62A-1-101. Short title.

This title shall be known as the "Utah Human Services Code."

Amended by Chapter 30, 1992 General Session

62A-1-102. Department of Human Services -- Creation.

There is created within state government the Department of Human Services, which has all of the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities outlined in this title.

Amended by Chapter 183, 1990 General Session

62A-1-104. Definitions.

(1) As used in this title:

(a) "Concurrence of the board" means agreement by a majority of the members of a board.

(b) "Department" means the Department of Human Services established in Section 62A-1-102.

(c) "Executive director" means the executive director of the department, appointed pursuant to Section 62A-1-108.

(d) "System of care" means a broad, flexible array of services and supports for minors with or at risk for complex emotional and behavioral needs that:

(i) is community based;

(ii) integrates service planning, service coordination, and management across state and local entities;

(iii) includes individualized, person-centered planning;

(iv) builds meaningful partnerships with families and children; and

(v) provides supportive management and policy infrastructure that is organized into a coordinated network.

(2) The definitions provided in Subsection (1) are to be applied in addition to definitions contained throughout this title which are applicable to specific chapters or parts.

Amended by Chapter 213, 2014 General Session

62A-1-105. Creation of boards, divisions, and offices.

(1) The following policymaking boards are created within the Department of Human Services:

(a) the Board of Aging and Adult Services; and

(b) the Board of Juvenile Justice Services.

(2) The following divisions are created within the Department of Human Services:

(a) the Division of Aging and Adult Services;

(b) the Division of Child and Family Services;

(c) the Division of Services for People with Disabilities;

(d) the Division of Substance Abuse and Mental Health; and
(e) the Division of Juvenile Justice Services.
(3) The following offices are created within the Department of Human Services:
(a) the Office of Licensing;
(b) the Office of Public Guardian; and
(c) the Office of Recovery Services.

Amended by Chapter 75, 2009 General Session

62A-1-106. Adjudicative proceedings.

The department and its boards, divisions, and offices described in Section 62A-1-105 shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

62A-1-107. Boards within department -- Members, appointment, terms, vacancies, chairperson, compensation, meetings, quorum.

(1) Each board described in Section 62A-1-105 shall have seven members who are appointed by the governor with the consent of the Senate.

(2) (a) Except as required by Subsection (2)(b), each member shall be appointed for a term of four years, and is eligible for one reappointment.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Board members shall continue in office until the expiration of their terms and until their successors are appointed, which may not exceed 90 days after the formal expiration of a term.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(3) No more than four members of any board may be from the same political party. Each board shall have diversity of gender, ethnicity, and culture; and members shall be chosen on the basis of their active interest, experience, and demonstrated ability to deal with issues related to their specific boards.

(4) Each board shall annually elect a chairperson from its membership. Each board shall hold meetings at least once every three months. Within budgetary constraints, meetings may be held from time to time on the call of the chairperson or of the majority of the members of any board. Four members of a board are necessary to constitute a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the board.

(5) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) Each board shall adopt bylaws governing its activities. Bylaws shall include procedures for removal of a board member who is unable or unwilling to fulfill the requirements of his appointment.

(7) The board has program policymaking authority for the division over which it presides.

Amended by Chapter 286, 2010 General Session

62A-1-107.5. Limitation on establishment of advisory bodies.

(1) Department divisions and boards:

(a) may not establish permanent, ongoing advisory groups unless otherwise specifically created in federal or state statute; and

(b) shall comply with the provisions of this section with regard to any advisory groups created prior to or after July 1, 2003.

(2) Divisions and boards may establish subject-limited and time-limited ad hoc advisory groups to provide input necessary to carry out their assigned responsibilities. When establishing such an advisory group, the board must establish in writing a specific charge and time limit.

(3) Members of any ad hoc advisory group shall receive no compensation or benefits for their service.

(4) The provision of staffing and support to any ad hoc advisory group will be contingent on availability of human and financial resources.

Enacted by Chapter 246, 2003 General Session

62A-1-108. Executive director -- Appointment -- Compensation -- Qualifications -- Responsibilities.

(1) The chief administrative officer of the department is the executive director, who shall be appointed by the governor with the consent of the Senate. The executive director may be removed at the will of the governor. The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation. The executive director shall be experienced in administration, management, and coordination of complex organizations.

(2) The executive director is responsible for:

(a) administration and supervision of the department;

(b) coordination of policies and program activities conducted through the boards, divisions, and offices of the department;

(c) approval of the proposed budget of each board, division, and office within the department; and

(d) such other duties as the Legislature or governor shall assign to him.

(3) The executive director may appoint deputy or assistant directors to assist

him in carrying out the department's responsibilities.

Amended by Chapter 176, 2002 General Session

62A-1-108.5. Mental illness and intellectual disability examinations -- Responsibilities of the department.

(1) In accomplishing its duties to conduct mental illness and intellectual disability examinations under Title 77, Utah Code of Criminal Procedure, and juvenile competency evaluations pursuant to Title 78A, Chapter 6, Juvenile Court Act, the department shall proceed as outlined in this section and within appropriations authorized by the Legislature. The executive director may delegate the executive director's responsibilities under this section to one or more divisions within the department.

(2) When the department is ordered by the district court to conduct a mental illness or intellectual disability examination the executive director shall:

(a) direct that the examination be performed at the Utah State Hospital; or

(b) designate at least one examiner, selected under Subsection (4), to examine 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 pursuant to Title 78A, Chapter 6, Juvenile Court Act, the executive director 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 or organizations to conduct mental illness and intellectual disability or related condition, and juvenile competency evaluations under Subsections (2)(b) 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 executive director, 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.

Amended by Chapter 316, 2012 General Session
Amended by Chapter 347, 2012 General Session

62A-1-109. Division directors -- Appointment -- Compensation -- Qualifications.

The chief officer of each division and office enumerated in Section 62A-1-105

shall be a director who shall serve as the executive and administrative head of the division or office. Each division director shall be appointed by the executive director with the concurrence of the division's board. The director of any division may be removed from that position at the will of the executive director after consultation with that division's board. Each office director shall be appointed by the executive director. Directors of divisions and offices shall receive compensation as provided by Title 67, Chapter 19. The director of each division and office shall be experienced in administration and possess such additional qualifications as determined by the executive director, and as provided by law.

Enacted by Chapter 1, 1988 General Session

62A-1-110. Executive director -- Jurisdiction over division and office directors -- Authority.

(1) The executive director of the department has administrative jurisdiction over each division and office directors. The executive director may make changes in personnel and service functions in the divisions and offices under his administrative jurisdiction, and authorize designees to perform appropriate responsibilities, to effectuate greater efficiency and economy in the operations of the department.

(2) The executive director may establish offices and bureaus to perform functions such as budgeting, planning, data processing, and personnel administration, to facilitate management of the department.

Amended by Chapter 292, 1991 General Session

62A-1-111. Department authority.

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

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

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

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

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

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

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

(7) set and collect fees for its services;

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

(9) acquire, manage, and dispose of any real or personal property needed or

owned by the department, not inconsistent with state law;

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

(11) accept and employ volunteer labor or services; the department is authorized to reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;

(12) carry out the responsibility assigned in the Workforce Services Plan by the State Council on Workforce Services;

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

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

(15) provide training and educational opportunities for its staff;

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

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

(18) establish policy and procedures, within appropriations authorized by the Legislature, in cases where the department is given custody of a minor by the juvenile court pursuant to Section 78A-6-117 or ordered to prepare an attainment plan for a minor found not competent to proceed pursuant to Section 78A-6-1301; any policy and procedures shall include:

(a) designation of interagency teams for each juvenile court district in the state;

(b) delineation of assessment criteria and procedures;

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

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

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

(20) examine and audit the expenditures of any public funds provided to local substance abuse authorities, local mental health authorities, local area agencies on aging, and 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; and

(22) within appropriations authorized by the Legislature, promote and develop a system of care, as defined in Section 62A-1-104, within the department and with contractors that provide services to the department or any of the department's divisions.

Amended by Chapter 213, 2014 General Session

62A-1-112. Participation in federal programs -- Federal grants -- Authority of executive director.

(1) The executive director may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures, seek federal grants, loans, or participation in federal programs.

(2) Wherever state law authorizes a board, director, division, or office of the department to accept any grant, fund, or service which is to be advanced or contributed in whole or in part by the federal government, that acceptance shall be subject to the approval or disapproval of the executive director. All applications for federal grants or other federal financial assistance for the support of any department program is subject to the approval of the executive director.

(3) If any executive or legislative provision of the federal government so requires, as a condition to participation by this state in any fund, property, or service, the executive director, with the governor's approval, shall expend whatever funds are necessary out of the money provided by the Legislature for use and disbursement by that department.

Amended by Chapter 382, 2008 General Session

62A-1-113. Department budget -- Reports from divisions.

The department shall prepare and submit to the governor, for inclusion in his budget to be submitted to the Legislature, a budget of the department's financial requirements needed to carry out its responsibilities, as provided by law during the fiscal year following the Legislature's next Annual General Session. The executive director shall require a report from each of the divisions and offices of the department, to aid in preparation of the departmental budget.

Enacted by Chapter 1, 1988 General Session

62A-1-114. Department is state agency for specified federal programs -- Development of state plans and programs.

(1) The department shall be the social services authority of the state, and shall be the sole state agency for administration of federally-assisted state programs or plans such as the social services block grant, low income energy assistance program

block grant, alcohol, drug, and mental health block grant, child welfare, refugee assistance, and state programs supported under the Older Americans Act, 42 U.S.C. Sections 3001 et seq.

(2) State plans and programs administered by the department shall be developed in the appropriate divisions and offices of the department, in accordance with the policy of the appropriate boards, and are subject to approval or change by the executive director to achieve coordination, efficiency, or economy.

Amended by Chapter 375, 1997 General Session

62A-1-115. Actions on behalf of department -- Party in interest.

The executive director, each of the department's boards, divisions, offices, and the director of each division or office, shall, in the exercise of any power, duty, or function under any statute of this state, is considered to be acting on behalf of the department. The department, through the executive director or through any of the department's boards, divisions, offices, or directors, shall be considered the party in interest in all actions at law or in equity, where the department or any constituent, board, division, office, or official thereof is authorized by any statute of the state to be a party to any legal action.

Enacted by Chapter 1, 1988 General Session

62A-1-117. Assignment of support -- Children in state custody.

(1) Child support is assigned to the department by operation of law when a child is residing outside of his home in the protective custody, temporary custody, custody, or care of the state for at least 30 days.

(2) The department has the right to receive payment for child support assigned to it under Subsection (1).

(3) The Office of Recovery Services is the payee for the department for payment received under this section.

Enacted by Chapter 174, 1997 General Session

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

(1) With respect to department employees and volunteers, the department may only access information in the Division of Child and Family Service's Management Information System created by Section 62A-4a-1003 and the Division of Aging and Adult Services database created by Section 62A-3-311.1 for the purpose of determining at the time of hire and each year thereafter whether a department employee or volunteer has an adjudication of abuse or neglect or since January 1, 1994, a substantiated finding of abuse or neglect after notice and an opportunity for a hearing consistent with Title 63G, Chapter 4, Administrative Procedures Act, but only if identification as a possible perpetrator of abuse or neglect is directly relevant to the employment or volunteer activities of that person.

(2) A department employee or volunteer to whom Subsection (1) applies shall submit to the department the employee or volunteer's name and other identifying information upon request.

(3) The department shall process the information to determine whether the employee or volunteer has a substantiated finding of child abuse or neglect.

(4) The department shall adopt rules defining permissible and impermissible work-related activities for a department employee or volunteer with one or more substantiated findings of abuse or neglect.

Amended by Chapter 382, 2008 General Session

62A-1-119. Respite Care Assistance Fund -- Use of money -- Restrictions -- Annual report.

(1) There is created an expendable special revenue fund known as the Respite Care Assistance Fund.

(2) The fund shall consist of:

(a) gifts, grants, devises, donations, and bequests of real property, personal property, or services, from any source, made to the fund; and

(b) any additional amounts as appropriated by the Legislature.

(3) The fund shall be administered by the director of the Utah Developmental Disabilities Council.

(4) The fund money shall be used for the following activities:

(a) to support a respite care information and referral system;

(b) to educate and train caregivers and respite care providers; and

(c) to provide grants to caregivers.

(5) An individual who receives services paid for from the fund shall:

(a) be a resident of Utah; and

(b) be a primary care giver for:

(i) an aging individual; or

(ii) an individual with a cognitive, mental, or physical disability.

(6) The fund money may not be used for:

(a) administrative expenses that are normally provided for by legislative appropriation; or

(b) direct services or support mechanisms that are available from or provided by another government or private agency.

(7) All interest and other earnings derived from the fund money shall be deposited into the fund.

(8) The state treasurer shall invest the money in the fund under Title 51, Chapter 7, State Money Management Act.

(9) The Department of Human Services shall make an annual report to the appropriate appropriations subcommittee of the Legislature regarding the status of the fund, including a report on the contributions received, expenditures made, and programs and services funded.

Amended by Chapter 400, 2013 General Session

62A-1-120. Utah Marriage Commission.

(1) As used in this section, "commission" means the Utah Marriage Commission created by this section.

(2) There is created within the department the "Utah Marriage Commission."

(3) The commission shall consist of 17 members appointed as follows:

(a) two members of the Senate appointed by the president of the Senate;

(b) two members of the House of Representatives appointed by the speaker of the House of Representatives;

(c) six current or former representatives from marriage and family studies departments, social or behavioral sciences departments, health sciences departments, colleges of law, or other related and supporting departments at institutions of higher education in this state, as shall be appointed by the governor;

(d) five representatives selected and appointed by the governor from among the following groups:

(i) social workers who are or have been licensed under Title 58, Chapter 60, Part 2, Social Worker Licensing Act;

(ii) psychologists who are or have been licensed under Title 58, Chapter 61, Psychologist Licensing Act;

(iii) physicians who are or have been board certified in psychiatry and are or have been licensed under Title 58, Chapter 67, Utah Medical Practice Act;

(iv) marriage and family therapists who are or have been licensed under Title 58, Chapter 60, Part 3, Marriage and Family Therapist Licensing Act;

(v) representatives of faith communities;

(vi) public health professionals;

(vii) representatives of domestic violence prevention organizations; or

(viii) legal professionals; and

(e) two representatives of the general public appointed by the members of the commission appointed under Subsections (3)(a) through (d).

(4) (a) A member appointed under Subsections (3)(c) through (e) shall serve for a term of four years. A member may be appointed for subsequent terms.

(b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) A commission member shall serve until a replacement is appointed and qualified.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment.

(5) (a) The commission shall annually elect a chair from its membership.

(b) The commission shall hold meetings as needed to carry out its duties. A meeting may be held on the call of the chair or a majority of the commission members.

(c) Nine commission members constitute a quorum and, if a quorum exists, the action of a majority of commission members present constitutes the action of the commission.

(6) (a) A commission member who is not a legislator may not receive compensation or benefits for the commission member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a commission member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(7) The department shall staff the commission.

(8) The commission shall:

(a) promote coalitions and collaborative efforts to uphold and encourage a strong and healthy culture of strong and lasting marriages and stable families;

(b) contribute to greater awareness of the importance of marriage and leading to reduced divorce and unwed parenthood in the state;

(c) promote public policies that support marriage;

(d) promote programs and activities that educate individuals and couples on how to achieve strong, successful, and lasting marriages, including promoting and assisting in the offering of:

(i) events;

(ii) classes and services, including those designed to promote strong, healthy, and lasting marriages and prevent domestic violence;

(iii) marriage and relationship education conferences for the public and professionals; and

(iv) enrichment seminars;

(e) actively promote measures designed to maintain and strengthen marriage, family, and the relationships between husband and wife and parents and children; and

(f) support volunteerism and private financial contributions and grants in partnership with the commission and in support of the commission's purposes and activities for the benefit of the state as provided in this section.

(9) Funding for the commission shall be as approved by the Legislature through annual appropriations and the added funding sought by the commission from private contributions and grants that support the duties of the commission described in Subsection (8).

Amended by Chapter 387, 2014 General Session

62A-1-201. Title.

This part is known as the "National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account Act."

Enacted by Chapter 37, 2014 General Session

62A-1-202. National Professional Men's Basketball Team Support of

Women and Children Issues Restricted Account.

(1) There is created in the General Fund a restricted account known as the "National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account."

(2) The account shall be funded by:

(a) contributions deposited into the account in accordance with Section 41-1a-422;

(b) private contributions; and

(c) donations or grants from public or private entities.

(3) Upon appropriation by the Legislature, the department shall distribute funds in the account to one or more charitable organizations that:

(a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(b) have a board that is appointed by the owners that, either on an individual or joint basis, own a controlling interest in a legal entity that is a franchised member of the internationally recognized national governing body for professional men's basketball in the United States;

(c) are headquartered within the state;

(d) create or support programs that focus on issues affecting women and children within the state, with an emphasis on health and education; and

(e) have a board of directors that disperses all funds of the organization.

(4) (a) An organization described in Subsection (3) may apply to the department to receive a distribution in accordance with Subsection (3).

(b) An organization that receives a distribution from the department in accordance with Subsection (3) shall expend the distribution only to:

(i) create or support programs that focus on issues affecting women and children, with an emphasis on health and education;

(ii) create or sponsor programs that will benefit residents within the state; and

(iii) pay the costs of issuing or reordering National Professional Men's Basketball Team Support of Women and Children Issues support special group license plate decals.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules providing procedures for an organization to apply to the department to receive a distribution under this Subsection (4).

(5) In accordance with Section 63J-1-602.4, appropriations from the account are nonlapsing.

Enacted by Chapter 37, 2014 General Session

62A-2-101. Definitions.

As used in this chapter:

(1) "Adult day care" means nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day; and

(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and

related support services in a protective setting.

(2) (a) "Boarding school" means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school's students:

(A) for the purpose of enabling the school's students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (2)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection (26)(a); or

(B) provides the treatment or services described in Subsection (26)(a) on a limited basis, as described in Subsection (2)(b)(ii).

(b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or services described in Subsection (26)(a) on a limited basis if:

(A) the treatment or services described in Subsection (26)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (26)(a); or

(II) have a primary purpose of providing the services described in Subsection (26)(a).

(c) "Boarding school" does not include a therapeutic school.

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

(4) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

(b) placing the child in a home for adoption; or

(c) foster home placement.

(5) "Client" means an individual who receives or has received services from a licensee.

(6) "Day treatment" means specialized treatment that is provided to:

(a) a client less than 24 hours a day; and

(b) four or more persons who:

(i) are unrelated to the owner or provider; and

(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

(7) "Department" means the Department of Human Services.

(8) "Direct access" means that an individual has, or likely will have, contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch.

(9) "Director" means the director of the Office of Licensing.

(10) "Domestic violence" is as defined in Section 77-36-1.

(11) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

(12) "Elder adult" means a person 65 years of age or older.

(13) "Executive director" means the executive director of the department.

(14) "Foster home" means a temporary residential living environment for the care of:

(a) fewer than four foster children in the home of a licensed or certified foster parent; or

(b) four or more children in the home of a licensed or certified foster parent if the children are siblings.

(15) (a) "Human services program" means a:

(i) foster home;

(ii) therapeutic school;

(iii) youth program;

(iv) resource family home;

(v) recovery residence; or

(vi) facility or program that provides:

(A) secure treatment;

(B) inpatient treatment;

(C) residential treatment;

(D) residential support;

(E) adult day care;

(F) day treatment;

(G) outpatient treatment;

(H) domestic violence treatment;

(I) child placing services;

(J) social detoxification; or

(K) any other human services that are required by contract with the department to be licensed with the department.

(b) "Human services program" does not include a boarding school.

(16) "Licensee" means a person or human services program licensed by the office.

(17) "Local government" means a:

(a) city; or

(b) county.

(18) "Minor" has the same meaning as "child."

(19) "Office" means the Office of Licensing within the Department of Human Services.

(20) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.

(21) (a) "Person associated with the licensee" means a person:

(i) affiliated with a licensee as an owner, director, member of the governing

body, employee, agent, provider of care, or volunteer; or

(ii) applying to become affiliated with a licensee in any capacity listed under Subsection (21)(a)(i).

(b) Notwithstanding Subsection (21)(a), "person associated with the licensee" does not include an individual serving on the following bodies unless that individual has direct access to children or vulnerable adults:

(i) a local mental health authority under Section 17-43-301;

(ii) a local substance abuse authority under Section 17-43-201; or

(iii) a board of an organization operating under a contract to provide:

(A) mental health or substance abuse programs; or

(B) services for the local mental health authority or substance abuse authority.

(c) "Person associated with the licensee" does not include a guest or visitor whose access to children or vulnerable adults is directly supervised by the licensee at all times.

(22) "Recovery residence" means a home or facility, other than a residential treatment or residential support program, that meets at least two of the following requirements:

(a) provides a supervised living environment for individuals recovering from a substance abuse disorder;

(b) requires more than half of the individuals in the residence to be recovering from a substance abuse disorder;

(c) provides or arranges for residents to receive services related to their recovery from a substance abuse disorder, either on or off site;

(d) holds the home or facility out as being a recovery residence; or

(e) (i) receives public funding; or

(ii) runs the home or facility as a commercial venture for financial gain.

(23) "Regular business hours" means:

(a) the hours during which services of any kind are provided to a client; or

(b) the hours during which a client is present at the facility of a licensee.

(24) (a) "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support" includes providing a supervised living environment for persons with dysfunctions or impairments that are:

(i) emotional;

(ii) psychological;

(iii) developmental; or

(iv) behavioral.

(c) Treatment is not a necessary component of residential support.

(d) "Residential support" does not include:

(i) a recovery residence; or

(ii) residential services that are performed:

(A) exclusively under contract with the Division of Services for People with Disabilities; or

(B) in a facility that serves fewer than four individuals.

(25) (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

(26) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

(27) (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

(28) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

(29) "Substance abuse treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

(b) that provides the treatment or services described in Subsection (29)(a) to persons with:

(i) a diagnosed substance abuse disorder; or

(ii) chemical dependency disorder.

(30) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals that are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:
(i) room and board; and
(ii) an academic education integrated with:
(A) specialized structure and supervision; or
(B) services or treatment related to:
(I) a disability;
(II) emotional development;
(III) behavioral development;
(IV) familial development; or
(V) social development.

(31) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

(32) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:
(a) provide personal protection;
(b) provide necessities such as food, shelter, clothing, or mental or other health care;
(c) obtain services necessary for health, safety, or welfare;
(d) carry out the activities of daily living;
(e) manage the adult's own resources; or
(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(33) (a) "Youth program" means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:
(i) serves adjudicated or nonadjudicated youth;
(ii) charges a fee for its services;
(iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;
(iv) may or may not provide all or part of its services in the outdoors;
(v) may or may not limit or censor access to parents or guardians; and
(vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.
(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

Amended by Chapter 240, 2014 General Session

62A-2-102. Purpose of licensure.

The purpose of licensing under this chapter is to permit or authorize a public or private agency to provide defined human services programs within statutory and regulatory guidelines.

Amended by Chapter 358, 1998 General Session

62A-2-103. Office of Licensing -- Appointment -- Qualifications of director.

(1) There is created the Office of Licensing within the Department of Human Services. The office shall be the licensing authority for the department, and is vested with all the powers, duties, and responsibilities described in this chapter.

(2) The executive director shall appoint the director of the office.

(3) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable of human services licensing.

Amended by Chapter 358, 1998 General Session

62A-2-106. Office responsibilities.

(1) Subject to the requirements of federal and state law, the office shall:

(a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:

(i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:

(A) fire safety;

(B) food safety;

(C) sanitation;

(D) infectious disease control;

(E) safety of the:

(I) physical facility and grounds; and

(II) area and community surrounding the physical facility;

(F) transportation safety;

(G) emergency preparedness and response;

(H) the administration of medical standards and procedures, consistent with the related provisions of this title;

(I) staff and client safety and protection;

(J) the administration and maintenance of client and service records;

(K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;

(L) staff to client ratios; and

(M) access to firearms;

(ii) basic health and safety standards for therapeutic schools, that shall be limited to:

(A) fire safety, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

(B) food safety;

(C) sanitation;

(D) infectious disease control, except that the standards are limited to:

(I) those required by law or rule under Title 26, Utah Health Code or Title 26A, Local Health Authorities; and

(II) requiring a separate room for clients who are sick;

(E) safety of the physical facility and grounds, except that the standards are

limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

(F) transportation safety;

(G) emergency preparedness and response;

(H) access to appropriate medical care, including:

(I) subject to the requirements of law, designation of a person who is authorized to dispense medication; and

(II) storing, tracking, and securing medication;

(I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;

(J) the administration and maintenance of client and service records;

(K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;

(L) staff to client ratios; and

(M) access to firearms;

(iii) procedures and standards for permitting a licensee to:

(A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:

(I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;

(II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);

(III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and

(IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or

(B) (I) provide residential treatment services to a child who is:

(Aa) 12 years old or older; and

(Bb) under the custody of the Division of Juvenile Justice Services; and

(II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:

(Aa) at least 18 years old, but younger than 21 years old; and

(Bb) under the custody of the Division of Juvenile Justice Services;

(iv) minimum administration and financial requirements for licensees;

(v) guidelines for variances from rules established under this Subsection (1); and

(vi) minimum ethical responsibilities of an adoption agency licensed under this chapter, including prohibiting an adoption agency or its employee from misrepresenting facts or information;

(b) enforce rules relating to the office;

(c) issue licenses in accordance with this chapter;

(d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:

(i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and

(ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;

(e) make rules to implement the provisions of Subsection (1)(d);

(f) conduct surveys and inspections of licensees and facilities in accordance with Section 62A-2-118;

(g) collect licensure fees;

(h) notify licensees of the name of a person within the department to contact when filing a complaint;

(i) investigate complaints regarding any licensee or human services program;

(j) have access to all records, correspondence, and financial data required to be maintained by a licensee;

(k) have authority to interview any client, family member of a client, employee, or officer of a licensee; and

(l) have authority to deny, condition, revoke, suspend, or extend any license issued by the department under this chapter by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee to establish and comply with an emergency response plan that requires clients and staff to:

(a) immediately report to law enforcement any significant criminal activity, as defined by rule, committed:

(i) on the premises where the licensee operates its human services program;

(ii) by or against its clients; or

(iii) by or against a staff member while the staff member is on duty;

(b) immediately report to emergency medical services any medical emergency, as defined by rule:

(i) on the premises where the licensee operates its human services program;

(ii) involving its clients; or

(iii) involving a staff member while the staff member is on duty; and

(c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency.

Amended by Chapter 442, 2013 General Session

62A-2-108. Licensure requirements -- Expiration -- Renewal.

(1) Except as provided in Section 62A-2-110, a person, agency, firm, corporation, association, or governmental unit, acting severally or jointly with any other person, agency, firm, corporation, association, or governmental unit, may not establish, conduct, or maintain a human services program in this state without a valid and current license issued by and under the authority of the office as provided by this chapter and the rules under the authority of this chapter.

(2) (a) For purposes of this Subsection (2), "member" means a person or entity that is associated with another person or entity:

(i) as a member;
(ii) as a partner;
(iii) as a shareholder; or
(iv) as a person or entity involved in the ownership or management of a residential treatment program owned or managed by the other person or entity.
(b) A license issued under this chapter may not be assigned or transferred.
(c) An application for a license under this chapter shall be treated as an application for reinstatement of a revoked license if:
(i) (A) the person or entity applying for the license had a license revoked under this chapter; and
(B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or
(ii) a member of an entity applying for the license:
(A) (I) had a license revoked under this chapter; and
(II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or
(B) (I) was a member of an entity that had a license revoked under this chapter at any time before the license was revoked; and
(II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.
(3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.
(4) (a) Except as provided in Subsection (4)(c), each license issued under this chapter expires at midnight 12 months from the date of issuance unless it has been:
(i) previously revoked by the office; or
(ii) voluntarily returned to the office by the licensee.
(b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:
(i) is not in compliance with the:
(A) provisions of this chapter; or
(B) rules made under this chapter;
(ii) has engaged in a pattern of noncompliance with the:
(A) provisions of this chapter; or
(B) rules made under this chapter;
(iii) has engaged in conduct that is grounds for denying a license under Section 62A-2-112; or
(iv) has engaged in conduct that poses a substantial risk of harm to any person.
(c) The office may issue a renewal license that expires at midnight 24 months after the day on which it is issued if:
(i) the licensee has maintained a human services license for at least 24 months before the day on which the licensee applies for the renewal; and
(ii) the licensee has not violated this chapter or a rule made under this chapter.
(5) Any licensee that is in operation at the time rules are made in accordance with this chapter shall be given a reasonable time for compliance as determined by the

rule.

(6) (a) A license for a human services program issued under this section shall apply to a specific human services program site.

(b) A human services program shall obtain a separate license for each site where the human services program is operated.

Amended by Chapter 302, 2012 General Session

62A-2-108.1. Coordination of human services and educational services -- Licensing of programs -- Procedures.

(1) For purposes of this section:

(a) "accredited private school" means a private school that is accredited by an accrediting entity recognized by the Utah State Board of Education; and

(b) "education entitled children" means children:

(i) subject to compulsory education under Section 53A-11-101.5;

(ii) subject to the school attendance requirements of Section 53A-11-101.7; or

(iii) entitled to educational services under Section 53A-15-301.

(2) Subject to Subsection (8) or (9), a human services program may not be licensed to serve education entitled children unless the human services program presents an educational service plan that includes evidence:

(a) satisfactory to:

(i) the office; and

(ii) (A) the local school board of the school district in which the human services program will be operated; or

(B) the school district superintendent of the school district in which the human services program will be operated; and

(b) that children served by the human services program shall receive appropriate educational services satisfying the requirements of applicable law.

(3) Subject to Subsection (8) or (9), if a human services program serves any education entitled children whose custodial parents or legal guardians reside outside the state, then the program shall also provide an educational funding plan that includes evidence:

(a) satisfactory to:

(i) the office; and

(ii) (A) the local school board of the school district in which the human services program will be operated; or

(B) the school district superintendent of the school district in which the human services program will be operated; and

(b) that all costs for educational services to be provided to the education entitled children, including tuition, and school fees approved by the local school board, shall be borne by the human services program.

(4) Subject to Subsection (8) or (9), and in accordance with Subsection (2), the human services program shall obtain and provide the office with a letter:

(a) from the entity referred to in Subsection (2)(a)(ii):

(i) approving the educational service plan referred to in Subsection (2); or

(ii) (A) disapproving the educational service plan referred to in Subsection (2); and

(B) listing the specific requirements the human services program must meet before approval is granted; and

(b) from the entity referred to in Subsection (3)(a)(ii):

(i) approving the educational funding plan, referred to in Subsection (3); or

(ii) (A) disapproving the educational funding plan, referred to in Subsection (3); and

(B) listing the specific requirements the human services program must meet before approval is granted.

(5) Subject to Subsection (8), failure of a local school board or school district superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local school board or school district superintendent if the human services program provides to the office:

(a) proof that:

(i) the human services program submitted the proposed plan to the local school board or school district superintendent; and

(ii) more than 45 days have passed from the day on which the plan was submitted; and

(b) an affidavit, on a form produced by the office, stating:

(i) the date that the human services program submitted the proposed plan to the local school board or school district superintendent;

(ii) that more than 45 days have passed from the day on which the plan was submitted; and

(iii) that the local school board or school district superintendent described in Subsection (5)(b)(i) failed to respond to the proposed plan within 45 days from the day on which the plan was submitted.

(6) If a licensee that is licensed to serve an education entitled child fails to comply with its approved educational service plan or educational funding plan, then:

(a) the office shall give the licensee notice of intent to revoke the licensee's license; and

(b) if the licensee continues its noncompliance for more than 30 days after receipt of the notice described in Subsection (6)(a), the office shall revoke the licensee's license.

(7) If an education entitled child whose custodial parent or legal guardian resides within the state is provided with educational services by a school district other than the school district in which the custodial parent or legal guardian resides, then the funding provisions of Section 53A-2-210 apply.

(8) A human services program that is an accredited private school:

(a) for purposes of Subsection (2):

(i) is only required to submit proof to the office that the accreditation of the private school is current; and

(ii) is not required to submit an educational service plan for approval by an entity described in Subsection (2)(a)(ii);

(b) for purposes of Subsection (3):

(i) is only required to submit proof to the office that all costs for educational services provided to education entitled children will be borne by the human services program; and

(ii) is not required to submit an educational funding plan for approval by an entity described in Subsection (3)(a)(ii); and

(c) is not required to comply with Subsections (4) and (5).

(9) Except for Subsection (7), the provisions of this section do not apply to a human services program that is:

(a) a foster home; and

(b) required to be licensed by the office.

Amended by Chapter 81, 2007 General Session

62A-2-108.2. Licensing residential treatment programs and recovery residences -- Notification of local government.

(1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish categories of residential treatment and recovery residence licenses based on differences in the types of residential treatment programs and recovery residences.

(b) The categories referred to in Subsection (1)(a) may be based on differences in:

(i) services offered;

(ii) types of clients served;

(iii) risks posed to the community; or

(iv) other factors that make regulatory differences advisable.

(2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section 62A-2-106, the office shall establish and enforce rules that:

(a) relate generally to all categories of residential treatment program and recovery residence licenses; and

(b) relate to specific categories of residential treatment program and recovery residence licenses on the basis of the regulatory needs, as determined by the office, of residential treatment programs and recovery residences within those specific categories.

(3) (a) Beginning July 1, 2014, the office shall charge an annual licensing fee, set by the office in accordance with the procedures described in Section 63J-1-504, to a recovery residence in an amount that will pay for the cost of the licensing and inspection requirements described in this section and in Section 62A-2-106.

(b) The office shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing and inspection requirements described in this section and in Section 62A-2-106.

(4) Before submitting an application for a license to operate a residential treatment program, the applicant shall serve notice of its intent to operate a residential treatment program on the governing body of:

(a) the city in which the residential treatment program will be located; or

(b) if the residential treatment program will be located in the unincorporated area of a county, the county in which the residential treatment program will be located.

(5) The notice described in Subsection (4) shall include the following information relating to the residential treatment program:

(a) an accurate description of the residential treatment program;

(b) the location where the residential treatment program will be operated;

(c) the services that will be provided by the residential treatment program;

(d) the type of clients that the residential treatment program will serve;

(e) the category of license for which the residential treatment program is applying to the office;

(f) the name, telephone number, and address of a person that may be contacted to make inquiries about the residential treatment program; and

(g) any other information that the office may require by rule.

(6) When submitting an application for a license to operate a residential treatment program, the applicant shall include with the application:

(a) a copy of the notice described in Subsection (4); and

(b) proof that the applicant served the notice described in Subsection (4) on the governing body described in Subsection (4).

Amended by Chapter 240, 2014 General Session

62A-2-108.5. Notification requirement for child placing agencies that provide foster home services -- Rulemaking authority.

(1) The office shall require a child placing agency that provides foster home services to notify a foster parent that if the foster parent signs as the responsible adult for a foster child to receive a driver license under Section 53-3-211:

(a) the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon a highway as provided under Subsections 53-3-211(2) and (4); and

(b) the foster parent may file with the Driver License Division a verified written request that the learner permit or driver license be canceled in accordance with Section 53-3-211 if the foster child no longer resides with the foster parent.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules establishing the procedures for a child placing agency to provide the notification required under this section.

Enacted by Chapter 314, 2008 General Session

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, that provide overnight shelter to minors.

Enacted by Chapter 312, 2014 General Session

62A-2-109. License application -- Classification of information.

(1) An application for a license under this chapter shall be made to the office and shall contain information that is necessary to comply with approved rules.

(2) Information received by the office through reports and inspections shall be classified in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 75, 2009 General Session

62A-2-110. Exclusions from chapter.

The provisions of this chapter do not apply to:

(1) a facility or program owned or operated by an agency of the United States government;

(2) a facility or program operated by or under an exclusive contract with the Department of Corrections;

(3) unless required otherwise by a contract with the department, individual or group counseling by a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;

(4) a general acute hospital, small health care facility, specialty hospital, nursing care facility, or other health care facility licensed by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(5) a boarding school.

Amended by Chapter 188, 2005 General Session

62A-2-111. Adjudicative proceedings.

(1) Whenever the office has reason to believe that a licensee is in violation of this chapter or rules made under this chapter, the office may commence adjudicative proceedings to determine the legal rights of the licensee by serving notice of agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) A licensee, human services program, or individual may commence adjudicative proceedings, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all office actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the licensee, human services program, or persons associated with the licensee, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, or license under this chapter.

Amended by Chapter 382, 2008 General Session

62A-2-112. Violations -- Penalties.

If the office finds that a violation has occurred under Section 62A-2-111, it may:

(1) deny, place conditions on, suspend, or revoke a license, if it finds:

(a) that there has been a failure to comply with the rules established under this chapter; or

(b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

(2) restrict or prohibit new admissions to a human services program or facility, if it finds:

(a) that there has been a failure to comply with rules established under this chapter; or

(b) evidence of aiding, abetting, or permitting the commission of any illegal act in the human services program or facility.

Amended by Chapter 75, 2009 General Session

62A-2-113. License revocation -- Suspension.

(1) If a license is revoked, the office may not grant a new license unless:

(a) the human services program provides satisfactory evidence to the office that the conditions upon which revocation was based have been corrected;

(b) the human services program is inspected by the office and found to be in compliance with all provisions of this chapter and applicable rules;

(c) at least one year has passed since the day on which the licensee is served with final notice that the license is revoked; and

(d) the office determines that the interests of the public will not be jeopardized by granting the license.

(2) The office may suspend a license for no longer than one year.

(3) When a license has been suspended, the office may restore, or restore subject to conditions, the suspended license upon a determination that the:

(a) conditions upon which the suspension was based have been completely or partially corrected; and

(b) interests of the public will not be jeopardized by restoration of the license.

Amended by Chapter 188, 2005 General Session

62A-2-115. Injunctive relief and other legal procedures.

In addition to, and notwithstanding, any other remedy provided by law the department may, in a manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, management, or operation of a human services program or facility in violation of this chapter or rules established under this chapter.

Amended by Chapter 75, 2009 General Session

62A-2-116. Violation -- Criminal penalties.

A person who owns, establishes, conducts, maintains, manages, or operates a

human services program in violation of this chapter is guilty of a class A misdemeanor if the violation endangers or harms the health, welfare, or safety of persons participating in that program.

Amended by Chapter 188, 2005 General Session

62A-2-117. Licensure of tribal foster homes.

(1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes may develop and implement tribal foster home standards.

(2) The office shall give full faith and credit to an Indian tribe's certification or licensure of tribal foster homes according to standards developed and approved by the Indian tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.

(3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this chapter.

Amended by Chapter 188, 2005 General Session

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.

Amended by Chapter 3, 2008 General Session

62A-2-118. Administrative inspections.

(1) The office may, for the purpose of ascertaining compliance with this chapter, enter and inspect on a routine basis the facility of a licensee.

(2) Before conducting an inspection under Subsection (1), the office shall, after identifying the person in charge:

(a) give proper identification;

(b) request to see the applicable license;

(c) describe the nature and purpose of the inspection; and

(d) if necessary, explain the authority of the office to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section 62A-2-116.

(3) In conducting an inspection under Subsection (1), the office may, after meeting the requirements of Subsection (2):

(a) inspect the physical facilities;

(b) inspect and copy records and documents;

(c) interview officers, employees, clients, family members of clients, and others; and

(d) observe the licensee in operation.

(4) An inspection conducted under Subsection (1) shall be during regular business hours and may be announced or unannounced.

(5) The licensee shall make copies of inspection reports available to the public upon request.

(6) The provisions of this section apply to on-site inspections and do not restrict the office from contacting family members, neighbors, or other individuals, or from seeking information from other sources to determine compliance with this chapter.

Amended by Chapter 188, 2005 General Session

62A-2-119. Adoption of inspections, examinations, and studies.

The office may adopt an inspection, examination, or study conducted by a public or private entity, as identified by rule, to determine whether a licensee has complied with a licensing requirement imposed by virtue of this chapter.

Enacted by Chapter 358, 1998 General Session

62A-2-120. Criminal background checks -- Direct access to children or vulnerable adults.

(1) (a) (i) Except as provided in Subsection (7), an applicant for an initial license or a license renewal under this chapter shall submit to the office the names and other identifying information, which may include fingerprints, of all persons associated with the licensee, as defined in Section 62A-2-101, with direct access to children or vulnerable adults.

(ii) Except as provided in Subsection (7), a licensee who has been issued a renewal license for a 24-month period under Subsection 62A-2-108(4)(c) shall submit to the office all the information described in Subsection (1)(a)(i) on an annual basis.

(b) The Criminal Investigations and Technical Services Division of the Department of Public Safety, or the office as authorized under Section 53-10-108, shall process the information described in Subsection (1)(a) to determine whether the applicant has been convicted of any crime.

(c) Except as provided in Subsection (1)(d), if an applicant has not continuously lived in Utah for the five years immediately preceding the day on which the information referred to in Subsection (1)(a) is submitted to the office, the applicant shall submit fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical Services Division.

(d) An applicant is not required to comply with Subsection (1)(c) if:

(i) the applicant continuously lived in Utah for the five years immediately preceding the day on which the information described in Subsection (1)(a) is submitted to the office, except for time spent outside of the United States and its territories; and

(ii) the background check of the applicant is being conducted for a purpose

other than a purpose described in Subsection (1)(f).

(e) If an applicant described in Subsection (1)(a) spent time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (1)(a) is submitted to the office, the office shall require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States and its territories.

(f) Notwithstanding Subsections (1)(a) through (e), and except as provided in Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an FBI national criminal history records check, through the Criminal Investigations and Technical Services Division, if the background check of the applicant is being conducted for the purpose of:

(i) licensing a prospective foster home; or

(ii) approving a prospective adoptive placement of a child in state custody.

(g) Except as provided in Subsection (1)(h), in addition to the other requirements of this section, if the background check of an applicant described in Subsection (1)(a) is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody, 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 (1)(g)(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.

(h) The requirements under Subsections (1)(f) and (g) 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; or

(B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f) and (g).

(i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to background checks.

(2) The office shall approve an applicant for whom identifying information is submitted under Subsection (1) to have direct access to children or vulnerable adults in the licensee program if:

(a) (i) the applicant is found to have no criminal history record; or

(ii) (A) the only convictions in the applicant's criminal history record are misdemeanors or infractions not involving any of the offenses described in Subsection (3); and

(B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years before the date of the search;

(b) the applicant is not listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;

(c) juvenile court records do not show that a court made a substantiated finding, under Section 78A-6-323, that the applicant committed a severe type of child abuse or neglect;

(d) the applicant is not listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006;

(e) the applicant has not pled guilty or no contest to a pending charge for any:

(i) felony;

(ii) misdemeanor listed in Subsection (3); or

(iii) infraction listed in Subsection (3); and

(f) for an applicant described in Subsection (1)(g), the registry check described in Subsection (1)(g) does not indicate that the applicant 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.

(3) Except as provided in Subsection (8), unless at least 10 years have passed since the date of conviction, the office may not approve an applicant to have direct access to children or vulnerable adults in the licensee's human services program if the applicant has been convicted of an offense, whether a felony, misdemeanor, or infraction, that is:

(a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

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

(c) prostitution;

(d) included in:

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

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

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

(e) a violation of Section 76-6-103, aggravated arson;

(f) a violation of Section 76-6-203, aggravated burglary;

(g) a violation of Section 76-6-302, aggravated robbery; or

(h) a conviction for an offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

(4) (a) Except as provided in Subsection (8), if an applicant for whom identifying information is submitted under Subsection (1) is not approved by the office under Subsection (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the office shall conduct a comprehensive review of criminal and court records and related circumstances if the reason the approval is not granted is due

solely to one or more of the following:

(i) a conviction for:

(A) any felony not listed in Subsection (3);

(B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the date of the search;

(C) a protective order or ex parte protective order violation under Section 76-5-108 or a similar statute in another state; or

(D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years have passed since the date of conviction;

(ii) a plea of guilty or no contest to a pending:

(A) felony;

(B) misdemeanor listed in Subsection (3); or

(C) infraction listed in Subsection (3);

(iii) the applicant is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;

(iv) juvenile court records show that a court made a substantiated finding, under Section 78A-6-323, that the applicant committed a severe type of child abuse or neglect;

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

(vi) the applicant is listed in a child abuse or 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.

(b) The comprehensive review under Subsection (4)(a) shall include an examination of:

(i) the date of the offense or incident;

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

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

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

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

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

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

(B) sexual abuse;

(C) sexual exploitation; and

(D) negligent treatment;

(vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric treatment received, or additional academic or vocational schooling completed, by the person; and

(viii) any other pertinent information.

(c) At the conclusion of the comprehensive review under Subsection (4)(a), the office shall approve the applicant who is the subject of the review to have direct access to children or vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

Act, the office may make rules, consistent with this chapter, defining procedures for the comprehensive review described in this Subsection (4).

(5) (a) For purposes of this Subsection (5), "directly supervised" means that the person being supervised is under the uninterrupted visual and auditory surveillance of the person doing the supervising.

(b) A licensee may not permit any person to have direct access to a child or a vulnerable adult unless, subject to Subsection (5)(c), that person is:

(i) associated with the licensee and:

(A) approved by the office to have direct access to children or vulnerable adults under this section; or

(B) (I) the office has not determined whether to approve that person to have direct access to children or vulnerable adults;

(II) the information described in Subsection (1)(a), relating to that person, is submitted to the department; and

(III) that person is directly supervised by a person associated with the licensee who is approved by the office to have direct access to children or vulnerable adults under this section;

(ii) (A) not associated with the licensee; and

(B) directly supervised by a person associated with the licensee who is approved by the office to have direct access to children or vulnerable adults under this section;

(iii) the parent or guardian of the child or vulnerable adult; or

(iv) a person approved by the parent or guardian of the child or vulnerable adult to have direct access to the child or vulnerable adult.

(c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child or a vulnerable adult if that person is prohibited by court order from having that access.

(6) (a) Within 30 days after receiving the identifying information for a person under Subsection (1), the office shall give written notice to the person and to the licensee or applicant with whom the person is associated of:

(i) the office's decision regarding its background screening clearance and findings; and

(ii) a list of any convictions found in the search.

(b) With the notice described in Subsection (6)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (4).

(c) If the notice under Subsection (6)(a) states that the applicant is not approved to have direct access to children or vulnerable adults, the notice shall further advise the persons to whom the notice is given that either the person or the licensee or applicant with whom the person is associated, or both, 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 its background screening decision described in this Subsection (6); and

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

(7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for an initial license, or license renewal, to operate a substance abuse program that provides services to adults only.

(8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or license a person as a prospective foster parent or a prospective adoptive parent if the person 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, 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;

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

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

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

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

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

(N) an offense described in Section 76-5b-201, Sexual Exploitation of a Minor;

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

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

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

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

(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (8)(a)(i).

(b) Notwithstanding Subsections (2) through (4), the office may not approve or license a person as a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the person would otherwise be approved or licensed, the person has been convicted of a felony involving conduct that constitutes any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

(iii) mayhem, as described in Section 76-5-105;

(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

Precursor Act; or

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

(9) If any provision of this section conflicts with a provision of Section 62A-2-120.5, the conflicting provision of Section 62A-2-120.5 shall govern.

Amended by Chapter 293, 2012 General Session
Amended by Chapter 302, 2012 General Session

62A-2-120.5. Pilot program for expedited background check of a qualified human services applicant.

(1) As used in this section:

(a) "Business day" means a day on which the office is open.

(b) "Qualified human services applicant" means a person who:

(i) is associated with a licensee that provides services, under contract with the Division of Services for People with Disabilities, to a person with a disability; and

(ii) has not lived outside of Utah for the five years immediately preceding the day on which the person applies for a background check.

(2) Beginning on May 11, 2010, and ending on July 1, 2017, the office shall, within two business days after the day on which the office receives a request for an initial background check of a qualified human services applicant:

(a) conduct the background check; and

(b) (i) send an email to the licensee that submitted the request for the background check, stating that the qualified human services applicant passed the background check, if:

(A) the licensee submits with the request a waiver that:

(I) is approved by the office;

(II) is signed by the qualified human services applicant; and

(III) permits the office to provide the results of the background check to the licensee that submits the request;

(B) the background check does not indicate that the qualified human services applicant has a criminal history;

(C) the qualified human services applicant is not listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; and

(D) the qualified human services applicant is not listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006; or

(ii) send an email to the licensee that submitted the request for the background check, stating that the qualified human services applicant did not pass the background check, or that additional research is needed, if:

(A) the licensee submits with the request a waiver that:

(I) is approved by the office;

(II) is signed by the qualified human services applicant; and

(III) permits the office to provide the results of the background check to the licensee that submits the request; and

(B) (I) the background check indicates that the qualified human services applicant may have a criminal history;

(II) the qualified human services applicant is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(III) the qualified human services applicant is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006.

(3) The office shall, during the 2016 interim, report to the Legislature's Health and Human Services Interim Committee, regarding:

(a) the functioning of the pilot program described in this section;

(b) whether the pilot program should be converted to an ongoing program;

(c) whether the pilot program should be modified; and

(d) whether the pilot program should be expanded to include background checks of other human services providers.

Amended by Chapter 468, 2013 General Session

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

(1) For purposes of this section:

(a) "Direct service worker" is as defined in Section 62A-5-101.

(b) "Personal care attendant" is as defined in Section 62A-3-101.

(2) With respect to a licensee, a certified local inspector applicant, 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(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(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(1) and (2);

(b) (i) determining whether a certified local inspector applicant:

(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(1) and (2); and

(ii) informing a local government that a certified local inspector applicant:

(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(1) and (2);

(c) (i) determining whether a direct service worker:

(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(1) and (2); and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker:

(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(1) and (2); or

(d) (i) determining whether a personal care attendant:

(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(1) and (2); and

(ii) informing a person described in Subsections 62A-3-101(8)(a)(i) through (iv) that a personal care attendant:

(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(1) and (2).

(3) Notwithstanding Subsection (2), the department may access the Division of Child and Family Service's Management Information System under Section 62A-4a-1003:

(a) for the purpose of licensing and monitoring foster parents; and

(b) for the purposes described in Subsection 62A-4a-1003(1)(d).

(4) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection (2).

(5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person 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, that the person committed a severe type of child abuse or neglect.

Amended by Chapter 75, 2009 General Session

62A-2-122. Access to vulnerable adult abuse and neglect information.

(1) For purposes of this section:

(a) "Direct service worker" is as defined in Section 62A-5-101.

(b) "Personal care attendant" is as defined in Section 62A-3-101.

(2) With respect to a licensee, a certified local inspector applicant, a direct service worker, or a personal care attendant, the department may access the database created by Section 62A-3-311.1 for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation;

(b) (i) determining whether a certified local inspector applicant has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a local government that a certified local inspector applicant has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation;

(c) (i) determining whether a direct service worker has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; or

(d) (i) determining whether a personal care attendant has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a person described in Subsections 62A-3-101 (9)(a)(i) through (iv) that a personal care attendant has a supported or substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation.

(3) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection (2).

(4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Amended by Chapter 366, 2011 General Session

62A-3-101. Definitions.

As used in this chapter:

(1) "Adult" or "high risk adult" means a person 18 years of age or older who experiences a condition:

(a) that places the person at a high risk of being unable to care for himself:

(i) as determined by assessment; and

(ii) due to the onset of a physical or cognitive impairment or frailty; and

(b) for which the person is not eligible to receive services under:

(i) Chapter 5, Services to People with Disabilities; or

(ii) Chapter 15, Substance Abuse and Mental Health Act.

(2) "Aging" and "aged" means a person 60 years of age or older.

(3) "Area agency" means an area agency that provides services to the aged, high risk adults, or both within a planning and service area.

(4) "Area agency on aging" means a public or private nonprofit agency or office designated by the division to:

(a) operate within a planning and service area of the state; and

(b) develop and implement a broad range of services for the aged in the area described in Subsection (4)(a).

(5) "Area agency on high risk adults" means a public or private nonprofit agency or office designated by the division to:

(a) operate within a planning and service area of the state; and

(b) develop and implement services for high risk adults in the area described in Subsection (5)(a).

(6) "Board" means the Board of Aging and Adult Services.

(7) "Director" means the director of the division.

(8) "Division" means the Division of Aging and Adult Services within the department.

(9) "Personal care attendant" means a person who:

(a) is selected by:

(i) an aged person;

(ii) an agent of an aged person;

(iii) a high risk adult; or

(iv) an agent of a high risk adult; and

(b) provides personal services to the:

(i) aged person described in Subsection (9)(a)(i); or

(ii) high risk adult described in Subsection (9)(a)(iii).

(10) "Personal services" means nonmedical care and support, including assisting a person with:

(a) meal preparation;

(b) eating;

(c) bathing;

(d) dressing;

(e) personal hygiene; or
(f) daily living activities.
(11) "Planning and service area" means a geographical area of the state designated by the division for purposes of planning, development, delivery, and overall administration of services for the aged or high risk adults.
(12) (a) "Public funds" means state or federal funds that are disbursed by:
(i) the Department of Health;
(ii) the division;
(iii) an area agency; or
(iv) an area agency on aging.
(b) "Public funds" includes:
(i) Medicaid funds; and
(ii) Medicaid waiver funds.

Amended by Chapter 107, 2005 General Session

62A-3-102. Division created.
There is created a Division of Aging and Adult Services within the department, under the administration and general supervision of the executive director.

Amended by Chapter 181, 1990 General Session

62A-3-103. Director of division -- Appointment -- Qualifications.
(1) The director of the division shall be appointed by the executive director with the concurrence of the board.
(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning the aging and adult populations.
(3) The director is the administrative head of the division.

Amended by Chapter 104, 1992 General Session

62A-3-104. Authority of division.
(1) The division is the sole state agency, as defined by the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., to:
(a) serve as an effective and visible advocate for the aging and adult population of this state;
(b) develop and administer a state plan under the policy direction of the board; and
(c) take primary responsibility for state activities relating to provisions of the Older Americans Act of 1965, as amended.
(2) (a) The division has authority to designate:
(i) planning and service areas for the state; and
(ii) an area agency on aging within each planning and service area to design and implement a comprehensive and coordinated system of services and programs for

the aged within appropriations from the Legislature.

(b) Designation as an area agency on aging may be withdrawn:

(i) upon request of the area agency on aging; or

(ii) upon noncompliance with the provisions of the:

(A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;

(B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;

(C) provisions of this chapter; or

(D) rules, policies, or procedures established by the division.

(3) (a) The division has the authority to designate:

(i) planning and service areas for the state; and

(ii) subject to Subsection (3)(b), an area agency on high risk adults within each planning and service area to design and implement a comprehensive and coordinated system of case management and programs for high risk adults within appropriations from the Legislature.

(b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall designate as the area agency on high risk adults in a planning and service area:

(i) the area agency on aging that operates within the same geographic area if that agency requests, before July 1, 1998, to expand that agency's current contract with the division to include the responsibility of:

(A) being the area agency on high risk adults; or

(B) operating the area agency on high risk adults:

(I) through joint cooperation with one or more existing area agencies on aging; and

(II) without reducing geographical coverage in any service area; or

(ii) a public or private nonprofit agency or office if the area agency on aging that operates within the same geographic area has not made a request in accordance with Subsection (3)(b)(i).

(c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.

(ii) The division's efforts to establish area agencies on high risk adults shall start with counties with a population of more than 150,000 people.

(d) Designation as an area agency on high risk adults may be withdrawn:

(i) upon request by the area agency; or

(ii) upon noncompliance with:

(A) state law;

(B) federal law; or

(C) rules, policies, or procedures established by the division.

(4) (a) The division may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures:

(i) seek federal grants, loans, or participation in federal programs; and

(ii) receive and distribute state and federal funds for the division's programs and services to the aging and adult populations of the state.

(b) The division may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as

provided in Section 62A-3-104.3.

(5) The division has authority to establish, either directly or by contract, programs of advocacy, monitoring, evaluation, technical assistance, and public education to enhance the quality of life for aging and adult citizens of the state.

(6) In accordance with the rules of the division and Title 63G, Chapter 6a, Utah Procurement Code, the division may contract with:

(a) the governing body of an area agency to provide a comprehensive program of services; or

(b) public and private entities for special services.

(7) The division has authority to provide for collection, compilation, and dissemination of information, statistics, and reports relating to issues facing aging and adult citizens.

(8) The division has authority to prepare and submit reports regarding the operation and administration of the division to the department, the Legislature, and the governor, as requested.

(9) The division shall:

(a) implement and enforce policies established by the board governing all aspects of the division's programs for aging and adult persons in the state;

(b) in order to ensure compliance with all applicable state and federal statutes, policies, and procedures, monitor and evaluate programs provided by or under contract with:

(i) the division;

(ii) area agencies; and

(iii) an entity that receives funds from an area agency;

(c) examine expenditures of public funds;

(d) withhold funds from programs based on contract noncompliance;

(e) review and approve plans of area agencies in order to ensure:

(i) compliance with division policies; and

(ii) a statewide comprehensive program;

(f) in order to further programs for aging and adult persons and prevent duplication of services, promote and establish cooperative relationships with:

(i) state and federal agencies;

(ii) social and health agencies;

(iii) education and research organizations; and

(iv) other related groups;

(g) advocate for the aging and adult populations;

(h) promote and conduct research on the problems and needs of aging and adult persons;

(i) submit recommendations for changes in policies, programs, and funding to the:

(i) governor; and

(ii) Legislature; and

(j) (i) accept contributions to and administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and

(ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, to facilitate the administration of the "Out and About" Homebound Transportation Assistance Fund in accordance with Section 62A-3-110.

Amended by Chapter 347, 2012 General Session

62A-3-104.1. Powers and duties of area agencies.

(1) An area agency that provides services to an aged person, or a high risk adult shall within the area agency's respective jurisdiction:

(a) advocate by monitoring, evaluating, and providing input on all policies, programs, hearings, and levies that affect a person described in this Subsection (1);

(b) design and implement a comprehensive and coordinated system of services within a designated planning and service area;

(c) conduct periodic reviews and evaluations of needs and services;

(d) prepare and submit to the division plans for funding and service delivery for services within the designated planning and service area;

(e) establish, either directly or by contract, programs licensed under Chapter 2, Licensure of Programs and Facilities;

(f) (i) appoint an area director;

(ii) prescribe the area director's duties; and

(iii) provide adequate and qualified staff to carry out the area plan described in Subsection (1)(d);

(g) establish rules not contrary to policies of the board and rules of the division, regulating local services and facilities;

(h) operate other services and programs funded by sources other than those administered by the division;

(i) establish mechanisms to provide direct citizen input, including an area agency advisory council with a majority of members who are eligible for services from the area agency;

(j) establish fee schedules; and

(k) comply with the requirements and procedures of:

(i) Title 11, Chapter 13, Interlocal Cooperation Act; and

(ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

(2) Before disbursing any public funds, an area agency shall require that all entities receiving any public funds agree in writing that:

(a) the division may examine the entity's program and financial records; and

(b) the auditor of the local area agency may examine and audit the entity's program and financial records, if requested by the local area agency.

(3) An area agency on aging may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 62A-3-104.3.

(4) (a) For the purpose of providing services pursuant to this part, a local area agency may receive:

(i) property;

(ii) grants;

(iii) gifts;
(iv) supplies;
(v) materials;
(vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v); and
(vii) contributions.
(b) If a gift is conditioned upon the gift's use for a specified service or program, the gift shall be used for the specific service or program.
(5) (a) Area agencies shall award all public funds in compliance with:
(i) the requirements of Title 63G, Chapter 6a, Utah Procurement Code; or
(ii) a county procurement ordinance that requires procurement procedures similar to those described in Subsection (5)(a)(i).
(b) (i) If all initial bids on a project are rejected, the area agency shall publish a new invitation to bid.
(ii) If no satisfactory bid is received by the area agency described in Subsection (5)(b)(i), when the bids received from the second invitation are opened the area agency may execute a contract without requiring competitive bidding.
(c) (i) An area agency need not comply with the procurement provisions of this section when it disburses public funds to another governmental entity.
(ii) For purposes of this Subsection (5)(c), "governmental entity" means any political subdivision or institution of higher education of the state.
(d) (i) Contracts awarded by an area agency shall be for a:
(A) fixed amount; and
(B) limited period.
(ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in available funding for the same contract purpose without competition.
(6) Local area agencies shall comply with:
(a) applicable state and federal:
(i) statutes;
(ii) policies; and
(iii) audit requirements; and
(b) directives resulting from an audit described in Subsection (6)(a)(iii).

Amended by Chapter 347, 2012 General Session

62A-3-104.2. Contracts for services.

When an area agency has established a plan to provide services authorized by this chapter, and those services meet standards fixed by rules of the board, the area agency may enter into a contract with the division for services to be furnished by that area agency for an agreed compensation to be paid by the division.

Amended by Chapter 254, 1998 General Session

62A-3-104.3. Disbursal of public funds -- Background check of a personal care attendant.

(1) For purposes of this section, "office" is as defined in Section 62A-2-101.
(2) Subject to Subsection (4), public funds may not be disbursed to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, unless the personal care attendant is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120.
(3) For purposes of Subsection (2), the office shall conduct a background check of a personal care attendant:
(a) who desires to receive public funds as payment for the personal services described in Subsection (2); and
(b) using the same procedures established for a background check of an applicant for an initial license under Section 62A-2-120.
(4) The background check and the approval determination described in this section shall be conducted for a personal care attendant on an annual basis.

Enacted by Chapter 107, 2005 General Session

62A-3-105. Matching requirements for state and federal Older American funds.
(1) Except as provided in Subsection (2), a local area agency on aging that receives state or federal Older Americans Act Supportive Services, Older Americans Act Congregate Meals, or Older Americans Act Home Delivered Meals related funds from the division to provide programs and services under this chapter shall match those funds in an amount at least equal to:
(a) 15% of service dollars; and
(b) 25% of administrative dollars.
(2) A local area agency on aging is not required to match cash-in-lieu funds related to the Home Delivered Meals program or congregate meals.
(3) A local area agency on aging may include services, property, or other in-kind contributions to meet the administrative dollars match but may only use cash to meet the service dollars match.

Amended by Chapter 110, 2013 General Session

62A-3-106. Eligibility criteria.
Eligibility for services provided by the division directly or through contractual arrangements shall be determined by criteria established by the division and approved by the board.

Enacted by Chapter 1, 1988 General Session

62A-3-106.5. Agency responsible to investigate and provide services.
(1) For purposes of this section, "responsible agency" means the agency responsible to investigate or provide services in a particular case under the rules established under Subsection (2)(a).

(2) In order to avoid duplication in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish procedures to:

(a) determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case; and

(b) determine whether, and under what circumstances, the agency described in Subsection (2)(a) that is not the responsible agency will provide assistance to the responsible agency in a particular case.

(3) Notwithstanding Subsection (2), or the rules made pursuant to Subsection (2), Adult Protective Services shall be the agency within the division that is responsible for receiving all reports of alleged abuse, neglect, or exploitation of a vulnerable adult as provided in Section 62A-3-305.

Amended by Chapter 382, 2008 General Session

62A-3-107. Requirements for establishing division policy.

(1) The board is the program policymaking body for the division and for programs funded with state and federal money under Sections 62A-3-104.1 and 62A-3-104.2. In establishing policy and reviewing existing policy, the board shall seek input from local area agencies, consumers, providers, advocates, division staff, and other interested parties as determined by the board.

(2) The board shall establish, by rule, procedures for developing its policies which ensure that local area agencies are given opportunity to comment and provide input on any new policy of the board and on any proposed changes in the board's existing policy. The board shall also provide a mechanism for review of its existing policy and for consideration of policy changes that are proposed by those local area agencies.

(3) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

62A-3-107.5. Allocation of funds to acquire facilities.

(1) (a) The board may make grants to local area agencies on aging to acquire facilities to provide community-based services for aged persons. Grants under this section shall be made solely from appropriations made to the division for implementation of this section.

(b) Acquisition of a facility may include acquisition of real property, construction

of a new facility, acquisition of an existing facility, or alteration, renovation, or improvement of an existing facility.

(c) The local area agency may allocate grants received under this section to a local nonprofit or governmental agency that owns or operates a facility to provide community-based services for aged persons.

(2) A local area agency on aging or the local nonprofit or governmental agency that owns or operates the facility and receives grant money from the area agency shall provide a matching contribution of at least 25% of the grant funds it receives under this section. A matching contribution may include funds, services, property, or other in-kind contributions.

(3) In making grants under this section, the board may consider:

(a) the extent and availability of public and private funding to operate programs in the facility to be acquired and to provide for maintenance of that facility;

(b) the need for community-based services in the geographical area served by the area agency on aging;

(c) the availability of private and local funds to assist in acquisition, alteration, renovation, or improvement of the facility; and

(d) the extent and level of support for acquisition of the facility from local government officials, private citizens, interest groups, and others.

(4) Grants to local area agencies on aging and any local nonprofit or governmental agency that owns or operates a facility and receives grant money from the area agency under this section are subject to the oversight and control by the division described in Subsection 62A-3-104(8).

(5) It is the intent of the Legislature that the grants made under this section serve the statewide purpose of providing support for senior citizens throughout the state, and that the grants shall be made to serve as effectively as possible the facilities in greatest need of assistance.

Enacted by Chapter 299, 1996 General Session

62A-3-108. Allocation of funds to local area agencies -- Formulas.

(1) The board shall establish by rule formulas for allocating funds to local area agencies through contracts to provide programs and services in accordance with this part based on need. Determination of need shall be based on the number of eligible persons located in the local area which the division is authorized to serve, unless federal regulations require otherwise or the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. Formulas established by the board shall include a differential to compensate for additional costs of providing services in rural areas.

(2) Formulas established under Subsection (1) shall be in effect on or before July 1, 1998, and apply to all state and federal funds appropriated by the Legislature to the division for local area agencies, but does not apply to:

(a) funds that local area agencies receive from sources other than the division;

(b) funds that local area agencies receive from the division to operate a specific program within its jurisdiction which is available to all residents of the state;

(c) funds that a local area agency receives from the division to meet a need that exists only within that local area; and

(d) funds that a local area agency receives from the division for research projects.

Amended by Chapter 254, 1998 General Session

62A-3-109. Adjudicative proceedings.

Adjudicative proceedings held by, or relating to, the division or the board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 91, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-3-110. "Out and About" Homebound Transportation Assistance Fund.

(1) (a) There is created an expendable special revenue fund known as the "Out and About" Homebound Transportation Assistance Fund.

(b) The "Out and About" Homebound Transportation Assistance Fund shall consist of:

(i) private contributions;

(ii) donations or grants from public or private entities;

(iii) voluntary donations collected under Section 53-3-214.8; and

(iv) interest and earnings on account money.

(c) The cost of administering the "Out and About" Homebound Transportation Assistance Fund shall be paid from money in the fund.

(2) The Division of Aging and Adult Services in the Department of Human Services shall:

(a) administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund; and

(b) select qualified organizations and distribute the funds in the "Out and About" Homebound Transportation Assistance Fund in accordance with Subsection (3).

(3) (a) The division may distribute the funds in the "Out and About" Homebound Transportation Assistance Fund to a selected organization that provides public transportation to aging persons, high risk adults, or people with disabilities.

(b) An organization that provides public transportation to aging persons, high risk adults, or people with disabilities may apply to the Division of Aging and Adult Services, in a manner prescribed by the division, to receive all or part of the money contained in the "Out and About" Homebound Transportation Assistance Fund.

Amended by Chapter 167, 2013 General Session
Amended by Chapter 400, 2013 General Session

62A-3-201. Legislative findings -- Purpose -- Ombudsman.

The Legislature finds and declares that the aging citizens of this state should be

assisted in asserting their civil and human rights as patients, residents, and clients of long-term care facilities created to serve their specialized needs and problems; and that for the health, safety, and welfare of these citizens, the state should take appropriate action through an adequate legal framework to address their difficulties.

The purpose of this part is to establish within the division the long-term care ombudsman program for the aging citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care for aging citizens, and to fulfill federal requirements.

Enacted by Chapter 1, 1988 General Session

62A-3-202. Definitions.

As used in this part:

(1) "Elderly resident" means an adult 60 years of age or older who because of physical, economic, social, or emotional problems cannot function normally on an independent basis, and who resides in a long-term care facility.

(2) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.

(3) "Long-term care facility" means any skilled nursing facility, intermediate care facility, nursing home, assisted living facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

(4) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 62A-3-203.

Amended by Chapter 192, 1998 General Session

62A-3-203. Creation of Long-Term Care Ombudsman Program -- Responsibilities.

(1) (a) There is created within the division the Long-Term Care Ombudsman Program for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the state.

(b) Subject to the rules made under Section 62A-3-106.5, the ombudsman is responsible for:

(i) receiving and resolving complaints relating to elderly residents of long-term care facilities;

(ii) conducting investigations of any act, practice, policy, or procedure of any long-term care facility or government agency which it has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of any elderly resident of a long-term care facility;

(iii) coordinating the department's services for elderly residents of long-term

care facilities to ensure that those services are made available to eligible elderly citizens of the state; and

(iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.

(2) (a) A long-term care facility shall display an ombudsman program information poster.

(b) The division is responsible for providing the posters, which shall include the names and phone numbers for local ombudsman programs.

Amended by Chapter 31, 2006 General Session

62A-3-204. Powers and responsibilities of ombudsman.

The long-term care ombudsman shall:

(1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;

(2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with elderly residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;

(3) investigate an administrative act or omission of any long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;

(4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;

(5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;

(6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;

(7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the long-term care ombudsman program under this part; and

(8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

Amended by Chapter 75, 2009 General Session

62A-3-205. Procedures -- Adjudicative proceedings.

The long-term care ombudsman shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

62A-3-206. Investigation of complaints -- Procedures.

(1) (a) The ombudsman shall investigate each complaint he receives. An investigation may consist of a referral to another public agency, the collecting of facts and information over the telephone, or an inspection of the long-term care facility that is named in the complaint.

(b) The ombudsman shall notify any complainant of its decision to not pursue investigation of a complaint after the initial investigation and the reasons for the decision.

(2) In making any investigation, the ombudsman may engage in actions it deems appropriate including, but not limited to:

(a) making inquiries and obtaining information;

(b) holding investigatory hearings;

(c) entering upon and inspecting any premises, without notice to the facility, provided the investigator identifies himself upon entering the premises as a person authorized by this part to inspect the premises; and

(d) inspecting or obtaining any book, file, medical record, or other record required by law to be retained by the long-term care facility or governmental agency, pertaining to elderly residents, subject to Subsection (3).

(3) (a) Before reviewing a resident's records, the ombudsman shall seek to obtain written permission to review the records from the institutionalized elderly person or his legal representative.

(b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the elderly resident or his legal representative. If the resident or legal representative refuses to sign a release allowing access to records, the ombudsman shall record and abide by this decision. If the attempt to obtain a signed release fails for any other reason, the ombudsman may review the records.

(4) Following any investigation, the ombudsman shall report its findings and recommendations to the complainant, elderly residents of long-term care facilities affected by the complaint, and to the long-term care facility or governmental agency involved.

Amended by Chapter 324, 2010 General Session

62A-3-207. Confidentiality of materials relating to complaints or investigations -- Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.

(1) The ombudsman shall establish procedures to assure that all files maintained by the long-term care ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or elderly resident of a long-term care facility may not be disclosed by the ombudsman unless:

(a) the complainant or elderly resident, or the legal representative of either, consents in writing to the disclosure;

(b) disclosure is ordered by the court; or

(c) the disclosure is made to a local area agency on aging, the state adult protective services agency, the Department of Health, the Department of Public Safety, the local law enforcement agency, or the county attorney as part of the investigation of a complaint.

(2) Neither the ombudsman nor its agents or designees may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce the provisions of this part.

(3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.

(4) (a) Discriminatory, disciplinary, or retaliatory action may not be taken against any volunteer or employee of a long-term care facility or governmental agency, or against any elderly resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.

(b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

Amended by Chapter 176, 1993 General Session

62A-3-208. Prohibited acts -- Penalty.

(1) No person may:

(a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;

(b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;

(c) willfully interfere with the lawful actions of the ombudsman;

(d) willfully refuse to comply with lawful demands of the ombudsman, including the demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to any elderly resident of a long-term care facility; or

(e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter which is before the ombudsman for determination of whether an investigation should be conducted.

(2) Violation of any provision of this part constitutes a class B misdemeanor.

Enacted by Chapter 1, 1988 General Session

62A-3-301. Definitions.

As used in this part:

(1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult

that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(2) "Abuse" means:

(a) knowingly or intentionally:

(i) attempting to cause harm;

(ii) causing harm; or

(iii) placing another in fear of harm;

(b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;

(c) emotional or psychological abuse;

(d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or

(e) deprivation of life sustaining treatment, or medical or mental health treatment, except:

(i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

(ii) when informed consent, as defined in Section 76-5-111, has been obtained.

(3) "Adult" means a person who is 18 years of age or older.

(4) "Adult protection case file" means a record, stored in any format, contained in a case file maintained by Adult Protective Services.

(5) "Adult Protective Services" means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.

(6) "Capacity to consent" means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person's property and lifestyle, including a decision to accept or refuse services.

(7) "Caretaker" means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management, or other necessities.

(8) "Counsel" means an attorney licensed to practice law in this state.

(9) "Database" means the statewide database maintained by the division under Section 62A-3-311.1.

(10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

(11) "Elder adult" means a person 65 years of age or older.

(12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.

(13) (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

(b) "Emotional or psychological abuse" includes intimidating, threatening, isolating, coercing, or harassing.

(c) "Emotional or psychological abuse" does not include verbal or non-verbal

conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:

(i) engage in the conduct; or

(ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

(14) "Exploitation" means an offense described in Subsection 76-5-111(4) or Section 76-5b-202.

(15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.

(16) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

(17) "Intimidation" means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.

(18) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:

(i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;

(ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

(iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

(b) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

(19) "Lacks capacity to consent" is as defined in Section 76-5-111.

(20) (a) "Neglect" means:

(i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or

(B) failure of a caretaker to provide protection from health and safety hazards or maltreatment;

(ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;

(iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;

(iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;

(v) self-neglect by the vulnerable adult; or

(vi) abandonment by a caretaker.

(b) "Neglect" does not include conduct, or failure to take action, that is permitted or excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

(21) "Physical injury" includes the damage and conditions described in Section 76-5-111.

(22) "Protected person" means a vulnerable adult for whom the court has ordered protective services.

(23) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.

(24) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

(25) "Serious physical injury" is as defined in Section 76-5-111.

(26) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

(27) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

(28) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental or other health care;

(c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;

(e) manage the adult's own financial resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(29) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Amended by Chapter 149, 2012 General Session

62A-3-302. Purpose of Adult Protective Services Program.

Subject to the rules made by the division under Section 62A-3-106.5, Adult Protective Services:

(1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults;

(2) shall, where appropriate, provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult; and

(3) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and develop procedures and policies relating to:

(a) reporting and investigating incidents of abuse, neglect, or exploitation; and

(b) providing protective services to the extent that funds are appropriated by the Legislature for this purpose.

Amended by Chapter 91, 2008 General Session

62A-3-303. Powers and duties of Adult Protective Services.

In addition to all other powers and duties that Adult Protective Services is given under this part, Adult Protective Services:

(1) shall maintain an intake system for receiving and screening reports;

(2) shall investigate referrals that meet the intake criteria;

(3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;

(4) shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;

(5) may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;

(6) may provide short-term, limited services to a vulnerable adult when family or community resources are not available to provide for the protective needs of the vulnerable adult;

(7) shall have access to facilities licensed by, or contracted with, the department or the Department of Health for the purpose of conducting investigations;

(8) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including private, controlled, or protected medical or financial records of a vulnerable adult who is the subject of an investigation if:

(a) for a vulnerable adult who does not lack capacity to consent, the vulnerable adult signs a release of information; or

(b) for a vulnerable adult who lacks capacity to consent, an administrative subpoena is issued by Adult Protective Services;

(9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;

(10) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including the provision of statements, documents, exhibits, and other items that assist Adult Protective Services in conducting investigations and providing protective services;

(11) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;

(12) may conduct studies and compile data regarding abuse, neglect, and exploitation; and

(13) may issue reports and recommendations.

Amended by Chapter 245, 2014 General Session

62A-3-304. Cooperation by caretaker.

A caretaker, facility, or other institution shall, regardless of the confidentiality standards of the caretaker, facility, or institution:

(1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this chapter;

(2) cooperate with any Adult Protective Services investigation;

(3) provide Adult Protective Services with access to records or documents relating to the vulnerable adult who is the subject of an investigation; or

(4) provide evidence in any judicial or administrative proceeding relating to a vulnerable adult who is the subject of an investigation.

Amended by Chapter 91, 2008 General Session

62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Nonmedical healing.

(1) A person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.

(2) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult:

(a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and

(b) the law enforcement agency may initiate an investigation in cooperation with Adult Protective Services.

(3) A person who in good faith makes a report or otherwise notifies a law enforcement agency or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.

(4) (a) A person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.

(b) A covered provider or covered contractor, as defined in Section 26-21-201, that knowingly fails to report suspected abuse or neglect, as required by this section, is subject to a private right of action and liability for the abuse or neglect of another person that is committed by the individual who was not reported to Adult Protective Services in accordance with this section.

(5) Under circumstances not amounting to a violation of Section 76-8-508, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is

the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

(6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Amended by Chapter 328, 2012 General Session

62A-3-307. Photographing, video, and audio taping.

Law enforcement or Adult Protective Services investigators may collect evidence regarding alleged abuse, neglect, or exploitation of a vulnerable adult by taking, or causing to be taken, photographs, video tape recordings, or audio or video tape accounts of a vulnerable adult, if the vulnerable adult:

(1) consents to the taking of the photographs, video tape recordings, or audio or video tape accounts; or

(2) lacks the capacity to give the consent described in Subsection (1).

Repealed and Re-enacted by Chapter 91, 2008 General Session

62A-3-308. Peace officer's authority to transport -- Notification.

(1) A peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility, if:

(a) the officer has probable cause to believe that:

(i) by reason of abuse, neglect, or exploitation there exist exigent circumstances; and

(ii) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment;

(b) the vulnerable adult refuses to consent or lacks capacity to consent; and

(c) there is not time to notify interested parties or to apply for a warrant or other court order.

(2) A peace officer described in Subsection (1) shall, within four hours after a vulnerable adult is transported to an appropriate medical or shelter facility:

(a) notify Adult Protective Services intake; and

(b) request that Adult Protective Services or the division file a petition with the court for an emergency protective order.

Amended by Chapter 91, 2008 General Session

62A-3-309. Enforcement by division -- Duty of county or district attorney.

(1) It is the duty of the county or district attorney, as appropriate under Sections 17-18a-202 and 17-18a-203, to:

(a) assist and represent the division;

(b) initiate legal proceedings to protect vulnerable adults; and

(c) take appropriate action to prosecute the alleged offenders.

(2) If the county or district attorney fails to act upon the request of the division to provide legal assistance within five business days after the day on which the request is made:

(a) the division may request the attorney general to act; and

(b) the attorney general may, in the attorney general's discretion, assume the responsibilities and carry the action forward in place of the county or district attorney.

Amended by Chapter 237, 2013 General Session

62A-3-311. Requests for records.

(1) Requests for records maintained by Adult Protective Services shall be made in writing to Adult Protective Services.

(2) Classification and disclosure of records shall be made in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 91, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-3-311.1. Statewide database -- Restricted use and access.

(1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.

(2) The database shall include:

(a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;

(b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:

(i) supported;

(ii) inconclusive;

(iii) without merit; or

(iv) for reports for which the finding is made before May 5, 2008:

(A) substantiated; or

(B) unsubstantiated; and

(c) any other information that may be helpful in furthering the purposes of this part, as determined by the division.

(3) Information obtained from the database may be used only:

(a) for statistical summaries compiled by the department that do not include names or other identifying data;

(b) where identification of a person as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:

(i) the department;

(ii) the Division of Occupational and Professional Licensing;

(iii) the Bureau of Licensing, within the Department of Health;

(iv) any government agency specifically authorized by statute to access or use the information in the database; or

(v) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or

(c) as otherwise specifically provided by law.

Amended by Chapter 91, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-3-311.5. Notice of supported finding -- Procedure for challenging finding -- Limitations.

(1) (a) Except as provided in Subsection (1)(b), within 15 days after the day on which the division makes a supported finding that a person committed abuse, neglect, or exploitation of a vulnerable adult, the division shall serve the person with a notice of agency action, in accordance with Subsections (2) and (3).

(b) The division may serve the notice described in Subsection (1)(a) within a reasonable time after the 15 day period described in Subsection (1)(a) if:

(i) the delay is necessary in order to:

(A) avoid impeding an ongoing criminal investigation or proceeding; or

(B) protect the safety of a person; and

(ii) the notice is provided before the supported finding is used as a basis to deny the person a license or otherwise adversely impact the person.

(2) The division shall cause the notice described in Subsection (1)(a) to be served by personal service or certified mail.

(3) The notice described in Subsection (1)(a) shall:

(a) indicate that the division has conducted an investigation regarding alleged abuse, neglect, or exploitation of a vulnerable adult by the alleged perpetrator;

(b) indicate that, as a result of the investigation described in Subsection (3)(a), the division made a supported finding that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult;

(c) include a summary of the facts that are the basis for the supported finding;

(d) indicate that the supported finding may result in disqualifying the person from:

(i) being licensed, certified, approved, or employed by a government agency;

(ii) being employed by a service provider, person, or other entity that contracts with, or is licensed by, a government agency; or

(iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii);

(e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying information is listed in the database;

(f) indicate that the alleged perpetrator may request a copy of the report of the alleged abuse, neglect, or exploitation; and

(g) inform the alleged perpetrator of:

(i) the right described in Subsection (4)(a); and

(ii) the consequences of failing to exercise the right described in Subsection (4)(a) in a timely manner.

(4) (a) The alleged perpetrator has the right, within 30 days after the day on

which the notice described in Subsection (1)(a) is served, to challenge the supported finding by filing a request for an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act.

(b) If the alleged perpetrator fails to file a request for an informal adjudicative proceeding within the time described in Subsection (4)(a), the supported finding will become final and will not be subject to challenge or appeal.

(5) At the hearing described in Subsection (4)(a), the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult.

(6) Notwithstanding any provision of this section, an alleged perpetrator described in this section may not challenge a supported finding if a court of competent jurisdiction entered a finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported finding is based.

(7) A person who was listed in the database as a perpetrator before May 5, 2008, and who did not have an opportunity to challenge the division's finding that resulted in the listing, may at any time:

(a) request that the division reconsider the division's finding; or

(b) request an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act, to challenge the finding.

Enacted by Chapter 91, 2008 General Session

62A-3-312. Access to information in database.

The database and the adult protection case file:

(1) shall be made available to law enforcement agencies, the attorney general's office, city attorneys, and county or district attorney's offices;

(2) shall be released as required under Subsection 63G-2-202(4)(c); and

(3) may be made available, at the discretion of the division, to:

(a) subjects of a report as follows:

(i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and

(ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and

(b) persons involved in an evaluation or assessment of the vulnerable adult as follows:

(i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;

(ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;

(iii) an authorized person or agency providing services to, or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to, the victim;

(iv) a licensing authority for a facility, program, or person providing care to a

victim named in a report; and

(v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:

(A) the Office of Public Guardian, created in Section 62A-14-103; and

(B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

Amended by Chapter 245, 2014 General Session

62A-3-314. Private right of action -- Estate asset -- Attorney fees.

(1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator.

(2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.

(3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff.

(4) If the defendant prevails in an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

Amended by Chapter 176, 2007 General Session

62A-3-315. Protective services voluntary unless court ordered.

(1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.

(2) Protective services may be provided without a court order for a vulnerable adult who does not lack capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.

(3) The court may order protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to services in accordance with this part.

Enacted by Chapter 108, 2002 General Session

62A-3-316. Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:

(1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written

agreement for services described in Section 62A-3-315;

(2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or

(3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

Enacted by Chapter 108, 2002 General Session

62A-3-317. Venue for protective services proceedings.

Venue for all proceedings for protective services under this chapter is in the county where the vulnerable adult resides or is present.

Enacted by Chapter 108, 2002 General Session

62A-3-318. Petition by division for protective services -- Notice -- Rights of adult.

(1) If the division determines that a vulnerable adult is in need of protective services but lacks capacity to consent to protective services, the division may petition the district court for an order authorizing the division to provide protective services. The petition shall include:

(a) the name, address, and age of the adult who is the subject of the petition;

(b) the reasonably ascertainable names and addresses of the spouse, parents, adult children, and caretaker of the adult who is the subject of the petition;

(c) the name and address of any court-appointed guardian or conservator for the adult;

(d) specific facts sufficient to show that the subject of the petition is a vulnerable adult in need of protective services; and

(e) specific facts sufficient to show that the vulnerable adult lacks capacity to consent.

(2) Upon the filing of a petition, the court shall set a date for hearing on the petition. At least 10 days' notice of the petition and the hearing shall be given to the adult who is the subject of the petition and to each other person identified in Subsection (1)(b) or (c).

(3) The notice shall be in plain language and in at least a 14-point font. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the adult, and a list of rights as set forth in Subsections (4), (6), and (7). The petition and notice shall be served personally upon the adult who is the subject of the petition and upon the adult's spouse, caretaker, and parents if they can be found within the state. Notice to the spouse, caretaker, and parents, if they cannot be found within the state, and to other persons shall be given by first-class mail, postage prepaid.

(4) The adult who is the subject of the petition shall have the right to be present at the hearing, unless the adult has knowingly and voluntarily waived the right to be present, or unless a licensed physician has certified that the adult is physically unable to attend. Waiver shall not be presumed by nonappearance of the adult, but shall be

determined by the court on the basis of evidence provided to the court.

(5) The adult who is the subject of the petition may be examined by a licensed physician appointed by the court, who shall submit a written report to the court. The adult may be interviewed by a visitor, as defined in Section 75-5-308, appointed by the court, who shall submit a written report to the court. The visitor may also interview knowledgeable persons at the division and others who have knowledge of the adult who is the subject of the petition.

(6) The adult who is the subject of the petition has the right to be represented by counsel at all proceedings before the court. Unless the adult has retained counsel, the court shall appoint counsel. The fees of the adult's counsel shall be paid by the adult who is the subject of the petition unless the adult is indigent in which case the division will pay the adult's reasonable attorney fees.

(7) The adult who is the subject of the petition is entitled to present evidence and to cross-examine witnesses, including any court-appointed physician and visitor. The issues may be determined at a closed hearing if the adult who is the subject of the petition so requests.

(8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate Code.

Amended by Chapter 91, 2008 General Session

62A-3-319. Court order for protective services -- Review.

(1) Only upon court order may involuntary protective services be provided to a vulnerable adult who lacks capacity to consent to services.

(2) The court may order protective services if it is satisfied that the adult who is the subject of the petition under Section 62A-3-318 lacks capacity to consent to services and is in need of protective services. The court shall specifically state the purpose, extent, and limitations of the protective services, including specific findings of fact and conclusions of law. The court shall fashion any order so as to place the least possible restrictions on the rights of the vulnerable adult, consistent with the welfare, safety, and best interests of the adult.

(3) Any party to the proceedings may petition the court for modification or dissolution of the order at any time upon a showing of a material change in circumstances. Any protected person has the right to petition the court for a rehearing within 10 days after the date the order was entered.

Enacted by Chapter 108, 2002 General Session

62A-3-320. Petition for emergency order -- Protective services -- Temporary guardian -- Forcible entry.

(1) Upon the filing of a petition for an emergency order, the court may, without notice, order appropriate protective services, if the court finds that:

(a) the subject of the petition is a vulnerable adult;

(b) the adult has no court-appointed guardian or conservator or the guardian or conservator is not effectively performing the guardian's or conservator's duties;

(c) an emergency exists; and

(d) the welfare, safety, or best interests of the adult require immediate action.

(2) The order described in Subsection (1) shall specifically designate the protective services which are approved, together with supporting facts.

(3) Protective services authorized in an emergency order may not include hospitalization, nursing or custodial care, or a change in residence, unless the court specifically finds that the action is necessary and authorizes the specific protective services in the order.

(4) (a) Protective services provided through an emergency order may not be provided longer than three business days, at which time the order shall expire unless a petition for guardianship, conservatorship, or other protective services is filed.

(b) If a petition for guardianship, conservatorship, or other protective services is filed within the three-business-day period described in Subsection (4)(a), the emergency order may be continued for as long as 15 days from the day on which the last petition was filed, to allow time for a hearing to determine whether the emergency order shall remain in effect.

(5) In the emergency order, the court may appoint a temporary guardian, in accordance with Section 75-5-310.

(6) To implement an emergency order, the court may authorize forcible entry by a peace officer into the premises where the protected person is residing, only upon a showing that voluntary access into the premises is not possible and that forcible entry is required.

Amended by Chapter 91, 2008 General Session

62A-3-321. Petition for injunctive relief when caretaker refuses to allow services.

(1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.

(2) The division's petition under Subsection (1) shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services or to order other appropriate relief.

(3) The court may, on appropriate findings and conclusions in accordance with Rule 65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.

(4) The petition under Subsection (1) may be joined with a petition under Section 62A-3-318 or Section 62A-3-320.

Enacted by Chapter 108, 2002 General Session

62A-4a-101. Definitions.

As used in this chapter:

(1) "Abuse" is as defined in Section 78A-6-105.

(2) "Adoption services" means:

(a) placing children for adoption;

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

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

(d) conducting adoption studies;

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

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

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

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

(5) "Chronic abuse" means repeated or patterned abuse.

(6) "Chronic neglect" means repeated or patterned neglect.

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

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

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

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

(i) day-care center;

(ii) family group home; or

(iii) family child care home.

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

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

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

(12) "Domestic violence services" means:

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

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

(ii) the dependent children of a person described in Subsection (12)(a)(i); and

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

(13) "Harm" is as defined in Section 78A-6-105.

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

(15) "Incest" is as defined in Section 78A-6-105.

(16) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of Children:

(a) a child; or

(b) a person:
(i) who is at least 18 years of age and younger than 21 years of age; and
(ii) for whom the division has been specifically ordered by the juvenile court to provide services.
(17) "Molestation" is as defined in Section 78A-6-105.
(18) "Natural parent" means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.
(19) "Neglect" is as defined in Section 78A-6-105.
(20) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:
(a) the shelter hearing; or
(b) the child's return home.
(21) "Protective services" means expedited services that are provided:
(a) in response to evidence of neglect, abuse, or dependency of a child;
(b) to a cohabitant who is neglecting or abusing a child, in order to:
(i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and
(ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
(c) in cases where the child's welfare is endangered:
(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
(ii) to cause a protective order to be issued for the protection of the child, when appropriate; and
(iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:
(A) removal from the child's home;
(B) placement in substitute care; and
(C) petitioning the court for termination of parental rights.
(22) "Severe abuse" is as defined in Section 78A-6-105.
(23) "Severe neglect" is as defined in Section 78A-6-105.
(24) "Sexual abuse" is as defined in Section 78A-6-105.
(25) "Sexual exploitation" is as defined in Section 78A-6-105.
(26) "Shelter care" means the temporary care of a minor in a nonsecure facility.
(27) "State" means:
(a) a state of the United States;
(b) the District of Columbia;
(c) the Commonwealth of Puerto Rico;
(d) the Virgin Islands;
(e) Guam;
(f) the Commonwealth of the Northern Mariana Islands; or
(g) a territory or possession administered by the United States.
(28) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.
(29) "Status offense" means a violation of the law that would not be a violation

but for the age of the offender.

(30) "Substance abuse" is as defined in Section 78A-6-105.

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

(32) "Substitute care" means:

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

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

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

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

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

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

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

(37) "Unsupported" means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

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

Amended by Chapter 75, 2009 General Session

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

(1) The Division of Child and Family Services, created in Section 62A-4a-103, is responsible for establishing policies for the division, by rule, 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 of 1996, 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, by rule, policies 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 policy or proposed revision of an existing policy; and

(c) provide a mechanism for:

(i) systematic and regular review of existing policies, including an annual review of all division policies to ensure that policies comply with the Utah Code; and

(ii) consideration of policy 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.

Amended by Chapter 293, 2012 General Session

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 his 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 his 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, to provide the child with a stable, permanent environment.

(3) The division shall also provide domestic violence services in accordance with federal law.

Amended by Chapter 265, 2014 General Session

62A-4a-104. Director of division -- Qualifications.

(1) The director of the division shall be appointed by the executive director.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in the areas of child and family services, including child protective services, family preservation, and foster

care.

(3) The director is the administrative head of the division.

Amended by Chapter 75, 2009 General Session

62A-4a-105. Division responsibilities.

(1) The division shall:

(a) administer services to minors and families, including:

(i) child welfare services;

(ii) domestic violence services; and

(iii) all other responsibilities that the Legislature or the executive director may assign to the division;

(b) provide the following services:

(i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;

(ii) non-custodial and in-home services, including:

(A) services designed to prevent family break-up; and

(B) family preservation services;

(iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

(iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;

(v) shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

(vi) domestic violence services, in accordance with the requirements of federal law;

(vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

(viii) substitute care for dependent, abused, neglected, and delinquent children;

(ix) programs and services for minors who have been placed in the custody of the division for reasons other than abuse or neglect, under Section 62A-4a-250;

(x) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302; and

(xi) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(c) establish standards for all:

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

(ii) facilities that provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division; and

(iii) direct or contract providers of domestic violence services described in Subsection (1)(b)(vi);

(d) have authority to:

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

(ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division;

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

(f) in accordance with Subsection (2)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state;

(g) cooperate with the Employment Development Division in the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;

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

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

(j) provide social studies and reports for the juvenile court in accordance with Section 78A-6-605;

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

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

(i) have a permanency goal of adoption; or

(ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314, and promote adoption of those children;

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

(n) perform other duties and functions required by law.

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

(i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions, to develop and administer a broad range of services and support;

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

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

(b) When an individual is referred to a local substance abuse authority or other

private or public resource for court-ordered drug screening under Subsection (1)(n), the court shall order the individual to pay all costs of the tests unless:

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

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

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

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

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

Amended by Chapter 140, 2014 General Session
Amended by Chapter 265, 2014 General Session

62A-4a-105.5. Employees -- Failure to comply with policy -- Termination.

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

(2) If, after training and supervision, the employee consistently fails to comply with those laws, rules, and policies, his employment with the division shall be terminated.

Enacted by Chapter 260, 1994 General Session

62A-4a-106. Services provided by division.

(1) The division may provide, directly or through contract, services that include the following:

(a) adoptions;

(b) day care for children;

(c) out-of-home placements for minors;

(d) health-related services;

(e) homemaking services;

(f) home management services;

(g) protective services for minors;

(h) transportation services; and

(i) domestic violence services.

(2) Services provided directly by the division or through contract shall be monitored by the division to insure compliance with applicable:

(a) state law; and

(b) standards and rules of the division.

(3) When the division provides a service through a private contract, not including a foster parent placement, the division shall post the name of the service provider on the division's website.

Amended by Chapter 290, 2012 General Session

62A-4a-107. Mandatory education and training of caseworkers -- Development of curriculum.

(1) There is created within the division a full-time position of Child Welfare Training Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee in that position is not responsible for direct casework services or the supervision of those services, but is required to:

(a) develop child welfare curriculum that:

(i) is current and effective, consistent with the division's mission and purpose for child welfare; and

(ii) utilizes curriculum and resources from a variety of sources including those from:

(A) the public sector;

(B) the private sector; and

(C) inside and outside of the state;

(b) recruit, select, and supervise child welfare trainers;

(c) develop a statewide training program, including a budget and identification of sources of funding to support that training;

(d) evaluate the efficacy of training in improving job performance;

(e) assist child protective services and foster care workers in developing and fulfilling their individual training plans;

(f) monitor staff compliance with division training requirements and individual training plans; and

(g) expand the collaboration between the division and schools of social work within institutions of higher education in developing child welfare services curriculum, and in providing and evaluating training.

(2) (a) The director shall, with the assistance of the child welfare training coordinator, establish a core curriculum for child welfare services that is substantially equivalent to the Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

(b) Any child welfare caseworker who is employed by the division for the first time after July 1, 1999, shall, before assuming significant independent casework responsibilities, successfully complete:

(i) the core curriculum; and

(ii) except as provided in Subsection (2)(c), on-the-job training that consists of observing and accompanying at least two capable and experienced child welfare caseworkers as they perform work-related functions:

(A) for three months if the caseworker has less than six months of on-the-job experience as a child welfare caseworker; or

(B) for two months if the caseworker has six months or more but less than 24 months of on-the-job experience as a child welfare caseworker.

(c) A child welfare caseworker with at least 24 months of on-the-job experience is not required to receive on-the-job training under Subsection (2)(b)(ii).

(3) Child welfare caseworkers shall complete training in:
(a) the legal duties of a child welfare caseworker;
(b) the responsibility of a child welfare caseworker to protect the safety and legal rights of children, parents, and families at all stages of a case, including:
(i) initial contact;
(ii) investigation; and
(iii) treatment;
(c) recognizing situations involving:
(i) substance abuse;
(ii) domestic violence;
(iii) abuse; and
(iv) neglect; and
(d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of the United States to the child welfare caseworker's job, including:
(i) search and seizure of evidence;
(ii) the warrant requirement;
(iii) exceptions to the warrant requirement; and
(iv) removing a child from the custody of the child's parent or guardian.
(4) The division shall train its child welfare caseworkers to apply the risk assessment tools and rules described in Subsection 62A-4a-1002(2).
(5) The division shall use the training of child welfare caseworkers to emphasize:
(a) the importance of maintaining the parent-child relationship whenever possible;
(b) the preference for providing in-home services over taking a child into protective custody, both for the emotional well-being of the child and the efficient allocation of resources; and
(c) the importance and priority of:
(i) kinship placement in the event a child must be taken into protective custody; and
(ii) guardianship placement, in the event the parent-child relationship is legally terminated and no appropriate adoptive placement is available.
(6) When a child welfare caseworker is hired, before assuming significant independent casework responsibilities, the child welfare caseworker shall complete the training described in Subsections (3) through (5).

Amended by Chapter 171, 2013 General Session

62A-4a-107.5. Private recruitment and training of foster care parents and child welfare volunteers -- Extension of immunity.
(1) The division may contract with one or more private, nonprofit organizations to recruit and train foster care parents and child welfare volunteers on a statewide or regional basis.
(2) An organization that contracts with the division pursuant to Subsection (1) shall agree to:

(a) increase the number of licensed and trained foster care parents in the geographic area covered by:

(i) developing a strategic plan;

(ii) assessing the needs, perceptions, and qualities of potential foster care parents;

(iii) assessing the needs, perceptions, and qualities of children in state custody;

(iv) identifying potential foster care parents through public and private resources;

(v) screening foster care parent applicants;

(vi) providing preservice, ongoing, and customized training to foster care parents;

(vii) developing a competency-based training curriculum with input from public and private resources and approved by the division;

(viii) focusing training exercises on skill development; and

(ix) supporting foster care parents by supplying staff support, identifying common issues, encouraging peer support, and connecting available resources;

(b) increase the number of child welfare volunteers in the geographical area covered by:

(i) developing a strategic plan;

(ii) seeking the participation of established volunteer organizations;

(iii) designing and offering initial orientation sessions to child welfare volunteers;

(iv) informing volunteers of options for service as specified by the division; and

(v) facilitating the placement and certification of child welfare volunteers;

(c) coordinate efforts, where appropriate, with the division;

(d) seek private contributions in furtherance of the organization's activities under this Subsection (2);

(e) perform other related services and activities as may be required by the division; and

(f) establish a system for evaluating performance and obtaining feedback on the activities performed pursuant to this Subsection (2).

(3) Notwithstanding Subsection (2), the department shall retain ultimate authority over and responsibility for:

(a) initial and ongoing training content, material, curriculum, and techniques, and certification standards used by an organization; and

(b) screening, investigation, licensing, certification, referral, and placement decisions with respect to any person recruited or trained by an organization.

(4) (a) An organization under contract with the department and its directors, trustees, officers, employees, and agents, whether compensated or not, may not be held civilly liable for any act or omission on a matter for which the department retains ultimate authority and responsibility under Subsection (3).

(b) Nothing in Subsection (4)(a) may be construed as altering the abuse and neglect reporting requirements of Section 62A-4a-403, regardless of whether the facts that give rise to such a report occur before or after a screening, investigation, licensing, or placement decision of the department.

(5) A referring entity or a referring individual that voluntarily and without remuneration assists the organization to identify and recruit foster care parents or child welfare volunteers is not liable in any civil action for any act or omission of:

(a) the referring entity or the referring individual, which is performed in good faith and in furtherance of the entity's assistance to the organization; or

(b) any person directly or indirectly referred to the organization by the entity as a foster care parent or child welfare volunteer, if the referring individual was without actual knowledge of any substantiated fact that would have disqualified the person from such a position at the time the referral was made.

(6) As used in this section:

(a) "referring entity" means:

(i) an incorporated or unincorporated organization or association whether formally incorporated or otherwise established and operating for religious, charitable, or educational purposes which does not distribute any of its income or assets to its members, directors, officers, or other participants;

(ii) any organization which is described in Section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from tax under Section 501 of the Internal Revenue Code; or

(iii) any not-for-profit organization which is formed and conducted for public benefit and operated primarily for charitable, civic, educational, religious, benevolent, welfare, or health purposes; and

(b) "referring individual" means an individual:

(i) with the authority to act on behalf of a referring entity in making a referral; and

(ii) who may or may not be compensated by the referring entity.

Amended by Chapter 299, 2008 General Session

62A-4a-109. Eligibility -- Fee schedules.

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

(2) The division shall assess a fee for services that it provides in accordance with this chapter, based on the fee schedule approved in accordance with Section 62A-4a-102.

Amended by Chapter 75, 2009 General Session

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

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

(2) The division may:

(a) accept and use volunteer labor or services of applicants, recipients, and other members of the community. The division may reimburse volunteers for necessary

expenses, including transportation, and provide recognition awards and recognition meals for services rendered. The division may cooperate with volunteer organizations in collecting funds to be used in the volunteer program. Those donated funds shall be considered as private, nonlapsing funds until used by the division, and may be invested under guidelines established by the state treasurer;

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

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

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

Amended by Chapter 75, 2009 General Session

62A-4a-111. Fraudulently obtained services -- Recovery.

If it is discovered that a person is fraudulently obtaining, or has fraudulently obtained, services offered by the division in accordance with this chapter, the division shall take all necessary steps, including legal action through the attorney general, to recover all money or the value of services fraudulently obtained. The division may establish an agreement with the Office of Recovery Services to fulfill the requirements of this section.

Renumbered and Amended by Chapter 260, 1994 General Session

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

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

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

(3) This section does not prohibit the division or its agents, or individuals, commissions, or agencies duly authorized for the purpose, from making special studies or from issuing or publishing statistical material and reports of a general character. This section does not prohibit the division or its representatives or employees from conveying or providing to local, state, or federal governmental agencies written

information that would affect an individual's eligibility or ineligibility for financial service, or other beneficial programs offered by that governmental agency. Access to the division's program plans, policies, and records, as well as consumer records and data, is governed by Title 63G, Chapter 2, Government Records Access and Management Act.

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

Amended by Chapter 75, 2009 General Session

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

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

(2) (a) Subject to the provisions of Section 67-5-17, the attorney general shall enforce all provisions of this chapter, in addition to the requirements of Title 78A, Chapter 6, Juvenile Court Act of 1996, relating to protection and custody of abused, neglected, or dependent minors. 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.

(b) 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.

(c) 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. Those attorneys shall devote their full time and attention to that representation and, insofar as it is practicable, shall be housed in or near various offices of the division statewide.

(3) As of July 1, 1998, 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 classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in this section may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with Section 78A-6-115.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 299, 2008 General Session

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.

(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).

Amended by Chapter 416, 2013 General Session

62A-4a-115. Administrative proceedings.

The department and division shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 75, 2009 General Session

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

(1) As used in this section:

(a) "Committee" means the state qualitative improvement committee, established by the division to provide community and professional input on the performance of the division.

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

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

(A) child protection services;

(B) adoption;

(C) foster care; and

(D) other substitute care.

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

(A) the qualitative case review; and

(B) the case process review.

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

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

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

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

(c) The notice described in Subsection (2)(b) shall include:

(i) the proposed amendment;

(ii) a summary of the reason for the proposed amendment; and

(iii) the proposed effective date of the amendment.

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

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

(i) seven days after the day on which the division receives the written comments regarding the proposed change described in Subsection (2)(d); or

(ii) 52 days after the day on which the division provides the notice described in Subsection (2)(b) to the committee.

(f) The division shall:

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

(ii) notify the committee in writing of:

(A) the division's decision regarding the proposed amendment; and

(B) the reasons that support the decision;

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

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

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

(a) collect information on performance indicators; and

(b) compare performance indicators to performance standards.

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

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

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

(i) the reason the standard was not met;

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

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

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

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

Amended by Chapter 242, 2012 General Session

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 his 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. 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, regarding his review of those cases, 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 Legislature shall include:

(a) the criteria used by the executive director, or his designee, in making the evaluation;

(b) findings regarding whether state statutes, division policy, and legislative policy were followed in each sample case;

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

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

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

(4) (a) In addition to the review conducted by the executive director, beginning July 1, 2004, the legislative auditor general shall audit a sample of child welfare referrals to and cases handled by the division and report his findings to the Child Welfare Legislative Oversight Panel.

(b) An audit under Subsection (4)(a) shall be conducted at least once every three years, but may be conducted more frequently pursuant to Subsection (4)(d).

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

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

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

(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 Subsection (4)(d).

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

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

(ii) the Child Welfare Legislative Oversight Panel; or

(iii) the Legislative Auditor General, based on the results of the executive director's review under Subsection (2).

Amended by Chapter 3, 2008 General Session

62A-4a-119. Division required to produce "family impact statement" with regard to rules.

Beginning May 1, 2000, whenever the division establishes a rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, those processes shall include an assessment of the impact of that rule on families. Those assessments shall determine the impact of the rule on the authority of parents to oversee the care, supervision, upbringing, and education of children in the parents' custody. The division shall publish a family impact statement describing those assessments and determinations, within 90 days of the establishment of each rule.

Amended by Chapter 75, 2009 General Session

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

(1) The division shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and establish procedures to accommodate the moral and religious beliefs, and culture, of the minors and families it serves, including:

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

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

(c) adoptive families.

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

Amended by Chapter 382, 2008 General Session

62A-4a-121. Reimbursement of motor vehicle insurance coverage for foster child.

(1) Within the amounts appropriated to the division for the purposes described in this section, the division may reimburse a foster parent for providing owner's or operator's security covering a foster child's operation of a motor vehicle in amounts required under Section 31A-22-304 if the foster child is in the legal custody of the division.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing:

(a) a procedure for providing the reimbursement to a foster parent described in Subsection (1);

(b) eligibility requirements for a foster parent to qualify for a reimbursement under this section; and

(c) a method for determining the amount of reimbursement that a foster parent is eligible to receive under this section.

(3) The division shall report to the Transportation Interim Committee no later than November 30, 2009:

(a) the number of foster children in the legal custody of the Division of Child and Family Services who have been issued a driver license;

(b) the results and impacts on the division and on foster parents signing for a foster child to receive a driver license; and

(c) the division's cost of reimbursing foster parents for providing owner's or operator's security in accordance with Subsection (1).

Enacted by Chapter 314, 2008 General Session

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.

(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, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

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

(d) The state recognizes that:

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

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

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

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

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A, Chapter 6, Juvenile Court Act of 1996. Therefore, the state, as parens patriae, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's need for protection from

immediate harm and the extent to which the child's extended family may provide needed protection. Throughout its involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned 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, 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) 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. If in-home services fail or are otherwise insufficient or inappropriate, the division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child. If in-home services and kinship placement are not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected, the division may pursue a foster placement.

(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, 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 Subsection 78A-6-117(2)(n).

Amended by Chapter 281, 2012 General Session

62A-4a-202. In-home services for the preservation of families.

(1) (a) Within appropriations from the Legislature and money obtained under Subsection (5), the division shall provide in-home services for the purpose of family preservation to any family with a child whose health and safety is not immediately endangered, when:

(i) (A) the child is at risk of being removed from the home; or

(B) the family is in crisis; and

(ii) the division determines that it is reasonable and appropriate.

(b) In determining whether in-home services are reasonable and appropriate, in keeping with the provisions of Subsection 62A-4a-201(1) the child's health, safety, and welfare shall be the paramount concern.

(c) The division shall consider whether the services described in Subsection (1)(b):

(i) will be effective within a six-month period; and

(ii) are likely to prevent continued abuse or neglect of the child.

(2) (a) The division shall maintain a statewide inventory of in-home services available through public and private agencies or individuals for use by caseworkers.

(b) The inventory described in Subsection (2)(a) shall include:

(i) the method of accessing each service;

(ii) eligibility requirements for each service;

(iii) the geographic areas and the number of families that can be served by each service; and

(iv) information regarding waiting lists for each service.

(3) (a) As part of its in-home services for the preservation of families, the division shall provide in-home services in varying degrees of intensity and contact that are specific to the needs of each individual family.

(b) As part of its in-home services, the division shall:

(i) provide customized assistance;

(ii) provide support or interventions that are tailored to the needs of the family;

(iii) discuss the family's needs with the parent;

(iv) discuss an assistance plan for the family with the parent; and

(v) address:

(A) the safety of children;

(B) the needs of the family; and

(C) services necessary to aid in the preservation of the family and a child's ability to remain in the home.

(c) In-home services shall be, as practicable, provided within the region that the family resides, using existing division staff.

(4) (a) The division may use specially trained caseworkers, private providers, or other persons to provide the in-home services described in Subsection (3).

(b) The division shall allow a caseworker to be flexible in responding to the

needs of each individual family, including:

(i) limiting the number of families assigned; and

(ii) being available to respond to assigned families within 24 hours.

(5) To provide, expand, and improve the delivery of in-home services to prevent the removal of children from their homes and promote the preservation of families, the division shall make substantial effort to obtain funding, including:

(a) federal grants;

(b) federal waivers; and

(c) private money.

Amended by Chapter 265, 2014 General Session

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

(1) A peace officer or child welfare worker may not:

(a) enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless authorized under Subsection 78A-6-106(2); or

(b) remove a child from the child's home or take a child into custody under this section solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school.

(2) A child welfare worker within the division may take action under Subsection (1) accompanied by a peace officer, or without a peace officer when a peace officer is not reasonably available.

(3) (a) If possible, consistent with the child's safety and welfare, before taking a child into protective custody, the child welfare worker shall also determine whether there are services available that, if provided to a parent or guardian of the child, would eliminate the need to remove the child from the custody of the child's parent or guardian.

(b) If the services described in Subsection (3)(a) are reasonably available, they shall be utilized.

(c) In determining whether the services described in Subsection (3)(a) are reasonably available, and in making reasonable efforts to provide those services, the child's health, safety, and welfare shall be the child welfare worker's paramount concern.

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

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

(i) a shelter facility; or

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

(c) When making a placement under Subsection (4)(b), the Division of Child

and Family Services shall give priority to a placement with a noncustodial parent, relative, or friend, in accordance with Section 62A-4a-209.

(d) If the child is not placed with a noncustodial parent, a relative, or a designated friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor explaining why a different placement was in the child's best interest.

(5) When a child is removed from the child's home or school or taken into protective custody, the caseworker shall give a parent of the child a pamphlet or flier explaining:

(a) the parent's rights under this part, including the right to be present and participate in any court proceeding relating to the child's case;

(b) that it may be in the parent's best interest to contact an attorney and that, if the parent cannot afford an attorney, the court will appoint one;

(c) the name and contact information of a division employee the parent may contact with questions;

(d) resources that are available to the parent, including:

(i) mental health resources;

(ii) substance abuse resources; and

(iii) parenting classes; and

(e) any other information considered relevant by the division.

(6) The pamphlet or flier described in Subsection (5) shall be:

(a) evaluated periodically for its effectiveness at conveying necessary information and revised accordingly;

(b) written in simple, easy-to-understand language; and

(c) available in English and other languages as the division determines to be appropriate and necessary.

Amended by Chapter 221, 2012 General Session
Amended by Chapter 293, 2012 General Session

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

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

(i) that the child has been taken into protective custody;

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

(iii) that a written statement is available that explains:

(A) the parent's or guardian's procedural rights; and

(B) the preliminary stages of the investigation and shelter hearing;

(iv) of a telephone number where the parent or guardian may access further information;

(v) that the child and the child's parent or guardian are entitled to have an attorney present at the shelter hearing;

(vi) that if the child's parent or guardian is impecunious and desires to have an attorney, one will be provided; and

(vii) that resources are available to assist the child's parent or guardian, including:

(A) a parent advocate;

(B) a qualified attorney; or

(C) potential expert witnesses to testify on behalf of the:

(I) child;

(II) child's parent;

(III) child's guardian; or

(IV) child's family.

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

(2) (a) The Office of the Attorney General shall adopt, print, and distribute a form for the written statement described in Subsection (1)(a)(iii).

(b) The statement described in Subsections (1)(a)(iii) and (2)(a) shall:

(i) be made available to the division and for distribution in:

(A) schools;

(B) health care facilities;

(C) local police and sheriff's offices;

(D) the division; and

(E) any other appropriate office within the Department of Human Services;

(ii) be in simple language; and

(iii) include at least the following information:

(A) the conditions under which a child may be released;

(B) hearings that may be required;

(C) the means by which the parent or guardian may access further specific information about a child's case and conditions of protective and temporary custody; and

(D) the rights of a child and of the parent or guardian to legal counsel and to appeal.

(3) If reasonable efforts are made by the peace officer or caseworker to notify the parent or guardian or a responsible relative in accordance with the requirements of Subsection (1), failure to notify:

(a) shall be considered to be due to circumstances beyond the control of the peace officer or caseworker; and

(b) may not be construed to:

(i) permit a new defense to any juvenile or judicial proceeding; or

(ii) interfere with any rights, procedures, or investigations provided for by this chapter or Title 78A, Chapter 6, Juvenile Court Act of 1996.

Amended by Chapter 3, 2008 General Session

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 when the division takes any other action which would require a shelter hearing under Subsection 78A-6-306(1), the division shall immediately initiate an investigation of the:

(a) circumstances of the child; and

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

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

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

(i) the same child;

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

(iii) the alleged perpetrator;

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

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

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

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

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

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

(i) school personnel; and

(ii) the child's health care provider;

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

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

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

(B) does not:

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

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

(ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and

(g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination, obtained no later than 24 hours after the child is placed in protective custody.

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

(a) law enforcement:

(i) previously conducted a timely and thorough investigation regarding the alleged abuse, neglect, or dependency; and

(ii) produced a written report;

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

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

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

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

(i) determining that a report is unsupported; or

(ii) closing the case.

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

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

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

(a) the child does not have a natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the child;

(b) (i) shelter of the child is a matter of necessity for the protection of the child; and

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

(A) the child's home; or

(B) the home of a responsible relative;

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

(d) the child has left a previously court ordered placement.

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

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

(ii) prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78A-6-306.

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

(i) the caseworker assigned to the case;

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

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

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

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

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

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

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

(7) (a) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be:

(i) except as provided in Subsection (7)(b), audio or video taped; and

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

(b) (i) Subject to Subsection (7)(b)(ii), an interview described in Subsection (7)(a) may be conducted without being taped if the child:

(A) is at least nine years old;

(B) refuses to have the interview audio taped; and

(C) refuses to have the interview video taped.

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

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

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

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

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

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

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

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

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

(iv) The division shall track the number of interviews under this Subsection (7) where a child refuses to have a support person present for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals than other interviewers.

(8) The division shall cooperate with law enforcement investigations 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.

Amended by Chapter 3, 2008 General Session

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, 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).

Amended by Chapter 32, 2009 General Session

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

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

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

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

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

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

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

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

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

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

being the protection of the child;

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

(c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division; and

(d) immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or includes an allegation of educational neglect.

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

Amended by Chapter 293, 2012 General Session

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, 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 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, 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 shall include as many persons under Subsection 62A-4a-202.3(6)(b) as appropriate.

(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.

Amended by Chapter 3, 2008 General Session

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

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

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

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

(a) are not reasonable or appropriate; and

(b) should not be utilized.

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

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

(b) provide reunification services; or

(c) rehabilitate the offending parent or parents.

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

Amended by Chapter 3, 2008 General Session
Amended by Chapter 299, 2008 General Session

62A-4a-203.5. Mandatory petition for termination of parental rights.

(1) For purposes of this section, "abandoned infant" means a child who is 12 months of age or younger whose parent or parents:

(a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;

(b) have failed to maintain physical custody, and have failed to exhibit the normal interest of a natural parent without just cause; or

(c) are unwilling to have physical custody of the child.

(2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 78A, Chapter 6, Juvenile Court Act of 1996, the division shall file a petition for termination of parental rights with regard to:

(a) an abandoned infant; or

(b) a parent, whenever a court has determined that the parent has:
(i) committed murder or child abuse homicide of another child of that parent;
(ii) committed manslaughter of another child of that parent;
(iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or
(iv) committed a felony assault or abuse that has resulted in serious physical injury to another child of that parent, or to the other parent of that child.
(3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:
(a) the child is being cared for by a relative;
(b) the division has:
(i) documented in the child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the child's best interest; and
(ii) made that child and family plan available to the court for its review; or
(c) (i) the court has previously determined, in accordance with the provisions and limitations of Sections 62A-4a-201, 62A-4a-203, 78A-6-306, and 78A-6-312, that reasonable efforts to reunify the child with the child's parent or parents were required; and
(ii) the division has not provided, within the time period specified in the child and family plan, services that had been determined to be necessary for the safe return of the child.

Amended by Chapter 3, 2008 General Session

62A-4a-205. Child and family plan -- Parent-time.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's child and family plan shall be finalized.
(2) (a) The division may use an interdisciplinary team approach in developing each child and family plan.
(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:
(i) mental health;
(ii) education; and
(iii) if appropriate, law enforcement.
(3) (a) The division shall involve all of the following in the development of a child's child and family plan:
(i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
(ii) the child;
(iii) the child's foster parents;
(iv) if appropriate, the child's stepparent; and
(v) the child's guardian ad litem, if one has been appointed by the court.
(b) In relation to all information considered by the division in developing a child and family plan, additional weight and attention shall be given to the input of the child's

natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

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

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

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

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

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

(a) guardian ad litem;

(b) child's natural parents; and

(c) child's foster parents.

(5) Each child and family plan shall:

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

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

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

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

(b) documentation of the:

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

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

(c) the primary permanency goal for the child and the reason for selection of that goal;

(d) the concurrent permanency goal for the child and the reason for the selection of that goal;

(e) if the plan is for the child to return to the child's family:

(i) specifically what the parents must do in order to enable the child to be returned home;

(ii) specifically how the requirements described in Subsection (6)(e)(i) may be accomplished; and

(iii) how the requirements described in Subsection (6)(e)(i) will be measured;

(f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;

(g) the name of the person who will provide for and be responsible for case management;

(h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;

(i) subject to Subsection (7), the health and mental health care to be provided to 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; and

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

(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 or younger, if the goal is not to return the child home, the 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(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).

(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 reunification goals;

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

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

Amended by Chapter 158, 2011 General Session
Amended by Chapter 167, 2011 General Session
Amended by Chapter 233, 2011 General Session

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.

(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.

Amended by Chapter 237, 2010 General Session

62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.

(1) With regard to a child who has a primary permanency goal of adoption or for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section 78A-6-314, 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 goal.

(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 Part 6. In accordance with federal law, the division shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

(3) The division shall ensure that children who are adopted and were previously in its custody, continue to receive the medical and mental health coverage that they are entitled to under state and federal law.

(4) The division may not consider a prospective adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with the prospective adoptive parent.

Amended by Chapter 438, 2013 General Session

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

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

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

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

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

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

(iii) placing the child with a relative, as defined in Subsection 78A-6-307(1)(b), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78A-6-307(18)(a); or

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

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

(b) Those procedures shall include requirements for:

(i) personal communication with, and a written explanation of the reasons for the removal to, the foster parents prior to removal of the child; and

(ii) an opportunity for foster parents to present their information and concerns to the division and to:

(A) request a review, to be held before removal of the child, by a third party neutral fact finder; or

(B) if the child has been placed with the foster parents for a period of at least two years, request a review, to be held before removal of the child, by:

(I) the juvenile court judge currently assigned to the child's case; or

(II) if the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

(c) If the division determines that there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, it shall place the child in emergency foster care during the pendency of the procedures described in this subsection, instead of making another foster care placement.

(3) If the division removes a child from a foster home based upon the child's statement alone, the division shall initiate and expedite the processes described in Subsection (2). The division may take no formal action with regard to that foster parent's license until after those processes, in addition to any other procedure or hearing required by law, have been completed.

(4) When a complaint is made to the division by a foster child against a foster parent, the division shall, within 30 business days, provide the foster parent with information regarding the specific nature of the complaint, the time and place of the alleged incident, and who was alleged to have been involved.

(5) Whenever the division places a child in a foster home, it shall provide the foster parents with:

(a) notification of the requirements of this section;

(b) a written description of the procedures enacted by the division pursuant to Subsection (2) and how to access those processes; and

(c) written notification of the foster parents' ability to petition the juvenile court directly for review of a decision to remove a foster child who has been in their custody for 12 months or longer, in accordance with the limitations and requirements of Section 78A-6-318.

(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)(b), 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.

Amended by Chapter 214, 2012 General Session

62A-4a-206.1. Foster parent's preference upon child's reentry into foster care.

When a child reenters the temporary custody or the custody of the division, and is to be placed in foster care, the child's former foster parents shall be notified. Upon a determination of their willingness and ability to safely and appropriately care for the child, those foster parents shall be given a preference for placement of the child.

Amended by Chapter 169, 2007 General Session

62A-4a-207. Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

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

(4) The panel shall:

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

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

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

(i) Subsection 78A-6-306(1)(a), regarding shelter hearings;

(ii) Section 78A-6-309, regarding pretrial and adjudication hearings;

(iii) Section 78A-6-312, regarding dispositional hearings and reunification services; and

(iv) Section 78A-6-314, regarding permanency hearings and petitions for termination;

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

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

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

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

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

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

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

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

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

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

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

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to

appear and present their views regarding the child welfare system in this state.

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

(b) The panel shall have access to all of the division's records, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Compensation and expenses of a member of the panel who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Amended by Chapter 387, 2014 General Session

62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.

(1) As used in this section:

(a) "Complainant" means a person who initiates a complaint with the ombudsman.

(b) "Ombudsman" means the child protection ombudsman appointed pursuant to this section.

(2) (a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.

(b) The ombudsman shall be:

(i) an individual of recognized executive and administrative capacity;

(ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and

(iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.

(c) The ombudsman shall devote full time to the duties of office.

(3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:

(i) is contrary to statute, rule, or policy;

(ii) places a child's health or safety at risk;

(iii) is made without an adequate statement of reason; or

(iv) is based on irrelevant, immaterial, or erroneous grounds.

(b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.

(c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

(4) The ombudsman shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:

(i) receiving and processing complaints;

(ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;

(iii) prioritizing workload;

(iv) maximum time within which investigations shall be completed;

(v) conducting investigations;

(vi) notifying complainants and the division regarding the results of investigations; and

(vii) making recommendations based on the findings and results of recommendations;

(b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;

(c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;

(d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;

(e) annually report to the:

(i) Child Welfare Legislative Oversight Panel;

(ii) governor;

(iii) Division of Child and Family Services;

(iv) executive director of the department; and

(v) director of the division; and

(f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.

(5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

(c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.

(d) The ombudsman shall immediately notify the division if the ombudsman finds

that a child needs protective custody, as that term is defined in Section 78A-6-105.

(e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6) (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, 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 ombudsman shall maintain the same classification that was designated by the department.

(7) (a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.

(b) The ombudsman shall make recommendations to the division if the ombudsman finds that:

(i) a matter should be further considered by the division;

(ii) an administrative act should be addressed, modified, or canceled;

(iii) action should be taken by the division with regard to one of its employees; or

(iv) any other action should be taken by the division.

Amended by Chapter 75, 2009 General Session

62A-4a-209. Emergency placement.

(1) As used in this section:

(a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

(b) "Relative" is as defined in Subsection 78A-6-307(1)(b).

(2) The division may use an emergency placement under Subsection 62A-4a-202.1(4)(b)(ii) 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 person that serves as the placement and not have any contact with the child until after the shelter hearing required by Section 78A-6-306;

(b) a person, 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 person described in Subsection (2)(b) agrees to care for the child on an

emergency basis under the following conditions:

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

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

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

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

(vi) the person 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 person.

(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:

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

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

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

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

(ii) if the emergency placement will be with a person other than a noncustodial parent or a relative, shall comply with the criminal background check provisions described in Section 78A-6-308 for adults living in the household where the child will be placed;

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

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

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

(i) a noncustodial parent of the child in accordance with Section 78A-6-307;

(ii) a relative of the child;

(iii) subject to Subsection (4)(b), a friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent; and

(iv) a shelter facility, former foster placement, or other foster placement designated by the division.

(b) Unless the division agrees otherwise, the custodial parent or guardian described in Subsection (4)(a)(iii) may designate up to two friends as a potential

emergency placement.

(5) (a) The division may, pending the outcome of the investigation described in Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial parent if, based on a limited investigation, prior to making the emergency placement, the division:

(i) determines that the noncustodial parent has regular, unsupervised visitation with the child that is not prohibited by law or court order;

(ii) determines that there is not reason to believe that the child's health or safety will be endangered during the emergency placement; and

(iii) has the custodial parent or guardian sign an emergency placement agreement.

(b) Either before or after making an emergency placement with the noncustodial parent of the child, the division may conduct the investigation described in Subsection (3)(a) in relation to the noncustodial parent.

(c) Before, or within one day, excluding weekends and holidays, after a child is placed in an emergency placement with the noncustodial parent of the child, the division shall conduct a limited:

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

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

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

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

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78A-6-306;

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

(d) complete the placement procedures required in Section 78A-6-307; and

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

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

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

(ii) a completed search of the Management Information System described in Section 62A-4a-1003.

(b) The division shall determine whether a person passes the background check described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3), and (8).

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

Amended by Chapter 416, 2013 General Session

62A-4a-210. Definitions.

As used in this part:

(1) "Activity" means an extracurricular, enrichment, or social activity.

(2) "Age-appropriate" means a type of activity that is generally accepted as suitable for a child of the same age or level of maturity, based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for the child's age or age group.

(3) "Caregiver" means a person with whom a child is placed in an out-of-home placement.

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

(5) "Out-of-home placement" means the placement of a child in the division's custody outside of the child's home, including placement in a foster home, a residential treatment program, proctor care, or with kin.

(6) "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions to maintain a child's health, safety, and best interest while at the same time encouraging the child's emotional and developmental growth.

Enacted by Chapter 67, 2014 General Session

62A-4a-211. Division responsibilities -- Normalizing lives of children.

(1) A child who comes into care under this chapter is entitled to participate in age-appropriate activities for the child's emotional well-being and development of valuable life-coping skills.

(2) The division shall make efforts to normalize the lives of children in the division's custody and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of the division.

(3) The division shall allow a caregiver to make important decisions, similar to the decisions that a parent is entitled to make, regarding the child's participation in activities.

Enacted by Chapter 67, 2014 General Session

62A-4a-212. Requirements for decision making -- Rulemaking authority.

(1) (a) A caregiver shall use a reasonable and prudent parent standard in determining whether to permit a child to participate in an activity.

(b) A caregiver shall consider:

(i) the child's age, maturity, and developmental level to maintain the overall health and safety of the child;

(ii) potential risk factors and the appropriateness of the activity;

(iii) the best interest of the child based on the caregiver's knowledge of the child;

(iv) the importance of encouraging the child's emotional and developmental growth;

(v) the importance of providing the child with the most family-like living experience possible; and

(vi) the behavioral history of the child and the child's ability to safely participate in the proposed activity.

(c) The division shall verify that private agencies providing out-of-home placement under contract with the division:

(i) promote and protect the ability of a child to participate in age-appropriate activities; and

(ii) implement policies consistent with this section.

(d) (i) A caregiver is not liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by the caregiver, when the caregiver has acted in accordance with a reasonable and prudent parent standard.

(ii) This section does not remove or limit any existing liability protection afforded by statute.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall adopt rules establishing the procedures for verifying that private agencies providing out-of-home placement under contract with the division comply with and promote this part.

Enacted by Chapter 67, 2014 General Session

62A-4a-250. Separate programs and procedures for minors committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect -- Attorney general responsibility.

(1) On or before July 1, 1998, the division shall have established programs designed to meet the needs of 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 pursuant to Section 78A-6-117, and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.

(2) (a) The processes and procedures designed to meet the needs of children who are abused or neglected, described in Part 2 and in Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, are not applicable to the minors described in Subsection (1).

(b) The procedures described in Subsection 78A-6-118(2)(a) are applicable to the minors described in Subsection (1).

(3) As of July 1, 1998, the attorney general's office has the responsibility to represent the division with regard to actions involving minors described in Subsection (1). Nothing in this section may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with Section 78A-6-115.

Amended by Chapter 3, 2008 General Session

62A-4a-301. Legislative finding.

The Legislature finds that there is a need to assist private and public agencies in identifying and establishing community-based education, service, and treatment

programs to prevent the occurrence and recurrence of abuse and neglect.

It is the purpose of this part to provide a means to increase prevention and treatment programs designed to reduce the occurrence or recurrence of child abuse and neglect.

Amended by Chapter 299, 2008 General Session

62A-4a-302. Definitions.

As used in this part, "council" means the Child Abuse Advisory Council established under Section 62A-4a-311.

Amended by Chapter 299, 2008 General Session

62A-4a-303. Director's responsibility.

The director shall:

(1) contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to establish voluntary community-based educational and service programs designed to reduce the occurrence or recurrence of abuse and neglect;

(2) facilitate the exchange of information between and among groups concerned with families and children;

(3) consult with appropriate state agencies, commissions, and boards to help determine the probable effectiveness, fiscal soundness, and need for proposed education and service programs for the prevention and treatment of abuse and neglect;

(4) develop policies to determine whether programs will be discontinued or will receive continuous funding;

(5) establish flexible fees and fee schedules based on the recipient's ability to pay for part or all of the costs of service received; and

(6) adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to carry out the purposes of this part.

Amended by Chapter 75, 2009 General Session

62A-4a-304. Contracts for services.

(1) (a) Contracts for services to prevent child abuse and neglect shall be awarded on the basis of probability of success, based in part on sound research data.

(b) Each contract entered into by the director under Section 62A-4a-303 shall contain a provision for the evaluation of services provided under the contract.

(2) Contract funds awarded for the treatment of victims of abuse and neglect are not a collateral source as described in Section 63M-7-502.

Amended by Chapter 299, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-4a-305. Prevention and treatment programs.

Programs contracted under this part shall be designed to provide voluntary primary abuse and neglect prevention, and voluntary or court-ordered treatment services, including, without limiting the generality of the foregoing, the following community-based programs:

(1) those relating to prenatal care, perinatal bonding, child growth and development, basic child care, care of children with special needs, and coping with family stress;

(2) those relating to crisis care, aid to parents, abuse counseling, support groups for abusive or potentially abusive parents and their children, and early identification of families where the potential for abuse and neglect exists;

(3) those clearly designed to prevent the occurrence or recurrence of abuse, neglect, sexual abuse, sexual exploitation, medical or educational neglect, and such other programs as the division and council may from time to time consider potentially effective in reducing the incidence of family problems leading to abuse or neglect; and

(4) those designed to establish and assist community resources that prevent abuse and neglect.

Amended by Chapter 75, 2009 General Session

62A-4a-306. Programs and services -- Public hearing requirements -- Review by local board of education.

(1) Before any abuse or neglect prevention or treatment program or service may be purchased or contracted for, the division shall conduct a public hearing and the council shall conduct a public hearing, to receive public comment on the specific program or service.

(2) Before any abuse or neglect prevention or treatment program or service which is intended for presentation in public schools may be purchased or contracted for, evidence shall be submitted to the division that the program or service has been approved by the local board of education of each school district which will be utilizing that program or service. The local board of education may grant the approval authority to the superintendent.

Amended by Chapter 75, 2009 General Session

62A-4a-307. Factors considered in award of contracts.

In awarding contracts under this part, consideration shall be given to factors such as need, diversity of geographic locations, coordination with or enhancement of existing services, and the extensive use of volunteers.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-308. Portion of funding provided by contractor.

The director may require that 25% of the funding for individual programs contracted by the director under this part be provided by the contractor operating the program. Contributions of materials, supplies, or physical facilities may be considered

as all or part of the funding provided by the contractor.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-309. Children's Account.

(1) There is created a restricted account within the General Fund known as the "Children's Account." The restricted account is for crediting of contributions from private sources and from appropriate revenues received under Section 26-2-12.5 for abuse and neglect prevention programs described in Section 62A-4a-305.

(2) Money shall be appropriated from the account to the division by the Legislature under the Utah Budgetary Procedures Act, and shall be drawn upon by the director in consultation with the executive director of the department.

(3) Except as provided in Subsection (4), the Children's Account may be used only to implement prevention programs described in Section 62A-4a-305, and may only be allocated to an entity that provides a one-to-one match, comprising a match from the community of at least 50% in cash and up to 50% in in-kind donations, which is 25% of the total funding received from the Children's Account.

(4) (a) The entity that receives the statewide evaluation contract is excepted from the cash-match provisions of Subsection (3).

(b) Upon recommendation of the executive director and the council, the division may reduce or waive the match requirements described in Subsection (3) for an entity, if the division determines that imposing the requirements would prohibit or limit the provision of services needed in a particular geographic area.

Amended by Chapter 278, 2010 General Session

62A-4a-310. Funds -- Transfers and gifts.

On behalf of the Children's Account, the department, through the division, may accept transfers, grants, gifts, bequests, or any money made available from any source to implement this part.

Amended by Chapter 278, 2010 General Session

62A-4a-311. Child Abuse Advisory Council -- Creation -- Membership -- Expenses.

(1) (a) There is established the Child Abuse Advisory Council composed of no more than 25 members who are appointed by the division.

(b) Except as required by Subsection (1)(c), as terms of current council members expire, the division shall appoint each new member or reappointed member to a four-year term.

(c) Notwithstanding the requirements of Subsection (1)(b), the division shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(d) The council shall have geographic, economic, gender, cultural, and

philosophical diversity.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(2) The council shall elect a chairperson from its membership at least biannually.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(4) The council shall hold a public meeting quarterly. Within budgetary constraints, meetings may also be held on the call of the chair, or of a majority of the members. A majority of the members currently appointed to the council constitute a quorum at any meeting and the action of the majority of the members present shall be the action of the council.

(5) The council shall:

(a) advise the division on matters relating to abuse and neglect; and

(b) recommend to the division how funds contained in the Children's Account should be allocated.

Amended by Chapter 278, 2010 General Session
Amended by Chapter 286, 2010 General Session

62A-4a-401. Legislative purpose -- Report and study items.

(1) It is the purpose of this part to protect the best interests of children, offer protective services to prevent harm to children, stabilize the home environment, preserve family life whenever possible, and encourage cooperation among the states in dealing with the problem of abuse or neglect.

(2) The division shall, during the 2013 interim, report to the Health and Human Services Interim Committee on:

(a) the division's efforts to use existing staff and funds while shifting resources away from foster care and to in-home services;

(b) a proposal to:

(i) keep sibling groups together, as much as possible; and

(ii) provide necessary services to available structured foster families to avoid sending foster children to proctor homes;

(c) the disparity between foster care payments and adoption subsidies, and whether an adjustment to those rates could result in savings to the state; and

(d) the utilization of guardianship, in the event an appropriate adoptive placement is not available after a termination of parental rights.

(3) The Health and Human Services Interim Committee shall, during the 2013 interim, study whether statewide practice standards should be implemented to assist the Child Welfare Parental Defense Program with its mission to provide legal services to indigent parents whose children are in the custody of the division.

Amended by Chapter 171, 2013 General Session

62A-4a-402. Definitions.

As used in this part:

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

(2) "Subject" or "subject of the report" means any person reported under this part, including, but not limited to, a child, parent, guardian, or other person responsible for a child's care.

Amended by Chapter 299, 2008 General Session

62A-4a-403. Reporting requirements.

(1) (a) Except as provided in Subsection (2), when any person including persons licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse Practice Act, has reason to believe that a child has been subjected to abuse or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately notify the nearest peace officer, law enforcement agency, or office of the division.

(b) Upon receipt of the notification described in Subsection (1)(a), the peace officer or law enforcement agency shall immediately notify the nearest office of the division. If an initial report of abuse or neglect is made to the division, the division shall immediately notify the appropriate local law enforcement agency. The division shall, in addition to its own investigation, comply with and lend support to investigations by law enforcement undertaken pursuant to a report made under this section.

(2) Subject to Subsection (3), the notification requirements of Subsection (1) do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to the clergyman or priest in the professional character of the clergyman or priest in the course of discipline enjoined by the church to which the clergyman or priest belongs, if:

(a) the confession was made directly to the clergyman or priest by the perpetrator; and

(b) the clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.

(3) (a) When a clergyman or priest receives information about abuse or neglect from any source other than confession of the perpetrator, the clergyman or priest is required to give notification on the basis of that information even though the clergyman or priest may have also received a report of abuse or neglect from the confession of the perpetrator.

(b) Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts required by law to prevent further

abuse or neglect by the perpetrator.

Amended by Chapter 299, 2008 General Session

62A-4a-404. Fetal alcohol syndrome and drug dependency -- Reporting requirements.

When an individual, including a licensee under the Medical Practice Act or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that the child, at the time of birth, has fetal alcohol syndrome, fetal alcohol spectrum disorder, or fetal drug dependency, the individual shall report that determination to the division as soon as possible.

Amended by Chapter 293, 2012 General Session

62A-4a-405. Death of child -- Reporting requirements.

(1) Any person who has reason to believe that a child has died as a result of abuse or neglect shall report that fact to:

(a) the local law enforcement agency, who shall report to the county attorney or district attorney as provided under Section 17-18a-202 or 17-18a-203; and

(b) the appropriate medical examiner in accordance with Title 26, Chapter 4, Utah Medical Examiner Act.

(2) After receiving a report described in Subsection (1), the medical examiner shall investigate and report the medical examiner's findings to:

(a) the police;

(b) the appropriate county attorney or district attorney;

(c) the attorney general's office;

(d) the division; and

(e) if the institution making the report is a hospital, to that hospital.

Amended by Chapter 237, 2013 General Session

62A-4a-406. Photographs.

(1) Any physician, surgeon, medical examiner, peace officer, law enforcement official, or public health officer or official may take photographs of the areas of trauma visible on a child and, if medically indicated, perform radiological examinations.

(2) Photographs may be taken of the premises or of objects relevant to a reported circumstance of abuse or neglect.

(3) Photographs or X-rays, and all other medical records pertinent to an investigation for abuse or neglect shall be made available to the division, law enforcement officials, and the court.

Amended by Chapter 299, 2008 General Session

62A-4a-407. Protective custody.

(1) A physician examining or treating a child may take the child into protective

custody not to exceed 72 hours, without the consent of the child's parent, guardian, or any other person responsible for the child's care or exercising temporary or permanent control over the child, when the physician has reason to believe that the child's life or safety will be in danger unless protective custody is exercised.

(2) The person in charge of a hospital or similar medical facility may retain protective custody of a child suspected of being abused or neglected, when he reasonably believes the facts warrant that retention. This action may be taken regardless of whether additional medical treatment is required, and regardless of whether the person responsible for the child's care requests the child's return.

(3) The division shall be immediately notified of protective custody exercised under this section. Protective custody under this section may not exceed 72 hours without an order of the district or juvenile court.

(4) A person who takes a child into, or retains a child in, protective custody under this section shall document:

(a) the grounds upon which the child was taken into, or retained in, protective custody; and

(b) the nature of, and necessity for, any medical care or treatment provided to the child.

Amended by Chapter 75, 2006 General Session

62A-4a-408. Written reports.

(1) Reports made pursuant to this part shall be followed by a written report within 48 hours, if requested by the division. The division shall immediately forward a copy of that report to the statewide central register, on forms supplied by the register.

(2) If, in connection with an intended or completed abortion by a minor, a physician is required to make a report of incest or abuse of a minor, the report may not include information that would in any way disclose that the report was made in connection with:

(a) an abortion; or

(b) a consultation regarding an abortion.

Amended by Chapter 207, 2006 General Session

62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval interviews of children.

(1) (a) The division shall make a thorough preremoval investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect that a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency exists.

(b) The primary purpose of the investigation described in Subsection (1)(a) shall be protection of 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) For this purpose, the division shall convene appropriate interdisciplinary "child protection teams" to assist it in its protective, diagnostic, assessment, treatment, and coordination services.

(c) 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 53A-11-101 through 53A-11-103.

(6) When the division completes its initial investigation under this part, it 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) clergy; and
(ii) may not be a person 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 of 1996, 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.

Amended by Chapter 239, 2010 General Session

62A-4a-410. Immunity from liability -- Exceptions.

(1) Except as provided in Subsection (3), any person, official, or institution participating in good faith in making a report, taking photographs or X-rays, assisting an investigator from the division, serving as a member of a child protection team, or taking a child into protective custody pursuant to this part, is immune from any liability, civil or criminal, that otherwise might result by reason of those actions.
(2) This section does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.
(3) The immunity described in Subsection (1) does not apply if the person, official, or institution:
(a) acted or failed to act through fraud or willful misconduct;
(b) in a judicial or administrative proceeding, intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry in the proceeding; or
(c) intentionally or knowingly:
(i) fabricated evidence; or
(ii) except as provided in Subsection (4), with a conscious disregard for the rights of others, failed to disclose evidence that:
(A) was known to the person, official, or institution; and

(B) (I) was known by the person, official, or institution to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding if the person, official, or institution knew of the pending judicial or administrative proceeding; or

(II) was known by the person, official, or institution to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.

(4) Immunity is not lost under Subsection (3)(c)(ii), if the person, official, or institution:

(a) failed to disclose evidence described in Subsection (3)(c)(ii), because the person, official, or institution is prohibited by law from disclosing the evidence; or

(b) (i) pursuant to the provisions of 45 CFR 164.502(g)(5), refused to disclose evidence described in Subsection (3)(c)(ii) to a person who requested the evidence; and

(ii) after refusing to disclose the evidence under Subsection (4)(b)(i), complied with or responded to a valid court order or valid subpoena received by the person, official, or institution to disclose the evidence described in Subsection (3)(c)(ii).

Amended by Chapter 382, 2008 General Session
Amended by Chapter 395, 2008 General Session

62A-4a-411. Failure to report -- Criminal penalty.

Any person, official, or institution required to report a case of suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, who willfully fails to do so is guilty of a class B misdemeanor. Action for failure to report must be commenced within four years from the date of knowledge of the offense and the willful failure to report.

Amended by Chapter 299, 2008 General Session

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

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 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;

(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 Office of Education, acting on behalf of itself or on behalf of a school district, 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 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; and

(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.

(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 it is a violation of Subsection (2)(a) to do so 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, 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 its 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 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.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 87, 2008 General Session
Amended by Chapter 299, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-4a-414. Interviews of children -- Recording required -- Exceptions.

(1) (a) Except as provided in Subsection (4), interviews of children during an investigation in accordance with Section 62A-4a-409, and involving allegations of sexual abuse, sexual exploitation, severe abuse, or severe neglect of a child, shall be conducted only under the following conditions:

(i) the interview shall be recorded visually and aurally on film, videotape, or by other electronic means;

(ii) both the interviewer and the child shall be simultaneously recorded and visible on the final product;

(iii) the time and date of the interview shall be continuously and clearly visible to any subsequent viewer of the recording; and

(iv) the recording equipment shall run continuously for the duration of the interview.

(b) This Subsection (1) does not apply to initial or minimal interviews conducted in accordance with Subsection 62A-4a-409(8)(b) or (c).

(2) Interviews conducted in accordance with Subsection (1) shall be carried out in an existing Children's Justice Center or in a soft interview room, when available.

(a) If the Children's Justice Center or a soft interview room is not available, the interviewer shall use the best setting available under the circumstances.

(b) Except as provided in Subsection (4), if the equipment required under

Subsection (1) is not available, the interview shall be audiotaped, provided that the interviewer shall clearly state at the beginning of the tape:

(i) the time, date, and place of the interview;

(ii) the full name and age of the child being interviewed; and

(iii) that the equipment required under Subsection (1) is not available and why.

(3) Except as provided in Subsection (4), all other investigative interviews shall be audiotaped using electronic means. At the beginning of the tape, the worker shall state clearly the time, date, and place of the meeting, and the full name and age of the child in attendance.

(4) (a) Subject to Subsection (4)(b), an interview described in this section may be conducted without being taped if the child:

(i) is at least nine years old;

(ii) refuses to have the interview audio taped; and

(iii) refuses to have the interview video taped.

(b) If, pursuant to Subsection (4)(a), an interview is conducted without being taped, the child's refusal shall be documented as follows:

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

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

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

(B) if complying with Subsection (4)(b)(ii)(A) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.

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

Amended by Chapter 239, 2010 General Session

62A-4a-415. Law enforcement interviews of children in state custody.

(1) Except as provided in Subsection (2), the division may not consent to the interview of a child in the division's custody by a law enforcement officer, unless consent for the interview is obtained from the child's guardian ad litem.

(2) Subsection (1) does not apply if a guardian ad litem is not appointed for the child.

Enacted by Chapter 322, 2010 General Session

62A-4a-501. Harboring a runaway -- Reporting requirements -- Division to provide assistance -- Affirmative defense -- Providing shelter after notice.

(1) As used in this section:

(a) "Harbor" means to provide shelter in:
(i) the home of the person who is providing the shelter; or
(ii) any structure over which the person providing the shelter has any control.
(b) "Receiving center" is as defined in Section 62A-7-101.
(c) "Runaway" means a minor, other than an emancipated minor, who is absent from the home or lawfully prescribed residence of the parent or legal guardian of the minor without the permission of the parent or legal guardian.
(d) "Temporary homeless youth shelter" means a facility that:
(i) provides temporary shelter to a runaway; and
(ii) is licensed by the Office of Licensing, created in Section 62A-1-105, as a residential support program.
(e) "Youth services center" means a center established by, or under contract with, the Division of Juvenile Justice Services, created in Section 62A-1-105, to provide youth services, as defined in Section 62A-7-101.
(2) Except as provided in Subsection (3), a person is guilty of a class B misdemeanor if the person:
(a) knowingly and intentionally harbors a minor;
(b) knows at the time of harboring the minor that the minor is a runaway;
(c) fails to notify one of the following, by telephone or other reasonable means, of the location of the minor:
(i) the parent or legal guardian of the minor;
(ii) the division; or
(iii) a youth services center; and
(d) fails to notify a person described in Subsection (2)(c) within eight hours after the later of:
(i) the time that the person becomes aware that the minor is a runaway; or
(ii) the time that the person begins harboring the minor.
(3) A person described in Subsection (2) is not guilty of a violation of Subsection (2) and is not required to comply with Subsections (2)(c) and (d), if:
(a) a court order is issued authorizing a peace officer to take the minor into custody; and
(b) the person notifies a peace officer or the nearest detention center, as defined in Section 62A-7-101, by telephone or other reasonable means, of the location of the minor, within eight hours after the later of:
(i) the time that the person becomes aware that the minor is a runaway; or
(ii) the time that the person begins harboring the minor.
(4) Nothing in this section limits the obligation of a person to report child abuse or neglect in accordance with Section 62A-4a-403.
(5) Except as provided in Subsection (6), a temporary homeless youth shelter shall notify:
(a) the parent or legal guardian of a minor within eight hours after the later of:
(i) the time that the temporary homeless youth shelter becomes aware that the minor is a runaway; or
(ii) the time that the temporary homeless youth shelter begins harboring the minor; and

(b) the division or a youth services center, within 48 hours after the later of:

(i) the time that the temporary homeless youth shelter becomes aware that a minor is a runaway; or

(ii) the time that the temporary homeless youth shelter begins harboring the minor.

(6) A temporary homeless youth shelter is not required to comply with Subsection (5) if:

(a) a court order is issued authorizing a peace officer to take the minor into custody; and

(b) the temporary homeless youth shelter notifies a peace officer or the nearest detention center, as defined in Section 62A-7-101, by telephone or other reasonable means, of the location of the minor, within eight hours after the later of:

(i) the time that the person becomes aware that the minor is a runaway; or

(ii) the time that the person begins harboring the minor.

(7) It is an affirmative defense to the crime described in Subsection (2) that:

(a) the person failed to provide notice as described in Subsection (2) or (3) due to circumstances beyond the control of the person providing the shelter; and

(b) the person provided the notice described in Subsection (2) or (3) as soon as it was reasonably practicable to provide the notice.

(8) Upon receipt of a report that a runaway is being harbored by a person:

(a) a youth services center shall:

(i) notify the parent or legal guardian that a report has been made; and

(ii) inform the parent or legal guardian of assistance available from the youth services center; or

(b) the division shall:

(i) determine whether the runaway is abused, neglected, or dependent; and

(ii) if appropriate, make a referral for services for the runaway.

(9) A parent or legal guardian of a runaway who is aware that the runaway is being harbored may notify a law enforcement agency and request assistance in retrieving the runaway. The local law enforcement agency may assist the parent or legal guardian in retrieving the runaway.

(10) Nothing in this section prohibits a person or a temporary homeless youth shelter from continuing to provide shelter to a runaway, after giving the notice described in Subsections (2) through (6), if:

(a) a parent or legal guardian of the minor consents to the continued provision of shelter; or

(b) a peace officer or a parent or legal guardian of the minor fails to retrieve the runaway.

(11) Nothing in this section prohibits a person or a temporary homeless youth shelter from providing shelter to a non-emancipated minor whose parents or legal guardians have intentionally:

(a) ceased to maintain physical custody of the minor;

(b) failed to make reasonable arrangements for the safety, care, and physical custody of the minor; and

(c) failed to provide the minor with food, shelter, or clothing.

(12) Nothing in this section prohibits:

(a) a receiving center or a youth services center from providing shelter to a runaway in accordance with the requirements of Title 62A, Chapter 7, Juvenile Justice Services, and the rules relating to a receiving center or a youth services center; or

(b) a government agency from taking custody of a minor as otherwise provided by law.

Amended by Chapter 312, 2014 General Session

62A-4a-601. Definitions.

For purposes of this part:

(1) "Child placing" means:

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

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

(2) "Child placing agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing.

Amended by Chapter 281, 2006 General Session

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

(1) No person, agency, firm, corporation, association, or group children's home may engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the Office of Licensing, in accordance with Chapter 2 of this title. When a child placing agency's license is suspended or revoked in accordance with that chapter, the care, control, or custody of any child who has been in the care, control, or custody of that agency shall be transferred to the division.

(2) (a) An attorney, physician, or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.

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

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

(ii) cause, permit, or allow any sign or marking indicating that he is available to provide that assistance, on or in any building or structure;

(iii) announce or cause, permit, or allow an announcement indicating that he is available to provide that assistance, to appear in any newspaper, magazine, directory, or on radio or television; or

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

(3) Nothing in this part precludes payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings; and no provision of this part abrogates the right

of procedures for independent adoption as provided by law.

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

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

(b) Beginning May 1, 2000, the division, as a licensed child placing agency, may not place a child in foster care with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137. However, nothing in this Subsection (5)(b) limits the placement of a child in foster care with the child's biological or adoptive parent.

(c) Beginning May 1, 2000, with regard to children who are in the custody of the state, the division shall establish a policy providing that priority for foster care and adoptive placement shall be provided to families in which both a man and a woman are legally married under the laws of this state. However, nothing in this Subsection (5)(c) limits the placement of a child with the child's biological or adoptive parent.

Amended by Chapter 3, 2008 General Session

62A-4a-603. Injunction -- Enforcement by county attorney or attorney general.

(1) The division or any interested person may commence an action in district court to enjoin any person, agency, firm, corporation, or association violating Section 62A-4a-602.

(2) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 62A-4a-602 when informed of any alleged violation. If the county attorney does not take action within 30 days after being informed, the attorney general may be requested to take action, and shall then institute legal proceedings in place of the county attorney.

(3) In addition to the remedies provided in Subsections (1) and (2), any person, agency, firm, corporation, or association found to be in violation of Section 62A-4a-602 shall forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than $10,000 for each violation. Every act in violation of Section 62A-4a-602, including each placement or attempted placement of a child, is a separate violation.

(4) (a) All amounts recovered as penalties under Subsection (3) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.

(b) If two or more governmental entities are involved in the prosecution, the penalty amounts recovered shall be apportioned by the court among the entities, according to their involvement.

(5) A judgment ordering the payment of any penalty or forfeiture under

Subsection (3) constitutes a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-605. Establishing proof of authority.

A child placing agency is not required to present its license, issued under Chapter 2 of this title, or its certificate of incorporation, or proof of its authority to consent to adoption, as proof of its authority in any proceeding in which it is an interested party, unless the court or a party to the proceeding requests that the agency or its representative establish proof of authority.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-606. Child placing agency responsibility for educational services -- Payment of costs.

(1) A child placing agency shall ensure that the requirements of Subsections 53A-11-101.5(2) and 53A-11-101.7(1) are met through the provision of appropriate educational services for all children served in the state by the agency.

(2) If the educational services are to be provided through a public school, and:

(a) the custodial parent or legal guardian resides outside the state, then the child placing agency shall pay all educational costs required under Sections 53A-2-205 and 53A-12-102; or

(b) the custodial parent or legal guardian resides within the state, then the child placing agency shall pay all educational costs required under Section 53A-12-102.

(3) Children in the custody or under the care of a Utah state agency are exempt from the payment of fees required under Subsection (2).

(4) A public school shall admit any child living within its school boundaries who is under the supervision of a child placing agency upon payment by the agency of the tuition and fees required under Subsection (2).

Amended by Chapter 81, 2007 General Session

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 or a primary permanency goal 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).

Amended by Chapter 3, 2008 General Session

62A-4a-608. Choose Life Adoption Support Restricted Account.

(1) There is created in the General Fund the "Choose Life Adoption Support Restricted Account."

(2) The account shall be funded by:

(a) contributions deposited into the Choose Life Adoption Support Restricted Account in accordance with Section 41-1a-422;

(b) appropriations to the account by the Legislature;

(c) private contributions; and

(d) donations or grants from public or private entities.

(3) The Legislature shall appropriate money in the account to the division.

(4) The division shall distribute the funds in the account to one or more charitable organizations that:

(a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue

Code;

(b) have as part of their primary mission the support, promotion, and education of adoption programs; and

(c) are licensed or registered to do business within the state in accordance with state law.

(5) (a) An organization described in Subsection (4) may apply to the division to receive a distribution in accordance with Subsection (4).

(b) An organization that receives a distribution from the division in accordance with Subsection (4) shall expend the distribution only to:

(i) produce and distribute educational and promotional materials on adoption;

(ii) conduct educational courses on adoption; and

(iii) provide other programs that support adoption.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules providing procedures and requirements for an organization to apply to the division to receive a distribution under Subsection (4).

Enacted by Chapter 438, 2011 General Session

62A-4a-701. Interstate Compact on Placement of Children -- Text.

The Interstate Compact on the Placement of Children is hereby enacted and entered into with all other jurisdictions that legally join in the compact which is, in form, substantially as follows: INTERSTATE COMPACT ON PLACEMENT OF CHILDREN ARTICLE I Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children so that:

(1) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide necessary and desirable care.

(2) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(3) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(4) Appropriate jurisdictional arrangements for the care of the children will be promoted. ARTICLE II Definitions

As used in this compact:

(1) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(2) "Sending agency" means a party state, officer, or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, Indian tribe, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(3) "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and

whether for placement with state or local public authorities or for placement with private agencies or persons.

(4) "Placement" means the arrangement for the care of a child in a family free, adoptive, or boarding home, or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution, primarily educational in character, and any hospital or other medical facility.

ARTICLE III Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) The name, date, and place of birth of the child.

(b) The identity and address or addresses of the parents or legal guardian.

(c) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child.

(d) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(e) Any public officer or agency in a receiving agency state which is in receipt of a notice pursuant to Paragraph (2) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(f) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child. ARTICLE IV Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children. ARTICLE V Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and

disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent any agency authorized to place children in the receiving agency from performing services or acting as agent in the receiving agency jurisdiction for a private charitable agency of the sending agency; nor to prevent the receiving agency from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in Paragraph (1) above. ARTICLE VI Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship. ARTICLE VII Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of the party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact. ARTICLE VIII Limitations

This compact shall not apply to:

(1) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(2) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law. ARTICLE IX Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, and with the

consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal. ARTICLE X Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-702. Financial responsibility.

Financial responsibility for a child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall, in the first instance, be determined in accordance with the provisions of Article V of the compact. However, in the event of partial or complete default of performance thereunder, the provisions of Title 78B, Chapter 12, Utah Child Support Act, may also be invoked.

Amended by Chapter 3, 2008 General Session

62A-4a-703. Division as public authority.

The "appropriate public authorities," as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the division. The division shall receive and act with reference to notices required by Article III of the compact.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-704. Director as authority.

As used in Paragraph (1) of Article V of the Interstate Compact on the Placement of Children, "appropriate authority in the receiving state," with reference to this state, means the director of the division.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-705. Fulfillment of requirements.

Requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under Part 2 of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state, or a subdivision thereof, as contemplated by Paragraph (2) of Article V of the Interstate Compact on the Placement of Children.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-706. Jurisdiction over delinquent children.

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state, pursuant to Article VI of the Interstate Compact on the Placement of Children, and shall retain jurisdiction as provided in Article V of the compact.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-707. Executive -- Authority.

As used in Article VII of the Interstate Compact on the Placement of Children, "executive" means the executive director of the department. The executive director is authorized to appoint a compact administrator in accordance with the terms of Article VII of the compact.

Renumbered and Amended by Chapter 260, 1994 General Session

62A-4a-708. Existing authority for child placement continues.

Any person who, under any law of this state other than this part or the interstate compact established under Section 62A-4a-701, has authority to make or assist in making the placement of a child, shall continue to have the ability lawfully to make or assist in making that placement, and the provisions of Part 6 of this chapter and of Title 78B, Chapter 6, Part 1, Utah Adoption Act, continue to apply.

Amended by Chapter 3, 2008 General Session

62A-4a-709. Medical assistance identification.

(1) As used in this section:

(a) "Adoption assistance" means financial support to adoptive parents provided under the Adoption Assistance and Child Welfare Act of 1980, Titles IV (e) and XIX of the Social Security Act.

(b) "Adoption assistance agreement" means a written agreement between the division and adoptive parents or between any state and adoptive parents, providing for adoption assistance.

(c) "Interstate compact" means an agreement executed by the division with any other state, under the authority granted in Section 62A-4a-907.

(2) The Employment Development Division in the Department of Workforce

Services and the Division of Health Care Financing shall cooperate with the division and comply with interstate compacts.

(3) A child who is a resident of this state and is the subject of an interstate compact is entitled to receive medical assistance identification from the Employment Development Division in the Department of Workforce Services and the Division of Health Care Financing by filing a certified copy of his adoption assistance agreement with that office. The adoptive parents shall annually provide that office with evidence, verifying that the adoption assistance agreement is still effective.

(4) The Employment Development Division in the Department of Workforce Services shall consider the holder of medical assistance identification received under this section as it does any other holder of medical assistance identification received under an adoption assistance agreement executed by the division.

(5) The submission of any claim for payment or reimbursement under this section that is known to be false, misleading, or fraudulent is punishable as a third degree felony.

Amended by Chapter 81, 2005 General Session

62A-4a-710. Interjurisdictional home study report.

(1) The state of Utah may request a home study report from another state or an Indian Tribe for purposes of assessing the safety and suitability of placing a child in a home outside of the jurisdiction of the state of Utah.

(2) The state of Utah may not impose any restriction on the ability of a state agency administering, or supervising the administration of, a state program operated under a state plan approved under Section 42 U.S.C. 671 to contract with a private agency to conduct a home study report described in Subsection (1).

(3) When the state of Utah receives a home study report described in Subsection (1), the home study report shall be considered to meet all requirements imposed by the state of Utah for completion of a home study before a child is placed in a home, unless, within 14 days after the day on which the report is received, the state of Utah determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child.

Enacted by Chapter 152, 2007 General Session

62A-4a-801. Definitions.

As used in this part:

(1) "Hospital" means a general acute hospital, as that term is defined in Section 26-21-2, that is:

(a) equipped with an emergency room;

(b) open 24 hours a day, seven days a week; and

(c) employs full-time health care professionals who have emergency medical services training.

(2) "Newborn child" means a child who is approximately 72 hours of age or younger, as determined within a reasonable degree of medical certainty.

Enacted by Chapter 134, 2001 General Session

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 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 child shall not be considered a neglected child, as defined in Section 78A-6-105, 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 that is relinquished pursuant to the provisions of this part, and may presume that the person relinquishing is the 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 child.

(c) The division shall provide hospitals with medical history forms and stamped envelopes addressed to the division that a hospital may provide to a person relinquishing a child pursuant to the provisions of this part.

(d) Personnel employed by a hospital shall:

(i) provide any necessary medical care to the child and notify the division as soon as possible, but no later than 24 hours after receipt of the child; and

(ii) prepare a birth certificate or foundling birth certificate if parentage is unknown and file with the Office of Vital Records and Statistics.

(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 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 of this chapter, Child Welfare Services;

(b) the investigation provisions contained in Section 62A-4a-409; or

(c) the provisions of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(5) Unless identifying information relating to the nonrelinquishing parent of the newborn child has been provided:

(a) the division shall 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;

(b) the division shall immediately place or contract for placement of the newborn child in a potential adoptive home and, within 10 days after receipt of the child, file a

petition for termination of parental rights in accordance with Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act;

(c) the division shall direct the Office of Vital Records and Statistics to conduct a search for a birth certificate for the child and an Initiation of Proceedings to Establish Paternity Registry for unmarried biological fathers maintained by the Office of Vital Records and Statistics within the Department of Health and provide notice to each potential father identified on the registry. Notice of termination of parental rights proceedings shall be provided in the same manner as is utilized for any other termination proceeding in which the identity of the child's parents is unknown;

(d) if no person has affirmatively identified himself or herself within two weeks after notice 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

(e) 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.

(6) If at any time prior to the adoption, a court finds it is in the best interest of the 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 person relinquishing a newborn child is the 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.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 299, 2008 General Session

62A-4a-901. Legislative purpose.

The purpose of this part is to provide adoption assistance to eligible adoptive families to establish and maintain a permanent adoptive placement for a child who has a special need and who qualifies under state and federal law.

Enacted by Chapter 115, 2001 General Session

62A-4a-902. Definitions.

(1) (a) "Adoption assistance" means direct financial subsidies and support to adoptive parents of a child with special needs or whose need or condition has created a barrier that would prevent a successful adoption.

(b) "Adoption assistance" may include state medical assistance, reimbursement of nonrecurring adoption expenses, or monthly subsidies.

(2) "Child who has a special need" means a child who cannot or should not be returned to the home of his biological parents and who meets at least one of the following conditions:

(a) the child is five years of age or older;
(b) the child is under the age of 18 with a physical, emotional, or mental disability; or
(c) the child is a member of a sibling group placed together for adoption.
(3) "Monthly subsidy" means financial support to assist with the costs of adopting and caring for a child who has a special need.
(4) "Nonrecurring adoption expenses" means reasonably necessary adoption fees, court costs, attorney's fees, and other expenses which are directly related to the legal adoption of a child who has a special need.
(5) "State medical assistance" means the Medicaid program and medical assistance as defined in Subsections 26-18-2(4) and (5).
(6) "Supplemental adoption assistance" means financial support for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

Amended by Chapter 116, 2006 General Session

62A-4a-903. Eligibility.
(1) The Division of Child and Family Services shall establish, by rule, eligibility criteria for the receipt of adoption assistance and supplemental adoption assistance.
(2) Eligibility determination shall be based upon:
(a) the needs of the child;
(b) the resources available to the child; and
(c) the federal requirements of Section 473, Social Security Act.

Amended by Chapter 75, 2009 General Session

62A-4a-904. Adoption assistance.
(1) Pursuant to federal requirements of 42 U.S.C. Sec. 670 et seq., Social Security Act, the Division of Child and Family Services:
(a) shall provide for:
(i) payment of nonrecurring adoption expenses for an eligible child who has a special need; and
(ii) state medical assistance when required by federal law; and
(b) may provide for monthly subsidies for an eligible child who has a special need.
(2) Payment of nonrecurring adoption expenses may not exceed $2,000 and shall be limited to costs incurred prior to finalization of an adoption.
(3) The level of monthly subsidy under Subsection (1)(b) shall be based on:
(a) the child's present and long-term treatment and care needs; and
(b) the family's ability to meet the needs of the child.
(4) (a) The level of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet the child's need changes.
(b) Either the family or the division may initiate changes to the monthly subsidy.

(5) Financial support provided under Subsection (1)(b) may not exceed the maximum foster care payment or residential room and board payment that would be paid at the time the subsidy amount is initiated or revised.

Enacted by Chapter 115, 2001 General Session

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

(1) The division may, based upon annual legislative appropriations for adoption assistance and division rules, provide supplemental adoption assistance for children who have a special need. Supplemental adoption assistance shall be provided only after all other resources for which a child is eligible have been exhausted.

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

(i) an adoption expert;

(ii) an adoptive parent;

(iii) a division representative;

(iv) a foster parent; and

(v) an adoption caseworker.

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

Amended by Chapter 75, 2009 General Session

62A-4a-906. Termination or modification of adoption assistance.

(1) Adoption assistance may not be terminated or modified unless the division has given adoptive parents notice and opportunity for a hearing as required in Title 63G, Chapter 4, Administrative Procedures Act.

(2) Adoption assistance shall be terminated if any of the following occur:

(a) the adoptive parents request termination;

(b) the child reaches 18 years of age, unless approval has been given by the division to continue beyond the age of 18 due to mental or physical disability, but in no case shall assistance continue after a child reaches 21 years of age;

(c) the child dies;

(d) the adoptive parents die;

(e) the adoptive parent's legal responsibility for the child ceases;

(f) the state determines that the child is no longer receiving support from the adoptive parents;

(g) the child marries; or

(h) the child enters military service.

Amended by Chapter 382, 2008 General Session

62A-4a-907. Interstate compact adoption assistance agreements.

(1) As used in this section:

(a) "Adoption assistance" means financial support to adoptive parents provided under the Adoption Assistance and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act.

(b) "Adoption assistance agreement" means a written agreement between the division and adoptive parents, or between any other state and adoptive parents, providing for adoption assistance.

(2) The division may develop and negotiate interstate compacts for the provision of medical identification and assistance to adoptive parents who receive adoption assistance. An interstate compact shall include:

(a) a provision for joinder by all states;

(b) a provision for withdrawal from the compact upon written notice to the parties, with a period of one year between the date of the notice and the effective date of withdrawal;

(c) a requirement that each instance of adoption assistance to which the compact applies be covered by a written adoption assistance agreement between the adoptive parents and the agency of the state which initially agrees to provide adoption assistance, and that any agreement is expressly for the benefit of the adopted child and is enforceable by the adoptive parents, and by the state agency providing adoption assistance;

(d) a provision that a child who is the subject of an adoption assistance agreement with another party state, and who subsequently becomes a resident of this state, shall receive medical identification and assistance in this state under the Adoption Assistance and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act, based on his adoption assistance agreement;

(e) a provision that a child who is the subject of an adoption assistance agreement with the division, and who subsequently becomes a resident of another party state, shall receive medical identification and assistance from that state under the Adoption and Child Welfare Act of 1980, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act, based on his adoption assistance agreement; and

(f) a requirement that the protections of the compact continue for the duration of the adoption assistance and apply to all children and their adoptive parents who receive adoption assistance from a party state other than the state in which they reside.

(3) (a) The division shall provide services to a child who is the subject of an adoption assistance agreement executed by the division, and who is a resident of another state, if those services are not provided by the child's residence state under an interstate compact.

(b) The division may reimburse the adoptive parents upon receipt of evidence of their payment for services for which the child is eligible, which were not paid by the residence state, and are not covered by insurance or other third party medical contract. The services provided under this subsection are those for which there is no federal contribution, or which, if federally aided, are not provided by the residence state.

Renumbered and Amended by Chapter 115, 2001 General Session

62A-4a-1001. Title.

This part is known as the "Management Information System and Licensing Information System."

Enacted by Chapter 77, 2006 General Session

62A-4a-1002. Definitions.

As used in this part:

(1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect" means:

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

(A) chronic abuse;

(B) severe abuse;

(C) sexual abuse;

(D) sexual exploitation;

(E) abandonment;

(F) chronic neglect; or

(G) severe neglect; or

(ii) if committed by a person under the age of 18:

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

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

(b) "Severe type of child abuse or neglect" does not include:

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

(ii) a person's conduct that:

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

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

(iii) a health care decision made for a child by the child's parent or guardian, unless, subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(2) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the division that focus on:

(a) age;

(b) social factors;

(c) emotional factors;

(d) sexual factors;

(e) intellectual factors;
(f) family risk factors; and
(g) other related considerations.

Amended by Chapter 45, 2008 General Session
Amended by Chapter 299, 2008 General Session

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

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

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

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

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

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

(i) as provided under Subsection (6) or Section 62A-4a-1006; or

(ii) who has specific statutory authorization to access the information or records for the purpose of assisting the state with state and federal requirements to maintain information solely for the purpose of protecting minors and providing services to families in need.

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

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

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

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

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

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

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

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

division;

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

(i) for each report, documentation of the:

(A) latest status; or

(B) final outcome or determination; and

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

(A) supported;

(B) unsupported;

(C) substantiated by a juvenile court;

(D) unsubstantiated by a juvenile court; or

(E) without merit;

(f) the number of times the child's parent or parents failed any child and family plan; and

(g) the number of different caseworkers who have been assigned to that child in the past.

(3) The division's Management Information System shall:

(a) contain all key elements of each family's current child and family plan, including:

(i) the dates and number of times the plan has been administratively or judicially reviewed;

(ii) the number of times the parent or parents have failed that child and family plan; and

(iii) the exact length of time the child and family plan has been in effect; and

(b) alert caseworkers regarding deadlines for completion of and compliance with policy, including child and family plans.

(4) With regard to all child protective services cases, the Management Information System shall:

(a) monitor the compliance of each case with:

(i) division rule and policy;

(ii) state law; and

(iii) federal law and regulation; and

(b) include the age and date of birth of the alleged perpetrator at the time the abuse or neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of the alleged perpetrator.

(5) Except as provided in Subsection (6) regarding contract providers and Section 62A-4a-1006 regarding limited access to the Licensing Information System, all information contained in the division's Management Information System is available to the department, upon the approval of the executive director, on a need-to-know basis.

(6) (a) Subject to this Subsection (6), the division may allow its contract providers, court clerks designated by the Administrative Office of the Courts, and the Office of Guardian Ad Litem to have limited access to the Management Information System.

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

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

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

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

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

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

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

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

(ii) train its employees regarding:

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

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

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

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

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

Amended by Chapter 32, 2009 General Session

62A-4a-1004. Risk assessment training -- Second health care opinion.

(1) The division shall train its child protection workers to apply the risk assessment tools and rules established under Subsection 62A-4a-1002(2).

(2) Nothing in Subsection 62A-4a-1002(1)(b)(iii) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

Enacted by Chapter 77, 2006 General Session

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);

(v) the alleged perpetrator may be disqualified from adopting a child, receiving state funds as a child care provider, or being licensed by:

(A) the department;

(B) a human services licensee;

(C) a child care provider or program; or

(D) a covered health care facility;

(vi) the alleged perpetrator has the rights described in Subsection (3); and

(vii) failure to take either action described in Subsection (3)(a) within one year after service of the notice will result in the action described in Subsection (3)(b);

(b) shall include a general statement of the nature of the findings; and

(c) may not include:

(i) the name of a victim or witness; or

(ii) any privacy information related to the victim or a witness.

(3) (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator has the right to:

(i) file a written request asking the division to review the findings made under Subsection (1);

(ii) except as provided in Subsection (3)(c), immediately petition the juvenile court under Section 78A-6-323; or

(iii) sign a written consent to:

(A) the supported finding made under Subsection (1); and

(B) entry into the Licensing Information System of:

(I) the alleged perpetrator's name; and

(II) other information regarding the supported finding made under Subsection (1).

(b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the information described in Subsection (1)(b) shall remain in the Licensing Information System:

(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 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; 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(1) and (2).

(5) Service of the notice described in Subsections (1)(a) and (2):

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

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

Amended by Chapter 3, 2008 General Session
Amended by Chapter 59, 2008 General Session
Amended by Chapter 299, 2008 General Session

62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding -- Protected record -- Access -- Criminal penalty.

(1) (a) The division shall maintain a sub-part of the Management Information System established pursuant to Section 62A-4a-1003, to be known as the Licensing Information System, to be used:

(i) for licensing purposes; or

(ii) as otherwise specifically provided for by law.

(b) The Licensing Information System shall include only the following information:

(i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

(ii) consented-to supported findings by alleged perpetrators under Subsection 62A-4a-1005(3)(a)(iii); and

(iii) the information in the licensing part of the division's Management Information System as of May 6, 2002.

(2) Notwithstanding Subsection (1), the department's access to information in the Management Information System for the licensure and monitoring of foster parents is governed by Sections 62A-4a-1003 and 62A-2-121.

(3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the juvenile court under Section 78A-6-323, the division shall:

(a) promptly amend the Licensing Information System; and

(b) enter the information in the Management Information System.

(4) (a) Information contained in the Licensing Information System is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding the disclosure provisions of Title 63G, Chapter 2, Government Records Access and Management Act, the information contained in the Licensing Information System may only be used or disclosed as specifically provided in this chapter and Section 62A-2-121.

(c) The information described in Subsection (4)(b) is accessible only to:

(i) the Office of Licensing within the department:

(A) for licensing purposes; or

(B) as otherwise specifically provided for by law;

(ii) the division to:

(A) screen a person at the request of the Office of Guardian Ad Litem:

(I) at the time that person seeks a paid or voluntary position with the Office of Guardian Ad Litem; and

(II) on an annual basis, throughout the time that the person remains with the Office of Guardian Ad Litem; and

(B) respond to a request for information from a person whose name is listed in the Licensing Information System;

(iii) persons designated by the Department of Health and approved by the Department of Human Services, only for the following purposes:

(A) licensing a child care program or provider; or

(B) determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child, has a supported finding of a severe type of child abuse or neglect;

(iv) persons designated by the Department of Workforce Services and approved

by the Department of Human Services for the purpose of qualifying child care providers under Section 35A-3-310.5; and

(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 it is a violation of this Subsection (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63G-2-801.

Amended by Chapter 32, 2009 General Session

62A-4a-1007. False reports -- Penalties.

(1) The division shall send a certified letter to any person who submits a report of abuse or neglect that is placed into or included in any part of the Management Information System, if the division determines, at the conclusion of its investigation, that:

(a) the report is false;

(b) it is more likely than not that the person knew the report was false at the time that person submitted the report; and

(c) the reporting person's address is known or reasonably available.

(2) The letter shall inform the reporting person of:

(a) the division's determination made under Subsection (1);

(b) the penalty for submitting false information under Section 76-8-506 and other applicable laws; and

(c) the obligation of the division to inform law enforcement and the person alleged to have committed abuse or neglect:

(i) in the present instance if law enforcement considers an immediate referral of the reporting person to law enforcement to be justified by the facts; or

(ii) if the reporting person submits a subsequent false report involving the same alleged perpetrator or victim.

(3) The division may inform law enforcement and the alleged perpetrator of a

report for which a letter is required to be sent under Subsection (1), if an immediate referral is justified by the facts.

(4) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (1) if a second letter is sent to the reporting person involving the same alleged perpetrator or victim.

(5) The division shall determine, in consultation with law enforcement:

(a) what information should be given to an alleged perpetrator relating to a false report; and

(b) whether good cause exists, as defined by the division by rule, for not informing an alleged perpetrator about a false report.

(6) Nothing in this section may be construed as requiring the division to conduct an investigation beyond what is described in Subsection (1), to determine whether or not a report is false.

Amended by Chapter 299, 2008 General Session

62A-4a-1008. Timeframes for deletion of specified information or reports.

(1) Unless the executive director determines that there is good cause for keeping a report of abuse or neglect in the Management Information System, based on standards established by rule, the division shall delete any reference to:

(a) a report that is without merit, if no subsequent report involving the same alleged perpetrator has occurred within one year; or

(b) a report that is determined by a court of competent jurisdiction to be unsubstantiated or without merit, if no subsequent report involving the same alleged perpetrator has occurred within five years.

(2) (a) The division shall maintain a separation of reports as follows:

(i) those that are supported;

(ii) those that are unsupported;

(iii) those that are without merit;

(iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;

(v) those that are substantiated under the law in effect prior to May 6, 2002; and

(vi) those that are consented-to supported findings under Subsection 62A-4a-1005(3)(a)(iii).

(b) Only persons with statutory authority have access to information contained in any of the reports identified in Subsection (2)(a).

Renumbered and Amended by Chapter 77, 2006 General Session

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 lives at a different address, unless there is good cause, as defined by rule, for not sending a notice to a parent or guardian.

(b) Nothing in this section may be construed as affecting:

(i) the manner in which the division conducts an investigation; or

(ii) the use or effect, in any other setting, of a supported finding by the division at the completion of an investigation for any purpose other than for notification under Subsection (1) (a).

(2) Subsection (1) does not apply to a person who has been served with notice under Subsection 62A-4a-1005(1)(a).

(3) The notice described in Subsection (1) shall state:

(a) that the division has conducted an investigation regarding alleged abuse, neglect, or dependency;

(b) that the division has made a supported finding of abuse, neglect, or dependency;

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

(d) that the person has the right to request:

(i) a copy of the report; and

(ii) an opportunity to challenge the supported finding by the division; and

(e) that failure to request an opportunity to challenge the supported finding within 30 days of receiving the notice will result in an unappealable supported finding of abuse, neglect, or dependency unless the person can show good cause for why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

(4) (a) A person may make a request to challenge a supported finding within 30 days of a notice being received under this section.

(b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

(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, 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 supported finding of a severe type of child abuse or neglect.

Amended by Chapter 87, 2008 General Session
Amended by Chapter 299, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-4a-1010. Notice and opportunity for court hearing for persons listed in Licensing Information System.
(1) Persons whose names were listed on the Licensing Information System as of May 6, 2002 and who have not been the subject of a court determination with respect to the alleged incident of abuse or neglect may at any time:
(a) request review by the division of their case and removal of their name from the Licensing Information System pursuant to Subsection (3); or
(b) file a petition for an evidentiary hearing and a request for a finding of unsubstantiated or without merit.
(2) Subsection (1) does not apply to an individual who has been the subject of any of the following court determinations with respect to the alleged incident of abuse or neglect:
(a) conviction;
(b) adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996;
(c) plea of guilty;
(d) plea of guilty with a mental illness; or
(e) no contest.
(3) If an alleged perpetrator listed on the Licensing Information System prior to May 6, 2002, requests removal of the alleged perpetrator's name from the Licensing Information System, the division shall, within 30 days:
(a) (i) review the case to determine whether the incident of alleged abuse or neglect qualifies as:
(A) a severe type of child abuse or neglect;
(B) chronic abuse; or
(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(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 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.

Amended by Chapter 366, 2011 General Session

62A-5-101. Definitions.

As used in this chapter:

(1) "Approved provider" means a person approved by the division to provide home-based services.

(2) (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.

(b) "Brain injury" does not include a deteriorating disease.

(3) "Designated intellectual disability professional" means:

(a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:

(i) (A) has at least one year of specialized training in working with persons with an intellectual disability; or

(B) has at least one year of clinical experience with persons with an intellectual disability; and

(ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability; or

(b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:

(i) has at least two years of clinical experience with persons with an intellectual disability; and

(ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability.

(4) "Deteriorating disease" includes:

(a) multiple sclerosis;

(b) muscular dystrophy;

(c) Huntington's chorea;

(d) Alzheimer's disease;

(e) ataxia; or

(f) cancer.

(5) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 2, Utah State Developmental Center.

(6) "Direct service worker" means a person who provides services to a person with a disability:

(a) when the services are rendered in:

(i) the physical presence of the person with a disability; or

(ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and

(b) (i) under a contract with the division;

(ii) under a grant agreement with the division; or

(iii) as an employee of the division.

(7) "Director" means the director of the Division of Services for People with Disabilities.

(8) (a) "Disability" means a severe, chronic disability that:

(i) is attributable to:

(A) an intellectual disability;

(B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;

(C) a physical disability; or

(D) a brain injury;

(ii) is likely to continue indefinitely;

(iii) (A) for a condition described in Subsection (8)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:

(I) self-care;

(II) receptive and expressive language;

(III) learning;

(IV) mobility;

(V) self-direction;

(VI) capacity for independent living; or

(VII) economic self-sufficiency; or

(B) for a condition described in Subsection (8)(a)(i)(D), results in a substantial limitation in three or more of the following areas:

(I) memory or cognition;

(II) activities of daily life;

(III) judgment and self-protection;

(IV) control of emotions;

(V) communication;

(VI) physical health; or

(VII) employment; and

(iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:

(A) may continue throughout life; and

(B) must be individually planned and coordinated.

(b) "Disability" does not include a condition due solely to:

(i) mental illness;
(ii) personality disorder;
(iii) hearing impairment;
(iv) visual impairment;
(v) learning disability;
(vi) behavior disorder;
(vii) substance abuse; or
(viii) the aging process.
(9) "Division" means the Division of Services for People with Disabilities.
(10) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division in accordance with Subsection 62A-5-102(4), to receive services that are administered by the division.
(11) "Endorsed program" means a facility or program that:
(a) is operated:
(i) by the division; or
(ii) under contract with the division; or
(b) provides services to a person committed to the division under Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.
(12) "Licensed physician" means:
(a) an individual licensed to practice medicine under:
(i) Title 58, Chapter 67, Utah Medical Practice Act; or
(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
(b) a medical officer of the United States Government while in this state in the performance of official duties.
(13) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.
(14) "Public funds" means state or federal funds that are disbursed by the division.
(15) "Resident" means an individual under observation, care, or treatment in an intermediate care facility for people with an intellectual disability.

Amended by Chapter 366, 2011 General Session

62A-5-102. Division of Services for People with Disabilities -- Creation -- Authority -- Direction -- Provision of services.

(1) There is created within the department the Division of Services for People with Disabilities, under the administrative direction of the executive director of the department.
(2) In accordance with this chapter, the division has the responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities and their families in this state.
(3) Within appropriations from the Legislature, the division shall provide services to any person with a disability who is eligible to receive division services.
(4) (a) Starting on July 1, 2013, any new appropriations designated to serve eligible persons waiting for services from the division shall be allocated as set forth in

this section.

(b) Eighty-five percent of the money appropriated in Subsection (4)(a) shall be allocated, as determined by the division by rule based on the:

(i) severity of the disability;

(ii) urgency of the need for services;

(iii) ability of a parent or guardian to provide the person with appropriate care and supervision; and

(iv) length of time during which the person has not received services from the division.

(c) Fifteen percent of the money appropriated in Subsection (4)(a) shall be allocated for respite services, and the division shall:

(i) establish rules to identify a person whose only need is respite services;

(ii) allocate money under this Subsection (4)(c) to the people described in Subsection (4)(c)(i) based on random selection; and

(iii) if all persons described in Subsection (4)(c)(i) have been served and there is money remaining for respite care under this Subsection (4)(c), the division shall use the remaining money as described in Subsection (4)(b).

(d) Funds from Subsection (4)(b) that are not spent by the division at the end of the fiscal year may be used as set forth in Subsection (7).

(5) The division:

(a) has the functions, powers, duties, rights, and responsibilities described in Section 62A-5-103; and

(b) is authorized to work in cooperation with other state, governmental, and private agencies to carry out the responsibilities described in Subsection (5)(a).

(6) Within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, the division shall ensure that the services and support that the division provides to any person with a disability:

(a) are provided in the least restrictive and most enabling environment;

(b) ensure opportunities to access employment; and

(c) enable reasonable personal choice in selecting services and support that:

(i) best meet individual needs; and

(ii) promote:

(A) independence;

(B) productivity; and

(C) integration in community life.

(7) (a) Appropriations to the division are nonlapsing.

(b) If an individual receiving services under Subsection (4)(b) or (c) ceases to receive those services, the division shall use the funds that were allocated to that individual to provide services to another eligible individual waiting for services as described in Subsection (4)(b).

(c) Funds unexpended by the division at the end of the fiscal year may be used only for one-time expenditures unless otherwise authorized by the Legislature.

(d) A one-time expenditure under this section:

(i) is not an entitlement;

(ii) may be withdrawn at any time; and

(iii) may provide short-term, limited services, including:
(A) respite care;
(B) service brokering;
(C) family skill building and preservation classes;
(D) after school group services; and
(E) other professional services.

Amended by Chapter 172, 2013 General Session

62A-5-103. Responsibility and authority of division.

(1) For purposes of this section "administer" means to:
(a) plan;
(b) develop;
(c) manage;
(d) monitor; and
(e) conduct certification reviews.
(2) The division has the authority and responsibility to:
(a) administer an array of services and supports for persons with disabilities and their families throughout the state;
(b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish eligibility criteria for the services and supports described in Subsection (2)(a);
(c) consistent with Section 62A-5-206, supervise the programs and facilities of the Developmental Center;
(d) in order to enhance the quality of life for a person with a disability, establish either directly, or by contract with private, nonprofit organizations, programs of:
(i) outreach;
(ii) information and referral;
(iii) prevention;
(iv) technical assistance; and
(v) public awareness;
(e) supervise the programs and facilities operated by, or under contract with, the division;
(f) cooperate with other state, governmental, and private agencies that provide services to a person with a disability;
(g) subject to Subsection (3), ensure that a person with a disability is not deprived of that person's constitutionally protected rights without due process procedures designed to minimize the risk of error when a person with a disability is admitted to an intermediate care facility for people with an intellectual disability, including:
(i) the developmental center; and
(ii) facilities within the community;
(h) determine whether to approve providers;
(i) monitor and sanction approved providers, as specified in the providers' contract;

(j) subject to Section 62A-5-103.5, receive and disburse public funds;
(k) review financial actions of a provider who is a representative payee appointed by the Social Security Administration;
(l) establish standards and rules for the administration and operation of programs conducted by, or under contract with, the division;
(m) approve and monitor division programs to insure compliance with the board's rules and standards;
(n) establish standards and rules necessary to fulfill the division's responsibilities under Parts 2, Utah State Developmental Center, and 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, with regard to an intermediate care facility for people with an intellectual disability;
(o) assess and collect equitable fees for a person who receives services provided under this chapter;
(p) maintain records of, and account for, the funds described in Subsection (2)(o);
(q) establish and apply rules to determine whether to approve, deny, or defer the division's services to a person who is:
(i) applying to receive the services; or
(ii) currently receiving the services;
(r) in accordance with state law, establish rules:
(i) relating to an intermediate care facility for people with an intellectual disability that is an endorsed program; and
(ii) governing the admission, transfer, and discharge of a person with a disability;
(s) manage funds for a person residing in a facility operated by the division:
(i) upon request of a parent or guardian of the person; or
(ii) under administrative or court order; and
(t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons with Disabilities.
(3) The due process procedures described in Subsection (2)(g):
(a) shall include initial and periodic reviews to determine the constitutional appropriateness of the placement; and
(b) with regard to facilities in the community, do not require commitment to the division.

Amended by Chapter 366, 2011 General Session

62A-5-103.1. Program for provision of supported employment services.
(1) There is established a program for the provision of supported employment services to be administered by the division.
(2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of the program described in this section.
(3) In accordance with Subsection (4), within funds appropriated by the Legislature for the program described in this section, the division shall provide

supported employment services to a person with a disability who:

(a) is eligible to receive services from the division;

(b) has applied for, and is waiting to, receive services from the division;

(c) is not receiving other ongoing services from the division;

(d) is not able to receive sufficient supported employment services from other sources;

(e) the division determines would substantially benefit from the provision of supported employment services; and

(f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of supported employment services.

(4) (a) The division shall provide supported employment services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.

(b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.

(5) It is the intent of the Legislature that the services provided under the program described in this section:

(a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;

(b) may not be supported with Medicaid funds;

(c) may not be provided as part of a Medicaid waiver;

(d) do not constitute an entitlement of any kind; and

(e) may be withdrawn from a person at any time.

(6) The division shall report to the Health and Human Services Interim Committee in even calendar years regarding the success and progress of employment services offered under this section.

Amended by Chapter 125, 2013 General Session

62A-5-103.2. Pilot Program for the Provision of Family Preservation Services.

(1) There is established a pilot program for the provision of family preservation services to a person with a disability and that person's family, beginning on July 1, 2007, and ending on July 1, 2009.

(2) The family preservation services described in Subsection (1) may include:

(a) family skill building classes;

(b) respite hours for class attendance; or

(c) professional intervention.

(3) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of this section.

(4) In accordance with Subsection (5), within funds appropriated by the Legislature for the pilot program described in this section, the division shall provide family preservation services to a person with a disability, and that person's family, if

that person:

(a) is eligible to receive services from the division;

(b) has applied for, and is willing to receive, services from the division;

(c) is not receiving other ongoing services from the division;

(d) is not able to receive sufficient family preservation services from other sources;

(e) is determined by the division to be a person who would substantially benefit from the provision of family preservation services; and

(f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of family preservation services.

(5) (a) The division shall provide family preservation services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.

(b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.

(6) It is the intent of the Legislature that the services provided under the pilot program described in this section:

(a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;

(b) may not be supported with Medicaid funds;

(c) may not be provided as part of a Medicaid waiver;

(d) do not constitute an entitlement of any kind; and

(e) may be withdrawn from a person at any time.

Amended by Chapter 29, 2009 General Session

62A-5-103.3. Employment first emphasis on the provision of services.

(1) When providing services to a person with a disability under this chapter, the division shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law, give priority to providing services that assist the person in obtaining and retaining meaningful and gainful employment that enables the person to:

(a) purchase goods and services;

(b) establish self-sufficiency; and

(c) exercise economic control of the person's life.

(2) The division shall develop a written plan to implement the policy described in Subsection (1) that includes:

(a) assessing the strengths and needs of a person with a disability;

(b) customizing strength-based approaches to obtaining employment;

(c) expecting, encouraging, providing, and rewarding:

(i) integrated employment in the workplace at competitive wages and benefits; and

(ii) self-employment;

(d) developing partnerships with potential employers;

(e) maximizing appropriate employment training opportunities;
(f) coordinating services with other government agencies and community resources;
(g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and
(h) arranging sub-minimum wage work or volunteer work when employment at market rates cannot be obtained.
(3) The division shall, on an annual basis:
(a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);
(b) determine whether the goals for the previous year have been met; and
(c) modify the plan described in Subsection (2) as needed.

Enacted by Chapter 169, 2011 General Session

62A-5-103.5. Disbursal of public funds -- Background check of a direct service worker.
(1) For purposes of this section:
(a) "directly supervised" means that the person being supervised is under the uninterrupted visual and auditory surveillance of the person doing the supervising; and
(b) "office" is as defined in Section 62A-2-101.
(2) Subject to Subsection (4), public funds may not be disbursed to pay a direct service worker for personal services rendered to a person, unless:
(a) subject to Subsections (5) and (7), the direct service worker is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120;
(b) except as provided in Subsection (5):
(i) during the time that the direct service worker renders the services described in this Subsection (2), the direct service worker who renders the services is directly supervised by a direct service worker who is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120;
(ii) the direct service worker who renders the services described in this Subsection (2) has submitted the information required for a background check pursuant to Section 62A-2-120; and
(iii) the office has not determined whether to approve the direct service worker described in Subsection (2)(b)(ii) to have direct access and provide services to children or vulnerable adults; or
(c) except as provided in Subsection (5), the direct service worker:
(i) (A) is a direct ancestor or descendent of the person to whom the services are rendered, but is not the person's parent;
(B) is the aunt, uncle, or sibling of the person to whom the services are rendered; or
(C) (I) has submitted the information required for a background check pursuant to Section 62A-2-120; and

(II) the office has not determined whether to approve the direct service worker to have direct access and provide services to children or vulnerable adults; and

(ii) is not listed in:

(A) the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006;

(B) the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation; or

(C) juvenile court records as having a substantiated finding under Section 78A-6-323 that the direct service worker committed a severe type of child abuse or neglect.

(3) For purposes of Subsection (2), the office shall conduct a background check of a direct service worker:

(a) except as provided in Subsection (2)(b) or (c), before public funds are disbursed to pay the direct service worker for the personal services described in Subsection (2); and

(b) using the same procedures established for a background check of an applicant for an initial license under Section 62A-2-120.

(4) The background check and the approval determination described in this section shall be conducted for a direct service worker on an annual basis.

(5) Notwithstanding Subsections (1) through (4), and except as provided in Subsection (6), a child who is in the legal custody of the department or any of the department's divisions may not be placed with a direct service worker unless, before the child is placed with the direct service worker, the direct service worker passes a background check, pursuant to the requirements of Section 62A-2-120, that includes:

(a) submitting the direct service worker's fingerprints for an FBI national criminal history records check, through the Criminal Investigations and Technical Services Division;

(b) checking the child abuse and neglect registry in each state where the direct service worker resided in the five years immediately preceding the day on which the direct service worker applied to be a direct service worker; and

(c) checking the child abuse and neglect registry in each state where each adult living in the home where the child will be placed resided in the five years immediately preceding the day on which the direct service worker applied to be a direct service worker.

(6) The requirements under Subsection (5) do not apply to the extent that federal law or rule permits otherwise.

(7) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, contracts with the division to provide services:

(a) the provisions of Subsections (2) through (5) are not applicable to a direct service worker employed by the public transit district; and

(b) the division may not reimburse the public transit district for services provided unless a direct service worker hired or transferred internally after July 1, 2013, by the public transit district to drive a paratransit route:

(i) is approved by the office to have direct access to children and vulnerable

adults in accordance with Section 62A-2-120; and

(ii) is subject to a background check established in a statute or rule governing a public transit district or other public transit district policy.

Amended by Chapter 448, 2013 General Session

62A-5-104. Director -- Qualifications -- Responsibilities.

(1) The director of the division shall be appointed by the executive director.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities, intellectual disabilities, and other disabilities.

(3) The director is the administrative head of the division.

(4) The director shall appoint the superintendent of the developmental center and the necessary and appropriate administrators for other facilities operated by the division with the concurrence of the executive director.

Amended by Chapter 369, 2012 General Session

62A-5-105. Division responsibilities -- Policy mediation.

(1) The division shall establish its rules in accordance with:

(a) the policy of the Legislature as set forth by this chapter; and

(b) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) The division shall:

(a) establish program policy for the division, the developmental center, and programs and facilities operated by or under contract with the division;

(b) establish rules for the assessment and collection of fees for programs within the division;

(c) no later than July 1, 2003, establish a graduated fee schedule based on ability to pay and implement the schedule with respect to service recipients and their families where not otherwise prohibited by federal law or regulation or not otherwise provided for in Section 62A-5-109;

(d) establish procedures to ensure that private citizens, consumers, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision to an existing policy;

(e) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described under Subsection (2)(d);

(f) establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding;

(g) review implementation and compliance by the division with policies established by the board to ensure that the policies established by the Legislature in this chapter are carried out; and

(h) annually report to the executive director.

(3) The executive director shall mediate any differences which arise between the policies of the division and those of any other policy board or division in the department.

Amended by Chapter 167, 2013 General Session

62A-5-106. Powers of other state agencies -- Severability.

Nothing in this part shall be construed to supersede or limit the authority granted by law to any other state agency. If any provision of this part, or the application of any provision to the person or circumstance, is held invalid, the remainder of this part shall not be affected.

Enacted by Chapter 1, 1988 General Session

62A-5-109. Parent liable for cost and support of minor -- Guardian liable for costs.

(1) Parents of a person who receives services or support from the division, who are financially responsible, are liable for the cost of the actual care and maintenance of that person and for the support of the child in accordance with Title 78B, Chapter 12, Utah Child Support Act, and Title 62A, Chapter 11, Public Support of Children Act until the person reaches 18 years of age.

(2) A guardian of a person who receives services or support from the division is liable for the cost of actual care and maintenance of that person, regardless of his age, where funds are available in the guardianship estate established on his behalf for that purpose. However, if the person who receives services is a beneficiary of a trust created in accordance with Section 62A-5-110, or if the guardianship estate meets the requirements of a trust described in that section, the trust income prior to distribution to the beneficiary, and the trust principal are not subject to payment for services or support for that person.

(3) If, at the time a person who receives services or support from the division is discharged from a facility or program owned or operated by or under contract with the division, or after the death and burial of a resident of the developmental center, there remains in the custody of the division or the superintendent any money paid by a parent or guardian for the support or maintenance of that person, it shall be repaid upon demand.

Amended by Chapter 3, 2008 General Session

62A-5-110. Discretionary trusts for persons with disabilities -- Impact on state services.

(1) For purposes of this section:

(a) "Discretionary trust for a person with disabilities" means a trust:

(i) that is established for the benefit of an individual who, at the time the trust is created, is under age 65 and has a disability as defined in 42 U.S.C. Sec. 1382c;

(ii) under which the trustee has discretionary power to determine distributions;

(iii) under which the beneficiary may not control or demand payments unless an abuse of the trustee's duties or discretion is shown;

(iv) that contains the assets of the beneficiary and is established for the benefit of the beneficiary by a parent, grandparent, legal guardian, or court;

(v) that is irrevocable, except that the trust document may provide that the trust be terminated if the beneficiary no longer has a disability as defined in 42 U.S.C. Sec. 1382c;

(vi) that is invalid as to any portion funded by property that is or may be subject to a lien by the state; and

(vii) providing that, upon the death of the beneficiary, the state will receive all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the beneficiary.

(b) "Medical assistance" means the same as that term is defined in Section 26-18-2.

(2) A state agency providing services or support to a person with disabilities may:

(a) waive application of Subsection (1)(a)(v) with respect to that individual if it determines that application of the criteria would place an undue hardship upon that individual; and

(b) define, by rule, what constitutes "undue hardship" for purposes of this section.

(3) A discretionary trust for a person with disabilities is not liable for reimbursement or payment to the state or any state agency, for financial aid or services provided to that individual except:

(a) to the extent that the trust property has been distributed directly to or is otherwise under the control of the beneficiary with a disability; or

(b) as provided in Subsection (1)(a)(vi).

(4) Property, goods, and services that are purchased or owned by a discretionary trust for a person with disabilities and that are used or consumed by a beneficiary with a disability shall not be considered trust property that is distributed to or under the control of the beneficiary.

(5) The benefits that a person with disabilities is otherwise legally entitled to may not be reduced, impaired, or diminished in any way because of contribution to a discretionary trust for that person.

(6) All state agencies shall disregard a discretionary trust for a person with disabilities, as defined in Subsection (1), as a resource when determining eligibility for services or support except as, and only to the extent that it is otherwise prohibited by federal law.

(7) This section applies to all discretionary trusts that meet the requirements contained in Subsection (1) created before, on, or after July 1, 1994.

Amended by Chapter 366, 2011 General Session

62A-5-201. Utah State Developmental Center.

(1) The intermediate care facility for people with an intellectual disability located

in American Fork City, Utah County, shall be known as the "Utah State Developmental Center."

(2) Within appropriations authorized by the Legislature, the role and function of the developmental center is to:

(a) provide care, services, and treatment to persons described in Subsection (3); and

(b) provide the following services and support to persons with disabilities who do not reside at the developmental center:

(i) psychiatric testing;

(ii) specialized medical and dental treatment and evaluation;

(iii) family and client special intervention;

(iv) crisis management;

(v) occupational, physical, speech, and audiology services; and

(vi) professional services, such as education, evaluation, and consultation, for families, public organizations, providers of community and family support services, and courts.

(3) Except as provided in Subsection (6), within appropriations authorized by the Legislature, and notwithstanding the provisions of Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, only the following persons may be residents of, be admitted to, or receive care, services, or treatment at the developmental center:

(a) persons with an intellectual disability;

(b) persons who receive services and supports under Subsection (2)(b); and

(c) persons who require at least one of the following services from the developmental center:

(i) continuous medical care;

(ii) intervention for conduct that is dangerous to self or others; or

(iii) temporary residential assessment and evaluation.

(4) (a) Except as provided in Subsection (6), the division shall, in the division's discretion:

(i) place residents from the developmental center into appropriate less restrictive placements; and

(ii) determine each year the number to be placed based upon the individual assessed needs of the residents.

(b) The division shall confer with parents and guardians to ensure the most appropriate placement for each resident.

(5) Except as provided in Subsection (7), within appropriations authorized by the Legislature, and notwithstanding the provisions of Subsection (3) and Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, a person who is under 18 years of age may be a resident of, admitted to, or receive care, services, or treatment at the developmental center only if the director certifies in writing that the developmental center is the most appropriate placement for that person.

(6) (a) If the division determines, pursuant to Utah's Community Supports Waiver (CSW) for Individuals with Intellectual Disabilities and Other Related Conditions, that a person who otherwise qualifies for placement in an intermediate care

facility for people with an intellectual disability should receive services in a home or community-based setting, the division shall:

(i) if the person does not have a legal representative or legal guardian:

(A) inform the person of any feasible alternatives under the waiver; and

(B) give the person the choice of being placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting; or

(ii) if the person has a legal representative or legal guardian:

(A) inform the legal representative or legal guardian of any feasible alternatives under the waiver; and

(B) give the legal representative or legal guardian the choice of having the person placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting.

(b) If a person chooses, under Subsection (6)(a)(i), to be placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:

(i) ask the person whether the person prefers to be placed in the developmental center rather than a private intermediate care facility for people with an intellectual disability; and

(ii) if the person expresses a preference to be placed in the developmental center:

(A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private intermediate care facility for people with an intellectual disability; or

(B) (I) strongly consider the person's preference to be placed in the developmental center if the cost of placing the person in the developmental center exceeds the cost of placing the person in a private intermediate care facility for people with an intellectual disability; and

(II) place the person in the developmental center or a private intermediate care facility for people with an intellectual disability.

(c) If a legal representative or legal guardian chooses, under Subsection (6)(a)(ii), to have the person placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:

(i) ask the legal representative or legal guardian whether the legal representative or legal guardian prefers to have the person placed in the developmental center rather than a private intermediate care facility for people with an intellectual disability; and

(ii) if the legal representative or legal guardian expresses a preference to have the person placed in the developmental center:

(A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private intermediate care facility for people with an intellectual disability; or

(B) (I) strongly consider the legal representative's or legal guardian's preference for the person's placement if the cost of placing the person in the developmental center

exceeds the cost of placing the person in a private intermediate care facility for people with an intellectual disability; and

(II) place the person in the developmental center or a private intermediate care facility for people with an intellectual disability.

(7) The certification described in Subsection (5) is not required for a person who receives services and support under Subsection (2)(b).

Amended by Chapter 366, 2011 General Session

62A-5-202. Developmental center within division.

The programs and facilities of the developmental center are within the division, and under the policy direction of the division.

Amended by Chapter 75, 2009 General Session

62A-5-203. Operation, maintenance, and repair of developmental center buildings and grounds.

(1) The division shall operate, maintain, and repair the buildings, grounds, and physical properties of the developmental center. However, the roads and driveways on the grounds of the developmental center shall be maintained by the Department of Transportation.

(2) The division has authority to make improvements to the buildings, grounds, and physical properties of the developmental center, as it deems necessary for the care and safety of the residents.

Amended by Chapter 207, 1991 General Session

62A-5-205. State Board of Education -- Education of children at developmental center.

(1) The State Board of Education is responsible for the education of school-aged children at the developmental center.

(2) In order to fulfill its responsibility under Subsection (1), the State Board of Education shall, where feasible, contract with local school districts or other appropriate agencies to provide educational and related administrative services.

(3) Medical, residential, and other services that are not the responsibility of the State Board of Education or other state agencies are the responsibility of the division.

Amended by Chapter 207, 1991 General Session

62A-5-206. Powers and duties of division.

The powers and duties of the division, with respect to the developmental center are as follows:

(1) to establish rules, not inconsistent with law, for the government of the developmental center;

(2) to receive, take, and hold property, both real and personal, in trust for the

state for the use and benefit of the developmental center;

(3) to establish rules governing the admission and discharge of persons with an intellectual disability in accordance with state law;

(4) to employ necessary medical and other professional personnel to assist in establishing rules relating to the developmental center and to the treatment and training of persons with an intellectual disability at the center;

(5) to transfer a person who has been committed to the developmental center under Part 3 of this chapter to any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facilities or programs available meet the needs indicated, and if transfer would be in the best interest of that person. A person transferred shall remain under the jurisdiction of the division;

(6) the developmental center may receive a person who meets the requirements of Subsection 62A-5-201(3) from any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facility or programs of the developmental center meet those needs, and if transfer would be in the best interest of that person. A person so received by the developmental center remains under the jurisdiction of the division;

(7) to manage funds for a person residing in the developmental center, upon request by that person's parent or guardian, or upon administrative or court order;

(8) to charge and collect a fair and equitable fee from developmental center residents, parents who have the ability to pay, or guardians where funds for that purpose are available;

(9) supervision and administration of security responsibilities for the developmental center is vested in the division. The executive director may designate, as special function officers, individuals to perform special security functions for the developmental center that require peace officer authority. Those special function officers may not become or be designated as members of the Public Safety Retirement System; and

(10) administration of the Utah State Developmental Center Miscellaneous Donation Fund, as established by Section 62A-5-206.5.

Amended by Chapter 21, 2013 General Session

62A-5-206.5. Utah State Developmental Center Miscellaneous Donation Fund -- Use.

(1) There is created an expendable special revenue fund known as the "Utah State Developmental Center Miscellaneous Donation Fund."

(2) The division shall deposit donations made to the Utah State Developmental Center under Section 62A-1-111 into the expendable special revenue fund described in Subsection (1).

(3) Except as provided in Subsection (5), no expenditure or appropriation may be made from the Utah State Developmental Center Miscellaneous Donation Fund.

(4) The state treasurer shall invest the money in the fund described in Subsection (1) according to the procedures and requirements of Title 51, Chapter 7,

State Money Management Act, and the interest shall remain with the fund described in Subsection (1).

(5) Subject to the requirements of Subsection (6), money and interest in the fund described in Subsection (1) may only be spent:

(a) as designated by the donor; or

(b) for the benefit of the Utah State Developmental Center and its clients.

(6) Money may not be expended from the fund described in Subsection (1) unless the expenditure is approved by the director in consultation with the executive director of the Department of Human Services.

Enacted by Chapter 21, 2013 General Session

62A-5-207. Superintendent -- Qualifications.

The superintendent of the developmental center, appointed in accordance with Subsection 62A-5-104(4), shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities and intellectual disability.

Amended by Chapter 366, 2011 General Session

62A-5-208. Powers and duties of superintendent.

The chief administrative officer of the developmental center is the superintendent, and has the following powers and duties:

(1) to manage the developmental center and administer the division's rules governing the developmental center;

(2) to hire, control, and remove all employees, and to fix their compensation according to state law; and

(3) with the approval of the division, to make any expenditures necessary in the performance of his duties.

Amended by Chapter 207, 1991 General Session

62A-5-302. Division responsibility.

The division is responsible:

(1) for the supervision, care, and treatment of persons with an intellectual disability in this state who are committed to the division's jurisdiction under the provisions of this part; and

(2) to evaluate and determine the most appropriate, least restrictive setting for an individual with an intellectual disability.

Amended by Chapter 366, 2011 General Session

62A-5-304. Limited admission of persons convicted of felony offenses.

A person with an intellectual disability who has been convicted of a felony, or if a minor, of a crime that would constitute a felony if committed by an adult, may not be

admitted to an intermediate care facility for people with an intellectual disability unless it is determined by the division, in accordance with the provisions of this part and other state law, that the person may benefit from treatment in that facility.

Amended by Chapter 366, 2011 General Session

62A-5-305. Residency requirements -- Transportation of person to another state.

(1) A person with an intellectual disability who has a parent or guardian residing in this state may be admitted to an intermediate care facility for people with an intellectual disability in accordance with the provisions of this part.

(2) If a person with an intellectual disability enters Utah from another state, the division may have that person transported to the home of a relative or friend located outside of this state, or to an appropriate facility in the state where the person with the intellectual disability is domiciled. This section does not prevent a person with an intellectual disability who is temporarily located in this state from being temporarily admitted or committed to an intermediate care facility for people with an intellectual disability in this state.

Amended by Chapter 366, 2011 General Session

62A-5-308. Commitment -- Persons under age 18.

Beginning July 1, 1993, the director of the division or the director's designee, may commit an individual under 18 years of age who has an intellectual disability or symptoms of an intellectual disability, to the division for observation, diagnosis, care, and treatment if that commitment is based on:

(1) involuntary commitment under the provisions of Section 62A-5-312. Proceedings for involuntary commitment of an individual under 18 years of age may be commenced by filing a written petition with the juvenile court under Section 62A-5-312. The juvenile court has jurisdiction to proceed in the same manner and with the same authority as the district court; or

(2) an emergency commitment in accordance with the provisions of Section 62A-5-311.

Amended by Chapter 366, 2011 General Session

62A-5-309. Commitment -- Person 18 years or older.

Beginning July 1, 1993, the director or his designee may commit to the division an individual 18 years of age or older who has an intellectual disability, for observation, diagnosis, care, and treatment if that commitment is based on:

(1) involuntary commitment under the provisions of Section 62A-5-312; or

(2) temporary emergency commitment under the provisions of Section 62A-5-311.

Amended by Chapter 366, 2011 General Session

62A-5-310. Involuntary commitment.

An individual may not be involuntarily committed to an intermediate care facility for people with an intellectual disability except in accordance with Sections 62A-5-311 and 62A-5-312.

Amended by Chapter 366, 2011 General Session

62A-5-311. Temporary emergency commitment -- Observation and evaluation.

(1) The director of the division or his designee may temporarily commit an individual to the division and therefore, as a matter of course, to an intermediate care facility for people with an intellectual disability for observation and evaluation upon:

(a) written application by a responsible person who has reason to know that the individual is in need of commitment, stating:

(i) a belief that the individual has an intellectual disability and is likely to cause serious injury to self or others if not immediately committed;

(ii) personal knowledge of the individual's condition; and

(iii) the circumstances supporting that belief; or

(b) certification by a licensed physician or designated intellectual disability professional stating that the physician or designated intellectual disability professional:

(i) has examined the individual within a three-day period immediately preceding the certification; and

(ii) is of the opinion that the individual has an intellectual disability, and that because of the individual's intellectual disability is likely to injure self or others if not immediately committed.

(2) If the individual in need of commitment is not placed in the custody of the director or the director's designee by the person submitting the application, the director's or the director's designee may certify, either in writing or orally that the individual is in need of immediate commitment to prevent injury to self or others.

(3) Upon receipt of the application required by Subsection (1)(a) and the certifications required by Subsections (1)(b) and (2), a peace officer may take the individual named in the application and certificates into custody, and may transport the individual to a designated intermediate care facility for people with an intellectual disability.

(4) (a) An individual committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the individual shall be released unless proceedings for involuntary commitment have been commenced under Section 62A-5-312.

(b) After proceedings for involuntary commitment have been commenced the individual shall be released unless an order of detention is issued in accordance with Section 62A-5-312.

(5) If an individual is committed to the division under this section on the application of any person other than the individual's legal guardian, spouse, parent, or next of kin, the director or his designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known.

Amended by Chapter 366, 2011 General Session

62A-5-312. Involuntary commitment -- Procedures -- Necessary findings -- Periodic review.

(1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:

(a) a certificate of a licensed physician or a designated intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician or designated intellectual disability professional examined the individual and believes that the individual has an intellectual disability and is in need of involuntary commitment; or

(b) a written statement by the petitioner that:

(i) states that the individual was requested to, but refused to, submit to an examination for an intellectual disability by a licensed physician or designated intellectual disability professional, and that the individual refuses to voluntarily go to the division or an intermediate care facility for people with an intellectual disability recommended by the division for treatment;

(ii) is under oath; and

(iii) sets forth the facts on which the statement is based.

(2) Before issuing a detention order, the court may require the petitioner to consult with personnel at the division or at an intermediate care facility for people with an intellectual disability and may direct a designated intellectual disability professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.

(3) The court may issue a detention order and may direct a peace officer to immediately take the individual to an intermediate care facility for people with an intellectual disability to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians or designated intellectual disability professionals that there is a reasonable basis to believe that the individual to be committed:

(a) poses an immediate danger of physical injury to self or others;

(b) requires involuntary commitment pending examination and hearing;

(c) the individual was requested but refused to submit to an examination by a licensed physician or designated intellectual disability professional; or

(d) the individual refused to voluntarily go to the division or to an intermediate care facility for people with an intellectual disability recommended by the division.

(4) (a) If the court issues a detention order based on an application that did not include a certification by a designated intellectual disability professional or physician in

accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:

(i) whether the director or his designee believes that the individual has an intellectual disability; and

(ii) whether appropriate treatment programs are available and will be used by the individual without court proceedings.

(b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.

(5) Immediately after an individual is involuntarily committed under a detention order or under Section 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.

(6) (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:

(i) the individual to be committed;

(ii) the applicant;

(iii) any legal guardian of the individual;

(iv) adult members of the individual's immediate family;

(v) legal counsel of the individual to be committed, if any;

(vi) the division; and

(vii) any other person to whom the individual requests, or the court designates, notice to be given.

(b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.

(7) That notice shall:

(a) set forth the allegations of the petition and all supporting facts;

(b) be accompanied by a copy of any detention order issued under Subsection (3); and

(c) state that a hearing will be held within the time provided by law, and give the time and place for that hearing.

(8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:

(a) there are no appropriate facilities for persons with an intellectual disability within the judicial district; and

(b) the transfer will not be adverse to the interests of the individual.

(9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or commitment under a detention order, the court shall appoint two designated intellectual disability professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining designated intellectual

disability professionals. The examinations shall be conducted:

(i) separately;

(ii) at the home of the individual to be committed, a hospital, an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and

(iii) within a reasonable period of time after appointment of the examiners by the court.

(b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:

(i) the individual does not have an intellectual disability; or

(ii) treatment programs are available and will be used by the individual without court proceedings.

(10) (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.

(b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorney fees as determined by the court.

(11) The division or a designated intellectual disability professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.

(12) (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The court may, in its discretion:

(i) receive the testimony of any other person;

(ii) allow a waiver of the right to appear only for good cause shown;

(iii) exclude from the hearing all persons not necessary to conduct the proceedings; and

(iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.

(c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.

(13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:

(a) the individual to be committed has an intellectual disability;

(b) because of the individual's intellectual disability one or more of the following conditions exist:

(i) the individual poses an immediate danger of physical injury to self or others;

(ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or

(iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;

(c) there is no appropriate, less restrictive alternative reasonably available; and

(d) the division or the intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs.

(14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings.

(15) (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment period, the administrator of the intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual.

(b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.

(16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated intellectual disability professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.

(17) (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.

(b) At least two weeks prior to the expiration of the designated period of any commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period.

(c) The staff of the division shall immediately:

(i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court;

(ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and

(iii) immediately inform the court of any discharge.

(d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the intermediate care facility for people with an intellectual disability does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.

(e) If the director of the division, or the director's designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged.

(18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs.

Amended by Chapter 366, 2011 General Session

62A-5-313. Transfer -- Procedures.

(1) The director of the division, or the director's designee, may place an involuntarily committed resident in appropriate care or treatment outside the intermediate care facility for people with an intellectual disability. During that placement, the order of commitment shall remain in effect, until the resident is discharged or the order is terminated.

(2) If the resident, or the resident's parent or guardian, objects to a proposed placement under this section, the resident may appeal the decision to the executive director or the executive director's designee. Those appeals shall be conducted in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. If an objection is made, the proposed placement may not take effect until the committee holds that hearing and the executive director makes a final decision on the placement.

Amended by Chapter 366, 2011 General Session

62A-5-315. Petition for reexamination.

(1) A resident committed under Section 62A-5-312, or his parent, spouse, legal guardian, relative, or attorney, may file a petition for reexamination with the district court of the county in which the resident is domiciled or detained.

(2) Upon receipt of that petition, the court shall conduct proceedings under Section 62A-5-312.

Amended by Chapter 114, 2004 General Session

62A-5-316. Temporary detention.

Pending removal to an intermediate care facility for people with an intellectual disability, an individual taken into custody or ordered to be committed under this part may be detained in the individual's home, or in some other suitable facility. The

individual shall not, however, be detained in a nonmedical facility used for detention of individuals charged with or convicted of penal offenses, except in a situation of extreme emergency. The division shall take reasonable measures, as may be necessary, to assure proper care of an individual temporarily detained under this part.

Amended by Chapter 366, 2011 General Session

62A-5-317. Authority to transfer resident.

(1) The administrator of an intermediate care facility for people with an intellectual disability, or the administrator's designee, may transfer or authorize the transfer of a resident to another intermediate care facility for people with an intellectual disability if, before the transfer, the administrator conducts a careful evaluation of the resident and the resident's treatment needs, and determines that a transfer would be in the best interest of that resident. If a resident is transferred, the administrator shall give immediate notice of the transfer to the resident's spouse, guardian, parent, or advocate or, if none of those persons are known, to the resident's nearest known relative.

(2) If a resident, or the resident's parent or guardian, objects to a proposed transfer under this section, the administrator shall conduct a hearing on the objection before a committee composed of persons selected by the administrator. That committee shall hear all evidence and make a recommendation to the administrator concerning the proposed transfer. The transfer may not take effect until the committee holds that hearing and the administrator renders a final decision on the proposed transfer.

Amended by Chapter 366, 2011 General Session

62A-5-318. Involuntary treatment with medication -- Committee -- Findings.

(1) If, after commitment, a resident elects to refuse treatment with medication, the director, the administrator of the intermediate care facility for people with an intellectual disability, or a designee, shall submit documentation regarding the resident's proposed treatment to a committee composed of:

(a) a licensed physician experienced in treating persons with an intellectual disability, who is not directly involved in the resident's treatment or diagnosis, and who is not biased toward any one facility;

(b) a psychologist who is a designated intellectual disability professional who is not directly involved in the resident's treatment or diagnosis; and

(c) another designated intellectual disability professional of the facility for persons with an intellectual disability, or a designee.

(2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident lacks the ability to engage in a rational decision-making process regarding the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment, the committee may authorize involuntary treatment with medication if it determines that:

(a) the proposed treatment is in the medical best interest of the resident, taking

into account the possible side effects as well as the potential benefits of the medication; and

(b) the proposed treatment is in accordance with prevailing standards of accepted medical practice.

(3) In making the determination described in Subsection (2), the committee shall consider the resident's general history and present condition, the specific need for medication and its possible side effects, and any previous reaction to the same or comparable medication.

(4) Any authorization of involuntary treatment under this section shall be periodically reviewed in accordance with rules promulgated by the division.

Amended by Chapter 366, 2011 General Session

62A-5-401. Purpose.

The purpose of this part is to provide support to families in their role as primary caregivers for family members with disabilities.

Enacted by Chapter 207, 1991 General Session

62A-5-402. Scope of services -- Principles.

(1) (a) To enable a person with a disability and the person's family to select services and supports that best suit their needs and preferences, the division shall, within appropriations from the Legislature, provide services and supports under this part by giving direct financial assistance to the parent or guardian of a person with a disability who resides at home.

(b) The dollar value of direct financial assistance is determined by the division based on:

(i) appropriations from the Legislature; and

(ii) the needs of the person with a disability.

(c) In determining whether to provide direct financial assistance to the family, the division shall consider:

(i) the family's preference; and

(ii) the availability of approved providers in the area where the family resides.

(d) If the division provides direct financial assistance, the division:

(i) shall require the family to account for the use of that financial assistance; and

(ii) shall tell the person with a disability or the person's parent or guardian how long the direct financial assistance is intended to provide services and supports before additional direct financial assistance is issued.

(e) Except for eligibility determination services directly connected to the provision of direct financial assistance, service coordination is not provided under this part by the division unless the person with a disability or the person's parent or guardian uses the direct financial assistance to purchase such services.

(2) The following principles shall be used as the basis for supporting families who care for family members with disabilities:

(a) all children, regardless of disability, should reside in a family-like

environment;

(b) families should receive the support they need to care for their children at home;

(c) services should:

(i) focus on the person with a disability;

(ii) take into consideration the family of the person described in Subsection (2)(c)(i);

(iii) be sensitive to the unique needs, preferences, and strengths of individual families; and

(iv) complement and reinforce existing sources of help and support that are available to each family.

Amended by Chapter 61, 2005 General Session

62A-5-403. Services for persons under 11 years of age.

(1) Except as provided in Subsection (2), after June 30, 1996, the division may not provide residential services to persons with disabilities who are under 11 years of age.

(2) The prohibition of Subsection (1) does not include residential services that are provided:

(a) for persons in the custody of the Division of Child and Family Services;

(b) under a plan for home-based services, including respite and temporary residential care or services provided by a professional parent under contract with the division; or

(c) after a written finding by the director that out-of-home residential placement is the most appropriate way to meet the needs of the person with disabilities and his family.

Amended by Chapter 179, 1996 General Session
Amended by Chapter 318, 1996 General Session

62A-5a-101. Policy statement.

It is the policy of this state that all agencies that provide services to persons with disabilities:

(1) coordinate and ensure that services and supports are provided in a cost-effective manner. It is the intent of the Legislature that services and supports provided under this chapter be coordinated to meet the individual needs of persons with disabilities; and

(2) whenever possible, regard an individual's personal choices concerning services and supports that are best suited to his individual needs and that promote his independence, productivity, and integration in community life.

Enacted by Chapter 207, 1991 General Session

62A-5a-102. Definitions.

As used in this chapter:

(1) "Council" means the Coordinating Council for Persons with Disabilities.

(2) "State agencies" means:

(a) the Division of Services for People with Disabilities and the Division of Substance Abuse and Mental Health, within the Department of Human Services;

(b) the Division of Health Care Financing within the Department of Health;

(c) family health services programs established under Title 26, Chapter 10, Family Health Services, operated by the Department of Health;

(d) the Utah State Office of Rehabilitation; and

(e) special education programs operated by the State Office of Education and local school districts under Title 53A, Chapter 15, Part 3, Education of Children with Disabilities.

Amended by Chapter 8, 2002 Special Session 5

62A-5a-103. Coordinating Council for Persons with Disabilities -- Creation -- Membership -- Expenses.

(1) There is created the Coordinating Council for Persons with Disabilities.

(2) The council shall consist of:

(a) the director of the Division of Services for People with Disabilities within the Department of Human Services, or his designee;

(b) the director of family health services programs, appointed under Section 26-10-3, or his designee;

(c) the executive director of the Utah State Office of Rehabilitation, or his designee;

(d) the state director of special education, or his designee;

(e) the director of the Division of Health Care Financing within the Department of Health, or his designee;

(f) the director of the Division of Substance Abuse and Mental Health within the Department of Human Services, or his designee;

(g) the superintendent of Schools for the Deaf and Blind, or his designee; and

(h) a person with a disability, a family member of a person with a disability, or an advocate for persons with disabilities, appointed by the members listed in Subsections (2)(a) through (g).

(3) (a) The council shall annually elect a chair from its membership.

(b) Five members of the council are a quorum.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

62A-5a-104. Powers of council.

(1) The council has authority, after local or individual efforts have failed, to:

(a) coordinate the appropriate transition of persons with disabilities who receive services and support from one state agency to receive services and support from another state agency;

(b) coordinate policies governing the provision of services and support for persons with disabilities by state agencies; and

(c) consider issues regarding eligibility for services and support and, where possible, develop uniform eligibility standards for state agencies.

(2) The council may receive appropriations from the Legislature to purchase services and supports for persons with disabilities as the council deems appropriate.

Amended by Chapter 167, 2013 General Session
Amended by Chapter 413, 2013 General Session

62A-5a-105. Coordination of services for school-age children.

(1) Within appropriations authorized by the Legislature, the state director of special education, the executive director of the Utah State Office of Rehabilitation, the executive director of the Department of Human Services, and the family health services director within the Department of Health, or their designees, and the affected local school district shall cooperatively develop a single coordinated education program, treatment services, and individual and family supports for students entitled to a free appropriate education under Title 53A, Chapter 15, Part 3, Education of Children with Disabilities, who also require services from the Department of Human Services, the Department of Health, or the Utah State Office of Rehabilitation.

(2) Distribution of costs for services and supports described in Subsection (1) shall be determined through a process established by the State Board of Education, the Department of Human Services, and the Department of Health.

Amended by Chapter 179, 1996 General Session

62A-5b-101. Title.

This chapter is known as "Rights and Privileges of a Person with a Disability."

Enacted by Chapter 22, 2007 General Session

62A-5b-102. Definitions.

As used in this chapter:

(1) "Disability" has the same meaning as defined in 42 U.S.C. 12102 of the Americans With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R. 36.104 of the Code of Federal Regulations, as may be amended in the future.

(2) "Restaurant":

(a) includes any coffee shop, cafeteria, luncheonette, soda fountain, dining room, or fast-food service where food is prepared or served for immediate consumption; and

(b) does not include:

(i) any retail establishment whose primary business or function is the sale of fuel or food items for off-premise, but not immediate, consumption; and

(ii) except for a dinner theater, a theater that sells food items.

(3) (a) "Service animal" includes any dog that:

(i) is trained, or is in training, to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability;

(ii) performs work or tasks, or is in training to perform work or tasks, that are directly related to the individual's disability, including:

(A) assisting an individual who is blind or has low vision with navigation or other tasks;

(B) alerting an individual who is deaf or hard of hearing to the presence of people or sounds;

(C) providing non-violent protection or rescue work;

(D) pulling a wheelchair;

(E) assisting an individual during a seizure;

(F) alerting an individual to the presence of an allergen;

(G) retrieving an item for the individual;

(H) providing physical support and assistance with balance and stability to an individual with a mobility disability; or

(I) helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors.

(b) "Service animal" does not include:

(i) an animal other than a dog, whether wild or domestic, trained or untrained; or

(ii) an animal used solely to provide:

(A) a crime deterrent;

(B) emotional support;

(C) well-being;

(D) comfort; or

(E) companionship.

Amended by Chapter 94, 2011 General Session

62A-5b-103. Rights and privileges of a person with a disability.

(1) A person with a disability has the same rights and privileges in the use of highways, streets, sidewalks, walkways, public buildings, public facilities, and other public areas as a person who is not a person with a disability.

(2) A person with a disability has equal rights to accommodations, advantages, and facilities offered by common carriers, including air carriers, railroad carriers, motor buses, motor vehicles, water carriers, and all other modes of public conveyance in this state.

(3) A person with a disability has equal rights to accommodations, advantages, and facilities offered by hotels, motels, lodges, and all other places of public accommodation in this state, and to places of amusement or resort to which the public

is invited.

(4) (a) A person with a disability has equal rights and access to public and private housing accommodations offered for rent, lease, or other compensation in this state.

(b) This chapter does not require a person renting, leasing, or selling private housing or real property to modify the housing or property in order to accommodate a person with a disability or to provide a higher degree of care for that person than for someone who is not a person with a disability.

(c) A person renting, leasing, or selling private housing or real property to a person with a disability shall comply with the provisions of Section 62A-5b-104, regarding the right of the person to be accompanied by a service animal specially trained for that purpose.

Renumbered and Amended by Chapter 22, 2007 General Session

62A-5b-104. Right to be accompanied by service animal -- Security deposits -- Discrimination -- Liability -- Identification.

(1) (a) A person with a disability has the right to be accompanied by a service animal, unless the service animal is a danger or nuisance to others as interpreted under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102:

(i) in any of the places specified in Section 62A-5b-103; and

(ii) without additional charge for the service animal.

(b) This section does not prohibit an owner or lessor of private housing accommodations from charging a person, including a person with a disability, a reasonable deposit as security for any damage or wear and tear that might be caused by a service animal if the owner or lessor would charge a similar deposit to other persons for potential wear and tear.

(c) An owner or lessor of private housing accommodations may not, in any manner, discriminate against a person with a disability on the basis of the person's possession of a service animal.

(2) A person who is not a person with a disability has the right to be accompanied by an animal that is in training to become a service animal or a police service canine, as defined in Section 53-16-102:

(a) in any of the places specified in Section 62A-5b-103; and

(b) without additional charge for the animal.

(3) A person with a disability is liable for any loss or damage caused or inflicted to the premises by the person's service animal.

(4) A person accompanied by a service animal is encouraged to identify the animal by exhibiting one or more of the following:

(a) the animal's laminated identification card;

(b) the animal's service vest; or

(c) another form of identification.

Amended by Chapter 389, 2012 General Session

62A-5b-105. Policy of state to employ persons with a disability.

It is the policy of this state that a person with a disability shall be employed in the state service, the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as a person who is not a person with a disability, unless it is shown that the particular disability prevents the performance of the work involved.

Renumbered and Amended by Chapter 22, 2007 General Session

62A-5b-106. Interference with rights provided in this chapter -- Misrepresentation of rights under this chapter.

(1) Any person, or agent of any person, who denies or interferes with the rights provided in this chapter is guilty of a class C misdemeanor.

(2) A person is guilty of a class B misdemeanor if:

(a) the person intentionally and knowingly falsely represents to another person that an animal is a service animal as defined in Section 62A-5b-102; or

(b) the person knowingly and intentionally misrepresents a material fact to a health care provider for the purpose of obtaining documentation from the health care provider necessary to designate an animal as a service animal as defined in Section 62A-5b-102.

Renumbered and Amended by Chapter 22, 2007 General Session

62A-5b-107. Annual "White Cane Safety Day" proclaimed.

Each year the governor shall take notice of October 15 as White Cane Safety Day.

Renumbered and Amended by Chapter 22, 2007 General Session

62A-6-101. Definitions.

As used in this chapter:

(1) "Informed consent" means consent that is voluntary and based on an understanding by the person to be sterilized of the nature and consequences of sterilization, the reasonably foreseeable risks and benefits of sterilization, and the available alternative methods of contraception.

(2) "Institutionalized" means residing in the Utah State Developmental Center, the Utah State Hospital, a residential facility for persons with a disability as defined in Sections 10-9a-103 and 17-27a-103, a group home for persons with a disability, a nursing home, or a foster care home or facility.

(3) "Sterilization" means any medical procedure, treatment, or operation rendering an individual permanently incapable of procreation.

Amended by Chapter 366, 2011 General Session

62A-6-102. Sterilization of persons 18 years of age or older.

(1) It is lawful for a physician to sterilize a person who is 18 years of age or older and who has the capacity to give informed consent.

(2) It is unlawful for a physician to sterilize a person who is 18 years of age or older and who is institutionalized, unless:

(a) the physician, through careful examination and counseling, ensures that the person is capable of giving informed consent and that no undue influence or coercion to consent has been placed on that person by nature of the fact that he is institutionalized; or

(b) the person is not capable of giving informed consent, a petition has been filed in accordance with Section 62A-6-107, and an order authorizing the sterilization has been entered by a court of competent jurisdiction.

(3) It is unlawful for a physician to sterilize a person who is 18 years of age or older and who is not capable of giving informed consent unless a petition has been filed in accordance with Section 62A-6-107 and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Enacted by Chapter 1, 1988 General Session

62A-6-103. Sterilization of persons under 18 years of age.

It is unlawful for a physician to sterilize a person who is under 18 years of age unless:

(1) the person is married or otherwise emancipated and the physician, through careful examination and counseling, ensures that the person is capable of giving informed consent. If that person is institutionalized, the physician shall also ensure that no undue influence or coercion to consent has been placed on the person by nature of the fact that he is institutionalized; or

(2) a petition has been filed in accordance with Section 62A-6-107, and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Enacted by Chapter 1, 1988 General Session

62A-6-104. Emergency -- Medical necessity.

If an emergency situation exists that prevents compliance with Section 62A-6-102 or 62A-6-103 because of medical necessity, if delay in performing the sterilization could result in serious physical injury or death to the person, the attending physician shall certify, in writing, the specific medical reasons that necessitated suspension of those requirements. That certified statement shall become a permanent part of the sterilized person's medical record.

Enacted by Chapter 1, 1988 General Session

62A-6-105. Persons who may give informed consent.

For purposes of this chapter, the following persons may give informed consent to sterilization:

(1) a person who is the subject of sterilization, if he is capable of giving

informed consent; and

(2) a person appointed by the court to give informed consent on behalf of a subject of sterilization who is incapable of giving informed consent.

Enacted by Chapter 1, 1988 General Session

62A-6-106. Declaration of capacity to give informed consent -- Hearing.

(1) A person who desires sterilization but whose capacity to give informed consent is questioned by any interested party may file a petition for declaration of capacity to give informed consent.

(2) If, after hearing all the relevant evidence, the court finds by a preponderance of the evidence that the person is capable of giving informed consent, the court shall enter an order declaring that the person has the capacity to give informed consent.

Enacted by Chapter 1, 1988 General Session

62A-6-107. Petition for order authorizing sterilization.

A petition for an order authorizing sterilization may be filed by a person who desires sterilization, or by his parent, spouse, guardian, custodian, or other interested party. The court shall adjudicate the petition for sterilization in accordance with Section 62A-6-108.

Enacted by Chapter 1, 1988 General Session

62A-6-108. Factors to be considered by court -- Evaluations -- Interview -- Findings of fact.

(1) If the court finds that the subject of sterilization is not capable of giving informed consent, the court shall consider, but not by way of limitation, the following factors concerning that person:

(a) the nature and degree of his mental impairment, and the likelihood that the condition is permanent;

(b) the level of his understanding regarding the concepts of reproduction and contraception, and whether his ability to understand those concepts is likely to improve;

(c) his capability for procreation or reproduction. It is a rebuttable presumption that the ability to procreate and reproduce exists in a person of normal physical development;

(d) the potentially injurious physical and psychological effects from sterilization, pregnancy, childbirth, and parenthood;

(e) the alternative methods of birth control presently available including, but not limited to, drugs, intrauterine devices, education and training, and the feasibility of one or more of those methods as an alternative to sterilization;

(f) the likelihood that he will engage in sexual activity or could be sexually abused or exploited;

(g) the method of sterilization that is medically advisable, and least intrusive and destructive of his rights to bodily and psychological integrity;

(h) the advisability of postponing sterilization until a later date; and

(i) the likelihood that he could adequately care and provide for a child.

(2) The court may require that independent medical, psychological, and social evaluations of the subject of sterilization be made prior to ruling on a petition for sterilization. The court may appoint experts to perform those examinations and evaluations and may require the petitioner, to the extent of the petitioner's ability, to bear the costs incurred.

(3) The court shall interview the subject of sterilization to determine his understanding of and desire for sterilization. The expressed preference of the person shall be made a part of the record, and shall be considered by the court in rendering its decision. The court is not bound by the expressed preference of the subject of sterilization; however, if the person expresses a preference not to be sterilized, the court shall deny the petition unless the petitioner proves beyond a reasonable doubt that the person will suffer serious physical or psychological injury if the petition is denied.

(4) When adjudicating a petition for sterilization the court shall determine, on the basis of all the evidence, what decision regarding sterilization would have been made by the subject of sterilization, if he were capable of giving informed consent to sterilization. The decision regarding sterilization shall be in the best interest of the person to be sterilized.

(5) If the court grants a petition for sterilization, it shall make appropriate findings of fact in support of its order.

Enacted by Chapter 1, 1988 General Session

62A-6-109. Advanced hearing.

On motion by the person seeking sterilization or by any other party to the proceeding, the court may advance hearing on the petition.

Enacted by Chapter 1, 1988 General Session

62A-6-110. Notice of hearing -- Service.

A copy of the petition and notice of the hearing shall be served personally on the person to be sterilized not less than 20 days before the hearing date. The notice shall state the date, time, and place of the hearing, and shall specifically state that the hearing is to adjudicate either a petition for declaration of capacity to give informed consent to sterilization or a petition for sterilization. Notice shall be served on that person's parents, spouse, guardian, or custodian and on his attorney by the clerk of the court, by certified mail, not less than 10 days before the hearing date.

Enacted by Chapter 1, 1988 General Session

62A-6-111. Guardian ad litem -- Procedural rights.

(1) The court shall appoint an attorney to act as guardian ad litem to defend the rights and interests of the person to be sterilized.

(2) The person to be sterilized is entitled to appear and testify at the hearing, to examine and cross examine witnesses, and to compel the attendance of witnesses.

(3) The person who is the subject of a sterilization proceeding may, on motion to the court and for good cause shown, waive the right to be present at the hearing. If the court grants that motion, the person shall be represented by a guardian ad litem at the hearing.

Enacted by Chapter 1, 1988 General Session

62A-6-112. Jury -- Rules of evidence -- Transcript -- Burden of proof.

(1) The petitioner is entitled to request a jury to hear the petition. The rules of evidence apply in any hearing on a petition for sterilization. A transcript shall be made of the hearing and shall be made a permanent part of the record.

(2) The burden of producing evidence and the burden of proof shall be upon the petitioner to prove by clear and convincing evidence that the petition for or order authorizing sterilization should be granted.

Enacted by Chapter 1, 1988 General Session

62A-6-113. Appeal to Supreme Court -- Stay.

Any party to a proceeding under this chapter may file a notice of appeal from any adverse decision with the Supreme Court in accordance with Rule 73, Utah Rules of Civil Procedure. The pendency of an appeal in the Supreme Court shall stay the proceedings until the appeal is finally determined.

Enacted by Chapter 1, 1988 General Session

62A-6-114. Treatment for therapeutic reasons unaffected.

Nothing in this chapter shall be construed to prevent the medical or surgical treatment, for sound therapeutic reasons, of any person by a physician or surgeon licensed by this state, which treatment may incidentally involve destruction of reproductive functions.

Enacted by Chapter 1, 1988 General Session

62A-6-115. Immunity.

A physician, assistant, or any other person acting pursuant to an order authorizing sterilization, as provided in this chapter, is not civilly or criminally liable for participation in or assistance to sterilization. This section does not apply to negligent acts committed in the performance of sterilization.

Enacted by Chapter 1, 1988 General Session

62A-6-116. Unauthorized sterilization -- Criminal penalty.

Except as authorized by this chapter, any person who intentionally performs,

encourages, assists in, or otherwise promotes the performance of a sterilization procedure for the purpose of destroying the power to procreate the human species, with knowledge that the provisions of this chapter have not been met, is guilty of a third degree felony.

Enacted by Chapter 1, 1988 General Session

62A-7-101. Definitions.

As used in this chapter:

(1) "Authority" means the Youth Parole Authority, established in accordance with Section 62A-7-501.

(2) "Board" means the Board of Juvenile Justice Services established in accordance with Section 62A-1-105.

(3) "Community-based program" means a nonsecure residential or nonresidential program designated to supervise and rehabilitate youth offenders in the least restrictive setting, consistent with public safety, and designated or operated by or under contract with the division.

(4) "Control" means the authority to detain, restrict, and supervise a youth in a manner consistent with public safety and the well being of the youth and division employees.

(5) "Court" means the juvenile court.

(6) "Delinquent act" is an act which would constitute a felony or a misdemeanor if committed by an adult.

(7) "Detention" means secure detention or home detention.

(8) "Detention center" means a facility established in accordance with Title 62A, Chapter 7, Part 2, Detention Facilities.

(9) "Director" means the director of the Division of Juvenile Justice Services.

(10) "Discharge" means a written order of the Youth Parole Authority that removes a youth offender from its jurisdiction.

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

(12) "Home detention" means predispositional placement of a child in the child's home or a surrogate home with the consent of the child's parent, guardian, or custodian for conduct by a child who is alleged to have committed a delinquent act or postdispositional placement pursuant to Subsection 78A-6-117(2)(f) or 78A-6-1101(3).

(13) "Observation and assessment program" means a service program operated or purchased by the division, that is responsible for temporary custody of youth offenders for observation.

(14) "Parole" means a conditional release of a youth offender from residency in a secure facility to live outside that facility under the supervision of the Division of Juvenile Justice Services or other person designated by the division.

(15) "Receiving center" means a nonsecure, nonresidential program established by the division or under contract with the division that is responsible for juveniles taken into custody by a law enforcement officer for status offenses or delinquent acts, but who do not meet the criteria for admission to secure detention or shelter.

(16) "Rescission" means a written order of the Youth Parole Authority that

rescinds a parole date.

(17) "Revocation of parole" means a written order of the Youth Parole Authority that terminates parole supervision of a youth offender and directs return of the youth offender to the custody of a secure facility because of a violation of the conditions of parole.

(18) "Runaway" means a youth who willfully leaves the residence of a parent or guardian without the permission of the parent or guardian.

(19) "Secure detention" means predisposition placement in a facility operated by or under contract with the division, for conduct by a child who is alleged to have committed a delinquent act.

(20) "Secure facility" means any facility operated by or under contract with the division, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(21) "Shelter" means the temporary care of children in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

(22) "Temporary custody" means control and responsibility of nonadjudicated youth until the youth can be released to the parent, guardian, a responsible adult, or to an appropriate agency.

(23) "Termination" means a written order of the Youth Parole Authority that terminates a youth offender from parole.

(24) "Ungovernable" means a youth in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the youth, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the youth, the family, or others; or

(c) results in the situations in both Subsections (24)(a) and (b).

(25) "Work program" means a public or private service work project established and administered by the division for youth offenders for the purpose of rehabilitation, education, and restitution to victims.

(26) "Youth offender" means a person 12 years of age or older, and who has not reached 21 years of age, committed or admitted by the juvenile court to the custody, care, and jurisdiction of the division, for confinement in a secure facility or supervision in the community, following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult.

(27) (a) "Youth services" means services provided in an effort to resolve family conflict:

(i) for families in crisis when a minor is ungovernable or runaway; or

(ii) involving a minor and the minor's parent or guardian.

(b) These services include efforts to:

(i) resolve family conflict;

(ii) maintain or reunite minors with their families; and

(iii) divert minors from entering or escalating in the juvenile justice system;

(c) The services may provide:

(i) crisis intervention;

(ii) short-term shelter;
(iii) time out placement; and
(iv) family counseling.

Amended by Chapter 3, 2008 General Session

62A-7-102. Creation of division -- Jurisdiction.

There is created the Division of Juvenile Justice Services within the department, under the administration and supervision of the executive director, and under the policy direction of the board. The division has jurisdiction over all youth committed to it pursuant to Section 78A-6-117.

Amended by Chapter 3, 2008 General Session

62A-7-103. Division director -- Qualifications -- Responsibility.

(1) The director of the division shall be appointed by the executive director with the concurrence of the board.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in youth corrections.

(3) The director is the administrative head of the division.

Amended by Chapter 104, 1992 General Session

62A-7-104. Division responsibilities.

(1) The division is responsible for all youth offenders committed to it by juvenile courts for secure confinement or supervision and treatment in the community.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all youth offenders committed to the division;

(b) establish and maintain all detention and secure facilities and set minimum standards for those facilities;

(c) establish and operate prevention and early intervention youth services programs for nonadjudicated youth placed with the division; and

(d) establish observation and assessment programs necessary to serve youth offenders committed by the juvenile court for short-term observation under Subsection 78A-6-117(2)(e), and whenever possible, conduct the programs in settings separate and distinct from secure facilities for youth offenders.

(3) The division shall place youth offenders committed to it in the most appropriate program for supervision and treatment.

(4) In any order committing a youth offender to the division, the juvenile court shall specify whether the youth offender is being committed for secure confinement or placement in a community-based program. The division shall place the youth offender in the most appropriate program within the category specified by the court.

(5) The division shall employ staff necessary to:

(a) supervise and control youth offenders in secure facilities or in the

community;

(b) supervise and coordinate treatment of youth offenders committed to the division for placement in community-based programs; and

(c) control and supervise nonadjudicated youth placed with the division for temporary services in receiving centers, youth services, and other programs established by the division.

(6) Youth in the custody or temporary custody of the division are controlled or detained in a manner consistent with public safety and rules promulgated by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.

(7) The division shall establish and operate compensatory-service work programs for youth offenders committed to the division by the juvenile court. The compensatory-service work program shall:

(a) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

(b) provide educational and prevocational programs in cooperation with the State Board of Education for youth offenders placed in the program; and

(c) provide counseling to youth offenders.

(8) The division shall establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities which provide services to juveniles who have committed a delinquent act, in this state or in any other state.

(9) In accordance with policies established by the board, the division shall provide regular training for staff of secure facilities, detention staff, case management staff, and staff of the community-based programs.

(10) (a) The division is authorized to employ special function officers, as defined in Section 53-13-105, to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.

(b) Special function officers may be employed through contract with the Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

(11) The division shall designate employees to obtain the saliva DNA specimens required under Section 53-10-403. The division shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(12) The division shall register with the Department of Corrections any person who:

(a) has been adjudicated delinquent based on an offense listed in Subsection 77-41-102(16)(a);

(b) has been committed to the division for secure confinement; and

(c) remains in the division's custody 30 days prior to the person's 21st birthday.

Amended by Chapter 145, 2012 General Session

62A-7-104.5. Appropriation and funding of receiving centers.

Funding for receiving centers and youth services programs under this part is intended to be broad based, be provided by an appropriation by the Legislature to the division, and include federal grant money, local government money, and private donations.

Enacted by Chapter 452, 2013 General Session

62A-7-105.5. Information supplied to division.

(1) Juvenile court probation sections shall render full and complete cooperation to the division in supplying the division with all pertinent information relating to youth offenders who have been committed to the division.

(2) Information under Subsection (1) may include, but is not limited to, prior criminal history, social history, psychological evaluations, and identifying information specified by the division.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-106.5. Annual review of programs and facilities.

(1) (a) The division shall annually review all programs and facilities that provide services to juveniles who have committed a delinquent act, in this state or in any other state, which would constitute a felony or misdemeanor if committed by an adult, and license those programs and facilities that are in compliance with standards approved by the board. The division shall provide written reviews to the managers of those programs and facilities.

(b) Based upon policies established by the board, programs or facilities that are unable or unwilling to comply with the approved standards may not be licensed.

(2) Any private facility or program providing services under this chapter that willfully fails to comply with the standards established by the division is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-107.5. Contracts with private providers.

(1) This chapter does not prohibit the division from contracting with private providers or other agencies for the construction, operation, and maintenance of juvenile facilities or the provision of care, treatment, and supervision of youth offenders who have been committed to the care of the division.

(2) All programs for the care, treatment, and supervision of youth offenders committed to the division shall be licensed in compliance with division standards within six months after commencing operation.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-108.5. Records -- Property of division.

(1) All records maintained by programs that are under contract with the division to provide services to youth offenders, are the property of the division and shall be returned to it when the youth offender is terminated from the program.

(2) The division shall maintain an accurate audit trail of information provided to other programs or agencies regarding youth offenders under its jurisdiction.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-109.5. Restitution by youth offender.

(1) The division shall make reasonable efforts to ensure that restitution is made to the victim of a youth offender. Restitution shall be made through the employment of youth offenders in work programs. However, reimbursement to the victim of a youth offender is conditional upon that youth offender's involvement in the work program.

(2) Restitution may be made a condition of release, placement, or parole by the division. In the event of parole revocation or, where there is no court order requiring restitution to the victim and the loss to the victim has been determined, the division shall evaluate whether restitution is appropriate and, if so, the amount or type of restitution to which the victim is entitled.

(3) The division shall notify the juvenile court of all restitution paid to victims through the employment of youth offenders in work programs.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-111.5. Cost of support and maintenance of youth offender -- Responsibility.

On commitment of a youth offender to the division, and on recommendation of the division to the juvenile court, the juvenile court may order the youth offender or his parent, guardian, or custodian, to share in the costs of support and maintenance for the youth offender during his term of commitment.

Amended by Chapter 308, 2007 General Session

62A-7-201. Confinement -- Facilities -- Restrictions.

(1) Children under 18 years of age, who are apprehended by any officer or brought before any court for examination under any provision of state law, may not be confined in jails, lockups, or cells used for persons 18 years of age or older who are charged with crime, or in secure postadjudication correctional facilities operated by the division, except as provided in Subsection (2), other specific statute, or in conformance with standards approved by the board.

(2) (a) Children charged with crimes under Section 78A-6-701, as a serious youth offender under Section 78A-6-702 and bound over to the jurisdiction of the district court, or certified to stand trial as an adult pursuant to Section 78A-6-703, if detained, shall be detained in a jail or other place of detention used for adults.

(b) Children detained in adult facilities under Section 78A-6-702 or 78A-6-703 prior to a hearing before a magistrate, or under Subsection 78A-6-113(3), may only be

held in certified juvenile detention accommodations in accordance with rules promulgated by the division. Those rules shall include standards for acceptable sight and sound separation from adult inmates. The division certifies facilities that are in compliance with the division's standards. The provisions of this Subsection (2)(b) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(3) In areas of low density population, the division may, by rule, approve juvenile holding accommodations within adult facilities that have acceptable sight and sound separation. Those facilities shall be used only for short-term holding purposes, with a maximum confinement of six hours, for children alleged to have committed an act which would be a criminal offense if committed by an adult. Acceptable short-term holding purposes are: identification, notification of juvenile court officials, processing, and allowance of adequate time for evaluation of needs and circumstances regarding release or transfer to a shelter or detention facility. The provisions of this Subsection (3) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(4) Children who are alleged to have committed an act which would be a criminal offense if committed by an adult, may be detained in holding rooms in local law enforcement agency facilities for a maximum of two hours, for identification or interrogation, or while awaiting release to a parent or other responsible adult. Those rooms shall be certified by the division, according to the division's rules. Those rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with any of the provisions of this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of children under 18 years of age who require detention care prior to trial or examination, or while awaiting assignment to a home or facility, as a dispositional placement under Subsection 78A-6-117(2)(f)(i) or 78A-6-1101(3)(a), and of youth offenders under Subsection 62A-7-504(8). The provisions of this Subsection (6)(a) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(b) The division shall provide standards for custody or detention under Subsections (2)(b), (3), and (4), and shall determine and set standards for conditions of care and confinement of children in detention facilities.

(c) All other custody or detention shall be provided by the division, or by contract with a public or private agency willing to undertake temporary custody or detention upon agreed terms, or in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems. The provisions of this Subsection (6)(c) do not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

Amended by Chapter 38, 2010 General Session

62A-7-202. Location of detention facilities and services.

(1) The division shall provide detention facilities and services in each county, or

group of counties, as the population demands, in accordance with the provisions of this chapter.

(2) The division, through its detention centers, is responsible for development, implementation, and administration of home detention services, and shall establish criteria for placement on home detention.

(3) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing standards for admission to secure detention and home detention programs.

(4) The division shall provide training regarding implementation of the rules to law enforcement agencies, division employees, juvenile court employees, and other affected agencies and individuals upon their request.

Amended by Chapter 382, 2008 General Session

62A-7-203. Detention -- Physical facilities.

The division may issue requests for proposals to allow for the private construction of facilities suitable to meet the detention requirements of any county or group of counties, subject to approval by the governor. The governor shall furnish an analysis of the benefits of the proposals received to the Infrastructure and General Government Appropriations Subcommittee for its review.

Amended by Chapter 242, 2012 General Session

62A-7-401.5. Secure facilities.

(1) The division shall maintain and operate secure facilities for the custody and rehabilitation of youth offenders who pose a danger of serious bodily harm to others, who cannot be controlled in a less secure setting, or who have engaged in a pattern of conduct characterized by persistent and serious criminal offenses which, as demonstrated through the use of other alternatives, cannot be controlled in a less secure setting.

(2) The director shall appoint an administrator for each secure facility. An administrator of a secure facility shall have experience in social work, law, criminology, corrections, or a related field, and also in administration.

(3) (a) The division, in cooperation with the State Board of Education, shall provide instruction, or make instruction available, to youth offenders in secure facilities. The instruction shall be appropriate to the age, needs, and range of abilities of the youth offender.

(b) An assessment shall be made of each youth offender by the appropriate secure facility to determine the offender's abilities, possible learning disabilities, interests, attitudes, and other attributes related to appropriate educational programs.

(c) Prevocational education shall be provided to acquaint youth offenders with vocations, and vocational requirements and opportunities.

(4) The division shall place youth offenders who have been committed to the division for secure confinement and rehabilitation in a secure facility, operated by the division or by a private entity, that is appropriate to ensure that humane care and

rehabilitation opportunities are afforded to the youth offender.

(5) The division shall adopt, subject to approval by the board, standards, policies, and procedures for the regulation and operation of secure facilities, consistent with state and federal law.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-402. Aiding or concealing youth offender -- Trespass -- Criminal penalties.

(1) A person who commits any of the following offenses is guilty of a class A misdemeanor:

(a) entering, or attempting to enter, a building or enclosure appropriated to the use of youth offenders, without permission;

(b) entering any premises belonging to a secure facility and committing or attempting to commit a trespass or damage on those premises; or

(c) willfully annoying or disturbing the peace and quiet of a secure facility or of a youth offender in a secure facility.

(2) A person is guilty of a third degree felony who:

(a) knowingly harbors or conceals a youth offender who has:

(i) escaped from a secure facility; or

(ii) absconded from:

(A) a facility or supervision; or

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

(b) willfully aided or assisted a youth offender who has been lawfully committed to a secure facility in escaping or attempting to escape from that facility.

(3) As used in this section:

(a) a youth offender absconds from a facility when he:

(i) leaves the facility without permission; or

(ii) fails to return at a prescribed time.

(b) A youth offender absconds from supervision when he:

(i) changes his residence from the residence that he reported to the division as his correct address to another residence, without notifying the Division of Juvenile Justice Services or obtaining permission; or

(ii) for the purpose of avoiding supervision:

(A) hides at a different location from his reported residence; or

(B) leaves his reported residence.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-403. Care of pregnant youth offender.

(1) When a youth offender in a secure facility is pregnant, the division shall ensure that adequate prenatal and postnatal care is provided, and shall place her in an accredited hospital before delivery. As soon as her condition after delivery will permit, the youth offender may be returned to the secure facility.

(2) If the division has concern regarding the youth offender's fitness to raise her

child, the division shall petition the juvenile court to hold a custody hearing.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-404. Commitment -- Termination and review.

(1) A youth offender who has been committed to a secure facility shall remain until the offender reaches the age of 21, is paroled, or is discharged.

(2) A youth offender who has been committed to a secure facility shall appear before the authority within 90 days after commitment, for review of treatment plans and establishment of parole release guidelines.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-501. Youth Parole Authority -- Expenses -- Responsibilities -- Procedures.

(1) There is created within the division a Youth Parole Authority.

(2) (a) The authority is composed of 10 part-time members and five pro tempore members who are residents of this state. No more than three pro tempore members may serve on the authority at any one time.

(b) Throughout this section, the term "member" refers to both part-time and pro tempore members of the Youth Parole Authority.

(3) (a) Except as required by Subsection (3)(b), members shall be appointed to four-year terms by the governor with the consent of the Senate.

(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.

(4) Each member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

(5) When a vacancy occurs in the membership for any reason, the replacement member shall be appointed for the unexpired term.

(6) During the tenure of his appointment, a member may not:

(a) be an employee of the department, other than in his capacity as a member of the authority;

(b) hold any public office;

(c) hold any position in the state's juvenile justice system; or

(d) be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor.

(7) In extraordinary circumstances or when a regular member is absent or otherwise unavailable, the chair may assign a pro tempore member to act in the absent member's place.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

(9) The authority shall determine appropriate parole dates for youth offenders, based on guidelines established by the board. The board shall review and update policy guidelines annually.

(10) Youth offenders may be paroled to their own homes, to a residential community-based program, to a nonresidential community-based treatment program, to an approved independent living setting, or to other appropriate residences, but shall remain on parole until parole is terminated by the authority.

(11) The division's case management staff shall implement parole release plans and shall supervise youth offenders while on parole.

(12) The division shall permit the authority to have reasonable access to youth offenders in secure facilities and shall furnish all pertinent data requested by the authority in matters of parole, revocation, and termination.

Amended by Chapter 286, 2010 General Session

62A-7-502. Youth Parole Authority -- Parole procedures.

(1) The authority has responsibility for parole release, rescission, revocation, and termination for youth offenders who have been committed to the division for secure confinement. The authority shall determine when and under what conditions youth offenders who have been committed to a secure facility are eligible for parole.

(2) Each youth offender shall be served with notice of parole hearings, and has the right to personally appear before the authority for parole consideration.

(3) Orders and decisions of the authority shall be in writing, and each youth offender shall be provided written notice of the authority's reasoning and decision in his case.

(4) The authority shall establish policies and procedures, subject to board approval, for the authority's governance, meetings, hearings, the conduct of proceedings before it, the parole of youth offenders, and the general conditions under which parole may be granted, rescinded, revoked, modified, and terminated.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-503. Administrative officer of Youth Parole Authority.

The director shall appoint an administrative officer of the authority, who is responsible for the day-to-day operations of the authority.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-504. Parole revocation -- Hearing -- Procedures.

(1) The authority may revoke the parole of a youth offender after a hearing and upon determination that there has been a violation of law or of a condition of parole by the youth offender which warrants his return to a secure facility. The parole revocation hearing shall be held at a secure facility.

(2) Before returning a youth offender to a secure facility for a parole revocation

hearing, the division shall provide a prerevocation hearing within the vicinity of the alleged violation, to determine whether there is probable cause to believe that the youth offender violated the conditions of his parole. Upon a finding of probable cause, the youth offender may be remanded to a secure facility, pending a revocation hearing.

(3) A paroled youth offender is entitled to legal representation at the parole revocation hearing, and if the youth offender or his family has requested but cannot afford legal representation, the authority shall appoint legal counsel.

(4) The authority and the administrative officer have power to issue subpoenas, compel attendance of witnesses, compel production of books, papers and other documents, administer oaths, and take testimony under oath for the purposes of conducting the hearings.

(5) (a) A youth offender shall receive timely advance notice of the date, time, place, and reason for the hearing, and has the right to appear at the hearing.

(b) The authority shall provide the youth offender an opportunity to be heard, to present witnesses and evidence, and to confront and cross-examine adverse witnesses, unless there is good cause for disallowing that confrontation.

(6) Decisions in parole revocation hearings shall be reached by a majority vote of the present members of the authority.

(7) The administrative officer shall maintain summary records of all hearings and provide written notice to the youth offender of the decision and reason for the decision.

(8) (a) The authority may issue a warrant to order any peace officer or division employee to take into custody a youth offender alleged to be in violation of parole conditions.

(b) The division may issue a warrant to any peace officer or division employee to retake a youth offender who has escaped from a secure facility.

(c) Based upon the warrant issued under this Subsection (8), a youth offender may be held in a local detention facility for no longer than 48 hours, excluding weekends and legal holidays, to allow time for a prerevocation hearing of the alleged parole violation, or in the case of an escapee, arrangement for transportation to the secure facility.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-505. Conditions of parole.

Conditions of parole shall be specified in writing and agreed to by the youth offender. That agreement shall be evidenced by the signature of the youth offender, which shall be affixed to the parole document.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-506. Discharge of youth offender.

(1) A youth offender may be discharged from the jurisdiction of the division at any time, by written order of the Youth Parole Authority, upon a finding that no further purpose would be served by secure confinement or supervision in a community setting.

(2) Discharge of a youth offender shall be in accordance with policies approved by the board.

(3) Discharge of a youth offender is a complete release of all penalties incurred by adjudication of the offense for which the youth offender was committed.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-507. Appeal regarding parole release or revocation.

(1) A youth offender, or the parent or legal guardian of a youth offender, may appeal to the executive director or his designee any decision of the authority regarding parole release, rescission, or revocation.

(2) The executive director or his designee may set aside or remand the authority's decision only if it is arbitrary, capricious, an abuse of discretion, or contrary to law.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-601. Youth services for prevention and early intervention -- Program standards -- Program services.

(1) The division shall establish and operate prevention and early intervention youth services programs.

(2) The division shall adopt with the approval of the board statewide policies and procedures, including minimum standards for the organization and operation of youth services programs.

(3) The division shall establish housing, programs, and procedures to ensure that youth who are receiving services under this section and who are not in the custody of the division are served separately from youth who are in custody of the division.

(4) The division may enter into contracts with state and local governmental entities and private providers to provide the youth services.

(5) The division shall establish and administer juvenile receiving centers and other programs to provide temporary custody, care, risk-needs assessments, evaluations, and control for nonadjudicated youth placed with the division.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-701. Community-based programs.

(1) The division shall operate residential and nonresidential community-based programs to provide care, treatment, and supervision for paroled youth offenders and for youth offenders committed to the division by juvenile courts.

(2) The division shall adopt, with the approval of the board, minimum standards for the organization and operation of community-based corrections programs for youth offenders.

(3) The division shall place youth offenders committed to it for community-based programs in the most appropriate program based upon the division's evaluation of the youth offender's needs and the division's available resources.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-7-702. Case management staff.

(1) The division shall provide a sufficient number of case management staff members to provide care, treatment, and supervision for youth offenders on parole and for youth offenders committed to the division by the juvenile courts for community-based programs.

(2) (a) Case management staff shall develop treatment programs for each youth offender in the community, provide appropriate services, and monitor individual progress.

(b) Progress reports shall be filed every three months with the juvenile court for each youth offender committed to the division for community-based programs and with the authority for each parolee.

(c) The authority, in the case of parolees, or the juvenile court, in the case of youth committed to the division for placement in community programs, shall be immediately notified, in writing, of any violation of law or of conditions of parole or placement.

(3) Case management staff shall:

(a) conduct investigations and make reports requested by the courts to aid them in determining appropriate case dispositions; and

(b) conduct investigations and make reports requested by the authority to aid it in making appropriate dispositions in cases of parole, revocation, and termination.

Renumbered and Amended by Chapter 13, 2005 General Session

62A-11-101. Legislative intent -- Liberal construction.

It is the intent of the Legislature that the integrity of the public assistance programs of this state be maintained and that the taxpayers support only those persons in need and only as a resource of last resort. To this end, this part should be liberally construed.

Enacted by Chapter 1, 1988 General Session

62A-11-102. Office of Recovery Services -- Creation.

(1) There is created within the department the Office of Recovery Services which has the powers and duties provided by law.

(2) The office is under the administrative and general supervision of the executive director.

Enacted by Chapter 1, 1988 General Session

62A-11-103. Definitions.

As used in this part:

(1) "Account" means a demand deposit account, checking or negotiable

withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(2) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.

(3) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651, et seq.

(4) "Director" means the director of the Office of Recovery Services.

(5) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction of all amounts required by law to be withheld.

(6) "Financial institution" means:

(a) a depository institution as defined in Section 7-1-103 or the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(c);

(b) an institution-affiliated party as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(u);

(c) any federal credit union or state credit union as defined in the Federal Credit Union Act, 12 U.S.C. Sec. 1752, including an institution-affiliated party of such a credit union as defined in 12 U.S.C. Sec. 1786(r);

(d) a broker-dealer as defined in Section 61-1-13; or

(e) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the state.

(7) "Financial record" is defined in the Right to Financial Privacy Act of 1978, 12 U.S.C. Sec. 3401.

(8) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, or contract payment, or denominated as advances on future wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:

(a) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;

(b) interest and dividends;

(c) periodic payments made under pension or retirement programs or insurance policies of any type;

(d) unemployment compensation benefits;

(e) workers' compensation benefits; and

(f) disability benefits.

(9) "IV-D" means Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.

(10) "New hire registry" means the centralized new hire registry created in Section 35A-7-103.

(11) "Obligee" means an individual, this state, another state, or other comparable jurisdiction to whom a debt is owed or who is entitled to reimbursement of child support or public assistance.

(12) "Obligor" means a person, firm, corporation, or the estate of a decedent owing money to this state, to an individual, to another state, or other comparable

jurisdiction in whose behalf this state is acting.

(13) "Office" means the Office of Recovery Services.

(14) "Provider" means a person or entity that receives compensation from any public assistance program for goods or services provided to a public assistance recipient.

(15) "Public assistance" or "assistance" means:

(a) services or benefits provided under Title 35A, Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments under Part E of Title IV of the Social Security Act, 42 U.S.C. Sec. 670, et seq.;

(d) SNAP benefits as defined in Section 35A-1-102; or

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(16) "State case registry" means the central, automated record system maintained by the office and the central, automated district court record system maintained by the Administrative Office of the Courts, that contains records which use standardized data elements, such as names, Social Security numbers and other uniform identification numbers, dates of birth, and case identification numbers, with respect to:

(a) each case in which services are being provided by the office under the state IV-D child support services plan; and

(b) each support order established or modified in the state on or after October 1, 1998.

Amended by Chapter 41, 2012 General Session

62A-11-104. Duties of office.

(1) The office has the following duties:

(a) except as provided in Subsection (2), to provide child support services if:

(i) the office has received an application for child support services;

(ii) the state has provided public assistance; or

(iii) a child lives out of the home in the protective custody, temporary custody, or custody or care of the state;

(b) to carry out the obligations of the department contained in this chapter and in Title 78B, Chapter 12, Utah Child Support Act; Chapter 14, Uniform Interstate Family Support Act; and Chapter 15, Utah Uniform Parentage Act, for the purpose of collecting child support;

(c) to collect money due the department which could act to offset expenditures by the state;

(d) to cooperate with the federal government in programs designed to recover health and social service funds;

(e) to collect civil or criminal assessments, fines, fees, amounts awarded as restitution, and reimbursable expenses owed to the state or any of its political

subdivisions, if the office has contracted to provide collection services;

(f) to implement income withholding for collection of child support in accordance with Part 4, Income Withholding in IV-D Cases, of this chapter;

(g) to enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system in the manner provided for in Section 62A-11-304.5;

(h) to establish and maintain the state case registry in the manner required by the Social Security Act, 42 U.S.C. Sec. 654a, which shall include a record in each case of:

(i) the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under the order;

(ii) any amount described in Subsection (1)(h)(i) that has been collected;

(iii) the distribution of collected amounts;

(iv) the birth date of any child for whom the order requires the provision of support; and

(v) the amount of any lien imposed with respect to the order pursuant to this part;

(i) to contract with the Department of Workforce Services to establish and maintain the new hire registry created under Section 35A-7-103;

(j) to determine whether an individual who has applied for or is receiving cash assistance or Medicaid is cooperating in good faith with the office as required by Section 62A-11-307.2;

(k) to finance any costs incurred from collections, fees, General Fund appropriation, contracts, and federal financial participation; and

(l) to provide notice to a noncustodial parent in accordance with Section 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of nonpayment of past-due child support, prior to taking action against a noncustodial parent to collect the alleged past-due support.

(2) The office may not provide child support services to the Division of Child and Family Services for a calendar month when the child to whom the child support services relate is:

(a) in the custody of the Division of Child and Family Services; and

(b) lives in the home of a custodial parent of the child for more than seven consecutive days, regardless of whether:

(i) the greater than seven consecutive day period starts during one month and ends in the next month; and

(ii) the child is living in the home on a trial basis.

(3) The Division of Child and Family Services is not entitled to child support, for a child to whom the child support relates, for a calendar month when child support services may not be provided under Subsection (2).

Amended by Chapter 369, 2012 General Session

62A-11-104.1. Disclosure of information regarding employees.

(1) Upon request by the office, for purposes of an official investigation made in connection with its duties under Section 62A-11-104, the following disclosures shall be made to the office:

(a) a public or private employer shall disclose an employee's name, address, date of birth, income, social security number, and health insurance information pertaining to the employee and the employee's dependents;

(b) an insurance organization subject to Title 31A, Insurance Code, or the insurance administrators of a self-insured employer shall disclose health insurance information pertaining to an insured or an insured's dependents, if known; and

(c) a financial institution subject to Title 7, Financial Institutions, shall disclose financial record information of a customer named in the request.

(2) The office shall specify by rule the type of health insurance and financial record information required to be disclosed under this section.

(3) All information received under this section is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(4) An employer, financial institution, or insurance organization, or its agent or employee, is not civilly or criminally liable for providing information to the office in accordance with this section, whether the information is provided pursuant to oral or written request.

Amended by Chapter 382, 2008 General Session

62A-11-105. Adjudicative proceedings.

The office and the department shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

62A-11-106. Office may file as real party in interest -- Written consent to payment agreements -- Money judgment in favor of obligee considered to be in favor of office to extent of right to recover.

(1) The office may file judicial proceedings as a real party in interest to establish, modify, and enforce a support order in the name of the state, any department of the state, the office, or an obligee.

(2) No agreement between an obligee and an obligor as to past, present, or future obligations, reduces or terminates the right of the office to recover from that obligor on behalf of the department for public assistance provided, unless the department has consented to the agreement in writing.

(3) Any court order that includes a money judgment for support to be paid to an obligee by any person is considered to be in favor of the office to the extent of the amount of the office's right to recover public assistance from the judgment debtor.

Amended by Chapter 140, 1994 General Session

62A-11-107. Director -- Powers of office -- Representation by county attorney or attorney general -- Receipt of grants -- Rulemaking and enforcement.

(1) The director of the office shall be appointed by the executive director.

(2) The office has power to administer oaths, certify to official acts, issue subpoenas, and to compel witnesses and the production of books, accounts, documents, and evidence.

(3) The office has the power to seek administrative and judicial orders to require 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 unemployed and is not otherwise incapacitated.

(4) The office has the power to enter into reciprocal child support enforcement agreements with foreign countries consistent with federal law and cooperative enforcement agreements with Indian Tribes.

(5) The office has the power to pursue through court action the withholding, suspension, and revocation of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or orders relating to paternity or child support proceedings pursuant to Section 78B-6-315.

(6) It is the duty of the attorney general or the county attorney of any county in which a cause of action can be filed, to represent the office. Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out the duties arising under this chapter.

(7) The office, with department approval, is authorized to receive any grants or stipends from the federal government or other public or private source designed to aid the efficient and effective operation of the recovery program.

(8) The office may adopt, amend, and enforce rules as may be necessary to carry out the provisions of this chapter.

Amended by Chapter 3, 2008 General Session

62A-11-108. Office designated as criminal justice agency -- Access by IV-D agencies to motor vehicle and law enforcement data through the office.

(1) The office is designated as a criminal justice agency for the purpose of requesting and obtaining access to criminal justice information, subject to appropriate federal, state, and local agency restrictions governing the dissemination of that information.

(2) All federal and state agencies conducting activities under Title IV-D of the Social Security Act shall have access through the office to any system used by this state to locate an individual for purposes relating to motor vehicles or law enforcement.

Amended by Chapter 232, 1997 General Session

62A-11-111. Lien provisions.

Provisions for collection of any lien placed as a condition of eligibility for any federally or state-funded public assistance program are as follows:

(1) Any assistance granted after July 1, 1953 to the spouse of an old-age recipient who was not eligible for old-age assistance but who participated in the assistance granted to the family is recoverable in the same manner as old-age assistance granted to the old-age recipient.

(2) At the time of the settlement of a lien given as a condition of eligibility for the old-age assistance program, there shall be allowed a cash exemption of $1,000, less any additional money invested by the department in the home of an old-age recipient or recipients of other assistance programs either as payment of taxes, home and lot improvements, or to protect the interest of the state in the property for necessary improvements to make the home habitable, to be deducted from the market or appraised value of the real property. When it is necessary to sell property or to settle an estate the department may grant reasonable costs of sale and settlement of an estate as follows:

(a) When the total cost of probate, including the sale of property when it is sold, and the cost of burial and last illness do not exceed $1,000, the exemption of $1,000 shall be the total exemption, which shall be the only amount deductible from the market or appraised value of the property.

(b) Subject to Subsection (2)(c), when $1,000 is not sufficient to pay for the costs of probate, the following expenditures are authorized:

(i) cost of funeral expenses not exceeding $1,500;

(ii) costs of terminal illness, provided the medical expenses have not been paid from any state or federally-funded assistance program;

(iii) realty fees, if any;

(iv) costs of revenue stamps, if any;

(v) costs of abstract or title insurance, whichever is the least costly;

(vi) attorney fees not exceeding the recommended fee established by the Utah State Bar;

(vii) administrator's fee not to exceed $150;

(viii) court costs; and

(ix) delinquent taxes, if any.

(c) An attorney, who sells the property in an estate that the attorney is probating, is entitled to the lesser of:

(i) a real estate fee; or

(ii) an attorney fee.

(3) The amounts listed in Subsection (2)(b) are to be considered only when the total costs of probate exceed $1,000, and those amounts are to be deducted from the market or appraised value of the property in lieu of the exemption of $1,000 and are not in addition to the $1,000 exemption.

(4) When both husband and wife are recipients and one or both of them own an interest in real property, the lien attaches to the interests of both for the reimbursement of assistance received by either or both spouses. Only one exemption, as provided in this section, is allowed.

(5) When a lien was executed by one party on property that is owned in joint tenancy with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy in common results, insofar as a department lien is affected, unless the

recipients are husband and wife. When recipients are husband and wife who own property in joint tenancy with full rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a department lien might be affected, and settlement of the lien shall be in accordance with the provisions of Subsection (4).

(6) The amount of the lien given for old-age assistance shall be the total amount of assistance granted up to the market or appraised value of the real or personal property, less the amount of the legal maximum property limitations from the execution of the lien until settlement thereof. There shall be no exemption of any kind or nature allowed against real or personal property liens granted for old-age assistance except assistance in the form of medical care, and nursing home care, other types of congregate care, and similar plans for persons with a physical or mental disability.

(7) When it is necessary to sell property or to settle an estate, the department is authorized to approve payment of the reasonable costs of sale and settlement of an estate on which a lien has been given for old-age assistance.

(8) The amount of reimbursement of all liens held by the department shall be determined on the basis of the formulas described in this section, when they become due and payable.

(9) All lien agreements shall be recorded with the county recorder of the county in which the real property is located, and that recording has the same effect as a judgment lien on any real property in which the recipient has any title or interest. All such real property including but not limited to, joint tenancy interests, shall, from the time a lien agreement is recorded, be and become charged with a lien for all assistance received by the recipient or his spouse as provided in this section. That lien has priority over all unrecorded encumbrances. No fees or costs shall be paid for such recording.

(10) Liens shall become due and payable, and the department shall seek collection of each lien now held:

(a) when the property to which the lien attaches is transferred to a third party prior to the recipient's death, provided, that if other property is purchased by the recipient to be used by the recipient as a home, the department may transfer the amount of the lien from the property sold to the property purchased;

(b) upon the death of the recipient and the recipient's spouse, if any. When the heirs or devisees of the property are also recipients of public assistance, or when other hardship circumstances exist, the department may postpone settlement of the lien if that would be in the best interest of the recipient and the state;

(c) when a recipient voluntarily offers to settle the lien; or

(d) when property subject to a lien is no longer used by a recipient and appears to be abandoned.

(11) When a lien becomes due and payable, a certificate in a form approved by the department certifying to the amount of assistance provided to the recipient and the amount of the lien, shall be mailed to the recipient, the recipient's heirs, or administrators of the estate, and the same shall be allowed, approved, filed, and paid as a preferred claim, as provided in Subsection 75-3-805(1)(e) in the administration of the decedent's estate. The amount so certified constitutes the entire claim, as of the date of the certificate, against the real or personal property of the recipient or the

recipient's spouse. Any person dealing with the recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount of the existing lien against that real or personal property. That amount, however, shall increase by accruing interest until time of final settlement, at the rate of 6% per annum, commencing six months after the lien becomes due and payable, or at the termination of probate proceedings, whichever occurs later.

(12) If heirs are unable to make a lump-sum settlement of the lien at the time it becomes due and payable, the department may permit settlement based upon periodic repayments in a manner prescribed by the department, with interest as provided in Subsection (11).

(13) All sums so recovered, except those credited to the federal government, shall be retained by the department.

(14) The department is empowered to accept voluntary conveyance of real or personal property in satisfaction of its interest therein. All property acquired by the department under the provisions of this section may be disposed of by public or private sale under rules prescribed by the department. The department is authorized to execute and deliver any document necessary to convey title to all property that comes into its possession, as though the department constituted a corporate entity.

(15) Any real property acquired by the department, either by foreclosure or voluntary conveyance, is tax exempt, so long as it is so held.

Amended by Chapter 366, 2011 General Session

62A-11-301. Title.

This part is known as the "Child Support Services Act."

Amended by Chapter 161, 2000 General Session

62A-11-302. Common-law and statutory remedies augmented by act -- Public policy.

The state of Utah, exercising its police and sovereign power, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by this part, which is directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies provided in this part are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this part be liberally construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving or avoiding, at least in part, the burden often borne by the general citizenry through public assistance programs.

Enacted by Chapter 1, 1988 General Session

62A-11-303. Definitions.

As used in this part:

(1) "Adjudicative proceeding" means an action or proceeding of the office conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) "Administrative order" means an order that has been issued by the office, the department, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.

(3) "Assistance" or "public assistance" is defined in Section 62A-11-103.

(4) "Business day" means a day on which state offices are open for regular business.

(5) "Child" means:

(a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) a son or daughter of any age who is incapacitated from earning a living and is without sufficient means.

(6) "Child support" is defined in Section 62A-11-401.

(7) "Child support guidelines" or "guidelines" is defined in Section 78B-12-102.

(8) "Child support order" or "support order" is defined in Section 62A-11-401.

(9) "Child support services" or "IV-D child support services" is defined in Section 62A-11-103.

(10) "Court order" means a judgment or order of a tribunal of appropriate jurisdiction of this state, another state, Native American tribe, the federal government, or any other comparable jurisdiction.

(11) "Director" means the director of the Office of Recovery Services.

(12) "Disposable earnings" is defined in Section 62A-11-103.

(13) "High-volume automated administrative enforcement" in interstate cases means, on the request of another state, the identification by the office, through automatic data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in the requesting state, and the seizure of the assets by the office, through levy or other appropriate processes.

(14) "Income" is defined in Section 62A-11-103.

(15) "Notice of agency action" means the notice required to commence an adjudicative proceeding in accordance with Section 63G-4-201.

(16) "Obligee" means an individual, this state, another state, or other comparable jurisdiction to whom a duty of child support is owed, or who is entitled to reimbursement of child support or public assistance.

(17) "Obligor" means a person, firm, corporation, or the estate of a decedent owing a duty of support to this state, to an individual, to another state, or other corporate jurisdiction in whose behalf this state is acting.

(18) "Office" is defined in Section 62A-11-103.

(19) "Parent" means a natural parent or an adoptive parent of a dependent child.

(20) "Person" includes an individual, firm, corporation, association, political

subdivision, department, or office.

(21) "Presiding officer" means a presiding officer described in Section 63G-4-103.

(22) "Support" includes past-due, present, and future obligations established by:

(a) a tribunal or imposed by law for the financial support, maintenance, medical, or dental care of a dependent child; and

(b) a tribunal for the financial support of a spouse or former spouse with whom the obligor's dependent child resides if the obligor also owes a child support obligation that is being enforced by the state.

(23) "Support debt," "past-due support," or "arrears" means the debt created by nonpayment of support.

(24) "Tribunal" means the district court, the Department of Human Services, the Office of Recovery Services, or court or administrative agency of any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-11-303.5. Application for child support services.

Any person applying to the office for child support services shall be required to attest to the truthfulness of the information contained in the application. The attestation shall indicate that the person believes that all information provided is true and correct to the best of their knowledge and that knowingly providing false or misleading information is a violation of Section 76-8-504 and may result in prosecution, case closure for failure to cooperate, or both.

Enacted by Chapter 60, 2002 General Session

62A-11-303.7. Annual fee for child support services to a custodial parent who has not received TANF assistance.

(1) The office shall impose an annual fee of $25 in each case in which services are provided by the office if:

(a) the custodial parent who received the services has never received assistance under a state program funded under Title IV, Part A of the Social Security Act; and

(b) the office has collected at least $500 of child support in the case.

(2) The fee described in Subsection (1) shall be:

(a) subject to Subsection (3), retained by the office from child support collected on behalf of the custodial parent described in Subsection (1)(a); or

(b) paid by the custodial parent described in Subsection (1)(a).

(3) A fee retained under Subsection (2)(a) may not be retained from the first $500 of child support collected in the case.

(4) The fees collected under this section shall be deposited in the General Fund as a dedicated credit to be used by the office for the purpose of collecting child

support.

Enacted by Chapter 184, 2007 General Session

62A-11-304.1. Expedited procedures for establishing paternity or establishing, modifying, or enforcing a support order.

(1) The office may, without the necessity of initiating an adjudicative proceeding or obtaining an order from any other judicial or administrative tribunal, take the following actions related to the establishment of paternity or the establishment, modification, or enforcement of a support order, and to recognize and enforce the authority of state agencies of other states to take the following actions:

(a) require a child, mother, and alleged father to submit to genetic testing;

(b) subpoena financial or other information needed to establish, modify, or enforce a support order, including:

(i) the name, address, and employer of a person who owes or is owed support that appears on the customer records of public utilities and cable television companies; and

(ii) information held by financial institutions on such things as the assets and liabilities of a person who owes or is owed support;

(c) require a public or private employer to promptly disclose information to the office on the name, address, date of birth, social security number, employment status, compensation, and benefits, including health insurance, of any person employed as an employee or contractor by the employer;

(d) require an insurance organization subject to Title 31A, Insurance Code, or an insurance administrator of a self-insured employer to promptly disclose to the office health insurance information pertaining to an insured or an insured's dependents, if known;

(e) obtain access to information in the records and automated databases of other state and local government agencies, including:

(i) marriage, birth, and divorce records;

(ii) state and local tax and revenue records providing information on such things as residential and mailing addresses, employers, income, and assets;

(iii) real and titled personal property records;

(iv) records concerning occupational and professional licenses and the ownership and control of corporations, partnerships, and other business entities;

(v) employment security records;

(vi) records of agencies administering public assistance programs;

(vii) motor vehicle department records; and

(viii) corrections records;

(f) upon providing notice to the obligor and obligee, direct an obligor or other payor to change the payee to the office if support has been assigned to the office under Section 35A-7-108 or if support is paid through the office pursuant to the Social Security Act, 42 U.S.C. Sec. 654B;

(g) order income withholding in accordance with Part 4, Income Withholding in IV-D Cases;

(h) secure assets to satisfy past-due support by:

(i) intercepting or seizing periodic or lump-sum payments from:

(A) a state or local government agency, including unemployment compensation, workers' compensation, and other benefits; and

(B) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of an obligor held in financial institutions;

(iii) attaching public and private retirement funds, if the obligor presently:

(A) receives periodic payments; or

(B) has the authority to withdraw some or all of the funds; and

(iv) imposing liens against real and personal property in accordance with this section and Section 62A-11-312.5; and

(i) increase monthly payments in accordance with Section 62A-11-320.

(2) (a) When taking action under Subsection (1), the office shall send notice under this Subsection (2)(a) to the person or entity who is required to comply with the action if not a party to a case receiving IV-D services.

(b) The notice described in Subsection (2)(a) shall include:

(i) the authority of the office to take the action;

(ii) the response required by the recipient;

(iii) the opportunity to provide clarifying information to the office under Subsection (2)(c);

(iv) the name and telephone number of a person in the office who can respond to inquiries; and

(v) the protection from criminal and civil liability extended under Subsection (7).

(c) The recipient of a notice sent under this Subsection (2) shall promptly comply with the terms of the notice and may, if the recipient believes the office's request is in error, send clarifying information to the office setting forth the basis for the recipient's belief.

(3) The office shall in any case in which it requires genetic testing under Subsection (1)(a):

(a) consider clarifying information if submitted by the obligee and alleged father;

(b) proceed with testing as the office considers appropriate;

(c) pay the cost of the tests, subject to recoupment from the alleged father if paternity is established;

(d) order a second test if the original test result is challenged, and the challenger pays the cost of the second test in advance; and

(e) require that the genetic test is:

(i) of a type generally acknowledged as reliable by accreditation bodies designated by the federal Secretary of Health and Human Services; and

(ii) performed by a laboratory approved by such an accreditation body.

(4) The office may impose a penalty against an entity for failing to provide information requested in a subpoena issued under Subsection (1) as follows:

(a) $25 for each failure to provide requested information; or

(b) $500 if the failure to provide requested information is the result of a conspiracy between the entity and the obligor to not supply the requested information or to supply false or incomplete information.

(5) (a) Unless a court or administrative agency has reduced past-due support to a sum certain judgment, the office shall provide concurrent notice to an obligor in accordance with Section 62A-11-304.4 of:

(i) any action taken pursuant to Subsections (1)(h)(i)(B), (l)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b) if Subsection (5)(b)(iii) does not apply; and

(ii) the opportunity of the obligor to contest the action and the amount claimed to be past-due by filing a written request for an adjudicative proceeding with the office within 15 days of notice being sent.

(b) (i) Upon receipt of a notice of levy from the office for an action taken pursuant to Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b), a person in possession of personal property of the obligor shall:

(A) secure the property from unauthorized transfer or disposition as required by Section 62A-11-313; and

(B) surrender the property to the office after 21 days of receiving the notice unless the office has notified the person to release all or part of the property to the obligor.

(ii) Unless released by the office, a notice of levy upon personal property shall be:

(A) valid for 60 days; and

(B) effective against any additional property which the obligor may deposit or transfer into the possession of the person up to the amount of the levy.

(iii) If the property upon which the office imposes a levy is insufficient to satisfy the specified amount of past-due support and the obligor fails to contest that amount under Subsection (5)(a)(ii), the office may proceed under Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b) against additional property of the obligor until the amount specified and the reasonable costs of collection are fully paid.

(c) Except as provided in Subsection (5)(b)(iii), the office may not disburse funds resulting from action requiring notice under Subsection (5)(a)(i) until:

(i) 21 days after notice was sent to the obligor; and

(ii) the obligor, if the obligor contests the action under Subsection (5)(a)(ii), has exhausted the obligor's administrative remedies and, if appealed to a district court, the district court has rendered a final decision.

(d) Before intercepting or seizing any periodic or lump-sum payment under Subsection (1)(h)(i)(A), the office shall:

(i) comply with Subsection 59-10-529(4)(a); and

(ii) include in the notice required by Subsection 59-10-529(4)(a) reference to Subsection (1)(h)(i)(A).

(e) If Subsection (5)(a) or (5)(d) does not apply, an action against the real or personal property of the obligor shall be in accordance with Section 62A-11-312.5.

(6) All information received under this section is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(7) No employer, financial institution, public utility, cable company, insurance organization, its agent or employee, or related entity may be civilly or criminally liable for providing information to the office or taking any other action requested by the office pursuant to this section.

(8) The actions the office may take under Subsection (1) are in addition to the actions the office may take pursuant to Part 4, Income Withholding in IV-D Cases.

Amended by Chapter 212, 2009 General Session

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 unemployed and is not otherwise incapacitated;

(g) imposes a penalty authorized under this chapter;

(h) determines an issue that may be specifically contested under this chapter by a party who timely files a written request for an adjudicative proceeding with the office; and

(i) renews an administrative judgment.

(2) (a) An abstract of a final administrative order issued under this section or a notice of judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.

(b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

(i) docket the abstract or notice in the judgment docket of the court and note the time of receipt on the abstract or notice and in the judgment docket; and

(ii) at the request of the office, place a copy of the abstract or notice in the file of a child support action involving the same parties.

(3) If a judicial order has been issued, the office may not issue an order under Subsection (1) that is not based on the judicial order, except:

(a) the office may establish a new obligation in those cases in which the juvenile court has ordered the parties to meet with the office to determine the support pursuant to Section 78A-6-1106; or

(b) the office may issue an order of current support in accordance with the child support guidelines if the conditions of Subsection 78B-14-207(2)(c) are met.

(4) The office may proceed under this section in the name of this state, another state under Section 62A-11-305, any department of this state, the office, or the obligee.

(5) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.

(6) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.

(7) The obligor shall, after a notice of agency action has been served on the obligor in accordance with Section 63G-4-201, keep the office informed of:

(a) the obligor's current address;

(b) the name and address of current payors of income;

(c) availability of or access to health insurance coverage; and

(d) applicable health insurance policy information.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-11-304.4. Filing of location information -- Service of process.

(1) (a) Upon the entry of an order in a proceeding to establish paternity or to establish, modify, or enforce a support order, each party shall file identifying information and shall update that information as changes occur:

(i) with the court or administrative agency that conducted the proceeding; and

(ii) after October 1, 1998, with the state case registry.

(b) The identifying information required under Subsection (1)(a) shall include the person's Social Security number, driver's license number, residential and mailing addresses, telephone numbers, the name, address, and telephone number of employers, and any other data required by the United States Secretary of Health and Human Services.

(c) In any subsequent child support action involving the office or between the parties, state due process requirements for notice and service of process shall be satisfied as to a party upon:

(i) a sufficient showing that diligent effort has been made to ascertain the location of the party; and

(ii) delivery of notice to the most recent residential or employer address filed with the court, administrative agency, or state case registry under Subsection (1)(a).

(2) (a) The office shall provide individuals who are applying for or receiving services under this chapter or who are parties to cases in which services are being provided under this chapter:

(i) with notice of all proceedings in which support obligations might be established or modified; and

(ii) with a copy of any order establishing or modifying a child support obligation, or in the case of a petition for modification, a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination.

(b) Notwithstanding Subsection (2)(a)(ii), notice in the case of an interstate order shall be provided in accordance with Section 78B-14-614.

(3) Service of all notices and orders under this part shall be made in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the Utah Rules of Civil Procedure, or this section.

(4) Consistent with Title 63G, Chapter 2, Government Records Access and Management Act, the office shall adopt procedures to classify records to prohibit the unauthorized use or disclosure of information relating to a proceeding to:

(a) establish paternity; or

(b) establish or enforce support.

(5) (a) The office shall, upon written request, provide location information available in its files on a custodial or noncustodial parent to the other party or the other party's legal counsel provided that:

(i) the party seeking the information produces a copy of the parent-time order signed by the court;

(ii) the information has not been safeguarded in accordance with Section 454 of the Social Security Act;

(iii) the party whose location is being sought has been afforded notice in accordance with this section of the opportunity to contest release of the information;

(iv) the party whose location is being sought has not provided the office with a copy of a protective order, a current court order prohibiting disclosure, a current court order limiting or prohibiting the requesting person's contact with the party or child whose location is being sought, a criminal order, an administrative order pursuant to Section 62A-4a-1009, or documentation of a pending proceeding for any of the above; and

(v) there is no other state or federal law that would prohibit disclosure.

(b) "Location information" shall consist of the current residential address of the custodial or noncustodial parent and, if different and known to the office, the current residence of any children who are the subject of the parent-time order. If there is no current residential address available, the person's place of employment and any other location information shall be disclosed.

(c) For the purposes of this section, "reason to believe" under Section 454 of the Social Security Act means that the person seeking to safeguard information has provided to the office a copy of a protective order, current court order prohibiting disclosure, current court order prohibiting or limiting the requesting person's contact with the party or child whose location is being sought, criminal order signed by a court of competent jurisdiction, an administrative order pursuant to Section 62A-4a-1009, or documentation of a pending proceeding for any of the above.

(d) Neither the state, the department, the office nor its employees shall be liable for any information released in accordance with this section.

(6) Custodial or noncustodial parents or their legal representatives who are denied location information in accordance with Subsection (5) may serve the Office of Recovery Services to initiate an action to obtain the information.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-11-304.5. Financial institutions.

(1) The office shall enter into agreements with financial institutions doing business in the state:

(a) to develop and operate, in coordination with such financial institutions, a data match system that:

(i) uses automated data exchanges to the maximum extent feasible; and

(ii) requires a financial institution each calendar quarter to provide the name, record address, social security number, other taxpayer identification number, or other identifying information for each obligor who:

(A) maintains an account at the institution; and

(B) owes past-due support as identified by the office by name and social security number or other taxpayer identification number; and

(b) to require a financial institution upon receipt of a notice of lien to encumber or surrender assets held by the institution on behalf of an obligor who is subject to a child support lien in accordance with Section 62A-11-304.1.

(2) The office may pay a reasonable fee to a financial institution for compliance with Subsection (1)(a), which may not exceed the actual costs incurred.

(3) A financial institution may not be liable under any federal or state law to any person for any disclosure of information or action taken in good faith under Subsection (1).

(4) The office may disclose a financial record obtained from a financial institution under this section only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation.

(5) If an employee of the office knowingly, or by reason of negligence, discloses a financial record of an individual in violation of Subsection (4), the individual may bring a civil action for damages in a district court of the United States as provided for in the Social Security Act, 42 U.S.C. Sec. 669A.

(6) The office shall provide notice and disburse funds seized or encumbered under this section in accordance with Section 62A-11-304.1.

Enacted by Chapter 232, 1997 General Session

62A-11-305. Support collection services requested by agency of another state.

(1) In accordance with Title 78B, Chapter 14, Uniform Interstate Family Support Act, the office may proceed to issue or modify an order under Section 62A-11-304.2 to collect under this part from an obligor who is located in or is a resident of this state regardless of the presence or residence of the obligee if:

(a) support collection services are requested by an agency of another state that is operating under Part IV-D of the Social Security Act; or

(b) an individual applies for services.

(2) The office shall use high-volume automated administrative enforcement, to the same extent it is used for intrastate cases, in response to a request made by another state's IV-D child support agency to enforce support orders.

(3) A request by another state shall constitute a certification by the requesting state:

(a) of the amount of support under the order of payment of which is in arrears; and

(b) that the requesting state has complied with procedural due process requirements applicable to the case.

(4) The office shall give automated administrative interstate enforcement requests the same priority as a two-state referral received from another state to enforce a support order.

(5) The office shall promptly report the results of the enforcement procedures to the requesting state.

(6) As required by the Social Security Act, 42 U.S.C. Sec. 666(a)(14), the office shall maintain records of:

(a) the number of requests for enforcement assistance received by the office under this section;

(b) the number of cases for which the state collected support in response to those requests; and

(c) the amount of support collected.

Amended by Chapter 3, 2008 General Session

62A-11-306.1. Issuance or modification of an order to collect support for persons not receiving public assistance.

The office may proceed to issue or modify an order under Section 62A-11-304.2 and collect under this part even though public assistance is not being provided on behalf of a dependent child if the office provides support collection services in accordance with:

(1) an application for services provided under Title IV-D of the federal Social Security Act;

(2) the continued service provisions of Subsection 62A-11-307.2(5); or

(3) the interstate provisions of Section 62A-11-305.

Amended by Chapter 232, 1997 General Session

62A-11-306.2. Mandatory review and adjustment of child support orders for TANF recipients.

If a child support order has not been issued, adjusted, or modified within the previous three years and the children who are the subject of the order currently receive TANF funds, the office shall review the order, and if appropriate, move the tribunal to adjust the amount of the order if there is a difference of 10% or more between the payor's ordered support amount and the payor's support amount required under the guidelines.

Enacted by Chapter 282, 2007 General Session

62A-11-307.1. Collection directly from responsible parent.

(1) The office may issue or modify an order under Section 62A-11-304.2 and collect under this part directly from a responsible parent if the procedural requirements of applicable law have been met and if public assistance is provided on behalf of that

parent's dependent child. The direct right to issue an order under this Subsection (1) is independent of and in addition to the right derived from that assigned under Section 35A-3-108.

(2) An order issuing or modifying a support obligation under Subsection (1), issued while public assistance was being provided for a dependent child, remains in effect and may be enforced by the office under Section 62A-11-306.1 after provision of public assistance ceases.

(3) (a) The office may issue or modify an administrative order, subject to the procedural requirements of applicable law, that requires that obligee to pay to the office assigned support that an obligee receives and retains in violation of Subsection 62A-11-307.2(4) and may reduce to judgment any unpaid balance due.

(b) The office may collect the judgment debt in the same manner as it collects any judgment for past-due support owed by an obligor.

Amended by Chapter 174, 1997 General Session
Amended by Chapter 232, 1997 General Session

62A-11-307.2. Duties of obligee after assignment of support rights.

(1) An obligee whose rights to support have been assigned under Section 35A-3-108 as a condition of eligibility for public assistance has the following duties:

(a) Unless a good cause or other exception applies, the obligee shall, at the request of the office:

(i) cooperate in good faith with the office by providing the name and other identifying information of the other parent of the obligee's child for the purpose of:

(A) establishing paternity; or

(B) establishing, modifying, or enforcing a child support order;

(ii) supply additional necessary information and appear at interviews, hearings, and legal proceedings; and

(iii) submit the obligee's child and himself to judicially or administratively ordered genetic testing.

(b) The obligee may not commence an action against an obligor or file a pleading to collect or modify support without the office's written consent.

(c) The obligee may not do anything to prejudice the rights of the office to establish paternity, enforce provisions requiring health insurance, or to establish and collect support.

(d) The obligee may not agree to allow the obligor to change the court or administratively ordered manner or amount of payment of past, present, or future support without the office's written consent.

(2) (a) The office shall determine and redetermine, when appropriate, whether an obligee has cooperated with the office as required by Subsection (1)(a).

(b) If the office determines that an obligee has not cooperated as required by Subsection (1)(a), the office shall:

(i) forward the determination and the basis for it to the Department of Workforce Services, which shall inform the Department of Health of the determination, for a determination of whether compliance by the obligee should be excused on the basis of

good cause or other exception; and

(ii) send to the obligee:

(A) a copy of the notice; and

(B) information that the obligee may, within 15 days of notice being sent:

(I) contest the office's determination of noncooperation by filing a written request for an adjudicative proceeding with the office; or

(II) assert that compliance should be excused on the basis of good cause or other exception by filing a written request for a good cause exception with the Department of Workforce Services.

(3) The office's right to recover is not reduced or terminated if an obligee agrees to allow the obligor to change the court or administratively ordered manner or amount of payment of support regardless of whether that agreement is entered into before or after public assistance is furnished on behalf of a dependent child.

(4) (a) If an obligee receives direct payment of assigned support from an obligor, the obligee shall immediately deliver that payment to the office.

(b) (i) If an obligee agrees with an obligor to receive payment of support other than in the court or administratively ordered manner and receives payment as agreed with the obligor, the obligee shall immediately deliver the cash equivalent of the payment to the office.

(ii) If the amount delivered to the office by the obligee under Subsection (4)(b)(i) exceeds the amount of the court or administratively ordered support due, the office shall return the excess to the obligee.

(5) If public assistance furnished on behalf of a dependent child is terminated, the office may continue to provide paternity establishment and support collection services. Unless the obligee notifies the office to discontinue these services, the obligee is considered to have accepted and is bound by the rights, duties, and liabilities of an obligee who has applied for those services.

Amended by Chapter 174, 1997 General Session
Amended by Chapter 232, 1997 General Session

62A-11-312.5. Liens by operation of law and writs of garnishment.

(1) Each payment or installment of child support is, on and after the date it is due, a judgment with the same attributes and effect of any judgment of a district court in accordance with Section 78B-12-112 and for purposes of Section 78B-5-202.

(2) (a) A judgment under Subsection (1) or final administrative order shall constitute a lien against the real property of the obligor upon the filing of a notice of judgment-lien in the district court where the obligor's real property is located if the notice:

(i) specifies the amount of past-due support; and

(ii) complies with the procedural requirements of Section 78B-5-202.

(b) Rule 69, Utah Rules of Civil Procedure, shall apply to any action brought to execute a judgment or final administrative order under this section against real or personal property in the obligor's possession.

(3) (a) The office may issue a writ of garnishment against the obligor's personal

property in the possession of a third party for a judgment under Subsection (1) or a final administrative order in the same manner and with the same effect as if the writ were issued on a judgment of a district court if:

(i) the judgment or final administrative order is recorded on the office's automated case registry; and

(ii) the writ is signed by the director or the director's designee and served by certified mail, return receipt requested, or as prescribed by Rule 4, Utah Rules of Civil Procedure.

(b) A writ of garnishment issued under Subsection (3)(a) is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 62A-11-316.

Amended by Chapter 3, 2008 General Session

62A-11-313. Effect of Lien.

(1) After receiving notice that a support lien has been filed under this part by the office, no person in possession of any property which may be subject to that lien may pay over, release, sell, transfer, encumber, or convey that property to any person other than the office, unless he first receives:

(a) a release or waiver thereof from the office; or

(b) a court order that orders release of the lien on the basis that the debt does not exist or has been satisfied.

(2) Whenever any such person has in his possession earnings, deposits, accounts, or balances in excess of $100 over the amount of the debt claimed by the office, that person may, without liability under this part, release that excess to the obligor.

Amended by Chapter 62, 1989 General Session

62A-11-315.5. Enforcement of liens arising in another state.

A lien arising in another state shall be accorded full faith and credit in this state, without any additional requirement of judicial notice or hearing prior to the enforcement of the lien, if the office, parent, or state IV-D agency who seeks to enforce the lien complies with Section 62A-11-304.1 or Section 62A-11-312.5.

Enacted by Chapter 232, 1997 General Session

62A-11-316. Requirement to honor voluntary assignment of earnings -- Discharge of employee prohibited -- Liability for discharge -- Earnings subject to support lien or garnishment.

(1) (a) Every person, firm, corporation, association, political subdivision, or department of the state shall honor, according to its terms, a duly executed voluntary assignment of earnings which is presented by the office as a plan to satisfy or retire a support debt or obligation.

(b) The requirement to honor an assignment of earnings, and the assignment of

earnings itself, are applicable whether the earnings are to be paid presently or in the future, and continue in effect until released in writing by the office.

(c) Payment of money pursuant to an assignment of earnings presented by the office shall serve as full acquittance under any contract of employment, and the state shall defend the employer and hold him harmless for any action taken pursuant to the assignment of earnings.

(d) The office shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

(2) An employer may not discharge or prejudice any employee because his earnings have been subjected to support lien, wage assignment, or garnishment for any indebtedness under this part.

(3) If a person discharges an employee in violation of Subsection (2), he is liable to the employee for the damages he may suffer, and, additionally, to the office in an amount equal to the debt which is the basis of the assignment or garnishment, plus costs, interest, and attorneys' fees, or a maximum of $1,000, whichever is less.

(4) The maximum part of the aggregate disposable earnings of an individual for any work pay period which may be subjected to a garnishment to enforce payment of a judicial or administrative judgment arising out of failure to support dependent children may not exceed 50% of his disposable earnings for the work pay period.

(5) The support lien or garnishment shall continue to operate and require that person to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until released in writing by the court or office.

Amended by Chapter 203, 1988 General Session

62A-11-319. Release of lien, attachment, or garnishment by department.

The office may, at any time, release a support lien, wage assignment, attachment, or garnishment on all or part of the property of the obligor, or return seized property without liability, if assurance of payment is considered adequate by the office, or if that action will facilitate collection of the support debt. However, that release or return does not prevent future action to collect from the same or other property. The office may also waive provisions providing for the collection of interest on accounts due, if that waiver would facilitate collection of the support debt.

Enacted by Chapter 1, 1988 General Session

62A-11-320. Payment schedules.

(1) The office may:

(a) set or reset a level and schedule of payments at any time consistent with the income, earning capacity, and resources of the obligor; or

(b) demand payment in full.

(2) If a support debt is reduced to a schedule of payments and made subject to income withholding, the total monthly amount of the scheduled payment, current support payment, and cost of health insurance attributable to a child for whom the obligor has been ordered may only be subject to income withholding in an amount that

does not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b).

(3) (a) Within 15 days of receiving notice, an obligor may contest a payment schedule as inconsistent with Subsection (2) or the rules adopted by the office to establish payment schedules under Subsection (1) by filing a written request for an adjudicative proceeding.

(b) For purposes of Subsection (3)(a), notice includes:

(i) notice sent to the obligor by the office in accordance with Section 62A-11-304.4;

(ii) participation by the obligor in the proceedings related to the establishment of the payment schedule; and

(iii) receiving a paycheck in which a reduction has been made in accordance with a payment schedule established under Subsection (1).

Amended by Chapter 232, 1997 General Session

62A-11-320.5. Review and adjustment of child support order in three-year cycle -- Substantial change in circumstances not required.

(1) If a child support order has not been issued, modified, or reviewed within the previous three years, the office shall review a child support order, taking into account the best interests of the child involved, if:

(a) requested by a parent or legal guardian involved in a case receiving IV-D services; or

(b) there has been an assignment under Section 35A-3-108 and the office determines that a review is appropriate.

(2) If the office conducts a review under Subsection (1), the office shall determine if there is a difference of 10% or more between the amount ordered and the amount that would be required under the child support guidelines. If there is such a difference and the difference is not of a temporary nature, the office shall:

(a) with respect to a child support order issued or modified by the office, adjust the amount to that which is provided for in the guidelines; or

(b) with respect to a child support order issued or modified by a court, file a petition with the court to adjust the amount to that which is provided for in the guidelines.

(3) The office may use automated methods to:

(a) collect information and conduct reviews under Subsection (2); and

(b) identify child support orders in which there is a difference of 10% or more between the amount of child support ordered and the amount that would be required under the child support guidelines for review under Subsection (1)(b).

(4) (a) A parent or legal guardian who requests a review under Subsection (1)(a) shall provide notice of the request to the other parent within five days and in accordance with Section 62A-11-304.4.

(b) If the office conducts a review under Subsections (1)(b) and (3)(b), the office shall provide notice to the parties of:

(i) a proposed adjustment under Subsection (2)(a); or

(ii) a proposed petition to be filed in court under Subsection (2)(b).

(5) (a) Within 30 days of notice being sent under Subsection (4)(a), a parent or legal guardian may respond to a request for review filed with the office.

(b) Within 30 days of notice being sent under Subsection (4)(b), a parent or legal guardian may contest a proposed adjustment or petition by requesting a review under Subsection (1)(a) and providing documentation that refutes the adjustment or petition.

(6) A showing of a substantial change in circumstances is not necessary for an adjustment under this section.

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-320.6. Review and adjustment of support order for substantial change in circumstances outside three-year cycle.

(1) (a) A parent or legal guardian involved in a case receiving IV-D services or the office, if there has been an assignment under Section 35A-3-108, may at any time request the office to review a child support order if there has been a substantial change in circumstances.

(b) For purposes of Subsection (1)(a), a substantial change in circumstances may include:

(i) material changes in custody;

(ii) material changes in the relative wealth or assets of the parties;

(iii) material changes of 30% or more in the income of a parent;

(iv) material changes in the ability of a parent to earn;

(v) material changes in the medical needs of the child; and

(vi) material changes in the legal responsibilities of either parent for the support of others.

(2) Upon receiving a request under Subsection (1), the office shall review the order, taking into account the best interests of the child involved, to determine whether the substantial change in circumstance has occurred, and if so, whether the change resulted in a difference of 15% or more between the amount of child support ordered and the amount that would be required under the child support guidelines. If there is such a difference and the difference is not of a temporary nature, the office shall:

(a) with respect to a support order issued or modified by the office, adjust the amount in accordance with the guidelines; or

(b) with respect to a support order issued or modified by a court, file a petition with the court to adjust the amount in accordance with the guidelines.

(3) The office may use automated methods to collect information for a review conducted under Subsection (2).

(4) (a) A parent or legal guardian who requests a review under Subsection (1) shall provide notice of the request to the other parent within five days and in accordance with Section 62A-11-304.4.

(b) If the office initiates and conducts a review under Subsection (1), the office shall provide notice of the request to any parent or legal guardian within five days and in accordance with Section 62A-11-304.4.

(5) Within 30 days of notice being sent under Subsection (4), a parent or legal guardian may file a response to a request for review with the office.

Enacted by Chapter 232, 1997 General Session

62A-11-320.7. Three-year notice of opportunity to review.

(1) Once every three years, the office shall give notice to each parent or legal guardian involved in a case receiving IV-D services of the opportunity to request a review and, if appropriate, adjustment of a child support order under Sections 62A-11-320.5 and 62A-11-320.6.

(2) (a) The notice required by Subsection (1) may be included in an issued or modified order of support.

(b) Notwithstanding Subsection (2)(a), the office shall comply with Subsection (1), three years after the date of the order issued or modified under Subsection (2)(a).

Enacted by Chapter 232, 1997 General Session

62A-11-321. Posting bond or security for payment of support debt -- Procedure.

(1) The office shall, or an obligee may, petition the court for an order requiring an obligor to post a bond or provide other security for the payment of a support debt, if the office or an obligee determines that action is appropriate, and if the payments are more than 90 days delinquent. The office shall establish rules for determining when it shall seek an order for bond or other security.

(2) When the office or an obligee petitions the court under this section, it shall give written notice to the obligor, stating:

(a) the amount of support debt;

(b) that it has petitioned the court for an order requiring the obligor to post security; and

(c) that the obligor has the right to appear before the court and contest the office's or obligee's petition.

(3) After notice to the obligor and an opportunity for a hearing, the court shall order a bond posted or other security to be deposited upon the office's or obligee's showing of a support debt and of a reasonable basis for the security.

Enacted by Chapter 1, 1988 General Session

62A-11-326. Medical and dental expenses of dependent children.

In any action under this part, the office and the department in their orders shall:

(1) include a provision assigning responsibility for cash medical support;

(2) include a provision requiring the purchase and maintenance of appropriate medical, hospital, and dental care insurance for those children, if:

(a) insurance coverage is or becomes available at a reasonable cost; and

(b) the insurance coverage is accessible to the children; and

(3) include a designation of which health, dental or hospital insurance plan, is

primary and which is secondary in accordance with the provisions of Section 30-3-5.4 which will take effect if at any time the dependent children are covered by both parents' health, hospital, or dental insurance plans.

Amended by Chapter 285, 2010 General Session

62A-11-326.1. Enrollment of child in accident and health insurance plan -- Order -- Notice.

(1) The office may issue a notice to existing and future employers or unions to enroll a dependent child in an accident and health insurance plan that is available through the dependent child's parent or legal guardian's employer or union, when the following conditions are satisfied:

(a) the parent or legal guardian is already required to obtain insurance coverage for the child by a prior court or administrative order; and

(b) the parent or legal guardian has failed to provide written proof to the office that:

(i) the child has been enrolled in an accident and health insurance plan in accordance with the court or administrative order; or

(ii) the coverage required by the order was not available at group rates through the employer or union 30 or more days prior to the date of the mailing of the notice to enroll.

(2) The office shall provide concurrent notice to the parent or legal guardian in accordance with Section 62A-11-304.4 of:

(a) the notice to enroll sent to the employer or union; and

(b) the opportunity to contest the enrollment due to a mistake of fact by filing a written request for an adjudicative proceeding with the office within 15 days of the notice being sent.

(3) A notice to enroll shall result in the enrollment of the child in the parent's accident and health insurance plan, unless the parent successfully contests the notice based on a mistake of fact.

(4) A notice to enroll issued under this section may be considered a "qualified medical support order" for the purposes of enrolling a dependent child in a group accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

Amended by Chapter 116, 2001 General Session

62A-11-326.2. Compliance with order -- Enrollment of dependent child for insurance.

(1) An employer or union shall comply with a notice to enroll issued by the office under Section 62A-11-326.1 by enrolling the dependent child that is the subject of the notice in the:

(a) accident and health insurance plan in which the parent or legal guardian is enrolled, if the plan satisfies the prior court or administrative order; or

(b) least expensive plan, assuming equivalent benefits, offered by the employer

or union that complies with the prior court or administrative order which provides coverage that is reasonably accessible to the dependent child.

(2) The employer, union, or insurer may not refuse to enroll a dependent child pursuant to a notice to enroll because a parent or legal guardian has not signed an enrollment application.

(3) Upon enrollment of the dependent child, the employer shall deduct the appropriate premiums from the parent or legal guardian's wages and remit them directly to the insurer.

(4) The insurer shall provide proof of insurance to the office upon request.

(5) The signature of the custodial parent of the insured dependent is a valid authorization to the insurer for purposes of processing any insurance reimbursement claim.

Amended by Chapter 116, 2001 General Session

62A-11-326.3. Determination of parental liability.

(1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the office may determine by order the amount of a parent's liability for uninsured medical, hospital, and dental expenses of a dependent child, when the parent:

(a) is required by a prior court or administrative order to:

(i) share those expenses with the other parent of the dependent child; or

(ii) obtain medical, hospital, or dental care insurance but fails to do so; or

(b) receives direct payment from an insurer under insurance coverage obtained after the prior court or administrative order was issued.

(2) If the prior court or administrative order does not specify what proportions of the expenses are to be shared, the office may determine the amount of liability in accordance with established rules.

(3) This section applies to an order without regard to when it was issued.

Amended by Chapter 382, 2008 General Session

62A-11-327. Reporting past-due support to consumer reporting agency.

The office shall periodically report the name of any obligor who is delinquent in the payment of support and the amount of overdue support owed by the obligor to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681a(f):

(1) only after the obligor has been afforded notice and a reasonable opportunity to contest the accuracy of the information; and

(2) only to an entity that has provided satisfactory evidence that it is a consumer reporting agency under 15 U.S.C. Sec. 1681a(f).

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-328. Information received from State Tax Commission provided to other states' child support collection agencies.

The office shall, upon request, provide to any other state's child support collection agency the information which it receives from the State Tax Commission under Subsection 59-1-403(3)(l), with regard to a support debt which that agency is involved in enforcing.

Amended by Chapter 31, 2009 General Session

62A-11-333. Right to judicial review.

(1) (a) Within 30 days of notice of any administrative action on the part of the office to establish paternity or establish, modify or enforce a child support order, the obligor may file a petition for de novo review with the district court.

(b) For purposes of Subsection (1)(a), notice includes:

(i) notice actually received by the obligor in accordance with Section 62A-11-304.4;

(ii) participation by the obligor in the proceedings related to the establishment of the paternity or the modification or enforcement of child support; or

(iii) receiving a paycheck in which a reduction has been made for child support.

(2) The petition shall name the office and all other appropriate parties as respondents and meet the form requirements specified in Section 63G-4-402.

(3) A copy of the petition shall be served upon the Child and Family Support Division of the Office of Attorney General.

(4) (a) If the petition is regarding the amount of the child support obligation established in accordance with Title 78B, Chapter 12, Utah Child Support Act, the court may issue a temporary order for child support until a final order is issued.

(b) The petitioner may file an affidavit stating the amount of child support reasonably believed to be due and the court may issue a temporary order for that amount. The temporary order shall be valid for 60 days, unless extended by the court while the action is being pursued.

(c) If the court upholds the amount of support established in Subsection (4)(a), the petitioner shall be ordered to make up the difference between the amount originally ordered in Subsection (4)(a) and the amount temporarily ordered under Subsection (4)(b).

(d) This Subsection (4) does not apply to an action for the court-ordered modification of a judicial child support order.

(5) The court may, on its own initiative and based on the evidence before it, determine whether the petitioner violated U.R. Civ. P. Rule 11 by filing the action. If the court determines that U.R.Civ.P. Rule 11 was violated, it shall, at a minimum, award to the office attorney fees and costs for the action.

(6) Nothing in this section precludes the obligor from seeking administrative remedies as provided in this chapter.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-11-401. Definitions.

As used in this part, Part 5, and Part 7:

(1) "Business day" means a day on which state offices are open for regular business.

(2) "Child" is defined in Section 62A-11-303.

(3) "Child support" means a base child support award as defined in Section 78B-12-102, or a financial award for uninsured monthly medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, and child care costs. Child support includes obligations ordered by a tribunal for the support of a spouse or former spouse with whom the child resides if the spousal support is collected with the child support.

(4) "Child support order" or "support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a tribunal for child support and related costs and fees, interest and penalties, income withholding, attorney fees, and other relief.

(5) "Child support services" is defined in Section 62A-11-103.

(6) "Delinquent" or "delinquency" means that child support in an amount at least equal to current child support payable for one month is overdue.

(7) "Immediate income withholding" means income withholding without regard to whether a delinquency has occurred.

(8) "Income" is defined in Section 62A-11-103.

(9) "Jurisdiction" means a state or political subdivision of the United States, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, an Indian tribe or tribal organization, or any comparable foreign nation or political subdivision.

(10) "Obligee" is defined in Section 62A-11-303.

(11) "Obligor" is defined in Section 62A-11-303.

(12) "Office" is defined in Section 62A-11-103.

(13) "Payor" means an employer or any person who is a source of income to an obligor.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 73, 2008 General Session

62A-11-402. Administrative procedures.

Because the procedures of this part are mandated by federal law they shall be applied for the purposes specified in this part and control over any other statutory administrative procedures.

Enacted by Chapter 1, 1988 General Session

62A-11-403. Provision for income withholding in child support order -- Immediate income withholding.

(1) Whenever a child support order is issued or modified in this state the obligor's income is subject to immediate income withholding for the child support

described in the order in accordance with the provisions of this chapter, unless:

(a) the court or administrative body which entered the order finds that one of the parties has demonstrated good cause so as not to require immediate income withholding; or

(b) a written agreement which provides an alternative payment arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.

(2) In every child support order issued or modified on or after January 1, 1994, the court or administrative body shall include a provision that the income of an obligor is subject to immediate income withholding in accordance with this chapter. If for any reason other than the provisions of Subsection (1) that provision is not included in the child support order the obligor's income is nevertheless subject to immediate income withholding.

(3) In determining "good cause," the court or administrative body may, in addition to any other requirement it considers appropriate, consider whether the obligor has:

(a) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months;

(b) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained; or

(c) arranged for electronic transfer of funds on a regular basis to meet court-ordered child support obligations.

Amended by Chapter 131, 2007 General Session

62A-11-404. Office procedures for income withholding for orders issued or modified on or after October 13, 1990.

(1) With regard to obligees or obligors who are receiving IV-D services, each child support order issued or modified on or after October 13, 1990, subjects the income of an obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:

(a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause not to require immediate income withholding; or

(b) a written agreement that provides an alternative arrangement is executed by the obligor and obligee, and by the office, if there is an assignment under Section 35A-3-108, and reviewed and entered in the record by the court or administrative body.

(2) For purposes of this section:

(a) "good cause" shall be based on, at a minimum:

(i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and

(ii) proof of timely payment of any previously ordered support;

(b) in determining "good cause," the court or administrative body may, in addition to any other requirement that it determines appropriate, consider whether the obligor has:

(i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months; and

(ii) arranged to deposit all child support payments into a checking account belonging to the obligee or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained.

(3) An exception from immediate income withholding shall be:

(a) included in the court or administrative agency's child support order; and

(b) negated without further administrative or judicial action:

(i) upon a delinquency;

(ii) upon the obligor's request; or

(iii) if the office, based on internal procedures and standards, or a party requests immediate income withholding for a case in which the parties have entered into an alternative arrangement to immediate income withholding pursuant to Subsection (1)(b).

(4) If an exception to immediate income withholding has been ordered on the basis of good cause under Subsection (1)(a), the office may commence income withholding under this part:

(a) in accordance with Subsection (3)(b); or

(b) if the administrative or judicial body that found good cause determines that circumstances no longer support that finding.

(5) (a) A party may contest income withholding due to a mistake of fact by filing a written objection with the office within 15 days of the commencement of income withholding under Subsection (4).

(b) If a party contests income withholding under Subsection (5)(a), the office shall proceed with the objection as it would an objection filed under Section 62A-11-405.

(6) Income withholding implemented under this section is subject to termination under Section 62A-11-408.

(7) (a) Income withholding under the order may be effective until the obligor no longer owes child support to the obligee.

(b) Appropriate income withholding procedures apply to existing and future payors and all withheld income shall be submitted to the office.

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-405. Office procedures for income withholding for orders issued or modified before October 13, 1990.

(1) With regard to child support orders issued prior to October 13, 1990, and not otherwise modified after that date, and for which an obligor or obligee is receiving IV-D services, the office shall proceed to withhold income as a means of collecting child support if a delinquency occurs under the order, regardless of whether the relevant

child support order includes authorization for income withholding.

(2) Upon receipt of a verified statement or affidavit alleging that a delinquency has occurred, the office shall:

(a) send notice to the payor for income withholding in accordance with Section 62A-11-406; and

(b) send notice to the obligor under Section 62A-11-304.4 that includes:

(i) a copy of the notice sent to the payor; and

(ii) information regarding:

(A) the commencement of income withholding; and

(B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing a written request for review under this section with the office within 15 days.

(3) If the obligor contests the withholding, the office shall:

(a) provide an opportunity for the obligor to provide documentation and, if necessary, to present evidence supporting the obligor's claim of mistake of fact;

(b) decide whether income withholding shall continue;

(c) notify the obligor of its decision and the obligor's right to appeal under Subsection (4); and

(d) at the obligor's option, return, if in the office's possession, or credit toward the most current and future support obligations of the obligor any amount mistakenly withheld and, if the mistake is attributable to the office, interest at the legal rate.

(4) (a) An obligor may appeal the office's decision to withhold income under Subsection (3) by filing an appeal with the district court within 30 days after service of the notice under Subsection (3) and immediately notifying the office in writing of the obligor's decision to appeal.

(b) The office shall proceed with income withholding under this part during the appeal, but shall hold all funds it receives, except current child support, in a reserve account pending the court's decision on appeal. The funds, plus interest at the legal rate, shall be paid to the party determined by the court.

(c) If an obligor appeals a decision of the office to a district court under Subsection (4)(a), the obligor shall provide to the obligee:

(i) notice of the obligor's appeal; and

(ii) a copy of any documents filed by the obligor upon the office in connection with the appeal.

(5) An obligor's payment of overdue child support may not be the sole basis for not implementing income withholding in accordance with this part.

Amended by Chapter 232, 1997 General Session

62A-11-406. Notice to payor.

Upon compliance with the applicable provisions of this part the office shall mail or deliver to each payor at the payor's last-known address written notice stating:

(1) the amount of child support to be withheld from income;

(2) that the child support must be withheld from the obligor's income each time the obligor is paid, but that the amount withheld may not exceed the maximum amount

permitted under Section 303 (b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);

(3) that the payor must mail or deliver the withheld income to the office within seven business days of the date the amount would have been paid or credited to the employee but for this section;

(4) that the payor may deduct from the obligor's income an additional amount which is equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil Procedure, as the payor's fee for administrative costs, but the total amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);

(5) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;

(6) (a) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection (3), the payor is liable to the office for a late fee of $50 or 10% of the withheld income, whichever is greater, for each payment that is late, per obligor; and

(b) that if the payor willfully fails to withhold income in accordance with the notice, the payor is liable to the office for $1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;

(7) that the notice to withhold is prior to any other legal process under state law;

(8) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice;

(9) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;

(10) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 62A-11-316, and to the office for the greater of $1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld, plus interest on that amount; and

(11) that, in addition to any other remedy provided in this section, the payor is liable for costs and reasonable attorneys' fees incurred in enforcing any provision in a notice to withhold mailed or delivered to the payor's last-known address.

Amended by Chapter 161, 2000 General Session

62A-11-407. Payor's procedures for income withholding.

(1) (a) A payor is subject to the requirements, penalties, and effects of a notice served on the payor under Section 62A-11-406.

(b) A payment of withheld income mailed to the office in an envelope postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 62A-11-406(3).

(2) (a) If a payor fails to comply with a notice served upon him under Section 62A-11-406, the office, the obligee, if an assignment has not been made under Section

35A-7-108, or the obligor may proceed with a civil action against the payor to enforce a provision of the notice.

(b) In addition to a civil action under Subsection (2)(a), the office may bring an administrative action pursuant to Title 63G, Chapter 4, Administrative Procedures Act, to enforce a provision of the notice.

(c) If an obligee or obligor brings a civil action under Subsection (2)(a) to enforce a provision of the notice, the obligee or obligor may recover any penalty related to that provision under Section 62A-11-406 in place of the office.

(3) If the obligor's child support is owed monthly and the payor's pay periods are at more frequent intervals, the payor, with the consent of the office may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly child support obligation.

(4) A payor may combine amounts which the payor has withheld from the incomes of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.

(5) In addition to any other remedy provided in this section, a payor is liable to the office, obligee, or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision in the notice mailed or delivered under Section 62A-11-406.

(6) Notwithstanding this section or Section 62A-11-406, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

(a) the payor's fee for processing income withholding;

(b) the maximum amount permitted to be withheld from the obligor's income;

(c) the time periods within which the payor must implement income withholding and forward child support payments;

(d) the priorities for withholding and allocating withheld income for multiple child support obligees; and

(e) any term or condition for withholding not specified in the notice.

Amended by Chapter 382, 2008 General Session

62A-11-408. Termination of income withholding.

(1) (a) At any time after the date income withholding begins, a party to the child support order may request a judicial hearing or administrative review to determine whether income withholding should be terminated due to:

(i) good cause under Section 62A-11-404;

(ii) the execution of a written agreement under Section 62A-11-404; or

(iii) the completion of an obligor’s support obligation.

(b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.

(c) If it is determined by a court or the office that income withholding should be terminated, the office shall give written notice of termination to each payor within 10 days after receipt of notice of that decision.

(d) If, after termination of income withholding by court or administrative order, an obligor's child support obligation becomes delinquent or subject to immediate and automatic income withholding under Section 62A-11-404, the office shall reinstate income withholding procedures in accordance with the provisions of this part.

(e) If the office terminates income withholding through an agreement with a party, the office may reinstate income withholding if:

(i) a delinquency occurs;

(ii) the obligor requests reinstatement;

(iii) the obligee requests reinstatement; or

(iv) the office, based on internal procedures and standards, determines reinstatement is appropriate.

(2) The office shall give written notice of termination to each payor when the obligor no longer owes child support to the obligee.

(3) A notice to withhold income, served by the office, is binding on a payor until the office notifies the payor that the obligation to withhold income has been terminated.

Amended by Chapter 232, 1997 General Session

62A-11-409. Payor's compliance with income withholding.

(1) Payment by a payor under this part satisfies the terms for payment of income under any contract between a payor and obligor.

(2) A payor who complies with an income withholding notice that is regular on its face may not be subject to civil liability to any person for conduct in compliance with the notice.

Amended by Chapter 232, 1997 General Session

62A-11-410. Violations by payor.

(1) A payor may not discharge, refuse to hire, or discipline any obligor because of a notice to withhold served by the office under this part, or because of a notice or order served by an obligee in a civil action for income withholding.

(2) If the payor violates Subsection (1), that payor is liable to the office, or to the obligee seeking income withholding in a civil action, for the greater of $1,000 or the amount of child support accumulated to the date of discharge which he should have withheld, plus interest on that amount and costs incurred in collection of the amount from the payor, including a reasonable attorney's fee.

Enacted by Chapter 1, 1988 General Session

62A-11-411. Priority of notice or order to withhold income.

The notice to withhold provided by Section 62A-11-406, and a notice or order to withhold issued by the court in a civil action for income withholding, are prior to all other legal collection processes provided by state law, including garnishment, attachment, execution, and wage assignment.

Enacted by Chapter 1, 1988 General Session

62A-11-413. Records and documentation -- Distribution or refund of collected income -- Allocation of payments among multiple notices to withhold.

(1) The office shall keep adequate records to document and monitor all child support payments received under this part.

(2) The office shall promptly distribute child support payments which it receives from a payor, to the obligee, unless those payments are owed to the department.

(3) The office shall promptly refund any improperly withheld income to the obligor.

(4) The office may allocate child support payments received from an obligor under this part among multiple notices to withhold which it has issued with regard to that obligor, in accordance with rules promulgated by the office to govern that procedure.

Enacted by Chapter 1, 1988 General Session

62A-11-414. Income withholding upon obligor's request.

Whether or not a delinquency has occurred, an obligor may request that the office implement income withholding procedures under this part for payment of his child support obligations.

Enacted by Chapter 1, 1988 General Session

62A-11-501. Definitions -- Application.

(1) The requirements of this part apply only to cases in which neither the obligee nor the obligor is receiving IV-D services.

(2) For purposes of this part the definitions contained in Section 62A-11-401 apply.

Amended by Chapter 232, 1997 General Session

62A-11-502. Child support orders issued or modified on or after January 1, 1994 -- Immediate income withholding.

(1) With regard to obligees or obligors who are not receiving IV-D services, each child support order issued or modified on or after January 1, 1994, subjects the income of an obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:

(a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause so as not to require immediate income withholding; or

(b) a written agreement which provides an alternative payment arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.

(2) For purposes of this section:

(a) an action on or after January 1, 1994, to reduce child support arrears to judgment, without a corresponding establishment of or modification to a base child support amount, is not sufficient to trigger immediate income withholding;

(b) "good cause" shall be based on, at a minimum:

(i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and

(ii) proof of timely payment of any previously ordered support;

(c) in determining "good cause," the court or administrative body may, in addition to any other requirement it considers appropriate, consider whether the obligor has:

(i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months;

(ii) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained; or

(iii) arranged for electronic transfer of funds on a regular basis to meet court-ordered child support obligations.

(3) In cases where the court or administrative body that entered the order finds a demonstration of good cause or enters a written agreement that immediate income withholding is not required, in accordance with this section, any party may subsequently pursue income withholding on the earliest of the following dates:

(a) the date payment of child support becomes delinquent;

(b) the date the obligor requests;

(c) the date the obligee requests if a written agreement under Subsection (1)(b) exists; or

(d) the date the court or administrative body so modifies that order.

(4) The court shall include in every child support order issued or modified on or after January 1, 1994, a provision that the income of an obligor is subject to income withholding in accordance with this chapter; however, if for any reason that provision is not included in the child support order, the obligor's income is nevertheless subject to income withholding.

(5) (a) In any action to establish or modify a child support order after July 1, 1997, the court, upon request by the obligee or obligor, shall commence immediate income withholding by ordering the clerk of the court or the requesting party to:

(i) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506; and

(ii) mail a copy of the written notice sent to the payor under Subsection (5)(a)(i) and a copy of the support order to the office.

(b) If neither the obligee nor obligor requests commencement of income withholding under Subsection (5)(a), the court shall include in the order to establish or modify child support a provision that the obligor or obligee may commence income withholding by:

(i) applying for IV-D services with the office; or

(ii) filing an ex parte motion with a district court of competent jurisdiction pursuant to Section 62A-11-504.

(c) A payor who receives written notice under Subsection (5)(a)(i) shall comply with the requirements of Section 62A-11-507.

Amended by Chapter 131, 2007 General Session

62A-11-503. Requirement of employment and location information.

(1) As of July 1, 1997, a court, before issuing or modifying an order of support, shall require the parties to file the information required under Section 62A-11-304.4.

(2) If a party fails to provide the information required by Section 62A-11-304.4, the court shall issue or modify an order upon receipt of a verified representation of employment or source of income for that party based on the best evidence available if:

(a) that party has participated in the current proceeding;

(b) the notice and service of process requirements of the Utah Rules of Civil Procedure have been met if the case is before the court to establish an original order of support; or

(c) the notice requirements of Section 62A-11-304.4 have been met if the case is before the court to modify an existing order.

(3) A court may restrict the disclosure of information required by Section 62A-11-304.4:

(a) in accordance with a protective order involving the parties; or

(b) if the court has reason to believe that the release of information may result in physical or emotional harm by one party to the other party.

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-504. Procedures for commencing income withholding.

(1) If income withholding has not been commenced in connection with a child support order, an obligee or obligor may commence income withholding by:

(a) applying for IV-D services from the office; or

(b) filing an ex parte motion for income withholding with a district court of competent jurisdiction.

(2) The office shall commence income withholding in accordance with Part 4 of this chapter upon receipt of an application for IV-D services under Subsection (1)(a).

(3) A court shall grant an ex parte motion to commence income withholding filed under Subsection (1)(b) regardless of whether the child support order provided for income withholding, if the obligee provides competent evidence showing:

(a) the child support order was issued or modified after January 1, 1994, and the obligee or obligor expresses a desire to commence income withholding;

(b) the child support order was issued or modified after January 1, 1994, and the order contains a good cause exception to income withholding as provided for in Section 62A-11-502, and a delinquency has occurred; or

(c) the child support order was issued or modified before January 1, 1994, and

a delinquency has occurred.

(4) If a court grants an ex parte motion under Subsection (3), the court shall order the clerk of the court or the requesting party to:

(a) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506;

(b) mail a copy of the written notice sent to the payor under Subsection (4)(a) to the nonrequesting party's address and a copy of the support order and the notice to the payor to the office; and

(c) if the obligee is the requesting party, send notice to the obligor under Section 62A-11-304.4 that includes:

(i) a copy of the notice sent to the payor; and

(ii) information regarding:

(A) the commencement of income withholding; and

(B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing an objection with the court within 20 days.

(5) A payor who receives written notice under Subsection (4)(a) shall comply with the requirements of Section 62A-11-507.

(6) If an obligor contests withholding, the court shall:

(a) provide an opportunity for the obligor to present evidence supporting his claim of a mistake of fact;

(b) decide whether income withholding should continue;

(c) notify the parties of the decision; and

(d) at the obligor's option, return or credit toward the most current and future support payments of the obligor any amount mistakenly withheld plus interest at the legal rate.

Amended by Chapter 188, 1998 General Session

62A-11-505. Responsibilities of the office.

The office shall document and distribute payments in the manner provided for and in the time required by Section 62A-11-413 and federal law upon receipt of:

(1) a copy of the written notice sent to the payor under Section 62A-11-502 or Section 62A-11-504;

(2) the order of support;

(3) the obligee's address; and

(4) withheld income from the payor.

Enacted by Chapter 232, 1997 General Session

62A-11-506. Notice to payor.

(1) A notice mailed or delivered to a payor under this part shall state in writing:

(a) the amount of child support to be withheld from income;

(b) that the child support must be withheld from the obligor's income each time the obligor is paid, but that the amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C.

Section 1673(b);

(c) that the payor must mail or deliver the withheld income to the office within seven business days of the date the amount would have been paid or credited to the employee but for this section;

(d) that the payor may deduct from the obligor's income an additional amount which is equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil Procedure, as the payor's fee for administrative costs, but the total amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);

(e) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;

(f) (i) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection (1)(c), the payor is liable to the obligee for a late fee of $50 or 10% of the withheld income, whichever is greater, for each payment that is late; and

(ii) that if the payor willfully fails to withhold income in accordance with the notice, the payor is liable to the obligee for $1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;

(g) that the notice to withhold is prior to any other legal process under state law;

(h) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice;

(i) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;

(j) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 62A-11-316 and the obligee for the greater of $1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld plus interest on that amount; and

(k) that, in addition to any other remedy provided in this section, the payor is liable to the obligee or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision in a notice to withhold mailed or delivered under Section 62A-11-502 or 62A-11-504.

(2) If the obligor's employment with a payor is terminated, the office shall, if known and if contacted by the obligee, inform the obligee of:

(a) the obligor's last-known address; and

(b) the name and address of any new payor.

Amended by Chapter 161, 2000 General Session

62A-11-507. Payor's procedures for income withholding.

(1) (a) A payor is subject to the requirements, penalties, and effects of a notice mailed or delivered to him under Section 62A-11-506.

(b) A payment of withheld income mailed to the office in an envelope

postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 62A-11-506(1)(c).

(2) If a payor fails to comply with the requirements of a notice served upon him under Section 62A-11-506, the obligee, or obligor may proceed with a civil action against the payor to enforce a provision of the notice.

(3) If the obligor's child support is owed monthly and the payor's pay periods are at more frequent intervals, the payor, with the consent of the office or obligee, may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly child support obligation.

(4) A payor may combine amounts which he has withheld from the income of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.

(5) In addition to any other remedy provided in this section, a payor is liable to the obligee or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision of the notice mailed or delivered under Section 62A-11-506.

(6) Notwithstanding this section or Section 62A-11-506, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of business in determining:

(a) the payor's fee for processing income withholding;

(b) the maximum amount permitted to be withheld from the obligor's income;

(c) the time periods within which the payor must implement income withholding and forward child support payments;

(d) the priorities for withholding and allocating withheld income for multiple child support obligees; and

(e) any terms or conditions for withholding not specified in the notice.

Enacted by Chapter 232, 1997 General Session

62A-11-508. Termination of income withholding.

(1) (a) At any time after the date income withholding begins, a party to the child support order may request a court to determine whether income withholding should be terminated due to:

(i) good cause under Section 62A-11-502; or

(ii) the completion of an obligor's support obligation.

(b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.

(c) After termination of income withholding under this section, a party may seek reinstatement of income withholding under Section 62A-11-504.

(2) (a) If it is determined that income withholding should be terminated under Subsection (1)(a)(i), the court shall order written notice of termination be given to each payor within 10 days after receipt of notice of that decision.

(b) The obligee shall give written notice of termination to each payor:

(i) when the obligor no longer owes child support to the obligee; or

(ii) if the obligee and obligor enter into a written agreement that provides an alternative arrangement, which may be filed with the court.

(3) A notice to withhold income is binding on a payor until the court or the obligee notifies the payor that his obligation to withhold income has been terminated.

Enacted by Chapter 232, 1997 General Session

62A-11-509. Payor's compliance with income withholding.

(1) Payment by a payor under this part satisfies the terms for payment of income under any contract between a payor and obligor.

(2) A payor who complies with an income withholding notice that is regular on its face may not be subject to civil liability to any person for conduct in compliance with the notice.

Enacted by Chapter 232, 1997 General Session

62A-11-510. Violations by payor.

(1) A payor may not discharge, refuse to hire, or discipline any obligor because of a notice to withhold under this part.

(2) If a payor violates Subsection (1), the payor is liable to the obligor as provided in Section 62A-11-316 and the obligee for the greater of $1,000 or the amount of child support accumulated to the date of discharge which should have been withheld plus interest on that amount and costs incurred in collecting the amount, including reasonable attorneys' fees.

Enacted by Chapter 232, 1997 General Session

62A-11-511. Priority of notice or order to withhold income.

The notice to withhold under this part is prior to all other legal collection processes provided by state law, including garnishment, attachment, execution, and wage assignment.

Enacted by Chapter 232, 1997 General Session

62A-11-601. Title.

This part is known as the "Administrative License Suspension Child Support Enforcement Act."

Enacted by Chapter 338, 2007 General Session

62A-11-602. Definitions.

As used in this part:

(1) "Child support" is as defined in Section 62A-11-401.

(2) "Delinquent on a child support obligation" means that a person:

(a) (i) made no payment for 60 days on a current child support obligation as set

forth in an administrative or court order;

(ii) after the 60-day period described in Subsection (2)(a)(i), failed to make a good faith effort under the circumstances to make payment on the child support obligation in accordance with the order; and

(iii) has not obtained a judicial order staying enforcement of the person's child support obligation, or the amount in arrears; or

(b) (i) made no payment for 60 days on an arrearage obligation of child support as set forth in:

(A) a payment schedule;

(B) a written agreement with the office; or

(C) an administrative or judicial order;

(ii) after the 60-day period described in Subsection (2)(b)(i), failed to make a good faith effort under the circumstances to make payment on the child support obligation in accordance with the payment schedule, agreement, or order; and

(iii) has not obtained a judicial order staying enforcement of the person's child support obligation, or the amount in arrears.

(3) "Driver license" means a license, as defined in Section 53-3-102.

(4) "Driver License Division" means the Driver License Division of the Department of Public Safety created in Section 53-3-103.

(5) "Office" means the Office of Recovery Services created in Section 62A-11-102.

Enacted by Chapter 338, 2007 General Session

62A-11-603. Suspension of driver license for child support delinquency -- Reinstatement.

(1) Subject to the provisions of this section, the office may order the suspension of a person's driver license if the person is delinquent on a child support obligation.

(2) Before ordering a suspension of a person's driver license, the office shall serve the person with a "notice of intent to suspend driver license."

(3) The notice described in Subsection (2) shall:

(a) be personally served or served by certified mail;

(b) except as otherwise provided in this section, comply with Title 63G, Chapter 4, Administrative Procedures Act;

(c) state the amount that the person is in arrears on the person's child support obligation; and

(d) state that, if the person desires to contest the suspension of the person's driver license, the person must request an informal adjudicative proceeding with the office within 30 days after the day on which the notice is mailed or personally served.

(4) (a) The office shall hold an informal adjudicative proceeding to determine whether a person's driver license should be suspended if the person requests a hearing within 30 days after the day on which the notice described in Subsection (2) is mailed or personally served on the person.

(b) The informal adjudicative proceeding described in Subsection (4)(a), and any appeal of the decision rendered in that proceeding, shall comply with Title 63G,

Chapter 4, Administrative Procedures Act.

(5) Except as provided in Subsection (6), the office may order that a person's driver license be suspended:

(a) if, after the notice described in Subsection (2) is mailed or personally served, the person fails to request an informal adjudicative proceeding within the time period described in Subsection (4)(a); or

(b) following the informal adjudicative proceeding described in Subsection (4)(a), if:

(i) the presiding officer finds that the person is delinquent on a child support obligation; and

(ii) the finding described in Subsection (5)(b)(i):

(A) is not timely appealed; or

(B) is upheld after a timely appeal becomes final.

(6) The office may not order the suspension of a person's driver license if the person:

(a) pays the full amount that the person is in arrears on the person's child support obligation;

(b) subject to Subsection (8):

(i) enters into a payment agreement with the office for the payment of the person's current child support obligation and all arrears; and

(ii) complies with the agreement described in Subsection (6)(b)(i) for any initial compliance period required by the agreement;

(c) obtains a judicial order staying enforcement of the person's child support obligation or the amount in arrears; or

(d) is not currently delinquent on a child support obligation.

(7) The office shall rescind an order made by the office to suspend a driver license if the person:

(a) pays the full amount that the person is in arrears on the person's child support obligation;

(b) subject to Subsection (8):

(i) enters into a payment agreement with the office for the payment of the person's current child support obligation and all arrears; and

(ii) complies with the agreement described in Subsection (7)(b)(i) for any initial compliance period required by the agreement;

(c) obtains a judicial order staying enforcement of the person's child support obligation or the amount in arrears; or

(d) is not currently delinquent on a child support obligation.

(8) For purposes of Subsections (6)(b) and (7)(b), the office shall diligently strive to enter into a fair and reasonable payment agreement that takes into account the person's employment and financial ability to make payments, provided that there is a reasonable basis to believe that the person will comply with the agreement.

(9) (a) If, after the office seeks to suspend a person's driver license under this section, it is determined that the person is not delinquent, the office shall refund to the person any noncustodial parent income withholding fee that was collected from the person during the erroneously alleged delinquency.

(b) Subsection (9)(a) does not apply if the person described in Subsection (9)(a) is otherwise in arrears on a child support obligation.

(10) (a) A person whose driver license is ordered suspended pursuant to this section may file a request with the office, on a form provided by the office, to have the office rescind the order of suspension if:

(i) the person claims that, since the time of the suspension, circumstances have changed such that the person is entitled to have the order of suspension rescinded under Subsection (7); and

(ii) the office has not rescinded the order of suspension.

(b) The office shall respond, in writing, to a person described in Subsection (10), within 10 days after the day on which the request is filed with the office, stating whether the person is entitled to have the order of suspension rescinded.

(c) If the office determines, under Subsection (10)(b), that an order to suspend a person's license should be rescinded, the office shall immediately rescind the order.

(d) If the office determines, under Subsection (10)(b), that an order to suspend a person's license should not be rescinded:

(i) the office shall, as part of the response described in Subsection (10)(b), notify the person, in writing, of the reasons for that determination; and

(ii) the person described in this Subsection (10)(d) may, within 15 days after the day on which the office sends the response described in Subsection (10)(b), appeal the determination of the office to district court.

(e) The office may not require that a person file the request described in Subsection (10)(a) before the office orders that an order of suspension is rescinded, if the office has already determined that the order of suspension should be rescinded under Subsection (7).

(11) The office may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) implement the provisions of this part; and

(b) determine when the arrears described in Subsections (6) and (7) are considered paid.

Amended by Chapter 382, 2008 General Session

62A-11-604. Notification of order to suspend or recision of order.

(1) When, pursuant to this part, the office orders the suspension of a person's driver license, or rescinds an order suspending a person's driver license, the office shall, within five business days after the day on which the order or recision is made, notify:

(a) the Driver License Division; and

(b) the person to whom the order or recision applies.

(2) (a) The notification described in Subsections (1)(a) and (b) shall include the name and identifying information of the person described in Subsection (1).

(b) The notification to a person described in Subsection (1)(b) shall include a statement indicating that the person must reinstate the person's driver license with the Driver License Division before driving a motor vehicle.

Enacted by Chapter 338, 2007 General Session

62A-11-701. Title.

This part is known as "Electronic Funds Transfer."

Enacted by Chapter 73, 2008 General Session

62A-11-702. Definitions.

(1) The definitions in Section 62A-11-401 apply to this section.

(2) As used in this section, "account" is as defined in Section 62A-11-103.

Enacted by Chapter 73, 2008 General Session

62A-11-703. Alternative payment by obligor through electronic funds transfer.

(1) The office may enter into a written alternative payment agreement with an obligor which provides for electronic payment of child support under Part 4, Income Withholding in IV-D Cases, or Part 5, Income Withholding in Non IV-D Cases. Electronic payment shall be accomplished through an automatic withdrawal from the obligor's account at a financial institution.

(2) The alternative payment agreement shall:

(a) provide for electronic payment of child support in lieu of income withholding;

(b) specify the date on which electronic payments will be withdrawn from an obligor's account; and

(c) specify the amount which will be withdrawn.

(3) The office may terminate the agreement and initiate immediate income withholding if:

(a) required to meet federal or state requirements or guidelines;

(b) funds available in the account at the scheduled time of withdrawal are insufficient to satisfy the agreement; or

(c) requested by the obligor.

(4) If the payment amount requires adjusting, the office may initiate a new written agreement with the obligor. If, for any reason, the office and obligor fail to agree on the terms, the office may terminate the agreement and initiate income withholding.

(5) If an agreement is terminated for insufficient funds, a new agreement may not be entered into between the office and obligor for a period of at least 12 months.

(6) The office shall make rules specifying eligibility requirements for obligors to enter into alternative payment agreements.

Renumbered and Amended by Chapter 73, 2008 General Session

62A-11-704. Mandatory distribution to obligee through electronic funds transfer.

(1) Notwithstanding any provision of this chapter to the contrary, the office shall, except as provided in Subsection (3), distribute child support payments, under Subsection 62A-11-413(2) or Section 62A-11-505, by electronic funds transfer.

(2) Distribution of child support payments by electronic payment under this section shall be made to:

(a) an account of the obligee; or

(b) an account that may be accessed by the obligee through the use of an electronic access card.

(3) (a) Subject to Subsection (3)(b), the office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to allow exceptions to the requirement to make distributions by electronic funds transfer under Subsection (1).

(b) The rules described in Subsection (3)(a) may only allow exceptions under circumstances where:

(i) requiring distribution by electronic funds transfer would result in an undue hardship to the office or a person; or

(ii) it is not likely that distribution will be made to the obligee on a recurring basis.

Enacted by Chapter 73, 2008 General Session

62A-14-101. Title.

This chapter is known as the "Office of Public Guardian Act."

Enacted by Chapter 69, 1999 General Session

62A-14-102. Definitions.

As used in this chapter:

(1) "Conservator" is as defined in Section 75-1-201.

(2) "Court" is as defined in Section 75-1-201.

(3) "Estate" is as defined in Section 75-1-201.

(4) "Guardian" is as defined in Section 75-1-201.

(5) "Incapacitated" means a person who has been determined by a court, pursuant to Section 75-5-303, to be incapacitated, as defined in Section 75-1-201, after the office has determined that the person is 18 years of age or older and suffers from a mental or physical impairment as part of the prepetition assessment in Section 62A-14-107.

(6) "Office" means the Office of Public Guardian.

(7) "Property" is as defined in Section 75-1-201.

(8) "Ward" means an incapacitated person for whom the office has been appointed as guardian or conservator.

Amended by Chapter 364, 2013 General Session

62A-14-103. Office of Public Guardian -- Creation.

(1) There is created within the department the Office of Public Guardian which

has the powers and duties provided in this chapter.

(2) The office is under the administrative and general supervision of the executive director.

Enacted by Chapter 69, 1999 General Session

62A-14-104. Director of the office -- Appointment -- Qualifications.

(1) The director of the office shall be appointed by the executive director.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning guardianship and conservatorship.

(3) The director is the administrative head of the office.

Amended by Chapter 75, 2009 General Session

62A-14-105. Powers and duties of the office.

(1) The office shall:

(a) before January 1, 2000, develop and operate a statewide program to:

(i) educate the public about the role and function of guardians and conservators; and

(ii) serve as a guardian, conservator, or both for a ward upon appointment by a court when no other person is able and willing to do so and the office petitioned for or agreed in advance to the appointment;

(b) possess and exercise all the powers and duties specifically given to the office by virtue of being appointed as guardian or conservator of a ward, including the power to access a ward's records;

(c) review and monitor the personal and, if appropriate, financial status of each ward for whom the office has been appointed to serve as guardian or conservator;

(d) train and monitor each employee and volunteer, and monitor each contract provider to whom the office has delegated a responsibility for a ward;

(e) retain all court-delegated powers and duties for a ward;

(f) report on the personal and financial status of a ward as required by a court in accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their Property;

(g) handle a ward's funds in accordance with the department's trust account system;

(h) request that the department's audit plan, established pursuant to Section 63I-5-401, include the requirement of an annual audit of all funds and property held by the office on behalf of wards;

(i) maintain accurate records concerning each ward, the ward's property, and office services provided to the ward;

(j) make reasonable and continuous efforts to find a family member, friend, or other person to serve as a ward's guardian or conservator;

(k) after termination as guardian or conservator, distribute a ward's property in accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their

Property;

(l) submit recommendations for changes in state law and funding to the governor and the Legislature and report to the governor and Legislature, upon request; and

(m) establish, implement, and enforce rules.

(2) The office may:

(a) petition a court pursuant to Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, to be appointed an incapacitated person's guardian, conservator, or both after conducting a prepetition assessment under Section 62A-14-107;

(b) develop and operate a statewide program to recruit, train, supervise, and monitor volunteers to assist the office in providing guardian and conservator services;

(c) delegate one or more responsibilities for a ward to an employee, volunteer, or contract provider, except as provided in Subsection 62A-14-107(1);

(d) solicit and receive private donations to provide guardian and conservator services under this chapter; and

(e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(i) effectuate policy; and

(ii) carry out the office's role as guardian and conservator of wards as provided in this chapter.

Amended by Chapter 75, 2009 General Session

62A-14-107. Prepetition assessment and plan.

(1) Before the office may file a petition in court to be appointed guardian or conservator of a person, the office shall:

(a) conduct a face-to-face needs assessment, by someone other than a volunteer, to determine whether the person suffers from a mental or physical impairment that renders the person substantially incapable of:

(i) caring for his personal safety;

(ii) managing his financial affairs; or

(iii) attending to and providing for such necessities as food, shelter, clothing, and medical care, to the extent that physical injury or illness may result;

(b) assess the financial resources of the person based on information supplied to the office at the time of assessment;

(c) inquire and, if appropriate, search to determine whether any other person may be willing and able to serve as the person's guardian or conservator; and

(d) determine the form of guardianship or conservatorship to request of a court, if any, giving preference to the least intensive form of guardianship or conservatorship, consistent with the best interests of the person.

(2) The office shall prepare an individualized guardianship or conservator plan for each ward within 60 days of appointment.

Enacted by Chapter 69, 1999 General Session

62A-14-108. Office volunteers.

(1) A person who desires to be an office volunteer shall:

(a) possess demonstrated personal characteristics of honesty, integrity, compassion, and concern for incapacitated persons; and

(b) upon request, submit information for a background check pursuant to Section 62A-1-118.

(2) An office volunteer may not receive compensation or benefits, but may be reimbursed by the office for expenses actually and reasonably incurred, consistent with Title 67, Chapter 20, Volunteer Government Workers Act.

(3) An office volunteer is immune from civil liability pursuant to Title 63G, Chapter 8, Immunity for Persons Performing Voluntary Services.

Amended by Chapter 382, 2008 General Session

62A-14-109. Contract for services.

(1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the office may contract with one or more providers to perform guardian and conservator duties.

(2) The office shall review and monitor the services provided by a contract provider to a ward for whom the office has been appointed guardian or conservator.

Amended by Chapter 347, 2012 General Session

62A-14-110. Court, legal, and other costs.

(1) The office may not be appointed as the guardian or conservator of a person unless the office petitioned for or agreed in advance to the appointment.

(2) Except as provided in Subsection (4), the court shall order the ward or the ward's estate to pay for the cost of services rendered under this chapter, including court costs and reasonable attorneys' fees.

(3) If the office recovers attorneys' fees under Subsection (2), the office shall transmit those fees to the attorneys who represented the ward or the office in connection with the ward's case.

(4) If a ward is indigent, the office shall provide guardian and conservator services free of charge and shall make reasonable efforts to secure pro bono legal services for the ward.

(5) Under no circumstances may court costs or attorneys' fees be assessed to the office.

Enacted by Chapter 69, 1999 General Session

62A-14-111. Duty of the county attorney or district attorney.

(1) The attorney general shall advise the office on legal matters and represent the office in legal proceedings.

(2) Upon the request of the attorney general, a county attorney may represent the office in connection with the filing of a petition for appointment as guardian or

conservator of an incapacitated person and with routine, subsequent appearances.

Enacted by Chapter 69, 1999 General Session

62A-15-101. Title.

(1) This chapter is known as the "Substance Abuse and Mental Health Act."

(2) This part is known as the "Division of Substance Abuse and Mental Health."

Amended by Chapter 75, 2009 General Session

62A-15-102. Definitions.

As used in this chapter:

(1) "Director" means the director of the Division of Substance Abuse and Mental Health.

(2) "Division" means the Division of Substance Abuse and Mental Health established in Section 62A-15-103.

(3) "Local mental health authority" means a county legislative body.

(4) "Local substance abuse authority" means a county legislative body.

(5) (a) "Public funds" means federal money received from the Department of Human Services or the Department of Health, and state money appropriated by the Legislature to the Department of Human Services, the Department of Health, a county governing body, or a local substance abuse authority, or a local mental health authority for the purposes of providing substance abuse or mental health programs or services.

(b) "Public funds" include federal and state money that has been transferred by a local substance abuse authority or a local mental health authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority. The money maintains the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local substance abuse authority or a local mental health authority to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority.

(c) Public funds received for the provision of services pursuant to substance abuse or mental health service plans may not be used for any other purpose except those authorized in the contract between the local mental health or substance abuse authority and provider for the provision of plan services.

(6) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the division.

Amended by Chapter 342, 2011 General Session

62A-15-103. Division -- Creation -- Responsibilities.

(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive

director. The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by identifying and disseminating information about effective practices and programs;

(v) promote integrated programs that address an individual's substance abuse, mental health, and physical healthcare needs;

(vi) evaluate the effectiveness of programs described in Subsection (2);

(vii) consider the impact of the programs described in Subsection (2) on:

(A) emergency department utilization;

(B) jail and prison populations;

(C) the homeless population; and

(D) the child welfare system; and

(viii) promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health;

(ii) provide direction over the state hospital including approval of its budget, administrative policy, and coordination of services with local service plans;

(iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that all individuals receiving services through local mental health authorities or the Utah State Hospital be informed about and, if desired, provided assistance in completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues,

and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

(vii) examine expenditures of any local, state, and federal funds;

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;

(B) local mental health authorities; and

(C) in counties where they exist, the private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authorities;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services according to division rules;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

(A) a statewide comprehensive continuum of substance abuse services;

(B) a statewide comprehensive continuum of mental health services;

(C) services result in improved overall health and functioning; and

(D) appropriate expenditure of public funds;

(xii) review and make recommendations regarding each local substance abuse authority's contract with its provider of substance abuse programs and services and each local mental health authority's contract with its provider of mental health programs and services to ensure compliance with state and federal law and policy;

(xiii) monitor and ensure compliance with division rules and contract requirements; and

(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;

(d) assure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

(e) require each local substance abuse authority and each local mental health authority to submit its plan to the division by May 1 of each year;

(f) conduct an annual program audit and review of each local substance abuse authority in the state and its contract provider and each local mental health authority in the state and its contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to local substance abuse authorities and local mental health authorities are consistent with services rendered and outcomes reported by

them or their contract providers; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance abuse and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate; and

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act.

(3) (a) The division may refuse to contract with and may pursue its legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract with its provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with its oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.

(5) In carrying out its duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

(6) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(7) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:

(a) the use of public funds;

(b) oversight responsibilities regarding public funds; and

(c) governance of substance abuse and mental health programs and services.

(8) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(9) If a local substance abuse authority contacts the division under Subsection 17-43-201(9) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

(a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or

(b) otherwise ensure that treatment services are made available to the pregnant

woman or pregnant minor.

Amended by Chapter 119, 2014 General Session
Amended by Chapter 205, 2014 General Session
Amended by Chapter 240, 2014 General Session

62A-15-104. Director -- Qualifications.

(1) The director of the division shall be appointed by the executive director.

(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning substance abuse and mental health.

(3) The director is the administrative head of the division.

Amended by Chapter 75, 2009 General Session

62A-15-105. Authority and responsibilities of division.

The division shall set policy for its operation and for programs funded with state and federal money under Sections 17-43-201, 17-43-301, 17-43-304, and 62A-15-110. The division shall:

(1) in establishing rules, seek input from local substance abuse authorities, local mental health authorities, consumers, providers, advocates, division staff, and other interested parties as determined by the division;

(2) establish, by rule, minimum standards for local substance abuse authorities and local mental health authorities;

(3) establish, by rule, procedures for developing policies that ensure that local substance abuse authorities and local mental health authorities are given opportunity to comment and provide input on any new policy of the division or proposed changes in existing rules of the division;

(4) provide a mechanism for review of its existing policy, and for consideration of policy changes that are proposed by local substance abuse authorities or local mental health authorities;

(5) develop program policies, standards, rules, and fee schedules for the division; and

(6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules approving the form and content of substance abuse treatment, educational series, screening, and assessment that are described in Section 41-6a-501.

Amended by Chapter 75, 2009 General Session

62A-15-105.2. Employment first emphasis on the provision of services.

(1) As used in this section, "recipient" means an individual who is:

(a) undergoing treatment for a substance abuse problem; or

(b) suffers from a mental illness.

(2) When providing services to a recipient, the division shall, within funds

appropriated by the Legislature and in accordance with the requirements of federal and state law and memorandums of understanding between the division and other state entities that provide services to a recipient, give priority to providing services that assist an eligible recipient in obtaining and retaining meaningful and gainful employment that enables the recipient to earn sufficient income to:

(a) purchase goods and services;

(b) establish self-sufficiency; and

(c) exercise economic control of the recipient's life.

(3) The division shall develop a written plan to implement the policy described in Subsection (2) that includes:

(a) assessing the strengths and needs of a recipient;

(b) customizing strength-based approaches to obtaining employment;

(c) expecting, encouraging, providing, and rewarding:

(i) integrated employment in the workplace at competitive wages and benefits; and

(ii) self-employment;

(d) developing partnerships with potential employers;

(e) maximizing appropriate employment training opportunities;

(f) coordinating services with other government agencies and community resources;

(g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (2); and

(h) arranging sub-minimum wage work or volunteer work for an eligible recipient when employment at market rates cannot be obtained.

(4) The division shall, on an annual basis:

(a) set goals to implement the policy described in Subsection (2) and the plan described in Subsection (3);

(b) determine whether the goals for the previous year have been met; and

(c) modify the plan described in Subsection (3) as needed.

Enacted by Chapter 305, 2012 General Session

62A-15-107. Authority to assess fees.

The division may, with the approval of the Legislature and the executive director, establish fee schedules and assess fees for services rendered by the division.

Amended by Chapter 75, 2009 General Session

62A-15-108. Formula for allocation of funds to local substance abuse authorities and local mental health authorities.

(1) The division shall establish, by rule, formulas for allocating funds to local substance abuse authorities and local mental health authorities through contracts, to provide substance abuse prevention and treatment services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, and mental health services in accordance with the provisions of this

chapter and Title 17, Chapter 43, Part 3, Local Mental Health Authorities. The formulas shall provide for allocation of funds based on need. Determination of need shall be based on population unless the division establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. The formulas shall include a differential to compensate for additional costs of providing services in rural areas.

(2) The formulas established under Subsection (1) apply to all state and federal funds appropriated by the Legislature to the division for local substance abuse authorities and local mental health authorities, but does not apply to:

(a) funds that local substance abuse authorities and local mental health authorities receive from sources other than the division;

(b) funds that local substance abuse authorities and local mental health authorities receive from the division to operate specific programs within their jurisdictions which are available to all residents of the state;

(c) funds that local substance abuse authorities and local mental health authorities receive from the division to meet needs that exist only within their local areas; and

(d) funds that local substance abuse authorities and local mental health authorities receive from the division for research projects.

Amended by Chapter 75, 2009 General Session

62A-15-110. Contracts for substance abuse and mental health services -- Provisions -- Responsibilities.

(1) If the division contracts with a local substance abuse authority or a local mental health authority to provide substance abuse or mental health programs and services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, or Title 17, Chapter 43, Part 3, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

(a) that an independent auditor shall conduct any audit of the local substance abuse authority or its contract provider's programs or services and any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(b) in addition to the requirements described in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, the division:

(i) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers, directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and

(ii) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local substance abuse authority, local

mental health authority, or contract provider at issue;

(c) the local substance abuse authority or its contract provider and the local mental health authority and its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;

(d) each member of the local substance abuse authority and each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;

(e) requested information and outcome data will be provided to the division in the manner and within the time lines defined by the division; and

(f) all audit reports by state or county persons or entities concerning the local substance abuse authority or its contract provider, or the local mental health authority or its contract provider shall be provided to the executive director of the department, the local substance abuse authority or local mental health authority, and members of the contract provider's governing board.

(2) Each contract between the division and a local substance abuse authority or a local mental health authority shall authorize the division to withhold funds, otherwise allocated under Section 62A-15-108, to cover the costs of audits, attorney fees, and other expenditures associated with reviewing the expenditure of public funds by a local substance abuse authority or its contract provider or a local mental health authority or its contract provider, if there has been an audit finding or judicial determination that public funds have been misused by the local substance abuse authority or its contract provider or the local mental health authority or its contract provider.

Amended by Chapter 71, 2005 General Session

62A-15-201. Title.

This part is known as the "Teen Substance Abuse Intervention and Prevention Act."

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-202. Definitions.

As used in this part:

(1) "Juvenile substance abuse offender" means any juvenile found to come within the provisions of Section 78A-6-103 for a drug or alcohol related offense, as designated by the Board of Juvenile Court Judges.

(2) "Local substance abuse authority" means a county legislative body designated to provide substance abuse services in accordance with Section 17-43-201.

(3) "Teen substance abuse school" means any school established by the local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, that provides an educational, interpersonal, skill-building experience for juvenile substance abuse offenders and their parents or legal guardians.

Amended by Chapter 3, 2008 General Session

62A-15-203. Teen substance abuse schools -- Establishment.

The division or a local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, may establish teen substance abuse schools in the districts of the juvenile court.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-204. Court order to attend substance abuse school -- Assessments.

(1) In addition to any other disposition ordered by the juvenile court pursuant to Section 78A-6-117, the court may order a juvenile and his parents or legal guardians to attend a teen substance abuse school, and order payment of an assessment in addition to any other fine imposed.

(2) All assessments collected shall be forwarded to the county treasurer of the county where the juvenile resides, to be used exclusively for the operation of a teen substance abuse program.

Amended by Chapter 3, 2008 General Session

62A-15-301. Commitment of minor to secure drug or alcohol facility or program -- Procedures -- Review.

(1) For purposes of this part:

(a) "Approved treatment facility or program" means a public or private secure, inpatient facility or program that is licensed or operated by the department or by the Department of Health to provide drug or alcohol treatment or rehabilitation.

(b) "Drug or alcohol addiction" means that the person has a physical or psychological dependence on drugs or alcohol in a manner not prescribed by a physician.

(2) The parent or legal guardian of a minor under the age of 18 years may submit that child, without the child's consent, to an approved treatment facility or program for treatment or rehabilitation of drug or alcohol addiction, upon application to a facility or program, and after a careful diagnostic inquiry is made by a neutral and detached fact finder, in accordance with the requirements of this section.

(3) The neutral fact finder who conducts the inquiry:

(a) shall be either a physician, psychologist, marriage and family therapist, psychiatric and mental health nurse specialist, or social worker licensed to practice in this state, who is trained and practicing in the area of substance abuse; and

(b) may not profit, financially or otherwise, from the commitment of the child and may not be employed by the proposed facility or program.

(4) The review by a neutral fact finder may be conducted on the premises of the proposed treatment facility or program.

(5) The inquiry conducted by the neutral fact finder shall include a private interview with the child, and an evaluation of the child's background and need for treatment.

(6) The child may be committed to the approved treatment facility or program if it

is determined by the neutral fact finder that:

(a) the child is addicted to drugs or alcohol and because of that addiction poses a serious risk of harm to himself or others;

(b) the proposed treatment or rehabilitation is in the child's best interest; and

(c) there is no less restrictive alternative that would be equally as effective, from a clinical standpoint, as the proposed treatment facility or program.

(7) Any approved treatment facility or program that receives a child under this section shall conduct a periodic review, at intervals not to exceed 30 days, to determine whether the criteria described in Subsection (6) continue to exist.

(8) A minor committed under this section shall be released from the facility or program upon the request of his parent or legal guardian.

(9) Commitment of a minor under this section terminates when the minor reaches the age of 18 years.

(10) Nothing in this section requires a program or facility to accept any person for treatment or rehabilitation.

(11) The parent or legal guardian who requests commitment of a minor under this section is responsible to pay any fee associated with the review required by this section and any necessary charges for commitment, treatment, or rehabilitation for a minor committed under this section.

(12) The child shall be released from commitment unless the report of the neutral fact finder is submitted to the juvenile court within 72 hours of commitment and approved by the court.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-401. Alcohol training and education seminar.

(1) As used in this part:

(a) "Instructor" means a person that directly provides the instruction during an alcohol training and education seminar for a seminar provider.

(b) "Licensee" means a person who is:

(i) (A) a new or renewing licensee under Title 32B, Alcoholic Beverage Control Act; and

(B) engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee; or

(ii) a business that is:

(A) a new or renewing licensee licensed by a city, town, or county; and

(B) engaged in the retail sale of beer for consumption off the premises of the licensee.

(c) "Off-premise beer retailer" is as defined in Section 32B-1-102.

(d) "Seminar provider" means a person other than the division who provides an alcohol training and education seminar meeting the requirements of this section.

(2) (a) This section applies to an individual who, as defined by the division by rule:

(i) manages operations at the premises of a licensee engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee;

(ii) supervises the serving of an alcoholic product to a customer for consumption on the premises of a licensee;

(iii) serves an alcoholic product to a customer for consumption on the premises of a licensee;

(iv) directly supervises the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or

(v) sells beer to a customer for consumption off the premises of an off-premise beer retailer.

(b) If the individual does not have a valid record that the individual has completed an alcohol training and education seminar, an individual described in Subsection (2)(a) shall:

(i) (A) complete an alcohol training and education seminar within 30 days of the following if the individual is described in Subsections (2)(a)(i) through (iii):

(I) if the individual is an employee, the day the individual begins employment;

(II) if the individual is an independent contractor, the day the individual is first hired; or

(III) if the individual holds an ownership interest in the licensee, the day that the individual first engages in an activity that would result in that individual being required to complete an alcohol training and education seminar; or

(B) complete an alcohol training and education seminar within the time periods specified in Subsection 32B-5-404(1) if the individual is described in Subsections (2)(a)(iv) and (v); and

(ii) pay a fee:

(A) to the seminar provider; and

(B) that is equal to or greater than the amount established under Subsection (4)(h).

(c) An individual shall have a valid record that the individual completed an alcohol training and education seminar within the time period provided in this Subsection (2) to engage in an activity described in Subsection (2)(a).

(d) A record that an individual has completed an alcohol training and education seminar is valid for:

(i) three years from the day on which the record is issued for an individual described in Subsection (2)(a)(i), (ii), or (iii); and

(ii) five years from the day on which the record is issued for an individual described in Subsection (2)(a)(iv) or (v).

(e) On and after July 1, 2011, to be considered as having completed an alcohol training and education seminar, an individual shall:

(i) attend the alcohol training and education seminar and take any test required to demonstrate completion of the alcohol training and education seminar in the physical presence of an instructor of the seminar provider; or

(ii) complete the alcohol training and education seminar and take any test required to demonstrate completion of the alcohol training and education seminar through an online course or testing program that meets the requirements described in Subsection (2)(f).

(f) The division shall by rule made in accordance with Title 63G, Chapter 3,

Utah Administrative Rulemaking Act, establish one or more requirements for an online course or testing program described in Subsection (2)(e) that are designed to inhibit fraud in the use of the online course or testing program. In developing the requirements by rule the division shall consider whether to require:

(i) authentication that the an individual accurately identifies the individual as taking the online course or test;

(ii) measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(iii) measures to track the actual time an individual taking the online course or test is actively engaged online;

(iv) a seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(v) a test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(vi) a seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(vii) measures for the division to audit online courses or tests;

(viii) measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(ix) a seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(x) an individual who takes an online course or test to use an e-signature; or

(xi) a seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

(3) (a) A licensee may not permit an individual who is not in compliance with Subsection (2) to:

(i) serve or supervise the serving of an alcoholic product to a customer for consumption on the premises of the licensee;

(ii) engage in any activity that would constitute managing operations at the premises of a licensee that engages in the retail sale of an alcoholic product for consumption on the premises of the licensee;

(iii) directly supervise the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or

(iv) sell beer to a customer for consumption off the premises of an off-premise beer retailer.

(b) A licensee that violates Subsection (3)(a) is subject to Section 32B-5-403.

(4) The division shall:

(a) (i) provide alcohol training and education seminars; or

(ii) certify one or more seminar providers;

(b) establish the curriculum for an alcohol training and education seminar that

includes the following subjects:

(i) (A) alcohol as a drug; and

(B) alcohol's effect on the body and behavior;

(ii) recognizing the problem drinker or signs of intoxication;

(iii) an overview of state alcohol laws related to responsible beverage sale or service, as determined in consultation with the Department of Alcoholic Beverage Control;

(iv) dealing with the problem customer, including ways to terminate sale or service; and

(v) for those supervising or engaging in the retail sale of an alcoholic product for consumption on the premises of a licensee, alternative means of transportation to get the customer safely home;

(c) recertify each seminar provider every three years;

(d) monitor compliance with the curriculum described in Subsection (4)(b);

(e) maintain for at least five years a record of every person who has completed an alcohol training and education seminar;

(f) provide the information described in Subsection (4)(e) on request to:

(i) the Department of Alcoholic Beverage Control;

(ii) law enforcement; or

(iii) a person licensed by the state or a local government to sell an alcoholic product;

(g) provide the Department of Alcoholic Beverage Control on request a list of any seminar provider certified by the division; and

(h) establish a fee amount for each person attending an alcohol training and education seminar that is sufficient to offset the division's cost of administering this section.

(5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) define what constitutes under this section an individual who:

(i) manages operations at the premises of a licensee engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee;

(ii) supervises the serving of an alcoholic product to a customer for consumption on the premises of a licensee;

(iii) serves an alcoholic product to a customer for consumption on the premises of a licensee;

(iv) directly supervises the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or

(v) sells beer to a customer for consumption off the premises of an off-premise beer retailer;

(b) establish criteria for certifying and recertifying a seminar provider; and

(c) establish guidelines for the manner in which an instructor provides an alcohol education and training seminar.

(6) A seminar provider shall:

(a) obtain recertification by the division every three years;

(b) ensure that an instructor used by the seminar provider:

(i) follows the curriculum established under this section; and

(ii) conducts an alcohol training and education seminar in accordance with the guidelines established by rule;

(c) ensure that any information provided by the seminar provider or instructor of a seminar provider is consistent with:

(i) the curriculum established under this section; and

(ii) this section;

(d) provide the division with the names of all persons who complete an alcohol training and education seminar provided by the seminar provider;

(e) (i) collect a fee for each person attending an alcohol training and education seminar in accordance with Subsection (2); and

(ii) forward to the division the portion of the fee that is equal to the amount described in Subsection (4)(h); and

(f) issue a record to an individual that completes an alcohol training and education seminar provided by the seminar provider.

(7) (a) If after a hearing conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division finds that a seminar provider violates this section or that an instructor of the seminar provider violates this section, the division may:

(i) suspend the certification of the seminar provider for a period not to exceed 90 days;

(ii) revoke the certification of the seminar provider;

(iii) require the seminar provider to take corrective action regarding an instructor; or

(iv) prohibit the seminar provider from using an instructor until such time that the seminar provider establishes to the satisfaction of the division that the instructor is in compliance with Subsection (6)(b).

(b) The division may certify a seminar provider whose certification is revoked:

(i) no sooner than 90 days from the date the certification is revoked; and

(ii) if the seminar provider establishes to the satisfaction of the division that the seminar provider will comply with this section.

Amended by Chapter 334, 2011 General Session

62A-15-402. Rules for substance use disorder peer support specialist training and certification.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act the division shall make rules:

(1) establishing a peer support services program for substance use disorder peer support services, including peer support specialist qualifications and peer support certification training curriculum;

(2) establishing the scope of work and supervision requirements for peer support specialists; and

(3) establishing criteria or guidelines for certifying and recertifying:

(a) a peer support specialist certification seminar; and

(b) a peer support specialist training course.

Enacted by Chapter 179, 2012 General Session

62A-15-501. DUI -- Legislative policy -- Rehabilitation treatment and evaluation -- Use of victim impact panels.

The Legislature finds that drivers impaired by alcohol or drugs constitute a major problem in this state and that the problem demands a comprehensive detection, intervention, education, and treatment program including emergency services, outpatient treatment, detoxification, residential care, inpatient care, medical and psychological care, social service care, vocational rehabilitation, and career counseling through public and private agencies. It is the policy of this state to provide those programs at the expense of persons convicted of driving while under the influence of intoxicating liquor or drugs. It is also the policy of this state to utilize victim impact panels to assist persons convicted of driving under the influence of intoxicating liquor or drugs to gain a full understanding of the severity of their offense.

Amended by Chapter 81, 2009 General Session

62A-15-502. Penalty for DUI conviction -- Amounts.

(1) Courts of record and not of record may at sentencing assess against the defendant, in addition to any fine, an amount that will fully compensate agencies that treat the defendant for their costs in each case where a defendant is convicted of violating:

(a) Section 41-6a-502 or 41-6a-517;

(b) a criminal prohibition resulting from a plea bargain after an original charge of violating Section 41-6a-502; or

(c) an ordinance that complies with the requirements of Subsection 41-6a-510(1).

(2) The fee assessed shall be collected by the court or an entity appointed by the court.

Amended by Chapter 2, 2005 General Session

62A-15-502.5. Intoxicated Driver Rehabilitation Account -- Created.

(1) There is created a restricted account within the General Fund known as the "Intoxicated Driver Rehabilitation Account."

(2) The restricted account created in Subsection (1) consists of assessments as provided for in Section 62A-15-503.

(3) Upon appropriations from the Legislature, money from the account created in Subsection (1) shall be used as prescribed in Section 62A-15-503.

Enacted by Chapter 278, 2010 General Session

62A-15-503. Assessments for DUI -- Use of money for rehabilitation

programs, including victim impact panels -- Rulemaking power granted.

(1) Assessments imposed under Section 62A-15-502 may, pursuant to court order, either:

(a) be collected by the clerk of the court in which the person was convicted; or

(b) be paid directly to the licensed alcohol or drug treatment program. Those assessments collected by the court shall either be:

(i) forwarded to the state treasurer for credit to the Intoxicated Driver Rehabilitation Account created by Section 62A-15-502.5; or

(ii) forwarded to a special nonlapsing account created by the county treasurer of the county in which the fee is collected.

(2) Proceeds of the accounts described in Subsection (1) shall be used exclusively for the operation of licensed alcohol or drug rehabilitation programs and education, assessment, supervision, and other activities related to and supporting the rehabilitation of persons convicted of driving while under the influence of intoxicating liquor or drugs. A requirement of the rehabilitation program shall be participation with a victim impact panel or program providing a forum for victims of alcohol or drug related offenses and defendants to share experiences on the impact of alcohol or drug related incidents in their lives. The Division of Substance Abuse and Mental Health shall establish guidelines to implement victim impact panels where, in the judgment of the licensed alcohol or drug program, appropriate victims are available, and shall establish guidelines for other programs where such victims are not available.

(3) None of the assessments shall be maintained for administrative costs by the division.

Amended by Chapter 278, 2010 General Session

62A-15-504. Policy -- Alternatives to incarceration.

It is the policy of this state to provide adequate and appropriate health and social services as alternatives to incarceration for public intoxication.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-601. Utah State Hospital.

The Utah State Hospital is established and located in Provo, in Utah county. For purposes of this part it is referred to as the "state hospital."

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-602. Definitions.

As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

(1) "Adult" means a person 18 years of age or older.

(2) "Commitment to the custody of a local mental health authority" means that

an adult is committed to the custody of the local mental health authority that governs the mental health catchment area in which the proposed patient resides or is found.

(3) "Designated examiner" means a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-15-631 may be a designated examiner in the same case.

(4) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of an agency that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.

(5) "Harmful sexual conduct" means any of the following conduct upon an individual without the individual's consent, or upon an individual who cannot legally consent to the conduct including under the circumstances described in Subsections 76-5-406(1) through (12):

(a) sexual intercourse;

(b) penetration, however slight, of the genital or anal opening of the individual;

(c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or

(d) any sexual act causing substantial emotional injury or bodily pain.

(6) "Institution" means a hospital, or a health facility licensed under the provisions of Section 26-21-9.

(7) "Licensed physician" means an individual licensed under the laws of this state to practice medicine, or a medical officer of the United States government while in this state in the performance of official duties.

(8) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

(9) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

(10) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to interact with and transport persons to any mental health facility.

(11) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.

(12) "Patient" means an individual under commitment to the custody or to the treatment services of a local mental health authority.

(13) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(14) "Substantial danger" means the person, by his or her behavior, due to mental illness:

(a) is at serious risk to:

(i) commit suicide;

(ii) inflict serious bodily injury on himself or herself; or

(iii) because of his or her actions or inaction, suffer serious bodily injury because he or she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or

(b) is at serious risk to cause or attempt to cause serious bodily injury or engage in harmful sexual conduct.

(15) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

Amended by Chapter 248, 2012 General Session

62A-15-603. Administration of state hospital -- Division -- Authority.

(1) The administration of the state hospital is vested in the division where it shall function and be administered as a part of the state's comprehensive mental health program and, to the fullest extent possible, shall be coordinated with local mental health authority programs. When it becomes feasible the board may direct that the hospital be decentralized and administered at the local level by being integrated with, and becoming a part of, the community mental health services.

(2) The division shall succeed to all the powers, discharge all the duties, and perform all the functions, duties, rights, and responsibilities pertaining to the state hospital which by law are conferred upon it or required to be discharged or performed. However, the functions, powers, duties, rights, and responsibilities of the division and of the board otherwise provided by law and by this part apply.

(3) Supervision and administration of security responsibilities for the state hospital is vested in the division. The executive director shall designate, as special function officers, individuals to perform special security functions for the state hospital that require peace officer authority. These special function officers may not become or be designated as members of the Public Safety Retirement System.

(4) Directors of mental health facilities that house involuntary detainees or detainees committed pursuant to judicial order may establish secure areas, as prescribed in Section 76-8-311.1, within the mental health facility for the detainees.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-604. Receipt of gift -- Transfer of persons from other institutions.

(1) The division may take and hold by gift, devise, or bequest real and personal property required for the use of the state hospital. With the approval of the governor it may convert that property which is not suitable for its use into money or property that is suitable for that use.

(2) The state hospital is authorized to receive from any other institution within the department any person committed to that institution, when a careful evaluation of the treatment needs of the person and of the treatment programs available at the state hospital indicates that the transfer would be in the interest of that person.

(3) (a) Notwithstanding the provisions of Subsection 62A-1-111(10), the state hospital is authorized to receive gifts, grants, devises, and donations and shall deposit them into an interest-bearing restricted special revenue fund. The state treasurer may invest the fund and all interest is to remain with the fund.

(b) Those gifts, grants, devises, donations, and the proceeds thereof shall be used by the superintendent or his designee for the use and benefit of patients at the state hospital.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-605. Forensic Mental Health Coordinating Council -- Establishment and purpose.

(1) There is established the Forensic Mental Health Coordinating Council composed of the following members:

(a) the director or the director's appointee;

(b) the superintendent of the state hospital or the superintendent's appointee;

(c) the executive director of the Department of Corrections or the executive director's appointee;

(d) a member of the Board of Pardons and Parole or its appointee;

(e) the attorney general or the attorney general's appointee;

(f) the director of the Division of Services for People with Disabilities or the director's appointee;

(g) the director of the Division of Juvenile Justice Services or the director's appointee;

(h) the director of the Commission on Criminal and Juvenile Justice or the director's appointee;

(i) the state court administrator or the administrator's appointee;

(j) the state juvenile court administrator or the administrator's appointee;

(k) a representative from a local mental health authority or an organization, excluding the state hospital that provides mental health services under contract with the Division of Substance Abuse and Mental Health or a local mental health authority, as appointed by the director of the division;

(l) the executive director of the Governor's Council for People with Disabilities or the director's appointee; and

(m) other persons as appointed by the members described in Subsections (1)(a) through (l).

(2) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(3) The purpose of the Forensic Mental Health Coordinating Council is to:

(a) advise the director regarding admissions to the state hospital of persons in the custody of the Department of Corrections;

(b) develop policies for coordination between the division and the Department of Corrections;

(c) advise the executive director of the Department of Corrections regarding issues of care for persons in the custody of the Department of Corrections who are mentally ill;

(d) promote communication between and coordination among all agencies dealing with persons with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;

(e) study, evaluate, and recommend changes to laws and procedures relating to persons with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;

(f) identify and promote the implementation of specific policies and programs to deal fairly and efficiently with persons with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system; and

(g) promote judicial education relating to persons with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system.

Amended by Chapter 366, 2011 General Session

62A-15-605.5. Admission of person in custody of Department of Corrections to state hospital -- Retransfer of person to Department of Corrections.

(1) The executive director of the Department of Corrections may request the director to admit a person who is in the custody of the Department of Corrections to the state hospital, if the clinical director within the Department of Corrections finds that the inmate has mentally deteriorated to the point that admission to the state hospital is necessary to ensure adequate mental health treatment. In determining whether that inmate should be placed in the state hospital, the director of the division shall consider:

(a) the mental health treatment needs of the inmate;

(b) the treatment programs available at the state hospital; and

(c) whether the inmate meets the requirements of Subsection 62A-15-610(2).

(2) If the director denies the admission of an inmate as requested by the clinical director within the Department of Corrections, the Board of Pardons and Parole shall determine whether the inmate will be admitted to the state hospital. The Board of

Pardons and Parole shall consider:

(a) the mental health treatment needs of the inmate;

(b) the treatment programs available at the state hospital; and

(c) whether the inmate meets the requirements of Subsection 62A-15-610(2).

(3) The state hospital shall receive any person in the custody of the Department of Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to Subsection (1) or (2). Any person so transferred to the state hospital shall remain in the custody of the Department of Corrections, and the state hospital shall act solely as the agent of the Department of Corrections.

(4) Inmates transferred to the state hospital pursuant to this section shall be transferred back to the Department of Corrections through negotiations between the director and the director of the Department of Corrections. If agreement between the director and the director of the Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final authority in determining whether a person will be transferred back to the Department of Corrections. In making that determination, that board shall consider:

(a) the mental health treatment needs of the inmate;

(b) the treatment programs available at the state hospital;

(c) whether the person continues to meet the requirements of Subsection 62A-15-610(2);

(d) the ability of the state hospital to provide adequate treatment to the person, as well as safety and security to the public; and

(e) whether, in the opinion of the director, in consultation with the clinical director of the state hospital, the person's treatment needs have been met.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-607. Responsibility for cost of care.

(1) The division shall estimate and determine, as nearly as possible, the actual expense per annum of caring for and maintaining a patient in the state hospital, and that amount or portion of that amount shall be assessed to and paid by the applicant, patient, spouse, parents, child or children who are of sufficient financial ability to do so, or by the guardian of the patient who has funds of the patient that may be used for that purpose.

(2) In addition to the expenses described in Subsection (1), parents are responsible for the support of their child while the child is in the care of the state hospital pursuant to Title 78B, Chapter 12, Utah Child Support Act, and Title 62A, Chapter 11, Recovery Services.

Amended by Chapter 3, 2008 General Session

62A-15-608. Local mental health authority -- Supervision and treatment of persons with a mental illness.

(1) Each local mental health authority has responsibility for supervision and treatment of persons with a mental illness who have been committed to its custody

under the provisions of this part, whether residing in the state hospital or elsewhere.

(2) The division, in administering and supervising the security responsibilities of the state hospital under its authority provided by Section 62A-15-603, shall enforce Sections 62A-15-620 through 62A-15-624 to the extent they pertain to the state hospital.

Amended by Chapter 366, 2011 General Session

62A-15-609. Responsibility for education of school-aged children at the hospital -- Responsibility for noninstructional services.

(1) The State Board of Education is responsible for the education of school-aged children committed to the division.

(2) In order to fulfill its responsibility under Subsection (1), the board may contract with local school districts or other appropriate agencies to provide educational and related administrative services.

(3) Medical, residential, and other noninstructional services at the state hospital are the responsibility of the division.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-610. Objectives of state hospital and other facilities -- Persons who may be admitted to state hospital.

(1) The objectives of the state hospital and other mental health facilities shall be to care for all persons within this state who are subject to the provisions of this chapter; and to furnish them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement, occupation, and support that is conducive to their physical and mental well-being.

(2) Only the following persons may be admitted to the state hospital:

(a) persons 18 years of age and older who meet the criteria necessary for commitment under this part and who have severe mental disorders for whom no appropriate, less restrictive treatment alternative is available;

(b) persons under 18 years of age who meet the criteria necessary for commitment under Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, and for whom no less restrictive alternative is available;

(c) persons adjudicated and found to be guilty with a mental illness under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;

(d) persons adjudicated and found to be not guilty by reason of insanity who are under a subsequent commitment order because they have a mental illness and are a danger to themselves or others, under Section 77-16a-302;

(e) persons found incompetent to proceed under Section 77-15-6;

(f) persons who require an examination under Title 77, Utah Code of Criminal Procedure; and

(g) persons in the custody of the Department of Corrections, admitted in accordance with Section 62A-15-605.5, giving priority to those persons with severe

mental disorders.

Amended by Chapter 366, 2011 General Session

62A-15-611. Allocation of state hospital beds -- Formula.

(1) As used in this section:

(a) "Adult beds" means the total number of patient beds located in the adult general psychiatric unit and the geriatric unit at the state hospital, as determined by the superintendent of the state hospital.

(b) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.

(2) (a) The division shall establish by rule a formula to separately allocate to local mental health authorities adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a). Beginning on May 10, 2011, and ending on June 30, 2011, 152 beds shall be allocated to local mental health authorities under this section.

(b) The number of beds shall be reviewed and adjusted as necessary:

(i) on July 1, 2011, to restore the number of beds allocated to 212 beds as funding permits; and

(ii) on July 1, 2011, and every three years after July 1, 2011, according to the state's population.

(c) All population figures utilized shall reflect the most recent available population estimates from the Utah Population Estimates Committee.

(3) The formula established under Subsection (2) shall provide for allocation of beds based on:

(a) the percentage of the state's adult population located within a mental health catchment area; and

(b) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located in urban areas.

(4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.

(5) The division shall allocate adult beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under the formula established under Subsection (2), the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.

(6) The board shall periodically review and make changes in the formula established under Subsection (2) as necessary to accurately reflect changes in population.

Amended by Chapter 187, 2011 General Session

62A-15-612. Allocation of pediatric state hospital beds -- Formula.

(1) As used in this section:

(a) "Mental health catchment area" means a county or group of counties

governed by a local mental health authority.

(b) "Pediatric beds" means the total number of patient beds located in the children's unit and the youth units at the state hospital, as determined by the superintendent of the state hospital.

(2) On July 1, 1996, 72 pediatric beds shall be allocated to local mental health authorities under this section. The division shall review and adjust the number of pediatric beds as necessary every three years according to the state's population of persons under 18 years of age. All population figures utilized shall reflect the most recent available population estimates from the Governor's Office of Management and Budget.

(3) The allocation of beds shall be based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area. Each community mental health center shall be allocated at least one bed.

(4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.

(5) The division shall allocate 72 pediatric beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under that formula, the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.

Amended by Chapter 17, 2013 General Session
Amended by Chapter 310, 2013 General Session

62A-15-613. Appointment of superintendent -- Qualifications -- Powers and responsibilities.

(1) The director, with the advice and consent of the board and the approval of the executive director, shall appoint a superintendent of the state hospital, who shall hold office at the will of the director.

(2) The superintendent shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning mental health.

(3) Subject to the rules of the board, the superintendent has general responsibility for the buildings, grounds, and property of the state hospital. The superintendent shall appoint, with the approval of the director, as many employees as necessary for the efficient and economical care and management of the state hospital, and shall fix their compensation and administer personnel functions according to the standards of the Department of Human Resource Management.

Amended by Chapter 139, 2006 General Session

62A-15-614. Clinical director -- Appointment -- Conditions and procedure -- Duties.

(1) Whenever the superintendent is not qualified to be the clinical director of

the state hospital under this section, he shall, with the approval of the director of the division, appoint a clinical director who is licensed to practice medicine and surgery in this state, and who has had at least three years' training in a psychiatric residency program approved by the American Board of Psychiatry and Neurology, Inc., and who is eligible for certification by that board.

(2) The salary of the clinical director of the state hospital shall be fixed by the standards of the Division of Finance, to be paid in the same manner as the salaries of other employees. The clinical director shall perform such duties as directed by the superintendent and prescribed by the rules of the board, and shall prescribe and direct the treatment of patients and adopt sanitary measures for their welfare.

(3) If the superintendent is qualified to be the clinical director, he may assume the duties of the clinical director.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-615. Forms.

The division shall furnish the clerks of the district courts with forms, blanks, warrants, and certificates, to enable the district court judges, with regularity and facility, to comply with the provisions of this chapter.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-616. Persons entering state mentally ill.

(1) A person who enters this state while mentally ill may be returned by a local mental health authority to the home of relatives or friends of that person with a mental illness, if known, or to a hospital in the state where that person with a mental illness is domiciled, in accordance with Title 62A, Chapter 15, Part 8, Interstate Compact on Mental Health.

(2) This section does not prevent commitment of persons who are traveling through or temporarily residing in this state.

Amended by Chapter 366, 2011 General Session

62A-15-617. Expenses of voluntary patients.

The expense for the care and treatment of voluntary patients shall be assessed to and paid in the same manner and to the same extent as is provided for involuntary patients under the provisions of Section 62A-15-607.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-618. Designated examiners -- Fees.

Designated examiners shall be allowed a reasonable fee by the county legislative body of the county in which the proposed patient resides or is found, unless they are otherwise paid.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-619. Liability of estate of person with a mental illness.

The provisions made in this part for the support of persons with a mental illness at public expense do not release the estates of those persons from liability for their care and treatment, and the division is authorized and empowered to collect from the estates of those persons any sums paid by the state in their behalf.

Amended by Chapter 366, 2011 General Session

62A-15-620. Attempt to commit person contrary to requirements -- Penalty.

Any person who attempts to place another person in the custody of a local mental health authority contrary to the provisions of this part is guilty of a class B misdemeanor, in addition to liability in an action for damages, or subject to other criminal charges.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-621. Trespass -- Disturbance -- Penalty.

Any person who, without permission, enters any of the buildings or enclosures appropriated to the use of patients, or makes any attempt to do so, or enters anywhere upon the premises belonging to or used by the division, a local mental health authority, or the state hospital and commits, or attempts to commit, any trespass or depredation thereon, or any person who, either from within or without the enclosures, willfully annoys or disturbs the peace or quiet of the premises or of any patient therein, is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-622. Abduction of patient -- Penalty.

Any person who abducts a patient who is in the custody of a local mental health authority, or induces any patient to elope or escape from that custody, or attempts to do so, or aids or assists therein, is guilty of a class B misdemeanor, in addition to liability for damages, or subject to other criminal charges.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-623. Criminal's escape -- Penalty.

Any person committed to the state hospital under the provisions of Title 77, Chapter 15, Inquiry into Sanity of Defendant, or Chapter 16, Mental Examination after Conviction, who escapes or leaves the state hospital without proper legal authority is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-624. Violations of this part -- Penalty.

Any person who willfully and knowingly violates any provision of this part, except where another penalty is provided by law, is guilty of a class C misdemeanor.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-625. Voluntary admission of adults.

(1) A local mental health authority or its designee may admit to that authority, for observation, diagnosis, care, and treatment any individual who is mentally ill or has symptoms of mental illness and who, being 18 years of age or older, applies for voluntary admission.

(2) (a) No adult may be committed or continue to be committed to a local mental health authority against his will except as provided in this chapter.

(b) A person under 18 years of age may be committed to the physical custody of a local mental health authority only after a court commitment proceeding in accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(3) An adult may be voluntarily admitted to a local mental health authority for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of Subsection 77-18-1(13) have been met.

Amended by Chapter 195, 2003 General Session

62A-15-626. Release from commitment.

(1) A local mental health authority or its designee shall release from commitment any person who, in the opinion of the local mental health authority or its designee, has recovered or no longer meets the criteria specified in Section 62A-15-631.

(2) A local mental health authority or its designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by Section 78A-6-120, but an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be provided.

(3) When a patient has been committed to a local mental health authority by judicial process, the local mental health authority shall follow the procedures described in Sections 62A-15-636 and 62A-15-637.

Amended by Chapter 3, 2008 General Session

62A-15-627. Release of voluntary patient -- Exceptions.

A voluntary patient who requests release, or whose release is requested in writing by his legal guardian, parent, spouse, or adult next of kin, shall be immediately released except that:

(1) if the patient was voluntarily admitted on his own application, and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient; and

(2) if a local mental health authority, or its designee is of the opinion that release of a patient would be unsafe for that patient or others, release of that patient may be postponed for up to 48 hours, excluding weekends and holidays, provided that the local mental health authority, or its designee, shall cause to be instituted involuntary commitment proceedings with the district court within the specified time period, unless cause no longer exists for instituting those proceedings. Written notice of that postponement with the reasons, shall be given to the patient without undue delay. No judicial proceedings may be commenced with respect to a voluntary patient unless he has requested release.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-628. Involuntary commitment -- Procedures.

(1) An adult may not be involuntarily committed to the custody of a local mental health authority except under the following provisions:

(a) emergency procedures for temporary commitment upon medical or designated examiner certification, as provided in Subsection 62A-15-629(1);

(b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection 62A-15-629(2); or

(c) commitment on court order, as provided in Section 62A-15-631.

(2) A person under 18 years of age may be committed to the physical custody of a local mental health authority only after a court commitment proceeding in accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

Amended by Chapter 195, 2003 General Session

62A-15-629. Temporary commitment -- Requirements and procedures.

(1) (a) An adult may be temporarily, involuntarily committed to a local mental health authority upon:

(i) written application by a responsible person who has reason to know, stating a belief that the individual is likely to cause serious injury to self or others if not immediately restrained, and stating the personal knowledge of the individual's condition or circumstances which lead to that belief; and

(ii) a certification by a licensed physician or designated examiner stating that the physician or designated examiner has examined the individual within a three-day period immediately preceding that certification, and that the physician or designated examiner is of the opinion that the individual has a mental illness and, because of the individual's mental illness, is likely to injure self or others if not immediately restrained.

(b) Application and certification as described in Subsection (1)(a) authorizes any peace officer to take the individual into the custody of a local mental health authority and transport the individual to that authority's designated facility.

(2) If a duly authorized peace officer observes a person involved in conduct that gives the officer probable cause to believe that the person has a mental illness, as

defined in Section 62A-15-602, and because of that apparent mental illness and conduct, there is a substantial likelihood of serious harm to that person or others, pending proceedings for examination and certification under this part, the officer may take that person into protective custody. The peace officer shall transport the person to be transported to the designated facility of the appropriate local mental health authority pursuant to this section, either on the basis of the peace officer's own observation or on the basis of a mental health officer's observation that has been reported to the peace officer by that mental health officer. Immediately thereafter, the officer shall place the person in the custody of the local mental health authority and make application for commitment of that person to the local mental health authority. The application shall be on a prescribed form and shall include the following:

(a) a statement by the officer that the officer believes, on the basis of personal observation or on the basis of a mental health officer's observation reported to the officer by the mental health officer, that the person is, as a result of a mental illness, a substantial and immediate danger to self or others;

(b) the specific nature of the danger;

(c) a summary of the observations upon which the statement of danger is based; and

(d) a statement of facts which called the person to the attention of the officer.

(3) A person committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the person shall be released unless application for involuntary commitment has been commenced pursuant to Section 62A-15-631. If that application has been made, an order of detention may be entered under Subsection 62A-15-631(3). If no order of detention is issued, the patient shall be released unless he has made voluntary application for admission.

(4) Transportation of persons with a mental illness pursuant to Subsections (1) and (2) shall be conducted by the appropriate municipal, or city or town, law enforcement authority or, under the appropriate law enforcement's authority, by ambulance to the extent that Subsection (5) applies. However, if the designated facility is outside of that authority's jurisdiction, the appropriate county sheriff shall transport the person or cause the person to be transported by ambulance to the extent that Subsection (5) applies.

(5) Notwithstanding Subsections (2) and (4), a peace officer shall cause a person to be transported by ambulance if the person meets any of the criteria in Section 26-8a-305. In addition, if the person requires physical medical attention, the peace officer shall direct that transportation be to an appropriate medical facility for treatment.

Amended by Chapter 366, 2011 General Session

62A-15-630. Mental health commissioners.

The court may appoint a mental health commissioner to assist in conducting commitment proceedings in accordance with Section 78A-5-107.

Amended by Chapter 3, 2008 General Session

62A-15-631. Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs.

(1) Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition or circumstances of the proposed patient which lead to the belief that the individual has a mental illness and should be involuntarily committed. The application shall include:

(a) unless the court finds that the information is not reasonably available, the individual's:

(i) name;

(ii) date of birth; and

(iii) Social Security number; and

(b) either:

(i) a certificate of a licensed physician or a designated examiner stating that within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual, and that the physician or designated examiner is of the opinion that the individual is mentally ill and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the individual has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;

(B) is sworn to under oath; and

(C) states the facts upon which the application is based.

(2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

(b) The consultation described in Subsection (2)(a):

(i) may take place at or before the hearing; and

(ii) is required if the local mental health authority appears at the hearing.

(3) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness that poses a substantial danger, as defined in Section 62A-15-602, to self or others requiring involuntary commitment pending examination and hearing; or, if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section 62A-15-634 to be detained for the purpose of examination. Within 24 hours of the issuance of the order for examination, a local mental health authority or its

designee shall report to the court, orally or in writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient has agreed to become a voluntary patient under Section 62A-15-625, and whether treatment programs are available and acceptable without court proceedings. Based on that information, the court may, without taking any further action, terminate the proceedings and dismiss the application. In any event, if the examiner reports orally, the examiner shall immediately send the report in writing to the clerk of the court.

(4) Notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall be provided by the court to a proposed patient before, or upon, placement in the custody of a local mental health authority or, with respect to any individual presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court. A copy of that order of detention shall be maintained at the place of detention.

(5) Notice of commencement of those proceedings shall be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.

(6) Proceedings for commitment of an individual under the age of 18 years to the division may be commenced by filing a written application with the juvenile court in accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(7) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.

(8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority under court order for detention or examination, the court shall appoint two designated examiners to examine the proposed patient. If requested by the proposed patient's counsel, the court shall appoint, as one of the examiners, a reasonably available qualified person designated by counsel. The examinations, to be conducted separately, shall be held at the home of the proposed patient, a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the patient's health.

(b) The examiner shall inform the patient if not represented by an attorney that, if desired, the patient does not have to say anything, the nature and reasons for the examination, that it was ordered by the court, that any information volunteered could form part of the basis for the patient's involuntary commitment, and that findings resulting from the examination will be made available to the court.

(c) A time shall be set for a hearing to be held within 10 calendar days of the

appointment of the designated examiners, unless those examiners or a local mental health authority or its designee informs the court prior to that hearing date that the patient is not mentally ill, that the patient has agreed to become a voluntary patient under Section 62A-15-625, or that treatment programs are available and acceptable without court proceedings, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application.

(9) (a) Before the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the patient before the hearing. In the case of an indigent patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the patient resides or was found.

(b) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.

(c) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.

(d) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.

(e) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.

(f) (i) A local mental health authority or its designee, or the physician in charge of the patient's care shall, at the time of the hearing, provide the court with the following information:

(A) the detention order;

(B) admission notes;

(C) the diagnosis;

(D) any doctors' orders;

(E) progress notes;

(F) nursing notes; and

(G) medication records pertaining to the current commitment.

(ii) That information shall also be supplied to the patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

(10) The court shall order commitment of an individual who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection (9)(e), the court finds by clear and convincing evidence that:

(a) the proposed patient has a mental illness;

(b) because of the proposed patient's mental illness the proposed patient poses

a substantial danger, as defined in Section 62A-15-602, to self or others, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;

(c) the patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;

(d) there is no appropriate less-restrictive alternative to a court order of commitment; and

(e) the local mental health authority can provide the individual with treatment that is adequate and appropriate to the individual's conditions and needs. In the absence of the required findings of the court after the hearing, the court shall forthwith dismiss the proceedings.

(11) (a) The order of commitment shall designate the period for which the individual shall be treated. When the individual is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Subsection (10) will last for an indeterminate period.

(b) The court shall maintain a current list of all patients under its order of commitment. That list shall be reviewed to determine those patients who have been under an order of commitment for the designated period. At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee. The local mental health authority or its designee shall immediately reexamine the reasons upon which the order of commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, it shall discharge the patient from involuntary commitment and immediately report that to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(c) The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period, shall at six-month intervals reexamine the reasons upon which the order of indeterminate commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

(12) In the event that the designated examiners are unable, because a proposed patient refuses to submit to an examination, to complete that examination on the first attempt, the court shall fix a reasonable compensation to be paid to those designated examiners for their services.

(13) Any person committed as a result of an original hearing or a person's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days of the entry of the court order. The petition must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.

(14) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

Amended by Chapter 29, 2013 General Session
Amended by Chapter 312, 2013 General Session

62A-15-632. Circumstances under which conditions justifying initial involuntary commitment shall be considered to continue to exist.

(1) After a person has been involuntarily committed to the custody of a local mental health authority under Subsection 62A-15-631(10), the conditions justifying commitment under that subsection shall be considered to continue to exist, for purposes of continued treatment under Subsection 62A-15-631(11) or conditional release under Section 62A-15-637, if the court finds that the patient is still mentally ill, and that absent an order of involuntary commitment and without continued treatment the patient will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in the patient's ability to function in the least restrictive environment, thereby making the patient a substantial danger to self or others.

(2) A patient whose treatment is continued or who is conditionally released under the terms of this section, shall be maintained in the least restrictive environment available that can provide the patient with the treatment that is adequate and appropriate.

Amended by Chapter 366, 2011 General Session

62A-15-633. Persons eligible for care or treatment by federal agency -- Continuing jurisdiction of state courts.

(1) If an individual committed pursuant to Section 62A-15-631 is eligible for care or treatment by any agency of the United States, the court, upon receipt of a certificate from a United States agency, showing that facilities are available and that the individual is eligible for care or treatment therein, may order the individual to be placed in the custody of that agency for care.

(2) When admitted to any facility or institution operated by a United States

agency, within or without this state, the individual shall be subject to the rules and regulations of that agency.

(3) The chief officer of any facility or institution operated by a United States agency and in which the individual is hospitalized, shall, with respect to that individual, be vested with the same powers as the superintendent or director of a mental health facility, regarding detention, custody, transfer, conditional release, or discharge of patients. Jurisdiction is retained in appropriate courts of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-634. Detention pending placement in custody.

Pending commitment to a local mental health authority, a patient taken into custody or ordered to be committed pursuant to this part may be detained in the patient's home, a licensed foster home, or any other suitable facility under reasonable conditions prescribed by the local mental health authority. Except in an extreme emergency, the patient may not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of criminal offenses. The local mental health authority shall take reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-635. Notice of commitment.

Whenever a patient has been temporarily, involuntarily committed to a local mental health authority pursuant to Section 62A-15-629 on the application of any person other than his legal guardian, spouse, or next of kin, the local mental health authority or its designee shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-636. Periodic review -- Discharge.

Each local mental health authority or its designee shall, as frequently as practicable, examine or cause to be examined every person who has been committed to it. Whenever the local mental health authority or its designee determines that the conditions justifying involuntary commitment no longer exist, it shall discharge the patient. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-637. Release of patient to receive other treatment -- Placement in more restrictive environment -- Procedures.

(1) A local mental health authority or its designee may release an improved patient to less restrictive treatment as it may specify, and when agreed to in writing by the patient. Whenever a local mental health authority or its designee determines that the conditions justifying commitment no longer exist, the patient shall be discharged. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held.

(2) (a) A local mental health authority or its designee is authorized to issue an order for the immediate placement of a patient not previously released from an order of commitment into a more restrictive environment, if the local mental health authority or its designee has reason to believe that the less restrictive environment in which the patient has been placed is aggravating the patient's mental illness as defined in Subsection 62A-15-631(10), or that the patient has failed to comply with the specified treatment plan to which he had agreed in writing.

(b) That order shall include the reasons therefor and shall authorize any peace officer to take the patient into physical custody and transport him to a facility designated by the division. Prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued release from inpatient care, copies of the order shall be personally delivered to the patient and sent to the person in whose care the patient is placed. The order shall also be sent to the patient's counsel of record and to the court that entered the original order of commitment. The order shall inform the patient of the right to a hearing, as prescribed in this section, the right to appointed counsel, and the other procedures prescribed in Subsection 62A-15-631(9).

(c) If the patient has been in the less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or his representative may request a hearing within 30 days of the change. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed pursuant to Section 62A-15-631, with the exception of Subsection 62A-15-631(10), unless, by the time set for the hearing, the patient has again been placed in the less restrictive environment, or the patient has in writing withdrawn his request for a hearing.

(3) The court shall find that either:

(a) the less restrictive environment in which the patient has been placed is aggravating the patient's dangerousness or mental illness as defined in Subsection 62A-15-631(10), or the patient has failed to comply with a specified treatment plan to which he had agreed in writing; or

(b) the less restrictive environment in which the patient has been placed is not aggravating the patient's mental illness or dangerousness, and the patient has not failed to comply with any specified treatment plan to which he had agreed in writing, in which event the order shall designate that the individual shall be placed and treated in a less restrictive environment appropriate for his needs.

(4) The order shall also designate the period for which the individual shall be treated, in no event to extend beyond expiration of the original order of commitment.

(5) Nothing contained in this section prevents a local mental health authority or its designee, pursuant to Section 62A-15-636, from discharging a patient from commitment or from placing a patient in an environment that is less restrictive than that ordered by the court.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-638. Reexamination of court order for commitment -- Procedures -- Costs.

(1) Any patient committed pursuant to Section 62A-15-631 is entitled to a reexamination of the order for commitment on the patient's own petition, or on that of the legal guardian, parent, spouse, relative, or friend, to the district court of the county in which the patient resides or is detained.

(2) Upon receipt of the petition, the court shall conduct or cause to be conducted by a mental health commissioner proceedings in accordance with Section 62A-15-631, except that those proceedings shall not be required to be conducted if the petition is filed sooner than six months after the issuance of the order of commitment or the filing of a previous petition under this section, provided that the court may hold a hearing within a shorter period of time if good cause appears. The costs of proceedings for such judicial determination shall be paid by the county in which the patient resided or was found prior to commitment, upon certification, by the clerk of the district court in the county where the proceedings are held, to the county legislative body that those proceedings were held and the costs incurred.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-639. Standards for care and treatment.

Every patient is entitled to humane care and treatment and to medical care and treatment in accordance with the prevailing standards accepted in medical practice, psychiatric nursing practice, social work practice, and the practice of clinical psychology.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-640. Mechanical restraints and medication -- Clinical record.

(1) Mechanical restraints may not be applied to a patient unless it is determined by the director or his designee to be required by the needs of the patient. Every use of a mechanical restraint and the reasons therefor shall be made a part of the patient's clinical record, under the signature of the director or his designee, and shall be reviewed regularly.

(2) In no event shall medication be prescribed for a patient unless it is determined by a physician to be required by the patient's medical needs. Every use of a medication and the reasons therefor shall be made a part of the patient's clinical record.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-641. Restrictions and limitations -- Civil rights and privileges.

(1) Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to:

(a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside the facility;

(b) receive visitors; and

(c) exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity.

(2) When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division or to the appropriate local mental health authority.

(3) Notwithstanding any limitations authorized under this section on the right of communication, each patient is entitled to communicate by sealed mail with the appropriate local mental health authority, the division, his attorney, and the court, if any, that ordered his commitment. In no case may the patient be denied a visit with the legal counsel or clergy of the patient's choice.

(4) Local mental health authorities shall provide reasonable means and arrangements for informing involuntary patients of their right to release as provided in this chapter, and for assisting them in making and presenting requests for release.

(5) Mental health facilities shall post a statement, promulgated by the division, describing patient's rights under Utah law.

(6) Notwithstanding Section 53B-17-303, any person committed under this chapter has the right to determine the final disposition of his body after death.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-642. Habeas corpus.

Any individual detained pursuant to this part is entitled to the writ of habeas corpus upon proper petition by himself or a friend, to the district court in the county in which he is detained.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-643. Confidentiality of information and records -- Exceptions -- Penalty.

(1) All certificates, applications, records, and reports made for the purpose of this part, including those made on judicial proceedings for involuntary commitment, that directly or indirectly identify a patient or former patient or an individual whose

commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person except insofar as:

(a) the individual identified or his legal guardian, if any, or, if a minor, his parent or legal guardian shall consent;

(b) disclosure may be necessary to carry out the provisions of:

(i) this part; or

(ii) Section 53-10-208.1; or

(c) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it, and that failure to make the disclosure would be contrary to the public interest.

(2) A person who knowingly or intentionally discloses any information not authorized by this section is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-644. Additional powers of director -- Reports and records of division.

(1) In addition to specific authority granted by other provisions of this part, the director has authority to prescribe the form of applications, records, reports, and medical certificates provided for under this part, and the information required to be contained therein, and to adopt rules that are not inconsistent with the provisions of this part that the director finds to be reasonably necessary for the proper and efficient commitment of persons with a mental illness.

(2) The division shall require reports relating to the admission, examination, diagnosis, release, or discharge of any patient and investigate complaints made by any patient or by any person on behalf of a patient.

(3) A local mental health authority shall keep a record of the names and current status of all persons involuntarily committed to it under this chapter.

Amended by Chapter 366, 2011 General Session

62A-15-645. Retrospective effect of provisions.

Patients who were in a mental health facility on May 8, 1951, shall be deemed to have been admitted under the provisions of this part appropriate in each instance, and their care, custody, and rights shall be governed by this part.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-646. Commitment and care of criminally insane.

Nothing contained in this part may be construed to alter or change the method presently employed for the commitment and care of the criminally insane as provided in Title 77, Chapter 15, Inquiry into Sanity of Defendant.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-647. Severability.

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this part, or the application thereof to any person or circumstance, is found to be unconstitutional the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding that unconstitutionality. The Legislature hereby declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-701. Definitions.

As used in this part:

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

(2) "Commit" and "commitment" mean the transfer of physical custody in accordance with the requirements of this part.

(3) "Legal custody" means:

(a) the right to determine where and with whom the child shall live;

(b) the right to participate in all treatment decisions and to consent or withhold consent for treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery; and

(c) the right to authorize surgery or other extraordinary medical care.

(4) "Physical custody" means:

(a) placement of a child in any residential or inpatient setting;

(b) the right to physical custody of a child;

(c) the right and duty to protect the child; and

(d) the duty to provide, or insure that the child is provided with, adequate food, clothing, shelter, and ordinary medical care.

(5) "Residential" means any out-of-home placement made by a local mental health authority, but does not include out-of-home respite care.

(6) "Respite care" means temporary, periodic relief provided to parents or guardians from the daily care of children with serious emotional disorders for the limited time periods designated by the division.

Amended by Chapter 195, 2003 General Session

62A-15-702. Treatment and commitment of minors in the public mental health system.

A child is entitled to due process proceedings, in accordance with the requirements of this part, whenever the child:

(1) may receive or receives services through the public mental health system and is placed, by a local mental health authority, in a physical setting where his liberty interests are restricted, including residential and inpatient placements; or

(2) receives treatment in which a constitutionally protected privacy or liberty interest may be affected, including the administration of antipsychotic medication, electroshock therapy, and psychosurgery.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

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 Subsection 62A-15-602(3); and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by the fact finder that the following circumstances clearly exist, he 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 Subsection 62A-15-602(8);

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from care and treatment by the local mental health authority; and

(e) there is no appropriate less-restrictive alternative.

(5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible, and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the person who submitted the petition for commitment, and a representative of the appropriate local mental health authority shall all receive informal notice of the date and time of the proceeding. Those parties shall also be afforded an opportunity to appear and to address the petition for commitment.

(c) The neutral and detached fact finder may, in his discretion, receive the testimony of any other person.

(d) The fact finder may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of

the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) When a decision for commitment is made, the neutral and detached fact finder shall inform the child and his parent or legal guardian of that decision, and of the reasons for ordering commitment at the conclusion of the hearing, and also in writing.

(iii) The neutral and detached fact finder shall state in writing the basis of his decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) Absent the procedures and findings required by this section, a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-15-629(1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been 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 that of his 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, his 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 his 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 his 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 his mental illness, or increasing the risk of harm to himself 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 him 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, his parent or legal guardian, the administrator of the more restrictive environment, or his 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 his 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 his mental illness, or increasing the risk of harm to himself or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating his mental illness, or increasing the risk of harm to himself 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. 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 pursuant to this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment which 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.

Amended by Chapter 3, 2008 General Session

62A-15-704. Invasive treatment -- Due process proceedings.

(1) For purposes of this section, "invasive treatment" means treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery.

(2) The requirements of this section apply to all children receiving services or treatment from a local mental health authority, its designee, or its provider regardless of whether a local mental health authority has physical custody of the child or the child is receiving outpatient treatment from the local authority, its designee, or provider.

(3) (a) The division shall promulgate rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing due process procedures for children prior to any invasive treatment as follows:

(i) with regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held in compliance with the procedures established under this Subsection (3);

(ii) with regard to psychosurgery and electroshock therapy, a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3), regardless of whether the parent or child agree or disagree with the treatment; and

(iii) other possible invasive treatments may be conducted unless either the parent or child disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3).

(b) In promulgating the rules required by Subsection (3)(a), the division shall consider the advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact finder, and other methods of providing due process for the purposes of this section. The division shall also establish the criteria and basis for determining when invasive treatment should be administered.

Amended by Chapter 382, 2008 General Session

62A-15-705. Commitment proceedings in juvenile court -- Criteria -- Custody.

(1) (a) Subject to Subsection (1)(b), commitment proceedings for a child may be commenced by filing a written application with the juvenile court of the county in which the child resides or is found, in accordance with the procedures described in Section 62A-15-631.

(b) Commitment proceedings under this section may be commenced only after a commitment proceeding under Section 62A-15-703 has concluded without the child being committed.

(2) The juvenile court shall order commitment to the physical custody of a local mental health authority if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that:

(a) the child has a mental illness, as defined in Subsection 62A-15-602(8);

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from the proposed care and treatment; and

(e) there is no appropriate less restrictive alternative.

(3) The local mental health authority has an affirmative duty to conduct periodic reviews of children committed to its custody pursuant to this section, and to release any child who has sufficiently improved so that the local mental health authority or its designee determines that commitment is no longer appropriate.

Amended by Chapter 195, 2003 General Session

62A-15-706. Parent advocate.

The division shall establish the position of a parent advocate to assist parents of children with a mental illness who are subject to the procedures required by this part.

Amended by Chapter 366, 2011 General Session

62A-15-707. Confidentiality of information and records -- Exceptions -- Penalty.

(1) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access Management Act, all certificates, applications, records, and reports made for the purpose of this part that directly or indirectly identify a patient or former patient or an individual whose commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person except as follows:

(a) the individual identified consents after reaching 18 years of age;

(b) the child's parent or legal guardian consents;

(c) disclosure is necessary to carry out any of the provisions of this part; or

(d) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it, and that failure to make the disclosure would be

contrary to the public interest.

(2) A person who violates any provision of this section is guilty of a class B misdemeanor.

Amended by Chapter 382, 2008 General Session

62A-15-708. Mechanical restraints -- Clinical record.

Mechanical restraints may not be applied to a child unless it is determined, by the local mental health authority or its designee in conjunction with the child's current treating mental health professional, that they are required by the needs of that child. Every use of a mechanical restraint and the reasons for that use shall be made a part of the child's clinical record, under the signature of the local mental health authority, its designee, and the child's current treating mental health professional.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-709. Habeas corpus.

Any child committed in accordance with Section 62A-15-703 is entitled to a writ of habeas corpus upon proper petition by himself or next of friend to the district court in the district in which he is detained.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-710. Restrictions and limitations -- Civil rights and privileges.

(1) Subject to the specific rules of the division, and except to the extent that the local mental health authority or its designee, in conjunction with the child's current treating mental health professional, determines that it is necessary for the welfare of the person to impose restrictions, every child committed to the physical custody of a local mental health authority under Section 62A-15-703 is entitled to:

(a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside of the facility;

(b) receive visitors; and

(c) exercise his civil rights.

(2) When any right of a child is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the child's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division.

(3) Notwithstanding any limitations authorized under this section on the right of communication, each child committed to the physical custody of a local mental health authority is entitled to communicate by sealed mail with his attorney, the local mental health authority, its designee, his current treating mental health professional, and the court, if commitment was court ordered. In no case may the child be denied a visit with the legal counsel or clergy of his choice.

(4) Each local mental health authority shall provide appropriate and reasonable

means and arrangements for informing children and their parents or legal guardians of their rights as provided in this part, and for assisting them in making and presenting requests for release.

(5) All local mental health facilities shall post a statement, promulgated by the division, describing patient's rights under Utah law.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-711. Standards for care and treatment.

Every child is entitled to humane care and treatment and to medical care and treatment in accordance with the prevailing standards accepted in medical practice, psychiatric nursing practice, social work practice, and the practice of clinical psychology.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-712. Responsibilities of the Division of Substance Abuse and Mental Health.

(1) The division shall ensure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.

(2) Because the division must, under Section 62A-15-103, contract with, review, approve, and oversee local mental health authority plans, and withhold funds from local mental health authorities and public and private providers for contract noncompliance or misuse of public funds, the division shall:

(a) require each local mental health authority to submit its plan to the division by May 1 of each year; and

(b) conduct an annual program audit and review of each local mental health authority in the state, and its contract provider.

(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether or not:

(a) public funds allocated to local mental health authorities are consistent with services rendered and outcomes reported by it or its contract provider; and

(b) each local mental health authority is exercising sufficient oversight and control over public funds allocated for mental health programs and services.

(4) The Legislature may refuse to appropriate funds to the division if the division fails to comply with the procedures and requirements of this section.

Amended by Chapter 167, 2013 General Session

62A-15-713. Contracts with local mental health authorities -- Provisions.

When the division contracts with a local mental health authority to provide mental health programs and services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 3, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

(1) that an independent auditor shall conduct any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(2) in addition to the requirements described in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, the division:

(a) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers, directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and

(b) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local mental health authority or contract provider at issue;

(3) the local mental health authority or its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;

(4) each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;

(5) requested information and outcome data will be provided to the division in the manner and within the timelines defined by the division;

(6) all audit reports by state or county persons or entities concerning the local mental health authority or its contract provider shall be provided to the executive director of the department, the local mental health authority, and members of the contract provider's governing board; and

(7) the local mental health authority or its contract provider will offer and provide mental health services to residents who are indigent and who meet state criteria for serious and persistent mental illness or severe emotional disturbance.

Amended by Chapter 71, 2005 General Session

62A-15-801. Interstate compact on mental health -- Compact provisions.

The Interstate Compact on Mental Health is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

Article I

The proper and expeditious treatment of the mentally ill can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability of furnishing that care and treatment bears no primary relation to the residence or citizenship of the patient but that the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them.

Consequently, it is the purpose of this compact and of the party states to provide the necessary legal and constitutional basis for commitment or other appropriate care and treatment of the mentally ill under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states.

The appropriate authority in this state for making determinations under this compact is the director of the division or his designee.

Article II

As used in this compact:

(1) "After-care" means care, treatment, and services provided to a patient on convalescent status or conditional release.

(2) "Institution" means any hospital, program, or facility maintained by a party state or political subdivision for the care and treatment of persons with a mental illness.

(3) "Mental illness" means a psychiatric disorder as defined by the current Diagnostic and Statistical Manual of Mental Disorders, that substantially impairs a person's mental, emotional, behavioral, or related functioning to such an extent that he requires care and treatment for his own welfare, the welfare of others, or the community.

(4) "Patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact and constitutional due process requirements.

(5) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be sent.

(6) "Sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be sent.

(7) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state is in need of institutionalization because of mental illness, he shall be eligible for care and treatment in an institution in that state, regardless of his residence, settlement, or citizenship qualifications.

(2) Notwithstanding the provisions of Subsection (1) of this article, any patient may be transferred to an institution in another state whenever there are factors, based upon clinical determinations, indicating that the care and treatment of that patient would be facilitated or improved by that action. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors to be considered include the patient's full record with due regard for the location of the patient's family, the character of his illness and its probable duration, and other factors considered appropriate by authorities in the party state and the director of the division, or his designee.

(3) No state is obliged to receive any patient pursuant to the provisions of Subsection (2) of this article unless the sending state has:

(a) given advance notice of its intent to send the patient;

(b) furnished all available medical and other pertinent records concerning the patient;

(c) given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient; and

(d) determined that the receiving state agrees to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and further transfer of the patient may be made as is deemed to be in the best interest of the patient, as determined by appropriate authorities in the receiving and sending states.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive after-care or supervision, that care or supervision may be provided in the receiving state. If the medical or other appropriate clinical authorities who have responsibility for the care and treatment of the patient in the sending state believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of providing the patient with after-care in the receiving state. That request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge the patient would be placed, the complete medical history of the patient, and other pertinent documents.

(2) If the medical or other appropriate clinical authorities who have responsibility for the care and treatment of the patient in the sending state, and the appropriate authorities in the receiving state find that the best interest of the patient would be served, and if the public safety would not be jeopardized, the patient may receive after-care or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment as for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities both within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of that patient, he shall be detained in the state where found, pending disposition in accordance with the laws of that state.

Article VI

Accredited officers of any party state, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII

(1) No person may be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state has the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs among themselves.

(3) No provision of this compact may be construed to alter or affect any internal relationships among the departments, agencies, and officers of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities.

(4) Nothing in this compact may be construed to prevent any party state or any of its subdivisions from asserting any right against any person, agency, or other entity with regard to costs for which that party state or its subdivision may be responsible under this compact.

(5) Nothing in this compact may be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill, or any statutory authority under which those agreements are made.

Article VIII

(1) Nothing in this compact may be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or with respect to any patient for whom he serves, except that when the transfer of a patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, a court of competent jurisdiction in the receiving state may make supplemental or substitute appointments. In that case, the court that appointed the previous guardian shall, upon being advised of the new appointment and upon the satisfactory completion of accounting and other acts as the court may require, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances.

However, in the case of any patient having settlement in the sending state, a court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or to continue his power and responsibility, as it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in Subsection (1) of this article includes any guardian, trustee, legal committee, conservator, or other person or agency however denominated, who is charged by law with power to act for the person or property of a patient.

Article IX

(1) No provision of this compact except Article V applies to any person institutionalized while under sentence in a penal or correctional institution, while subject to trial on a criminal charge, or whose institutionalization is due to the

commission of an offense for which, in the absence of mental illness, he would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible, it shall be the policy of party states that no patient be placed or detained in any prison, jail, or lockup, but shall, with all expedition, be taken to a suitable institutional facility for mental illness.

Article X

(1) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state, either in the capacity of sending or receiving state. The compact administrator, or his designee, shall deal with all matters relating to the compact and patients processed under the compact. In this state the director of the division, or his designee shall act as the "compact administrator."

(2) The compact administrators of the respective party states have power to promulgate reasonable rules and regulations as are necessary to carry out the terms and provisions of this compact. In this state, the division has authority to establish those rules in accordance with the Utah Administrative Rulemaking Act.

(3) The compact administrator shall cooperate with all governmental departments, agencies, and officers in this state and its subdivisions in facilitating the proper administration of the compact and any supplementary agreement or agreements entered into by this state under the compact.

(4) The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of this compact. In the event that supplementary agreements require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, that agreement shall have no force unless approved by the director of the department or agency under whose jurisdiction the institution or facility is operated, or whose department or agency will be charged with the rendering of services.

(5) The compact administrator may make or arrange for any payments necessary to discharge financial obligations imposed upon this state by the compact or by any supplementary agreement entered into under the compact.

Article XI

Administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility, or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that those agreements will improve services, facilities, or institutional care and treatment of persons who are mentally ill. A supplementary agreement may not be construed to relieve a party state of any obligation that it otherwise would have under other provisions of this compact.

Article XII

This compact has full force and effect in any state when it is enacted into law in that state. Thereafter, that state is a party to the compact with any and all states that have legally joined.

Article XIII

A party state may withdraw from the compact by enacting a statute repealing the compact. Withdrawal takes effect one year after notice has been communicated officially and in writing to the compact administrators of all other party states. However, the withdrawal of a state does not change the status of any patient who has been sent to that state or sent out of that state pursuant to the compact.

Article XIV

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence or provision is declared to be contrary to the constitution of the United States or the applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected thereby. If this compact is held to be contrary to the constitution of any party state the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-802. Requirement of conformity with this chapter.

All actions and proceedings taken under authority of this compact shall be in accordance with the procedures and constitutional requirements described in Part 6 of this chapter.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-901. Establishment.

The Utah Forensic Mental Health Facility is hereby established and shall be located on state land on the campus of the Utah State Hospital in Provo, Utah County.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-902. Design and operation -- Security.

(1) The forensic mental health facility is a secure treatment facility.

(2) (a) The forensic mental health facility accommodates the following populations:

(i) prison inmates displaying mental illness, as defined in Section 62A-15-602, necessitating treatment in a secure mental health facility;

(ii) criminally adjudicated persons found guilty with a mental illness or guilty with a mental illness at the time of the offense undergoing evaluation for mental illness under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;

(iii) criminally adjudicated persons undergoing evaluation for competency or found guilty with a mental illness or guilty with a mental illness at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, who also have an intellectual disability;

(iv) persons undergoing evaluation for competency or found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

(v) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or the superintendent's designee; and

(vi) persons ordered to commit themselves to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

(b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's status as established by the court at the time of adjudication.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for the allocation of beds to the categories described in Subsection (2)(a).

(3) The department shall:

(a) own and operate the forensic mental health facility;

(b) provide and supervise administrative and clinical staff; and

(c) provide security staff who are trained as psychiatric technicians.

(4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate individuals to perform security functions for the state hospital.

Amended by Chapter 366, 2011 General Session

62A-15-1001. Definitions.

As used in this part:

(1) "Attending physician" means a physician licensed to practice medicine in this state who has primary responsibility for the care and treatment of the declarant.

(2) "Attorney-in-fact" means an adult properly appointed under this part to make mental health treatment decisions for a declarant under a declaration for mental health treatment.

(3) "Incapable" means that, in the opinion of the court in a guardianship proceeding under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

(4) "Mental health facility" means the same as that term is defined in Section 62A-15-602.

(5) "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, or admission to and retention in a facility for a period not to exceed 17 days.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-1002. Declaration for mental health treatment.

(1) An adult who is not incapable may make a declaration of preferences or instructions regarding his mental health treatment. The declaration may include, but is not limited to, consent to or refusal of specified mental health treatment.

(2) A declaration for mental health treatment shall designate a capable adult to act as attorney-in-fact to make decisions about mental health treatment for the declarant. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the declarant only when the declarant is incapable. The decisions shall be consistent with any instructions or desires the declarant has expressed in the declaration.

(3) A declaration is effective only if it is signed by the declarant and two capable adult witnesses. The witnesses shall attest that the declarant is known to them, signed the declaration in their presence, appears to be of sound mind and is not under duress, fraud, or undue influence. Persons specified in Subsection 62A-15-1003(6) may not act as witnesses.

(4) A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment provider and remains valid until it expires or is revoked by the declarant. The physician or provider is authorized to act in accordance with an operative declaration when the declarant has been found to be incapable. The physician or provider shall continue to obtain the declarant's informed consent to all mental health treatment decisions if the declarant is capable of providing informed consent or refusal.

(5) (a) An attorney-in-fact does not have authority to make mental health treatment decisions unless the declarant is incapable.

(b) An attorney-in-fact is not, solely as a result of acting in that capacity, personally liable for the cost of treatment provided to the declarant.

(c) Except to the extent that a right is limited by a declaration or by any federal law, an attorney-in-fact has the same right as the declarant to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(d) In exercising authority under the declaration, the attorney-in-fact shall act consistently with the instructions and desires of the declarant, as expressed in the declaration. If the declarant's desires are unknown, the attorney-in-fact shall act in what he, in good faith, believes to be the best interest of the declarant.

(e) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health treatment.

(6) (a) A declaration for mental health treatment remains effective for a period of three years or until revoked by the declarant. If a declaration for mental health treatment has been invoked and is in effect at the expiration of three years after its

execution, the declaration remains effective until the declarant is no longer incapable.

(b) The authority of a named attorney-in-fact and any alternative attorney-in-fact continues in effect as long as the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.

(7) A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a facility.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-1003. Physician and provider responsibilities -- Provision of services contrary to declaration -- Revocation.

(1) Upon being presented with a declaration, a physician shall make the declaration a part of the declarant's medical record. When acting under authority of a declaration, a physician shall comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider shall promptly notify the declarant and the attorney-in-fact, and document the notification in the declarant's medical record.

(2) A physician or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's wishes, as expressed in a declaration for mental health treatment if:

(a) the declarant has been committed to the custody of a local mental health authority in accordance with Part 6; or

(b) in cases of emergency endangering life or health.

(3) A declaration does not limit any authority provided in Part 6 to take a person into custody, or admit or retain a person in the custody of a local mental health authority.

(4) A declaration may be revoked in whole or in part by the declarant at any time so long as the declarant is not incapable. That revocation is effective when the declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.

(5) A physician who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding that a declaration is invalid.

(6) None of the following persons may serve as an attorney-in-fact or as witnesses to the signing of a declaration:

(a) the declarant's attending physician or mental health treatment provider, or an employee of that physician or provider;

(b) an employee of the division; or

(c) an employee of a local mental health authority or any organization that contracts with a local mental health authority.

(7) An attorney-in-fact may withdraw by giving notice to the declarant. If a

declarant is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician shall note the withdrawal as part of the declarant's medical record.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-1004. Declaration for mental health treatment -- Form.

A declaration for mental health treatment shall be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment, to be followed if it is determined by a court or by two physicians that my ability to receive and evaluate information effectively or to communicate my decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, and admission to and retention in a mental health facility for a period up to 17 days.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

_____
_____
_____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

_____ I consent to the administration of the following medications:

_____
_____

in the dosages:

_____ considered appropriate by my attending physician.

_____ approved by _____

_____ as I hereby direct: _____

_____ I do not consent to the administration of the following medications:

_____
_____
_____
_____

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

_____ I consent to the administration of convulsive treatment of the following type:

_____, the number of treatments to be:

_____ determined by my attending physician.
_____ approved by _____ _____
_____ as follows: _____
_____ I do not consent to the administration of convulsive treatment.

My reasons for consenting to or refusing convulsive treatment are as follows;

_____
_____
_____
_____

ADMISSION TO AND RETENTION IN A MENTAL HEALTH FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility are as follows:

_____ I consent to being admitted to the following mental health facilities:

_____
_____

I may be retained in the facility for a period of time:

_____ determined by my attending physician.
_____ approved by _____ _____
_____ no longer than _____

This directive cannot, by law, provide consent to retain me in a facility for more than 17 days.

ADDITIONAL REFERENCES OR INSTRUCTIONS

_____
_____
_____
_____

ATTORNEY-IN-FACT

I hereby appoint:
NAME _____
ADDRESS _____
TELEPHONE # _____

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my alternative attorney-in-fact:

NAME _____
ADDRESS _____
TELEPHONE # _____

My attorney-in-fact is authorized to make decisions which are consistent with the wishes I have expressed in this declaration. If my wishes are not expressed, my attorney-in-fact is to act in good faith according to what he or she believes to be in my best interest.

_____

(Signature of Declarant/Date)

AFFIRMATION OF WITNESSES

We affirm that the declarant is personally known to us, that the declarant signed or acknowledged the declarant's signature on this declaration for mental health treatment in our presence, that the declarant appears to be of sound mind and does not appear to be under duress, fraud, or undue influence. Neither of us is the person appointed as attorney-in-fact by this document, the attending physician, an employee of the attending physician, an employee of the Division of Substance Abuse and Mental Health within the Department of Human Services, an employee of a local mental health authority, or an employee of any organization that contracts with a local mental health authority.

Witnessed By:

_____

_____

(Signature of Witness/Date) (Printed Name of Witness)

_____

_____

(Signature of Witness/Date) (Printed Name of Witness)

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the declarant. I understand that I have a duty to act consistently with the desires of the declarant as expressed in the declaration. I understand that this document gives me authority to make decisions about mental health treatment only while the declarant is incapable as determined by a court or two physicians. I understand that the declarant may revoke this appointment, or the declaration, in whole or in part, at any time and in any manner, when the declarant is not incapable.

_____

_____

(Signature of Attorney-in-fact/Date) (Printed name)

_____

_____

(Signature of Alternate Attorney-in-fact/Date) (Printed name)

NOTICE TO PERSON MAKING A
DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It is a declaration that allows, or disallows, mental health treatment. Before signing this document, you should know that:

(1) this document allows you to make decisions in advance about three types of mental health treatment: psychoactive medication, convulsive therapy, and short-term (up to 17 days) admission to a mental health facility;

(2) the instructions that you include in this declaration will be followed only if a court or two physicians believe that you are incapable of otherwise making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for treatment;

(3) you may also appoint a person as your attorney-in-fact to make these

treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, to make decisions in accordance with what that person believes, in good faith, to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your attorney-in-fact at any time;

(4) this document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable;

(5) you have the right to revoke this document in whole or in part, or the appointment of an attorney-in-fact, at any time you have not been determined to be incapable. YOU MAY NOT REVOKE THE DECLARATION OR APPOINTMENT WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT OR TWO PHYSICIANS. A revocation is effective when it is communicated to your attending physician or other provider; and

(6) if there is anything in this document that you do not understand, you should ask an attorney to explain it to you. This declaration is not valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-1101. Suicide prevention -- Reporting requirements.

(1) As used in the section:

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

(b) "Division" means the State Division of Substance Abuse and Mental Health.

(c) "Intervention" means an effort to prevent a person from attempting suicide.

(d) "Postvention" means mental health intervention after a suicide attempt or death to prevent or contain contagion.

(e) "State suicide prevention coordinator" means an individual designated by the division as described in Subsections (2) and (3).

(2) The division shall appoint a state suicide prevention coordinator.

(3) The state suicide prevention coordinator shall coordinate the suicide prevention program, including suicide prevention, intervention, and postvention programs, services, and efforts statewide, with at least the following:

(a) local mental health and substance abuse authorities;

(b) the State Board of Education, including the State Office of Education suicide prevention coordinator described in Section 53A-15-1301;

(c) the Department of Health;

(d) health care providers, including emergency rooms; and

(e) other public health suicide prevention efforts.

(4) The state suicide prevention coordinator shall report to the Legislature's Education Interim Committee, by the November 2014 meeting, jointly with the State Board of Education, on the coordination of suicide prevention programs and efforts with

the State Board of Education and the State Office of Education suicide prevention coordinator as described in Section 53A-15-1301.

(5) The state suicide prevention coordinator shall consult with the bureau to implement and manage the operation of a firearm safety program, as described in Subsection 53-10-202(18) and Section 53-10-202.1.

Amended by Chapter 226, 2014 General Session

62A-16-101. Title.

This chapter is known as the "Fatality Review Act."

Enacted by Chapter 239, 2010 General Session

62A-16-102. Definitions.

(1) "Committee" means a fatality review committee, formed under Section 62A-16-202 or 62A-16-203.

(2) "Qualified individual" means an individual who:

(a) at the time that the individual dies, is a resident of a facility or program that is owned or operated by the department or a division of the department;

(b) (i) is in the custody of the department or a division of the department; and

(ii) is placed in a residential placement by the department or a division of the department;

(c) at the time that the individual dies, has an open case for the receipt of child welfare services, including:

(i) an investigation for abuse, neglect, or dependency;

(ii) foster care;

(iii) in-home services; or

(iv) substitute care;

(d) had an open case for the receipt of child welfare services within one year immediately preceding the day on which the individual dies;

(e) was the subject of an accepted referral received by Adult Protective Services within one year immediately preceding the day on which the individual dies, if:

(i) the department or a division of the department is aware of the death; and

(ii) the death is reported as a homicide, suicide, or an undetermined cause;

(f) received services from, or under the direction of, the Division of Services for People with Disabilities within one year immediately preceding the day on which the individual dies, unless the individual:

(i) lived in the individual's home at the time of death; and

(ii) the director of the Office of Services Review determines that the death was not in any way related to services that were provided by, or under the direction of, the department or a division of the department;

(g) dies within 60 days after the day on which the individual is discharged from the Utah State Hospital, if the department is aware of the death; or

(h) is designated as a qualified individual by the executive director.

Enacted by Chapter 239, 2010 General Session

62A-16-201. Initial review.

(1) Within seven days after the day on which the department knows that a qualified individual has died, a person designated by the department shall:

(a) complete a deceased client report form, created by the department; and

(b) forward the completed client report form to the director of the office or division that has jurisdiction over the region or facility.

(2) The director of the office or division described in Subsection (1) shall, upon receipt of a deceased client report form, immediately provide a copy of the form to:

(a) the executive director; and

(b) the fatality review coordinator or the fatality review coordinator's designee.

(3) Within 10 days after the day on which the fatality review coordinator or the fatality review coordinator's designee receives a copy of the deceased client report form, the fatality review coordinator or the fatality review coordinator's designee shall request a copy of all relevant department case records regarding the individual who is the subject of the deceased client report form.

(4) Each person who receives a request for a record described in Subsection (3) shall provide a copy of the record to the fatality review coordinator or the fatality review coordinator's designee, by a secure method, within seven days after the day on which the request is made.

(5) Within 30 days after the day on which the fatality review coordinator or the fatality review coordinator's designee receives the case records requested under Subsection (3), the fatality review coordinator, or the fatality review coordinator's designee, shall:

(a) review the deceased client report form, the case files, and other relevant information received by the fatality review coordinator; and

(b) make a recommendation to the director of the Office of Services Review regarding whether a formal fatality review should be conducted.

(6) (a) In accordance with Subsection (6)(b), within seven days after the day on which the fatality review coordinator or the fatality review coordinator's designee makes the recommendation described in Subsection (5)(b), the director of the Office of Services Review or the director's designee shall determine whether to order that a formal fatality review be conducted.

(b) The director of the Office of Services Review or the director's designee shall order that a formal fatality review be conducted if:

(i) at the time of death, the qualified individual is:

(A) an individual described in Subsection 62A-16-102(2)(a) or (b), unless:

(I) the death is due to a natural cause; or

(II) the director of the Office of Services Review or the director's designee determines that the death was not in any way related to services that were provided by, or under the direction of, the department or a division of the department; or

(B) a child in foster care or substitute care, unless the death is due to:

(I) a natural cause; or

(II) an accident;

(ii) it appears, based on the information provided to the director of the Office of Services Review or the director's designee, that:

(A) a provision of law, rule, policy, or procedure relating to the deceased individual or the deceased individual's family may not have been complied with;

(B) the fatality was not responded to properly;

(C) a law, rule, policy, or procedure may need to be changed; or

(D) additional training is needed;

(iii) the death is caused by suicide; or

(iv) the director of the Office of Services Review or the director's designee determines that another reason exists to order that a formal fatality review be conducted.

Amended by Chapter 343, 2011 General Session

62A-16-202. Fatality Review Committee for a deceased individual who was not a resident of the Utah State Hospital or the Utah State Developmental Center.

(1) Except for a fatality review committee described in Section 62A-16-203, the fatality review coordinator shall organize a fatality review committee for each formal fatality review that is ordered to be conducted under Subsection 62A-16-201(6).

(2) Except as provided in Subsection (5), a committee described in Subsection (1):

(a) shall include the following members:

(i) the department's fatality review coordinator, who shall designate a member of the committee to serve as chair of the committee;

(ii) a member of the board, if there is a board, of the relevant division or office;

(iii) the attorney general or the attorney general's designee;

(iv) (A) a member of the management staff of the relevant division or office; or

(B) a person who is a supervisor, or a higher level position, from a region that did not have jurisdiction over the qualified individual; and

(v) a member of the department's risk management services; and

(b) may include the following members:

(i) a health care professional;

(ii) a law enforcement officer; or

(iii) a representative of the Office of Public Guardian.

(3) If a death that is subject to formal review involves a qualified individual described in Subsection 62A-16-102(2)(c) or (d), the committee may also include:

(a) a health care professional;

(b) a law enforcement officer;

(c) the director of the Office of Guardian ad Litem;

(d) an employee of the division who may be able to provide information or expertise that would be helpful to the formal review; or

(e) a professional whose knowledge or expertise may significantly contribute to the formal review.

(4) A committee described in Subsection (1) may also include a person whose knowledge or expertise may significantly contribute to the formal review.

(5) A committee described in this section may not include an individual who was involved in, or who supervises a person who was involved in, the fatality.

(6) Each member of a committee described in this section who is not an employee of the department shall sign a form, created by the department, indicating that the member agrees to:

(a) keep all information relating to a fatality review confidential; and

(b) not release any information relating to a fatality review, unless required or permitted by law to release the information.

Enacted by Chapter 239, 2010 General Session

62A-16-203. Fatality Review Committees for a deceased resident of the Utah State Hospital or the Utah State Developmental Center.

(1) If a qualified individual who is the subject of a formal fatality review that is ordered to be conducted under Subsection 62A-16-201(6) was a resident of the Utah State Hospital or the Utah State Developmental Center, the fatality review coordinator of that facility shall organize a fatality review committee to review the fatality.

(2) Except as provided in Subsection (4), a committee described in Subsection (1) shall include the following members:

(a) the fatality review coordinator for the facility, who shall serve as chair of the committee;

(b) a member of the management staff of the facility;

(c) a supervisor of a unit other than the one in which the qualified individual resided;

(d) a physician;

(e) a representative from the administration of the division that oversees the facility;

(f) the department's fatality review coordinator;

(g) a member of the department's risk management services; and

(h) a citizen who is not an employee of the department.

(3) A committee described in Subsection (1) may also include a person whose knowledge or expertise may significantly contribute to the formal review.

(4) A committee described in this section may not include an individual who:

(a) was involved in, or who supervises a person who was involved in, the fatality; or

(b) has a conflict with the fatality review.

Enacted by Chapter 239, 2010 General Session

62A-16-204. Fatality Review Committee Proceedings.

(1) A majority vote of committee members present constitutes the action of the committee.

(2) The department shall give the committee access to all reports, records, and other documents that are relevant to the fatality under investigation, including:

(a) narrative reports;

(b) case files;
(c) autopsy reports; and
(d) police reports, unless the report is protected from disclosure under Subsection 63G-2-305(10) or (11).
(3) The Utah State Hospital and the Utah State Developmental Center shall provide protected health information to the committee if requested by a fatality review coordinator.
(4) A committee shall convene its first meeting within 14 days after the day on which a formal fatality review is ordered under Subsection 62A-16-201(6), unless this time is extended, for good cause, by the director of the Office of Services Review.
(5) A committee may interview a staff member, a provider, or any other person who may have knowledge or expertise that is relevant to the fatality review.
(6) A committee shall render an advisory opinion regarding:
(a) whether the provisions of law, rule, policy, and procedure relating to the deceased individual and the deceased individual's family were complied with;
(b) whether the fatality was responded to properly;
(c) whether to recommend that a law, rule, policy, or procedure be changed; and
(d) whether additional training is needed.

Amended by Chapter 445, 2013 General Session

62A-16-301. Fatality review committee report -- Response to report.
(1) Within 20 days after the day on which the committee proceedings described in Section 62A-16-204 end, the committee shall submit:
(a) a written report to the executive director that includes:
(i) the advisory opinions made under Subsection 62A-16-204(6); and
(ii) any recommendations regarding action that should be taken in relation to an employee of the department or a person who contracts with the department;
(b) a copy of the report described in Subsection (1)(a) to:
(i) the director, or the director's designee, of the office or division to which the fatality relates; and
(ii) the regional director, or the regional director's designee, of the region to which the fatality relates; and
(c) a copy of the report described in Subsection (1)(a), with only identifying information redacted, to the Office of Legislative Research and General Counsel.
(2) Within 20 days after the day on which the director described in Subsection (1)(b)(i) receives a copy of the report described in Subsection (1)(a), the director shall provide a written response to the director of the Office of Services Review and a copy of the response, with only identifying information redacted, to the Office of Legislative Research and General Counsel, if the report:
(a) indicates that a law, rule, policy, or procedure was not complied with;
(b) indicates that the fatality was not responded to properly;
(c) recommends that a law, rule, policy, or procedure be changed; or
(d) indicates that additional training is needed.
(3) The response described in Subsection (2) shall include a plan of action to

implement any recommended improvements within the office or division.

(4) Within 30 days after the day on which the executive director receives the response described in Subsection (2), the executive director, or the executive director's designee shall:

(a) review the plan of action described in Subsection (3);

(b) make any written response that the executive director or the executive director's designee determines is necessary;

(c) provide a copy of the written response described in Subsection (4)(b), with only identifying information redacted, to the Office of Legislative Research and General Counsel; and

(d) provide an unredacted copy of the response described in Subsection (4)(b) to the director of the Office of Services Review.

(5) A report described in Subsection (1) and each response described in this section is a protected record.

(6) (a) As used in this Subsection (6), "fatality review document" means any document created in connection with, or as a result of, a fatality review or a decision whether to conduct a fatality review, including:

(i) a report described in Subsection (1);

(ii) a response described in this section;

(iii) a recommendation regarding whether a fatality review should be conducted;

(iv) a decision to conduct a fatality review;

(v) notes of a person who participates in a fatality review;

(vi) notes of a person who reviews a fatality review report;

(vii) minutes of a fatality review;

(viii) minutes of a meeting where a fatality review report is reviewed; and

(ix) minutes of, documents received in relation to, and documents generated in relation to, the portion of a meeting of the Health and Human Services Interim Committee or the Child Welfare Legislative Oversight Panel that a fatality review report or a document described in this Subsection (6)(a) is reviewed or discussed.

(b) A fatality review document is not subject to discovery, subpoena, or similar compulsory process in any civil, judicial, or administrative proceeding, nor shall any individual or organization with lawful access to the data be compelled to testify with regard to a report described in Subsection (1) or a response described in this section.

(c) The following are not admissible as evidence in a civil, judicial, or administrative proceeding:

(i) a fatality review document; and

(ii) an executive summary described in Subsection 62A-16-302(4).

Amended by Chapter 343, 2011 General Session

62A-16-302. Reporting to, and review by, legislative committees.

(1) The Office of Legislative Research and General Counsel shall provide a copy of the report described in Subsection 62A-16-301(1)(b), and the responses described in Subsections 62A-16-301(2) and (4)(c) to the chairs of:

(a) the Health and Human Services Interim Committee; or

(b) if the individual who is the subject of the report was, at the time of death, a person described in Subsection 62A-16-102(2)(c) or (d), the Child Welfare Legislative Oversight Panel.

(2) (a) The Health and Human Services Interim Committee may, in a closed meeting, review a report described in Subsection 62A-16-301(1)(b).

(b) The Child Welfare Legislative Oversight Panel shall, in a closed meeting, review a report described in Subsection (1)(b).

(3) (a) Neither the Health and Human Services Interim Committee nor the Child Welfare Legislative Oversight Panel may interfere with, or make recommendations regarding, the resolution of a particular case.

(b) The purpose of a review described in Subsection (2) is to assist a committee or panel described in Subsection (2) in determining whether to recommend a change in the law.

(c) Any recommendation, described in Subsection (3)(b), by a committee or panel for a change in the law shall be made in an open meeting.

(4) (a) On or before September 1 of each year, the department shall provide an executive summary of all fatality review reports for the preceding state fiscal year to the Office of Legislative Research and General Counsel.

(b) The Office of Legislative Research and General Counsel shall forward a copy of the executive summary described in Subsection (4)(a) to:

(i) the Health and Human Services Interim Committee; and

(ii) the Child Welfare Legislative Oversight Panel.

(5) The executive summary described in Subsection (4):

(a) may not include any names or identifying information;

(b) shall include:

(i) all recommendations regarding changes to the law that were made during the preceding fiscal year under Subsection 62A-16-204(6);

(ii) all changes made, or in the process of being made, to a law, rule, policy, or procedure in response to a fatality review that occurred during the preceding fiscal year;

(iii) a description of the training that has been completed in response to a fatality review that occurred during the preceding fiscal year;

(iv) statistics for the preceding fiscal year regarding:

(A) the number and type of fatalities of qualified individuals that are known to the department;

(B) the number of formal fatality reviews conducted;

(C) the categories, described in Subsection 62A-16-102(2) of qualified individuals who died;

(D) the gender, age, race, and other significant categories of qualified individuals who died; and

(E) the number of fatalities of qualified individuals known to the department that are identified as suicides; and

(v) action taken by the Office of Licensing and the Bureau of Internal Review and Audits in response to the fatality of a qualified individual; and

(c) is a public document.

(6) The Division of Child and Family Services shall, to the extent required by the federal Child Abuse Prevention and Treatment Act, as amended, allow public disclosure of the findings or information relating to a case of child abuse or neglect that results in a child fatality or near fatality.

Amended by Chapter 343, 2011 General Session

62A-17-101. Title.

This chapter is known as "Utah Referral Information Network."

Enacted by Chapter 24, 2013 General Session

62A-17-102. Definitions.

As used in this chapter:

(1) "211" means the abbreviated dialing code assigned by the Federal Communications Commission for consumer access to community information and referral services.

(2) "Approved 211 service provider" means a public or nonprofit agency or organization designated by the department to provide 211 services.

(3) (a) "Utah 211" means an information and referral system that:

(i) maintains a database of:

(A) providers of health and human services; and

(B) volunteer opportunities and coordinators throughout the state;

(ii) assists individuals, families, and communities at no cost in identifying, understanding, and accessing the providers of health and human services; and

(iii) works collaboratively with state agencies, local governments, community-based organizations, not-for-profit organizations, organizations active in disaster relief, and faith-based organizations.

(b) "Utah 211" does not mean service provided by 911 and first responders.

Enacted by Chapter 24, 2013 General Session

62A-17-103. Designated approved 211 service provider -- Department responsibilities.

(1) The department shall designate an approved 211 service provider to provide information to Utah citizens about health and human services available in the citizen's community.

(2) Only a service provider approved by the department may provide 211 telephone services in this state.

(3) The department shall approve a 211 service provider after considering the following:

(a) the ability of the proposed 211 service provider to meet the national 211 standards recommended by the Alliance of Information and Referral Systems;

(b) the financial stability of the proposed 211 service provider;

(c) the community support for the proposed 211 service provider;

(d) the relationship between the proposed 211 service provider and other information and referral services; and

(e) other criteria as the department considers appropriate.

(4) The department shall coordinate with the approved 211 service provider and:

(a) other state and local agencies to ensure the joint development and maintenance of a statewide information database for use by the approved 211 service provider; and

(b) other interested parties, including public, private, and non-profit transportation operators, who shall form a work group and issue a report to the Health and Human Services Interim Committee by November 15, 2013 that addresses the following issues:

(i) an assessment of transportation needs for individuals with disabilities, the elderly, and other receiving services from the department;

(ii) an assessment of available services and current transportation providers throughout Utah;

(iii) identification of opportunities to achieve efficiency in service delivery, including the viability of a single dispatch system; and

(iv) priorities for implementation of efficiency, based on resources and feasibility.

Enacted by Chapter 24, 2013 General Session

62A-17-104. Utah 211 created -- Responsibilities.

(1) The designated 211 service provider described in Section 62A-17-102 shall be known as Utah 211.

(2) Utah 211 shall, as appropriations allow:

(a) by 2014:

(i) provide the services described in this Subsection (2) 24 hours a day, seven days a week;

(ii) abide by the key standards for 211 programs, as specified in the Standards for Professional Information and Referral Requirements for Alliance of Information Systems Accreditation and Operating 211 systems; and

(iii) be a point of entry for disaster-related information and referral;

(b) track types of calls received and referrals made;

(c) develop, coordinate, and implement a statewide information and referral system that integrates existing community-based structures with state and local agencies;

(d) provide information relating to:

(i) health and human services; and

(ii) volunteer opportunities;

(e) create an online, searchable database to provide information to the public about the health and human services provided by public or private entities throughout the state, and ensure that:

(i) the material on the searchable database is indexed:

(A) geographically to inform an individual about the health and human services provided in the area where the individual lives; and

(B) by type of service provided; and

(ii) the searchable database contains links to the Internet sites of any local provider of health and human services, if possible, and include:

(A) the name, address, and phone number of organizations providing health and human services in a county; and

(B) a description of the type of services provided;

(f) be responsible, in collaboration with state agencies, for raising community awareness about available health and human services; and

(g) host meetings on a quarterly basis until calendar year 2014, and on a biannual basis beginning in 2014, to seek input and guidance from state agencies, local governments, community-based organizations, not-for-profit organizations, and faith-based organizations.

Enacted by Chapter 24, 2013 General Session

62A-17-105. Other state agencies and local governments.

(1) A state agency or local government institution that provides health and human services, or a public or private entity receiving state-appropriated funds to provide health and human services, shall provide Utah 211 with information, in a form determined by Utah 211, about the services the agency or entity provides for inclusion in the statewide information and referral system.

(2) A state agency or local government institution that provides health and human services may not establish a new public telephone line or hotline, other than an emergency first responder hotline, to provide information or referrals unless the agency or institution first:

(a) consults with Utah 211 about using the existing 211 to provide access to the information or referrals; and

(b) assesses whether a new line or the existing 211 program would be more cost effective.

(3) Nothing in this section prohibits a state agency or local government institution from starting a public telephone line or hotline in an emergency situation.

(4) State agencies, local governments, community-based organizations, not-for-profit organizations, faith-based organizations, and businesses that engage in providing human services may contract with Utah 211 to provide specialized projects, including:

(a) public health campaigns;

(b) seasonal community services; and

(c) expanded point of entry services.

Enacted by Chapter 24, 2013 General Session

62A-17-106. Immunity from liability.

(1) Except as provided in Subsection (2), Utah 211, its employees, directors,

officers, and information specialists are not liable to any person in a civil action for injury or loss as a result of an act or omission of Utah 211, its employees, directors, officers, or information specialists, in connection with:

(a) developing, adopting, implementing, maintaining, or operating the Utah 211 system;

(b) making Utah 211 available for use by the public; or

(c) providing 211 services.

(2) Utah 211, its employees, directors, officers, and information specialists shall be liable to any person in a civil action for an injury or loss resulting from willful or wanton misconduct.

Enacted by Chapter 24, 2013 General Session