

1 **UNIFORM UNREGULATED CHILD CUSTODY TRANSFER**

2 **ACT**

3 2022 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Merrill F. Nelson**

6 Senate Sponsor: Michael K. McKell

8 **LONG TITLE**

9 **General Description:**

10 This bill enacts the Uniform Unregulated Child Custody Transfer Act (Act).

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ creates, modifies, and repeals definitions;
- 14 ▶ prohibits a parent or guardian from transferring custody of a child with intent to
15 abandon the parent's or guardian's rights and responsibilities for the child, except
16 under certain circumstances;
- 17 ▶ prohibits a person from receiving custody of a child or assisting in the transfer of
18 custody of the child if the person knows the transfer is a violation of the Act;
- 19 ▶ authorizes the Division of Child and Family Services (division) to conduct a home
20 visit or take other action to protect the welfare of a child who the division
21 reasonably believes may be the subject of an unregulated custody transfer;
- 22 ▶ prohibits a person from soliciting or advertising to take certain actions in violation
23 of the Act;
- 24 ▶ requires a child-placing agency to provide a prospective adoptive parent general
25 adoption information and other information specific to the child to be adopted;
- 26 ▶ requires a child-placing agency or the division to provide information about certain
27 financial assistance or support services available to the prospective adoptive parent;



- 28 ▶ authorizes the Office of Licensing (office) to initiate proceedings to investigate a
- 29 violation of the Act;
- 30 ▶ authorizes the office to suspend or revoke a child-placing agency's license for a
- 31 violation of the Act;
- 32 ▶ provides the office rulemaking authority;
- 33 ▶ provides penalties for a violation of certain provisions of the Act;
- 34 ▶ includes a severability clause; and
- 35 ▶ makes technical and conforming changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **62A-4a-601**, as last amended by Laws of Utah 2017, Chapters 148 and 401

43 **62A-4a-602**, as last amended by Laws of Utah 2020, Chapter 250

44 **80-1-102**, as last amended by Laws of Utah 2021, First Special Session, Chapter 2

45 ENACTS:

46 **78B-24-101**, Utah Code Annotated 1953

47 **78B-24-102**, Utah Code Annotated 1953

48 **78B-24-201**, Utah Code Annotated 1953

49 **78B-24-202**, Utah Code Annotated 1953

50 **78B-24-203**, Utah Code Annotated 1953

51 **78B-24-204**, Utah Code Annotated 1953

52 **78B-24-205**, Utah Code Annotated 1953

53 **78B-24-301**, Utah Code Annotated 1953

54 **78B-24-302**, Utah Code Annotated 1953

55 **78B-24-303**, Utah Code Annotated 1953

56 **78B-24-304**, Utah Code Annotated 1953

57 **78B-24-305**, Utah Code Annotated 1953

58 **78B-24-306**, Utah Code Annotated 1953

59 [78B-24-307](#), Utah Code Annotated 1953
 60 [78B-24-308](#), Utah Code Annotated 1953
 61 [78B-24-401](#), Utah Code Annotated 1953
 62 [78B-24-402](#), Utah Code Annotated 1953
 63 [78B-24-403](#), Utah Code Annotated 1953
 64 [78B-24-404](#), Utah Code Annotated 1953

65 REPEALS:

66 [62A-4a-607](#), as last amended by Laws of Utah 2021, Chapter 262
 67 [62A-4a-609](#), as enacted by Laws of Utah 2017, Chapter 401
 68 [62A-4a-711](#), as last amended by Laws of Utah 2021, Chapter 262

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

71 Section 1. Section [62A-4a-601](#) is amended to read:

72 **[62A-4a-601. Definitions.](#)**

73 [~~For purposes of~~] As used in this part:

74 (1) "Child placing" means the same as that term is defined in Section [62A-2-101](#).

75 (2) "Child-placing agency" means the same as that term is defined in Section

76 [62A-2-101](#).

77 [~~(3) "High needs child" means a child:~~]

78 [~~(a) with an attachment or trauma-related disorder;~~]

79 [~~(b) who suffered from prenatal exposure to alcohol or drugs;~~]

80 [~~(c) who is the subject of an intercountry adoption;~~]

81 [~~(d) who was previously adopted; or~~]

82 [~~(e) who is in foster care.~~]

83 Section 2. Section [62A-4a-602](#) is amended to read:

84 **[62A-4a-602. Licensure requirements -- Prohibited acts.](#)**

85 (1) As used in this section:

86 (a) (i) "Advertisement" means any written, oral, or graphic statement or representation

87 made in connection with a solicitation of business.

88 (ii) "Advertisement" includes a statement or representation described in Subsection

89 (1)(a)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer,

90 circular, billboard, banner, Internet website, social media, or sign.

91 (b) "Clearly and conspicuously disclose" means the same as that term is defined in
92 Section [13-11a-2](#).

93 (c) (i) "Matching advertisement" means any written, oral, or graphic statement or
94 representation made in connection with a solicitation of business to provide the assistance
95 described in Subsection (3)(a)(i), regardless of whether there is or will be an exchange
96 described in Subsection (3)(a)(ii).

97 (ii) "Matching advertisement" includes a statement or representation described in
98 Subsection (1)(c)(i) by a noncable television system, radio, printed brochure, newspaper,
99 leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.

100 (2) (a) [A] Subject to Section [78B-24-205](#), a person may not engage in child placing, or
101 solicit money or other assistance for child placing, without a valid license issued by the Office
102 of Licensing within the department, in accordance with Chapter 2, Licensure of Programs and
103 Facilities.

104 (b) When a child-placing agency's license is suspended or revoked in accordance with
105 that chapter, the care, control, or custody of any child who has been in the care, control, or
106 custody of that agency shall be transferred to the division.

107 (3) (a) (i) An attorney, physician, or other person may assist a parent in identifying or
108 locating a person interested in adopting the parent's child, or in identifying or locating a child to
109 be adopted.

110 (ii) No payment, charge, fee, reimbursement of expense, or exchange of value of any
111 kind, or promise or agreement to make the same, may be made for the assistance described in
112 Subsection (3)(a)(i).

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

114 (i) issue or cause to be issued to any person a card, sign, or device indicating that the
115 attorney, physician, or other person is available to provide the assistance described in
116 Subsection (3)(a)(i);

117 (ii) cause, permit, or allow any sign or marking indicating that the attorney, physician,
118 or other person is available to provide the assistance described in Subsection (3)(a)(i), on or in
119 any building or structure;

120 (iii) announce, cause, permit, or allow an announcement indicating that the attorney,

121 physician, or other person is available to provide the assistance described in Subsection
 122 (3)(a)(i), to appear in any newspaper, magazine, directory, on radio or television, or an Internet
 123 website relating to a business;

124 (iv) announce, cause, permit, or allow a matching advertisement; or

125 (v) announce, cause, permit, or allow an advertisement that indicates or implies the
 126 attorney, physician, or other person is available to provide the assistance described in
 127 Subsection (3)(a)(i) as part of, or related to, other adoption-related services by using any of the
 128 following terms:

129 (A) "comprehensive";

130 (B) "complete";

131 (C) "one-stop";

132 (D) "all-inclusive"; or

133 (E) any other term similar to the terms described in Subsections (3)(b)(v)(A) through
 134 (D).

135 (c) An attorney, physician, or other person who is not licensed by the Office of
 136 Licensing within the department shall clearly and conspicuously disclose in any print media
 137 advertisement or written contract regarding adoption services or adoption-related services that
 138 the attorney, physician, or other person is not licensed to provide adoption services by the
 139 Office of Licensing within the department.

140 [~~(4) Nothing in this part.~~]

141 (4) This part does not:

142 (a) [~~precludes~~] preclude payment of fees for medical, legal, or other lawful services
 143 rendered in connection with the care of a mother, delivery and care of a child, or lawful
 144 adoption proceedings; or

145 (b) [~~abrogates~~] abrogate the right of procedures for independent adoption as provided
 146 by law.

147 (5) In accordance with federal law, only [~~agents or employees~~] an agent or employee of
 148 the division and of a licensed [~~child placing agencies~~] child-placing agency may certify to the
 149 United States Citizenship and Immigration [~~and Naturalization Service~~] Services that a family
 150 meets the division's preadoption requirements.

151 (6) (a) Neither a licensed child-placing agency nor any attorney practicing in this state

152 may place a child for adoption, either temporarily or permanently, with ~~[any individual or~~
153 ~~individuals that]~~ an individual who would not be qualified for adoptive placement ~~[pursuant to~~
154 ~~the provisions of]~~ under Sections 78B-6-117, 78B-6-102, and 78B-6-137.

155 (b) (i) The division, as a licensed child-placing agency, may not place a child in foster
156 care with ~~[any]~~ an individual ~~[or individuals that]~~ who would not be qualified for adoptive
157 placement ~~[pursuant to the provisions of]~~ under Sections 78B-6-117, 78B-6-102, and
158 78B-6-137. ~~[However, nothing in this]~~

159 (ii) This Subsection (6)(b) [limits] does not limit the placement of a child in foster care
160 with the child's biological or adoptive parent, a relative, or in accordance with the Indian Child
161 Welfare Act, 25 U.S.C. Sec. 1901 et seq.

162 (c) (i) With regard to ~~[children who are]~~ a child who is in the custody of the state, the
163 division shall establish a rule in accordance with Title 63G, Chapter 3, Utah Administrative
164 Rulemaking Act, providing that priority for placement shall be provided to ~~[families]~~ a family
165 in which a couple is legally married under the laws of this state. ~~[However, nothing in this]~~

166 (ii) This Subsection (6)(c) [limits] does not limit the placement of a child with the
167 child's biological or adoptive parent, a relative, or in accordance with the Indian Child Welfare
168 Act, 25 U.S.C. Sec. 1901 et seq.

169 Section 3. Section 78B-24-101 is enacted to read:

170 **CHAPTER 24. UNIFORM UNREGULATED CHILD CUSTODY TRANSFER ACT**

171 **Part 1. General Provisions**

172 **78B-24-101. Definitions.**

173 As used in this chapter:

174 (1) "Child" means an unemancipated individual under 18 years old.

175 (2) (a) "Child-placing agency" means a person with authority under other law of this
176 state to identify or place a child for adoption.

177 (b) "Child-placing agency" does not include a parent of a child.

178 (3) "Custody" means the exercise of physical care and supervision of a child.

179 (4) (a) "Intercountry adoption" means an adoption or placement for adoption of a child
180 who resides in a foreign country at the time of adoption or placement.

181 (b) "Intercountry adoption" includes an adoption finalized in the child's country of
182 residence or in a state.

183 (5) "Parent" means an individual recognized as a parent under other law of this state.

184 (6) "Person" means an individual, estate, business or nonprofit entity, public
185 corporation, government or governmental subdivision, agency, or instrumentality, or other
186 legal entity.

187 (7) "Record" means information:

188 (a) inscribed on a tangible medium; or

189 (b) stored in an electronic or other medium and retrievable in perceivable form.

190 (8) (a) "State" means a state of the United States, the District of Columbia, Puerto
191 Rico, the United States Virgin Islands, or any other territory or possession subject to the
192 jurisdiction of the United States.

193 (b) "State" includes a federally recognized Indian tribe.

194 Section 4. Section **78B-24-102** is enacted to read:

195 **78B-24-102. Limitations on applicability.**

196 This chapter does not apply to custody of an Indian child, as defined in the Indian Child
197 Welfare Act, 25 U.S.C. Sec. 1903, to the extent governed by the Indian Child Welfare Act, 25
198 U.S.C. Sec. 1901 through 1963.

199 Section 5. Section **78B-24-201** is enacted to read:

200 **Part 2. Prohibition of Unregulated Custody Transfer**

201 **78B-24-201. Definitions.**

202 As used in this part:

203 (1) "Guardian" means a person recognized as a guardian under other law of this state.

204 (2) "Intermediary" means a person that assists or facilitates a transfer of custody of a
205 child, whether or not for compensation.

206 Section 6. Section **78B-24-202** is enacted to read:

207 **78B-24-202. Applicability.**

208 This part does not apply to a transfer of custody of a child by a parent or guardian of the
209 child to:

210 (1) a parent of the child;

211 (2) a stepparent of the child;

212 (3) an adult who is related to the child by blood, marriage, or adoption;

213 (4) an adult who, at the time of the transfer, had a close relationship with the child or

214 the parent $\hat{H} \rightarrow$ or $\leftarrow \hat{H}$ guardian of the child for a substantial period, and whom the parent or
214a guardian

215 reasonably believed, at the time of the transfer, to be a fit custodian of the child;

216 (5) an Indian custodian, as defined in the Indian Child Welfare Act, 25 U.S.C. Sec.
217 1903, of the child; or

218 (6) a member of the child's customary family unit recognized by the child's indigenous
219 group.

220 Section 7. Section **78B-24-203** is enacted to read:

221 **78B-24-203. Prohibited custody transfer.**

222 (1) Except as provided in Subsection (2), a parent or guardian of a child, or an
223 individual with whom a child has been placed for adoption, may not transfer custody of the
224 child to another person with the intent, at the time of the transfer, to abandon the rights and
225 responsibilities concerning the child.

226 (2) A parent or guardian of a child or an individual with whom a child has been placed
227 for adoption may transfer custody of the child to another person with the intent, at the time of
228 the transfer, to abandon the rights and responsibilities concerning the child only through:

229 (a) adoption or guardianship;

230 (b) judicial award of custody;

231 (c) placement by or through a child-placing agency;

232 (d) other judicial or tribal action; or

233 (e) safe relinquishment under Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a
234 Newborn Child.

235 (3) (a) A person may not receive custody of a child, or act as an intermediary in a
236 transfer of custody of a child, if the person knows or reasonably should know the transfer
237 violates Subsection (1).

238 (b) This subsection does not apply if the person as soon as practicable after the transfer,
239 notifies the Division of Child and Family Services of the transfer or takes appropriate action to
240 establish custody under Subsection (2).

241 (4) A violation of this section is a class B misdemeanor.

242 (5) A violation of Subsection (1) is not established solely because a parent or guardian
243 that transfers custody of a child does not regain custody.

244 Section 8. Section **78B-24-204** is enacted to read:

245 78B-24-204. Authority and responsibility of the Division of Child and Family
246 Services.

247 (1) If the Division of Child and Family Services has a reasonable basis to believe that a
248 person has transferred or will transfer custody of a child in violation of Subsection
249 78B-24-203(1), the Division of Child and Family Services may conduct a home visit as
250 provided by other law of this state and take appropriate action to protect the welfare of the
251 child.

252 (2) If the Division of Child and Family Services conducts a home visit for a child
253 adopted or placed through an intercountry adoption, the Division of Child and Family Services
254 shall:

255 (a) prepare a report on the welfare and plan for permanent placement of the child; and

256 (b) provide a copy of the report to the United States Department of State.

257 (3) This chapter does not prevent the Division of Child and Family Services from
258 taking appropriate action under law of this state.

259 Section 9. Section **78B-24-205** is enacted to read:

260 **78B-24-205. Prohibited soliciting or advertising.**

261 (1) A person may not solicit or advertise to:

262 (a) find a person to which to make a transfer of custody in violation of Subsection
263 78B-24-203(1);

264 (b) identify a child for a transfer of custody in violation of Subsection 78B-24-203(3);

265 or

266 (c) act as an intermediary in a transfer of custody in violation of Subsection
267 78B-24-203(3).

268 (2) A violation of this section is a class B misdemeanor.

269 Section 10. Section **78B-24-301** is enacted to read:

270 **Part 3. Information and Guidance**

271 **78B-24-301. Definitions.**

272 As used in this part, "prospective adoptive parent" means an individual who has been
273 approved or permitted under other law of this state to adopt a child.

274 Section 11. Section **78B-24-302** is enacted to read:

275 **78B-24-302. Scope.**

276 This part applies to placement for adoption of a child who:

277 (1) has been or is in foster or institutional care;

278 (2) previously has been adopted in a state;

279 (3) has been or is being adopted under the law of a foreign country;

280 (4) has come or is coming to a state from a foreign country to be adopted;

281 (5) is not a citizen of the United States;

282 (6) has an attachment or trauma-related disorder; or

283 (7) suffered from prenatal exposure to alcohol or drugs.

284 Section 12. Section **78B-24-303** is enacted to read:

285 **78B-24-303. General adoption information.**

286 (1) Within a reasonable time before a child-placing agency places a child for adoption
287 with a prospective adoptive parent, the child-placing agency shall provide or cause to be
288 provided to the prospective adoptive parent general adoption information.

289 (2) The information under Subsection (1) shall address:

290 (a) possible physical, mental, emotional, and behavioral issues concerning:

291 (i) identity, loss, and trauma that a child might experience before, during, or after
292 adoption; and

293 (ii) a child leaving familiar ties and surroundings;

294 (b) the effect that access to resources, including health insurance, might have on the
295 ability of an adoptive parent to meet the needs of a child;

296 (c) causes of disruption of an adoptive placement or dissolution of an adoption and
297 resources available to help avoid disruption or dissolution; and

298 (d) prohibitions under Sections [78B-24-203](#) and [78B-24-205](#).

299 Section 13. Section **78B-24-304** is enacted to read:

300 **78B-24-304. Information about a child.**

301 (1) (a) Except as prohibited by other law of this state, within a reasonable time before a
302 child-placing agency places a child for adoption with a prospective adoptive parent, the agency
303 shall provide or cause to be provided to the prospective adoptive parent information specific to
304 the child that is known or reasonably obtainable by the child-placing agency and material to the
305 prospective adoptive parents informed decision to adopt the child.

306 (b) The information under Subsection (1)(a) shall include:

- 307 (i) the child's family, cultural, racial, religious, ethnic, linguistic, and educational
308 background;
- 309 (ii) the child's physical, mental, emotional, and behavioral health;
- 310 (iii) circumstances that may adversely affect the child's physical, mental, emotional, or
311 behavioral health;
- 312 (iv) the child's medical history, including immunizations;
- 313 (v) the medical history of the child's genetic parents and siblings;
- 314 (vi) the history of an adoptive or out-of-home placement of the child and the reason the
315 adoption or placement ended;
- 316 (vii) the child's United States immigration status;
- 317 (viii) medical, therapeutic, and educational resources, including language-acquisition
318 training, available to the adoptive parent and child after placement or adoption to assist in
319 responding effectively to physical, mental, emotional, or behavioral issues; and
- 320 (ix) available records relevant to the information in Subsections (1)(b)(i) through (viii).
- 321 (2) If, before an adoption is finalized, additional information under Subsection (1) that
322 is material to a prospective adoptive parent's informed decision to adopt the child becomes
323 known or reasonably obtainable by the child-placing agency, the child-placing agency shall
324 provide the information to the prospective adoptive parent.
- 325 (3) If, after an adoption is finalized, additional information under Subsection (1)
326 becomes known to the child-placing agency, the child-placing agency shall make a reasonable
327 effort to provide the information to the adoptive parent.
- 328 Section 14. Section **78B-24-305** is enacted to read:
- 329 **78B-24-305. Guidance and instruction.**
- 330 (1) A child-placing agency placing a child for adoption shall provide or cause to be
331 provided to the prospective adoptive parent guidance and instruction specific to the child to
332 help prepare the parent to respond effectively to needs of the child which are known or
333 reasonably ascertainable by the child-placing agency.
- 334 (2) The guidance and instruction under Subsection (1) shall address, if applicable:
- 335 (a) the potential effect on the child of:
- 336 (i) previous adoption or out-of-home placement;
- 337 (ii) multiple previous adoptions or out-of-home placements;

- 338 (iii) trauma, insecure attachment, fetal alcohol exposure, or malnutrition;
- 339 (iv) neglect, abuse, drug exposure, or similar adversity;
- 340 (v) separation from a sibling or significant caregiver; and
- 341 (vi) a difference in ethnicity, race, or cultural identity between the child and the
- 342 prospective adoptive parent or other child of the parent;
- 343 (b) information available from the federal government on the process for the child to
- 344 acquire United States citizenship; and
- 345 (c) any other matter the child-placing agency considers material to the adoption.

- 346 (3) The guidance and instruction under Subsection (1) shall be provided:
- 347 (a) for adoption of a child residing in the United States, a reasonable time before the
- 348 adoption is finalized; or
- 349 (b) for an intercountry adoption, in accordance with federal law.

350 Section 15. Section **78B-24-306** is enacted to read:

351 **78B-24-306. Information about financial assistance and support services.**

352 On request of a child who was placed for adoption or the child's adoptive parent, the

353 child-placing agency placing the child or the Division of Child and Family Services shall

354 provide information about how to obtain financial assistance or support services:

- 355 (1) to assist the child or parent to respond effectively to adjustment, behavioral, and
- 356 other challenges; and
- 357 (2) to help preserve the placement or adoption.

358 Section 16. Section **78B-24-307** is enacted to read:

359 **78B-24-307. Child-placing agency compliance.**

360 (1) The Office of Licensing, created in Section [62A-2-103](#), may investigate an

361 allegation that a child-placing agency has failed to comply with this part and commence an

362 action for injunctive or other relief or initiate administrative proceedings against the

363 child-placing agency to enforce this part.

364 (2) (a) The Office of Licensing may initiate a proceeding to determine whether a

365 child-placing agency has failed to comply with this part.

366 (b) If the Office of Licensing finds that the child-placing agency has failed to comply,

367 the Office of Licensing may suspend or revoke the child-placing agency's license or take other

368 action permitted by law of the state.

369 Section 17. Section **78B-24-308** is enacted to read:

370 **78B-24-308. Rulemaking authority.**

371 The Office of Licensing, created in Section [62A-2-103](#), may adopt rules under Title
372 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement Sections [78B-24-303](#),
373 [78B-24-304](#), [78B-24-305](#), and [78B-24-306](#).

374 Section 18. Section **78B-24-401** is enacted to read:

375 **Part 4. Miscellaneous Provisions**

376 **78B-24-401. Uniformity of application and construction.**

377 In applying and construing this uniform act, a court shall consider the promotion of
378 uniformity of the law among jurisdictions that enact the uniform act.

379 Section 19. Section **78B-24-402** is enacted to read:

380 **78B-24-402. Relation to Electronic Signatures in Global and National Commerce**
381 **Act.**

382 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
383 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
384 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in 15
385 U.S.C. Sec. 7003(b).

386 Section 20. Section **78B-24-403** is enacted to read:

387 **78B-24-403. Transitional provisions.**

388 (1) Part 2, Prohibition of Unregulated Custody Transfer, applies to:

389 (a) a transfer of custody on or after May 4, 2022; and

390 (b) soliciting or advertising on or after May 4, 2022.

391 (2) Part 3, Information and Guidance, applies to placement of a child for adoption more
392 than 60 days after May 4, 2022.

393 Section 21. Section **78B-24-404** is enacted to read:

394 **78B-24-404. Severability.**

395 If a provision of this chapter or the provision's application to a person or circumstance
396 is held invalid, the invalidity does not affect another provision or application that can be given
397 effect without the invalid provision.

398 Section 22. Section **80-1-102** is amended to read:

399 **80-1-102. Juvenile code definitions.**

- 400 As used in this title:
- 401 (1) (a) "Abuse" means:
- 402 (i) (A) nonaccidental harm of a child;
- 403 (B) threatened harm of a child;
- 404 (C) sexual exploitation;
- 405 (D) sexual abuse; or
- 406 (E) human trafficking of a child in violation of Section 76-5-308.5; or
- 407 (ii) that a child's natural parent:
- 408 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
- 409 child;
- 410 (B) is identified by a law enforcement agency as the primary suspect in an investigation
- 411 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
- 412 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
- 413 recklessly causing the death of another parent of the child.
- 414 (b) "Abuse" does not include:
- 415 (i) reasonable discipline or management of a child, including withholding privileges;
- 416 (ii) conduct described in Section 76-2-401; or
- 417 (iii) the use of reasonable and necessary physical restraint or force on a child:
- 418 (A) in self-defense;
- 419 (B) in defense of others;
- 420 (C) to protect the child; or
- 421 (D) to remove a weapon in the possession of a child for any of the reasons described in
- 422 Subsections (1)(b)(iii)(A) through (C).
- 423 (2) "Abused child" means a child who has been subjected to abuse.
- 424 (3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the
- 425 facts alleged in the petition have been proved.
- 426 (b) "Adjudication" does not mean a finding of not competent to proceed in accordance
- 427 with Section 80-6-402.
- 428 (4) (a) "Adult" means an individual who is 18 years old or older.
- 429 (b) "Adult" does not include an individual:
- 430 (i) who is 18 years old or older; and

- 431 (ii) who is a minor.
- 432 (5) "Attorney guardian ad litem" means the same as that term is defined in Section
- 433 78A-2-801.
- 434 (6) "Board" means the Board of Juvenile Court Judges.
- 435 (7) "Child" means an individual who is under 18 years old.
- 436 (8) "Child and family plan" means a written agreement between a child's parents or
- 437 guardian and the Division of Child and Family Services as described in Section 62A-4a-205.
- 438 (9) "Child placement agency" means:
- 439 (a) a private agency licensed to receive a child for placement or adoption under this
- 440 code; or
- 441 (b) a private agency that receives a child for placement or adoption in another state,
- 442 which is licensed or approved where such license or approval is required by law.
- 443 (10) "Clandestine laboratory operation" means the same as that term is defined in
- 444 Section 58-37d-3.
- 445 (11) "Commit" or "committed" means, unless specified otherwise:
- 446 (a) with respect to a child, to transfer legal custody; and
- 447 (b) with respect to a minor who is at least 18 years old, to transfer custody.
- 448 (12) "Community-based program" means a nonsecure residential or nonresidential
- 449 program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least
- 450 restrictive setting, consistent with public safety, and operated by or under contract with the
- 451 Division of Juvenile Justice Services.
- 452 (13) "Community placement" means placement of a minor in a community-based
- 453 program described in Section 80-5-402.
- 454 (14) "Correctional facility" means:
- 455 (a) a county jail; or
- 456 (b) a secure correctional facility as defined in Section 64-13-1.
- 457 (15) "Criminogenic risk factors" means evidence-based factors that are associated with
- 458 a minor's likelihood of reoffending.
- 459 (16) "Department" means the Department of Human Services created in Section
- 460 62A-1-102.
- 461 (17) "Dependent child" or "dependency" means a child who is without proper care

462 through no fault of the child's parent, guardian, or custodian.

463 (18) "Deprivation of custody" means transfer of legal custody by the juvenile court
464 from a parent or a previous custodian to another person, agency, or institution.

465 (19) "Detention" means home detention or secure detention.

466 (20) "Detention risk assessment tool" means an evidence-based tool established under
467 Section 80-5-203 that:

468 (a) assesses a minor's risk of failing to appear in court or reoffending before
469 adjudication; and

470 (b) is designed to assist in making a determination of whether a minor shall be held in
471 detention.

472 (21) "Developmental immaturity" means incomplete development in one or more
473 domains that manifests as a functional limitation in the minor's present ability to:

474 (a) consult with counsel with a reasonable degree of rational understanding; and

475 (b) have a rational as well as factual understanding of the proceedings.

476 (22) "Disposition" means an order by a juvenile court, after the adjudication of a
477 minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.

478 (23) "Educational neglect" means that, after receiving a notice of compulsory education
479 violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to
480 ensure that the child receives an appropriate education.

481 (24) "Educational series" means an evidence-based instructional series:

482 (a) obtained at a substance abuse program that is approved by the Division of
483 Substance Abuse and Mental Health in accordance with Section 62A-15-105; and

484 (b) designed to prevent substance use or the onset of a mental health disorder.

485 (25) "Emancipated" means the same as that term is defined in Section 80-7-102.

486 (26) "Evidence-based" means a program or practice that has had multiple randomized
487 control studies or a meta-analysis demonstrating that the program or practice is effective for a
488 specific population or has been rated as effective by a standardized program evaluation tool.

489 (27) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

490 (28) "Formal probation" means a minor is:

491 (a) supervised in the community by, and reports to, a juvenile probation officer or an
492 agency designated by the juvenile court; and

- 493 (b) subject to return to the juvenile court in accordance with Section [80-6-607](#).
- 494 (29) "Group rehabilitation therapy" means psychological and social counseling of one
- 495 or more individuals in the group, depending upon the recommendation of the therapist.
- 496 (30) "Guardian" means a person appointed by a court to make decisions regarding a
- 497 minor, including the authority to consent to:
 - 498 (a) marriage;
 - 499 (b) enlistment in the armed forces;
 - 500 (c) major medical, surgical, or psychiatric treatment; or
 - 501 (d) legal custody, if legal custody is not vested in another individual, agency, or
 - 502 institution.
- 503 (31) "Guardian ad litem" means the same as that term is defined in Section [78A-2-801](#).
- 504 (32) "Harm" means:
 - 505 (a) physical or developmental injury or damage;
 - 506 (b) emotional damage that results in a serious impairment in the child's growth,
 - 507 development, behavior, or psychological functioning;
 - 508 (c) sexual abuse; or
 - 509 (d) sexual exploitation.
- 510 (33) "Home detention" means placement of a minor:
 - 511 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the
 - 512 consent of the minor's parent, guardian, or custodian, under terms and conditions established by
 - 513 the Division of Juvenile Justice Services or the juvenile court; or
 - 514 (b) if after a disposition, and in accordance with Section [78A-6-353](#) or [80-6-704](#), in the
 - 515 minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or
 - 516 custodian, under terms and conditions established by the Division of Juvenile Justice Services
 - 517 or the juvenile court.
- 518 (34) (a) "Incest" means engaging in sexual intercourse with an individual whom the
- 519 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
- 520 nephew, niece, or first cousin.
 - 521 (b) "Incest" includes:
 - 522 (i) blood relationships of the whole or half blood, without regard to legitimacy;
 - 523 (ii) relationships of parent and child by adoption; and

- 524 (iii) relationships of stepparent and stepchild while the marriage creating the
525 relationship of a stepparent and stepchild exists.
- 526 (35) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 527 (36) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 528 (37) "Indigent defense service provider" means the same as that term is defined in
529 Section [78B-22-102](#).
- 530 (38) "Indigent defense services" means the same as that term is defined in Section
531 [78B-22-102](#).
- 532 (39) "Indigent individual" means the same as that term is defined in Section
533 [78B-22-102](#).
- 534 (40) (a) "Intake probation" means a minor is:
535 (i) monitored by a juvenile probation officer; and
536 (ii) subject to return to the juvenile court in accordance with Section [80-6-607](#).
- 537 (b) "Intake probation" does not include formal probation.
- 538 (41) "Intellectual disability" means a significant subaverage general intellectual
539 functioning existing concurrently with deficits in adaptive behavior that constitutes a
540 substantial limitation to the individual's ability to function in society.
- 541 (42) "Juvenile offender" means:
542 (a) a serious youth offender; or
543 (b) a youth offender.
- 544 (43) "Juvenile probation officer" means a probation officer appointed under Section
545 [78A-6-205](#).
- 546 (44) "Juvenile receiving center" means a nonsecure, nonresidential program established
547 by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile
548 Justice Services, that is responsible for minors taken into temporary custody under Section
549 [80-6-201](#).
- 550 (45) "Legal custody" means a relationship embodying:
551 (a) the right to physical custody of the minor;
552 (b) the right and duty to protect, train, and discipline the minor;
553 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
554 medical care;

- 555 (d) the right to determine where and with whom the minor shall live; and
- 556 (e) the right, in an emergency, to authorize surgery or other extraordinary care.
- 557 (46) "Mental illness" means:
- 558 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
- 559 behavioral, or related functioning; or
- 560 (b) the same as that term is defined in:
- 561 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
- 562 published by the American Psychiatric Association; or
- 563 (ii) the current edition of the International Statistical Classification of Diseases and
- 564 Related Health Problems.
- 565 (47) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:
- 566 (a) a child; or
- 567 (b) an individual:
- 568 (i) (A) who is at least 18 years old and younger than 21 years old; and
- 569 (B) for whom the Division of Child and Family Services has been specifically ordered
- 570 by the juvenile court to provide services because the individual was an abused, neglected, or
- 571 dependent child or because the individual was adjudicated for an offense; or
- 572 (ii) (A) who is at least 18 years old and younger than 25 years old; and
- 573 (B) whose case is under the continuing jurisdiction of the juvenile court under Chapter
- 574 6, Juvenile Justice.
- 575 (48) "Mobile crisis outreach team" means the same as that term is defined in Section
- 576 62A-15-102.
- 577 (49) "Molestation" means that an individual, with the intent to arouse or gratify the
- 578 sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,
- 579 or the breast of a female child, or takes indecent liberties with a child as defined in Section
- 580 76-5-416.
- 581 (50) (a) "Natural parent" means a minor's biological or adoptive parent.
- 582 (b) "Natural parent" includes the minor's noncustodial parent.
- 583 (51) (a) "Neglect" means action or inaction causing:
- 584 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
- 585 Relinquishment of a Newborn Child;

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

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

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

593 (v) abandonment of a child through an unregulated child custody transfer under Section
594 78B-24-203; or

595 (vi) educational neglect.

596 (b) "Neglect" does not include:

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

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

602 (iii) a parent or guardian exercising the right described in Section 80-3-304; or

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

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

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

608 (C) engaging in outdoor play;

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

610 Subsection 76-10-2202(2);

611 (E) remaining at home unattended; or

612 (F) engaging in a similar independent activity.

613 (52) "Neglected child" means a child who has been subjected to neglect.

614 (53) "Nonjudicial adjustment" means closure of the case by the assigned juvenile
615 probation officer, without an adjudication of the minor's case under Section 80-6-701, upon the
616 consent in writing of:

617 (a) the assigned juvenile probation officer; and

618 (b) (i) the minor; or

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

620 (54) "Not competent to proceed" means that a minor, due to a mental illness,
621 intellectual disability or related condition, or developmental immaturity, lacks the ability to:

622 (a) understand the nature of the proceedings against the minor or of the potential
623 disposition for the offense charged; or

624 (b) consult with counsel and participate in the proceedings against the minor with a
625 reasonable degree of rational understanding.

626 (55) "Parole" means a conditional release of a juvenile offender from residency in
627 secure care to live outside of secure care under the supervision of the Division of Juvenile
628 Justice Services, or another person designated by the Division of Juvenile Justice Services.

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

630 (57) (a) "Probation" means a legal status created by court order, following an
631 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's
632 home under prescribed conditions.

633 (b) "Probation" includes intake probation or formal probation.

634 (58) "Prosecuting attorney" means:

635 (a) the attorney general and any assistant attorney general;

636 (b) any district attorney or deputy district attorney;

637 (c) any county attorney or assistant county attorney; and

638 (d) any other attorney authorized to commence an action on behalf of the state.

639 (59) "Protective custody" means the shelter of a child by the Division of Child and
640 Family Services from the time the child is removed from the home until the earlier of:

641 (a) the day on which the shelter hearing is held under Section 80-3-301; or

642 (b) the day on which the child is returned home.

643 (60) "Protective supervision" means a legal status created by court order, following an
644 adjudication on the ground of abuse, neglect, or dependency, whereby:

645 (a) the minor is permitted to remain in the minor's home; and

646 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided
647 by an agency designated by the juvenile court.

648 (61) (a) "Related condition" means a condition that:
649 (i) is found to be closely related to intellectual disability;
650 (ii) results in impairment of general intellectual functioning or adaptive behavior
651 similar to that of an intellectually disabled individual;
652 (iii) is likely to continue indefinitely; and
653 (iv) constitutes a substantial limitation to the individual's ability to function in society.
654 (b) "Related condition" does not include mental illness, psychiatric impairment, or
655 serious emotional or behavioral disturbance.

656 (62) (a) "Residual parental rights and duties" means the rights and duties remaining
657 with a parent after legal custody or guardianship, or both, have been vested in another person or
658 agency, including:

- 659 (i) the responsibility for support;
- 660 (ii) the right to consent to adoption;
- 661 (iii) the right to determine the child's religious affiliation; and
- 662 (iv) the right to reasonable parent-time unless restricted by the court.

663 (b) If no guardian has been appointed, "residual parental rights and duties" includes the
664 right to consent to:

- 665 (i) marriage;
- 666 (ii) enlistment; and
- 667 (iii) major medical, surgical, or psychiatric treatment.

668 (63) "Runaway" means a child, other than an emancipated child, who willfully leaves
669 the home of the child's parent or guardian, or the lawfully prescribed residence of the child,
670 without permission.

671 (64) "Secure care" means placement of a minor, who is committed to the Division of
672 Juvenile Justice Services for rehabilitation, in a facility operated by, or under contract with, the
673 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement of the
674 minor.

675 (65) "Secure care facility" means a facility, established in accordance with Section
676 [80-5-503](#), for juvenile offenders in secure care.

677 (66) "Secure detention" means temporary care of a minor who requires secure custody
678 in a physically restricting facility operated by, or under contract with, the Division of Juvenile

679 Justice Services:

680 (a) before disposition of an offense that is alleged to have been committed by the
681 minor; or

682 (b) under Section 80-6-704.

683 (67) "Serious youth offender" means an individual who:

684 (a) is at least 14 years old, but under 25 years old;

685 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction
686 of the juvenile court was extended over the individual's case until the individual was 25 years
687 old in accordance with Section 80-6-605; and

688 (c) is committed by the juvenile court to the Division of Juvenile Justice Services for
689 secure care under Sections 80-6-703 and 80-6-705.

690 (68) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
691 child.

692 (69) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
693 child.

694 (70) "Sexual abuse" means:

695 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
696 adult directed towards a child;

697 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
698 committed by a child towards another child if:

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

700 (ii) the children are related, as described in Subsection (34), including siblings by
701 marriage while the marriage exists or by adoption;

702 (iii) there have been repeated incidents of sexual contact between the two children,
703 unless the children are 14 years old or older; or

704 (iv) there is a disparity in chronological age of four or more years between the two
705 children;

706 (c) engaging in any conduct with a child that would constitute an offense under any of
707 the following, regardless of whether the individual who engages in the conduct is actually
708 charged with, or convicted of, the offense:

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

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

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

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

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

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

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

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

717 (d) subjecting a child to participate in or threatening to subject a child to participate in
718 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural
719 marriage.

720 (71) "Sexual exploitation" means knowingly:

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

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

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

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

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

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

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

732 (72) "Shelter" means the temporary care of a child in a physically unrestricted facility
733 pending a disposition or transfer to another jurisdiction.

734 (73) "Shelter facility" means the same as that term is defined in Section 62A-4a-101.

735 (74) "Single criminal episode" means the same as that term is defined in Section
736 76-1-401.

737 (75) "Status offense" means an offense that would not be an offense but for the age of
738 the offender.

739 (76) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
740 substances.

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

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

743 (79) "Termination of parental rights" means the permanent elimination of all parental
744 rights and duties, including residual parental rights and duties, by court order.

745 (80) "Therapist" means:

746 (a) an individual employed by a state division or agency for the purpose of conducting
747 psychological treatment and counseling of a minor in the division's or agency's custody; or

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

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

752 (82) "Ungovernable" means a child in conflict with a parent or guardian, and the
753 conflict:

754 (a) results in behavior that is beyond the control or ability of the child, or the parent or
755 guardian, to manage effectively;

756 (b) poses a threat to the safety or well-being of the child, the child's family, or others;

757 or

758 (c) results in the situations described in Subsections (82)(a) and (b).

759 [~~(83) "Unregulated custody transfer" means the placement of a child:]~~

760 [~~(a) with an individual who is not the child's parent, step-parent, grandparent, adult~~

761 ~~sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with~~
762 ~~whom the child is familiar, or a member of the child's federally recognized tribe;]~~

763 [~~(b) with the intent of severing the child's existing parent-child or guardian-child~~
764 ~~relationship; and]~~

765 [~~(c) without taking:]~~

766 [~~(i) reasonable steps to ensure the safety of the child and permanency of the placement;~~
767 ~~and]~~

768 [~~(ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or~~
769 ~~guardianship to the individual taking custody of the child.]~~

770 [~~(84)~~] (83) "Unsupported" means the same as that term is defined in Section

771 [62A-4a-101](#).

772 [~~(85)~~] (84) "Unsubstantiated" means the same as that term is defined in Section
773 62A-4a-101.

774 [~~(86)~~] (85) "Validated risk and needs assessment" means an evidence-based tool that
775 assesses a minor's risk of reoffending and a minor's criminogenic needs.

776 [~~(87)~~] (86) "Without merit" means the same as that term is defined in Section
777 62A-4a-101.

778 [~~(88)~~] (87) "Youth offender" means an individual who is:

779 (a) at least 12 years old, but under 21 years old; and

780 (b) committed by the juvenile court to the Division of Juvenile Justice Services for
781 secure care under Sections 80-6-703 and 80-6-705.

782 Section 23. **Repealer.**

783 This bill repeals:

784 Section 62A-4a-607, **Promotion of adoption -- Agency notice to potential adoptive**
785 **parents.**

786 Section 62A-4a-609, **Preplacement disclosure and training before high needs child**
787 **adoption.**

788 Section 62A-4a-711, **Penalty.**