controlled substances included in Schedules II through V under this section:

1940 (i) an agent or employee, except a sales representative, of any registered manufacturer,
1941 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
1942 usual course of the agent or employee's business or employment; however, nothing in this
1943 subsection shall be interpreted to permit an agent, employee, sales representative, or detail man
1944 to maintain an inventory of controlled substances separate from the location of the person's
1945 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,

1973 or dispensing of substances;

1974 (D) past experience in the manufacture of controlled dangerous substances;

1975 (E) established effective controls against diversion; and

1976 (F) complied with any other factors that the division establishes that promote the public
1977 health and safety.

1978 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
1979 produce, distribute, conduct research with, or perform laboratory analysis upon controlled
1980 substances in Schedule I other than those specified in the license.

1981 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
1982 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
1983 research under the laws of this state.

1984 (ii) The division need not require a separate license for practitioners engaging in
1985 research with nonnarcotic controlled substances in Schedules II through V where the licensee is
1986 already licensed under this chapter in another capacity.

1987 (iii) With respect to research involving narcotic substances in Schedules II through V,
1988 or where the division by rule requires a separate license for research of nonnarcotic substances
1989 in Schedules II through V, a practitioner shall apply to the division prior to conducting
1990 research.

1991 (iv) Licensing for purposes of bona fide research with controlled substances by a
1992 practitioner considered qualified may be denied only on a ground specified in Subsection (4),
1993 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard
1994 adequately the practitioner's supply of substances against diversion from medical or scientific
1995 use.

1996 (v) Practitioners registered under federal law to conduct research in Schedule I
1997 substances may conduct research in Schedule I substances within this state upon providing the
1998 division with evidence of federal registration.

1999 (d) Compliance by manufacturers, producers, and distributors with the provisions of

federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.

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

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

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

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

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

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

(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;

2027 or

2028 (B) improve performance in any form of human exercise, sport, or game.

2029 (b) The division may limit revocation or suspension of a license to a particular
2030 controlled substance with respect to which grounds for revocation or suspension exist.

2031 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
2032 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
2033 Occupational and Professional Licensing Act, and conducted in conjunction with the
2034 appropriate representative committee designated by the director of the department.

2035 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
2036 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
2037 except where the division is designated by law to perform those functions, or, when not
2038 designated by law, is designated by the executive director of the Department of Commerce to
2039 conduct the proceedings.

2040 (d) (i) The division may suspend any license simultaneously with the institution of
2041 proceedings under this section if it finds there is an imminent danger to the public health or
2042 safety.

2043 (ii) Suspension shall continue in effect until the conclusion of proceedings, including
2044 judicial review, unless withdrawn by the division or dissolved by a court of competent
2045 jurisdiction.

2046 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
2047 substances owned or possessed by the licensee may be placed under seal in the discretion of the
2048 division.

2049 (ii) Disposition may not be made of substances under seal until the time for taking an
2050 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,
2051 orders the sale of perishable substances and the proceeds deposited with the court.

2052 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

2053 (f) The division shall notify promptly the Drug Enforcement Administration of all

orders suspending or revoking a license and all forfeitures of controlled substances.

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

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

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

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

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

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

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state 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).

(i) A prescription for a Schedule II substance may not be refilled.

(ii) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II or Schedule III controlled substance that is an opiate and that is issued for an acute condition shall be completely or partially filled in a quantity not to exceed a seven-day supply as directed on the daily dosage rate of the prescription.

(B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when the practitioner determined that a quantity exceeding seven days is needed, in which case the practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the practitioner.

(C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or chronic conditions which are documented as being complex or chronic in the medical record.

(D) A pharmacist is not required to verify that a prescription is in compliance with Subsection (7)(f)(iii).

(iv) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(v) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

(vi) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is

2135 specified separately from the date of issue.

2136 (vii) A practitioner may issue more than one prescription at the same time for the same
2137 Schedule II controlled substance, but only under the following conditions:

2138 (A) no more than three prescriptions for the same Schedule II controlled substance may
2139 be issued at the same time;

2140 (B) no one prescription may exceed a 30-day supply; and

2141 (C) a second or third prescription shall include the date of issuance and the date for
2142 dispensing.

2143 (g) (i) Beginning January 1, 2022, each prescription issued for a controlled substance
2144 shall be transmitted electronically as an electronic prescription unless the prescription is:

2145 (A) for a patient residing in an assisted living facility as that term is defined in Section
2146 26-21-2, a long-term care facility as that term is defined in Section 58-31b-102, or a
2147 correctional facility as that term is defined in Section 64-13-1;

2148 (B) issued by a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice
2149 Act;

2150 (C) dispensed by a Department of Veterans Affairs pharmacy;

2151 (D) issued during a temporary technical or electronic failure at the practitioner's or
2152 pharmacy's location; or

2153 (E) issued in an emergency situation.

2154 (ii) The division, in collaboration with the appropriate boards that govern the licensure
2155 of the licensees who are authorized by the division to prescribe or to dispense controlled
2156 substances, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative
2157 Rulemaking Act to:

2158 (A) require that controlled substances prescribed or dispensed under Subsection
2159 (7)(g)(i)(D) indicate on the prescription that the prescribing practitioner or the [pharmacy]
2160 pharmacy is experiencing a technical difficulty or an electronic failure;

2161 (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

2216 any violations in accordance with Sections 58-1-106 and 58-1-108.

2217 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the
2218 General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

2219 (iii) The director may collect a penalty that is not paid by:

2220 (A) referring the matter to a collection agency; or

2221 (B) bringing an action in the district court of the county where the person against
2222 whom the penalty is imposed resides or in the county where the office of the director is located.

2223 (iv) A county attorney or the attorney general of the state shall provide legal assistance
2224 and advice to the director in an action to collect a penalty.

2225 (v) A court shall award reasonable attorney fees and costs to the prevailing party in an
2226 action brought by the division to collect a penalty.

2227 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j)
2228 or Subsection (10) is:

2229 (i) upon first conviction, guilty of a class B misdemeanor;

2230 (ii) upon second conviction, guilty of a class A misdemeanor; and

2231 (iii) on third or subsequent conviction, guilty of a third degree felony.

2232 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through
2233 (o) shall upon conviction be guilty of a third degree felony.

2234 (9) Any information communicated to any licensed practitioner in an attempt to
2235 unlawfully procure, or to procure the administration of, a controlled substance is not considered
2236 to be a privileged communication.

2237 (10) A person holding a valid license under this chapter who is engaged in medical
2238 research may produce, possess, administer, prescribe, or dispense a controlled substance for
2239 research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense
2240 a controlled substance listed in Section 58-37-4.2.

2241 Section 31. Section 62A-1-108.5 is amended to read:

2242 **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 Procedure, and for good cause shown, from proposing a person who has not been previously selected under Subsection (4) to contract with the department to conduct the evaluation. In selecting that person, the criteria of the department established under Subsection (4) and the provisions of Title 63G, Chapter 6a, Utah Procurement Code, shall be met.

Section 32. Section **62A-1-111** is amended to read:

2270 **62A-1-111. Department authority.**

2271 The department may, in addition to all other authority and responsibility granted to the
2272 department by law:

2273 (1) adopt rules, not inconsistent with law, as the department may consider necessary or
2274 desirable for providing social services to the people of this state;

2275 (2) establish and manage client trust accounts in the department's institutions and
2276 community programs, at the request of the client or the client's legal guardian or representative,
2277 or in accordance with federal law;

2278 (3) purchase, as authorized or required by law, services that the department is
2279 responsible to provide for legally eligible persons;

2280 (4) conduct adjudicative proceedings for clients and providers in accordance with the
2281 procedures of Title 63G, Chapter 4, Administrative Procedures Act;

2282 (5) establish eligibility standards for its programs, not inconsistent with state or federal
2283 law or regulations;

2284 (6) take necessary steps, including legal action, to recover money or the monetary value
2285 of services provided to a recipient who was not eligible;

2286 (7) set and collect fees for the department's services;

2287 (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited,
2288 or limited by law;

2289 (9) acquire, manage, and dispose of any real or personal property needed or owned by
2290 the department, not inconsistent with state law;

2291 (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or
2292 the proceeds thereof, may be credited to the program designated by the donor, and may be used
2293 for the purposes requested by the donor, as long as the request conforms to state and federal
2294 policy; all donated funds shall be considered private, nonlapsing funds and may be invested
2295 under guidelines established by the state treasurer;

2296 (11) accept and employ volunteer labor or services; the department is authorized to

2297 reimburse volunteers for necessary expenses, when the department considers that
2298 reimbursement to be appropriate;

2299 (12) carry out the responsibility assigned in the workforce services plan by the State
2300 Workforce Development Board;

2301 (13) carry out the responsibility assigned by Section 35A-8-602 with respect to
2302 coordination of services for the homeless;

2303 (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to
2304 coordination of services for students with a disability;

2305 (15) provide training and educational opportunities for the department's staff;

2306 (16) collect child support payments and any other money due to the department;

2307 (17) apply the provisions of Title 78B, Chapter 12, Utah Child Support Act, to parents
2308 whose child lives out of the home in a department licensed or certified setting;

2309 (18) establish policy and procedures, within appropriations authorized by the
2310 Legislature, in cases where ~~[the department]~~ the Division of Child and Family Services or the
2311 Division of Juvenile Justice Services is given custody of a minor by the juvenile court under
2312 ~~[Section 78A-6-117]~~ Title 80, Utah Juvenile Code, or the department is ordered to prepare an
2313 attainment plan for a minor found not competent to proceed under Section ~~[78A-6-1301]~~
2314 80-6-403; any policy and procedures shall include:

2315 (a) designation of interagency teams for each juvenile court district in the state;
2316 (b) delineation of assessment criteria and procedures;

2317 (c) minimum requirements, and timeframes, for the development and implementation
2318 of a collaborative service plan for each minor placed in department custody; and

2319 (d) provisions for submittal of the plan and periodic progress reports to the court;

2320 (19) carry out the responsibilities assigned to the department by statute;

2321 (20) examine and audit the expenditures of any public funds provided to local
2322 substance abuse authorities, local mental health authorities, local area agencies on aging, and
2323 any person, agency, or organization that contracts with or receives funds from those authorities

or agencies. Those local authorities, area agencies, and any person or entity that contracts with or receives funds from those authorities or area agencies, shall provide the department with any 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.

Section 33. Section **62A-2-108.8** is amended to read:

62A-2-108.8. Residential support program -- Temporary homeless youth shelter.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish age-appropriate and gender-appropriate sleeping quarters in temporary homeless youth shelters, as defined in Section [\[62A-4a-501\]](#) [80-5-102](#), that provide overnight shelter to minors.

Section 34. Section **62A-2-117.5** is amended to read:

62A-2-117.5. Foster care by a child's relative.

(1) In accordance with state and federal law, the division shall provide for licensure of a child's relative for foster or substitute care, when the child is in the temporary custody or custody of the Division of Child and Family Services. If it is determined that, under federal law, allowance is made for an approval process requiring less than full foster parent licensure proceedings for a child's relative, the division shall establish an approval process to accomplish that purpose.

(2) For purposes of this section:

(a) "Custody" and "temporary custody" mean the same as those terms are defined in Section [62A-4a-101](#).

(b) "Relative" means the same as that term is defined in Section [\[78A-6-307\]](#) [80-3-102](#).

Section 35. Section **62A-2-120** is amended to read:

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

- 2378 (1) As used in this section:
- 2379 (a) (i) "Applicant" means:
- 2380 (A) the same as that term is defined in Section 62A-2-101;
- 2381 (B) an individual who is associated with a licensee and has or will likely have direct
- 2382 access to a child or a vulnerable adult;
- 2383 (C) an individual who provides respite care to a foster parent or an adoptive parent on
- 2384 more than one occasion;
- 2385 (D) a department contractor;
- 2386 (E) a guardian submitting an application on behalf of an individual, other than the child
- 2387 or vulnerable adult who is receiving the service, if the individual is 12 years ~~[of age]~~ old or
- 2388 older and resides in a home, that is licensed or certified by the office, with the child or
- 2389 vulnerable adult who is receiving services; or
- 2390 (F) a guardian submitting an application on behalf of an individual, other than the child
- 2391 or vulnerable adult who is receiving the service, if the individual is 12 years ~~[of age]~~ old or
- 2392 older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).
- 2393 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
- 2394 of the Division of Child and Family Services or the Division of Juvenile Justice Services.
- 2395 (b) "Application" means a background screening application to the office.
- 2396 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
- 2397 Public Safety, created in Section 53-10-201.
- 2398 (d) "Incidental care" means occasional care, not in excess of five hours per week and
- 2399 never overnight, for a foster child.
- 2400 (e) "Personal identifying information" means:
- 2401 (i) current name, former names, nicknames, and aliases;
- 2402 (ii) date of birth;
- 2403 (iii) physical address and email address;
- 2404 (iv) telephone number;

2405 (v) driver license or other government-issued identification;
 2406 (vi) social security number;
 2407 (vii) only for applicants who are 18 years ~~[of age]~~ old or older, fingerprints, in a form
 2408 specified by the office; and
 2409 (viii) other information specified by the office by rule made in accordance with Title
 2410 63G, Chapter 3, Utah Administrative Rulemaking Act.

2411 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
 2412 submit the following to the office:

2413 (i) personal identifying information;
 2414 (ii) a fee established by the office under Section 63J-1-504; and
 2415 (iii) a disclosure form, specified by the office, for consent for:

2416 (A) an initial background check upon submission of the information described under
 2417 this Subsection (2)(a);
 2418 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
 2419 licensee for 90 days;
 2420 (C) a background check when the office determines that reasonable cause exists; and
 2421 (D) retention of personal identifying information, including fingerprints, for
 2422 monitoring and notification as described in Subsections (3)(d) and (4).

2423 (b) In addition to the requirements described in Subsection (2)(a), if an applicant
 2424 resided outside of the United States and its territories during the five years immediately
 2425 preceding the day on which the information described in Subsection (2)(a) is submitted to the
 2426 office, the office may require the applicant to submit documentation establishing whether the
 2427 applicant was convicted of a crime during the time that the applicant resided outside of the
 2428 United States or its territories.

2429 (3) The office:

2430 (a) shall perform the following duties as part of a background check of an applicant:

2431 (i) check state and regional criminal background databases for the applicant's criminal

2432 history by:

2433 (A) submitting personal identifying information to the bureau for a search; or

2434 (B) using the applicant's personal identifying information to search state and regional

2435 criminal background databases as authorized under Section [53-10-108](#);

2436 (ii) submit the applicant's personal identifying information and fingerprints to the

2437 bureau for a criminal history search of applicable national criminal background databases;

2438 (iii) search the Department of Human Services, Division of Child and Family Services'

2439 Licensing Information System described in Section [62A-4a-1006](#);

2440 (iv) search the Department of Human Services, Division of Aging and Adult Services'

2441 vulnerable adult abuse, neglect, or exploitation database described in Section [62A-3-311.1](#);

2442 (v) search the juvenile court records for substantiated findings of severe child abuse or

2443 neglect described in Section [\[78A-6-323\] 80-6-404](#); and

2444 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided

2445 under Section [78A-6-209](#);

2446 (b) shall conduct a background check of an applicant for an initial background check

2447 upon submission of the information described under Subsection (2)(a);

2448 (c) may conduct all or portions of a background check of an applicant, as provided by

2449 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative

2450 Rulemaking Act:

2451 (i) for an annual renewal; or

2452 (ii) when the office determines that reasonable cause exists;

2453 (d) may submit an applicant's personal identifying information, including fingerprints,

2454 to the bureau for checking, retaining, and monitoring of state and national criminal background

2455 databases and for notifying the office of new criminal activity associated with the applicant;

2456 (e) shall track the status of an approved applicant under this section to ensure that an

2457 approved applicant is not required to duplicate the submission of the applicant's fingerprints if

2458 the applicant applies for:

2459 (i) more than one license;
2460 (ii) direct access to a child or a vulnerable adult in more than one human services
2461 program; or
2462 (iii) direct access to a child or a vulnerable adult under a contract with the department;
2463 (f) shall track the status of each license and each individual with direct access to a child
2464 or a vulnerable adult and notify the bureau within 90 days after the day on which the license
2465 expires or the individual's direct access to a child or a vulnerable adult ceases;
2466 (g) shall adopt measures to strictly limit access to personal identifying information
2467 solely to the individuals responsible for processing and entering the applications for
2468 background checks and to protect the security of the personal identifying information the office
2469 reviews under this Subsection (3);
2470 (h) as necessary to comply with the federal requirement to check a state's child abuse
2471 and neglect registry regarding any individual working in a congregate care setting that serves
2472 children, shall:
2473 (i) search the Department of Human Services, Division of Child and Family Services'
2474 Licensing Information System described in Section [62A-4a-1006](#); and
2475 (ii) require the child abuse and neglect registry be checked in each state where an
2476 applicant resided at any time during the five years immediately preceding the day on which the
2477 applicant submits the information described in Subsection (2)(a) to the office; and
2478 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
2479 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
2480 checks.
2481 (4) (a) With the personal identifying information the office submits to the bureau under
2482 Subsection (3), the bureau shall check against state and regional criminal background databases
2483 for the applicant's criminal history.
2484 (b) With the personal identifying information and fingerprints the office submits to the
2485 bureau under Subsection (3), the bureau shall check against national criminal background

2486 databases for the applicant's criminal history.

2487 (c) Upon direction from the office, and with the personal identifying information and
2488 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

2489 (i) maintain a separate file of the fingerprints for search by future submissions to the
2490 local and regional criminal records databases, including latent prints; and

2491 (ii) monitor state and regional criminal background databases and identify criminal
2492 activity associated with the applicant.

2493 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
2494 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
2495 Investigation Next Generation Identification System for the purpose of:

2496 (i) being searched by future submissions to the national criminal records databases,
2497 including the Federal Bureau of Investigation Next Generation Identification System and latent
2498 prints; and

2499 (ii) monitoring national criminal background databases and identifying criminal
2500 activity associated with the applicant.

2501 (e) The Bureau shall notify and release to the office all information of criminal activity
2502 associated with the applicant.

2503 (f) Upon notice from the office that a license has expired or an individual's direct
2504 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

2505 (i) discard and destroy any retained fingerprints; and

2506 (ii) notify the Federal Bureau of Investigation when the license has expired or an
2507 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
2508 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
2509 Investigation Next Generation Identification System.

2510 (5) (a) After conducting the background check described in Subsections (3) and (4), the
2511 office shall deny an application to an applicant who, within three years before the day on which
2512 the applicant submits information to the office under Subsection (2) for a background check,

2513 has been convicted of any of the following, regardless of whether the offense is a felony, a
2514 misdemeanor, or an infraction:

2515 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
2516 animals, or bestiality;

2517 (ii) a violation of any pornography law, including sexual exploitation of a minor;

2518 (iii) prostitution;

2519 (iv) an offense included in:

2520 (A) Title 76, Chapter 5, Offenses Against the Person;

2521 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

2522 (C) Title 76, Chapter 7, Offenses Against the Family;

2523 (v) aggravated arson, as described in Section 76-6-103;

2524 (vi) aggravated burglary, as described in Section 76-6-203;

2525 (vii) aggravated robbery, as described in Section 76-6-302;

2526 (viii) identity fraud crime, as described in Section 76-6-1102; or

2527 (ix) a felony or misdemeanor offense committed outside of the state that, if committed
2528 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)
2529 through (viii).

2530 (b) If the office denies an application to an applicant based on a conviction described in
2531 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
2532 Subsection (6).

2533 (c) If the applicant will be working in a program serving only adults whose only
2534 impairment is a mental health diagnosis, including that of a serious mental health disorder,
2535 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
2536 do not apply, and the office shall conduct a comprehensive review as described in Subsection
2537 (6).

2538 (6) (a) The office shall conduct a comprehensive review of an applicant's background
2539 check if the applicant:

(i) has an open court case or a conviction for any felony offense, not described in Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on which the applicant submits the application;

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

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

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

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

(vi) has a listing in 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](#);

(vii) has a record in the juvenile court of a substantiated finding of severe child abuse or neglect described in Section [\[78A-6-323\]](#) [80-3-404](#);

(viii) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:

(A) under 28 years ~~[of age]~~ old; or

(B) 28 years ~~[of age]~~ old or older and 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 a misdemeanor offense described in Subsection (5)(a);

(ix) has a pending charge for an offense described in Subsection (5)(a); or

2567 (x) is an applicant described in Subsection (5)(c).
2568 (b) The comprehensive review described in Subsection (6)(a) shall include an
2569 examination of:
2570 (i) the date of the offense or incident;
2571 (ii) the nature and seriousness of the offense or incident;
2572 (iii) the circumstances under which the offense or incident occurred;
2573 (iv) the age of the perpetrator when the offense or incident occurred;
2574 (v) whether the offense or incident was an isolated or repeated incident;
2575 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
2576 adult, including:
2577 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
2578 (B) sexual abuse;
2579 (C) sexual exploitation; or
2580 (D) negligent treatment;
2581 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
2582 treatment received, or additional academic or vocational schooling completed;
2583 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
2584 which the applicant is applying; and
2585 (ix) any other pertinent information presented to or publicly available to the committee
2586 members.
2587 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
2588 office shall deny an application to an applicant if the office finds that approval would likely
2589 create a risk of harm to a child or a vulnerable adult.
2590 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
2591 office may not deny an application to an applicant solely because the applicant was convicted
2592 of an offense that occurred 10 or more years before the day on which the applicant submitted
2593 the information required under Subsection (2)(a) if:

(i) the applicant has not committed another misdemeanor or felony offense after the day on which the conviction occurred; and

(ii) the applicant has never been convicted of an offense described in Subsection (14)(c).

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

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

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

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

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

(b) The office may conditionally approve an application of an applicant, for a maximum of one year after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised if the office:

(i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and

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

(c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).

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

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

2621 (i) the individual's application is approved by the office under this section;
2622 (ii) the individual's application is conditionally approved by the office under
2623 Subsection (8); or
2624 (iii) (A) the individual has submitted the background check information described in
2625 Subsection (2) to the office;
2626 (B) the office has not determined whether to approve the applicant's application; and
2627 (C) the individual is directly supervised by an individual who has a current background
2628 screening approval issued by the office under this section and is associated with the licensee or
2629 department contractor;
2630 (b) (i) the individual is associated with the licensee or department contractor;
2631 (ii) the individual has a current background screening approval issued by the office
2632 under this section;
2633 (iii) one of the following circumstances, that the office has not yet reviewed under
2634 Subsection (6), applies to the individual:
2635 (A) the individual was charged with an offense described in Subsection (5)(a);
2636 (B) the individual is listed in the Licensing Information System, described in Section
2637 [62A-4a-1006](#);
2638 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
2639 database, described in Section [62A-3-311.1](#);
2640 (D) the individual has a record in the juvenile court of a substantiated finding of severe
2641 child abuse or neglect, described in Section [[78A-6-323](#)] [80-3-404](#); or
2642 (E) the individual has a record of an adjudication in juvenile court for an act that, if
2643 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)
2644 or (6); and
2645 (iv) the individual is directly supervised by an individual who:
2646 (A) has a current background screening approval issued by the office under this
2647 section; and

2648 (B) is associated with the licensee or department contractor;
2649 (c) the individual:
2650 (i) is not associated with the licensee or department contractor; and
2651 (ii) is directly supervised by an individual who:
2652 (A) has a current background screening approval issued by the office under this
2653 section; and
2654 (B) is associated with the licensee or department contractor;
2655 (d) the individual is the parent or guardian of the child, or the guardian of the
2656 vulnerable adult;
2657 (e) the individual is approved by the parent or guardian of the child, or the guardian of
2658 the vulnerable adult, to have direct access to the child or the vulnerable adult;
2659 (f) the individual is only permitted to have direct access to a vulnerable adult who
2660 voluntarily invites the individual to visit; or
2661 (g) the individual only provides incidental care for a foster child on behalf of a foster
2662 parent who has used reasonable and prudent judgment to select the individual to provide the
2663 incidental care for the foster child.
2664 (10) An individual may not have direct access to a child or a vulnerable adult if the
2665 individual is prohibited by court order from having that access.
2666 (11) Notwithstanding any other provision of this section, an individual for whom the
2667 office denies an application may not have direct access to a child or vulnerable adult unless the
2668 office approves a subsequent application by the individual.
2669 (12) (a) Within 30 days after the day on which the office receives the background
2670 check information for an applicant, the office shall give notice of the clearance status to:
2671 (i) the applicant, and the licensee or department contractor, of the office's decision
2672 regarding the background check and findings; and
2673 (ii) the applicant of any convictions and potentially disqualifying charges and
2674 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 adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in

the home of the applicant described in Subsection (14)(a)(i) 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 adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

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

(i) federal law or rule permits otherwise; or

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

(A) a noncustodial parent under Section 62A-4a-209, [~~78A-6-307~~, or ~~78A-6-307.5~~] 80-3-302, or 80-3-303; or

(B) a relative, other than a noncustodial parent, under Section 62A-4a-209, [~~78A-6-307~~, or ~~78A-6-307.5~~] 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (5).

(c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an applicant seeking a position in a congregate care facility, an applicant for a one-time adoption, an applicant to become a prospective foster parent, or an applicant to become a prospective adoptive parent if the applicant has been convicted of:

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

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

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

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

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

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

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

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

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

2729 (I) homicide by assault, as described in Section 76-5-209;
 2730 (J) kidnapping, as described in Section 76-5-301;
 2731 (K) child kidnapping, as described in Section 76-5-301.1;
 2732 (L) aggravated kidnapping, as described in Section 76-5-302;
 2733 (M) human trafficking of a child, as described in Section 76-5-308.5;
 2734 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
 2735 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
 2736 (P) aggravated arson, as described in Section 76-6-103;
 2737 (Q) aggravated burglary, as described in Section 76-6-203;
 2738 (R) aggravated robbery, as described in Section 76-6-302; or
 2739 (S) domestic violence, as described in Section 77-36-1; or
 2740 (ii) an offense committed outside the state that, if committed in the state, would
 2741 constitute a violation of an offense described in Subsection (14)(c)(i).
 2742 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
 2743 license renewal to a prospective foster parent or a prospective adoptive parent if, within the five
 2744 years immediately preceding the day on which the individual's application or license would
 2745 otherwise be approved, the applicant was convicted of a felony involving conduct that
 2746 constitutes a violation of any of the following:
 2747 (i) aggravated assault, as described in Section 76-5-103;
 2748 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
 2749 (iii) mayhem, as described in Section 76-5-105;
 2750 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
 2751 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
 2752 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
 2753 Act;
 2754 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
 2755 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 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

Section 36. Section **62A-2-121** is amended to read:

62A-2-121. Access to abuse and neglect information.

(1) [~~For purposes of this section~~] As used in this section:

(a) "Direct service worker" means the same as that term is defined in Section [62A-5-101](#).

(b) "Personal care attendant" means the same as that term is defined in Section [62A-3-101](#).

(2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section [62A-4a-1006](#) and juvenile court records under Subsection [~~78A-6-323~~] [80-3-404](#)(6), for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to children:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections [~~78A-6-323~~] [80-3-404](#)(1) and (2); and

(ii) informing a licensee that a person associated with the licensee:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections [~~78A-6-323~~] [80-3-404](#)(1) and (2);

(b) (i) determining whether a 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); and
2786 (ii) informing a direct service worker or the direct service worker's employer that the
2787 direct service worker:
2788 (A) is listed in the Licensing Information System; or
2789 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
2790 neglect under Subsections [~~78A-6-323~~] [80-3-404](#)(1) and (2); or
2791 (c) (i) determining whether a 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); and
2795 (ii) informing a person described in Subsections [62A-3-101](#)(9)(a)(i) through (iv) that a
2796 personal care attendant:
2797 (A) is listed in the Licensing Information System; or
2798 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
2799 neglect under Subsections [~~78A-6-323~~] [80-3-404](#)(1) and (2).
2800 (3) Notwithstanding Subsection (2), the department may access the Division of Child
2801 and Family Services' Management Information System under Section [62A-4a-1003](#):
2802 (a) for the purpose of licensing and monitoring foster parents;
2803 (b) for the purposes described in Subsection [62A-4a-1003](#)(1)(d); and
2804 (c) for the purpose described in Section [62A-1-118](#).
2805 (4) The department shall receive and process personal identifying information under
2806 Subsection [62A-2-120](#)(1) for the purposes described in Subsection (2).
2807 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
2808 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
2809 may have direct access or provide services to children when:

(a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section [62A-4a-1006](#); or

(b) juvenile court records show that a court made a substantiated finding under Section ~~[78A-6-323]~~ [80-3-404](#), that the person committed a severe type of child abuse or neglect.

Section 37. Section **62A-4a-102** is amended to read:

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

(1) The Division of Child and Family Services, created in Section [62A-4a-103](#), is responsible for establishing division rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, 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, regarding abuse, neglect, and dependency proceedings, and domestic violence services. The division is responsible to see that the legislative purposes for the division are carried out.

(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;

- 2864 (ii) domestic violence services; and
- 2865 (iii) all other responsibilities that the Legislature or the executive director may assign to
- 2866 the division;
- 2867 (b) provide the following services:
- 2868 (i) financial and other assistance to an individual adopting a child with special needs
- 2869 under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the
- 2870 child as a legal ward of the state;
- 2871 (ii) non-custodial and in-home services, including:
- 2872 (A) services designed to prevent family break-up; and
- 2873 (B) family preservation services;
- 2874 (iii) reunification services to families whose children are in substitute care in
- 2875 accordance with the requirements of this chapter and [~~Title 78A, Chapter 6, Juvenile Court~~
- 2876 ~~Act~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 2877 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse
- 2878 or neglect of a child in that family;
- 2879 (v) shelter care in accordance with the requirements of this chapter and [~~Title 78A,~~
- 2880 ~~Chapter 6, Juvenile Court Act~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency
- 2881 Proceedings;
- 2882 (vi) domestic violence services, in accordance with the requirements of federal law;
- 2883 (vii) protective services to victims of domestic violence, as defined in Section 77-36-1,
- 2884 and their children, in accordance with the provisions of this chapter and [~~Title 78A, Chapter 6,~~
- 2885 ~~Part~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 2886 (viii) substitute care for dependent, abused, and neglected children;
- 2887 (ix) services for minors who are victims of human trafficking or human smuggling as
- 2888 described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual
- 2889 solicitation as defined in Sections 76-10-1302 and 76-10-1313; and
- 2890 (x) training for staff and providers involved in the administration and delivery of

2891 services offered by the division in accordance with this chapter;

2892 (c) establish standards for all:

2893 (i) contract providers of out-of-home care for minors and families;

2894 (ii) facilities that provide substitute care for dependent, abused, and neglected children

2895 placed in the custody of the division; and

2896 (iii) direct or contract providers of domestic violence services described in Subsection

2897 (1)(b)(vi);

2898 (d) have authority to:

2899 (i) contract with a private, nonprofit organization to recruit and train foster care

2900 families and child welfare volunteers in accordance with Section [62A-4a-107.5](#); and

2901 (ii) approve facilities that meet the standards established under Subsection (1)(c) to

2902 provide substitute care for dependent, abused, and neglected children placed in the custody of

2903 the division;

2904 (e) cooperate with the federal government in the administration of child welfare and

2905 domestic violence programs and other human service activities assigned by the department;

2906 (f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of

2907 division records to the same extent that the division is required to protect division records,

2908 cooperate with and share all appropriate information in the division's possession regarding an

2909 Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child

2910 with the Indian tribe that is affiliated with the Indian child;

2911 (g) in accordance with Subsection (2)(a), promote and enforce state and federal laws

2912 enacted for the protection of abused, neglected, and dependent children, in accordance with the

2913 requirements of this chapter, unless administration is expressly vested in another division or

2914 department of the state;

2915 (h) cooperate with the Workforce Development Division within the Department of

2916 Workforce Services in meeting the social and economic needs of an individual who is eligible

2917 for public assistance;

2918 (i) compile relevant information, statistics, and reports on child and family service
2919 matters in the state;

2920 (j) prepare and submit to the department, the governor, and the Legislature reports of
2921 the operation and administration of the division in accordance with the requirements of
2922 Sections [62A-4a-117](#) and [62A-4a-118](#);

2923 (k) within appropriations from the Legislature, provide or contract for a variety of
2924 domestic violence services and treatment methods;

2925 (l) ensure regular, periodic publication, including electronic publication, regarding the
2926 number of children in the custody of the division who:

2927 (i) have a permanency goal of adoption; or

2928 (ii) have a final plan of termination of parental rights, pursuant to Section [~~78A-6-314~~]
2929 [80-3-409](#), and promote adoption of those children;

2930 (m) subject to Subsection (2)(b), refer an individual receiving services from the
2931 division to the local substance abuse authority or other private or public resource for a
2932 court-ordered drug screening test;

2933 (n) report before November 30, 2020, and every third year thereafter, to the Social
2934 Services Appropriations Subcommittee regarding:

2935 (i) the daily reimbursement rate that is provided to licensed foster parents based on
2936 level of care;

2937 (ii) the amount of money spent on daily reimbursements for licensed foster parents in
2938 the state during the previous fiscal year; and

2939 (iii) any recommended changes to the division's budget to support the daily
2940 reimbursement rates described in Subsection (1)(n)(i); and

2941 (o) perform other duties and functions required by law.

2942 (2) (a) In carrying out the requirements of Subsection (1)(g), the division shall:

2943 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
2944 with all public and private licensed child welfare agencies and institutions to develop and

2945 administer a broad range of services and support;

2946 (ii) take the initiative in all matters involving the protection of abused or neglected
2947 children, if adequate provisions have not been made or are not likely to be made; and

2948 (iii) make expenditures necessary for the care and protection of the children described
2949 in this Subsection (2)(a), within the division's budget.

2950 (b) When an individual is referred to a local substance abuse authority or other private
2951 or public resource for court-ordered drug screening under Subsection (1)(m), the court shall
2952 order the individual to pay all costs of the tests unless:

2953 (i) the cost of the drug screening is specifically funded or provided for by other federal
2954 or state programs;

2955 (ii) the individual is a participant in a drug court; or

2956 (iii) the court finds that the individual is impecunious.

2957 (3) Except to the extent provided by rule, the division is not responsible for
2958 investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

2959 (4) The division may not require a parent who has a child in the custody of the division
2960 to pay for some or all of the cost of any drug testing the parent is required to undergo.

2961 Section 40. Section 62A-4a-113 is amended to read:

2962 **62A-4a-113. Division's enforcement authority -- Responsibility of attorney**
2963 **general to represent division.**

2964 (1) The division shall take legal action that is necessary to enforce the provisions of
2965 this chapter.

2966 (2) (a) Subject to Section 67-5-17 and the attorney general's prosecutorial discretion in
2967 civil enforcement actions, the attorney general shall enforce all provisions of this chapter, in
2968 addition to the requirements of [~~Title 78A, Chapter 6, Juvenile Court Act of 1996,~~] Title 80,
2969 Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and
2970 Restoration of Parental Rights, relating to protection, custody, and parental rights termination
2971 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~~

3053 ~~3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights~~
 3054 ~~Act]~~ Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4,
 3055 Termination and Restoration of Parental Rights, and division rule;

3056 (d) an assessment of the division's intake procedures and decisions, including an
 3057 assessment of the appropriateness of decisions not to accept referrals; and

3058 (e) an assessment of the appropriateness of the division's assignment of priority.

3059 (4) (a) In addition to the executive director's review under Subsection (2), the
 3060 legislative auditor general shall audit, subject to the prioritization of the Legislative Audit
 3061 Subcommittee, a sample of child welfare referrals to and cases handled by the division and
 3062 report the findings to the Child Welfare Legislative Oversight Panel.

3063 (b) An audit under Subsection (4)(a) may be initiated by:

3064 (i) the Audit Subcommittee of the Legislative Management Committee;

3065 (ii) the Child Welfare Legislative Oversight Panel; or

3066 (iii) the legislative auditor general, based on the results of the executive director's
 3067 review under Subsection (2).

3068 (c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor
 3069 General's report may include:

3070 (i) findings regarding whether state statutes, division rule, legislative policy, and
 3071 division policy were followed by the division and its employees;

3072 (ii) a determination regarding whether referrals, removals, and cases were appropriately
 3073 handled by the division and its employees, and whether children were adequately and
 3074 appropriately protected and appropriate services provided for families, in accordance with the
 3075 provisions of Title 62A, Chapter 4a, Child and Family Services, [~~Title 78A, Chapter 6, Part 3,~~
 3076 ~~Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act]~~
 3077 Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination
 3078 and Restoration of Parental Rights, and division rule;

3079 (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

3107 their natural relationship and the state cannot presume that a child and the child's parents are
3108 adversaries.

3109 (c) It is in the best interest and welfare of a child to be raised under the care and
3110 supervision of the child's natural parents. A child's need for a normal family life in a permanent
3111 home, and for positive, nurturing family relationships is usually best met by the child's natural
3112 parents. Additionally, the integrity of the family unit and the right of parents to conceive and
3113 raise their children are constitutionally protected. The right of a fit, competent parent to raise
3114 the parent's child without undue government interference is a fundamental liberty interest that
3115 has long been protected by the laws and Constitution and is a fundamental public policy of this
3116 state.

3117 (d) The state recognizes that:

3118 (i) a parent has the right, obligation, responsibility, and authority to raise, manage,
3119 train, educate, provide and care for, and reasonably discipline the parent's children; and

3120 (ii) the state's role is secondary and supportive to the primary role of a parent.

3121 (e) It is the public policy of this state that parents retain the fundamental right and duty
3122 to exercise primary control over the care, supervision, upbringing, and education of their
3123 children.

3124 (f) Subsections (2) through (7) shall be interpreted and applied consistent with this
3125 Subsection (1).

3126 (2) It is also the public policy of this state that children have the right to protection
3127 from abuse and neglect, and that the state retains a compelling interest in investigating,
3128 prosecuting, and punishing abuse and neglect[, as defined in this chapter, and in Title 78A,
3129 Chapter 6, Juvenile Court Act]. Therefore, the state, as parens patriae, has an interest in and
3130 responsibility to protect children whose parents abuse them or do not adequately provide for
3131 their welfare. There may be circumstances where a parent's conduct or condition is a substantial
3132 departure from the norm and the parent is unable or unwilling to render safe and proper
3133 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(40)(b)(i) through (iii) and 78A-6-117(2) and Section 78A-6-301.5.~~] Subsections 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

3188 division shall immediately initiate an investigation of the:

3189 (a) circumstances of the child; and

3190 (b) grounds upon which the decision to place the child into protective custody was

3191 made.

3192 (2) The division's investigation shall conform to reasonable professional standards, and
3193 shall include:

3194 (a) a search for and review of any records of past reports of abuse or neglect involving:

3195 (i) the same child;

3196 (ii) any sibling or other child residing in the same household as the child; and

3197 (iii) the alleged perpetrator;

3198 (b) with regard to a child who is five years ~~[of age]~~ old or older, a personal interview
3199 with the child:

3200 (i) outside of the presence of the alleged perpetrator; and

3201 (ii) conducted in accordance with the requirements of Subsection (7);

3202 (c) if a parent or guardian can be located, an interview with at least one of the child's
3203 parents or guardian;

3204 (d) an interview with the person who reported the abuse, unless the report was made
3205 anonymously;

3206 (e) where possible and appropriate, interviews with other third parties who have had
3207 direct contact with the child, including:

3208 (i) school personnel; and

3209 (ii) the child's health care provider;

3210 (f) an unscheduled visit to the child's home, unless:

3211 (i) there is a reasonable basis to believe that the reported abuse was committed by a
3212 person who:

3213 (A) is not the child's parent; and

3214 (B) does not:

3215 (I) live in the child's home; or
3216 (II) otherwise have access to the child in the child's home; or
3217 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
3218 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
3219 failure to meet the child's medical needs, a medical examination, obtained no later than 24
3220 hours after the child is placed in protective custody.

3221 (3) The division may rely on a written report of a prior interview rather than conducting
3222 an additional interview, if:

3223 (a) law enforcement:

3224 (i) previously conducted a timely and thorough investigation regarding the alleged
3225 abuse, neglect, or dependency; and
3226 (ii) produced a written report;

3227 (b) the investigation described in Subsection (3)(a)(i) included one or more of the
3228 interviews required by Subsection (2); and

3229 (c) the division finds that an additional interview is not in the best interest of the child.

3230 (4) (a) The division's determination of whether a report is supported or unsupported
3231 may be based on the child's statements alone.

3232 (b) Inability to identify or locate the perpetrator may not be used by the division as a
3233 basis for:

3234 (i) determining that a report is unsupported; or
3235 (ii) closing the case.

3236 (c) The division may not determine a case to be unsupported or identify a case as
3237 unsupported solely because the perpetrator was an out-of-home perpetrator.

3238 (d) Decisions regarding whether a report is supported, unsupported, or without merit
3239 shall be based on the facts of the case at the time the report was made.

3240 (5) The division should maintain protective custody of the child if it finds that one or
3241 more of the following conditions exist:

- 3242 (a) the child does not have a natural parent, guardian, or responsible relative who is
3243 able and willing to provide safe and appropriate care for the child;
- 3244 (b) (i) shelter of the child is a matter of necessity for the protection of the child; and
3245 (ii) there are no reasonable means by which the child can be protected in:
- 3246 (A) the child's home; or
3247 (B) the home of a responsible relative;
- 3248 (c) there is substantial evidence that the parent or guardian is likely to flee the
3249 jurisdiction of the court; or
- 3250 (d) the child has left a previously court ordered placement.
- 3251 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding
3252 weekends and holidays, the division shall:
- 3253 (i) convene a child protection team to review the circumstances regarding removal of
3254 the child from the child's home or school; and
- 3255 (ii) prepare the testimony and evidence that will be required of the division at the
3256 shelter hearing, in accordance with Section [~~78A-6-306~~] [80-3-301](#).
- 3257 (b) The child protection team may include members of a child protection unit.
- 3258 (c) At the 24-hour meeting, the division shall have available for review and
3259 consideration the complete child protective services and foster care history of the child and the
3260 child's parents and siblings.
- 3261 (7) (a) After receipt of a child into protective custody and prior to the adjudication
3262 hearing, all investigative interviews with the child that are initiated by the division shall be:
- 3263 (i) except as provided in Subsection (7)(b), audio or video taped; and
3264 (ii) except as provided in Subsection (7)(c), conducted with a support person of the
3265 child's choice present.
- 3266 (b) (i) Subject to Subsection (7)(b)(ii), an interview described in Subsection (7)(a) may
3267 be conducted without being taped if the child:
- 3268 (A) is at least nine years old;

3269 (B) refuses to have the interview audio taped; and
3270 (C) refuses to have the interview video taped.

3271 (ii) If, pursuant to Subsection (7)(b)(i), an interview is conducted without being taped,
3272 the child's refusal shall be documented, as follows:

3273 (A) the interviewer shall attempt to get the child's refusal on tape, including the reasons
3274 for the refusal; or

3275 (B) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the
3276 interviewer shall:

3277 (I) state on the tape that the child is present, but has refused to have the interview,
3278 refusal, or the reasons for the refusal taped; or

3279 (II) if complying with Subsection (7)(b)(ii)(B)(I) will result in the child, who would
3280 otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall
3281 document, in writing, that the child refused to allow the interview to be taped and the reasons
3282 for that refusal.

3283 (iii) The division shall track the number of interviews under this Subsection (7) that are
3284 not taped, and the number of refusals that are not taped, for each interviewer, in order to
3285 determine whether a particular interviewer has a higher incidence of refusals, or taped refusals,
3286 than other interviewers.

3287 (c) (i) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an
3288 interview of a child may not be an alleged perpetrator.

3289 (ii) Subsection (7)(a)(ii) does not apply if the child refuses to have a support person
3290 present during the interview.

3291 (iii) If a child described in Subsection (7)(c)(ii) refuses to have a support person
3292 present in the interview, the interviewer shall document, in writing, the refusal and the reasons
3293 for the refusal.

3294 (iv) The division shall track the number of interviews under this Subsection (7) where a
3295 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~~] 80-3-201, the division shall convene a child protection team meeting to:

(a) review the circumstances of the filing of the petition; and

(b) develop or review implementation of a safety plan to protect the child from further abuse, neglect, or dependency.

(2) The child protection team meeting required under Subsection (1) shall be held within the shorter of:

(a) 14 days of the day on which the petition is filed under Section ~~[78A-6-304]~~ 80-3-201 if the conditions of Subsection (2)(b) or (c) are not met;

(b) 24 hours of the filing of the petition under Section ~~[78A-6-304]~~ 80-3-201, excluding weekends and holidays, if the child who is the subject of the petition will likely be taken into protective custody unless there is an expedited hearing and services ordered under the protective supervision of the court; or

(c) 24 hours after receipt of a child into protective custody, excluding weekends and holidays, if the child is taken into protective custody as provided in Section 62A-4a-202.3.

(3) The child protection team may include members of a child protection unit.

(4) At its meeting the child protection team shall review the complete child protective services and foster care history of the child and the child's parents and siblings.

Section 47. Section **62A-4a-203** is amended to read:

62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain child in home -- Exception -- Reasonable efforts for reunification.

(1) Because removal of a child from the child's home affects protected, constitutional rights of the parent and has a dramatic, long-term impact on a child, the division shall:

(a) when possible and appropriate, without danger to the child's welfare, make reasonable efforts to prevent or eliminate the need for removal of a child from the child's home prior to placement in substitute care;

(b) determine whether there is substantial cause to believe that a child has been or is in danger of abuse or neglect, in accordance with the guidelines described in ~~[Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, prior to]~~ Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, before removing the child from the child's home; and

(c) when it is possible and appropriate, and in accordance with the limitations and requirements of Sections ~~[78A-6-312 and 78A-6-314]~~ 80-3-406 and 80-3-409, make reasonable

3350 efforts to make it possible for a child in substitute care to return to the child's home.

3351 (2) (a) In determining the reasonableness of efforts needed to maintain a child in the
3352 child's home or to return a child to the child's home, in accordance with Subsection (1)(a) or
3353 (c), the child's health, safety, and welfare shall be the paramount concern.

3354 (b) The division shall consider whether the efforts described in Subsections (1) and (2)
3355 are likely to prevent abuse or continued neglect of the child.

3356 (3) When removal and placement in substitute care is necessary to protect a child, the
3357 efforts described in Subsections (1) and (2):

3358 (a) are not reasonable or appropriate; and

3359 (b) should not be utilized.

3360 (4) Subject to Subsection (5), in cases where sexual abuse, sexual exploitation,
3361 abandonment, severe abuse, or severe neglect are involved, the state has no duty to make
3362 reasonable efforts to, in any way, attempt to:

3363 (a) maintain a child in the child's home;

3364 (b) provide reunification services; or

3365 (c) rehabilitate the offending parent or parents.

3366 (5) Nothing in Subsection (4) exempts the division from providing court ordered
3367 services.

3368 Section 48. Section **62A-4a-205** is amended to read:

3369 **62A-4a-205. Child and family plan -- Parent-time and relative visitation.**

3370 (1) No more than 45 days after a child enters the temporary custody of the division, the
3371 child's child and family plan shall be finalized.

3372 (2) (a) The division may use an interdisciplinary team approach in developing each
3373 child and family plan.

3374 (b) The interdisciplinary team described in Subsection (2)(a) may include
3375 representatives from the following fields:

3376 (i) mental health;

3377 (ii) education; and
3378 (iii) if appropriate, law enforcement.

3379 (3) (a) The division shall involve all of the following in the development of a child's
3380 child and family plan:

3381 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
3382 (ii) the child;
3383 (iii) the child's foster parents; and
3384 (iv) if appropriate, the child's stepparent.

3385 (b) Subsection (3)(a) does not prohibit any other party not listed in Subsection (3)(a) or
3386 a party's counsel from being involved in the development of a child's child and family plan if
3387 the party or counsel's participation is otherwise permitted by law.

3388 (c) In relation to all information considered by the division in developing a child and
3389 family plan, additional weight and attention shall be given to the input of the child's natural and
3390 foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

3391 (d) (i) The division shall make a substantial effort to develop a child and family plan
3392 with which the child's parents agree.

3393 (ii) If a parent does not agree with a child and family plan:

3394 (A) the division shall strive to resolve the disagreement between the division and the
3395 parent; and

3396 (B) if the disagreement is not resolved, the division shall inform the court of the
3397 disagreement.

3398 (4) A copy of the child and family plan shall, immediately upon completion, or as soon
3399 as reasonably possible thereafter, be provided to the:

3400 (a) guardian ad litem;
3401 (b) child's natural parents; and
3402 (c) child's foster parents.

3403 (5) Each child and family plan shall:

3404 (a) specifically provide for the safety of the child, in accordance with federal law; and
3405 (b) clearly define what actions or precautions will, or may be, necessary to provide for
3406 the health, safety, protection, and welfare of the child.

3407 (6) The child and family plan shall set forth, with specificity, at least the following:
3408 (a) the reason the child entered into the custody of the division;
3409 (b) documentation of the:
3410 (i) reasonable efforts made to prevent placement of the child in the custody of the
3411 division; or
3412 (ii) emergency situation that existed and that prevented the reasonable efforts described
3413 in Subsection (6)(b)(i), from being made;
3414 (c) the primary permanency plan for the child and the reason for selection of that plan;
3415 (d) the concurrent permanency plan for the child and the reason for the selection of that
3416 plan;
3417 (e) if the plan is for the child to return to the child's family:
3418 (i) specifically what the parents must do in order to enable the child to be returned
3419 home;
3420 (ii) specifically how the requirements described in Subsection (6)(e)(i) may be
3421 accomplished; and
3422 (iii) how the requirements described in Subsection (6)(e)(i) will be measured;
3423 (f) the specific services needed to reduce the problems that necessitated placing the
3424 child in the division's custody;
3425 (g) the name of the person who will provide for and be responsible for case
3426 management;
3427 (h) subject to Subsection (10), a parent-time schedule between the natural parent and
3428 the child;
3429 (i) subject to Subsection (7), the health and mental health care to be provided to
3430 address any known or diagnosed mental health needs of the child;

(j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders;

(k) social summaries that include case history information pertinent to case planning; and

(l) subject to Subsection (12), a sibling visitation schedule.

(7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:

(i) is placed in residential treatment; and

(ii) has medical or mental health issues that need to be addressed.

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

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

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

(i) federal mandates; and

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

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

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

(i) keep a child in placement; and

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

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

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

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

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

(i) address findings made by the court; or

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

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

(9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years ~~of age~~ old or younger, if the plan is not to return the child home, the primary permanency plan for that child shall be adoption.

(b) Notwithstanding Subsection (9)(a), if the division documents to the court that there 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

3539 condition of placing a child with the prospective adoptive parent.

3540 Section 51. Section **62A-4a-206** is amended to read:

3541 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**
3542 **process.**

3543 (1) (a) The Legislature finds that, except with regard to a child's natural parent or legal
3544 guardian, a foster family has a very limited but recognized interest in its familial relationship
3545 with a foster child who has been in the care and custody of that family. In making
3546 determinations regarding removal of a child from a foster home, the division may not dismiss
3547 the foster family as a mere collection of unrelated individuals.

3548 (b) The Legislature finds that children in the temporary custody and custody of the
3549 division are experiencing multiple changes in foster care placements with little or no
3550 documentation, and that numerous studies of child growth and development emphasize the
3551 importance of stability in foster care living arrangements.

3552 (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide
3553 procedural due process for a foster family prior to removal of a foster child from their home,
3554 regardless of the length of time the child has been in that home, unless removal is for the
3555 purpose of:

3556 (i) returning the child to the child's natural parent or legal guardian;

3557 (ii) immediately placing the child in an approved adoptive home;

3558 (iii) placing the child with a relative, as defined in [~~Subsection 78A-6-307(1)~~] Section
3559 80-3-102, who obtained custody or asserted an interest in the child within the preference period
3560 described in Subsection [~~78A-6-307(18)(a)~~] 80-3-302(8); or

3561 (iv) placing an Indian child in accordance with [~~preplacement~~] placement preferences
3562 and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

3563 (2) (a) The division shall maintain and utilize due process procedures for removal of a
3564 foster child from a foster home, in accordance with the procedures and requirements of Title
3565 63G, Chapter 4, Administrative Procedures Act.

3566 (b) Those procedures shall include requirements for:
3567 (i) personal communication with, and a written explanation of the reasons for the
3568 removal to, the foster parents prior to removal of the child; and
3569 (ii) an opportunity for foster parents to present their information and concerns to the
3570 division and to:
3571 (A) request a review, to be held before removal of the child, by a third party neutral
3572 fact finder; or
3573 (B) if the child has been placed with the foster parents for a period of at least two years,
3574 request a review, to be held before removal of the child, by:
3575 (I) the juvenile court judge currently assigned to the child's case; or
3576 (II) if the juvenile court judge currently assigned to the child's case is not available,
3577 another juvenile court judge.
3578 (c) If the division determines that there is a reasonable basis to believe that the child is
3579 in danger or that there is a substantial threat of danger to the health or welfare of the child, it
3580 shall place the child in emergency foster care during the pendency of the procedures described
3581 in this subsection, instead of making another foster care placement.
3582 (3) If the division removes a child from a foster home based upon the child's statement
3583 alone, the division shall initiate and expedite the processes described in Subsection (2). The
3584 division may take no formal action with regard to that foster parent's license until after those
3585 processes, in addition to any other procedure or hearing required by law, have been completed.
3586 (4) When a complaint is made to the division by a foster child against a foster parent,
3587 the division shall, within 30 business days, provide the foster parent with information regarding
3588 the specific nature of the complaint, the time and place of the alleged incident, and who was
3589 alleged to have been involved.
3590 (5) Whenever the division places a child in a foster home, it shall provide the foster
3591 parents with:
3592 (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

3647 Subsection (1) as the House chair of the panel.

3648 (3) The panel shall follow the interim committee rules established by the Legislature.

3649 (4) The panel shall:

3650 (a) examine and observe the process and execution of laws governing the child welfare
3651 system by the executive branch and the judicial branch;

3652 (b) upon request, receive testimony from the public, the juvenile court, and from all
3653 state agencies involved with the child welfare system, including the division, other offices and
3654 agencies within the department, the attorney general's office, the Office of Guardian Ad Litem,
3655 and school districts;

3656 (c) before October 1 of each year, receive a report from the judicial branch identifying
3657 the cases not in compliance with the time limits established in the following sections, and the
3658 reasons for noncompliance:

3659 (i) Subsection [~~78A-6-306(1)(a)~~] 80-3-301(1), regarding shelter hearings;

3660 (ii) Section [~~78A-6-309~~] 80-3-401, regarding pretrial and adjudication hearings;

3661 (iii) Section [~~78A-6-312~~] 80-3-406, regarding dispositional hearings and reunification
3662 services; and

3663 (iv) Section [~~78A-6-314~~] 80-3-409, regarding permanency hearings and petitions for
3664 termination;

3665 (d) receive recommendations from, and make recommendations to the governor, the
3666 Legislature, the attorney general, the division, the Office of Guardian Ad Litem, the juvenile
3667 court, and the public;

3668 (e) (i) receive reports from the executive branch and the judicial branch on budgetary
3669 issues impacting the child welfare system; and

3670 (ii) recommend, as the panel considers advisable, budgetary proposals to the Social
3671 Services Appropriations Subcommittee and the Executive Offices and Criminal Justice
3672 Appropriations Subcommittee, which recommendation should be made before December 1 of
3673 each year;

3674 (f) study and recommend proposed changes to laws governing the child welfare
3675 system;

3676 (g) study actions the state can take to preserve, unify, and strengthen the child's family
3677 ties whenever possible in the child's best interest, including recognizing the constitutional
3678 rights and claims of parents whenever those family ties are severed or infringed;

3679 (h) perform such other duties related to the oversight of the child welfare system as the
3680 panel considers appropriate; and

3681 (i) annually report the panel's findings and recommendations to the president of the
3682 Senate, the speaker of the House of Representatives, the Health and Human Services Interim
3683 Committee, and the Judiciary Interim Committee.

3684 (5) (a) The panel has authority to review and discuss individual cases.

3685 (b) When an individual case is discussed, the panel's meeting may be closed pursuant
3686 to Title 52, Chapter 4, Open and Public Meetings Act.

3687 (c) When discussing an individual case, the panel shall make reasonable efforts to
3688 identify and consider the concerns of all parties to the case.

3689 (6) (a) The panel has authority to make recommendations to the Legislature, the
3690 governor, the Board of Juvenile Court Judges, the division, and any other statutorily created
3691 entity related to the policies and procedures of the child welfare system. The panel does not
3692 have authority to make recommendations to the court, the division, or any other public or
3693 private entity regarding the disposition of any individual case.

3694 (b) The panel may hold public hearings, as it considers advisable, in various locations
3695 within the state in order to afford all interested persons an opportunity to appear and present
3696 their views regarding the child welfare system in this state.

3697 (7) (a) All records of the panel regarding individual cases shall be classified private,
3698 and may be disclosed only in accordance with federal law and the provisions of Title 63G,
3699 Chapter 2, Government Records Access and Management Act.

3700 (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)]
Section 80-3-102.

(2) The division may use an emergency placement under Subsection 62A-4a-202.1[(4)(b)(ii)](7)(b) when:

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

(i) the child's home is unsafe;

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

(iii) the child's custodial parent or guardian will agree to not remove the child from the home of the individual that serves as the placement and not have any contact with the child until after the shelter hearing required by Section [~~78A-6-306~~] [80-3-301](#);

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

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

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

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

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

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

(iii) the individual agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;

(iv) the individual agrees to allow the division and the child's guardian ad litem to have access to the child;

(v) the individual has been informed and understands that the division may continue to search for other possible placements for long-term care, if needed;

(vi) the individual is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and

(vii) the child is comfortable with the individual.

(3) Except as otherwise provided in Subsection (5), before the division places a child in an emergency placement, the division:

(a) may request the name of a reference and may contact the reference to determine the answer to the following questions:

3755 (i) would the individual identified as a reference place a child in the home of the
3756 emergency placement; and

3757 (ii) are there any other relatives or friends to consider as a possible emergency or
3758 long-term placement for the child;

3759 (b) shall have the custodial parent or guardian sign an emergency placement agreement
3760 form during the investigation;

3761 (c) (i) if the emergency placement will be with a relative, shall comply with the
3762 background check provisions described in Subsection (7); or

3763 (ii) if the emergency placement will be with an individual other than a noncustodial
3764 parent or a relative, shall comply with the background check provisions described in
3765 Subsection (8) for adults living in the household where the child will be placed;

3766 (d) shall complete a limited home inspection of the home where the emergency
3767 placement is made; and

3768 (e) shall have the emergency placement approved by a family service specialist.

3769 (4) (a) The following order of preference shall be applied when determining the
3770 individual with whom a child will be placed in an emergency placement described in this
3771 section, provided that the individual is willing, and has the ability, to care for the child:

3772 (i) a noncustodial parent of the child in accordance with Section ~~[78A-6-307]~~
3773 80-3-302;

3774 (ii) a relative;

3775 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent, guardian,
3776 or the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a
3777 placement;

3778 (iv) a former foster placement designated by the division;

3779 (v) a foster placement, that is not a former foster placement, designated by the division;
3780 and

3781 (vi) a shelter facility designated by the division.

(b) In determining whether a friend is a willing and appropriate temporary emergency 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

3809 in an emergency placement with the noncustodial parent of the child, the division shall conduct
3810 a limited:

3811 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

3812 (ii) inspection of the home where the emergency placement is made.

3813 (6) After an emergency placement, the division caseworker must:

3814 (a) respond to the emergency placement's calls within one hour if the custodial parents
3815 or guardians attempt to make unauthorized contact with the child or attempt to remove the
3816 child;

3817 (b) complete all removal paperwork, including the notice provided to the custodial
3818 parents and guardians under Section [~~78A-6-306~~] [80-3-301](#);

3819 (c) contact the attorney general to schedule a shelter hearing;

3820 (d) complete the placement procedures required in Section [~~78A-6-307~~] [80-3-302](#); and

3821 (e) continue to search for other relatives as a possible long-term placement, if needed.

3822 (7) (a) The background check described in Subsection (3)(c)(i) shall include
3823 completion of:

3824 (i) a name-based, Utah Bureau of Criminal Identification background check; and

3825 (ii) a search of the Management Information System described in Section
3826 [62A-4a-1003](#).

3827 (b) The division shall determine whether an individual passes the background check
3828 described in this Subsection (7) pursuant to the provisions of Subsection [62A-2-120](#)(14).

3829 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an
3830 individual who is prohibited by court order from having access to that child.

3831 (8) (a) The background check described in Subsection (3)(c)(ii) shall include
3832 completion of:

3833 (i) a name-based, Utah Bureau of Criminal Identification background check;

3834 (ii) a federal name-based criminal background check; and

3835 (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. Members of the team shall serve at the coordinator's invitation. Whenever possible, the team shall include representatives of:

(i) health, mental health, education, and law enforcement agencies;

(ii) the child;

(iii) parent and family support groups unless the parent is alleged to be the perpetrator; and

(iv) other appropriate agencies or individuals.

(5) If a report of neglect is based upon or includes an allegation of educational neglect, the division shall immediately consult with school authorities to verify the child's status in accordance with Sections [53G-6-201](#) through [53G-6-206](#).

(6) When the division completes the division's initial investigation under this part, the division shall give notice of that completion to the person who made the initial report.

(7) Division workers or other child protection team members have authority to enter

upon public or private premises, using appropriate legal processes, to investigate reports of alleged abuse or neglect, upon notice to parents of their rights under the Child Abuse Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

(8) With regard to any interview of a child prior to removal of that child from the child's home:

(a) except as provided in Subsection (8)(b) or (c), the division shall inform a parent of the child prior to the interview of:

(i) the specific allegations concerning the child; and

(ii) the time and place of the interview;

(b) if a child's parent or stepparent, or a parent's paramour has been identified as the alleged perpetrator, the division is not required to comply with Subsection (8)(a);

(c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family is unknown, the division may conduct a minimal interview or conversation, not to exceed 15 minutes, with the child prior to complying with Subsection (8)(a);

(d) in all cases described in Subsection (8)(b) or (c), a parent of the child shall be notified as soon as practicable after the child has been interviewed, but in no case later than 24 hours after the interview has taken place;

(e) a child's parents shall be notified of the time and place of all subsequent interviews with the child; and

(f) the child shall be allowed to have a support person of the child's choice present, who:

(i) may include:

(A) a school teacher;

(B) an administrator;

(C) a guidance counselor;

(D) a child care provider;

(E) a family member;

- (F) a family advocate; or
- (G) a member of the clergy; and
- (ii) may not be an individual who is alleged to be, or potentially may be, the perpetrator.
- (9) In accordance with the procedures and requirements of Sections [62A-4a-202.1](#) through [62A-4a-202.3](#), a division worker or child protection team member may take a child into protective custody and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent to the child's removal from the child's original environment. Control and jurisdiction over the child is determined by the provisions of [~~Title 78A, Chapter 6, Juvenile Court Act~~] Title 78A, Chapter 6, Juvenile Court, and Title 80, Utah Juvenile Code, and as otherwise provided by law.
- (10) With regard to cases in which law enforcement has or is conducting an investigation of alleged abuse or neglect of a child:
- (a) the division shall coordinate with law enforcement to ensure that there is an adequate safety plan to protect the child from further abuse or neglect; and
- (b) the division is not required to duplicate an aspect of the investigation that, in the division's determination, has been satisfactorily completed by law enforcement.
- (11) With regard to a mutual case in which a child protection unit was involved in the investigation of alleged abuse or neglect of a child, the division shall consult with the child protection unit before closing the case.
- 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 placement pursuant to the requirements of Sections [78B-6-117](#), [78B-6-102](#), and [78B-6-137](#).

(2) The division shall obtain or conduct research of prior adoptive families to determine what families may do to be successful with their adoptive children and shall make this research available to potential adoptive parents.

(3) (a) A child-placing agency licensed under this part shall inform each potential adoptive parent with whom it is working that:

(i) children in the custody of the state are available for adoption;

(ii) Medicaid coverage for medical, dental, and mental health services may be available for these children;

(iii) tax benefits, including the tax credit provided for in Section [59-10-1104](#), and financial assistance may be available to defray the costs of adopting these children;

(iv) training and ongoing support may be available to the adoptive parents of these children; and

(v) information about individual children may be obtained by contacting the division's offices or its Internet site as explained by the child-placing agency.

(b) A child-placing agency shall:

(i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity; and

(ii) simultaneously distribute a copy of the pamphlet prepared by the division in accordance with Subsection (3)(d).

(c) As a condition of licensure, the child-placing agency shall certify to the Office of Licensing at the time of license renewal that it has complied with the provisions of this section.

(d) Before July 1, 2000, the division shall:

(i) prepare a pamphlet that explains the information that is required by Subsection (3)(a); and

(ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to child-placing agencies.

(e) The division shall respond to any inquiry made as a result of the notice provided in Subsection (3)(a).

Section 58. Section **62A-4a-711** is amended to read:

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 administered according to standard medical practice.

(3) The division shall assume care and custody of the newborn child immediately upon notice from the hospital.

(4) So long as the division determines there is no abuse or neglect of the newborn child, neither the newborn child nor the child's parents are subject to:

(a) the provisions of Part 2, Child Welfare Services;

(b) the investigation provisions contained in Section [62A-4a-409](#); or

(c) the provisions of [~~Title 78A, Chapter 6, Part~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings.

(5) (a) Unless identifying information relating to the nonrelinquishing parent of the newborn child has been provided, the division shall:

(i) work with local law enforcement and the Bureau of Criminal Identification within

the Department of Public Safety in an effort to ensure that the newborn child has not been identified as a missing child;

(ii) immediately place or contract for placement of the newborn child in a potential adoptive home and, within 10 days after the day on which the child is received, file a petition for termination of parental rights in accordance with [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 4, Termination and Restoration of Parental Rights;

(iii) direct the Office of Vital Records and Statistics within the Department of Health to conduct a search for:

(A) a birth certificate for the newborn child; and

(B) unmarried biological fathers in the registry maintained by the Office of Vital Records and Statistics in accordance with Title 78B, Chapter 15, Part 4, Registry; and

(iv) provide notice to each potential father identified on the registry described in Subsection (5)(a)(iii) in accordance with Title 78B, Chapter 15, Part 4, Registry.

(b) (i) If no individual has affirmatively identified himself or herself within two weeks after the day on which notice under Subsection (5)(a)(iv) is complete and established paternity by scientific testing within as expeditious a time frame as practicable, a hearing on the petition for termination of parental rights shall be scheduled and notice provided in accordance with [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 4, 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;

(iii) facts gathered by the division support the supported finding;

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

4160 (v) the alleged perpetrator may be disqualified from adopting a child, receiving state
4161 funds as a child care provider, or being licensed by:

- 4162 (A) the department;
- 4163 (B) a human services licensee;
- 4164 (C) a child care provider or program; or
- 4165 (D) a covered health care facility;

4166 (vi) the alleged perpetrator has the rights described in Subsection (3); and

4167 (vii) failure to take either action described in Subsection (3)(a) within one year after
4168 service of the notice will result in the action described in Subsection (3)(b);

- 4169 (b) shall include a general statement of the nature of the findings; and
- 4170 (c) may not include:
 - 4171 (i) the name of a victim or witness; or
 - 4172 (ii) any privacy information related to the victim or a witness.

4173 (3) (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator
4174 has the right to:

- 4175 (i) file a written request asking the division to review the findings made under
4176 Subsection (1);
- 4177 (ii) except as provided in Subsection (3)(c), immediately petition the juvenile court
4178 under Section [~~78A-6-323~~] 80-3-404; or
- 4179 (iii) sign a written consent to:
 - 4180 (A) the supported finding made under Subsection (1); and
 - 4181 (B) entry into the Licensing Information System of:
 - 4182 (I) the alleged perpetrator's name; and
 - 4183 (II) other information regarding the supported finding made under Subsection (1).
- 4184 (b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the
4185 information described in Subsection (1)(b) shall remain in the Licensing Information System:
- 4186 (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

4214 (b) does not preclude civil or criminal action against the alleged perpetrator.

4215 Section 61. Section **62A-4a-1006** is amended to read:

4216 **62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding**
4217 **-- Protected record -- Access -- Criminal penalty.**

4218 (1) (a) The division shall maintain a sub-part of the Management Information System
4219 established pursuant to Section **62A-4a-1003**, to be known as the Licensing Information
4220 System, to be used:

4221 (i) for licensing purposes; or

4222 (ii) as otherwise specifically provided for by law.

4223 (b) The Licensing Information System shall include only the following information:

4224 (i) the information described in Subsections **62A-4a-1005**(1)(b) and (3)(b);

4225 (ii) consented-to supported findings by alleged perpetrators under Subsection
4226 **62A-4a-1005**(3)(a)(iii); and

4227 (iii) the information in the licensing part of the division's Management Information
4228 System as of May 6, 2002.

4229 (2) Notwithstanding Subsection (1), the department's access to information in the
4230 Management Information System for the licensure and monitoring of foster parents is governed
4231 by Sections **62A-4a-1003** and **62A-2-121**.

4232 (3) Subject to Subsection **62A-4a-1005**(3)(e), upon receipt of a finding from the
4233 juvenile court under Section [~~78A-6-323~~] **80-3-404**, the division shall:

4234 (a) promptly amend the Licensing Information System; and

4235 (b) enter the information in the Management Information System.

4236 (4) (a) Information contained in the Licensing Information System is classified as a
4237 protected record under Title 63G, Chapter 2, Government Records Access and Management
4238 Act.

4239 (b) Notwithstanding the disclosure provisions of Title 63G, Chapter 2, Government
4240 Records Access and Management Act, the information contained in the Licensing Information

4241 System may only be used or disclosed as specifically provided in this chapter and Section
4242 [62A-2-121](#).

4243 (c) The information described in Subsection (4)(b) is accessible only to:

4244 (i) the Office of Licensing within the department:

4245 (A) for licensing purposes; or

4246 (B) as otherwise specifically provided for by law;

4247 (ii) the division to:

4248 (A) screen an individual at the request of the Office of Guardian Ad Litem:

4249 (I) at the time that individual seeks a paid or voluntary position with the Office of
4250 Guardian Ad Litem; and

4251 (II) on an annual basis, throughout the time that the individual remains with the Office
4252 of Guardian Ad Litem; and

4253 (B) respond to a request for information from a person whose name is listed in the
4254 Licensing Information System;

4255 (iii) persons designated by the Department of Health and approved by the Department
4256 of Human Services, only for the following purposes:

4257 (A) licensing a child care program or provider;

4258 (B) determining whether an individual associated with a child care facility, program, or
4259 provider, who is exempt from being licensed or certified by the Department of Health under
4260 Title 26, Chapter 39, Utah Child Care Licensing Act, has a supported finding of a severe type
4261 of child abuse or neglect; or

4262 (C) determining whether an individual who is seeking an emergency medical services
4263 license has a supported finding of a severe type of child abuse or neglect;

4264 (iv) persons designated by the Department of Workforce Services and approved by the
4265 Department of Human Services for the purpose of qualifying child care providers under Section
4266 [35A-3-310.5](#); and

4267 (v) the department, as specifically provided in this chapter.

(5) The persons designated by the Department of Health under Subsection (4)(c)(iii) and the persons designated by the Department of Workforce Services under Subsection (4)(c)(iv) shall adopt measures to:

- (a) protect the security of the Licensing Information System; and
- (b) strictly limit access to the Licensing Information System to those persons designated by statute.

(6) All persons designated by statute as having access to information contained in the Licensing Information System shall be approved by the Department of Human Services and receive training from the department with respect to:

- (a) accessing the Licensing Information System;
- (b) maintaining strict security; and
- (c) the criminal provisions of Sections 62A-4a-412 and 63G-2-801 pertaining to the improper release of information.

(7) (a) A person, except those authorized by this chapter, may not request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of abuse or neglect.

(b) A person who requests information knowing that the request is a violation of this Subsection (7) is subject to the criminal penalty described in Sections 62A-4a-412 and 63G-2-801.

Section 62. Section 62A-4a-1009 is amended to read:

62A-4a-1009. Notice and opportunity to challenge supported finding in Management Information System -- Right of judicial review.

(1) (a) Except as provided in Subsection (2), the division shall send a notice of agency action to a person with respect to whom the division makes a supported finding. In addition, if the alleged perpetrator is under the age of 18, the division shall:

- (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and
- (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that

4295 lives at a different address, unless there is good cause, as defined by rule, for not sending a
4296 notice to a parent or guardian.

4297 (b) Nothing in this section may be construed as affecting:

4298 (i) the manner in which the division conducts an investigation; or

4299 (ii) the use or effect, in any other setting, of a supported finding by the division at the
4300 completion of an investigation for any purpose other than for notification under Subsection (1)
4301 (a).

4302 (2) Subsection (1) does not apply to a person who has been served with notice under
4303 Subsection [62A-4a-1005](#)(1)(a).

4304 (3) The notice described in Subsection (1) shall state:

4305 (a) that the division has conducted an investigation regarding alleged abuse, neglect, or
4306 dependency;

4307 (b) that the division has made a supported finding of abuse, neglect, or dependency;

4308 (c) that facts gathered by the division support the supported finding;

4309 (d) that the person has the right to request:

4310 (i) a copy of the report; and

4311 (ii) an opportunity to challenge the supported finding by the division; and

4312 (e) that failure to request an opportunity to challenge the supported finding within 30
4313 days of receiving the notice will result in an unappealable supported finding of abuse, neglect,
4314 or dependency unless the person can show good cause for why compliance within the 30-day
4315 requirement was virtually impossible or unreasonably burdensome.

4316 (4) (a) A person may make a request to challenge a supported finding within 30 days of
4317 a notice being received under this section.

4318 (b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative
4319 Hearings shall hold an adjudicative proceeding pursuant to Title 63G, Chapter 4,
4320 Administrative Procedures Act.

4321 (5) (a) In an adjudicative proceeding held pursuant to this section, the division shall

have the burden of proving, by a preponderance of the evidence, that abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred.

(b) Any party shall have the right of judicial review of final agency action, in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(c) Proceedings for judicial review of a final agency action under this section shall be closed to the public.

(d) The Judicial Council shall make rules that ensure the confidentiality of the proceedings described in Subsection (5)(c) and the records related to the proceedings.

(6) Except as otherwise provided in this chapter, an alleged perpetrator who, after receiving notice, fails to challenge a supported finding in accordance with this section:

(a) may not further challenge the finding; and

(b) shall have no right to:

(i) agency review of the finding;

(ii) an adjudicative hearing on the finding; or

(iii) judicial review of the finding.

(7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a request under Subsection (4) to challenge a supported finding if a court of competent jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which was also the subject of the supported finding.

(b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

(c) An adjudicative proceeding under Subsection (5) may be stayed during the time a judicial action on the same matter is pending.

(8) Pursuant to Section [~~78A-6-323~~] 80-3-404, an adjudicative proceeding on a supported finding of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudicative proceeding on a

4349 supported finding of a severe type of child abuse or neglect.

4350 Section 63. Section **62A-4a-1010** is amended to read:

4351 **62A-4a-1010. Notice and opportunity for court hearing for persons listed in**
4352 **Licensing Information System.**

4353 (1) Persons whose names were listed on the Licensing Information System as of May 6,
4354 2002 and who have not been the subject of a court determination with respect to the alleged
4355 incident of abuse or neglect may at any time:

4356 (a) request review by the division of their case and removal of their name from the
4357 Licensing Information System pursuant to Subsection (3); or

4358 (b) file a petition for an evidentiary hearing and a request for a finding of
4359 unsubstantiated or without merit.

4360 (2) Subsection (1) does not apply to an individual who has been the subject of any of
4361 the following court determinations with respect to the alleged incident of abuse or neglect:

4362 (a) conviction;

4363 (b) adjudication under [~~Title 78A, Chapter 6, Juvenile Court Act of 1996~~] Section
4364 80-3-402 or 80-6-701;

4365 (c) plea of guilty;

4366 (d) plea of guilty with a mental illness; or

4367 (e) no contest.

4368 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,
4369 2002, requests removal of the alleged perpetrator's name from the Licensing Information
4370 System, the division shall, within 30 days:

4371 (a) (i) review the case to determine whether the incident of alleged abuse or neglect
4372 qualifies as:

4373 (A) a severe type of child abuse or neglect;

4374 (B) chronic abuse; or

4375 (C) chronic neglect; and

(ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from the Licensing Information System; or

(b) determine whether to file a petition for substantiation.

(4) If the division decides to file a petition, that petition must be filed no more than 14 days after the decision.

(5) The juvenile court shall act on the petition as provided in Subsection [~~78A-6-323~~] 80-3-404(3).

(6) If a person whose name appears on the Licensing Information System prior to May 6, 2002 files a petition pursuant to Section [~~78A-6-323~~] 80-3-404 during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter on an expedited basis.

Section 64. Section **62A-11-304.2** is amended to read:

62A-11-304.2. Issuance or modification of administrative order -- Compliance with court order -- Authority of office -- Stipulated agreements -- Notification requirements.

(1) Through an adjudicative proceeding the office may issue or modify an administrative order that:

(a) determines paternity;

(b) determines whether an obligor owes support;

(c) determines temporary orders of child support upon clear and convincing evidence of paternity in the form of genetic test results or other evidence;

(d) requires an obligor to pay a specific or determinable amount of present and future support;

(e) determines the amount of past-due support;

(f) orders an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is

4403 unemployed and is not otherwise incapacitated;

4404 (g) imposes a penalty authorized under this chapter;

4405 (h) determines an issue that may be specifically contested under this chapter by a party

4406 who timely files a written request for an adjudicative proceeding with the office; and

4407 (i) renews an administrative judgment.

4408 (2) (a) An abstract of a final administrative order issued under this section or a notice

4409 of judgment-lien under Section [62A-11-312.5](#) may be filed with the clerk of any district court.

4410 (b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

4411 (i) docket the abstract or notice in the judgment docket of the court and note the time of

4412 receipt on the abstract or notice and in the judgment docket; and

4413 (ii) at the request of the office, place a copy of the abstract or notice in the file of a

4414 child support action involving the same parties.

4415 (3) If a judicial order has been issued, the office may not issue an order under

4416 Subsection (1) that is not based on the judicial order, except:

4417 (a) the office may establish a new obligation in those cases in which the juvenile court

4418 has ordered the parties to meet with the office to determine the support pursuant to Section

4419 ~~[78A-6-1106]~~ [78A-6-356](#); or

4420 (b) the office may issue an order of current support in accordance with the child support

4421 guidelines if the conditions of Subsection [78B-14-207\(2\)\(c\)](#) are met.

4422 (4) The office may proceed under this section in the name of this state, another state

4423 under Section [62A-11-305](#), any department of this state, the office, or the obligee.

4424 (5) The office may accept voluntary acknowledgment of a support obligation and enter

4425 into stipulated agreements providing for the issuance of an administrative order under this part.

4426 (6) The office may act in the name of the obligee in endorsing and cashing any drafts,

4427 checks, money orders, or other negotiable instruments received by the office for support.

4428 (7) The obligor shall, after a notice of agency action has been served on the obligor in

4429 accordance with Section [63G-4-201](#), keep the office informed of:

- 4430 (a) the obligor's current address;
4431 (b) the name and address of current payors of income;
4432 (c) availability of or access to health insurance coverage; and
4433 (d) applicable health insurance policy information.

4434 Section 65. Section **62A-15-204** is amended to read:

4435 **62A-15-204. Court order to attend substance abuse school -- Assessments.**

4436 (1) In addition to any other disposition ordered by the juvenile court [~~pursuant to~~
4437 ~~Section 78A-6-117~~] under Section 80-3-405 or 80-6-701, the court may order a juvenile and his
4438 parents or legal guardians to attend a teen substance abuse school, and order payment of an
4439 assessment in addition to any other fine imposed.

4440 (2) All assessments collected shall be forwarded to the county treasurer of the county
4441 where the juvenile resides, to be used exclusively for the operation of a teen substance abuse
4442 program.

4443 Section 66. Section **62A-15-626** is amended to read:

4444 **62A-15-626. Release from commitment.**

4445 (1) (a) Subject to Subsection (1)(b), a local mental health authority or the mental health
4446 authority's designee shall release from commitment any individual who, in the opinion of the
4447 local mental health authority or the mental health authority's designee, has recovered or no
4448 longer meets the criteria specified in Section 62A-15-631.

4449 (b) A local mental health authority's inability to locate a committed individual may not
4450 be the basis for the individual's release, unless the court orders the release of the individual
4451 after a hearing.

4452 (2) A local mental health authority or the mental health authority's designee may
4453 release from commitment any patient whose commitment is determined to be no longer
4454 advisable except as provided by [~~Section 78A-6-120~~] Section 62A-15-705, but an effort shall
4455 be made to assure that any further supportive services required to meet the patient's needs upon
4456 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.

4484 (5) (a) The commitment proceeding before the neutral and detached fact finder shall be
4485 conducted in as informal manner as possible and in a physical setting that is not likely to have a
4486 harmful effect on the child.

4487 (b) The child, the child's parent or legal guardian, the petitioner, and a representative of
4488 the appropriate local mental health authority:

4489 (i) shall receive informal notice of the date and time of the proceeding; and

4490 (ii) may appear and address the petition for commitment.

4491 (c) The neutral and detached fact finder may, in the fact finder's discretion, receive the
4492 testimony of any other person.

4493 (d) The fact finder may allow a child to waive the child's right to be present at the
4494 commitment proceeding, for good cause shown. If that right is waived, the purpose of the
4495 waiver shall be made a matter of record at the proceeding.

4496 (e) At the time of the commitment proceeding, the appropriate local mental health
4497 authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the
4498 commitment proceeding, shall provide the neutral and detached fact finder with the following
4499 information, as it relates to the period of current admission:

4500 (i) the petition for commitment;

4501 (ii) the admission notes;

4502 (iii) the child's diagnosis;

4503 (iv) physicians' orders;

4504 (v) progress notes;

4505 (vi) nursing notes; and

4506 (vii) medication records.

4507 (f) The information described in Subsection (5)(e) shall also be provided to the child's
4508 parent or legal guardian upon written request.

4509 (g) (i) The neutral and detached fact finder's decision of commitment shall state the
4510 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 the following information, as it relates to the period of current admission:

(i) the original petition for commitment;

(ii) admission notes;

(iii) diagnosis;

(iv) physicians' orders;

(v) progress notes;

- (vi) nursing notes; and
(vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, the child's parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive the right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the 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:

(i) statewide expansion of:

(A) juvenile receiving centers, as defined in Section 80-1-102;

(B) mobile crisis outreach teams, as defined in Section [~~78A-6-105~~] 62A-15-102;

(C) youth courts; and

(D) victim-offender mediation;

(ii) statewide implementation of nonresidential diagnostic assessment;

(iii) statewide availability of evidence-based programs and practices including cognitive behavioral and family therapy programs for minors assessed by a validated risk and needs assessment as moderate or high risk;

(iv) implementation and infrastructure to support the sustainability and fidelity of evidence-based juvenile justice programs, including resources for staffing, transportation, and flexible funds; and

(v) early intervention programs such as family strengthening programs, family wraparound services, and proven truancy interventions;

(f) assist the Administrative Office of the Courts in the development of a statewide sliding scale for the assessment of fines, fees, and restitution, based on the ability of the minor's family to pay;

(g) analyze the alignment of resources and the roles and responsibilities of agencies, such as the operation of early intervention services, receiving centers, and diversion, and make recommendations to reallocate functions as appropriate, in accordance with Section

~~[62A-7-601]~~ 80-5-401;

(h) ensure that data reporting is expanded and routinely review data in additional areas, including:

(i) referral and disposition data by judicial district;

(ii) data on the length of time minors spend in the juvenile justice system, including the total time spent under court jurisdiction, on community supervision, and in each out-of-home placement;

(iii) recidivism data for ~~[diversion types pursuant to Section 78A-6-602 and disposition types pursuant to Section 78A-6-117]~~ minors who are diverted to a nonjudicial adjustment under Section 80-6-304 and minors for whom dispositions are ordered under Section 80-6-701, 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;

4727 (l) subject to Subsection (2), assist in the development of training for juvenile justice
4728 stakeholders, including educators, law enforcement officers, probation staff, judges, Division
4729 of Juvenile Justice Services staff, Division of Child and Family Services staff, and program
4730 providers;

4731 (m) subject to Subsection (3), assist in the development of a performance-based
4732 contracting system, which shall be developed by the Administrative Office of the Courts and
4733 the Division of Juvenile Justice Services for contracted services in the community and
4734 contracted out-of-home placement providers;

4735 (n) assist in the development of a validated detention risk assessment tool that shall be
4736 developed or adopted and validated by the Administrative Office of the Courts and the Division
4737 of Juvenile Justice Services as provided in Section [~~78A-6-124~~] 80-5-203 on and after July 1,
4738 2018; and

4739 (o) annually issue and make public a report to the governor, president of the Senate,
4740 speaker of the House of Representatives, and chief justice of the Utah Supreme Court on the
4741 progress of the reforms and any additional areas in need of review.

4742 (2) Training described in Subsection (1)(l) should include instruction on
4743 evidence-based programs and principles of juvenile justice, such as risk, needs, responsiveness,
4744 and fidelity, and shall be supplemented by the following topics:

- 4745 (a) adolescent development;
- 4746 (b) identifying and using local behavioral health resources;
- 4747 (c) implicit bias;
- 4748 (d) cultural competency;
- 4749 (e) graduated responses;
- 4750 (f) Utah juvenile justice system data and outcomes; and
- 4751 (g) gangs.

4752 (3) The system described in Subsection (1)(m) shall provide incentives for:

- 4753 (a) the use of evidence-based juvenile justice programs and practices rated as effective

4754 by the tools selected in accordance with Subsection (1)(j);
4755 (b) the use of three-month timelines for program completion; and
4756 (c) evidence-based programs and practices for minors living at home in rural areas.
4757 (4) The Commission on Criminal and Juvenile Justice may delegate the duties imposed
4758 under this section to a subcommittee or board established by the Commission on Criminal and
4759 Juvenile Justice in accordance with Subsection 63M-7-204(2).
4760 (5) Subsections (1)(a) through (c) take effect August 1, 2017. The remainder of this
4761 section takes effect July 1, 2018.
4762 Section 70. Section 67-25-201 is amended to read:
4763 **67-25-201. State agency work week.**
4764 (1) Except as provided in Subsection (2), and subject to Subsection (3):
4765 (a) a state agency with five or more employees shall, at least nine hours per day on
4766 Monday, Tuesday, Wednesday, Thursday, and Friday to provide a service required by statute to
4767 another entity of the state, a political subdivision, or the public:
4768 (i) in person;
4769 (ii) online; or
4770 (iii) by telephone; and
4771 (b) a state agency with fewer than five employees shall, at least eight hours per day on
4772 Monday, Tuesday, Wednesday, Thursday, and Friday, provide a service required by statute to
4773 another entity of the state, a political subdivision, or the public:
4774 (i) in person;
4775 (ii) online; or
4776 (iii) by telephone.
4777 (2) (a) Subsection (1) does not require a state agency to operate a physical location, or
4778 provide a service, on a holiday established under Section 63G-1-301.
4779 (b) Except for a legal holiday established under Section 63G-1-301, the following state
4780 agencies shall operate at least one physical location, and as many physical locations as

4781 necessary, at least nine hours per day on Monday, Tuesday, Wednesday, Thursday, and Friday
4782 to provide a service required by statute to another entity of the state, a political subdivision, or
4783 the public:

- 4784 (i) the Department of Technology Services, created in Section [63F-1-103](#);
- 4785 (ii) the Division of Child and Family Services, created in Section [62A-4a-103](#); and
- 4786 (iii) the Office of Guardian Ad Litem, created in Section [~~78A-6-901~~] [78A-2-802](#).

4787 (3) A state agency shall make staff available, as necessary, to provide:

4788 (a) services incidental to a court or administrative proceeding, during the hours of
4789 operation of a court or administrative body, including:

- 4790 (i) testifying;
- 4791 (ii) the production of records or evidence; and
- 4792 (iii) other services normally available to a court or administrative body;
- 4793 (b) security services; and
- 4794 (c) emergency services.

4795 (4) This section does not limit the days or hours a state agency may operate.

4796 (5) To provide a service as required by Subsection (1), the chief administrative officer
4797 of a state agency may determine:

- 4798 (a) the number of physical locations, if any are required by this section, operating each
4799 day;
- 4800 (b) the daily hours of operation of a physical location;
- 4801 (c) the number of state agency employees who work per day; and
- 4802 (d) the hours a state agency employee works per day.

4803 (6) To provide a service as required by Subsection (2)(b), the chief administrative
4804 officer of a state agency, or a person otherwise designated by law, may determine:

- 4805 (a) the number of physical locations operating each day;
- 4806 (b) the daily hours of operation, as required by Subsection (2)(b), of each physical
4807 location;

- 4808 (c) the number of state agency employees who work per day; and
4809 (d) the hours a state agency employee works per day.
- 4810 (7) A state agency shall:
- 4811 (a) provide information, accessible from a conspicuous link on the home page of the
4812 state agency's website, on a method that a person may use to schedule an in-person meeting
4813 with a representative of the state agency; and
- 4814 (b) except as provided in Subsection (8), as soon as reasonably possible:
- 4815 (i) contact a person who makes a request for an in-person meeting; and
4816 (ii) when appropriate, schedule and hold an in-person meeting with the person that
4817 requests an in-person meeting.
- 4818 (8) A state agency is not required to comply with Subsection (7)(b) to the extent that
4819 the contact or meeting:
- 4820 (a) would constitute a conflict of interest;
4821 (b) would conflict or interfere with a procurement governed by Title 63G, Chapter 6a,
4822 Utah Procurement Code;
- 4823 (c) would violate an ethical requirement of the state agency or an employee of the state
4824 agency; or
- 4825 (d) would constitute a violation of law.
- 4826 Section 71. Section **75-5-209** is amended to read:
- 4827 **75-5-209. Powers and duties of guardian of minor -- Residual parental rights and**
4828 **duties -- Adoption of a ward.**
- 4829 (1) For purposes of this section, "residual parental rights and duties" is as defined in
4830 Section [~~78A-6-105~~] [80-1-102](#).
- 4831 (2) Except as provided in Subsection (4)(a), a guardian of a minor has the powers and
4832 responsibilities of a parent who has not been deprived of custody of the parent's unemancipated
4833 minor, including the powers and responsibilities described in Subsection (3).
- 4834 (3) A guardian of a minor:

- 4835 (a) must take reasonable care of the personal effects of the guardian's ward;
- 4836 (b) must commence protective proceedings if necessary to protect other property of the
- 4837 guardian's ward;
- 4838 (c) subject to Subsection (4)(b), may receive money payable for the support of the ward
- 4839 to the ward's parent, guardian, or custodian under the terms of a:
- 4840 (i) statutory benefit or insurance system;
- 4841 (ii) private contract;
- 4842 (iii) devise;
- 4843 (iv) trust;
- 4844 (v) conservatorship; or
- 4845 (vi) custodianship;
- 4846 (d) subject to Subsection (4)(b), may receive money or property of the ward paid or
- 4847 delivered by virtue of Section [75-5-102](#);
- 4848 (e) except as provided in Subsection (4)(c), must exercise due care to conserve any
- 4849 excess money or property described in Subsection (3)(d) for the ward's future needs;
- 4850 (f) unless otherwise provided by statute, may institute proceedings to compel the
- 4851 performance by any person of a duty to:
- 4852 (i) support the ward; or
- 4853 (ii) pay sums for the welfare of the ward;
- 4854 (g) is empowered to:
- 4855 (i) facilitate the ward's education, social, or other activities; and
- 4856 (ii) subject to Subsection (4)(d), authorize medical or other professional care,
- 4857 treatment, or advice;
- 4858 (h) may consent to the:
- 4859 (i) marriage of the guardian's ward, if specifically authorized by a court to give this
- 4860 consent; or
- 4861 (ii) adoption of the guardian's ward if the:

4862 (A) guardian of the ward is specifically authorized by a court to give this consent; and
4863 (B) parental rights of the ward's parents have been terminated; and
4864 (i) must report the condition of the minor and of the minor's estate that has been subject
4865 to the guardian's possession or control:
4866 (i) as ordered by court on petition of any person interested in the minor's welfare; or
4867 (ii) as required by court rule.
4868 (4) (a) Notwithstanding Subsection (2), a guardian of a minor is not:
4869 (i) legally obligated to provide from the guardian's own funds for the ward; and
4870 (ii) liable to third persons by reason of the guardian's relationship for acts of the ward.
4871 (b) Sums received under Subsection (3)(c) or (d):
4872 (i) may not be used for compensation for the services of a guardian, except as:
4873 (A) approved by court order; or
4874 (B) determined by a duly appointed conservator other than the guardian; and
4875 (ii) shall be applied to the ward's current needs for support, care, and education.
4876 (c) Notwithstanding Subsection (3)(e), if a conservator is appointed for the estate of the
4877 ward, the excess shall be paid over at least annually to the conservator.
4878 (d) A guardian of a minor is not, by reason of giving the authorization described in
4879 Subsection (3)(g)(ii), liable for injury to the minor resulting from the negligence or acts of third
4880 persons, unless it would have been illegal for a parent to have given the authorization.
4881 (5) A parent of a minor for whom a guardian is appointed retains residual parental
4882 rights and duties.
4883 (6) If a parent of a minor for whom a guardian is appointed consents to the adoption of
4884 the minor, the guardian is entitled to:
4885 (a) receive notice of the adoption proceeding pursuant to Section 78B-6-110;
4886 (b) intervene in the adoption; and
4887 (c) present evidence to the court relevant to the best interest of the child pursuant to
4888 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:

- (a) Section **76-5-202**, aggravated murder;
- (b) Section **76-5-203**, murder;
- (c) Section **76-5-301.1**, child kidnapping;
- (d) Section **76-5-302**, aggravated kidnapping;
- (e) Section **76-5-402**, rape, if the individual is sentenced under Subsection **76-5-402(3)(b)**, (3)(c), or (4);
- (f) Section **76-5-402.1**, rape of a child;
- (g) Section **76-5-402.2**, object rape, if the individual is sentenced under Subsection **76-5-402.2(1)(b)**, (1)(c), or (2);
- (h) Section **76-5-402.3**, object rape of a child;
- (i) Section **76-5-403**, forcible sodomy, if the individual is sentenced under Subsection **76-5-403(3)(b)**, (3)(c), or (4);
- (j) Section **76-5-403.1**, sodomy on a child;
- (k) Section **76-5-404**, forcible sexual abuse, if the individual is sentenced under Subsection **76-5-404(2)(b)** or (3);
- (l) Subsections **76-5-404.1(4)** and (5), aggravated sexual abuse of a child;

- 4916 (m) Section [76-5-405](#), aggravated sexual assault; or
- 4917 (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
- 4918 (2) Except for an offense before the district court in accordance with Section
- 4919 ~~[78A-6-703.2 or 78A-6-703.5]~~ [80-6-502](#) or [80-6-504](#), the provisions of this section do not
- 4920 apply if the sentencing court finds that the defendant:
- 4921 (a) was under 18 years old at the time of the offense; and
- 4922 (b) could have been adjudicated in the juvenile court but for the delayed reporting or
- 4923 delayed filing of the information.
- 4924 Section 73. Section **76-5-107.1** is amended to read:
- 4925 **76-5-107.1. Threats against schools.**
- 4926 (1) As used in this section, "school" means a preschool or a public or private
- 4927 elementary or secondary school.
- 4928 (2) An individual is guilty of making a threat against a school if the individual
- 4929 threatens in person or via electronic means, either with real intent or as an intentional hoax, to
- 4930 commit any offense involving bodily injury, death, or substantial property damage, and:
- 4931 (a) threatens the use of a firearm or weapon or hoax weapon of mass destruction, as
- 4932 defined in Section [76-10-401](#);
- 4933 (b) acts with intent to:
- 4934 (i) disrupt the regular schedule of the school or influence or affect the conduct of
- 4935 students, employees, or the general public at the school;
- 4936 (ii) prevent or interrupt the occupancy of the school or a portion of the school, or a
- 4937 facility or vehicle used by the school; or
- 4938 (iii) intimidate or coerce students or employees of the school; or
- 4939 (c) causes an official or volunteer agency organized to deal with emergencies to take
- 4940 action due to the risk to the school or general public.
- 4941 (3) (a) A violation of Subsection (2)(a), (b)(i), or (b)(iii) is a class A misdemeanor.
- 4942 (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

4970 Interstate Enforcement of Domestic Violence Protection Orders Act.

4971 (2) Violation of an order as described in Subsection (1) is a domestic violence offense
4972 under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

4973 Section 75. Section 76-5-110 is amended to read:

4974 **76-5-110. Abuse or neglect of a child with a disability.**

4975 (1) As used in this section:

4976 (a) "Abuse" means:

4977 (i) inflicting physical injury, as that term is defined in Section 76-5-109;

4978 (ii) having the care or custody of a child with a disability, causing or permitting another
4979 to inflict physical injury, as that term is defined in Section 76-5-109; or

4980 (iii) unreasonable confinement.

4981 (b) "Caretaker" means:

4982 (i) any parent, legal guardian, or other person having under that person's care and
4983 custody a child with a disability; or

4984 (ii) any person, corporation, or public institution that has assumed by contract or court
4985 order the responsibility to provide food, shelter, clothing, medical, and other necessities to a
4986 child with a disability.

4987 (c) "Child with a disability" means any person under 18 years ~~[of age]~~ old who is
4988 impaired because of mental illness, mental deficiency, physical illness or disability, or other
4989 cause, to the extent that the person is unable to care for the person's own personal safety or to
4990 provide necessities such as food, shelter, clothing, and medical care.

4991 (d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter,
4992 supervision, or medical care.

4993 (2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a child
4994 with a disability is guilty of a third degree felony.

4995 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual
4996 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

5024 (ix) incest, in violation of Section [76-7-102](#).

5025 (2) Unlawful adolescent sexual activity is punishable as a:

5026 (a) third degree felony if an adolescent who is 17 years old engages in unlawful

5027 adolescent sexual activity with an adolescent who is 12 or 13 years old;

5028 (b) third degree felony if an adolescent who is 16 years old engages in unlawful

5029 adolescent sexual activity with an adolescent who is 12 years old;

5030 (c) class A misdemeanor if an adolescent who is 16 years old engages in unlawful

5031 adolescent sexual activity with an adolescent who is 13 years old;

5032 (d) class A misdemeanor if an adolescent who is 14 or 15 years old engages in

5033 unlawful adolescent sexual activity with an adolescent who is 12 years old;

5034 (e) class B misdemeanor if an adolescent who is 17 years old engages in unlawful

5035 adolescent sexual activity with an adolescent who is 14 years old;

5036 (f) class B misdemeanor if an adolescent who is 15 years old engages in unlawful

5037 adolescent sexual activity with an adolescent who is 13 years old;

5038 (g) class C misdemeanor if an adolescent who is 12 or 13 years old engages in unlawful

5039 adolescent sexual activity with an adolescent who is 12 or 13 years old; and

5040 (h) class C misdemeanor if an adolescent who is 14 years old engages in unlawful

5041 adolescent sexual activity with an adolescent who is 13 years old.

5042 (3) An offense under this section is not eligible for a nonjudicial adjustment under

5043 Section [~~78A-6-602~~] [80-6-304](#) or a referral to a youth court under Section [~~78A-6-1203~~]

5044 [80-6-902](#).

5045 (4) Except for an offense that is transferred to a district court by the juvenile court in

5046 accordance with Section [~~78A-6-703.5~~] [80-6-504](#), the district court may enter any sentence or

5047 combination of sentences that would have been available in juvenile court but for the delayed

5048 reporting or delayed filing of the information in the district court.

5049 (5) An offense under this section is not subject to registration under Subsection

5050 [77-41-102](#)(17).

5051 Section 77. Section **76-5-413** is amended to read:

5052 **76-5-413. Custodial sexual relations or misconduct with youth receiving state**
 5053 **services -- Definitions -- Penalties -- Defenses.**

5054 (1) As used in this section:

5055 (a) "Actor" means:

5056 (i) an individual employed by the Department of Human Services, as created in Section
 5057 [62A-1-102](#), or an employee of a private provider or contractor; or

5058 (ii) an individual employed by the juvenile court of the state, or an employee of a
 5059 private provider or contractor.

5060 (b) "Department" means the Department of Human Services created in Section
 5061 [62A-1-102](#).

5062 (c) "Juvenile court" means the juvenile court of the state created in Section [78A-6-102](#).

5063 (d) "Private provider or contractor" means any individual or entity that contracts with
 5064 the:

5065 (i) department to provide services or functions that are part of the operation of the
 5066 department; or

5067 (ii) juvenile court to provide services or functions that are part of the operation of the
 5068 juvenile court.

5069 (e) "Youth receiving state services" means an individual:

5070 (i) younger than 18 years [~~of age~~] old, except as provided under Subsection (1)(e)(ii),
 5071 who is:

5072 (A) in the custody of the department under [~~Subsection 78A-6-117(2)(c)~~] Section
 5073 [80-6-703](#); or

5074 (B) receiving services from any division of the department if any portion of the costs of
 5075 these services is covered by public money; or

5076 (ii) younger than 21 years [~~of age who is~~] old:

5077 (A) who is in the custody of the Division of Juvenile Justice Services, or the Division

5078 of Child and Family Services; or

5079 (B) whose case is under the jurisdiction of the juvenile court.

5080 (2) (a) An actor commits custodial sexual relations with a youth receiving state services
5081 if the actor commits any of the acts under Subsection (3):

5082 (i) under circumstances not amounting to commission of, or an attempt to commit, an
5083 offense under Subsection (6); and

5084 (ii) (A) the actor knows that the individual is a youth receiving state services; or

5085 (B) a reasonable person in the actor's position should have known under the
5086 circumstances that the individual was a youth receiving state services.

5087 (b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving
5088 state services is younger than 18 years [~~of age~~] old, a violation of Subsection (2)(a) is a second
5089 degree felony.

5090 (c) If the act committed under this Subsection (2) amounts to an offense subject to a
5091 greater penalty under another provision of state law than is provided under this Subsection (2),
5092 this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

5093 (3) Acts referred to in Subsection (2)(a) are:

5094 (a) having sexual intercourse with a youth receiving state services;

5095 (b) engaging in any sexual act with a youth receiving state services involving the
5096 genitals of one individual and the mouth or anus of another individual, regardless of the sex of
5097 either participant; or

5098 (c) causing the penetration, however slight, of the genital or anal opening of a youth
5099 receiving state services by any foreign object, substance, instrument, or device, including a part
5100 of the human body, with the intent to cause substantial emotional or bodily pain to any
5101 individual, regardless of the sex of any participant or with the intent to arouse or gratify the
5102 sexual desire of any individual, regardless of the sex of any participant.

5103 (4) (a) An actor commits custodial sexual misconduct with a youth receiving state
5104 services if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or
(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years ~~[of age]~~ old, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(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;

- 5132 (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
5133 (j) Section 76-5-405, aggravated sexual assault.

5134 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations
5135 with a youth receiving state services under Subsection (2) or custodial sexual misconduct with
5136 a youth receiving state services under Subsection (4), or an attempt to commit either of these
5137 offenses, if the youth receiving state services is younger than 18 years [~~of age~~] old, that the
5138 actor:

5139 (i) mistakenly believed the youth receiving state services to be 18 years [~~of age~~] old or
5140 older at the time of the alleged offense; or

5141 (ii) was unaware of the true age of the youth receiving state services.

5142 (b) Consent of the youth receiving state services is not a defense to any violation or
5143 attempted violation of Subsection (2) or (4).

5144 (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4)
5145 is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

5146 Section 78. Section 76-5b-201 is amended to read:

5147 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

5148 (1) A person is guilty of sexual exploitation of a minor:

5149 (a) when the person:

5150 (i) knowingly produces, possesses, or possesses with intent to distribute child
5151 pornography; or

5152 (ii) intentionally distributes or views child pornography; or

5153 (b) if the person is a minor's parent or legal guardian and knowingly consents to or
5154 permits the minor to be sexually exploited as described in Subsection (1)(a).

5155 (2) (a) Except as provided in Subsection (2)(b), sexual exploitation of a minor is a
5156 second degree felony.

5157 (b) A violation of Subsection (1) for knowingly producing child pornography is a first
5158 degree felony if the person produces original child pornography depicting a first degree felony

5159 that involves:

5160 (i) the person or another person engaging in conduct with the minor that is a violation

5161 of:

5162 (A) Section [76-5-402.1](#), rape of a child;

5163 (B) Section [76-5-402.3](#), object rape of a child;

5164 (C) Section [76-5-403.1](#), sodomy on a child; or

5165 (D) Section [76-5-404.1](#), aggravated sexual abuse of a child; or

5166 (ii) the minor being physically abused, as defined in Section [[78A-6-105](#)] [80-1-102](#).

5167 (3) It is a separate offense under this section:

5168 (a) for each minor depicted in the child pornography; and

5169 (b) for each time the same minor is depicted in different child pornography.

5170 (4) (a) It is an affirmative defense to a charge of violating this section that no minor

5171 was actually depicted in the visual depiction or used in producing or advertising the visual

5172 depiction.

5173 (b) For a charge of violating this section for knowingly possessing or intentionally

5174 viewing child pornography, it is an affirmative defense that:

5175 (i) the defendant:

5176 (A) did not solicit the child pornography from the minor depicted in the child

5177 pornography;

5178 (B) is not more than two years older than the minor depicted in the child pornography;

5179 and

5180 (C) upon request of a law enforcement agent or the minor depicted in the child

5181 pornography, removes from an electronic device or destroys the child pornography and all

5182 copies of the child pornography in the defendant's possession; and

5183 (ii) the child pornography does not depict an offense under Title 76, Chapter 5, Part 4,

5184 Sexual Offenses.

5185 (5) In proving a violation of this section in relation to an identifiable minor, proof of

the actual identity of the identifiable minor is not required.

(6) This section may not be construed to impose criminal or civil liability on:

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child pornography on tangible or intangible property, or of detecting and reporting the presence of child pornography on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child pornography during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child pornography during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child pornography during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Human Services who is required to view child pornography within the scope of the employee's employment; or

(g) an attorney who is required to view child pornography within the scope of the attorney's responsibility to represent the Department of Human Services, including the divisions and offices within the Department of Human Services.

Section 79. Section **76-7-301** is amended to read:

76-7-301. Definitions.

As used in this part:

(1) (a) "Abortion" means:

(i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;

5213 (ii) the intentional killing or attempted killing of a live unborn child through a medical
5214 procedure carried out by a physician or through a substance used under the direction of a
5215 physician; or

5216 (iii) the intentional causing or attempted causing of a miscarriage through a medical
5217 procedure carried out by a physician or through a substance used under the direction of a
5218 physician.

5219 (b) "Abortion" does not include:

5220 (i) removal of a dead unborn child;

5221 (ii) removal of an ectopic pregnancy; or

5222 (iii) the killing or attempted killing of an unborn child without the consent of the
5223 pregnant woman, unless:

5224 (A) the killing or attempted killing is done through a medical procedure carried out by
5225 a physician or through a substance used under the direction of a physician; and

5226 (B) the physician is unable to obtain the consent due to a medical emergency.

5227 (2) "Abortion clinic" means the same as that term is defined in Section [26-21-2](#).

5228 (3) "Abuse" means the same as that term is defined in Section [\[78A-6-105\] 80-1-102](#).

5229 (4) "Department" means the Department of Health.

5230 (5) "Down syndrome" means a genetic condition associated with an extra chromosome
5231 21, in whole or in part, or an effective trisomy for chromosome 21.

5232 (6) "Gestational age" means the age of an unborn child as calculated from the first day
5233 of the last menstrual period of the pregnant woman.

5234 (7) "Hospital" means:

5235 (a) a general hospital licensed by the department according to Title 26, Chapter 21,
5236 Health Care Facility Licensing and Inspection Act; and

5237 (b) a clinic or other medical facility to the extent that such clinic or other medical
5238 facility is certified by the department as providing equipment and personnel sufficient in
5239 quantity and quality to provide the same degree of safety to the pregnant woman and the

5240 unborn child as would be provided for the particular medical procedures undertaken by a
5241 general hospital licensed by the department.

5242 (8) "Information module" means the pregnancy termination information module
5243 prepared by the department.

5244 (9) "Medical emergency" means that condition which, on the basis of the physician's
5245 good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the
5246 immediate abortion of her pregnancy to avert her death, or for which a delay will create serious
5247 risk of substantial and irreversible impairment of major bodily function.

5248 (10) "Minor" means an individual who is:

5249 (a) under 18 years [~~of age~~] old;

5250 (b) unmarried; and

5251 (c) not emancipated.

5252 (11) (a) "Partial birth abortion" means an abortion in which the person performing the
5253 abortion:

5254 (i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a
5255 head first presentation, the entire fetal head is outside the body of the mother, or, in the case of
5256 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother,
5257 for the purpose of performing an overt act that the person knows will kill the partially delivered
5258 living fetus; and

5259 (ii) performs the overt act, other than completion of delivery, that kills the partially
5260 living fetus.

5261 (b) "Partial birth abortion" does not include the dilation and evacuation procedure
5262 involving dismemberment prior to removal, the suction curettage procedure, or the suction
5263 aspiration procedure for abortion.

5264 (12) "Physician" means:

5265 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
5266 67, Utah Medical Practice Act;

5267 (b) an osteopathic physician licensed to practice osteopathic medicine under Title 58,
5268 Chapter 68, Utah Osteopathic Medical Practice Act; or

5269 (c) a physician employed by the federal government who has qualifications similar to a
5270 person described in Subsection (12)(a) or (b).

5271 (13) (a) "Severe brain abnormality" means a malformation or defect that causes an
5272 individual to live in a mentally vegetative state.

5273 (b) "Severe brain abnormality" does not include:

5274 (i) Down syndrome;

5275 (ii) spina bifida;

5276 (iii) cerebral palsy; or

5277 (iv) any other malformation, defect, or condition that does not cause an individual to
5278 live in a mentally vegetative state.

5279 Section 80. Section **76-7a-101 (Contingently Effective)** is amended to read:

5280 **76-7a-101 (Contingently Effective). Definitions.**

5281 As used in this chapter:

5282 (1) (a) "Abortion" means:

5283 (i) the intentional termination or attempted termination of human pregnancy after
5284 implantation of a fertilized ovum through a medical procedure carried out by a physician or
5285 through a substance used under the direction of a physician;

5286 (ii) the intentional killing or attempted killing of a live unborn child through a medical
5287 procedure carried out by a physician or through a substance used under the direction of a
5288 physician; or

5289 (iii) the intentional causing or attempted causing of a miscarriage through a medical
5290 procedure carried out by a physician or through a substance used under the direction of a
5291 physician.

5292 (b) "Abortion" does not include:

5293 (i) removal of a dead unborn child;

- 5294 (ii) removal of an ectopic pregnancy; or
5295 (iii) the killing or attempted killing of an unborn child without the consent of the
5296 pregnant woman, unless:
- 5297 (A) the killing or attempted killing is done through a medical procedure carried out by
5298 a physician or through a substance used under the direction of a physician; and
5299 (B) the physician is unable to obtain the consent due to a medical emergency.
- 5300 (2) "Abortion clinic" means a type I abortion clinic licensed by the state or a type II
5301 abortion clinic licensed by the state.
- 5302 (3) "Department" means the Department of Health.
- 5303 (4) "Down syndrome" means a genetic condition associated with an extra chromosome
5304 21, in whole or in part, or an effective trisomy for chromosome 21.
- 5305 (5) "Hospital" means:
- 5306 (a) a general hospital licensed by the department; or
5307 (b) a clinic or other medical facility to the extent the clinic or other medical facility is
5308 certified by the department as providing equipment and personnel sufficient in quantity and
5309 quality to provide the same degree of safety to a pregnant woman and an unborn child as would
5310 be provided for the particular medical procedure undertaken by a general hospital licensed by
5311 the department.
- 5312 (6) "Incest" means the same as that term is defined in [~~Title 78A, Chapter 6, Juvenile~~
5313 ~~Court Act~~] Section 80-1-102.
- 5314 (7) "Medical emergency" means a condition which, on the basis of the physician's good
5315 faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the
5316 immediate abortion of her pregnancy to avert her death, or for which a delay will create serious
5317 risk of substantial and irreversible impairment of major bodily function.
- 5318 (8) "Physician" means:
- 5319 (a) a medical doctor licensed to practice medicine and surgery in the state;
5320 (b) an osteopathic physician licensed to practice osteopathic medicine in the state; or

(c) a physician employed by the federal government who has qualifications similar to an individual described in Subsection (8)(a) or (b).

(9) "Rape" means the same as that term is defined in Title 76, Utah Criminal Code.

(10) (a) "Severe brain abnormality" means a malformation or defect that causes an individual to live in a mentally vegetative state.

(b) "Severe brain abnormality" does not include:

(i) Down syndrome;

(ii) spina bifida;

(iii) cerebral palsy; or

(iv) any other malformation, defect, or condition that does not cause an individual to live in a mentally vegetative state.

Section 81. Section **76-8-306** is amended to read:

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 or a maximum term of imprisonment exceeding 15 years;

(iii) a second degree felony if the penalty provided exceeds five years;

(iv) a third degree felony if the penalty provided includes imprisonment for any period exceeding one year; and

(v) a misdemeanor if the penalty provided includes imprisonment for any period of one year or less.

(3) Obstruction of justice is:

(a) a second degree felony if the conduct which constitutes an offense would be a capital felony or first degree felony;

(b) a third degree felony if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(b), (c), (d), (e), or (f);

(ii) the conduct that constitutes an offense would be any offense other than a capital or first degree felony and the actor violates Subsection (1)(a);

(iii) the obstruction of justice is presented or committed before a court of law; or

(iv) a violation of Subsection (1)(h); or

(c) a class A misdemeanor for any violation of this section that is not enumerated under Subsection (3)(a) or (b).

(4) It is not a defense that the actor was unaware of the level of penalty for the conduct constituting an offense.

(5) Subsection (1)(e) does not apply to harboring ~~a youth offender, which is governed by Section 62A-7-402~~ a juvenile offender, as defined in Section 80-1-102, which is governed by Section 76-8-311.5.

(6) Subsection (1)(b) does not apply to:

(a) tampering with a juror, which is governed by Section 76-8-508.5;

(b) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, which is governed by Section 76-8-316;

(c) tampering with a witness or soliciting or receiving a bribe, which is governed by Section 76-8-508;

(d) retaliation against a witness, victim, or informant, which is governed by Section 76-8-508.3; or

(e) extortion or bribery to dismiss a criminal proceeding, which is governed by Section 76-8-509.

(7) Notwithstanding Subsection (1), (2), or (3), an actor commits a third degree felony if the actor harbors or conceals an offender who has escaped from official custody as defined in Section 76-8-309.

Section 82. Section 76-9-701 is amended to read:

76-9-701. Intoxication -- Release of arrested person or placement in detoxification center.

(1) A person is guilty of intoxication if the person is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger the person or another, in a public place or in a private place where the person unreasonably disturbs other persons.

(2) (a) A peace officer or a magistrate may release from custody a person arrested under this section if the peace officer or magistrate believes imprisonment is unnecessary for the protection of the person or another.

(b) A peace officer may take the arrested person to a detoxification center or other special facility as an alternative to incarceration or release from custody.

(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, the court hearing the case shall suspend the

5429 minor's driving privileges under Section [53-3-219](#).

5430 (b) Notwithstanding the requirement in Subsection (4)(a), the court may reduce the
5431 suspension period required under Section [53-3-219](#) if:

5432 (i) the violation is the minor's first violation of this section; and

5433 (ii) (A) the minor completes an educational series as defined in Section [41-6a-501](#); or

5434 (B) the minor demonstrates substantial progress in substance use disorder treatment.

5435 (c) Notwithstanding the requirement in Subsection (4)(a) and in accordance with the
5436 requirements of Section [53-3-219](#), the court may reduce the suspension period required under
5437 Section [53-3-219](#) if:

5438 (i) the violation is the minor's second or subsequent violation of this section;

5439 (ii) the minor has completed an educational series as defined in Section [41-6a-501](#) or
5440 demonstrated substantial progress in substance use disorder treatment; and

5441 (iii) (A) the person is 18 years [~~of age~~] old or older and provides a sworn statement to
5442 the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year
5443 consecutive period during the suspension period imposed under Subsection (4)(a); or

5444 (B) the person is under 18 years [~~of age~~] old and has the person's parent or legal
5445 guardian provide an affidavit or sworn statement to the court certifying that to the parent or
5446 legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at
5447 least a one-year consecutive period during the suspension period imposed under Subsection
5448 (4)(a).

5449 (5) When a person who is younger than 18 years old is found by a court to have
5450 violated this section, the provisions regarding suspension of the driver's license under Section
5451 [~~78A-6-606~~] [80-6-707](#) apply to the violation.

5452 (6) Notwithstanding Subsections (3)(a) and (b), if a minor is adjudicated under Section
5453 [~~78A-6-117~~] [80-6-701](#), the court may only order substance use disorder treatment or an
5454 educational series if the minor has an assessed need for the intervention based on the results of
5455 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](#).

(8) An offense under this section is a class C misdemeanor.

Section 83. Section **76-10-105** is amended to read:

76-10-105. Buying or possessing a tobacco product or an electronic cigarette product by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) An individual who is 18 years old or older, but younger than 21 years old, and who buys or attempts to buy, accepts, or has in the individual's possession a tobacco product, an electronic cigarette product, or a nicotine product is:

(a) guilty of an infraction; and

(b) subject to:

(i) a minimum fine or penalty of \$60; and

(ii) participation in a court-approved tobacco education or cessation program, which may include a participation fee.

(2) (a) An individual who is under 18 years old and who buys or attempts to buy, accepts, or has in the individual's possession a tobacco product, an electronic cigarette product, or a nicotine product is subject to a citation under Section [~~78A-6-603~~] [80-6-302](#), unless the violation is committed on school property under Section [53G-8-211](#).

(b) If a violation under this section is adjudicated under Section [~~78A-6-117~~] [80-6-701](#), the minor may be subject to the following:

(i) a fine or penalty, in accordance with Section [~~78A-6-117~~] [80-6-709](#); and

(ii) participation in a court-approved tobacco education program, which may include a participation fee.

(3) (a) A compliance officer appointed by a board of education under Section [53G-4-402](#) may not issue a citation for a violation of this section committed on school property.

(b) A cited violation committed on school property shall be addressed in accordance with Section 53G-8-211.

Section 84. Section 76-10-503 is amended to read:

76-10-503. Restrictions on possession, purchase, transfer, and ownership of dangerous weapons by certain persons -- Exceptions.

(1) For purposes of this section:

(a) A Category I restricted person is a person who:

(i) has been convicted of any violent felony as defined in Section 76-3-203.5;

(ii) is on probation or parole for any felony;

(iii) is on parole from ~~[a secure facility as defined in Section 62A-7-101]~~ secure care, as defined in Section 80-1-102;

(iv) within the last 10 years has been adjudicated ~~[delinquent]~~ under Section 80-6-701 for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5;

(v) is an alien who is illegally or unlawfully in the United States; or

(vi) is on probation for a conviction of possessing:

(A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;

(B) a controlled substance analog; or

(C) a substance listed in Section 58-37-4.2.

(b) A Category II restricted person is a person who:

(i) has been convicted of any felony;

(ii) within the last seven years has been adjudicated delinquent for an offense which if committed by an adult would have been a felony;

(iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

(iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

(v) has been found not guilty by reason of insanity for a felony offense;

- 5510 (vi) has been found mentally incompetent to stand trial for a felony offense;
- 5511 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
- 5512 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
- 5513 to a mental institution;
- 5514 (viii) has been dishonorably discharged from the armed forces;
- 5515 (ix) has renounced the individual's citizenship after having been a citizen of the United
- 5516 States;
- 5517 (x) is a respondent or defendant subject to a protective order or child protective order
- 5518 that is issued after a hearing for which the respondent or defendant received actual notice and at
- 5519 which the respondent or defendant has an opportunity to participate, that restrains the
- 5520 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that
- 5521 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate
- 5522 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
- 5523 partner, and that:
- 5524 (A) includes a finding that the respondent or defendant represents a credible threat to
- 5525 the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C.
- 5526 Sec. 921 or the child of the individual; or
- 5527 (B) explicitly prohibits the use, attempted use, or threatened use of physical force that
- 5528 would reasonably be expected to cause bodily harm against an intimate partner or the child of
- 5529 an intimate partner; or
- 5530 (xi) has been convicted of the commission or attempted commission of assault under
- 5531 Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or former
- 5532 spouse, parent, guardian, individual with whom the restricted person shares a child in common,
- 5533 individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent,
- 5534 or guardian, or against an individual similarly situated to a spouse, parent, or guardian of the
- 5535 restricted person.
- 5536 (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

5564 dangerous weapon, the penalties of that section control.

5565 (6) It is an affirmative defense to a charge based on the definition in Subsection

5566 (1)(b)(iv) that the person was:

5567 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner
5568 for use of a member of the person's household or for administration to an animal owned by the
5569 person or a member of the person's household; or

5570 (b) otherwise authorized by law to possess the substance.

5571 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon
5572 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

5573 (i) was possessed by the person or was under the person's custody or control before the
5574 person became a restricted person;

5575 (ii) was not used in or possessed during the commission of a crime or subject to
5576 disposition under Section 24-3-103;

5577 (iii) is not being held as evidence by a court or law enforcement agency;

5578 (iv) was transferred to a person not legally prohibited from possessing the weapon; and

5579 (v) unless a different time is ordered by the court, was transferred within 10 days of the
5580 person becoming a restricted person.

5581 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
5582 of a firearm or other dangerous weapon by a restricted person.

5583 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
5584 dangerous weapon to any person, knowing that the recipient is a person described in Subsection
5585 (1)(a) or (b).

5586 (b) A person who violates Subsection (8)(a) when the recipient is:

5587 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is
5588 guilty of a second degree felony;

5589 (ii) a person described in Subsection (1)(a) 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 third degree felony;

5592 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is
5593 guilty of a third degree felony; or

5594 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous
5595 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
5596 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

5597 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
5598 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
5599 circumstances which the person knows would be a violation of the law.

5600 (b) A person may not provide to a dealer or other person any information that the
5601 person knows to be materially false information with intent to deceive the dealer or other
5602 person about the legality of a sale, transfer or other disposition of a firearm or dangerous
5603 weapon.

5604 (c) "Materially false information" means information that portrays an illegal transaction
5605 as legal or a legal transaction as illegal.

5606 (d) A person who violates this Subsection (9) is guilty of:

5607 (i) a third degree felony if the transaction involved a firearm; or

5608 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
5609 firearm.

5610 Section 85. Section **76-10-1315** is amended to read:

5611 **76-10-1315. Safe harbor for children as victims in commercial sex or sexual**
5612 **solicitation.**

5613 (1) As used in this section:

5614 (a) "Child engaged in commercial sex" means a child who:

5615 (i) engages, offers, or agrees to engage in any sexual activity with another individual
5616 for a fee, or the functional equivalent of a fee;

5617 (ii) takes steps in arranging a meeting through any form of advertising, agreeing to

meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee or the functional equivalent of a fee; or

(iii) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(b) "Child engaged in sexual solicitation" means a child who offers or agrees to commit or engage in any sexual activity with another person for a fee or the functional equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

(c) "Division" means the Division of Child and Family Services created in Section 62A-4a-103.

(d) [~~"Receiving"~~] "Juvenile receiving center" means the same as that term is defined in Section [~~62A-7-101~~] 80-1-102.

(2) Upon encountering a child engaged in commercial sex or sexual solicitation, a law enforcement officer shall:

(a) conduct an investigation regarding possible human trafficking of the child pursuant to Sections 76-5-308 and 76-5-308.5;

(b) refer the child to the division;

(c) bring the child to a juvenile receiving center, if available; and

(d) contact the child's parent or guardian, if practicable.

(3) When law enforcement refers a child to the division under Subsection (2)(b) the division shall provide services to the child under Title 62A, Chapter 4a, Child and Family Services.

(4) A child may not be subjected to delinquency proceedings for prostitution under Section 76-10-1302, or sex solicitation under Section 76-10-1313.

Section 86. Section 77-2-9 is amended to read:

77-2-9. Offenses ineligible for diversion.

(1) A magistrate may not grant a diversion for:

(a) a capital felony;

- 5645 (b) a felony in the first degree;
- 5646 (c) any case involving a sexual offense against a victim who is under 14 years old;
- 5647 (d) any motor vehicle related offense involving alcohol or drugs;
- 5648 (e) any case involving using a motor vehicle in the commission of a felony;
- 5649 (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended
- 5650 license;
- 5651 (g) any case involving operating a commercial motor vehicle in a negligent manner
- 5652 causing the death of another including the offenses of:
- 5653 (i) manslaughter under Section [76-5-205](#); or
- 5654 (ii) negligent homicide under Section [76-5-206](#); or
- 5655 (h) a crime of domestic violence as defined in Section [77-36-1](#).
- 5656 (2) When an individual is alleged to have committed any violation of Title 76, Chapter
- 5657 5, Part 4, Sexual Offenses, while under 16 years old, the court may enter a diversion in the
- 5658 matter if the court enters on the record the court's findings that:
- 5659 (a) the offenses could have been adjudicated in juvenile court but for the delayed
- 5660 reporting or delayed filing of the information in the district court, unless the offenses are before
- 5661 the court in accordance with Section [~~[78A-6-703.2](#)~~ or ~~[78A-6-703.5](#)~~] [80-6-502](#) or [80-6-504](#);
- 5662 (b) the individual did not use coercion or force;
- 5663 (c) there is no more than three years' difference between the ages of the participants;
- 5664 and
- 5665 (d) it would be in the best interest of the person to grant diversion.
- 5666 Section 87. Section **77-16b-102** is amended to read:
- 5667 **77-16b-102. Definitions.**
- 5668 As used in this chapter:
- 5669 (1) "Correctional facility" means:
- 5670 (a) a county jail;
- 5671 (b) a secure correctional facility as defined by Section [64-13-1](#); or

(c) a secure ~~[facility as defined by Section 62A-7-101]~~ care facility as defined in Section 80-1-102.

(2) "Correctional facility administrator" means:

(a) a county sheriff in charge of a county jail;

(b) a designee of the executive director of the Utah Department of Corrections; or

(c) a designee of the director of the Division of Juvenile Justice Services.

(3) "Medical supervision" means under the direction of a licensed physician, physician assistant, or nurse practitioner.

(4) "Mental health therapist" ~~[has the same definition as]~~ means the same as that term is defined in Section 58-60-102.

(5) "Prisoner" means:

(a) any ~~[person]~~ individual who is a pretrial detainee or who has been committed to the custody of a sheriff or the Utah Department of Corrections, and who is physically in a correctional facility; and

(b) any ~~[person older than 18 years of age and younger than 21 years of age]~~ individual who is 18 years old or older and younger than 21 years old, and who has been committed to the custody of the Division of Juvenile Justice Services.

Section 88. Section ~~77-37-3~~ is amended to read:

77-37-3. Bill of rights.

(1) The bill of rights for victims and witnesses is:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section ~~76-8-508~~, regarding witness tampering, and Section ~~76-8-509~~, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.

(b) Victims and witnesses, including children and their guardians, have a right to be

5699 informed and assisted as to their role in the criminal justice process. All criminal justice
5700 agencies have the duty to provide this information and assistance.

5701 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
5702 proceedings; these explanations shall be appropriate to the age of child victims and witnesses.
5703 All criminal justice agencies have the duty to provide these explanations.

5704 (d) Victims and witnesses should have a secure waiting area that does not require them
5705 to be in close proximity to defendants or the family and friends of defendants. Agencies
5706 controlling facilities shall, whenever possible, provide this area.

5707 (e) Victims may seek restitution or reparations, including medical costs, as provided in
5708 Title 63M, Chapter 7, Criminal Justice and Substance Abuse, and Sections [~~62A-7-109.5;~~
5709 ~~77-38a-302~~, [~~and~~] ~~77-27-6~~, and 80-6-710. State and local government agencies that serve
5710 victims have the duty to have a functional knowledge of the procedures established by the
5711 Crime Victim Reparations Board and to inform victims of these procedures.

5712 (f) Victims and witnesses have a right to have any personal property returned as
5713 provided in Sections ~~77-24a-1~~ through ~~77-24a-5~~. Criminal justice agencies shall expeditiously
5714 return the property when it is no longer needed for court law enforcement or prosecution
5715 purposes.

5716 (g) Victims and witnesses have the right to reasonable employer intercession services,
5717 including pursuing employer cooperation in minimizing employees' loss of pay and other
5718 benefits resulting from their participation in the criminal justice process. Officers of the court
5719 shall provide these services and shall consider victims' and witnesses' schedules so that
5720 activities which conflict can be avoided. Where conflicts cannot be avoided, the victim may
5721 request that the responsible agency intercede with employers or other parties.

5722 (h) Victims and witnesses, particularly children, should have a speedy disposition of
5723 the entire criminal justice process. All involved public agencies shall establish policies and
5724 procedures to encourage speedy disposition of criminal cases.

5725 (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 System;

(iv) the right to be informed whether there is a match between a DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Utah Combined DNA Index System, provided that disclosure would not impede or compromise an ongoing investigation; and

(v) the right to designate a person of the victim's choosing to act as a recipient of the information provided under this Subsection (1)(j) and under Subsections (2) and (3).

(k) Subsections (1)(j)(ii) through (iv) do not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing, absent a specific request received from the victim or the victim's designee.

(2) The law enforcement agency investigating a sexual offense may:

(a) release the information indicated in Subsections (1)(j)(ii) through (iv) upon the request of a victim or the victim's designee and is the designated agency to provide that information to the victim or the victim's designee;

(b) require that the victim's request be in writing; and

(c) respond to the victim's request with verbal communication, written communication,

5753 or by email, if an email address is available.

5754 (3) The law enforcement agency investigating a sexual offense has the following
5755 authority and responsibilities:

5756 (a) If the law enforcement agency determines that DNA evidence will not be analyzed
5757 in a case where the identity of the perpetrator has not been confirmed, the law enforcement
5758 agency shall notify the victim or the victim's designee.

5759 (b) (i) If the law enforcement agency intends to destroy or dispose of rape kit evidence
5760 or other crime scene evidence from an unsolved sexual assault case, the law enforcement
5761 agency shall provide written notification of that intention and information on how to appeal the
5762 decision to the victim or the victim's designee of that intention.

5763 (ii) Written notification under this Subsection (3) shall be made not fewer than 60 days
5764 prior to the destruction or disposal of the rape kit evidence or other crime scene evidence.

5765 (c) A law enforcement agency responsible for providing information under Subsections
5766 (1)(j)(ii) through (iv), (2), and (3) shall do so in a timely manner and, upon request of the
5767 victim or the victim's designee, shall advise the victim or the victim's designee of any
5768 significant changes in the information of which the law enforcement agency is aware.

5769 (d) The law enforcement agency investigating the sexual offense is responsible for
5770 informing the victim or the victim's designee of the rights established under Subsections
5771 (1)(j)(ii) through (iv) and (2), and this Subsection (3).

5772 (4) Informational rights of the victim under this chapter are based upon the victim
5773 providing the current name, address, telephone number, and email address, if an email address
5774 is available, of the person to whom the information should be provided to the criminal justice
5775 agencies involved in the case.

5776 Section 89. Section **77-38-5** is amended to read:

5777 **77-38-5. Application to felonies and misdemeanors of the declaration of the rights**
5778 **of crime victims.**

5779 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:

- (a) judgment of guilt;
- (b) a plea of guilty; or
- (c) a plea of no contest.

(2) "Criminal activities" means:

- (a) any misdemeanor or felony offense of which the defendant is convicted; or
- (b) any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) (a) "Defendant" means an individual who has been convicted of, or entered into a

5807 plea disposition for, a criminal activity.

5808 (b) "Defendant" does not include a minor, as defined in Section [~~78A-6-105~~] 80-1-102,
5809 who is adjudicated, or enters into a nonjudicial adjustment, for any offense under [~~Title 78A,~~
5810 ~~Chapter 6, Juvenile Court Act~~] Title 80, Chapter 6, Juvenile Justice.

5811 (4) "Department" means the Department of Corrections.

5812 (5) "Diversion" means suspending criminal proceedings prior to conviction on the
5813 condition that a defendant agree to participate in a rehabilitation program, make restitution to
5814 the victim, or fulfill some other condition.

5815 (6) "Party" means the prosecutor, defendant, or department involved in a prosecution.

5816 (7) "Pecuniary damages" means all demonstrable economic injury, whether or not yet
5817 incurred, including those which a person could recover in a civil action arising out of the facts
5818 or events constituting the defendant's criminal activities and includes the fair market value of
5819 property taken, destroyed, broken, or otherwise harmed, and losses, including lost earnings,
5820 including those and other travel expenses reasonably incurred as a result of participation in
5821 criminal proceedings, and medical and other expenses, but excludes punitive or exemplary
5822 damages and pain and suffering.

5823 (8) "Plea agreement" means an agreement entered between the prosecution and
5824 defendant setting forth the special terms and conditions and criminal charges upon which the
5825 defendant will enter a plea of guilty or no contest.

5826 (9) "Plea disposition" means an agreement entered into between the prosecution and
5827 defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement
5828 by which the defendant may enter a plea in any other jurisdiction or where charges are
5829 dismissed without a plea.

5830 (10) "Plea in abeyance" means an order by a court, upon motion of the prosecution and
5831 the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that
5832 time, entering judgment of conviction against him nor imposing sentence upon him on
5833 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.

5915 (b) (i) The bureau shall perform a check of records of governmental agencies, including
5916 national criminal databases, to determine whether an offender is eligible to receive a certificate
5917 of eligibility.

5918 (ii) If the offender meets the requirements described in Subsection (1)(a) or (b), the
5919 bureau shall issue a certificate of eligibility to the offender, which is valid for a period of 90
5920 days after the day on which the bureau issues the certificate.

5921 (iii) The bureau shall request information from the department regarding whether the
5922 offender meets the requirements.

5923 (iv) Upon request from the bureau under Subsection (3)(b)(iii), the department shall
5924 issue a document that states whether the offender meets the requirements described in
5925 Subsection (1)(a) or (b), which may be used by the bureau to determine if a certificate of
5926 eligibility is appropriate.

5927 (v) The bureau shall provide a copy of the document provided to the bureau under
5928 Subsection (3)(b)(iv) to the offender upon issuance of a certificate of eligibility.

5929 (4) (a) (i) The bureau shall charge application and issuance fees for a certificate of
5930 eligibility in accordance with the process in Section [63J-1-504](#).

5931 (ii) The application fee shall be paid at the time the offender submits an application for
5932 a certificate of eligibility to the bureau.

5933 (iii) If the bureau determines that the issuance of a certificate of eligibility is
5934 appropriate, the offender will be charged an additional fee for the issuance of a certificate of
5935 eligibility.

5936 (b) Funds generated under this Subsection (4) shall be deposited into the General Fund
5937 as a dedicated credit by the department to cover the costs incurred in determining eligibility.

5938 (5) (a) The offender shall file the petition, including original information, the court
5939 docket, the certificate of eligibility from the bureau, and the document from the department
5940 described in Subsection (3)(b)(iv) with the court, and deliver a copy of the petition to the office
5941 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]~~ old, 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

5969 issues the court's decision in the same manner described in Subsection (5).

5970 Section 94. Section **78A-2-104** is amended to read:

5971 **78A-2-104. Judicial Council -- Creation -- Members -- Terms and election --**
5972 **Responsibilities -- Reports -- Guardian Ad Litem Oversight Committee.**

5973 (1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution,
5974 shall be composed of:

5975 (a) the chief justice of the Supreme Court;

5976 (b) one member elected by the justices of the Supreme Court;

5977 (c) one member elected by the judges of the Court of Appeals;

5978 (d) six members elected by the judges of the district courts;

5979 (e) three members elected by the judges of the juvenile courts;

5980 (f) three members elected by the justice court judges; and

5981 (g) a member or ex officio member of the Board of Commissioners of the Utah State
5982 Bar who is an active member of the Bar in good standing at the time of election by the Board of
5983 Commissioners.

5984 (2) The Judicial Council shall have a seal.

5985 (3) (a) The chief justice of the Supreme Court shall act as presiding officer of the
5986 council and chief administrative officer for the courts. The chief justice shall vote only in the
5987 case of a tie.

5988 (b) All members of the council shall serve for three-year terms.

5989 (i) If a council member should die, resign, retire, or otherwise fail to complete a term of
5990 office, the appropriate constituent group shall elect a member to complete the term of office.

5991 (ii) In courts having more than one member, the members shall be elected to staggered
5992 terms.

5993 (iii) The person elected by the Board of Commissioners may complete a three-year
5994 term of office on the Judicial Council even though the person ceases to be a member or ex
5995 officio member of the Board of Commissioners. The person shall be an active member of the

5996 Bar in good standing for the entire term of the Judicial Council.

5997 (c) Elections shall be held under rules made by the Judicial Council.

5998 (4) The council is responsible for the development of uniform administrative policy for
5999 the courts throughout the state. The presiding officer of the Judicial Council is responsible for
6000 the implementation of the policies developed by the council and for the general management of
6001 the courts, with the aid of the state court administrator. The council has authority and
6002 responsibility to:

6003 (a) establish and assure compliance with policies for the operation of the courts,
6004 including uniform rules and forms; and

6005 (b) publish and submit to the governor, the chief justice of the Supreme Court, and the
6006 Legislature an annual report of the operations of the courts, which shall include financial and
6007 statistical data and may include suggestions and recommendations for legislation.

6008 (5) The council shall establish standards for the operation of the courts of the state
6009 including, but not limited to, facilities, court security, support services, and staff levels for
6010 judicial and support personnel.

6011 (6) The council shall by rule establish the time and manner for destroying court
6012 records, including computer records, and shall establish retention periods for these records.

6013 (7) (a) Consistent with the requirements of judicial office and security policies, the
6014 council shall establish procedures to govern the assignment of state vehicles to public officers
6015 of the judicial branch.

6016 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and
6017 may be assigned for unlimited use, within the state only.

6018 (8) (a) The council shall advise judicial officers and employees concerning ethical
6019 issues and shall establish procedures for issuing informal and formal advisory opinions on
6020 these issues.

6021 (b) Compliance with an informal opinion is evidence of good faith compliance with the
6022 Code of Judicial Conduct.

6023 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial
6024 Conduct.

6025 (9) (a) The council shall establish written procedures authorizing the presiding officer
6026 of the council to appoint judges of courts of record by special or general assignment to serve
6027 temporarily in another level of court in a specific court or generally within that level. The
6028 appointment shall be for a specific period and shall be reported to the council.

6029 (b) These procedures shall be developed in accordance with Subsection 78A-2-107(10)
6030 regarding temporary appointment of judges.

6031 (10) The Judicial Council may by rule designate municipalities in addition to those
6032 designated by statute as a location of a trial court of record. There shall be at least one court
6033 clerk's office open during regular court hours in each county. Any trial court of record may hold
6034 court in any municipality designated as a location of a court of record.

6035 (11) The Judicial Council shall by rule determine whether the administration of a court
6036 shall be the obligation of the Administrative Office of the Courts or whether the Administrative
6037 Office of the Courts should contract with local government for court support services.

6038 (12) The Judicial Council may by rule direct that a district court location be
6039 administered from another court location within the county.

6040 (13) (a) The Judicial Council shall:

6041 (i) establish the Office of Guardian Ad Litem, in accordance with Title 78A, [~~Chapter~~
6042 ~~6, Part 9~~] Chapter 2, Part 8, Guardian Ad Litem; and

6043 (ii) establish and supervise a Guardian Ad Litem Oversight Committee.

6044 (b) The Guardian Ad Litem Oversight Committee described in Subsection (13)(a)(ii)
6045 shall oversee the Office of Guardian Ad Litem, established under Subsection (13)(a)(i), and
6046 assure that the Office of Guardian Ad Litem complies with state and federal law, regulation,
6047 policy, and court rules.

6048 (14) The Judicial Council shall establish and maintain, in cooperation with the Office
6049 of Recovery Services within the Department of Human Services, the part of the state case

registry that contains records of each support order established or modified in the state on or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec. 654a.

Section 95. Section **78A-2-301** is amended to read:

78A-2-301. Civil fees of the courts of record -- Courts complex design.

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is \$375.

(b) The fee for filing a complaint or petition is:

(i) \$90 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$200 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000 and less than \$10,000;

(iii) \$375 if the claim for damages or amount in interpleader is \$10,000 or more;

(iv) \$325 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance;

(v) \$35 for a motion for temporary separation order filed under Section 30-3-4.5;

(vi) \$125 if the petition is for removal from the Sex Offender and Kidnap Offender Registry under Section 77-41-112; and

(vii) \$35 if the petition is for guardianship and the prospective ward is the biological or adoptive child of the petitioner.

(c) The fee for filing a small claims affidavit is:

(i) \$60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$2,000 or less;

(ii) \$100 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than \$2,000, but less than \$7,500; and

(iii) \$185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is \$7,500 or more.

6077 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
6078 complaint, or other claim for relief against an existing or joined party other than the original
6079 complaint or petition is:

6080 (i) \$55 if the claim for relief exclusive of court costs, interest, and attorney fees is
6081 \$2,000 or less;

6082 (ii) \$165 if the claim for relief exclusive of court costs, interest, and attorney fees is
6083 greater than \$2,000 and less than \$10,000;

6084 (iii) \$170 if the original petition is filed under Subsection (1)(a), the claim for relief is
6085 \$10,000 or more, or the party seeks relief other than monetary damages; and

6086 (iv) \$130 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
6087 Chapter 4, Separate Maintenance.

6088 (e) The fee for filing a small claims counter affidavit is:

6089 (i) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
6090 \$2,000 or less;

6091 (ii) \$70 if the claim for relief exclusive of court costs, interest, and attorney fees is
6092 greater than \$2,000, but less than \$7,500; and

6093 (iii) \$120 if the claim for relief exclusive of court costs, interest, and attorney fees is
6094 \$7,500 or more.

6095 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
6096 action already before the court is determined under Subsection (1)(b) based on the amount
6097 deposited.

6098 (g) The fee for filing a petition is:

6099 (i) \$240 for trial de novo of an adjudication of the justice court or of the small claims
6100 department; and

6101 (ii) \$80 for an appeal of a municipal administrative determination in accordance with
6102 Section 10-3-703.7.

6103 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or

6104 petition for writ of certiorari is \$240.

6105 (i) The fee for filing a petition for expungement is \$150.

6106 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
6107 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
6108 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
6109 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
6110 Act.

6111 (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be
6112 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
6113 Defense Account, as provided in Section 51-9-408.

6114 (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g),
6115 and (1)(s) shall be allocated to and deposited with the Dispute Resolution Account as provided
6116 in Section 78B-6-209.

6117 (iv) Thirty dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
6118 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
6119 deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

6120 (v) Twenty dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii)
6121 and (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account,
6122 Court Security Account, as provided in Section 78A-2-602.

6123 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
6124 United States is \$35.

6125 (l) The fee for filing a renewal of judgment in accordance with Section 78B-6-1801 is
6126 50% of the fee for filing an original action seeking the same relief.

6127 (m) The fee for filing probate or child custody documents from another state is \$35.

6128 (n) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
6129 State Tax Commission is \$30.

6130 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state

6131 or a judgment, order, or decree of an administrative agency, commission, board, council, or
6132 hearing officer of this state or of its political subdivisions other than the State Tax
6133 Commission, is \$50.

6134 (o) The fee for filing a judgment by confession without action under Section
6135 78B-5-205 is \$35.

6136 (p) The fee for filing an award of arbitration for confirmation, modification, or vacation
6137 under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before
6138 the court is \$35.

6139 (q) The fee for filing a petition or counter-petition to modify a domestic relations order
6140 other than a protective order or stalking injunction is \$100.

6141 (r) The fee for filing any accounting required by law is:

6142 (i) \$15 for an estate valued at \$50,000 or less;

6143 (ii) \$30 for an estate valued at \$75,000 or less but more than \$50,000;

6144 (iii) \$50 for an estate valued at \$112,000 or less but more than \$75,000;

6145 (iv) \$90 for an estate valued at \$168,000 or less but more than \$112,000; and

6146 (v) \$175 for an estate valued at more than \$168,000.

6147 (s) The fee for filing a demand for a civil jury is \$250.

6148 (t) The fee for filing a notice of deposition in this state concerning an action pending in
6149 another state under Utah Rules of Civil Procedure, Rule 30 is \$35.

6150 (u) The fee for filing documents that require judicial approval but are not part of an
6151 action before the court is \$35.

6152 (v) The fee for a petition to open a sealed record is \$35.

6153 (w) The fee for a writ of replevin, attachment, execution, or garnishment is \$50 in
6154 addition to any fee for a complaint or petition.

6155 (x) (i) The fee for a petition for authorization for a minor to marry required by Section
6156 30-1-9 is \$5.

6157 (ii) The fee for a petition for emancipation of a minor provided in [Title 78A, Chapter

6158 ~~6, Part 8, Emancipation]~~ Title 80, Chapter 7, Emancipation, is \$50.

6159 (y) The fee for a certificate issued under Section 26-2-25 is \$8.

6160 (z) The fee for a certified copy of a document is \$4 per document plus 50 cents per
6161 page.

6162 (aa) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
6163 per page.

6164 (bb) The Judicial Council shall by rule establish a schedule of fees for copies of
6165 documents and forms and for the search and retrieval of records under Title 63G, Chapter 2,
6166 Government Records Access and Management Act. Fees under this Subsection (1)(bb) shall be
6167 credited to the court as a reimbursement of expenditures.

6168 (cc) There is no fee for services or the filing of documents not listed in this section or
6169 otherwise provided by law.

6170 (dd) Except as provided in this section, all fees collected under this section are paid to
6171 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk
6172 accepts the pleading for filing or performs the requested service.

6173 (ee) The filing fees under this section may not be charged to the state, its agencies, or
6174 political subdivisions filing or defending any action. In judgments awarded in favor of the state,
6175 its agencies, or political subdivisions, except the Office of Recovery Services, the court shall
6176 order the filing fees and collection costs to be paid by the judgment debtor. The sums collected
6177 under this Subsection (1)(ee) shall be applied to the fees after credit to the judgment, order,
6178 fine, tax, lien, or other penalty and costs permitted by law.

6179 (2) (a) (i) From March 17, 1994, until June 30, 1998, the state court administrator shall
6180 transfer all revenues representing the difference between the fees in effect after May 2, 1994,
6181 and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities
6182 Construction and Management Capital Projects Fund.

6183 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
6184 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the

6185 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
6186 initiate the development of a courts complex in Salt Lake City.

6187 (B) If the Legislature approves funding for construction of a courts complex in Salt
6188 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and
6189 Management shall use the revenue deposited in the Capital Projects Fund under this Subsection
6190 (2)(a)(ii) to construct a courts complex in Salt Lake City.

6191 (C) After the courts complex is completed and all bills connected with its construction
6192 have been paid, the Division of Facilities Construction and Management shall use any money
6193 remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal
6194 District Court building.

6195 (iii) The Division of Facilities Construction and Management may enter into
6196 agreements and make expenditures related to this project before the receipt of revenues
6197 provided for under this Subsection (2)(a)(iii).

6198 (iv) The Division of Facilities Construction and Management shall:

6199 (A) make those expenditures from unexpended and unencumbered building funds
6200 already appropriated to the Capital Projects Fund; and

6201 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
6202 under this Subsection (2).

6203 (b) After June 30, 1998, the state court administrator shall ensure that all revenues
6204 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
6205 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
6206 account.

6207 (c) The Division of Finance shall deposit all revenues received from the state court
6208 administrator into the restricted account created by this section.

6209 (d) (i) From May 1, 1995, until June 30, 1998, the state court administrator shall
6210 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
6211 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:

(a) nonmoving traffic violations;

(b) community service; and

(c) penalties assessed by the juvenile court as part of the nonjudicial adjustment of a case under Section [~~78A-6-602~~] 80-6-304.

(3) The security surcharge shall be collected after the surcharge under Section 51-9-401, but before any fine, and deposited with the state treasurer. A fine that would

6239 otherwise have been charged may not be reduced due to the imposition of the security
6240 surcharge.

6241 (4) The state treasurer shall deposit the collected security surcharge in the restricted
6242 account, Court Security Account, as provided in Section [78A-2-602](#).

6243 Section 97. Section **78A-2-702** is amended to read:

6244 **78A-2-702. Definitions.**

6245 As used in this part:

6246 (1) "Attorney guardian ad litem" means an attorney employed by the office.

6247 (2) "Director" means the director of the office.

6248 (3) "Guardian ad litem" means ~~[either]~~ an attorney guardian ad litem or a private
6249 attorney guardian ad litem.

6250 (4) "Office" means the Office of Guardian ad Litem, created in Section ~~[78A-6-901]~~
6251 [78A-2-802](#).

6252 (5) "Private attorney guardian ad litem" means an attorney designated by the office
6253 ~~[pursuant to]~~ in accordance with Section [78A-2-705](#) who is not an employee of the office.

6254 Section 98. Section **78A-5-102** is amended to read:

6255 **78A-5-102. Jurisdiction -- Appeals.**

6256 (1) As used in this section:

6257 (a) "Qualifying offense" means an offense described in Subsection ~~[78A-6-703.2]~~
6258 [80-6-502](#)(1)(b).

6259 (b) "Separate offense" means any offense that is not a qualifying offense.

6260 (c) "Single criminal episode" means the same as that term is defined in Section
6261 [76-1-401](#).

6262 (2) Except as otherwise provided by the Utah Constitution or by statute, the district
6263 court has original jurisdiction in all matters civil and criminal.

6264 (3) A district court judge may issue all extraordinary writs and other writs necessary to
6265 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

6293 jurisdiction over any separate offense:

6294 (i) committed by an individual who is 16 or 17 years old; and

6295 (ii) arising from a single criminal episode containing a qualifying offense for which the
6296 district court has original jurisdiction under Subsection (9)(b).

6297 (b) If an individual who is charged with a qualifying offense enters a plea to, or is
6298 found guilty of, a separate offense other than the qualifying offense, the district court shall have
6299 jurisdiction over the separate offense.

6300 (c) If an individual who is 16 or 17 years old is charged with a qualifying offense and
6301 the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal, the
6302 exclusive jurisdiction of the district court over any separate offense is terminated.

6303 (11) If a district court has jurisdiction in accordance with Subsection (6), (9)(a)(i), or
6304 (9)(a)(ii), the district court has jurisdiction over an offense listed in Subsection [78A-7-106\(2\)](#)
6305 even if the offense is committed by an individual who is 16 or 17 years old.

6306 (12) The district court has subject matter jurisdiction over an offense for which the
6307 juvenile court has original jurisdiction if the juvenile court transfers jurisdiction over the
6308 offense to the district court in accordance with Section [\[78A-6-703.5\]](#) [80-6-504](#).

6309 (13) The district court has subject matter jurisdiction over an action under Title 78B,
6310 Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the action to the
6311 district court.

6312 Section 99. Section **78A-7-106** is amended to read:

6313 **78A-7-106. Jurisdiction.**

6314 (1) Except as otherwise provided by Subsection [78A-5-102\(8\)](#), a justice court has
6315 original jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions
6316 committed within the justice court's territorial jurisdiction by an individual who is 18 years old
6317 or older.

6318 (2) Except for an offense for which the juvenile court or the district court has exclusive
6319 jurisdiction under Subsection [78A-5-102\(10\)](#) or [\[78A-6-103\(3\)\]](#) [Section 78A-6-103.5](#), a justice

6320 court has original jurisdiction over the following offenses committed within the justice court's
6321 territorial jurisdiction by an individual who is 16 or 17 years old:

6322 (a) class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver
6323 Licensing Act; and

6324 (b) class B and C misdemeanor and infraction violations of:

6325 (i) Title 23, Wildlife Resources Code of Utah;

6326 (ii) Title 41, Chapter 1a, Motor Vehicle Act;

6327 (iii) Title 41, Chapter 6a, Traffic Code, except Title 41, Chapter 6a, Part 5, Driving
6328 Under the Influence and Reckless Driving;

6329 (iv) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and
6330 Operators Act;

6331 (v) Title 41, Chapter 22, Off-Highway Vehicles;

6332 (vi) Title 73, Chapter 18, State Boating Act, except Section [73-18-12](#);

6333 (vii) Title 73, Chapter 18a, Boating - Litter and Pollution Control;

6334 (viii) Title 73, Chapter 18b, Water Safety; and

6335 (ix) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and
6336 Operators Act.

6337 (3) An offense is committed within the territorial jurisdiction of a justice court if:

6338 (a) conduct constituting an element of the offense or a result constituting an element of
6339 the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is
6340 itself unlawful;

6341 (b) either an individual committing an offense or a victim of an offense is located
6342 within the court's jurisdiction at the time the offense is committed;

6343 (c) either a cause of injury occurs within the court's jurisdiction or the injury occurs
6344 within the court's jurisdiction;

6345 (d) an individual commits any act constituting an element of an inchoate offense within
6346 the court's jurisdiction, including an agreement in a conspiracy;

- 6347 (e) an individual solicits, aids, or abets, or attempts to solicit, aid, or abet another
6348 individual in the planning or commission of an offense within the court's jurisdiction;
- 6349 (f) the investigation of the offense does not readily indicate in which court's jurisdiction
6350 the offense occurred, and:
- 6351 (i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft
6352 passing within the court's jurisdiction;
- 6353 (ii) (A) the offense is committed on or in any body of water bordering on or within this
6354 state if the territorial limits of the justice court are adjacent to the body of water; and
6355 (B) as used in Subsection (3)(f)(ii)(A), "body of water" includes any stream, river, lake,
6356 or reservoir, whether natural or man-made;
- 6357 (iii) an individual who commits theft exercises control over the affected property
6358 within the court's jurisdiction; or
- 6359 (iv) the offense is committed on or near the boundary of the court's jurisdiction;
- 6360 (g) the offense consists of an unlawful communication that was initiated or received
6361 within the court's jurisdiction; or
- 6362 (h) jurisdiction is otherwise specifically provided by law.
- 6363 (4) If in a criminal case the defendant is 16 or 17 years old, a justice court judge may
6364 transfer the case to the juvenile court for further proceedings if the justice court judge
6365 determines and the juvenile court concurs that the best interests of the defendant would be
6366 served by the continuing jurisdiction of the juvenile court.
- 6367 (5) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8,
6368 Small Claims Courts, if a defendant resides in or the debt arose within the territorial
6369 jurisdiction of the justice court.
- 6370 Section 100. Section **78B-3-406** is amended to read:
- 6371 **78B-3-406. Failure to obtain informed consent -- Proof required of patient --**
6372 **Defenses -- Consent to health care.**
- 6373 (1) (a) When a person submits to health care rendered by a health care provider, it is

presumed that actions taken by the health care provider are either expressly or impliedly authorized to be done.

(b) For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(i) that a provider-patient relationship existed between the patient and health care provider;

(ii) the health care provider rendered health care to the patient;

(iii) the patient suffered personal injuries arising out of the health care rendered;

(iv) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(v) the patient was not informed of the substantial and significant risk;

(vi) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision 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

6401 the matters to which he would be entitled to be informed;

6402 (d) the health care provider, after considering all of the attendant facts and
6403 circumstances, used reasonable discretion as to the manner and extent to which risks were
6404 disclosed, if the health care provider reasonably believed that additional disclosures could be
6405 expected to have a substantial and adverse effect on the patient's condition; or

6406 (e) the patient or the patient's representative executed a written consent which sets forth
6407 the nature and purpose of the intended health care and which contains a declaration that the
6408 patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired
6409 beneficial results of health care and which acknowledges that health care providers involved
6410 have explained the patient's condition and the proposed health care in a satisfactory manner and
6411 that all questions asked about the health care and its attendant risks have been answered in a
6412 manner satisfactory to the patient or the patient's representative.

6413 (4) The written consent shall be a defense to an action against a health care provider
6414 based upon failure to obtain informed consent unless the patient proves that the person giving
6415 the consent lacked capacity to consent or shows by clear and convincing evidence that the
6416 execution of the written consent was induced by the defendant's affirmative acts of fraudulent
6417 misrepresentation or fraudulent omission to state material facts.

6418 (5) This act may not be construed to prevent any person 18 years ~~[of age]~~ old or over
6419 from refusing to consent to health care for the patient's own person upon personal or religious
6420 grounds.

6421 (6) Except as provided in Section 76-7-304.5, the following persons are authorized and
6422 empowered to consent to any health care not prohibited by law:

6423 (a) any parent, whether an adult or a minor, for the parent's minor child;

6424 (b) any married person, for a spouse;

6425 (c) any person temporarily standing in loco parentis, whether formally serving or not,
6426 for the minor under that person's care and any guardian for the guardian's ward;

6427 (d) any person 18 years ~~[of age]~~ old or over for that person's parent who is unable by

6428 reason of age, physical or mental condition, to provide such consent;

6429 (e) any patient 18 years [~~of age~~] old or over;

6430 (f) any female regardless of age or marital status, when given in connection with her
6431 pregnancy or childbirth;

6432 (g) in the absence of a parent, any adult for the adult's minor brother or sister;

6433 (h) in the absence of a parent, any grandparent for the grandparent's minor grandchild;

6434 (i) an emancipated minor as provided in Section [~~78A-6-805~~] 80-7-105;

6435 (j) a minor who has contracted a lawful marriage; and

6436 (k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento
6437 Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years [~~of age~~] old or
6438 older.

6439 (7) A person who in good faith consents or authorizes health care treatment or
6440 procedures for another as provided by this act may not be subject to civil liability.

6441 (8) Notwithstanding any other provision of this section, if a health care provider fails to
6442 comply with the requirement in Section 58-1-509, the health care provider is presumed to have
6443 lacked informed consent with respect to the patient examination, as defined in Section
6444 58-1-509.

6445 Section 101. Section **78B-6-112** is amended to read:

6446 **78B-6-112. District court jurisdiction over termination of parental rights**
6447 **proceedings.**

6448 (1) A district court has jurisdiction to terminate parental rights in a child if the party
6449 that filed the petition is seeking to terminate parental rights in the child for the purpose of
6450 facilitating the adoption of the child.

6451 (2) A petition to terminate parental rights under this section may be:

6452 (a) joined with a proceeding on an adoption petition; or

6453 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

6454 (3) A court may enter a final order terminating parental rights before a final decree of

6455 adoption is entered.

6456 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
6457 proceedings to terminate parental rights as described in Section 78A-6-103.

6458 (b) This section does not grant jurisdiction to a district court to terminate parental
6459 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
6460 neglect, dependency, or termination of parental rights proceeding.

6461 (5) The district court may terminate an individual's parental rights in a child if:

6462 (a) the individual executes a voluntary consent to adoption, or relinquishment for
6463 adoption, of the child, in accordance with:

6464 (i) the requirements of this chapter; or

6465 (ii) the laws of another state or country, if the consent is valid and irrevocable;

6466 (b) the individual is an unmarried biological father who is not entitled to consent to
6467 adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;

6468 (c) the individual:

6469 (i) received notice of the adoption proceeding relating to the child under Section
6470 78B-6-110; and

6471 (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days
6472 after the day on which the individual was served with notice of the adoption proceeding;

6473 (d) the court finds, under Section 78B-15-607, that the individual is not a parent of the
6474 child; or

6475 (e) the individual's parental rights are terminated on grounds described in [~~Title 78A,
6476 Chapter 6, Part 5, Termination of Parental Rights Act~~] Title 80, Chapter 4, Termination and
6477 Restoration of Parental Rights, and termination is in the best interests of the child.

6478 (6) The court shall appoint an indigent defense service provider in accordance with
6479 Title 78B, Chapter 22, Indigent Defense Act, to represent an individual who faces any action
6480 initiated by a private party under [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights
6481 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

- 6509 (iii) are an appropriate placement for the child;
- 6510 (b) the child is placed with a relative of the child;
- 6511 (c) the child is placed with an individual who has already developed a substantial
- 6512 relationship with the child;
- 6513 (d) the child is placed with an individual who:
- 6514 (i) is selected by a parent or former parent of the child, if the parent or former parent
- 6515 consented to the adoption of the child; and
- 6516 (ii) the parent or former parent described in Subsection (4)(d)(i):
- 6517 (A) knew the individual with whom the child is placed before the parent consented to
- 6518 the adoption; or
- 6519 (B) became aware of the individual with whom the child is placed through a source
- 6520 other than the division or the child-placing agency that assists with the adoption of the child; or
- 6521 (e) it is in the best interests of the child to place the child with a single adult.
- 6522 (5) Except as provided in Subsection (6), an adult may not adopt a child if, before
- 6523 adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest
- 6524 to a felony or attempted felony involving conduct that constitutes any of the following:
- 6525 (a) child abuse, as described in Section 76-5-109;
- 6526 (b) child abuse homicide, as described in Section 76-5-208;
- 6527 (c) child kidnapping, as described in Section 76-5-301.1;
- 6528 (d) human trafficking of a child, as described in Section 76-5-308.5;
- 6529 (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- 6530 (f) rape of a child, as described in Section 76-5-402.1;
- 6531 (g) object rape of a child, as described in Section 76-5-402.3;
- 6532 (h) sodomy on a child, as described in Section 76-5-403.1;
- 6533 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section
- 6534 76-5-404.1;
- 6535 (j) sexual exploitation of a minor, as described in Section 76-5b-201; or

(k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (5).

(6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense listed in Subsection (5) that prevents a court from considering an individual for adoption of a child except as provided in this Subsection (6).

(b) An individual described in Subsection (5) may only be considered for adoption of a 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;

6563 (v) the individual can provide evidence of all of the following:
6564 (A) the relationship with the child is of long duration;
6565 (B) that an emotional bond exists with the child; and
6566 (C) that adoption by the individual who has committed the disqualifying offense
6567 ensures the best interests of the child are met; and
6568 (vi) the adoption is by:
6569 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
6570 (B) subject to Subsection (6)(d), a relative of the child as defined in Section
6571 ~~[78A-6-307]~~ [80-3-102](#) and there is not another relative without a disqualifying offense filing an
6572 adoption petition.
6573 (c) The individual with the disqualifying offense bears the burden of proof regarding
6574 why adoption with that individual is in the best interest of the child over another responsible
6575 relative or equally situated individual who does not have a disqualifying offense.
6576 (d) If there is an alternative responsible relative who does not have a disqualifying
6577 offense filing an adoption petition, the following applies:
6578 (i) preference for adoption shall be given to a relative who does not have a
6579 disqualifying offense; and
6580 (ii) before the court may grant adoption to the individual who has the disqualifying
6581 offense over another responsible, willing, and able relative:
6582 (A) an impartial custody evaluation shall be completed; and
6583 (B) a guardian ad litem shall be assigned.
6584 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a
6585 final decision on adoption has not been made and to a case filed on or after March 25, 2017.
6586 Section 103. Section **78B-6-121** is amended to read:
6587 **78B-6-121. Consent of unmarried biological father.**
6588 (1) Except as provided in Subsections (2)(a) and [78B-6-122\(1\)](#), and subject to
6589 Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents

6590 more than six months after birth, consent of an unmarried biological father is not required
6591 unless the unmarried biological father:

6592 (a) (i) developed a substantial relationship with the child by:

6593 (A) visiting the child monthly, unless the unmarried biological father was physically or
6594 financially unable to visit the child on a monthly basis; or

6595 (B) engaging in regular communication with the child or with the person or authorized
6596 agency that has lawful custody of the child;

6597 (ii) took some measure of responsibility for the child and the child's future; and

6598 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial
6599 support of the child of a fair and reasonable sum in accordance with the father's ability; or

6600 (b) (i) openly lived with the child:

6601 (A) (I) for a period of at least six months during the one-year period immediately
6602 preceding the day on which the child is placed with prospective adoptive parents; or

6603 (II) if the child is less than one year old, for a period of at least six months during the
6604 period of time beginning on the day on which the child is born and ending on the day on which
6605 the child is placed with prospective adoptive parents; and

6606 (B) immediately preceding placement of the child with prospective adoptive parents;
6607 and

6608 (ii) openly held himself out to be the father of the child during the six-month period
6609 described in Subsection (1)(b)(i)(A).

6610 (2) (a) If an unmarried biological father was prevented from complying with a
6611 requirement of Subsection (1) by the person or authorized agency having lawful custody of the
6612 child, the unmarried biological father is not required to comply with that requirement.

6613 (b) The subjective intent of an unmarried biological father, whether expressed or
6614 otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been
6615 met, shall not preclude a determination that the father failed to meet the requirements of
6616 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:

(i) he did not have actual knowledge of the pregnancy;

(ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or

(iii) the mother refused to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).

(4) (a) The notice described in Subsection (3)(c) is considered filed when received by the state registrar of vital statistics.

(b) If the unmarried biological father fully complies with the requirements of

Subsection (3), and an adoption of the child is not completed, the unmarried biological father shall, without any order of the court, be legally obligated for a reasonable amount of child support, pregnancy expenses, and child birth expenses, in accordance with his financial ability.

(5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3).

(6) Consent of an unmarried biological father is not required under this section if:

(a) the court determines, in accordance with the requirements and procedures of [Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act,] Title 80, Chapter 4, Termination and Restoration of Parental Rights, that the unmarried biological father's rights should be terminated, based on the petition of any interested party;

(b) (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and

(ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306; or

(c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.

(7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a 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~~]

6698 [80-3-302](#), or [80-3-303](#); or

6699 (ii) a relative, under Section [62A-4a-209](#), [~~78A-6-307~~, or ~~78A-6-307.5~~] [80-3-302](#), or
6700 [80-3-303](#), pending completion of the background check described in Subsection (1).

6701 Section 105. Section **78B-6-133** is amended to read:

6702 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

6703 (1) If a person whose consent for an adoption is required pursuant to Subsection
6704 [78B-6-120](#)(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether
6705 proper grounds exist for the termination of that person's rights pursuant to the provisions of this
6706 chapter or [~~Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act~~] Title 80, Chapter
6707 4, Termination and Restoration of Parental Rights.

6708 (2) (a) If there are proper grounds to terminate the person's parental rights, the court
6709 shall order that the person's rights be terminated.

6710 (b) If there are not proper grounds to terminate the person's parental rights, the court
6711 shall:

6712 (i) dismiss the adoption petition;

6713 (ii) conduct an evidentiary hearing to determine who should have custody of the child;

6714 and

6715 (iii) award custody of the child in accordance with the child's best interest.

6716 (c) Termination of a person's parental rights does not terminate the right of a relative of
6717 the parent to seek adoption of the child.

6718 (3) Evidence considered at the custody hearing may include:

6719 (a) evidence of psychological or emotional bonds that the child has formed with a third
6720 person, including the prospective adoptive parent; and

6721 (b) any detriment that a change in custody may cause the child.

6722 (4) If the court dismisses the adoption petition, the fact that a person relinquished a
6723 child for adoption or consented to the adoption may not be considered as evidence in a custody
6724 proceeding described in this section, or in any subsequent custody proceeding, that it is not in

6725 the child's best interest for custody to be awarded to such person or that:

6726 (a) the person is unfit or incompetent to be a parent;

6727 (b) the person has neglected or abandoned the child;

6728 (c) the person is not interested in having custody of the child; or

6729 (d) the person has forfeited the person's parental presumption.

6730 (5) Any custody order entered pursuant to this section may also:

6731 (a) include provisions for:

6732 (i) parent-time; or

6733 (ii) visitation by an interested third party; and

6734 (b) provide for the financial support of the child.

6735 (6) (a) If a person or entity whose consent is required for an adoption under Subsection

6736 **78B-6-120**(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing

6737 and award custody as set forth in Subsection (2).

6738 (b) The court may also finalize the adoption if doing so is in the best interest of the

6739 child.

6740 (7) (a) A person may not contest an adoption after the final decree of adoption is

6741 entered, if that person:

6742 (i) was a party to the adoption proceeding;

6743 (ii) was served with notice of the adoption proceeding; or

6744 (iii) executed a consent to the adoption or relinquishment for adoption.

6745 (b) No person may contest an adoption after one year from the day on which the final

6746 decree of adoption is entered.

6747 (c) The limitations on contesting an adoption action, described in this Subsection (7),

6748 apply to all attempts to contest an adoption:

6749 (i) regardless of whether the adoption is contested directly or collaterally; and

6750 (ii) regardless of the basis for contesting the adoption, including claims of fraud,

6751 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of

6752 jurisdiction.

6753 (d) The limitations on contesting an adoption action, described in this Subsection (7),
6754 do not prohibit a timely appeal of:

6755 (i) a final decree of adoption; or

6756 (ii) a decision in an action challenging an adoption, if the action was brought within the
6757 time limitations described in Subsections (7)(a) and (b).

6758 (8) A court that has jurisdiction over a child for whom more than one petition for
6759 adoption is filed shall grant a hearing only under the following circumstances:

6760 (a) to a petitioner:

6761 (i) with whom the child is placed;

6762 (ii) who has custody or guardianship of the child;

6763 (iii) who has filed a written statement with the court within 120 days after the day on
6764 which the shelter hearing is held:

6765 (A) requesting immediate placement of the child with the petitioner; and

6766 (B) expressing the petitioner's intention of adopting the child;

6767 (iv) who is a relative with whom the child has a significant and substantial relationship
6768 and who was unaware, within the first 120 days after the day on which the shelter hearing is
6769 held, of the child's removal from the child's parent; or

6770 (v) who is a relative with whom the child has a significant and substantial relationship
6771 and, in a case where the child is not placed with a relative or is placed with a relative that is
6772 unable or unwilling to adopt the child:

6773 (A) was actively involved in the child's child welfare case with the division or the
6774 juvenile court while the child's parent engaged in reunification services; and

6775 (B) filed a written statement with the court that includes the information described in
6776 Subsections (8)(a)(iii)(A) and (B) within 30 days after the day on which the court terminated
6777 reunification services; or

6778 (b) if the child:

(i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; or

(ii) is placed with, or is in the custody or guardianship of, an individual who previously informed the division or the court that the individual is unwilling or unable to adopt the child.

(9) (a) If the court grants a hearing on more than one petition for adoption, there is a rebuttable presumption that it is in the best interest of a child to be placed for adoption with a petitioner:

(i) who has fulfilled the requirements described in Title 78B, Chapter 6, Part 1, Utah Adoption Act; and

(ii) (A) with whom the child has continuously resided for six months;

(B) who has filed a written statement with the court within 120 days after the day on 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

6806 duties with regard to that adopted child at the earlier of:

6807 (a) the time the pre-existing parent's parental rights are terminated; or

6808 (b) except as provided in Subsection (2), and subject to Subsections (3) and (4), the
6809 time the final decree of adoption is entered.

6810 (2) The parental rights and duties of a pre-existing parent who, at the time the child is
6811 adopted, is lawfully married to the person adopting the child are not released under Subsection
6812 (1)(b).

6813 (3) The parental rights and duties of a pre-existing parent who, at the time the child is
6814 adopted, is not lawfully married to the person adopting the child are released under Subsection
6815 (1)(b).

6816 (4) (a) Notwithstanding the provisions of this section, the court may allow a
6817 prospective adoptive parent to adopt a child without releasing the pre-existing parent from
6818 parental rights and duties under Subsection (1)(b), if:

6819 (i) the pre-existing parent and the prospective adoptive parent were lawfully married at
6820 some time during the child's life;

6821 (ii) the pre-existing parent consents to the prospective adoptive parent's adoption of the
6822 child, or is unable to consent because the pre-existing parent is deceased or incapacitated;

6823 (iii) notice of the adoption proceeding is provided in accordance with Section
6824 [78B-6-110](#);

6825 (iv) consent to the adoption is provided in accordance with Section [78B-6-120](#); and

6826 (v) the court finds that it is in the best interest of the child to grant the adoption without
6827 releasing the pre-existing parent from parental rights and duties.

6828 (b) This Subsection (4) does not permit a child to have more than two natural parents,
6829 as that term is defined in Section [~~78A-6-105~~] [80-1-102](#).

6830 (5) This section may not be construed as terminating any child support obligation of a
6831 parent incurred before the adoption.

6832 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:
 - (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 documents by an individual who has appealed the denial of that individual's motion to intervene;
- (c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;

6860 (d) as provided under Section 78B-6-144;

6861 (e) when the adoption document becomes public on the one hundredth anniversary of

6862 the date the final decree of adoption was entered;

6863 (f) when the birth certificate becomes public on the one hundredth anniversary of the

6864 date of birth;

6865 (g) to a mature adoptee or a parent who adopted the mature adoptee, without a court

6866 order, unless the final decree of adoption is entered by the juvenile court under Subsection

6867 78B-6-115(3)(b); or

6868 (h) to an adult adoptee, to the extent permitted under Subsection (4).

6869 (4) (a) For an adoption finalized on or after January 1, 2016, a birth parent may elect,

6870 on a written consent form provided by the office, to permit identifying information about the

6871 birth parent to be made available for inspection by an adult adoptee.

6872 (b) A birth parent may, at any time, file a written document with the office to:

6873 (i) change the election described in Subsection (4)(a); or

6874 (ii) elect to make other information about the birth parent, including an updated

6875 medical history, available for inspection by an adult adoptee.

6876 (c) A birth parent may not access any identifying information or an adoption document

6877 under this Subsection (4).

6878 (5) (a) An individual who files a motion to intervene in an adoption proceeding:

6879 (i) is not a party to the adoption proceeding, unless the motion to intervene is granted;

6880 and

6881 (ii) may not be granted access to the documents described in Subsection (2), unless the

6882 motion to intervene is granted.

6883 (b) An order described in Subsection (3)(b) shall:

6884 (i) prohibit the individual described in Subsection (3)(b) from inspecting a document

6885 described in Subsection (2) that contains identifying information of the adoptive or prospective

6886 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 documents by an individual who has appealed the denial of that individual's motion to intervene;

(c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;

(d) as provided under Section 78B-6-144;

(e) when the adoption document becomes public on the one hundredth anniversary of the date the final decree of adoption was entered;

(f) when the birth certificate becomes public on the one hundredth anniversary of the date of birth;

(g) to a mature adoptee or a parent who adopted the mature adoptee, without a court order, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b); or

(h) to an adult adoptee, to the extent permitted under Subsection (4).

(4) (a) An adult adoptee that was born in the state may access an adoption document associated with the adult adoptee's adoption without a court order:

(i) to the extent that a birth parent consents under Subsection (4)(b); or

(ii) if the birth parents listed on the original birth certificate are deceased.

(b) A birth parent may:

(i) provide consent to allow the access described in Subsection (4)(a) by electing, electronically or on a written form provided by the office, allowing the birth parent to elect to:

(A) allow the office to provide the adult adoptee with the contact information of the birth parent that the birth parent indicates;

(B) allow the office to provide the adult adoptee with the contact information of an intermediary that the birth parent indicates;

(C) prohibit the office from providing any contact information to the adult adoptee;

(D) allow the office to provide the adult adoptee with a noncertified copy of the

6941 original birth certificate; and

6942 (ii) at any time, file, electronically or on a written document with the office, to:

6943 (A) change the election described in Subsection (4)(b); or

6944 (B) elect to make other information about the birth parent, including an updated
6945 medical history, available for inspection by an adult adoptee.

6946 (c) A birth parent may not access any identifying information or an adoption document
6947 under this Subsection (4).

6948 (d) If two birth parents are listed on the original birth certificate and only one birth
6949 parent consents under Subsection (4)(b) or is deceased, the office may redact the name of the
6950 other birth parent.

6951 (5) (a) An individual who files a motion to intervene in an adoption proceeding:

6952 (i) is not a party to the adoption proceeding, unless the motion to intervene is granted;

6953 and

6954 (ii) may not be granted access to the documents described in Subsection (2), unless the
6955 motion to intervene is granted.

6956 (b) An order described in Subsection (3)(b) shall:

6957 (i) prohibit the individual described in Subsection (3)(b) from inspecting a document
6958 described in Subsection (2) that contains identifying information of the adoptive or prospective
6959 adoptive parent; and

6960 (ii) permit the individual described in Subsection (5)(b)(i) to review a copy of a
6961 document described in Subsection (5)(b)(i) after the identifying information described in
6962 Subsection (5)(b)(i) is redacted from the document.

6963 Section 109. Section **78B-6-203** is amended to read:

6964 **78B-6-203. Purpose and findings.**

6965 (1) The purpose of this part is to offer an alternative or supplement to the formal
6966 processes associated with a court trial and to promote the efficient and effective operation of
6967 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

6995 agreement or who may be able to contribute to the agreement. A party may request notice be
6996 provided to a person who is not a party.

6997 (3) (a) Except as provided in Subsection (3)(b), any settlement agreement between the
6998 parties as a result of mediation may be executed in writing, filed with the clerk of the court, and
6999 enforceable as a judgment of the court. If the parties stipulate to dismiss the action, any
7000 agreement to dismiss shall not be filed with the court.

7001 (b) With regard to mediation affecting any petition filed under Section [~~78A-6-304 or~~
7002 ~~78A-6-505~~] 80-3-201 or 80-4-201:

7003 (i) all settlement agreements and stipulations of the parties shall be filed with the court;

7004 (ii) all timelines, requirements, and procedures described in [~~Title 78A, Chapter 6, Part~~
7005 ~~3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights~~
7006 ~~Act,~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4,
7007 Termination and Restoration of Parental Rights, and in Title 62A, Chapter 4a, Child and
7008 Family Services, shall be complied with; and

7009 (iii) the parties to the mediation may not agree to a result that could not have been
7010 ordered by the court in accordance with the procedures and requirements of [~~Title 78A, Chapter~~
7011 ~~6, Part 3, Abuse, Neglect, and Dependency Proceedings and Part 5, Termination of Parental~~
7012 ~~Rights Act,~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4,
7013 Termination and Restoration of Parental Rights, and Title 62A, Chapter 4a, Child and Family
7014 Services.

7015 Section 111. Section **78B-7-102** is amended to read:

7016 **78B-7-102. Definitions.**

7017 As used in this chapter:

7018 (1) "Abuse" means, except as provided in Section 78B-7-201, intentionally or
7019 knowingly causing or attempting to cause another individual physical harm or intentionally or
7020 knowingly placing another individual in reasonable fear of imminent physical harm.

7021 (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;

(vi) resides or has resided in the same residence as the other party; or

(vii) is or was in a consensual sexual relationship with the other party.

(b) "Cohabitant" does not include:

(i) the relationship of natural parent, adoptive parent, or step-parent to a minor; or

(ii) the relationship between natural, adoptive, step, or foster siblings who are under 18 years ~~[of age]~~ old.

(6) "Consanguinity" means the same as that term is defined in Section 76-1-601.

(7) "Criminal protective order" means an order issued under Part 8, Criminal Protective Orders.

(8) "Criminal stalking injunction" means a stalking injunction issued under Part 9,

7049 Criminal Stalking Injunctions.

7050 (9) "Court clerk" means a district court clerk.

7051 (10) (a) "Dating partner" means an individual who:

7052 (i) (A) is an emancipated individual under Section 15-2-1 or ~~[Title 78A, Chapter 6,~~

7053 ~~Part 8, Emancipation]~~ Title 80, Chapter 7, Emancipation; or

7054 (B) is 18 years ~~[of age]~~ old or older; and

7055 (ii) is, or has been, in a dating relationship with the other party.

7056 (b) "Dating partner" does not include an intimate partner.

7057 (11) (a) "Dating relationship" means a social relationship of a romantic or intimate

7058 nature, or a relationship which has romance or intimacy as a goal by one or both parties,

7059 regardless of whether the relationship involves sexual intimacy.

7060 (b) "Dating relationship" does not include casual fraternization in a business,

7061 educational, or social context.

7062 (c) In determining, based on a totality of the circumstances, whether a dating

7063 relationship exists:

7064 (i) all relevant factors shall be considered, including:

7065 (A) whether the parties developed interpersonal bonding above a mere casual

7066 fraternization;

7067 (B) the length of the parties' relationship;

7068 (C) the nature and the frequency of the parties' interactions, including communications

7069 indicating that the parties intended to begin a dating relationship;

7070 (D) the ongoing expectations of the parties, individual or jointly, with respect to the

7071 relationship;

7072 (E) whether, by statement or conduct, the parties demonstrated an affirmation of their

7073 relationship to others; and

7074 (F) whether other reasons exist that support or detract from a finding that a dating

7075 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

7103 parties, unless each party:

7104 (a) files an independent petition against the other for a protective order, and both

7105 petitions are served;

7106 (b) makes a showing at a due process protective order hearing of abuse or domestic

7107 violence committed by the other party; and

7108 (c) demonstrates the abuse or domestic violence did not occur in self-defense.

7109 (2) If the court issues mutual protective orders, the court shall include specific findings

7110 of all elements of Subsection (1) in the court order justifying the entry of the court order.

7111 (3) A court may not grant an order for protection to a civil petitioner who is the

7112 respondent or defendant subject to a protective order, child protective order, or ex parte child

7113 protective order:

7114 (a) issued under:

7115 (i) a foreign protection order enforceable under Chapter 7, Part 3, Uniform Interstate

7116 Enforcement of Domestic Violence Protection Orders Act;

7117 (ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

7118 (iii) ~~[Title 78A, Chapter 6, Juvenile Court Act]~~ Title 80, Utah Juvenile Code; or

7119 (iv) Chapter 7, Part 1, Cohabitant Abuse Act; and

7120 (b) unless the court determines that the requirements of Subsection (1) are met, and:

7121 (i) the same court issued the order for protection against the respondent; or

7122 (ii) if the matter is before a subsequent court, the subsequent court:

7123 (A) determines it would be impractical for the original court to consider the matter; or

7124 (B) confers with the court that issued the order for protection.

7125 Section 113. Section **78B-7-201** is amended to read:

7126 **78B-7-201. Definitions.**

7127 As used in this chapter:

7128 (1) "Abuse" means:

7129 (a) physical abuse;

- 7130 (b) sexual abuse;
- 7131 (c) any sexual offense described in Title 76, Chapter 5b, Part 2, Sexual Exploitation; or
- 7132 (d) human trafficking of a child for sexual exploitation under Section [76-5-308.5](#).
- 7133 (2) "Child protective order" means an order issued under this part after a hearing on the
- 7134 petition, of which the petitioner and respondent have been given notice.
- 7135 (3) "Court" means the district court or juvenile court.
- 7136 (4) "Ex parte child protective order" means an order issued without notice to the
- 7137 respondent under this part.
- 7138 (5) "Protective order" means:
- 7139 (a) a child protective order; or
- 7140 (b) an ex parte child protective order.
- 7141 (6) All other terms have the same meaning as defined in Section [~~78A-6-105~~]
- 7142 [80-1-102](#).
- 7143 Section 114. Section **78B-7-202** is amended to read:
- 7144 **78B-7-202. Abuse or danger of abuse -- Child protective orders -- Ex parte child**
- 7145 **protective orders -- Guardian ad litem -- Referral to division.**
- 7146 (1) (a) Any interested person may file a petition for a protective order:
- 7147 (i) on behalf of a child who is being abused or is in imminent danger of being abused
- 7148 by any individual; or
- 7149 (ii) on behalf of a child who has been abused by an individual who is not the child's
- 7150 parent, stepparent, guardian, or custodian.
- 7151 (b) Before filing a petition under Subsection (1)(a), the interested person shall make a
- 7152 referral to the division.
- 7153 (2) Upon the filing of a petition described in Subsection (1), the clerk of the court shall:
- 7154 (a) review the records of the juvenile court, the district court, and the management
- 7155 information system of the division to find any petitions, orders, or investigations related to the
- 7156 child or the parties to the case;

7157 (b) request the records of any law enforcement agency identified by the petitioner as
7158 having investigated abuse of the child; and

7159 (c) identify and obtain any other background information that may be of assistance to
7160 the court.

7161 (3) If it appears from a petition for a protective order filed under Subsection (1)(a)(i)
7162 that the child is being abused or is in imminent danger of being abused, or it appears from a
7163 petition for a protective order filed under Subsection (1)(a)(ii) that the child has been abused,
7164 the court may:

7165 (a) without notice, immediately issue an ex parte child protective order against the
7166 respondent if necessary to protect the child; or

7167 (b) upon notice to the respondent, issue a child protective order after a hearing in
7168 accordance with Subsection [78B-7-203](#)(5).

7169 (4) The court may appoint an attorney guardian ad litem under Sections [78A-2-703](#) and
7170 [\[78A-6-902\]](#) [78A-2-803](#).

7171 (5) This section does not prohibit a protective order from being issued against a
7172 respondent who is a child.

7173 Section 115. Section **78B-7-203** is amended to read:

7174 **78B-7-203. Hearings.**

7175 (1) If an ex parte child protective order is granted, the court shall schedule a hearing to
7176 be held within 20 days after the day on which the court makes the ex parte determination. If an
7177 ex parte child protective order is denied, the court, upon the request of the petitioner made
7178 within five days after the day on which the court makes the ex parte determination, shall
7179 schedule a hearing to be held within 20 days after the day on which the petitioner makes the
7180 request.

7181 (2) The petition, ex parte child protective order, and notice of hearing shall be served
7182 on the respondent, the child's parent or guardian, and, if appointed, the guardian ad litem. The
7183 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

7211 frequented by the child;

7212 (d) upon finding that the respondent's use or possession of a weapon may pose a
7213 serious threat of harm to the child, prohibit the respondent from purchasing, using, or
7214 possessing a firearm or other specified weapon; and

7215 (e) determine ownership and possession of personal property and direct the appropriate
7216 law enforcement officer to attend and supervise the petitioner's or respondent's removal of
7217 personal property.

7218 (2) A child protective order or an ex parte child protective order may contain the
7219 following provisions the violation of which is contempt of court:

7220 (a) determine temporary custody of the child who is the subject of the petition;

7221 (b) determine parent-time with the child who is the subject of the petition, including
7222 denial of parent-time if necessary to protect the safety of the child, and require supervision of
7223 parent-time by a third party;

7224 (c) determine support in accordance with Title 78B, Chapter 12, Utah Child Support
7225 Act; and

7226 (d) order any further relief the court considers necessary to provide for the safety and
7227 welfare of the child.

7228 (3) (a) If the child who is the subject of the child protective order attends the same
7229 school or place of worship as the respondent, or is employed at the same place of employment
7230 as the respondent, the court:

7231 (i) may not enter an order under Subsection (1)(c) that excludes the respondent from
7232 the respondent's school, place of worship, or place of employment; and

7233 (ii) may enter an order governing the respondent's conduct at the respondent's school,
7234 place of worship, or place of employment.

7235 (b) A violation of an order under Subsection (3)(a) is contempt of court.

7236 (4) (a) A respondent may petition the court to modify or vacate a child protective order
7237 after notice and a hearing.

(b) At the hearing described in Subsection (4)(a):

(i) the respondent shall have the burden of proving by clear and convincing evidence that modification or vacation of the child protective order is in the best interest of the child; and

(ii) the court shall consider:

(A) the nature and duration of the abuse;

(B) the pain and trauma inflicted on the child as a result of the abuse;

(C) if the respondent is a parent of the child, any reunification services provided in accordance with [~~Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings~~] Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings; and

(D) any other evidence the court finds relevant to the determination of the child's best interests, including recommendations by the other parent or a guardian of the child, or a mental health professional.

(c) The child is not required to attend the hearing described in Subsection (4)(a).

Section 117. Section **78B-7-409** is amended to read:

78B-7-409. Mutual dating violence protective orders.

(1) A court may not grant a mutual order or mutual dating violence protective orders to opposing parties, unless each party:

(a) files an independent petition against the other for a dating violence protective order, and both petitions are served;

(b) makes a showing at a due process dating violence protective order hearing of abuse or dating violence committed by the other party; and

(c) demonstrates the abuse or dating violence did not occur in self-defense.

(2) If the court issues mutual dating violence 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) Except as provided in Subsection (3)(b), a court may not grant a protective order to a civil petitioner who is the respondent or defendant subject to:

7265 (i) a civil protective order that is issued under:
7266 (A) this part;
7267 (B) Part 2, Child Protective Orders;
7268 (C) Part 6, Cohabitant Abuse Protective Orders;
7269 (D) Part 8, Criminal Protective Orders; or
7270 (E) [~~Title 78A, Chapter 6, Juvenile Court Act~~] Title 80, Utah Juvenile Code;
7271 (ii) an ex parte civil protective order issued under Part 2, Child Protective Orders; or
7272 (iii) a foreign protection order enforceable under Part 3, Uniform Interstate
7273 Enforcement of Domestic Violence Protection Orders Act.
7274 (b) The court may issue a protective order to a civil petitioner described in Subsection
7275 (3)(a) if:
7276 (i) the court determines that the requirements of Subsection (1) are met; and
7277 (ii) (A) the same court issued the protective order against the respondent; or
7278 (B) the subsequent court determines it would be impractical for the original court to
7279 consider the matter or confers with the court that issued the protective order described in
7280 Subsection (3)(a)(i) or (ii).
7281 Section 118. Section **78B-7-603** is amended to read:
7282 **78B-7-603. Cohabitant abuse protective orders -- Ex parte cohabitant abuse**
7283 **protective orders -- Modification of orders -- Service of process -- Duties of the court.**
7284 (1) If it appears from a petition for a protective order or a petition to modify a
7285 protective order that domestic violence or abuse has occurred, that there is a substantial
7286 likelihood domestic violence or abuse will occur, or that a modification of a protective order is
7287 required, a court may:
7288 (a) without notice, immediately issue an ex parte cohabitant abuse protective order or
7289 modify a protective order ex parte as the court considers necessary to protect the petitioner and
7290 all parties named to be protected in the petition; or
7291 (b) upon notice, issue a protective order or modify an order after a hearing, regardless

7292 of whether the respondent appears.

7293 (2) A court may grant the following relief without notice in a protective order or a
7294 modification issued ex parte:

7295 (a) enjoin the respondent from threatening to commit domestic violence or abuse,
7296 committing domestic violence or abuse, or harassing the petitioner or any designated family or
7297 household member;

7298 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating
7299 with the petitioner or any designated family or household member, directly or indirectly, with
7300 the exception of any parent-time provisions in the ex parte order;

7301 (c) subject to Subsection (2)(e), prohibit the respondent from being within a specified
7302 distance of the petitioner;

7303 (d) subject to Subsection (2)(e), order that the respondent is excluded from and is to
7304 stay away from the following places and their premises:

7305 (i) the petitioner's residence or any designated family or household member's residence;

7306 (ii) the petitioner's school or any designated family or household member's school;

7307 (iii) the petitioner's or any designated family or household member's place of
7308 employment;

7309 (iv) the petitioner's place of worship or any designated family or household member's
7310 place of worship; or

7311 (v) any specified place frequented by the petitioner or any designated family or
7312 household member;

7313 (e) if the petitioner or designated family or household member attends the same school
7314 as the respondent, is employed at the same place of employment as the respondent, or attends
7315 the same place of worship, the court:

7316 (i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent
7317 from the respondent's school, place of employment, or place of worship; and

7318 (ii) may enter an order governing the respondent's conduct at the respondent's school,

7319 place of employment, or place of worship;

7320 (f) upon finding that the respondent's use or possession of a weapon may pose a serious
7321 threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a
7322 firearm or other weapon specified by the court;

7323 (g) order possession and use of an automobile and other essential personal effects, and
7324 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
7325 the parties to ensure that the petitioner is safely restored to possession of the residence,
7326 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
7327 removal of personal belongings;

7328 (h) order the respondent to maintain an existing wireless telephone contract or account;

7329 (i) grant to the petitioner or someone other than the respondent temporary custody of a
7330 minor child of the parties;

7331 (j) order the appointment of an attorney guardian ad litem under Sections [78A-2-703](#)
7332 and ~~[78A-6-902]~~ [78A-2-803](#);

7333 (k) order any further relief that the court considers necessary to provide for the safety
7334 and welfare of the petitioner and any designated family or household member; and

7335 (l) if the petition requests child support or spousal support, at the hearing on the
7336 petition order both parties to provide verification of current income, including year-to-date pay
7337 stubs or employer statements of year-to-date or other period of earnings, as specified by the
7338 court, and complete copies of tax returns from at least the most recent year.

7339 (3) A court may grant the following relief in a cohabitant abuse protective order or a
7340 modification of an order after notice and hearing, regardless of whether the respondent appears:

7341 (a) grant the relief described in Subsection (2); and

7342 (b) specify arrangements for parent-time of any minor child by the respondent and
7343 require supervision of that parent-time by a third party or deny parent-time if necessary to
7344 protect the safety of the petitioner or child.

7345 (4) In addition to the relief granted under Subsection (3), the court may order the

7346 transfer of a wireless telephone number in accordance with Section 78B-7-117.

7347 (5) Following the cohabitant abuse protective order hearing, the court shall:

7348 (a) as soon as possible, deliver the order to the county sheriff for service of process;

7349 (b) make reasonable efforts to ensure that the cohabitant abuse protective order is

7350 understood by the petitioner, and the respondent, if present;

7351 (c) transmit electronically, by the end of the next business day after the order is issued,

7352 a copy of the cohabitant abuse protective order to the local law enforcement agency or agencies

7353 designated by the petitioner;

7354 (d) transmit a copy of the order to the statewide domestic violence network described

7355 in Section 78B-7-113; and

7356 (e) if the individual is a respondent or defendant subject to a court order that meets the

7357 qualifications outlined in 18 U.S.C. Sec. 922(g)(8), transmit within 48 hours, excluding

7358 Saturdays, Sundays, and legal holidays, a record of the order to the Bureau of Criminal

7359 Identification that includes:

7360 (i) an agency record identifier;

7361 (ii) the individual's name, sex, race, and date of birth;

7362 (iii) the issue date, conditions, and expiration date for the protective order; and

7363 (iv) if available, the individual's social security number, government issued driver

7364 license or identification number, alien registration number, government passport number, state

7365 identification number, or FBI number.

7366 (6) Each protective order shall include two separate portions, one for provisions, the

7367 violation of which are criminal offenses, and one for provisions, the violation of which are civil

7368 violations, as follows:

7369 (a) criminal offenses are those under Subsections (2)(a) through (g), and under

7370 Subsection (3)(a) as it refers to Subsections (2)(a) through (g); and

7371 (b) civil offenses are those under Subsections (2)(h), (j), (k), and (l), and Subsection

7372 (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 statewide domestic violence network described in Section 78B-7-113.

(b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:

(i) has contact with the respondent and service by that law enforcement agency is possible; or

(ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.

(9) (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.

(b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.

(10) A court may modify or vacate a protective order or any provisions in the protective order after notice and hearing, except that the criminal provisions of a cohabitant abuse protective order may not be vacated within two years of issuance unless the petitioner:

(a) is personally served with notice of the hearing, as provided in the Utah Rules of Civil Procedure, and the petitioner personally appears, in person or through court video conferencing, before the court and gives specific consent to the vacation of the criminal provisions of the cohabitant abuse protective order; or

(b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the cohabitant abuse protective order.

(11) A protective order may be modified without a showing of substantial and material change in circumstances.

(12) A civil provision of a cohabitant abuse protective order described in Subsection (6) may be modified in a divorce proceeding that is pending between the parties to the cohabitant abuse protective order action after 150 days after the day on which the cohabitant abuse protective order is issued if:

(a) the parties stipulate in writing or on the record to dismiss a civil provision of the cohabitant abuse protective order; or

(b) the court in the divorce proceeding finds good cause to modify the civil provision.

Section 119. Section **78B-7-702** is amended to read:

78B-7-702. Mutual civil stalking injunctions.

(1) A court may not grant a mutual order or mutual civil stalking injunction to opposing parties, unless each party:

(a) files an independent petition against the other for a civil stalking injunction, and both petitions are served;

(b) makes a showing at an evidentiary hearing on the civil stalking injunction that stalking has occurred by the other party; and

(c) demonstrates the alleged act did not occur in self-defense.

(2) If the court issues mutual civil stalking injunctions, the court shall include specific findings of all elements of Subsection (1) in the court order justifying the entry of the court orders.

(3) (a) Except as provided in Subsection (3)(b), a court may not grant a protective order to a civil petitioner who is the respondent or defendant subject to:

(i) a civil stalking injunction;

(ii) a civil protective order that is issued under:

7427 (A) this part;

7428 (B) Part 2, Child Protective Orders;

7429 (C) Part 6, Cohabitant Abuse Protective Orders;

7430 (D) Part 8, Criminal Protective Orders; or

7431 (E) [~~Title 78A, Chapter 6, Juvenile Court Act~~] Title 80, Utah Juvenile Code;

7432 (iii) an ex parte civil protective order issued under Part 2, Child Protective Orders; or

7433 (iv) a foreign protection order enforceable under Part 3, Uniform Interstate

7434 Enforcement of Domestic Violence Protection Orders Act.

7435 (b) The court may issue a protective order to a civil petitioner described in Subsection

7436 (3)(a) if:

7437 (i) the court determines that the requirements of Subsection (1) are met; and

7438 (ii) (A) the same court issued the protective order against the respondent; or

7439 (B) the subsequent court determines it would be impractical for the original court to

7440 consider the matter or confers with the court that issued the protective order described in

7441 Subsection (3)(a)(ii) or (iii).

7442 Section 120. Section **78B-11-121** is amended to read:

7443 **78B-11-121. Change of award by arbitrator.**

7444 (1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may

7445 modify or correct an award:

7446 (a) on any grounds stated in Subsection **78B-11-125**(1)(a) or (c);

7447 (b) if the arbitrator has not made a final and definite award upon a claim submitted by

7448 the parties to the arbitration proceeding; or

7449 (c) to clarify the award.

7450 (2) A motion under Subsection (1) must be made and notice given to all parties within

7451 20 days after the movant receives notice of the award.

7452 (3) A party to the arbitration proceeding must give notice of any objection to the

7453 motion within 10 days after receipt of the notice.

(4) If a motion to the court is pending under Section 78B-11-123, 78B-11-124, or 78B-11-125, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) on any grounds stated in Subsection 78B-11-125(1)(a) or (c);

(b) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) to clarify the award.

(5) An award modified or corrected pursuant to this section is subject to [Subsection 78A-6-119(1) and] Sections 78A-6-357, 78B-11-123, 78B-11-124, and 78B-11-125.

Section 121. Section 78B-12-219 is amended to read:

78B-12-219. Adjustment when child becomes emancipated.

(1) When a child becomes 18 years [of age] old or graduates from high school during the child's normal and expected year of graduation, whichever occurs later, or if the child dies, marries, becomes a member of the armed forces of the United States, or is emancipated in accordance with [~~Title 78A, Chapter 6, Part 8, Emancipation~~] Title 80, Chapter 7, Emancipation, the base child support award is automatically adjusted to the base combined child support obligation for the remaining number of children due child support, shown in the table that was used to establish the most recent order, using the incomes of the parties as 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

7481 collected during the interim.

7482 Section 122. Section **78B-15-612** is amended to read:

7483 **78B-15-612. Minor as party -- Representation.**

7484 (1) A minor is a permissible party, but is not a necessary party to a proceeding under
7485 this part.

7486 (2) The tribunal may appoint an attorney guardian ad litem under Sections [78A-2-703](#)
7487 and [~~78A-6-902~~] [78A-2-803](#), or a private attorney guardian ad litem under Section [78A-2-705](#),
7488 to represent a minor or incapacitated child if the child is a party.

7489 Section 123. Section **78B-22-102** is amended to read:

7490 **78B-22-102. Definitions.**

7491 As used in this chapter:

7492 (1) "Account" means the Indigent Defense Resources Restricted Account created in
7493 Section [78B-22-405](#).

7494 (2) "Board" means the Indigent Defense Funds Board created in Section [78B-22-501](#).

7495 (3) "Commission" means the Utah Indigent Defense Commission created in Section
7496 [78B-22-401](#).

7497 (4) "Director" means the director of the Office of Indigent Defense Services, created in
7498 Section [78B-22-451](#), who is appointed in accordance with Section [78B-22-453](#).

7499 (5) (a) "Indigent defense resources" means the resources necessary to provide an
7500 effective defense for an indigent individual, including the costs for a competent investigator,
7501 expert witness, scientific or medical testing, transcripts, and printing briefs.

7502 (b) "Indigent defense resources" does not include an indigent defense service provider.

7503 (6) "Indigent defense service provider" means an attorney or entity appointed to
7504 represent an indigent individual pursuant to:

7505 (a) a contract with an indigent defense system to provide indigent defense services; or

7506 (b) an order issued by the court under Subsection [78B-22-203\(2\)\(a\)](#).

7507 (7) "Indigent defense services" means:

(a) the representation of an indigent individual by an indigent defense service provider;
and

(b) the provision of indigent defense resources for an indigent individual.

(8) "Indigent defense system" means:

(a) a city or town that is responsible for providing indigent defense services;

(b) a county that is responsible for providing indigent defense services in the district court, juvenile court, and the county's justice courts; or

(c) an interlocal entity, created pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, that is responsible for providing indigent defense services according to the terms of an agreement between a county, city, or town.

(9) "Indigent individual" means:

(a) a minor who is:

(i) arrested and admitted into detention for an offense under Section [78A-6-103](#);

(ii) charged by petition or information in the juvenile or district court; or

(iii) described in this Subsection (9)(a), who is appealing an adjudication or other final court action; and

(b) an individual listed in Subsection [78B-22-201\(1\)](#) who is found indigent pursuant to Section [78B-22-202](#).

(10) "Minor" means the same as that term is defined in Section [[78A-6-105](#)] [80-1-102](#).

(11) "Office" means the Office of Indigent Defense Services created in Section [78B-22-451](#).

(12) "Participating county" means a county that complies with this chapter for participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections [78B-22-702](#) and [78B-22-703](#).

Section 124. Section **78B-22-201** is amended to read:

78B-22-201. Right to counsel.

(1) A court shall advise the following of the individual's right to counsel when the

7535 individual first appears before the court:

7536 (a) an adult charged with a criminal offense the penalty for which includes the
7537 possibility of incarceration regardless of whether actually imposed;

7538 (b) a parent or legal guardian facing an action initiated by the state under:

7539 [~~(i) Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;~~]

7540 [~~(ii) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or~~]

7541 [~~(iii) Title 78A, Chapter 6, Part 10, Adult Offenses;~~]

7542 (i) Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings;

7543 (ii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or

7544 (iii) Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;

7545 (c) a parent or legal guardian facing an action initiated by any party under:

7546 [~~(i) Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act; or~~]

7547 (i) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or

7548 (ii) Section 78B-6-112; or

7549 (d) an individual described in this Subsection (1), who is appealing a conviction or
7550 other final court action.

7551 (2) If an individual described in Subsection (1) does not knowingly and voluntarily
7552 waive the right to counsel, the court shall determine whether the individual is indigent under
7553 Section 78B-22-202.

7554 Section 125. Section 78B-22-406 is amended to read:

7555 **78B-22-406. Indigent defense services grant program.**

7556 (1) The commission may award grants:

7557 (a) to supplement local spending by an indigent defense system for indigent defense
7558 services; and

7559 (b) for contracts to provide indigent defense services for appeals from juvenile court
7560 proceedings in a county of the third, fourth, fifth, or sixth class.

7561 (2) The commission may use grant money:

(a) to assist an indigent defense system to provide indigent defense services that meet the commission's core principles for the effective representation of indigent individuals;

(b) to establish and maintain local indigent defense data collection systems;

(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

7616 described in Section [78B-22-404](#);

7617 (iii) have experience in child welfare cases; and

7618 (iv) participate each calendar year in continuing legal education courses providing no
7619 fewer than eight hours of instruction in child welfare law.

7620 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
7621 commission may, by rule, exempt from the requirements of Subsection (2)(a) an attorney who
7622 has equivalent training or adequate experience.

7623 Section 128. **Effective date.**

7624 This bill takes effect on September 1, 2021.

7625 Section 129. **Coordinating H.B. 286 with H.B. 260 -- Substantive change.**

7626 If this H.B. 286 and H.B. 260, Criminal Justice Modifications, both pass and become
7627 law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and
7628 General Counsel, prepare the Utah Code database for publication amending Subsection
7629 [77-37-3\(1\)\(e\)](#) to read:

7630 "(e) Victims may seek restitution or reparations, including medical costs, as provided
7631 in Title 63M, Chapter 7, Criminal Justice and Substance Abuse, [~~and Sections [62A-7-109.5](#),~~
7632 ~~[77-38a-302](#), and [77-27-6](#).] Title 77, Chapter 38b, Crime Victims Restitution Act, and Section~~
7633 [80-6-710](#). State and local government agencies that serve victims have the duty to have a
7634 functional knowledge of the procedures established by the Crime Victim Reparations Board
7635 and to inform victims of these procedures."

7636 Section 130. **Coordinating H.B. 286 with S.B. 90 -- Technical amendments.**

7637 If this H.B. 286 and S.B. 90, Parental Defense Amendments, both pass and become law,
7638 the Legislature intends that, on September 1, 2021, the Office of Legislative Research and
7639 General Counsel shall prepare the Utah Code database for publication as follows:

7640 (1) Subsection [78B-22-102\(4\)](#) is amended to read:

7641 "(4) "Child welfare case" means a proceeding under Title 80, Chapter 3, Abuse,
7642 Neglect, or Dependency Proceedings, or Chapter 4, Termination and Restoration of Parental

7643 Rights."; and

7644 (2) the amendments to Section [78B-22-801](#) in S.B. 90 supersede the amendments to

7645 Section [78B-22-801](#) in this bill.