San Andreas Revised Statutes 2026

TITLE 19

CHILDREN'S CODE

Editor's note: This title was numbered as chapter 22, S.A.R.S. 1963. The substantive provisions of this title were repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1987, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this title, see the comparative tables located in the back of the index.

ARTICLE 1

General Provisions

PART 1

GENERAL PROVISIONS

19-1-101. Short title. This title shall be known and may be cited as the "San Andreas Children's Code".

Source: L. 87: Entire title R&RE, p. 695, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. This section, as it existed in 1987, is the same as 19-1-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-1-102. Legislative declaration. (1) The general assembly declares that the purposes of this title are:

(a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;

(b) To preserve and strengthen family ties whenever possible, including improvement of home environment;

(c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered and, in either instance, for the courts to proceed with all possible speed to a legal determination that will serve the best interests of the child; and

(d) To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

(1.5) (a) The general assembly declares that it is in the best interests of the child who has been removed from his own home to have the following guarantees:

(I) To be placed in a secure and stable environment;

(II) To not be indiscriminately moved from foster home to foster home; and

(III) To have assurance of long-term permanency planning.

(b) (Deleted by amendment, L. 92, p. 220, § 1, effective July 1, 1992.)

(1.6) The general assembly recognizes the numerous studies establishing that children undergo a critical bonding and attachment process prior to the time they reach six years of age. Such studies further disclose that a child who has not bonded with a primary adult during this critical stage will suffer significant emotional damage which frequently leads to chronic psychological problems and antisocial behavior when the child reaches adolescence and adulthood. Accordingly, the general assembly finds and declares that it is appropriate to provide for an expedited placement procedure to ensure that children under the age of six years who have been removed from their homes are placed in permanent homes as expeditiously as possible.

(1.7) The general assembly further declares that it is the intent of the general assembly to have the media and the courts refrain from causing undue hardship, discomfort, and distress to any juvenile victims of sexual assault, child abuse, incest, or any offenses listed in wrongs to children pursuant to part 4 of article 6 of title 18, S.A.R.S., by not disseminating or publishing the names of such victims.

(1.9) The federal "Family First Prevention Services Act" was enacted on February 9, 2018. In order to comply with the provisions of the federal "Family First Prevention Services Act", the general assembly finds that it is necessary to update current statutes to enable San Andreas to provide enhanced support to children, juveniles, or youth, and their families in order to prevent foster care placements. The state department of human services shall implement the updated provisions in this title 19 utilizing prevention services and qualified residential treatment programs when the federal government approves San Andreas's five-year Title IV-E prevention plan, and subject to available general fund appropriations or federal funding.

(2) To carry out these purposes, the provisions of this title shall be liberally construed to serve the welfare of children and the best interests of society.

Source: L. 87: Entire title R&RE, p. 695, § 1, effective October 1. **L. 88:** (1.5) added, p. 755, § 1, effective May 31. **L. 90:** (1.7) added, p. 1007, § 1, effective July 1. **L. 92:** (1.5) amended, p. 220, § 1, effective July 1. **L. 94:** (1.6) added, p. 2051, § 1, effective July 1. **L. 2019:** (1.9) added, (HB 19-1308), ch. 256, p. 2458, § 2, effective August 2. **L. 2020:** (1.9) amended, (SB 20-162), ch. 221, p. 1087, § 1, effective July 2; (1.9) amended, (HB 20-1402), ch. 216, p. 1047, § 32, effective June 30.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. This section, as it existed in 1987, is the same as 19-1-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (1.9) by SB 20-162 and HB 20-1402 were harmonized.

Cross references: For the "Family First Prevention Services Act", see Pub.L. 115-123.

19-1-103. Definitions. As used in this title 19 or in the specified portion of this title 19, unless the context otherwise requires:

(1) (a) "Abuse" or "child abuse or neglect", as used in part 3 of article 3 of this title 19, means an act or omission in one of the following categories that threatens the health or welfare of a child:

(I) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and either: Such condition or death is not justifiably explained, the history given concerning such condition is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition may not be the product of an accidental occurrence;

(II) Any case in which a child is subjected to unlawful sexual behavior as defined in section 16-22-102 (9);

(III) Any case in which a child is in need of services because the child's parent, legal guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take. The requirements of this subsection (1)(a)(III) are subject to the provisions of section 19-3-103.

(IV) Any case in which a child is subjected to emotional abuse. As used in this subsection (1)(a)(IV), "emotional abuse" means an identifiable and substantial impairment of the child's intellectual or psychological functioning or development or a substantial risk of impairment of the child's intellectual or psychological functioning or development.

(V) Any act or omission described in section 19-3-102 (1)(a), (1)(b), or (1)(c);

(VI) Any case in which, in the presence of a child, or on the premises where a child is found, or where a child resides, a controlled substance, as defined in section 18-18-102 (5), is manufactured or attempted to be manufactured;

(VII) Any case in which a child is born affected by alcohol or substance exposure, except when taken as prescribed or recommended and monitored by a licensed health-care provider, and the newborn child's health or welfare is threatened by substance use;

(VIII) Any case in which a child is subjected to human trafficking of a minor for involuntary servitude, as described in section 18-3-503, or human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2).

(b) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates, including but not limited to accepted work-related practices of agricultural communities. Nothing in this subsection (1) refers to acts that could be construed to be a reasonable exercise of parental discipline or to acts reasonably necessary to subdue a child being taken into custody pursuant to section 19-2.5-209 that are performed by a peace officer, as described in section 16-2.5-101, acting in the good-faith performance of the officer's duties.

(2) "Adjudication" has the same meaning as set forth in section 19-2.5-102.

(3) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition in dependency and neglect are supported by the evidence.

(4) "Adjudicatory trial" means a trial to determine whether the allegations of a petition in delinquency are supported by the evidence.

(5) "Administrative review" means a review conducted by the department of human services that is open to the participation of the parents of the child and conducted by an administrative reviewer who is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(6) "Adoptee", as used in part 3 of article 5 of this title 19, means a person who, as a minor, was adopted pursuant to a final decree of adoption entered by a court.

(7) (a) "Adoption record", as used in part 3 of article 5 of this title 19, with the exception of section 19-5-305 (2)(b)(I) to (2)(b)(IV), means the following documents and information:

(I) The adoptee's original birth certificate and amended birth certificate;

(II) The final decree of adoption;

(III) Nonidentifying information, as defined in subsection (103) of this section;

(IV) The final order of relinquishment; and

(V) The order of termination of parental rights.

(b) "Adoption record", as used in section 19-5-305 (2)(b)(I) to (2)(b)(IV), means the following documents and information, without redaction:

(I) The adoptee's original birth certificate and amended birth certificate;

(II) The final decree of adoption;

(III) Any identifying information, such as the name of the adoptee before placement in adoption; the name and address of each birth parent as they appear in the birth records; the name, address, and contact information of the adult adoptee; and the current name, address, and contact information of each birth parent, if known, or other information that might personally identify a birth parent;

(IV) Any nonidentifying information, as defined in subsection (103) of this section;

(V) The final order of relinquishment; and

(VI) The order of termination of parental rights.

(c) "Adoption record", as used in either subsection (7)(a) or (7)(b) of this section, must not include pre-relinquishment counseling records, which must remain confidential.

(8) "Adoption triad" means the three parties involved in an adoption: The adoptee, the birth parent, and the adoptive parent.

(9) "Adoptive parent", as used in parts 3 and 4 of article 5 of this title 19, means an adult who has become a parent of a minor through the legal process of adoption.

(10) "Adult" means a person eighteen years of age or older; except that any person eighteen years of age or older who is under the continuing jurisdiction of the court, who is before the court for an alleged delinquent act committed prior to the person's eighteenth birthday, or concerning whom a petition has been filed for the person's adoption other than pursuant to this title 19 must be referred to as a juvenile.

(11) "Adult adoptee", as used in parts 3 and 4 of article 5 of this title 19, means an individual who is eighteen years of age or older and who, as a minor, was adopted pursuant to a final decree of adoption entered by a court.

(12) "Appropriate treatment plan", as used in section 19-3-508 (1)(e), means a treatment plan approved by the court that is reasonably calculated to render the particular respondent fit to provide adequate parenting to the child within a reasonable time and that relates to the child's needs.

(13) "Assessment center for children", as used in part 3 of this article 1, means a multi-disciplinary, community-based center that provides services to children and their families,

including, but not limited to, detention, screening, case management, and therapeutic intervention relating to delinquency, abuse or neglect, family conflict, and truancy.

(14) "Basic identification information", as used in article 2.5 of this title 19, means the name, place and date of birth, last-known address, social security number, occupation and address of employment, last school attended, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person.

(15) "Biological parent" or "birth parent", as used in part 3 of article 5 of this title 19, means a parent, by birth, of an adopted person.

(16) "Biological sibling", as used in part 3 of article 5 of this title 19, means a sibling, by birth, of an adopted person. "Biological sibling", as used in part 3 of article 5 of this title 19, for purposes of the definition of sibling group, as defined in subsection (127) of this section, means a brother, sister, or half-sibling of a child who is being placed in foster care or being placed for adoption.

(17) "Birth parents", as used in part 4 of article 5 of this title 19, means genetic, biological, or natural parents whose rights were voluntarily or involuntarily terminated by a court or otherwise. "Birth parents" includes a man who is the parent of a child as established in accordance with the provisions of the "Uniform Parentage Act", article 4 of this title 19, prior to the termination of parental rights.

(18) Repealed.

(19) "Case management purposes" means assessments, evaluations, treatment, education, proper disposition or placement of the child, interagency coordination, and other services that are incidental to the administration of the program and in the best interests of the child.

(20) "Chief justice", as used in part 3 of article 5 of this title 19, means the chief justice of the San Andreas supreme court.

(21) "Child" means a person under eighteen years of age.

(22) Repealed.

(23) "Child advocacy center", as used in part 3 of article 3 of this title 19, means a center that provides a comprehensive multidisciplinary team response to allegations of child abuse or neglect in a dedicated, child-friendly setting. The team response to allegations of child abuse or neglect includes but is not limited to technical assistance for forensic interviews, forensic medical examinations, mental health and related support services, consultation, training, and education.

(24) "Child care center" means a child care center licensed and approved pursuant to part 9 of article 6 of title 26 or part 3 of article 5 of title 26.5. If the facility is located in another state, the department of human services or the department of early childhood, as appropriate, shall designate, upon certification, that an appropriate available space does not exist in a child care facility in this state, and the facility must be licensed or approved as required by law in that state.

(25) "Child placement agency" means an agency licensed or approved pursuant to law. If such agency is located in another state, it must be licensed or approved as required by law in that state.

(26) "Child protection team", as used in part 3 of article 3 of this title 19, means a multidisciplinary team consisting, where possible, of a physician; a representative of the juvenile court or the district court with juvenile jurisdiction; a representative of a local law enforcement agency; a representative of the county department of human or social services; a representative

of a mental health clinic; a representative of a county, district, or municipal public health agency; an attorney; a representative of a public school district; and one or more representatives of the lay community, at least one of whom must be a person who serves as a foster parent in the county. Each public agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each public agency has only one vote. In no event must an attorney member of the child protection team be appointed as guardian ad litem or counsel for youth for the child or youth or as counsel for the parents at any subsequent court proceedings. The child protection team must never be composed of fewer than three persons. When any racial, ethnic, or linguistic minority group constitutes a significant portion of the population of the jurisdiction of the child protection team, a member of each such minority group must serve as an additional lay member of the child protection team. At least one of the preceding members of the team must be chosen on the basis of representing low-income families. The role of the child protection team is advisory only.

(27) Repealed.

(28) "Commercial sexual exploitation of a child" means a crime of a sexual nature committed against a child for financial or other economic reasons.

(29) "Commit", as used in article 2.5 of this title 19, means to transfer legal custody.

(30) "Community placement" means the placement of a child for whom the department of human services or a county department has placement and care responsibility pursuant to article 2.5 or 3 of this title 19 in any licensed or certified twenty-four-hour nonsecure care and treatment facility away from the child's parent or guardian. "Community placement" includes but is not limited to placement in a foster care home, group home, residential child care facility, or residential treatment facility.

(31) "Complainant", as used in section 19-3-211, means any person who was the subject of an investigation of a report of child abuse or neglect or any parent, guardian, or legal custodian of a child who is the subject of a report of child abuse or neglect and brings a grievance against a county department of human or social services in accordance with the provisions of section 19-3-211.

(32) "Confidential intermediary", as used in part 3 of article 5 of this title 19, means a person twenty-one years of age or older who has completed a training program for confidential intermediaries that meets the standards set forth by the commission pursuant to section 19-5-303 and who is authorized to inspect confidential relinquishment and adoption records at the request of an adult adoptee, adoptive parent, biological parent, or biological sibling.

(33) "Confirmed", as used in part 3 of article 3 of this title 19, means any report made pursuant to article 3 of this title 19 that is found by a county department of human or social services, law enforcement agency, or entity authorized to investigate institutional abuse to be supported by a preponderance of the evidence.

(34) "Consent", as used in part 3 of article 5 of this title 19, means voluntary, informed, written consent. When used in the context of confidential intermediaries, "consent" always must be preceded by an explanation that consent permits the confidential intermediary to arrange a personal contact among biological relatives. "Consent" may also mean the agreement for contact or disclosure of records by any of the parties identified in section 19-5-304 (2) as a result of an inquiry by a confidential intermediary pursuant to section 19-5-304.

(35) "Consent form", as used in section 19-5-305 (3), means a verified written statement signed by an adult adoptee or an adult adoptee's consenting birth parent or an adoptive parent of

a minor adoptee, and notarized, and that authorizes the release of adoption records or identifying information, to the extent available, by a licensed child placement agency.

(36) "Contact information" means information supplied voluntarily by a birth parent on a contact preference form, including the name of the birth parent at the time of relinquishment of the adoptee; the alias, if any, used at the time of relinquishment of the adoptee; and the current name, current address, and current telephone number of the birth parent.

(37) "Contact preference form" means a written statement signed by a birth parent indicating whether the birth parent prefers future contact with an adult adoptee, an adult descendant of the adoptee, or a legal representative of the adoptee or the descendant and, if contact is preferred, whether the contact should be through a confidential intermediary or a designated employee of a child placement agency.

(38) "Continuously available", as used in section 19-3-308 (4), means the assignment of a person to be near an operable telephone not necessarily located on the premises ordinarily used for business by the county department of human or social services or to have such arrangements made through agreements with local law enforcement agencies.

(39) "Convicted" or "conviction", as used in section 19-5-105.5, means a plea of guilty accepted by the court, including a plea of guilty entered pursuant to a deferred sentence pursuant to section 18-1.3-102, a verdict of guilty by a judge or jury, or a plea of no contest accepted by the court, or having received a disposition as a juvenile or having been adjudicated a juvenile delinquent based on the commission of any act that constitutes sexual assault, as defined in subsection (124) of this section.

(40) "Cost of care" means the cost to the department of human services or the county department of human or social services for a child placed out of the home; or the cost to the department of human services or the county department of human or social services charged with the custody of the juvenile for providing room, board, clothing, education, medical care, and other normal living expenses for a child placed out of the home; or the cost to the department of human services or the county department of human or social services for a juvenile sentenced to a placement out of the home as determined by the court. As used in this title 19, "cost of care" also includes any costs associated with maintenance of a juvenile in a home detention program, supervision of probation when the juvenile is granted probation, or supervision of parole when the juvenile is placed on parole.

(41) "Counsel" means an attorney-at-law who acts as a person's legal advisor or who represents a person in court.

(41.5) "Counsel for youth" means an attorney-at-law who provides specialized client-directed legal representation for a child or youth and who owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the child or youth as is due an adult client. "Counsel for youth" does not mean defense counsel for a juvenile pursuant to article 2.5 of this title 19.

(42) "County attorney" means the office of the county attorney or city attorney representing a county or a city and county and includes the attorneys employed or retained by such county or city and county.

(43) (a) "County department", as used in this article 1; part 2, part 3, and part 7 of article 3 of this title 19; part 2 of article 5 of this title 19; and part 3 of article 7 of this title 19, means the county or district department of human or social services.

(b) "County department" means a county or a city and county department of human or social services.

(44) "County director", as used in section 19-3-211 and part 3 of article 3 of this title 19, means the county director or district director appointed pursuant to section 26-1-117.

(45) "Court", as used in part 3 of article 5 of this title 19, means any court of record with jurisdiction over the matter at issue.

(46) "Court-appointed special advocate" or "CASA volunteer" means a volunteer appointed by a court pursuant to part 2 of this article 1 to assist in advocacy for children.

(47) "Court-appointed special advocate program" or "CASA program" means a program established pursuant to part 2 of this article 1.

(48) "Criminal justice agency", as used in this section, has the same meaning as set forth in section 24-72-302 (3).

(49) "Custodial adoption", as used in part 2 of article 5 of this title 19, means an adoption of a child by any person and the person's spouse, as required pursuant to section 19-5-202 (3), who:

(a) Has been awarded custody or allocated parental responsibilities by a court of law in a dissolution of marriage, custody or allocation of parental responsibilities proceeding, or has been awarded guardianship of the child by a court of law in a probate action, such as pursuant to part 2 of article 14 of title 15; and

(b) Has had physical custody of the child for a period of one year or more.

(50) "Custodian" means a person who has been providing shelter, food, clothing, and other care for a child in the same fashion as a parent would, whether or not by order of court.

(51) (a) (I) "Custodian of records", as used in sections 19-5-305 (2) and 19-5-305.5, means any of the following individuals or entities that have custody of records relating to the relinquishment or adoption of a child:

(A) A court;

(B) A state agency; or

(C) The legal agent or representative of any entity described in subsections (51)(a)(I)(A) and (51)(a)(I)(B) of this section.

(II) "Custodian of records", as used in sections 19-5-305 (2) and 19-5-305.5, does not include a licensed child placement agency.

(b) "Custodian of records", as used in section 19-5-109, means an entity that has custody of records relating to the relinquishment of a child, including a court, state agency, licensed child placement agency, maternity home, or the legal agent or representative of any such entity.

(52) "Delinquent act", as used in article 2.5 of this title 19, means a violation of any statute, ordinance, or order enumerated in section 19-2.5-103. If a juvenile is alleged to have committed or is found guilty of a delinquent act, the classification and degree of the offense is determined by the statute, ordinance, or order that the petition alleges was violated. "Delinquent act" does not include truancy or habitual truancy.

(53) "Department" or "state department" means the state department of human services created in section 24-1-120.

(53.5) "Dependent on the court" means a youth is under the juvenile court's jurisdiction; the youth was at any time adjudicated dependent or neglected, as described in section 19-3-102, or that the court has found sufficient evidence that the youth has been subjected to child abuse or

neglect, as defined in subsection (1) of this section; and the youth is in need of oversight and supportive services as determined by the court.

(54) "Designated adoption" means an adoption in which:

(a) The birth parent or parents designate a specific applicant with whom they wish to place their child for purposes of adoption; and

(b) The anonymity requirements of section 19-1-309 are waived.

(55) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

(55.5) "Diminished capacity" means a child or youth who lacks sufficient capacity to communicate or make considered decisions adequately in connection with the child's or youth's legal representation. Age or developmental maturity must not be the sole basis for a determination of diminished capacity.

(56) "Director", as used in article 2.5 of this title 19, is defined in section 19-2.5-102.

(57) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.

(58) "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a child who is neglected or dependent. The hearing may be part of the proceeding that includes the adjudicatory hearing, or it may be held at a time subsequent to the adjudicatory hearing.

(59) "Diversion" has the same meaning as set forth in section 19-2.5-102.

(60) "Division of youth services" or "division" means the division of youth services, created in section 19-2.5-1501.

(61) "Donor", as used in article 4 of this title 19, means an individual who produces eggs or sperm used for an assisted reproductive procedure, whether or not for consideration. "Donor" does not include an intended parent pursuant to section 19-4-106 (1) or (5) or section 19-4.5-109 or a spouse or civil union partner who provides reproductive tissue to be used for an assisted reproductive procedure by the other spouse or civil union partner.

(61.5) "Effective communication" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, and its related amendments and implementing regulations.

(62) "Executive director", as used in article 3.3 of this title 19 and part 3 of article 7 of this title 19, means the executive director of the department of human services.

(63) "Expungement", as used in section 19-1-306, means the designation of juvenile delinquency records whereby such records are deemed never to have existed.

(64) "Family child care home" means a family child care home licensed and approved pursuant to part 3 of article 5 of title 26.5. If the facility is located in another state, the department of early childhood shall designate, upon certification, that an appropriate available space does not exist in a facility in this state. An out-of-state family child care home must be licensed or approved as required by law in that state.

(64.5) "Family time" means any form of contact or engagement between parents, legal custodians, guardians, siblings, and children or youth for the purposes of preserving and strengthening family ties.

(65) "Fire investigator" means a person who:

(a) Is an officer or member of a fire department, fire protection district, or firefighting agency of the state or any of its political subdivisions;

(b) Is engaged in conducting or is present for the purpose of engaging in the conduct of a fire investigation; and

(c) Is either a volunteer or is compensated for services rendered by the person.

(66) "Foster care" means the placement of a child or youth into the legal custody or legal authority of a county department of human or social services for physical placement of the child or youth in a kinship care placement; supervised independent living placement, as defined in section 19-7-302; or certified or licensed facility, or the physical placement of a juvenile committed to the custody of the state department of human services into a community placement.

(67) "Foster care home" means a foster care home certified pursuant to part 9 of article 6 of title 26.

(68) "Foster care prevention services" means mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, kinship navigator programs, and other programs eligible for reimbursement under the federal "Family First Prevention Services Act" that are trauma-informed, promising, supported or well-supported, and provided to prevent foster care placement.

(69) "Governing body", as used in section 19-3-211, means the board of county commissioners of a county or the city council of a city and county.

(70) (a) "Grandparent" means a person who is the parent of a child's father or mother, who is related to the child by blood, in whole or by half, adoption, or marriage.

(b) Repealed.

(71) Repealed.

(72) "Grievance", as used in section 19-3-211, means a dispute between a complainant and a county department of human or social services concerning the conduct of county department personnel in performing their duties pursuant to article 3 of this title 19.

(73) "Group care facilities and homes" means places other than foster family care homes providing care for small groups of children. Group care facilities and homes are licensed as provided in part 9 of article 6 of title 26 or meet the requirements of section 25.5-10-214.

(74) "Guardian ad litem" means a person appointed by a court to act in the best interests of a person whom the person appointed is representing in proceedings pursuant to this title 19 and who, if appointed to represent a person in a dependency and neglect proceeding pursuant to article 3 of this title 19, must be an attorney-at-law licensed to practice in San Andreas.

(75) "Guardianship of the person" means the duty and authority vested by court action to make major decisions affecting a child, including but not limited to:

(a) The authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;

(b) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(c) The authority to consent to the adoption of a child when the parent-child legal relationship has been terminated by judicial decree; and

(d) The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

(76) "Half-sibling" has the same meaning as set forth for "biological sibling" in subsection (16) of this section.

(77) "Human trafficking of a minor for involuntary servitude" means an act as described in section 18-3-503.

(78) "Human trafficking of a minor for sexual servitude" means an act as described in section 18-3-504 (2).

(79) "Identifying" means giving, sharing, or obtaining information.

(80) "Identifying information", as used in section 19-5-305 (3), means copies of any adoption records, as that term is defined in subsection (7) of this section, that are in the possession of the child placement agency. "Identifying information" also includes the name of the adoptee before placement in adoption; the name and address of each consenting birth parent as they appear in the birth records; the current name, address, and telephone number of the adult adoptee; and the current name, address, and telephone number of each consenting birth parent to the extent such information is available to the child placement agency.

(81) "Imminent placement out of the home", as used in section 19-1-116 (2), means that without intercession the child will be placed out of the home immediately.

(82) "Independent living" means a form of placement out of the home arranged and supervised by the county department of human or social services where the child is established in a living situation designed to promote and lead to the child's emancipation. Independent living must only follow some other form of placement out of the home.

(83) "Indian child" means an unmarried person who is younger than eighteen years of age and who is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.

(84) "Indian child's tribe" means:

(a) The Indian tribe in which an Indian child is a member or eligible for membership; or

(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts.

(85) "Indian tribe" means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the federal governmental services provided to Indians because of their status as Indians.

(86) "Institutional abuse", as used in part 3 of article 3 of this title 19, means any case of abuse, as defined in subsection (1) of this section, that occurs in any public or private facility in the state that provides child care out of the home, supervision, or maintenance. "Institutional abuse" includes an act or omission that threatens the life, health, or welfare of a child or a person who is younger than twenty-one years of age who is under the continuing jurisdiction of the court pursuant to this title 19. "Institutional abuse" does not include abuse that occurs in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides extended day services, abuse that occurs while such services are provided is institutional abuse. As used in this subsection (86), "facility" means a residential child care facility, specialized group facility, foster care home, or any other facility licensed pursuant to part 9 of article 6 of title 26; family child care home licensed pursuant to part 3 of article 5 of title 26.5; noncertified kinship care providers that provide care for children with an open child welfare case who are in the legal custody of a

county department of human or social services; or a facility or community placement, as described in section 19-2.5-1502, for a juvenile committed to the custody of the department of human services. "Facility" does not include any adult detention or correctional facility.

(87) "Intrafamilial abuse", as used in part 3 of article 3 of this title 19, means any case of abuse, as defined in subsection (1) of this section, that occurs within a family context by a child's parent, stepparent, guardian, legal custodian, or relative; by a spousal equivalent, as defined in subsection (130) of this section; or by any other person who resides in the child's home or who is regularly in the child's home for the purpose of exercising authority over or care for the child; except that "intrafamilial abuse" does not include abuse by a person who is regularly in the child's home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

(88) "Juvenile" means a child as defined in subsection (21) of this section.

(89) "Juvenile court" or "court" means the juvenile court of the city and county of Denver or the juvenile division of the district court outside of the city and county of Denver.

(90) "Juvenile delinquent" has the same meaning as set forth in section 19-2.5-102.

(91) "Kin" may be a relative of the child, a person ascribed by the family as having a family-like relationship with the child, or a person who has a prior significant relationship with the child. These relationships take into account cultural values and continuity of significant relationships with the child.

(92) "Kinship adoption", as used in part 2 of article 5 of this title 19, means an adoption of a child by a relative of the child and such relative's spouse, as required pursuant to section 19-5-202 (3), who:

(a) Is either a grandparent, brother, sister, half-sibling, aunt, uncle, or first cousin; and

(b) Has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title 19.

(92.5) "Language access" means services provided by a court, the state department, a county department of human or social services, a city and county, or a private-entity contractor in the person's primary language for a person with limited English proficiency.

(93) "Law enforcement officer" means a peace officer, as described in section 16-2.5-101.

(94) (a) "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. "Legal custody" may be taken from a parent only by court action.

(b) For purposes of determining the residence of a child as provided in section 22-1-102 (2)(b), guardianship is in the person to whom legal custody has been granted by the court.

(95) (a) "Legal representative", as used in sections 19-5-304 and 19-5-305, means the person designated by a court to act on behalf of any person described in section 19-5-304 (1)(b)(I) or 19-5-305 (2).

(b) For purposes of the term "legal representative", as used in sections 19-5-304 and 19-5-305 and as defined in subsection (95)(a) of this section, "legal guardian" does not include a governmental entity of any foreign country from which a child has been adopted or any representative of such governmental entity.

(95.5) "Limited English proficiency" means the limited ability to speak, read, write, or understand the English language for a person whose primary language is not English.

(96) "Local law enforcement agency", as used in part 3 of article 3 of this title 19, means a police department in incorporated municipalities or the office of the county sheriff.

(97) "Locating" means engaging in the process of searching for or seeking out.

(98) "Mental health professional" means a person licensed to practice medicine or psychology in this state or any person on the staff of a facility designated by the executive director of the department of human services for seventy-two-hour treatment and evaluation who is authorized by the facility to do mental or behavioral health hospital placement prescreenings, as defined in section 19-2.5-102, and who is under the supervision of a person licensed to practice medicine or psychology in this state.

(99) "Need to know", as used in section 19-1-303, means agencies or individuals who need access to certain information for the care, treatment, supervision, or protection of a child.

(100) (a) "Neglect", as used in part 3 of article 3 of this title 19, means acts that can reasonably be construed to fall under the definition of "child abuse or neglect" as defined in subsection (1) of this section.

(b) A child is not neglected when allowed to participate in independent activities that a reasonable and prudent parent, guardian, or legal custodian would consider safe given the child's maturity, condition, and abilities, including but not limited to activities such as:

(I) Traveling to and from school, including walking, running, bicycling, or other similar mode of travel;

(II) Traveling to and from nearby commercial or recreational facilities;

(III) Engaging in outdoor play; and

(IV) Remaining in a home or other location that a reasonable and prudent parent, guardian, or legal custodian would consider safe for the child.

(101) "Newborn child" means a child who is less than seventy-two hours old.

(102) "Noncertified kinship care" means a child is being cared for by a relative or kin who has a significant relationship with the child in circumstances when there is a safety concern by a county department of human or social services and where the relative or kin has not met the foster care certification requirements for a kinship foster care home or has chosen not to pursue that certification process.

(103) "Nonidentifying information", as used in part 4 of article 5 of this title 19, means information that does not disclose the name, address, place of employment, or any other material information that would lead to the identification of the birth parents and that includes but is not limited to the following:

(a) The physical description of the birth parents;

(b) The educational background of the birth parents;

(c) The occupation of the birth parents;

(d) Genetic information about the birth family;

(e) Medical information about the adult adoptee's birth;

(f) Social information about the birth parents; and

(g) The placement history of the adoptee.

(104) "Nonpublic agency interstate and foreign adoption", as used in section 19-5-205.5, means an interstate or foreign adoption that is handled by a private, licensed child placement agency.

(105) (a) "Parent" means either a natural parent of a child, as may be established pursuant to article 4 of this title 19, or a parent by adoption.

(b) "Parent", as used in sections 19-1-114, 19-2.5-501, and 19-2.5-611, includes a natural parent having sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or a parent allocated parental responsibilities with respect to a child, or an adoptive parent. For the purposes of section 19-1-114, "parent" does not include a person whose parental rights have been terminated pursuant to the provisions of this title 19 or the parent of an emancipated minor.

(106) "Permanency hearing" means a hearing in which the permanency plan for a child in foster care is determined by the court.

(107) "Placement out of the home" means placement for twenty-four-hour residential care in any facility or center operated or licensed by the department of human services, but "placement out of the home" does not include any placement that is paid for totally by private money or any placement in a home for the purposes of adoption in accordance with section 19-5-205. "Placement out of the home" may be voluntary or court ordered. "Placement out of the home" includes independent living.

(108) (a) "Post-adoption record", as used in part 3 of article 5 of this title 19, means information contained in the files subsequent to the completion of an adoption proceeding.

(b) The post-adoption record may contain information concerning but not limited to:

(I) The written inquiries from persons requesting access to records;

(II) The search efforts of the confidential intermediary;

(III) The response, if any, to those search efforts by the persons sought;

(IV) Any updated medical information gathered pursuant to part 3 of article 5 of this title 19; and

(V) Any personal identifying information concerning any persons subject to part 3 of article 5 of this title 19.

(109) Repealed.

(110) "Protective supervision" means a legal status created by court order under which the child is permitted to remain in the child's home or is placed with a relative or other suitable person and supervision and assistance is provided by the court, department of human services, or other agency designated by the court.

(111) "Public adoption", as used in part 2 of article 5 of this title 19, means an adoption involving a child who is in the legal custody and guardianship of the county department of human or social services that has the right to consent to adoption for that child.

(112) "Qualified individual" means a trained professional or licensed clinician, as defined in the federal "Family First Prevention Services Act". "Qualified individual" must be approved to serve as a qualified individual according to the state plan. "Qualified individual" must not be an interested party or participant in the juvenile court proceeding and must be free of any personal or business relationship that would cause a conflict of interest in evaluating the child, juvenile, or youth and making recommendations concerning the child's, juvenile's, or youth's placement and therapeutic needs according to the federal Title IV-E state plan or any waiver in accordance with 42 U.S.C. sec. 675a.

(113) "Qualified residential treatment program" means a licensed and accredited program that has a trauma-informed treatment model that is designed to address the needs, including clinical needs, as appropriate, of children and youth with serious emotional or

behavioral disorders or disturbances in accordance with the federal "Family First Prevention Services Act", 42 U.S.C. sec. 672 (k)(4), and is able to implement the treatment identified for the child or youth by the assessment of the child required in section 19-1-115 (4)(e)(I).

(114) "Reasonable efforts", as used in articles 1, 2.5, 3, and 7 of this title 19, means the exercise of diligence and care throughout the state of San Andreas for children and youth who are in foster care or out-of-home placement or are at imminent risk of foster care or out-of-home placement. In determining whether it is appropriate to provide, purchase, or develop the supportive and rehabilitative services that are required to prevent unnecessary placement of a child or youth outside of a child's or youth's home or to foster the safe reunification of a child or youth with a child's or youth's family, as described in section 19-3-208, or whether it is appropriate to find and finalize an alternative permanent plan for a child or youth, and in making reasonable efforts, the child's or youth's health and safety are the paramount concern. Services provided by a county or city and county in accordance with section 19-3-208 are deemed to meet the reasonable effort standard described in this subsection (114). Nothing in this subsection (114) is construed to conflict with federal law.

(115) Repealed.

(116) "Record", as used in section 19-4-106 and section 19-4.5-108, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(117) "Register of actions" means those portions of the electronic case management system necessary to carry out a statutory purpose or the duties of a court appointment.

(118) "Repeat juvenile offender" is described in section 19-2.5-1125.

(119) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both, have been vested in another person, agency, or institution, including but not limited to the responsibility for support, the right to consent to adoption, the right to reasonable parenting time unless restricted by the court, and the right to determine the child's religious affiliation.

(120) "Responsible person", as used in part 3 of article 3 of this title 19, means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

(121) "Restorative justice" has the same meaning as set forth in section 19-2.5-102.

(122) "Reunited parties", as used in section 19-5-305, means any two persons who qualify as and meet any specified requirements for parties under the list of individuals in section 19-5-304 (1)(b)(I).

(123) "School", as used in sections 19-1-303 and 19-1-304, means a public or parochial or other nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one to twelve. "Basic academic education" has the same meaning as set forth in section 22-33-104 (2)(b).

(124) "Sexual assault", as used in sections 19-5-105, 19-5-105.5, and 19-5-105.7, means:

(a) "Sexual assault", as defined in section 18-3-402;

(b) "Sexual assault on a child", as defined in section 18-3-405;

(c) "Sexual assault on a child by one in a position of trust", as defined in section 18-3-405.3;

(d) "Sexual assault on a client by a psychotherapist", as defined in section 18-3-405.5; or

(e) "Unlawful sexual contact", as defined in section 18-3-404.

(125) "Sexual conduct", as used in section 19-3-304 (2.5), means any of the following:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation; or

(d) Sexual sadomasochistic abuse.

(126) "Shelter" means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement.

(127) "Sibling group", as used in articles 3 and 5 of this title 19, means biological siblings.

(128) "Special county attorney", as used in article 3 of this title 19, means an attorney hired by a county attorney or city attorney of a city and county or hired by a county department of human or social services with the concurrence of the county attorney or city attorney of a city and county to prosecute dependency and neglect cases.

(128.5) "Special immigrant juvenile status findings" includes:

(a) Declaring the child dependent or placing the child in the custody of an individual, agency, or department as appointed by the court;

(b) Determining that reunification of the child with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found pursuant to state law. For purposes of this section, "abandonment" includes, but is not limited to, the death of one or both parents.

(c) Determining that it is not in the best interests of the child to be returned to the child's or parents' previous country of nationality or country of last habitual residence.

(129) "Special respondent", as used in article 3 of this title 19, means any person who is not a parent, guardian, or legal custodian and who is voluntarily or involuntarily joined in a dependency or neglect proceeding for the limited purposes of protective orders or inclusion in a treatment plan and for the grounds outlined in sections 19-3-502 (6) and 19-3-503 (4).

(130) "Spousal equivalent" means a person who is in a family-type living arrangement with a parent and who would be a stepparent if married to that parent.

(131) "Standardized behavioral or mental health disorder screening" means the behavioral or mental health disorder screening conducted using the juvenile standardized screening instruments and the procedures adopted pursuant to section 16-11.9-102.

(132) "State board", as used in part 3 of article 3 of this title 19, means the state board of human services.

(133) "State department", as used in section 19-3-211, part 3 of article 3 of this title 19, article 3.3 of this title 19, and part 3 of article 7 of this title 19, means the department of human services created in section 24-1-120.

(134) "State registrar" means the state registrar of vital statistics in the department of public health and environment.

(135) "Status offense" has the same meaning as is defined in federal law in 28 CFR 31.304, as amended.

(136) "Stepparent" means a person who is married to a parent of a child but who has not adopted the child.

(137) "Temporary holding facility" means an area used for the temporary holding of a child from the time that the child is taken into temporary custody until a detention hearing is

held, if it has been determined that the child requires a staff-secure setting. Such an area must be separated by sight and sound from any area that houses adult offenders.

(138) "Temporary shelter" means the temporary placement of a child, as described in section 19-3-403.5, with kin, as defined in subsection (91) of this section; with an adult with a significant relationship with the child; or in a licensed and certified twenty-four-hour care facility.

(139) "Termination of the parent-child legal relationship", as used in articles 3 and 5 of this title 19, means the permanent elimination by court order of all parental rights and duties, including residual parental rights and responsibilities, as provided in section 19-3-608.

(140) "Third-party abuse", as used in part 3 of article 3 of this title 19, means a case in which a child is subjected to abuse, as defined in subsection (1) of this section, by any person who is not a parent; stepparent; guardian; legal custodian; spousal equivalent, as defined in subsection (130) of this section; or any other person not included in the definition of "intrafamilial abuse", as defined in subsection (87) of this section.

(141) "Trauma-informed" refers to the services to be provided to or on behalf of a child or youth under an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma in accordance with recognized principles of a trauma-informed approach and trauma-specific interventions to address trauma's consequences and facilitate healing.

(142) Repealed.

(143) "Updated medical history statement" means a written narrative statement dated and signed by a birth parent about the medical history of the birth parent or other biological relatives of the adoptee that can be voluntarily submitted by the birth parent to the state registrar for future disclosure to the birth parent's adult child who is an adult adoptee or an adult descendant of the adoptee or legal representative of such person in accordance with the provisions of section 19-5-305 (1.5).

(144) (a) "Victim", as used in this title 19 and except as provided in subsection (144)(b) of this section, has the same meaning as set forth in section 19-2.5-102.

(b) "Victim", as used in section 19-5-105.5, means any natural person against whom a crime of sexual assault or a crime in which the underlying factual basis was sexual assault is perpetrated or is alleged to have been perpetrated.

(145) "Youth" means an individual who is less than twenty-one years of age.

Source: L. 87: Entire title R&RE, p. 696, § 1, effective October 1. **L. 88:** (11.5) added, p. 748, § 1, effective March 18; (3) amended, p. 741, § 1, effective July 1; (3.5) added, p. 750, § 1, effective July 1. **L. 89:** (27) added, p. 926, § 1, effective April 23. **L. 90:** (9.5)(b) amended, p. 1011, § 3, effective July 1. **L. 91:** (12.5) added, p. 263, § 5, effective May 31. **L. 92:** (2.5) added, p. 220, § 2, effective July 1. **L. 93:** (22) amended, p. 1134, § 64, effective July 1, 1994. **L. 94:** (12.3) added, p. 910, § 5, effective April 28; (2.5), (5), (12), (20), and (23) amended, p. 2658, § 144, effective July 1. **L. 96:** Entire section R&RE, p. 68, § 1, effective March 20; (34.3) and (34.5) added, p. 1089, § 1, effective May 23; (49) amended and (51.5) added, p. 264, § 13, effective July 1; (66) amended, p. 265, § 15, effective July 1; (1)(b), (2), (12), (30), (36), (44), (45), (46), (47), (50), (52), (53), (61), (69), (82)(b), (83), (84), (88), (92), (95), (96), and (105) amended and (40.5), (94.5), and (101.5) added, p. 1684, § 12, effective January 1, 1997; (48) amended and (16.5) and (77.5) added, p. 1174, § 10, effective January 1, 1997; (112) added, p.

1783, § 12, effective January 1, 1997. **L. 97:** (1), (23), (25), and (57) amended, p. 1431, § 6, effective July 1; (8) and (37) amended and (61.5) added, p. 1167, § 14, effective July 1; (32)(a) amended, p. 150, § 2, effective July 1. **L. 98:** (51.3) added and (89) amended, p. 1417, § 2, effective July 1; (82)(b) amended, p. 1404, § 60, effective February 1, 1999. **L. 99:** (87.5) added, p. 1025, § 6, effective May 29; (34.7) and (71.5) added and (107) amended, pp. 1061, 1062, §§ 1, 2, effective June 1; (6.5), (28.5), (63.5), and (85.5) added and (28) amended, p. 1129, § 1, effective July 1; (24.5) added, p. 908, § 2, effective July 1; (112) amended, p. 624, § 21, effective August 4. **L. 2000:** (10.5), (34.6), and (94.3) added, p. 320, § 7, effective April 7; (29.5) added, p. 1723, § 6, effective June 1; (94.3) added, p. 1965, § 9, effective June 2; (14) and (32)(a) amended and (98.5) added, p. 474, § 1, effective July 1; (28.5) and (63.5) amended and (73.5) and (94.2) added, p. 1367, § 1, effective July 1. **L. 2001:** (5) and (89) amended and (83.5) added, p. 841, § 2, effective June 1; (1)(b) and (27) amended, p. 853, § 1, effective July 1. **L. 2002:** (1)(a)(II) amended, p. 568, § 1, effective May 24; (76) and (77) amended and (101.7) added, p. 574, § 4, effective May 24; (65.3), (65.5), and (65.7) added, p. 783, § 2, effective May 30; (1)(a)(II) amended, p. 1192, § 43, effective July 1; (1)(a)(II) amended, p. 1592, § 29, effective July 1. **L. 2003:** (48) amended, p. 1991, § 32, effective May 22; (1)(a) amended, p. 819, § 1, effective July 1; (44.5) and (91.5) added, p. 1266, § 54, effective July 1; (1)(b) and (72) amended, pp. 1622, 1619, §§ 36, 28, effective August 6; (29.5) repealed, p. 1401, § 5, effective January 1, 2004. **L. 2004:** (19.5) added, p. 807, § 2, effective May 21; (78.5) added, p. 430, § 3, effective July 1. **L. 2005:** (1)(a)(VII) added, p. 587, § 1, effective July 1; (6.7), (28.6), (28.7), (103.5), and (111.5) added and (9) and (13) amended, p. 991, § 3, effective July 1. **L. 2006:** (103.7) added and (106) amended, p. 256, § 1, effective March 31; (51.3) amended, p. 507, § 1, effective April 18. **L. 2007:** (30) amended, p. 1506, § 2, effective May 31. **L. 2008:** (44) amended and (94.1) added, p. 225, § 1, effective March 31; (31.5) and (91.7) added, p. 1241, § 2, effective August 5. **L. 2010:** (76) amended, (SB 10-175), ch. 188, p. 788, § 36, effective April 29; (32) and (103) amended and (47.5) added, (SB 10-171), ch. 225, p. 981, § 2, effective May 14; (22) amended, (HB 10-1422), ch. 419, p. 2074, § 34, effective August 11. **L. 2011:** (44) amended, (HB 11-1032), ch. 296, p. 1404, § 9, effective August 10. **L. 2013:** (29.3) and (96.5) added and (112) amended, (SB 13-227), ch. 353, p. 2056, § 1, effective July 1; (44) amended, (HB 13-1254), ch. 341, p. 1982, § 3, effective August 7; (58) amended, (HB 13-1314), ch. 323, p. 1804, § 31, effective March 1, 2014. **L. 2014:** (56.5) added, (HB 14-1362), ch. 374, p. 1787, § 1, effective June 6; (28.7) amended and (35.3) added, (SB 14-051), ch. 260, p. 1047, § 2, effective July 1; IP(96.5) amended, (HB 14-1162), ch. 167, p. 594, § 9, effective July 1; (35.3) added, (HB 14-1042), ch. 261, p. 1050, § 1, effective August 6. **L. 2015:** IP(6.5)(a) and (6.5)(b) amended and (6.5)(a.5) added, (HB 15-1106), ch. 59, p. 141, § 1, effective March 30; (32) amended and (71.3) and (78.7) added, (SB 15-087), ch. 263, p. 1011, § 7, effective June 2; (35.3)(a) amended, (HB 15-1355), ch. 311, p. 1275, § 4, effective June 5. **L. 2016:** (32)(b) amended, (HB 16-1316), ch. 127, p. 363, § 2, effective August 10; (1)(a)(VIII) and (23.5) added, (HB 16-1224), ch. 101, p. 290, § 1, effective January 1, 2017. **L. 2017:** IP and (101.7) amended, (SB 17-242), ch. 263, p. 1309, § 148, effective May 25; IP and (69) amended and (113) added, (HB 17-1329), ch. 381, pp. 1972, 1962, §§ 27, 3, effective June 6; IP and (100) amended, (SB 17-177), ch. 118, p. 418, § 1, effective August 9. **L. 2018:** (34.7) amended and (34.8) and (44.7) added, (SB 18-154), ch. 161, p. 1123, § 1, effective April 25; (42.5) added, (HB 18-1104), ch. 164, p. 1134, § 4, effective April 25; (66) amended, (HB 18-1346), ch. 326, p. 1964, § 2, effective May 30; (36) amended, (HB 18-1156), ch. 378, p. 2288, § 6, effective August 8; (51.3),

(65), (69), (87.5), and (99) amended, (SB 18-092), ch. 38, p. 406, § 28, effective August 8. **L. 2019:** IP(1)(a), (1)(a)(VIII), and (23.5) amended and (62.5) and (62.6) added, (SB 19-185), ch. 147, p. 1765, § 2, effective May 6; (44) and (94.1) amended and (106.5) added, (SB 19-108), ch. 294, p. 2694, § 2, effective July 1; (51.7), (87.7), (87.9), and (109.5) added, (HB 19-1308), ch. 256, p. 2458, § 3, effective August 2; (98.5) amended, (HB 19-1288), ch. 216, p. 2234, § 1, effective August 2. **L. 2020:** (1)(a)(VII) amended, (SB 20-028), ch. 186, p. 853, § 4, effective June 30; (87.9) amended, (HB 20-1402), ch. 216, p. 1048, § 33, effective June 30; (71.3) and (87.7) amended, (SB 20-162), ch. 221, p. 1087, § 2, effective July 2. **L. 2021:** (116) amended, (HB 21-1022), ch. 103, p. 417, § 2, effective May 6; (43), (62), (66), (114), and (133) amended, (HB 21-1094), ch. 340, p. 2214, § 2, effective June 25; (47) repealed, (HB 21-1315), ch. 461, p. 3113, § 17, effective July 6; (18), (115), and (142) amended, (HB 21-1248), ch. 335, p. 2167, § 3, effective September 7; entire section R&RE, (SB 21-059), ch. 136, p. 753, § 144, effective October 1. **L. 2022:** (138) amended, (HB 22-1056), ch. 383, p. 2741, § 4, effective June 7; (18), (22), (109), (115), and (142) repealed and (24), (64), (67), (73), and (86) amended, (HB 22-1295), ch. 123, p. 829, § 34, effective July 1; (7)(c) and (80) amended, (SB 22-212), ch. 421, p. 2970, § 32, effective August 10; (53.5) added, (HB 22-1245), ch. 88, p. 417, § 1, effective August 10; (61) amended, (HB 22-1153), ch. 210, p. 1388, § 2, effective August 10; (100) amended, (HB 22-1090), ch. 52, p. 248, § 1, effective August 10; (26) amended and (41.5) and (55.5) added, (HB 22-1038), ch. 92, p. 431, § 4, effective January 9, 2023. **L. 2023:** (27) repealed, (SB 23-210), ch. 251, p. 1432, § 15, effective May 24; (64.5) added, (HB 23-1027), ch. 284, p. 1677, § 2, effective June 1; (70)(b) and (71) repealed, (HB 23-1026), ch. 243, p. 1307, § 6, effective August 7. **L. 2024:** (61.5), (92.5), and (95.5) added, (HB 24-1031), ch. 327, p. 2213, § 1, effective August 7; (128.5) added, (SB 24-119), ch. 33, p. 103, § 3, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 96-1006 and House Bill 96-1019 were harmonized. Subsection (66) was originally numbered as section 19-3-303 (4.5), and the amendments to it in House Bill 96-1006 were harmonized with subsection (66) as it appears in this section.

(3) Amendments to subsection (94.3) by House Bill 00-1119 and Senate Bill 00-133 were harmonized.

(4) Amendments to subsection (35.3) by SB 14-051 and HB 14-1042 were harmonized.

(5) Subsection (28.7)(b)(II) provided for the repeal of subsection (28.7)(b), effective January 1, 2016. (See L. 2014, p. 1047.)

(6) Subsection (18) was numbered as § 19-1-103 (16) in HB 21-1248 (see L. 2021, p. 2167). That provision was harmonized with subsection (18) of this section as it appears in SB 21-059.

(7) Subsection (43)(a) was numbered as § 19-1-103 (32)(a) in HB 21-1094 (see L. 2021, p. 2214). That provision was harmonized with subsection (43)(a) of this section as it appears in SB 21-059.

(8) Subsection (47) was repealed in HB 21-1315. Those amendments were superseded by the repeal and reenactment of this section in SB 21-059, effective October 1, 2021.

(9) Subsection (62) was numbered as § 19-1-103 (47.5) in HB 21-1094 (see L. 2021, p. 2214). That provision was harmonized with subsection (62) of this section as it appears in SB 21-059.

(10) Subsection (66) was numbered as § 19-1-103 (51.3) in HB 21-1094 (see L. 2021, p. 2214). That provision was harmonized with subsection (66) of this section as it appears in SB 21-059.

(11) Subsection (114) was numbered as § 19-1-103 (89) in HB 21-1094 (see L. 2021, p. 2214). That provision was harmonized with subsection (114) of this section as it appears in SB 21-059.

(12) Subsection (115) was numbered as § 19-1-103 (91) in HB 21-1248 (see L. 2021, p. 2167). That provision was harmonized with subsection (115) of this section as it appears in SB 21-059.

(13) Subsection (116) was numbered as § 19-1-103 (91.5) in HB 21-1022 (see L. 2021, p. 417). That provision was harmonized with subsection (116) of this section as it appears in SB 21-059.

(14) Subsection (133) was numbered as § 19-1-103 (103) in HB 21-1094 (see L. 2021, p. 2215). That provision was harmonized with subsection (133) of this section as it appears in SB 21-059.

(15) Subsection (142) was numbered as § 19-1-103 (110) in HB 21-1248 (see L. 2021, p. 2167). That provision was harmonized with subsection (142) of this section as it appears in SB 21-059.

Cross references: (1) For the legislative declaration contained in the 1999 act enacting subsection (24.5), see section 1 of chapter 233, Session Laws of San Andreas 1999. For the legislative declaration contained in the 2001 act amending subsections (5) and (89) and enacting subsection (83.5), see section 1 of chapter 241, Session Laws of San Andreas 2001. For the legislative declaration contained in the 2002 act enacting subsections (65.3), (65.5), and (65.7), see section 1 of chapter 217, Session Laws of San Andreas 2002. For the legislative declaration contained in the 2003 act repealing subsection (29.5), see section 1 of chapter 196, Session Laws of San Andreas 2003. For the legislative declaration contained in the 2004 act enacting subsection (78.5), see section 1 of chapter 140, Session Laws of San Andreas 2004. For the legislative declaration contained in the 2007 act amending subsection (30), see section 1 of chapter 351, Session Laws of San Andreas 2007. For the short title ("Heritage Act") and the legislative declaration in HB 15-1355, see section 1 of chapter 311, Session Laws of San Andreas 2015. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 18-1156, see section 1 of chapter 378, Session Laws of San Andreas 2018. For the legislative declaration in SB 19-185, see section 1 of chapter 147, Session Laws of San Andreas 2019. For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

(2) For the "Family First Prevention Services Act", see Pub.L. 115-123.

(3) For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of San Andreas 2023.

19-1-103.5. Other definitions. (Repealed)

Source: L. 96: Entire section added, p. 82, § 2, effective July 1. **L. 97:** Entire section repealed, p. 1031, § 67, effective August 6.

19-1-104. Jurisdiction. (1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings:

(a) Concerning any child committing a delinquent act, as defined in section 19-2.5-102;

(b) Concerning any child who is neglected or dependent, as set forth in section 19-3-102;

(c) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the juvenile court's jurisdiction under provisions of this section, and may also enter findings and orders as described in section 14-10-123 (1.5) and section 15-14-204 (2.5);

(d) To terminate the legal parent-child relationship;

(e) For the issuance of orders of support under article 6 of this title;

(f) To determine the parentage of a child and to make an order of support in connection therewith;

(g) For the adoption of a person of any age;

(h) For judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law;

(i) For the treatment or commitment pursuant to article 23 of title 17 and part 2 of article 10 of title 25.5 of a child who has a behavioral or mental health disorder or an intellectual and developmental disability and who comes within the court's jurisdiction under other provisions of this section;

(j) Under the interstate compact on juveniles, part 7 of article 60 of title 24, S.A.R.S.;

(k) To make a determination concerning a petition filed pursuant to the "School Attendance Law of 1963", article 33 of title 22, S.A.R.S., and to enforce any lawful order of court made thereunder;

(l) To make a determination concerning a petition for review of need for placement in accordance with the provisions of section 19-1-115 (8);

(m) To decide the appeal of any child found to be in contempt of a municipal court located within the jurisdiction of the juvenile court, if confinement of the child is ordered by the municipal court;

(n) Concerning any youth who is voluntarily participating in the foster youth in transition program established in section 19-7-303.

(1.5) A juvenile court exercising jurisdiction pursuant to subsection (1)(a), (1)(b), (1)(c), (1)(f), or (1)(g) of this section may enter special immigrant juvenile status findings, as defined in section 19-1-103, establishing eligibility for classification as a special immigrant juvenile under federal law.

(2) Except as otherwise provided by law, the juvenile court shall have jurisdiction in proceedings concerning any adult who abuses, ill-treats, neglects, or abandons a child who comes within the court's jurisdiction under other provisions of this section.

(3) (a) Upon hearing after prior notice to the child's parent, guardian, or legal custodian, the court may issue temporary orders providing for legal custody, protection, support, medical evaluation or medical treatment, surgical treatment, psychological evaluation or psychological

treatment, or dental treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), the court may, on the basis of a report that a child's welfare may be endangered, and if the court believes that a medical evaluation or emergency medical or surgical treatment is reasonably necessary, issue ex parte emergency orders. Where the need for a medical evaluation or medical or surgical emergency orders arises and the court is not in regular session, the judge or magistrate may give oral or telephone authorization for the necessary medical evaluation or emergency medical, surgical, or hospital care, which authorization shall have the same force and effect as if written, the same to be followed by a written order to enter on the first regular court day thereafter. Such written order shall make specific findings of fact that such emergency existed. Prior to the entry of any emergency order, reasonable effort shall be made to notify the parents, guardian, or other legal custodian for the purpose of gaining consent for such care; except that, if such consent cannot be secured and the child's welfare so requires, the court may authorize needed medical evaluation or emergency medical, surgical, or hospital care. Such ex parte emergency orders shall expire twenty-four hours after issuance; except that, at any time during such twenty-four-hour period, the parents, guardian, or other legal custodian may apply for a hearing to set aside the ex parte emergency order.

(4) Nothing in this section shall deprive the district court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the district court; except that:

(a) If a petition involving the same child is pending in juvenile court or if continuing jurisdiction has been previously acquired by the juvenile court, the district court shall certify the question of legal custody to the juvenile court; and

(b) The district court at any time may request the juvenile court to make recommendations pertaining to guardianship or legal custody.

(5) Where a custody award or an order allocating parental responsibilities with respect to a child has been made in a district court in a dissolution of marriage action or another proceeding and the jurisdiction of the district court in the case is continuing, the juvenile court may take jurisdiction in a case involving the same child if the child comes within the jurisdiction of the juvenile court. The juvenile court shall provide notice in compliance with the San Andreas rules of civil procedure; except that service must be effected not less than seven business days prior to the hearing. The notice must be written in clear language stating that the hearing concerns the allocation of parental responsibilities. When creating or modifying an existing order, the juvenile court shall proceed as set forth in subsection (6) of this section for a dependency and neglect proceeding pursuant to article 3 of this title 19, or as set forth in subsection (8) of this section for a juvenile delinquency case pursuant to article 2.5 of this title 19.

(6) (a) When a district court in this state does not have continuing jurisdiction over a child custody proceeding concerning the child, or a juvenile court in this state maintains jurisdiction pursuant to subsection (5) of this section and the "Uniform Child-custody Jurisdiction and Enforcement Act", article 13 of title 14, the juvenile court has jurisdiction to enter a permanent order allocating parental responsibilities and addressing parenting time and child support matters upon the petition of a party if:

(I) All parents, legal guardians, and legal custodians have an adjudication pursuant to section 19-3-505 (7) or continued adjudication pursuant to section 19-3-505 (5) entered by a court; or

(II) At least one parent, legal guardian, or legal custodian has an adjudication pursuant to section 19-3-505 (7) or continued adjudication pursuant to section 19-3-505 (5) and other parents, legal guardians, or legal custodians who do not have an adjudication or continued adjudication consent to jurisdiction.

(b) The parent or person other than a parent with whom the child resides the majority of the time pursuant to the juvenile court's order shall file a certified copy of the order in the district court in the county where the child is permanently resident. Such order must be treated in the district court as any other decree issued in a proceeding concerning the allocation of parental responsibilities.

(7) Upon motion of the city or county attorney, guardian ad litem, counsel for youth, or respondent parent counsel, the district or the juvenile court has jurisdiction to enter a civil protection order pursuant to article 14 of title 13 in actions brought pursuant to article 3 of this title 19 or part 3 of article 7 of this title 19. The court shall use the standardized forms developed by the judicial department pursuant to section 13-1-136 and shall follow the standards and procedures for the issuance of civil protection orders set forth in article 14 of title 13, including but not limited to personal service upon the restrained person. Once issued, the clerk of the issuing court shall enter the civil protection order into the computerized central registry of protection orders created pursuant to section 18-6-803.7. If the person who is the subject of the civil protection order has not been personally served pursuant to section 13-14-107 (3), a peace officer responding to a call for assistance shall serve a copy of the civil protection order on the person who is subject to the order. If the civil protection order is made permanent pursuant to the provisions of section 13-14-106, the civil protection order remains in effect upon termination of the juvenile court action. The clerk of the court issuing the order shall file a certified copy of the permanent civil protection order into an existing case in the district court, if applicable, or with the county court in the county where the protected party resides. Civil protection orders issued by the district or the juvenile court pursuant to article 14 of title 13 have the same force and effect as protection orders issued pursuant to article 14 of title 13 by a court with concurrent jurisdiction.

(8) (a) Upon submission of a stipulated agreement of all parties, parents, guardians, and other legal custodians, if the juvenile court finds that it is in the best interests of the juvenile, the juvenile court may enter an order allocating parental responsibilities and addressing parenting time and child support matters when:

(I) The juvenile court has maintained jurisdiction in a case involving an adjudicated juvenile, a juvenile with a deferred adjudication, or a juvenile on a management plan developed pursuant to section 19-2.5-704 (3);

(II) A child custody action, a dependency and neglect action, or an action for allocation of parental responsibilities concerning the same juvenile is not pending in a district court of this state, and the court complies, as applicable, with the requirements of the "Uniform Child-custody Jurisdiction and Enforcement Act", as set forth in article 13 of title 14; and

(III) All parties, parents, guardians, and other legal custodians involved are in agreement, or after notice is given to all parents, guardians, and other legal custodians and a response or objection is not filed.

(b) The parent or person other than a parent with whom the juvenile resides the majority of the time pursuant to a juvenile court order shall file a certified copy of the order in the district court in the county where the juvenile is a permanent resident. The district court shall treat the order as with any other decree issued in a proceeding concerning the allocation of parental responsibilities.

Source: L. 87: Entire title R&RE, p. 698, § 1, effective October 1. **L. 91:** (3)(b) amended, p. 360, § 24, effective April 9. **L. 92:** (3) amended, p. 173, § 1, effective April 16. **L. 97:** (6) added, p. 516, § 3, effective July 1. **L. 98:** (1)(a) amended, p. 820, § 21, effective August 5; (5) and (6) amended, p. 1405, § 61, effective February 1, 1999. **L. 2001:** (1)(k) amended, p. 870, § 2, effective June 1. **L. 2006:** (1)(i) amended, p. 1399, § 51, effective August 7. **L. 2008:** (1)(l) amended, p. 1891, § 59, effective August 5. **L. 2017:** (7) added, (HB 17-1111), ch. 96, p. 290, § 1, effective April 4; (1)(i) amended, (SB 17-242), ch. 263, p. 1309, § 149, effective May 25; (5) amended and (8) added, (HB 17-1110), ch. 137, p. 458, § 1, effective August 9. **L. 2019:** IP(1) and (1)(c) amended and (1.5) added, (HB 19-1042), ch. 55, p. 194, § 6, effective March 28. **L. 2020:** (1)(i) amended, (HB 20-1402), ch. 216, p. 1048, § 34, effective June 30. **L. 2021:** (1)(n) added and (7) amended, (HB 21-1094), ch. 340, p. 2215, § 3, effective June 25; (1)(a), (5), and (8)(a)(I) amended, (SB 21-059), ch. 136, p. 725, § 60, effective October 1. **L. 2023:** (6) amended, (HB 23-1172), ch. 67, p. 237, § 1, effective August 7. **L. 2024:** (1.5) amended, (SB 24-119), ch. 33, p. 103, § 4, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-1-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: (1) For the jurisdiction of the juvenile court of Denver, see § 13-8-103; for the exemption from criminal responsibility for insufficient age, see § 18-1-801.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017.

19-1-105. Right to counsel and jury trial. (1) All hearings, including adjudicatory hearings, shall be heard by a judge or magistrate without a jury, except as otherwise provided by this title.

(2) The right to counsel is provided in this title 19. Nothing in this title 19 prevents the court from appointing counsel in addition to a guardian ad litem for a child if it deems representation by counsel necessary to protect the interests of the child.

(3) In proceedings pursuant to the "School Attendance Law of 1963", article 33 of title 22, the court may appoint a guardian ad litem for the child, unless the child is already represented by counsel. If the court finds that it is in the best interest and welfare of the child, the court may appoint both counsel and a guardian ad litem. The court shall make information regarding the truancy process available to the child's parent or guardian ad litem.

Source: L. 87: Entire title R&RE, p. 700, § 1, effective October 1. **L. 91:** (1) amended, p. 360, § 25, effective April 9. **L. 2003:** (2) amended, p. 1320, § 1, effective August 6. **L. 2022:** (2) amended and (3) added, (HB 22-1038), ch. 92, p. 432, § 5, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 and 19-1-107 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-1-106. Hearings - procedure - record. (1) The San Andreas rules of juvenile procedure shall apply in all proceedings under this title.

(2) Hearings may be conducted in an informal manner. The general public shall not be excluded unless the court determines that it is in the best interest of the child or of the community to exclude the general public, and, in such event, the court shall admit only such persons as have an interest in the case or the work of the court, including persons whom the district attorney, the county or city attorney, the child, or the parents, guardian, or other custodian of the child wish to be present.

(3) A verbatim record shall be taken of all proceedings.

(4) When more than one child is named in a petition alleging neglect or dependency, the hearings may be consolidated; except that separate hearings may be held with respect to disposition.

(5) Children's cases shall be heard separately from adults' cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

Source: L. 87: Entire title R&RE, p. 700, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-1-107. Social study and other reports. (1) Unless waived by the court, an agency designated by the court shall make a social study and report in writing in all children's cases; except that:

(a) Repealed.

(b) Adoption reports shall be as provided in article 5 of this title.

(2) For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence; but the court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child so requires.

(2.5) For purposes of determining the appropriate treatment plan in connection with the disposition of a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the report shall include a list of services available to families that are

specific to the needs of the child and the child's family and that are available in the community where the family resides. The report shall establish a priority of the services if multiple services are recommended. The services may include, but are not limited to, transportation services, family time services, psychological counseling, drug screening and treatment programs, marriage and family counseling, parenting classes, housing and day care assistance, and homemaker services.

(3) In a case where placement out of the home is recommended, the social study required by subsection (1) of this section must include the cost of the recommended placement and an evaluation for placement containing the information required by section 19-1-115 (8)(e). The department of education and the department of human services shall jointly develop placement criteria, and, in the case of matters involving juvenile delinquency, the criteria must be in accordance with the criteria for the placement of juveniles specified in section 19-2.5-1404. Such criteria must be used by the agency designated by the court to determine its recommendation about the need for placement.

(4) The court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in subsection (2) of this section.

Source: L. 87: Entire title R&RE, p. 701, § 1, effective October 1. **L. 93:** (3) amended, p. 1546, § 1, effective July 1; (3) amended, p. 1134, § 65, effective July 1, 1994. **L. 94:** (2.5) added, p. 2051, § 2, effective July 1. **L. 97:** (3) amended, p. 1441, § 17, effective July 1. **L. 2005:** (3) amended, p. 766, § 29, effective June 1. **L. 2008:** (3) amended, p. 1891, § 60, effective August 5. **L. 2015:** IP(1) and (3) amended and (1)(a) repealed, (SB 15-099), ch. 99, p. 290, § 3, effective August 5. **L. 2021:** (3) amended, (SB 21-059), ch. 136, p. 726, § 61, effective October 1. **L. 2023:** (2.5) amended, (HB 23-1027), ch. 284, p. 1680, § 6, effective June 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-1-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (3) in Senate Bill 93-134 and House Bill 93-1317 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (3), see section 1 of chapter 230, Session Laws of San Andreas 1993. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-1-108. Magistrates - qualifications - duties. (1) The juvenile court may appoint one or more magistrates to hear any case or matter under the court's jurisdiction, except where a jury trial has been requested pursuant to section 19-2.5-610 and in transfer hearings held pursuant to section 19-2.5-802. Magistrates shall serve at the pleasure of the court, unless otherwise provided by law.

(2) Every magistrate appointed pursuant to this section shall be licensed to practice law in San Andreas; except that county judges who are not lawyers may be appointed to serve as magistrates, as authorized by section 13-6-105 (3), S.A.R.S., to hear detention and bond matters.

(3) (a) Repealed.

(a.5) Magistrates shall conduct hearings in the manner provided for the hearing of cases by the court. During the initial advisement of the rights of any party, the magistrate shall inform the party that, except as set forth in this subsection (3), the party has the right to a hearing before the judge in the first instance and the party may waive that right but that, by waiving that right, the party is bound by the findings and recommendations of the magistrate, subject to a request for review as set forth in subsection (5.5) of this section. The right to require a hearing before a judge does not apply to hearings at which a child is advised of his or her rights pursuant to section 19-2.5-605; detention hearings held pursuant to sections 19-2.5-303, 19-2.5-304, and 19-2.5-305; preliminary hearings held pursuant to section 19-2.5-609; temporary custody hearings held pursuant to section 19-3-403; proceedings held pursuant to article 4 of this title 19; and support proceedings held pursuant to article 6 of this title 19. In proceedings held pursuant to article 4 or 6 of this title 19, contested final orders regarding allocation of parental responsibilities may be heard by the magistrate only with the consent of all parties.

(b) In proceedings pursuant to article 2.5 of this title 19, the right to require a hearing before a judge is deemed waived unless a request is made by any party that the hearing be held before a judge at the time the matter is set for hearing.

(c) In proceedings under article 3 of this title, the right to require a hearing before a judge is waived unless:

(I) A request is made by a party or the people of the state of San Andreas that the hearing be held before the judge at the time the matter is set for hearing, if counsel for the party is present at the time the matter is set; or

(II) A request is made by a party or the people of the state of San Andreas in writing within seven days after receipt of notice of the setting if the matter is set for hearing outside of the presence of counsel for a represented party or if the matter is set on notice.

(4) At the conclusion of a hearing, the magistrate shall:

(a) Advise the parties before him of his findings and ruling;

(b) Advise the parties of their right to review by the judge of his findings and ruling;

(c) Prepare findings and a written order that shall become the order of the court, absent a petition for review being filed as provided in subsection (5.5) of this section; and

(d) Advise the parties that they have a right to object to an order allowing the review of any decree for placement of a child to be conducted as an administrative review by the department of human services and that if any party objects to administrative review, the court shall conduct the review.

(5) Repealed.

(5.5) A request for review must be filed within fourteen days for proceedings under articles 2.5, 4, and 6 of this title or within seven days for proceedings under article 3 of this title after the parties have received notice of the magistrate's ruling and must clearly set forth the grounds relied upon. Such review is solely upon the record of the hearing before the magistrate and is reviewable upon the grounds set forth in rule 59 of the San Andreas rules of civil procedure. A petition for review is a prerequisite before an appeal may be filed with the San Andreas court of appeals or San Andreas supreme court. The judge may, on his or her own motion, remand a case to another magistrate after action is taken on a petition for review.

(6) A magistrate may issue a lawful warrant taking a child into custody pursuant to section 19-2.5-204 and may issue search warrants as provided in sections 19-1-112 and 19-2.5-205.

Source: L. 87: Entire title R&RE, p. 701, § 1, effective October 1. **L. 88:** (3) amended, p. 741, § 2, effective July 1. **L. 91:** Entire section amended, p. 361, § 26, effective April 9. **L. 92:** (4)(d) added, p. 221, § 3, effective July 1. **L. 94:** (4)(d) amended, p. 2658, § 145, effective July 1. **L. 97:** (3) and (5) amended, p. 517, § 4, effective July 1. **L. 99:** (1) and (6) amended, p. 1375, § 11, effective July 1; (5) amended, p. 1086, § 4, effective July 1. **L. 2000:** (3)(c) amended, p. 35, § 1, effective July 1. **L. 2003:** (3)(b) amended, p. 1901, § 1, effective July 1. **L. 2006:** (3)(a) and (5) amended, p. 451, § 2, effective April 18; (3)(a.5) and (5.5) added, p. 452, §§ 3, 4, effective July 1, 2007. **L. 2007:** (3)(a.5) amended, p. 1652, § 9, effective May 31; (3)(a.5) amended, p. 2029, § 35, effective June 1; (4)(c) amended, p. 2029, § 36, effective July 1. **L. 2016:** IP(3)(c), (3)(c)(II), and (5.5) amended, (HB 16-1057), ch. 31, p. 70, § 1, effective July 1. **L. 2019:** (3)(a.5) amended, (SB 19-108), ch. 294, p. 2727, § 21, effective July 1. **L. 2021:** (1), (3)(a.5), (3)(b), and (6) amended, (SB 21-059), ch. 136, p. 726, § 62, effective October 1. **L. 2022:** (5.5) amended, (SB 22-212), ch. 421, p. 2970, § 33, effective August 10.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(a)(II) provided for the repeal of subsection (3)(a), effective July 1, 2007. (See L. 2006, p. 451.)

(3) Amendments to subsection (3)(a.5) by House Bill 07-1349 and House Bill 07-1367 were harmonized.

(4) Subsection (5)(b) provided for the repeal of subsection (5), effective July 1, 2007. (See L. 2006, p. 451.)

19-1-109. Appeals - child welfare appeals workgroup - created - reports. (1) An appeal as provided in the introductory portion to section 13-4-102 (1), S.A.R.S., may be taken from any order, decree, or judgment. Appellate procedure shall be as provided by the San Andreas appellate rules. Initials shall appear on the record on appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

(2) (a) The people of the state of San Andreas shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

(b) An order terminating or refusing to terminate the legal relationship between a parent or parents and one or more of the children of such parent or parents on a petition, or between a child and one or both parents of the child, shall be a final and appealable order.

(c) An order decreeing a child to be neglected or dependent shall be a final and appealable order after the entry of the disposition pursuant to section 19-3-508. Any appeal shall not affect the jurisdiction of the trial court to enter such further dispositional orders as the court believes to be in the best interests of the child.

(3) (a) The child welfare appeals workgroup is established in the state judicial department and referred to in this subsection (3) as the "workgroup". The purpose of the workgroup is to consider necessary changes to practices, rules, and statutes to ensure that appeals in cases concerning relinquishment, adoption, and dependency and neglect are resolved within six months after being filed.

(b) Beginning January 1, 2022, the workgroup shall monitor, for two years, the implementation of the recommendations of the workgroup's 2021 final report, determine if other issues are contributing to appellate delay, study opportunities to reduce delay in child welfare appeals, and provide training. No later than January 1, 2023, the judicial department shall report to the health and human services committee of the senate and the public and behavioral health and human services committee of the house of representatives, or any successor committees, on the status of the workgroup's data collection; identified necessary resources; progress made on implementation of the recommendations; outstanding recommendations; additional changes to practices, rules, and statutes necessary to ensure that appeals are resolved within six months of filing; and the impact those recommendations are having on appellate delay. No later than July 1, 2024, the workgroup shall also issue a final report.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1. **L. 97:** (2) amended and (3) added, p. 1433, § 7, effective July 1. **L. 2000:** (3) amended, p. 1546, § 3, effective August 2. **L. 2022:** (3) amended, (HB 22-1113), ch. 56, p. 261, § 2, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1113, see section 1 of chapter 56, Session Laws of San Andreas 2022.

19-1-110. Previous orders and decrees - force and effect. All orders and decrees in proceedings concerning dependency and neglect, delinquency, relinquishment, adoption, paternity, or contributing to dependency or delinquency entered by the court prior to October 1, 1987, shall remain in full force and effect until modified or terminated by the court, as provided in this title.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1; entire section amended, p. 1827, § 1, effective August 27.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-1-111. Appointment of guardian ad litem. (1) The court shall appoint a guardian ad litem for every child under twelve years of age in all dependency and neglect cases pursuant to this title 19.

(2) The court may appoint a guardian ad litem in the following cases:

(a) For a child in a delinquency proceeding where:

(I) No parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at the first or any subsequent hearing in the case;

(II) The court finds that a conflict of interest exists between the child and parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent; or

(III) The court makes specific findings that the appointment of a guardian ad litem is necessary to serve the best interests of the child and such specific findings are included in the court's order of appointment.

(b) For a child in proceedings under the "School Attendance Law of 1963", article 33 of title 22, S.A.R.S., when the court finds that the appointment is necessary due to exceptional and extraordinary circumstances;

(c) For a parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, or spousal equivalent in dependency or neglect proceedings who has been determined to have a behavioral or mental health disorder or an intellectual and developmental disability by a court of competent jurisdiction; except that, if a conservator has been appointed, the conservator shall serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, the conservator shall be informed that a guardian ad litem has been appointed.

(d) For an underage party seeking a marriage license, as provided in section 14-2-108 (2).

(e) For a youth who is twelve years of age or older in a dependency and neglect case when the court determines a guardian ad litem is necessary due to the youth's diminished capacity. The court shall not consider age or developmental maturity as the sole basis for a determination of diminished capacity. The court shall not deem a guardian ad litem appointed pursuant to this subsection (2)(e) to be a substitute for a counsel for youth appointed pursuant to this section.

(2.5) A court shall not deem a guardian ad litem who is appointed by the court for a juvenile in a delinquency proceeding pursuant to subsection (2) of this section to be a substitute for defense counsel for the juvenile.

(3) The guardian ad litem for the child shall have the right to participate in all proceedings as a party, except in delinquency cases.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection (4), the appointment of a guardian ad litem pursuant to this section shall continue until such time as the court's jurisdiction is terminated.

(b) The appointment of the guardian ad litem terminates in a delinquency proceeding:

(I) At the time sentence is imposed, unless the court continues the appointment because the child is sentenced to residential or community out-of-home placement as a condition of probation; or

(II) When the child reaches eighteen years of age, unless the court continues the appointment because the court determines the appointment is necessary because of the youth's diminished capacity.

(c) The court may terminate the appointment of a guardian ad litem in a delinquency proceeding on its own motion or on the motion of the guardian ad litem when the appointment is no longer necessary due to any of the following reasons:

(I) The child's parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, relative, stepparent, or spousal equivalent appears at a hearing in the case;

(II) The conflict of interest described in subparagraph (II) of paragraph (a) of subsection (2) of this section no longer exists; or

(III) The appointment no longer serves the best interests of the child.

(5) The guardian ad litem shall cooperate with any CASA volunteer appointed pursuant to section 19-1-206.

(6) Any person appointed to serve as a guardian ad litem pursuant to this section shall comply with any chief justice directive concerning the court appointment of guardians ad litem and other representatives and of counsel for youth and indigent persons in titles 14, 15, 22, and 27 and this title 19, and any subsequent chief justice directive or other practice standards established by rule or directive of the chief justice pursuant to section 13-91-105 concerning the duties or responsibilities of guardians ad litem in legal matters affecting children.

Source: L. 87: Entire title R&RE, p. 702, § 1, effective October 1. **L. 92:** (1) amended, p. 221, § 4, effective July 1. **L. 96:** (5) added, p. 1089, § 2, effective May 23. **L. 98:** (2)(a)(I), (2)(a)(II), and (2)(c) amended, p. 1405, § 62, effective February 1, 1999. **L. 2000:** (6) added, p. 1774, § 4, effective July 1. **L. 2006:** (2)(c) amended, p. 1400, § 52, effective August 7. **L. 2009:** (2)(a)(III), (2)(b), and (4) amended, (SB 09-268), ch. 207, p. 942, § 3, effective May 1. **L. 2014:** (2.5) added, (HB 14-1032), ch. 247, p. 954, § 5, effective November 1. **L. 2015:** (6) amended, (SB 15-264), ch. 259, p. 952, § 41, effective August 5. **L. 2017:** (2)(c) amended, (SB 17-242), ch. 263, p. 1309, § 150, effective May 25. **L. 2019:** (2)(d) added, (HB 19-1316), ch. 380, p. 3422, § 6, effective August 2. **L. 2022:** (1), IP(4)(b), (4)(b)(II), and (6) amended and (2)(e) added, (HB 22-1038), ch. 92, p. 433, § 6, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-1-111.5. Court-appointed special advocate. The court may appoint a CASA volunteer pursuant to the provisions of part 2 of this article if the court finds that the appointment would be in the best interests of the child. The court may direct the manner in which a CASA volunteer and any guardian ad litem appointed in a case shall collaborate.

Source: L. 96: Entire section added, p. 1089, § 3, effective May 23.

19-1-112. Search warrants for the protection of children. (1) A search warrant may be issued by the juvenile court to search any place for the recovery of any child within the jurisdiction of the court believed to be a delinquent child or a neglected or dependent child.

(2) Such warrant shall be issued only on the conditions that the application for the warrant shall:

(a) Be in writing and supported by affidavit sworn to or affirmed before the court;

(b) Name or describe with particularity the child sought;

(c) State that the child is believed to be a delinquent child or a neglected or dependent child and the reasons upon which such belief is based;

(d) State the address or legal description of the place to be searched;

(e) State the reasons why it is necessary to proceed pursuant to this section.

(3) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(4) The search warrant shall be directed to any officer authorized by law to execute it in the county wherein the place to be searched is located.

(5) The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.

(6) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.

(7) A copy of the warrant, the application therefor, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

(8) If the child is found, the child may be taken into custody pursuant to section 19-2.5-209 or 19-3-401.

(9) The warrant shall be returned to the issuing court.

Source: L. 87: Entire title R&RE, p. 703, § 1, effective October 1. **L. 2021:** (8) amended, (SB 21-059), ch. 136, p. 727, § 63, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-1-113. Emergency protection orders. (1) The juvenile court is authorized to issue an ex parte written or verbal emergency protection order for the protection of a child pursuant to this section. A judge or magistrate shall be available in the juvenile court in each judicial district to issue by telephone emergency protection orders at all times when the juvenile court is otherwise closed for judicial business.

(2) Any person who has the responsibility of supervising a child placed out of the home by court order may seek an emergency protection order, through a P.O.S.T.-certified peace officer, when such person asserts reasonable grounds to believe that the child is in immediate and present danger based on an allegation that the child is absent without permission from the court-ordered placement.

(3) An emergency protection order may include, but need not be limited to:

(a) Restraining a person from threatening, molesting, or injuring the child;

(b) Restraining a person from interfering with the supervision of the child;

(c) Restraining a person from having contact with the child or the child's court-ordered residence;

(d) Restraining a person from harboring a child who is absent without permission from a court-ordered placement.

(4) An emergency protection order shall expire not later than the close of judicial business on the next day of judicial business following the day of issue, unless otherwise continued by the court. With respect to any continuing order, on two days' notice to the person who obtained the emergency protection order or on such shorter notice to that person as the court may prescribe, the responding person may appear and move for its dissolution or modification. The motion to dissolve or modify the emergency protection order shall be set for hearing at the earliest possible time and shall take precedence over all matters except any emergency protection orders issued earlier, and the court shall determine such motion as expeditiously as the ends of justice require.

(5) (a) An emergency protection order may be issued only if the issuing judge or magistrate finds that an imminent danger exists to the welfare of a child based on an allegation that the child is absent without permission from the court-ordered placement. A verbal order shall be reduced to writing and signed by the peace officer through whom the emergency order was sought and shall include a statement of the grounds for the order asserted through the P.O.S.T.-certified peace officer. An order initially written shall meet the same requirement as an order issued verbally.

(b) The emergency protection order shall be served upon the respondent with a copy given to the person who sought the order and filed with the juvenile court as soon as practicable after issuance. If any person named as a respondent in an order issued pursuant to this section has not been served personally with the order but has received actual notice of the existence and substance of the order from any sheriff, deputy sheriff, or police officer, any act in violation of the order may be deemed by the juvenile court a violation of the order and as such may be sufficient to subject the respondent to the order to any penalty for such violation. If the law enforcement agency having jurisdiction to enforce the emergency protection order has cause to believe that a violation of the order has occurred, it shall enforce the order.

(6) The issuance of an emergency protection order shall not be considered evidence of any wrongdoing.

(7) A law enforcement officer who acts in good faith and without malice shall not be held civilly or criminally liable for acts performed pursuant to this section.

Source: L. 87: Entire title R&RE, p. 704, § 1, effective October 1. **L. 91:** (1) and (5)(a) amended, p. 362, § 27, effective April 9. **L. 2003:** (2) and (5)(a) amended, p. 1632, § 79, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-110.1 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-1-114. Order of protection. (1) The court may make an order of protection in assistance of, or as a condition of, any decree authorized by this title. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, spousal equivalent, or any other person who is party to a proceeding brought under this title.

(2) The order of protection may require any such person:

(a) To stay away from a child or a child's residence;

(b) To comply with a family time schedule;

(c) To abstain from offensive conduct against a child, the child's parent or parents, the child's guardian or legal custodian, or any other person to whom legal custody of or parental responsibilities with respect to a child has been given;

(d) To give proper attention to the care of the home;

(e) To cooperate in good faith with an agency:

(I) Which has been given legal custody of a child;

(II) Which is providing protective supervision of a child by court order; or

(III) To which the child has been referred by the court;

(f) To refrain from acts of commission or omission that tend to make a home an improper place for a child;

(g) To perform any legal obligation of support; or

(h) To pay for damages recoverable under the provisions of section 13-21-107, S.A.R.S.

(3) (a) When such an order of protection is made applicable to a parent or guardian, it may specifically require his or her active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (5) of this section.

(b) The court may, when the court determines that it is in the best interests of the child, make an order of protection that is applicable to a parent or guardian of a child and the person with whom the child resides, if other than the child's parent or guardian, subject to article 2.5 of this title 19. The order must require the parent or guardian and the person with whom the child resides, if other than the parent or guardian, to be present at any juvenile proceeding concerning the child.

(4) After notice and opportunity for a hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the court finds that the best interests of the child and the public will be served thereby.

(5) (a) A person failing to comply with an order of protection without good cause may be found in contempt of court.

(b) The court shall issue a bench warrant for any parent or guardian or person with whom the child resides, if other than the parent or guardian, who, without good cause, fails to appear at any proceeding.

(c) For purposes of this subsection (5), good cause for failing to appear shall include, but shall not be limited to, a situation where a parent or guardian:

(I) Does not have physical custody of the child and resides outside of San Andreas;

(II) Has physical custody of the child, but resides outside of San Andreas and appearing in court will result in undue hardship to such parent or guardian; or

(III) Resides in San Andreas, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent or guardian.

(d) The general assembly hereby declares that every parent or guardian whose child is the subject of a juvenile proceeding under this article should attend any such proceeding as often as is practicable.

(6) Repealed.

(7) Nothing in this section shall be construed to create a right for any juvenile to have his or her parent or guardian present at any proceeding at which such juvenile is present.

Source: L. 87: Entire title R&RE, p. 705, § 1, effective October 1. **L. 93, 1st Ex. Sess.:** (3) and (5) amended and (6) and (7) added, p. 29, § 1, effective September 13. **L. 96:** (6) repealed, p. 85, § 11, effective March 20. **L. 98:** (1) and (2)(c) amended, p. 1406, § 63, effective February 1, 1999. **L. 2021:** (3)(b) amended, (SB 21-059), ch. 136, p. 727, § 64, effective October 1. **L. 2023:** (2)(a) and (2)(b) amended, (HB 23-1027), ch. 284, p. 1680, § 7, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-1-115. Legal custody - guardianship - placement out of the home - petition for review for need of placement - rules. (1) (a) Except as otherwise provided by law, in awarding legal custody of a child pursuant to this title 19, the court may, if in the best interests of the child, give preference to the child's grandparent who is appropriate, capable, willing, and available to care for the child, if the court finds that there is no suitable natural or adoptive parent available, with due diligence having been exercised in attempting to locate any such natural or adoptive parent. Any individual, agency, or institution vested by the court with legal custody of a child has the rights and duties defined in section 19-1-103.

(b) Any individual, agency, or institution vested by the court with the guardianship of the person of a child has the rights and duties defined in section 19-1-103; except that a guardian of the person may not consent to the adoption of a child unless the court has expressly given that authority.

(2) (a) If legal custody or guardianship of the person is vested in an agency or institution, the court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(b) An individual, agency, or institution vested by the court with legal custody or guardianship of the person of a child shall give the court any information concerning the child which the court at any time may require.

(3) (a) Any agency vested by the court with legal custody of a child shall have the right, subject to the approval of the court, to determine where and with whom the child shall live, but this paragraph (a) shall not apply to placement of children committed to the department of human services. In determining where and with whom a child shall live, if in the best interests of the child, preference may be given to the child's grandparent who is appropriate, capable, willing, and available to care for the child.

(b) No individual or agency vested by the court with legal custody of a child or with which a child is placed pursuant to subsection (8) of this section shall remove the child from the state for more than thirty days without court approval. When granting such approval, if appropriate, the court shall enter an order that the individual or agency comply with the

requirements of the "Interstate Compact on Placement of Children" set forth in part 18 of article 60 of title 24, S.A.R.S.

(4) (a) A decree vesting legal custody of a child in an individual, institution, or agency or providing for placement of a child pursuant to section 19-2.5-1102 or 19-3-403 or subsection (8) of this section must be for a determinate period. The court shall review the decree no later than three months after it is entered, except a decree vesting legal custody of a child with the department of human services.

(b) The individual, institution, or agency vested with the legal custody of a child may petition the court for renewal of the decree. The court, after notice and hearing, may renew the decree for such additional determinate period as the court may determine if it finds such renewal to be in the best interests of the child and of the community. The findings of the court and the reasons therefor shall be entered with the order renewing or denying renewal of the decree.

(c) The court shall review any decree or, if there is no objection by any party to the action, the court may, in its discretion, require an administrative review by the state department of human services of any decree entered in accordance with this subsection (4) each six months after the initial review provided in subsection (4)(a) of this section. In the event that an administrative review is ordered, all counsel of record must be notified and may appear at said review. Periodic reviews must include the determinations and projections required in section 19-3-702.5.

(d) (I) When a decree is entered vesting legal custody of a child or youth or providing for placement of a child or youth with an agency in which public money is expended and a county department that delivers child welfare services determines that a referral is appropriate in accordance with rules promulgated by the state board of human services, a delegate child support enforcement unit may charge the parent of the child or youth a fee to cover the costs of providing for residential care of the child or youth. When custody of the child or youth is given to the county department, the fee for residential care must be in accordance with the fee requirements provided by rule of the state board of human services, and the fee applies, to the extent unpaid, to the entire period of placement. When a child or youth is committed to the state department of human services, the fee for care and treatment must be in accordance with the fee requirements provided by rule of the state board of human services, and the fee applies, to the extent unpaid, to the entire period of placement.

(II) For an adoptive family who receives an approved Title IV-E adoption assistance subsidy pursuant to the federal "Social Security Act", 42 U.S.C. sec. 673 et seq., or an approved payment in subsidization of adoption pursuant to article 7 of title 26, the cost of care, as defined in section 19-1-103, must not exceed the amount of the adoption assistance payment.

(III) The state department of human services shall convene a working group of geographically and demographically diverse partners and stakeholders to provide feedback and recommendations regarding the collection of fees for the residential care of children or youth in out-of-home placement who are not adjudicated dependent or neglected pursuant to section 19-3-102, ensuring compliance with federal law, including but not limited to Title IV of the federal "Social Security Act". On or before March 31, 2022, the state department shall submit a report of the recommendations of the working group to the public behavioral health care and human services committee of the house of representatives and the health and human services committee of the senate, or their successor committees.

(e) When a child, juvenile, or youth has been committed to the division of youth services and the court no longer has ongoing jurisdiction, the administrative review division shall review the placement of that child, juvenile, or youth in a qualified residential treatment program within sixty days after placement. When the child, juvenile, or youth has not been committed to the division of youth services and the court has ongoing jurisdiction, within sixty days after a placement of that child, juvenile, or youth in a qualified residential treatment program, or within thirty days after a placement when the qualified individual does not support the qualified residential treatment program level of care or the child, juvenile, youth, guardian ad litem, or any party objects to the placement, a juvenile court shall review that placement. In both instances, the juvenile court or the administrative review division of the state department shall:

(I) Consider the assessment, determination, and documentation made by the qualified individual;

(II) Determine whether the needs of the child, juvenile, or youth can be met through placement with a parent, legal guardian, legal custodian, kin caregiver, or in a foster care home, or whether placement of the child, juvenile, or youth in a qualified residential treatment program provides the most effective and appropriate level of care for the child, juvenile, or youth in the least restrictive environment, and whether that placement is consistent with the short- and long-term goals, including mental, behavioral, and physical health goals, for the child, juvenile, or youth as specified in the permanency plan for the child, juvenile, or youth or as outlined in the family services plan or division of youth services plan; and

(III) Approve or disapprove of the placement.

(f) As long as a child, juvenile, or youth remains in a qualified residential treatment program, the county department or the division of youth services shall submit evidence:

(I) Demonstrating that ongoing assessment of the strengths and needs of the child, juvenile, or youth continues to support the determination that the needs of the child, juvenile, or youth cannot be met through placement with a parent, legal guardian, legal custodian, kin caregiver, or in a foster family home; that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child, juvenile, or youth in the least restrictive environment; and that the placement is consistent with the short- and long-term goals for the child, juvenile, or youth as specified in the permanency plan for the child, juvenile, or youth, or as outlined in the family services plan;

(II) Documenting the specific treatment or service needs that will be met for the child, juvenile, or youth in the placement and the length of time the child, juvenile, or youth is expected to need treatment or services; and

(III) Documenting the efforts made by the county department to prepare the child, juvenile, or youth to return home or to be placed with a fit and willing kin caregiver, a legal guardian, legal custodian, or an adoptive parent, or in a foster family.

(g) The evidence required pursuant to subsection (4)(f) of this section must be submitted at each subsequent review and each subsequent permanency hearing held concerning the child, juvenile, or youth. The evidence must not be submitted less frequently than every ninety days during the duration of the placement of the child, juvenile, or youth in the qualified residential treatment program. The evidence must be submitted to the court or to the administrative review division of the state department of human services if parties consent to the latter. The court shall review the evidence submitted pursuant to subsection (4)(f) of this section at each subsequent permanency and status review hearing at least every ninety days during the duration of the

placement of the child, juvenile, or youth in the qualified residential treatment program. If the parties consent to a review by the administrative review division, attorneys of record must be notified and may appear at the review. The administrative review division shall review the evidence submitted pursuant to subsection (4)(f) of this section at least every ninety days during the duration of the placement of the child, juvenile, or youth in the qualified residential treatment program.

(h) In making a decision as to proper placement in a qualified residential treatment program, the court or the administrative review division shall consider the assessment provided by the qualified individual and the most recent assessment, as described in subsection (4)(e) of this section, and shall give great weight to the recommendation in the assessment when making a qualified residential treatment program placement decision. An assessment prepared by the qualified individual must identify whether a qualified residential treatment program is the most effective, appropriate, and least restrictive placement for the child or youth. The assessment must also identify child- or youth-specific short- and long-term goals for the child or youth and the family. If the court or administrative review division deviates from the qualified individual's assessment and recommendation, the court or the administrative review division shall make specific findings of fact regarding the most effective, appropriate, and least restrictive placement for the child or youth and whether the placement is consistent with child- or youth-specific short- and long-term goals for the child or youth and the family. When making such findings of fact, the court or administrative review division shall consider all relevant information, including:

(I) Whether the protocol for the qualified residential treatment program assessment was followed;

(II) The strengths and specific treatment or service needs of the child or youth and the family;

(III) The expected length of stay; and

(IV) The placement preference of the child or youth and the family.

(4.5) The department of human services shall implement the provisions of subsections (4)(e) and (4)(f) of this section when the federal government approves San Andreas's five-year Title IV-E prevention plan, at which time the department of human services may submit a budget request to the joint budget committee for necessary funding to implement the plan.

(5) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court if he so requests.

(6) Any time the court enters an order awarding legal custody of a child or youth to the department of human services or to a county department pursuant to the provisions of this title 19, even temporarily, the order must contain specific findings, if warranted by the evidence, as follows:

(a) That continuation of the child in the home would be contrary to the child's best interests;

(b) That there has been compliance with reasonable efforts requirements regarding removal of the child from the home, as follows:

(I) That reasonable efforts have been made to prevent or eliminate the need for removal of the child from the home; or

(II) That an emergency situation exists which requires the immediate temporary removal of the child from the home and it is reasonable that preventive efforts not be made due to the emergency situation; or

(III) That reasonable efforts to prevent the child's removal from the home are not required because of the existence of a circumstance described in subsection (7) of this section;

(c) That reasonable efforts have been made or will be made to reunite the child and the family or that efforts to reunite the child and the family have failed or that reasonable efforts to reunite the child and the family are not required pursuant to subsection (7) of this section; and

(d) That procedural safeguards with respect to parental rights have been applied in connection with the removal of the child or youth from the home, a change in the child's or youth's placement out of the home, and any determination affecting family time.

(6.5) Any time the court enters an order continuing a child or youth in a placement out of the home pursuant to this title 19, the order must contain specific findings, if warranted by the evidence, as follows:

(a) The continuation of the child in out-of-home placement is in the best interests of the child;

(b) That reasonable efforts have been made to reunite the child and the family or that reasonable efforts to reunite the child and the family are not required pursuant to subsection (7) of this section; and

(c) That procedural safeguards with respect to parental rights have been applied in connection with the continuation of the child or youth in out-of-home placement, a change in the child's or youth's placement out of the home, and any determination affecting family time.

(6.7) Any time the court enters an order related to out-of-home placement pursuant to subsections (6)(a) to (6)(c) or subsection (6.5)(b) of this section; subsection (8)(f) of this section; section 19-2.5-305 (3)(a)(XI)(A) and (3)(a)(XI)(B); section 19-2.5-1116 (1)(a), (1)(b), and (3)(a)(III); or sections 19-3-702 (3)(b) and 19-3-702.5 (1)(b), the order is effective as of the date the findings were made by the court, notwithstanding the date that a written order may be signed by the court. Written orders entered pursuant to subsections (6)(a) to (6)(c) or subsection (6.5)(b) of this section; subsection (8)(f) of this section; section 19-2.5-305 (3)(a)(XI)(A) and (3)(a)(XI)(B); section 19-2.5-1116 (1)(a), (1)(b), and (3)(a)(III); or sections 19-3-702 (3)(b) and 19-3-702.5 (1)(b) must state "the effective date of this order is" and must not use the words "nunc pro tunc".

(7) Reasonable efforts are not required to prevent the child's removal from the home or to reunify the child and the family in the following circumstances:

(a) When the court finds that the parent has subjected the child to aggravated circumstances as described in sections 19-3-604 (1) and (2); or

(b) When the parental rights of the parent with respect to a sibling of the child have been involuntarily terminated; unless the prior sibling termination resulted from a parent delivering a child to a firefighter or a staff member of a hospital or community clinic emergency center, as defined in section 19-3-304.5 (9), pursuant to the provisions of section 19-3-304.5; or

(c) When the court finds that the parent has been convicted of any of the following crimes:

(I) Murder of another child of the parent;

(II) Voluntary manslaughter of another child of the parent;

(III) Aiding, abetting, or attempting the commission of or conspiring or soliciting to commit the crimes in subparagraphs (I) and (II) of this paragraph (c); or

(IV) A felony assault that resulted in serious bodily injury to the child or to another child of the parent.

(8) (a) Whenever it appears necessary that the placement of a child out of the home will be for longer than ninety days, the placement is voluntary and not court-ordered, and the placement involves the direct expenditure of funds appropriated by the general assembly to the department of human services, a petition for review of need for placement shall be filed by the department or agency with which the child has been placed before the expiration of ninety days in the placement. A decree providing for voluntary placement of a child with an agency in which public money is expended must be renewable in circumstances when there is documentation that the child has an emotional, a physical, or an intellectual disability that necessitates care and treatment for a longer duration than ninety days as provided pursuant to this subsection (8)(a). The court shall not transfer or require relinquishment of legal custody of, or otherwise terminate the parental rights with respect to, a child who has an emotional, a physical, or an intellectual disability and who was voluntarily placed out of the home for the purposes of obtaining special treatment or care solely because the parent or legal guardian is unable to provide the treatment or care. Whenever a child fifteen years of age or older consents to placement in a mental health facility pursuant to section 27-65-104, the review pursuant to section 27-65-104 (4) must be conducted in lieu of and must fulfill the requirements for review under this subsection (8)(a).

(b) (I) The petition and all subsequent court documents in any proceedings brought under paragraph (a) of this subsection (8) shall be titled "The People of the State of San Andreas, in the Interest of _____, a child (or children) and Concerning _____, Respondent." The petition shall be verified, and the statements in the petition may be made upon information and belief.

(II) The petition shall set forth plainly the facts that bring the child within the court's jurisdiction, specifying that the child is subject to immediate placement out of the home or has been in voluntary placement out of the home and it appears that continuation of the placement is necessary for a time exceeding ninety days and continuation of the placement is necessary and is in the best interest of the child, the family, and the community. The petition shall also state the name, age, and residence of the child and the names and residences of his or her parents, guardian, or other legal custodian or of his or her nearest known relative if no parent, guardian, or other legal custodian is known.

(III) All petitions filed pursuant to this subsection (8) shall include the following statement: "If the child is placed out of the home for a period of twelve months or longer, the court shall hold a permanency hearing within said twelve months to determine the future status of the child. The review of any decree of placement of a child subsequent to the three-month review required by section 19-1-115 (4)(a), San Andreas Revised Statutes, may be conducted as an administrative review by the department of human services. If you are a party to the action, you have a right to object to an administrative review, and, if you object, the review shall be conducted by the court."

(c) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons must be substantially in the form specified in section 19-3-502 and be dealt with in the manner provided in section 19-3-503 and must set forth the constitutional and legal rights of the child, the child's parents or guardian, and any other respondent, including the right to have an attorney present at the hearing on the petition. The petitioner shall send the summons to the child and the child's parents, guardian, or legal custodian by certified mail. The court shall give notice of the hearing to the director of the facility or agency in which the child is placed and any person who has physical custody of the

child and any attorney or guardian ad litem or counsel for youth of record. Nothing in this subsection (8) requires the presence of any person before the court unless the court so directs.

(d) The court shall appoint a guardian ad litem for a child under twelve years of age, or counsel for youth if the youth is twelve years of age or older, to protect the interest of any child or youth who is the subject of a petition for review of placement, unless the court makes specific findings that no useful purpose would be served by such appointment. The court may appoint both a guardian ad litem and a counsel for youth if a youth is twelve years of age or older and the appointment of a guardian ad litem is necessary because the youth has diminished capacity.

(e) For purposes of determining proper placement of the child, the petition for review of placement or social study shall be accompanied by an evaluation for placement prepared by the department or agency that recommends placement or with which the child has been placed. The evaluation for placement shall include an assessment of the child's physical and mental health, developmental status, family and social history, and educational status. The petition shall also be accompanied by recommended placements for the child and the monthly cost of each and a treatment plan that contains, at a minimum, the goals to be achieved by the placement; the services to be provided; the intensity, duration, and provider of the services; identification of the services that can be provided only in a residential setting; and the recommended duration of the placement. The petition or social study shall also be accompanied by the required fee to be charged to the parents pursuant to paragraph (d) of subsection (4) of this section. In addition, if a change in legal custody is recommended, the evaluation for placement shall include other alternatives that have been explored and the reason for their rejection, and the evaluation for placement shall contain an explanation of any particular placements that were considered and rejected and the reason for their rejection.

(f) The petition for review of need for placement shall request the court to determine, by a preponderance of the evidence, whether placement or continued placement is necessary and in the best interest of the child, the family, and the community and whether reasonable efforts have been made to return the child to a safe home or whether the child should be permanently removed from his or her home. If the court makes such findings, it shall enter a decree ordering the child's placement out of the home in the facility or setting that most appropriately meets the needs of the child, the family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107 or the evaluation for placement required by paragraph (e) of this subsection (8) that shall state the cost of recommended placement. If the evaluation for placement recommends placement in a facility located in San Andreas that can provide appropriate treatment and that will accept the child, then the court shall not place the child in a facility outside this state. If the court deviates from the recommendations of the evaluation for placement in a manner that results in a difference in the cost of the disposition ordered by the court and the cost of the disposition recommended in the evaluation, the court shall make specific findings of fact relating to its decision, including the monthly cost of the placement, if ordered. A copy of such findings shall be sent to the chief justice of the San Andreas supreme court, who shall report annually to the joint budget committee and the health and human services committees of the house of representatives and senate of the general assembly, or any successor committees, on such orders. If the court commits the child to the department of human services, it shall not make a specific placement, nor shall the provisions of this paragraph (f) relating to specific findings of fact be applicable. If the court makes a finding that continued placement is not necessary and is not in the best interest of the child, the

family, and the community, the court shall dismiss the petition for review of need for placement and shall order that the child be returned home. The court may require a continued hearing of the petition for review of need for placement for a period not to exceed fourteen days if it finds that the materials submitted are insufficient to make a finding as provided in this paragraph (f).

(g) A petition for review of need for placement shall not be handled as an informal adjustment in accordance with the provisions of section 19-3-501 (2).

Source: L. 87: Entire title R&RE, p. 706, § 1, effective October 1. **L. 89:** (4)(c) amended, p. 930, § 1, effective April 23. **L. 90:** (4)(d) amended, p. 1014, § 2, effective July 1. **L. 91:** (1)(a) and (3)(a) amended, p. 264, § 6, effective May 31. **L. 92:** (3)(b) and (4) amended and (6) added, p. 221, § 5, effective July 1. **L. 93:** (4)(c) and (6) amended, p. 388, § 1, effective April 19; (4)(d) amended, p. 1546, § 2, effective July 1. **L. 94:** (3)(a), (4)(a), (4)(c), and (4)(d) amended, p. 2659, § 146, effective July 1. **L. 98:** (1) amended, p. 820, § 22, effective August 5. **L. 2001:** (6) amended and (7) added, p. 842, § 3, effective June 1. **L. 2003:** (7)(b) amended, p. 769, § 2, effective March 25; (1)(a) amended, p. 2629, § 12, effective June 5; IP(6) and (6)(b)(II) amended and (6.5) added, p. 2486, § 1, effective July 1. **L. 2004:** (6.7) added, p. 357, § 1, effective July 1. **L. 2007:** (4)(d) amended and (8) added, p. 1506, § 4, effective May 31. **L. 2008:** (3)(b), (4)(a), and (6.7) amended, p. 1891, § 61, effective August 5. **L. 2009:** (4)(a) amended, (SB 09-292), ch. 369, p. 1949, § 34, effective August 5. **L. 2010:** (8)(a) amended, (SB 10-175), ch. 188, p. 788, § 37, effective April 29. **L. 2018:** (7)(b) amended, (SB 18-050), ch. 20, p. 270, § 2, effective March 7; (4)(d)(I) amended, (SB 18-092), ch. 38, p. 407, § 29, effective August 8. **L. 2019:** (6.7) amended, (SB 19-108), ch. 294, p. 2728, § 22, effective July 1; (4)(c) and (6.7) amended, (HB 19-1219), ch. 237, p. 2355, § 4, effective August 2; (4)(d)(II) amended, (SB 19-178), ch. 180, p. 2048, § 2, effective August 2; (4)(e), (4)(f), and (4.5) added, (HB 19-1308), ch. 256, p. 2459, § 4, effective August 2. **L. 2020:** IP(4)(e), (4)(e)(II), and (4)(f) amended and (4)(g) and (4)(h) added, (SB 20-162), ch. 221, p. 1088, § 3, effective July 2. **L. 2021:** (4)(d)(III) added and IP(4)(e) and IP(4)(h) amended, (SB 21-278), ch. 344, pp. 2244, 2240, §§ 6, 1, effective June 25; (1), (4)(a), (4)(d)(II), and (6.7) amended, (SB 21-059), ch. 136, p. 727, § 65, effective October 1. **L. 2022:** (8)(a) amended, (HB 22-1256), ch. 451, p. 3229, § 28, effective August 10; (8)(c) and (8)(d) amended, (HB 22-1038), ch. 92, p. 433, § 7, effective January 9, 2023. **L. 2023:** IP(6), (6)(d), IP(6.5), and (6.5)(c) amended, (HB 23-1027), ch. 284, p. 1681, § 8, effective June 1. **L. 2024:** (4)(d)(I) amended, (SB 24-202), ch. 222, p. 1387, § 1, effective May 22.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-3-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (6.7) by SB 19-108 and HB 19-1219 were harmonized.

Cross references: (1) For the legislative declaration contained in the 2001 act amending subsection (6) and enacting subsection (7), see section 1 of chapter 241, Session Laws of San Andreas 2001. For the legislative declaration contained in the 2007 act amending subsection (4)(d) and enacting subsection (8), see section 1 of chapter 351, Session Laws of San Andreas 2007. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92,

Session Laws of San Andreas 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

19-1-115.3. Missing children and youth from out-of-home placement - required reporting to law enforcement. If a child or youth for whom the department of human services or a county department of human or social services has legal custody pursuant to the provisions of this title 19 is determined by the agency to be missing, the agency having legal custody of the child or youth shall report the disappearance immediately, and in no case later than twenty-four hours after learning of the disappearance, to the National Center for Missing and Exploited Children and to law enforcement. Law enforcement authorities shall notify the San Andreas bureau of investigation and enter any relevant information into the San Andreas crime information center database pursuant to section 16-2.7-103. The reporting requirements set forth for foster parents and out-of-home placement facilities in section 19-2.5-1508 apply.

Source: L. 2015: Entire section added, (HB 15-1078), ch. 41, p. 101, § 1, effective January 1, 2016. **L. 2021:** Entire section amended, (SB 21-059), ch. 136, p. 728, § 66, effective October 1. **L. 2022:** Entire section amended, (SB 22-095), ch. 70, p. 365, § 4, effective April 7.

19-1-115.5. Placement of children out of home - legislative declaration. (1) (a) (I) The general assembly hereby finds that the number of children in out-of-home placement has increased significantly. The general assembly further finds that the facility in which a child is placed out of home is often not located in the same school district as the child's school district of residence. Nevertheless, the general assembly finds that, pursuant to the "Public School Finance Act of 2025", article 54 of title 22, children in foster home placement are considered residents of the school district in which the foster home is located. Accordingly, the school district in which the child is placed must accommodate the child and provide the child with the necessary educational services that serve the child's best interests while absorbing the costs associated with such services within the constraints of the school district's existing budget. The general assembly finds that in many circumstances it is not possible to meet the best interests of the child in out-of-home placement and the needs of other children enrolled in the school district within the confines of the district's budget.

(II) The general assembly determines that the number of children in out-of-home placement and the severity of their attendant needs are increasing. The ability to meet the needs of the children in out-of-home placement is frequently restricted by the limited resources available to a school district. Furthermore, the general assembly finds that there is a disproportionately larger number of children in out-of-home placement in some school districts than in others, thereby directly impacting the ability of certain school districts to effectively manage and finance the provision of quality educational services to all students in those districts.

(b) The general assembly therefore determines that it would serve the best interests of all children enrolled in a school district if the number of children placed in out-of-home placement facilities by county departments of human or social services in each of the various school districts is monitored so that the financial impact on all school districts throughout the state is manageable and equitable and so that the best interests of all children, whether or not in out-of-home placement, can be served.

(2) (a) Contingent upon implementation of the children, youth, and families automation project in the department of human services, the department shall make the following information available to all county departments throughout the state:

(I) Vacancies in out-of-home placement facilities within each county;

(II) The number of out-of-home placement children enrolled in each school district in relation to the total number of students enrolled in the school district;

(III) A list of all out-of-home placement facilities in each school district; and

(IV) To the extent known and within available resources, a list of the types of services available in each school district to meet the special needs of children in out-of-home placement.

(b) In every proceeding pursuant to this title in which the court contemplates placing a child out of home, the county department shall make recommendations to the court concerning the proposed placement. Such recommendations shall include information about placement facilities that are most able to serve appropriately the best interests of the child. In making its recommendations to the court, the county department shall consider:

(I) The special needs, if any, of the child to be placed, including the ability of the proposed out-of-home placement facility and the school district in which the proposed out-of-home placement facility is located to provide the necessary services to meet those needs;

(II) The proximity of the proposed out-of-home placement facility to the child's parents' home, if parental rights have not been terminated;

(III) Whether the proposed placement facility is in the same school district as the child's parents' residence;

(IV) If the proposed placement facility is not in the same school district as the child's parents' residence and if the information is available through the children, youth, and families automation project, the number of children placed out of home by the court who are already enrolled in the school district in which the proposed out-of-home placement facility is located.

(c) If the recommendation of the county department is to place the child in a placement facility that is not located in the same school district as the child's parents' residence, the placing county department shall inform the school district in which the child's parents reside of the recommended placement.

(d) In placing a child out of home, the court shall consider the recommendations of the county department and any information it may have concerning whether the child's educational needs can be met adequately if the child is placed in an out-of-home placement facility located in a school district other than the district in which the child's parents reside.

(e) Upon entry of the court's order placing a child in an out-of-home placement facility located in a school district other than the school district in which the child's parents reside, the county department shall advise the school district in which the child's parents reside of the court's order.

(f) When a school district is advised by the county department that a child residing in that school district is to be placed in an out-of-home placement facility in another school district pursuant to a court order, the school district shall contact the school district in which the child is to be placed concerning:

(I) The special educational needs, if any, of the child; and

(II) The resources necessary to meet those special needs.

(3) The state board of education shall provide the department of human services with all aggregate, nonidentifying information concerning student enrollment in every school district in

the state that the department of human services may request for purposes of implementing this section.

Source: L. 97: Entire section added, p. 147, § 1, effective July 1. **L. 2018:** (1)(b) amended, (SB 18-092), ch. 38, p. 408, § 30, effective August 8. **L. 2024:** (1)(a)(I) amended, (HB 24-1448), ch. 236, p. 1526, § 26, effective May 23.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-1-115.7. Foster care prevention services - provision of services - rights and remedies - exchange of information. (1) A county department of human or social services may provide both child welfare and prevention services, including but not limited to foster care prevention services, as defined in section 19-1-103, to families, kin caregivers, children, juveniles, and youth.

(2) Nothing in this section affects any existing rights of a child, juvenile, or youth or a parent or legal guardian.

(3) When prevention services information is exchanged between state agencies, county departments, and service providers to allow for the provision of prevention services, such information is confidential and not available to the public. Any entities providing prevention services shall ensure that all information obtained and exchanged is confidential as required pursuant to this section, sections 19-1-103 and 19-1-307, and any other applicable state or federal law.

Source: L. 2020: Entire section added, (SB 20-162), ch. 221, p. 1090, § 4, effective July 2. **L. 2021:** (1) amended, (SB 21-059), ch. 136, p. 729, § 67, effective October 1.

19-1-116. Funding - alternatives to placement out of the home - services to prevent continued involvement in child welfare system. (1) The state department of human services shall reimburse allowable expenses to county departments of human or social services for foster care. The state department's budget request for foster care must be based upon the actual aggregate expenditure of federal, state, and local funds of all counties during the preceding twenty-four months on foster care. Special purpose funds, not to exceed five percent of the total appropriation for foster care, must be retained by the state department of human services for purposes of meeting emergencies and contingencies in individual counties. The amount thus reimbursed to each county must represent the total expenditure by an individual county for foster care and for alternative services provided in conformance with the plan prepared and approved pursuant to subsections (2)(b) and (4) of this section.

(1.5) No later than July 1, 1994, each county in the state shall assure access to alternatives to out-of-home placements for families with children and youth who are at imminent risk of out-of-home placements. Beginning September 1, 2011, a county may also provide access for families to alternative services to prevent continued involvement with the county department child welfare system. Beginning September 1, 2018, a county may also provide access to alternative services for former foster care youth, as defined in section 26-5-101, who are no longer in the custody of the department but need limited assistance from the county. Two or

more counties may jointly provide or purchase alternative services to families in the respective counties. Such services shall either be provided for under the plan adopted by placement alternative commissions in accordance with subsection (2)(b) of this section or purchased by the county if such county does not have a placement alternative commission for the county. If a county purchases alternative services, the county shall ensure that the services purchased meet the goals of placement alternative commission plans, as described in subsection (2)(b)(I) of this section.

(2) (a) The county commissioners in each county may appoint a placement alternatives commission consisting, where possible, of a physician or a licensed health professional, an attorney, representatives of a local law enforcement agency, representatives recommended by the court and probation department, representatives from the county department of human or social services, a local mental health clinic, and the county, district, or municipal public health agency, a representative of a local school district specializing in special education, a representative of a local case management agency, as defined in section 25.5-6-1702, representatives of a local residential child care facility and a private nonprofit agency providing nonresidential services for children and families, a representative specializing in occupational training or employment programs, a foster parent, and one or more representatives of the lay community. At least fifty percent of the commission members must represent the private sector. The county commissioners of two or more counties may jointly establish a district placement alternatives commission. A placement alternatives commission may be consolidated with other local advisory boards pursuant to section 24-1.7-103.

(b) (I) On or before July 1, 1994, the commission, if established, shall annually prepare a plan for the provision of services. The primary goals under the plan shall be to prevent imminent placement of children out of the home and to reunite children who have been placed out of the home with their families. If a county provides services to children who, without intervention, risk continued involvement with the child welfare system, the county shall include in the plan the goals to be achieved by providing said services. The plan shall be prepared using all available sources of information in the community, including public hearings. The plan shall specify the nature of the expenditures to be made and shall identify the services which are intended to prevent or minimize placement out of the home and to what extent. The plan shall contain, whenever practicable, a vocational component to provide assistance to older children concerning a transition into the work force upon completion of school. Upon approval of the plan by the county commissioners, the counties shall submit the plan to the department of human services.

(II) On and after July 1, 1994, the commissions shall prepare multi-year plans for services which contain the same goals as described in subparagraph (I) of this paragraph (b), and the period for the plans shall be determined in state board rules. The multi-year plans may be amended annually for budgetary or programmatic changes that are necessary to enhance service delivery or as otherwise deemed necessary to accomplish the goals of the plan, which reasons shall be set forth in state board rules. Counties shall submit the multi-year plans for approval by the state board.

(c) The commission shall review, on an ongoing basis, the effectiveness of programs within its jurisdiction which are designed to prevent or reduce placement and shall report its findings to the county commissioners annually.

(d) Repealed.

(e) Upon approval by the state board of human services of the plan submitted pursuant to paragraph (b) of this subsection (2), the department of human services shall reimburse county departments, as described in section 26-1-122, S.A.R.S., for eighty percent of the expenditures made in conformance with the plan.

(3) Repealed.

(4) (a) The departments of human services and education and the judicial department shall jointly develop guidelines for the content and submission of plans as described in paragraph (b) of subsection (2) of this section. Said guidelines shall include but not be limited to the information that is gathered by the commission, the goals to be addressed by the plan, the form of the budget for expenditures that are to be made under the plan, the services that are to be provided which are intended to prevent or minimize placement out of the home and to reunite children with their families and to what extent, and the method by which the plan may be amended during the year to meet the changing local conditions; except that amendments to the plan on and after July 1, 1994, shall be in accordance with subparagraph (II) of paragraph (b) of subsection (2) of this section. On and after July 1, 1993, any amendments to the guidelines shall be developed by the department of human services. Said guidelines shall then be submitted to the state board of human services, which shall promulgate rules for the submission of plans.

(b) In addition to the duties described in paragraph (a) of this subsection (4), the state board of human services is hereby authorized to develop through the adoption of rules categories of programs and services that promote the primary goals of the plan established in accordance with paragraph (b) of subsection (2) of this section. Any plan established on and after July 1, 1994, shall provide for the availability and provision of services or programs within such categories. Any plan established before July 1, 1994, shall be amended on or before that date to provide for the availability and provision of services or programs within such categories. The department of human services shall monitor the implementation of the plans as approved by the state board.

(5) Children currently residing in institutions whose condition would permit them to be discharged to less restrictive settings shall be so transferred at the earliest possible date. Moneys appropriated and available to the department of human services shall be allocated on a priority basis by the department to county departments for the purposes of providing care to children who are discharged from the institution in which they reside if such children then receive care that is less intensive, closer to the residence of the parents or family, or in a less restrictive setting.

(6) It is the intent of the general assembly that state money appropriated for placements out of the home must not be used by county boards of human or social services for the development of new county-run programs or for the expansion of existing staff or programs, if such development or expansion duplicates services already provided in the community, including, but not limited to, day care programs, independent living programs, home-based care, transitional care, alternative school programs, counseling programs, street academies, tutorial programs, and in-home treatment and counseling programs.

(7) (a) Any county is hereby authorized to establish a program under which a multidisciplinary, noncategorical program fund for the county shall be created and moneys from such fund shall be used to provide child welfare services to at-risk children and their families. Except as otherwise provided by federal law, the moneys in the county's fund contributed by state agencies shall be exempt from restrictive, categorical rules otherwise governing the use of

such funds, including the "M" notation in the state's annual appropriations act which describes the general and federal fund contributions for federally supported programs.

(b) Such services shall include, but are not limited to, assessment, intervention, treatment, supervision, and shelter when and if appropriate.

(c) (I) The fund for each county must consist of contributions, made by any state, county, or local agency, of federal, state, or local funds appropriated to or contributed by such agencies for child welfare services for at-risk children and their families. Appropriated funds include, but are not limited to, those appropriated to county departments of human or social services, the state department of human services, the department of public health and environment, the department of education, the department of public safety, the judicial department, and the job training partnership office in the governor's office. Each state agency's contribution to a county's fund must be contingent upon and equal to contributions from the participating county and any other local agency that participates and seeks money from the fund. Nothing in this subsection (7) allows the allocation of general fund money to any other participating county in the same manner that such money is allocated to Mesa county in accordance with section 2 of House Bill 93-1171, as enacted during the first regular session of the fifty-ninth general assembly.

(II) The fund for each county may also consist of contributions from the fund of any other participating county.

(d) The county board of human or social services for a county shall convene a meeting of the local and state agencies that provide child welfare services to at-risk children and their families, that will participate in the program, and that seek money from the county's fund. The meeting is for the purpose of developing and adopting a memorandum of understanding between such agencies and the county's board of human or social services concerning the amount of contributions to the fund described in subsection (7)(c) of this section and the allocation and use of money allocated from the fund. The memorandum of understanding must provide for the designation of a governing entity to oversee the administration of the fund and a fiscal agent, a three-year plan, provisions for evaluating the programmatic and fiscal impact and overall effectiveness of the program, and a process for submitting the results of the evaluation to the general assembly and state officials on an annual basis.

(e) The state agencies affected by the implementation of the three-year plan described in subsection (7)(d) of this section shall review and approve the plan. The state agencies shall act on the plan within ninety days after the plan is submitted to the state agencies. It is the intent of the general assembly that the plan be implemented and that the state agencies cooperate in the plan's development and implementation. Prior to the implementation of the program, a copy of the approved plan must be submitted to the joint budget committee of the general assembly. Prior to the expiration of the three-year plan, the county board of human or social services shall follow the procedures described in subsection (7)(d) of this section for readoption of or revisions to the three-year plan.

Source: L. 87: Entire title R&RE, p. 707, § 1, effective October 1. **L. 90:** (1), (2)(b), (2)(e), and (3) amended and (2)(d) repealed, pp. 1013, 1015, §§ 1, 4, effective July 1. **L. 93:** (1.5) added and (2) and (4) amended, p. 2002, § 2, effective June 9; (7) added, p. 2095, § 1, effective July 1; (4) amended, p. 1135, § 66, effective July 1, 1994. **L. 94:** (1), (2)(a), (2)(b)(I), (2)(e), (3), (4)(b), (5), and (7)(c) amended, pp. 2659, 2736, §§ 147, 363, effective July 1; (7)

amended, p. 1798, § 1, effective July 1. **L. 96:** (2)(b)(I) amended, p. 82, § 3, effective March 20; (3) amended, p. 1256, § 143, effective August 7. **L. 97:** (2)(a) amended, p. 1191, § 12, effective July 1. **L. 98:** (3) amended, p. 729, § 16, effective May 18; (4)(a) amended, p. 821, § 23, effective August 5. **L. 2001:** (3) repealed, p. 1176, § 5, effective August 8. **L. 2010:** (2)(a) amended, (HB 10-1422), ch. 419, p. 2075, § 35, effective August 11. **L. 2011:** (1.5) and (2)(b)(I) amended, (HB 11-1196), ch. 160, p. 553, § 3, effective August 10. **L. 2018:** (1.5) amended, (HB 18-1319), ch. 217, p. 1391, § 4, effective May 18; (1), (2)(a), (6), (7)(c)(I), (7)(d), and (7)(e) amended, (SB 18-092), ch. 38, p. 408, § 31, effective August 8. **L. 2021:** (2)(a) amended, (HB 21-1187), ch. 83, p. 326, § 7, effective July 1, 2024.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-120 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (4) in Senate Bill 93-254 and House Bill 93-1317 were harmonized. Amendments to subsection (2)(a) in section 147 of House Bill 94-1029 were superseded by amendments in section 363 of House Bill 94-1029. Amendments to subsection (7) in House Bill 94-1357 and House Bill 94-1029 were harmonized.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (4), see section 1 of chapter 230, Session Laws of San Andreas 1993. For the legislative declaration contained in the 1996 act amending subsection (3), see section 1 of chapter 237, Session Laws of San Andreas 1996. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-1-117. Visitation rights of grandparents or great-grandparents. (Repealed)

Source: L. 87: Entire title R&RE, p. 709, § 1, effective October 1. **L. 91:** (5) added, p. 262, § 3, effective May 31. **L. 93:** (5) amended, p. 581, § 18, effective July 1. **L. 98:** IP(1), (1)(b), and (2) amended, p. 1406, § 64, effective February 1, 1999. **L. 2014:** IP(1), (1)(c), (2), (3), (4), and (5) amended, (HB 14-1362), ch. 374, p. 1787, § 2, effective June 6. **L. 2023:** Entire section repealed, (HB 23-1026), ch. 243, p. 1308, § 8, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) This section was relocated to §14-10-124.4 in 2023.

Cross references: (1) For the legislative declaration contained in the 1993 act amending subsection (5), see section 1 of chapter 165, Session Laws of San Andreas 1993.

(2) For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of San Andreas 2023.

19-1-117.5. Disputes concerning grandparent or great-grandparent visitation. (Repealed)

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 98:** IP(1), (1)(b), and IP(2) amended, p. 1407, § 65, effective February 1, 1999. **L. 2014:** IP(1), (1)(b), IP(2)(d), (2)(d)(III), and (2)(f) amended, (HB 14-1362), ch. 374, p. 1788, § 3, effective June 6. **L. 2023:** Entire section repealed, (HB 23-1026), ch. 243, p. 1308, § 8, effective August 7.

Editor's note: This section was relocated to § 14-10-124.5 in 2023.

Cross references: For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of San Andreas 2023.

19-1-117.6. Definitions. (Repealed)

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

19-1-117.7. Requests for placement - legal custody by grandparents. Whenever a grandparent seeks the placement of his or her grandchild in the grandparent's home or seeks the legal custody of his or her grandchild pursuant to the provisions of this title, the court entering such order shall consider any credible evidence of the grandparent's past conduct of child abuse or neglect. Such evidence may include, but shall not be limited to, medical records, school records, police reports, information contained in records and reports of child abuse or neglect, and court records received by the court pursuant to section 19-1-307 (2)(f).

Source: L. 91: Entire section added, p. 262, § 4, effective May 31. **L. 2003:** Entire section amended, p. 1401, § 6, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 196, Session Laws of San Andreas 2003.

19-1-118. Court records - inspection. (Repealed)

Source: L. 87: Entire title R&RE, p. 710, § 1, effective October 1. **L. 89:** (4) and (5) added, p. 914, § 1, effective July 1. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-1-119. Confidentiality of juvenile records - delinquency. (Repealed)

Source: L. 90: Entire section added, p. 1007, § 2, effective July 1. **L. 91:** IP(1)(a) amended and (1)(b.5) added, p. 205, § 1, effective July 1. **L. 93:** Entire section amended, p. 932, § 2, effective May 28; (1)(a), (1)(b), and (2)(a) amended, p. 1547, § 3, effective July 1; (1)(a)(VII) amended, p. 969, § 5, effective July 1; (5) amended, p. 453, § 4, effective July 1. **L. 93, 1st Ex. Sess.:** (1)(b.5) amended, p. 36, § 1, effective September 13. **L. 94:** (1)(b.5), IP(1)(c)(II), IP(2)(a), and (5) amended and (1)(b.7) added, p. 910, § 6, effective April 28; (1)(a)(X), (1)(a)(XIII)(A), (1)(c)(V), (2)(a)(X), (2)(a)(XIV)(A), and (6) amended, p. 2661, § 148, effective July 1. **L. 96:** (1)(a)(XIV) added, p. 1585, § 8, effective July 1; entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-304 in 1997.

19-1-120. Confidentiality of records - dependency and neglect. (Repealed)

Source: L. 90: Entire section added, (2)(k) and (2)(k)(I) amended, and (2)(l) added, pp. 1009, 1031, 1845, §§ 2, 21, 27, effective July 1; (2)(j) amended, p. 1845, § 37, effective October 1. **L. 91:** (2)(k) amended and (2)(m) to (2)(o) and (2.5) added, pp. 221, 222, §§ 1, 2, effective May 24. **L. 92:** (2)(a) amended, p. 406, § 21, effective June 3; (2)(a) amended, p. 1103, § 1, effective July 1. **L. 93:** (2)(k) and (2)(l) amended, p. 1779, § 42, effective June 6. **L. 94:** (2)(p) added, p. 2084, § 3, effective June 3; (2)(k), IP(2)(m), and (2)(o) amended, p. 2662, § 149, effective July 1. **L. 96:** (2)(q) added and (2.5) amended, p. 1586, §§ 9, 10, effective July 1; entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-307 in 1997.

19-1-121. Confidentiality of records - "Uniform Parentage Act". (Repealed)

Source: L. 90: Entire section added, p. 1011, § 2, effective July 1. **L. 94:** Entire section amended, p. 1540, § 12, effective May 31. **L. 96:** Entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-308 in 1997.

19-1-122. Confidentiality of records - relinquishments and adoptions. (Repealed)

Source: L. 90: Entire section added, p. 1011, § 2, effective July 1. **L. 93:** Entire section amended, p. 656, § 2, effective July 1. **L. 96:** Entire section repealed, p. 1173, § 7, effective January 1, 1997.

Editor's note: This section was relocated to § 19-1-309 in 1997.

19-1-123. Expedited procedures for permanent placement - children under the age of six years - designated counties. (1) (a) The expedited procedures for the permanent placement of children under the age of six years required by article 3 of this title 19 must be implemented on a county-by-county basis beginning July 1, 1994. The state department of human services, in consultation with the judicial department and the governing boards of each county department of human or social services, shall have the responsibility for establishing an implementation schedule that provides for statewide implementation of such expedited procedures by June 30, 2004. A designated county is required to implement the expedited procedures on and after the implementation date applicable to the county as specified in the implementation schedule for each new case filed in the county involving a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2).

(b) (Deleted by amendment, L. 2000, p. 73, § 1, effective March 10, 2000.)

(2) (a) The implementation of expedited procedures in additional counties shall be subject to specific appropriation by the general assembly or by determination by a county that no additional resources are needed.

(b) (Deleted by amendment, L. 2004, p. 193, § 6, effective August 4, 2004.)

Source: L. 94: Entire section added, p. 2052, § 3, effective July 1. **L. 98:** (2)(a) amended, p. 730, § 17, effective May 18. **L. 2000:** (1)(b) and (2)(a) amended, p. 73, § 1, effective March 10. **L. 2004:** (2) amended, p. 193, § 6, effective August 4. **L. 2018:** (1)(a) amended, (SB 18-092), ch. 38, p. 409, § 32, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-1-124. Providers of children's services using federal or state moneys - use of state accounting standards. In order to ensure financial accountability, on and after July 1, 1997, all service providers receiving federal or state moneys through the state for the provision of services to children, youth, and families pursuant to this title shall use the accounting standards of the governmental accounting standards board.

Source: L. 96: Entire section added, p. 1155, § 5, effective January 1, 1997.

19-1-125. Family stabilization services. (1) It is the intent of the general assembly to assist in the provision of appropriate and necessary short-term services to help stabilize families that are at risk of having their children placed in out-of-home placement when those families voluntarily request such services. It is further the intent of the general assembly that county departments provide for family stabilization services through contracts with private or nonprofit organizations or entities whenever possible.

(2) Repealed.

(3) County departments shall use any moneys allocated pursuant to this section to provide for family stabilization services, defined by rule of the state board of human services, that may include but not be limited to:

(a) Less than twenty-four-hour respite care for parents and children;

(b) In-home services that may include kinship care and counseling; or

(c) Services that assist the family to reintegrate following a separation or out-of-home placement.

Source: L. 2001: Entire section added, p. 739, § 1, effective June 1. **L. 2002:** (1) and (2) amended, p. 528, § 2, effective May 24. **L. 2003:** (2) amended, p. 386, § 1, effective March 5. **L. 2004:** (2)(d) added, p. 1555, § 3, effective May 28.

Editor's note: Subsection (2)(d)(I) provided for the repeal of subsection (2), effective July 1, 2006. (See L. 2004, p. 1555.)

19-1-126. Compliance with the federal "Indian Child Welfare Act of 1978". (1) In each case filed pursuant to this title 19 that constitutes a child custody proceeding, as defined in

the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and therefore to which the terms of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., apply, the court and each party to the proceeding shall comply with the federal implementing regulations, and any modifications thereof, of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., located in 25 CFR 23, which outline the minimum federal standards governing the implementation of the "Indian Child Welfare Act of 1978" to ensure the statute is applied in San Andreas consistent with the act's express language, congress's intent in enacting the statute, and to promote the stability and security of Indian children, tribes, and families. In each child-custody proceeding filed pursuant to this title 19 to which the terms of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., apply:

(a) (I) The court shall make inquiries to determine whether the child who is the subject of the proceeding is an Indian child, and, if so, shall determine the identity of the Indian child's tribe. In determining the Indian child's tribe:

(A) The court shall ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is to be made at the commencement of the proceeding, and all responses must be on the record. The court shall instruct the participants to inform the court if any participant subsequently receives information that provides reason to know the child is an Indian child.

(B) Any party to the proceeding shall disclose any information indicating that the child is an Indian child or provide an identification card indicating membership in a tribe to the petitioning and filing parties and the court in a timely manner. The court shall order the party to provide the information no later than seven business days after the date of the hearing or prior to the next hearing on the matter, whichever occurs first. The information should be filed with the court and provided to the county department of human or social services and each party no later than seven business days after the date of the hearing.

(II) The court, upon conducting the inquiry described in subsection (1)(a)(I) of this section, has reason to know that a child is an Indian child if:

(A) Any participant in the child-custody proceeding, officer of the court involved in the child-custody proceeding, Indian tribe, Indian organization, or agency informs the court that the child is an Indian child;

(B) Any participant in the child-custody proceeding, officer of the court involved in the child-custody proceeding, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(C) The child who is the subject of the child-custody proceeding gives the court reason to know he or she is an Indian child;

(D) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska native village;

(E) The court is informed that the child is or has been a ward of a tribal court, as defined in 25 U.S.C. sec. 1903; or

(F) The court is informed that the child or the child's parent possesses an identification card indicating membership in an Indian tribe.

(b) If the court knows or has reason to know, as defined in subsection (1)(a)(II) of this section, that the child who is the subject of the proceeding is an Indian child, the petitioning or filing party shall send notice by registered or certified mail, return receipt requested, to the

parent or parents, the Indian custodian or Indian custodians of the child and to the tribal agent of the Indian child's tribe as designated in 25 CFR 23, or, if there is no designated tribal agent, the petitioning or filing party shall contact the tribe to be directed to the appropriate office or individual. In providing notice, the court and each party shall comply with 25 CFR 23.111.

(c) The petitioning or filing party shall disclose in the complaint, petition, or other commencing pleading filed with the court that the child who is the subject of the proceeding is an Indian child and the identity of the Indian child's tribe or what efforts the petitioning or filing party has made in determining whether the child is an Indian child. If the child who is the subject of the proceeding is determined to be an Indian child, the petitioning or filing party shall further identify what reasonable efforts have been made to send notice to the persons identified in subsection (1)(b) of this section. The postal receipts indicating that notice was properly sent by the petitioning or filing party to the parent or Indian custodian of the Indian child and to the Indian child's tribe must be attached to the complaint, petition, or other commencing pleading filed with the court; except that, if notification has not been perfected at the time the initial complaint, petition, or other commencing pleading is filed with the court or if the postal receipts have not been received back from the post office, the petitioning or filing party shall file the postal receipts with the court. Any responses sent by the tribal agents to the petitioning or filing party, the county department of human or social services, or the court must be distributed to the parties and deposited with the court.

(2) If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall:

(a) Confirm, by way of a report, declaration, or testimony included in the record, that the petitioning or filing party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership; and

(b) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an Indian child.

(3) If the court receives information that the child may have Indian heritage but does not have sufficient information to determine that there is reason to know that the child is an Indian child pursuant to subsection (1)(a)(II) of this section, the court shall direct the petitioning or filing party to exercise due diligence in gathering additional information that would assist the court in determining whether there is reason to know that the child is an Indian child. The court shall direct the petitioning or filing party to make a record of the effort taken to determine whether or not there is reason to know that the child is an Indian child.

(4) The requirements of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., in effect as of February 9, 2003, and the related regulations located at 25 CFR 23, in effect as of February 9, 2023, are incorporated into and adopted as state law.

Source: L. 2002: Entire section added, p. 784, § 3, effective May 30. **L. 2018:** (3) amended, (SB 18-092), ch. 38, p. 410, § 33, effective August 8. **L. 2019:** Entire section amended, (HB 19-1232), ch. 305, p. 2791, § 2, effective May 28. **L. 2023:** (4) amended, (SB 23-211), ch. 150, p. 637, § 1, effective May 4.

Cross references: For the legislative declaration contained in the 2002 act enacting this section, see section 1 of chapter 217, Session Laws of San Andreas 2002. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 19-1232, see section 1 of chapter 305, Session Laws of San Andreas 2019.

19-1-127. Responsibility for placement and care. (1) "Responsibility for placement and care", for purposes of compliance with federal requirements pursuant to the federal "Social Security Act", 42 U.S.C. sec. 672 (a)(2), means the specified entity is considered to have the responsibility for placement and care of a child if:

(a) A county department of human or social services has entered into a voluntary placement agreement with the parent or guardian of the child;

(b) A court, as a result of a petition for review of need of placement, has determined that a county department of human or social services shall have continuing placement and care responsibility of the child who entered care pursuant to a voluntary placement;

(c) A court has awarded legal custody of the child to a county department of human or social services, or has committed the child to the custody of the state department of human services; or

(d) An agency, such as a tribal agency, with which the state department of human services has a contract pursuant to the federal "Social Security Act", has placement and care responsibility of the child pursuant to a voluntary placement agreement or a court order awarding custody of the child to the agency.

Source: L. 2006: Entire section added, p. 507, § 2, effective April 18. **L. 2018:** Entire section amended, (SB 18-092), ch. 38, p. 410, § 34, effective August 8. **L. 2022:** IP(1) amended, (SB 22-212), ch. 421, p. 2971, § 34, effective August 10.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-1-128. Foster care sibling visits - rules. (Repealed)

Source: L. 2008: Entire section added, p. 1, § 1, effective August 5. **L. 2019:** Entire section repealed, (HB 19-1288), ch. 216, p. 2238, § 3, effective August 2.

Editor's note: This section was relocated to § 19-7-204 in 2019.

19-1-129. Department - research authorized - prenatal substance exposure - newborn and family outcomes - report. (1) The state department of human services may conduct research as related to the definition of "abuse" in section 19-1-103 concerning the incidence of prenatal substance exposure and related newborn and family health and human services outcomes as the result of a mother's lawful and unlawful intake of controlled substances.

(2) Beginning in January 2021 and every two years thereafter, the state department of human services shall report the outcomes of any research conducted pursuant to subsection (1) of this section to the joint health committees of the general assembly as part of its "State

Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" presentation required by section 2-7-203.

Source: L. 2019: Entire section added, (SB 19-228), ch. 276, p. 2603, § 6, effective May 23. **L. 2020:** Entire section amended, (HB 20-1402), ch. 216, p. 1048, § 35, effective June 30.

19-1-130. Access to services related to out-of-home placement - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Gender expression" means a person's way of reflecting and expressing their gender to the outside world, typically demonstrated through appearance, dress, and behavior.

(b) "Gender identity" means a person's innate sense of the person's own gender, which may or may not correspond with the person's sex as assigned at birth.

(c) "Placement-related service" means any program, benefit, or service related to out-of-home placement, including adoption, kinship care, foster care homes, and private child placement, or a benefit or service described in title 26 that is related to out-of-home placement, provided by the state department of human services, a county department of human or social services, a child placement agency, or any other such entity, or a contractor or subcontractor that provides such program, benefit, or service on behalf of the state department of human services, a county department of human or social services, a child placement agency, or any other such entity. Placement-related services may include, but are not limited to, pursuing adoption or any other child placement; providing early intervention services, out-of-home placement prevention services, or family preservation services; or any service related to licensing or training for child care centers, adoptive or foster parents, or kinship care. The state department of human services, a county department of human or social services, a child placement agency, or any other such entity is not required to contract with or access a placement-related service outside the current placement-related services that are utilized by that specific entity.

(d) "Service provider" means the state department of human services, a county department of human or social services, or a child placement agency. "Service provider" includes a contractor or subcontractor that provides placement-related services on a service provider's behalf.

(2) A service provider that receives state money to provide placement-related services shall provide to each individual, family, or other service provider requesting services, including a service provider under investigation by the state department of human services or its designee for a violation of this section, fair and equal access to all available placement-related services offered by the service provider. Service providers that provide specialized placement-related services to specific populations are not required to provide services outside the scope of their specialized service or their specific population if the specialization serves a specific treatment-related purpose.

(3) In addition to any restrictions set forth in section 24-34-805 (2)(b), a service provider that receives state money to provide placement-related services shall not:

(a) Deny any person the opportunity to become an adoptive or a foster parent solely on the basis of a real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, or any communicable disease, including HIV, of the person or a member of the person's household. Any denial to care for a specific child or youth that includes one of these factors as the basis for

the denial must be documented, must have a clear nexus to the ability to meet the needs of the child or youth, and the denial to care must not be detrimental to the health or welfare of the child or youth.

(b) Delay or deny the placement of a child or youth for adoption or into foster care on the basis of a real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, or any communicable disease, including HIV, of the child or youth, unless the delay or denial of the placement is not detrimental to the health or welfare of the child or youth;

(c) Require different or additional screenings, processes, or procedures for adoptive or foster placement decisions solely on the basis of the following, unless such screenings, processes, or procedures are necessary to determine if the placement is detrimental to the health or welfare of the child or youth:

(I) A real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, or any communicable disease, including HIV, of the prospective adoptive or foster parent; or

(II) A real or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, or any communicable disease, including HIV, of the child or youth involved; or

(d) Subject a child or youth in foster care or an individual, family, or other service provider to discrimination or harassment on the basis of actual or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, or any communicable disease, including HIV, when providing any placement-related service.

(4) (a) A service provider shall provide placement-related services in a manner that is culturally responsive to the complex social identity of the individual receiving such services. Complex social identities include but are not limited to race, ethnicity, nationality, age, religion, sex, sexual orientation, gender identity, gender expression, socioeconomic status, physical or cognitive ability, language, beliefs, values, behavior patterns, and customs. Nothing in this subsection (4) may be used to cause the delay or denial of an out-of-home placement of a child or youth, unless the delay or denial of the placement is not detrimental to the health or welfare of the child or youth.

(b) The state department of human services shall determine whether placement-related services are provided in a manner that is culturally responsive to the complex social identity of the individual receiving such services.

(5) Nothing in this section diminishes the protections afforded to a parent, prospective parent, child, or youth with a disability, as described in sections 19-3-208, 19-5-100.2, and 24-34-805.

Source: L. 2021: Entire section added, (HB 21-1072), ch. 43, p. 182, § 1, effective April 19.

19-1-131. Children of parents who are incarcerated - rules. The department shall promulgate rules that facilitate communication and family time between children and their parents who are incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail. The purpose of the rules is to

normalize, to the extent possible, the child and parent relationship, to aid and encourage healthy child development, and reduce recidivism and intergenerational incarceration. The rules must consider the benefits to the child through maintaining contact with the child's parent and the parent's willingness and desire to maintain a meaningful relationship with the child, and assist in the reunification of the child and parent when appropriate. The rules must consider the impact of rules promulgated pursuant to this section on department of corrections facilities, private correctional facilities under contract with the department of corrections, jails, and county departments that must implement the rules. The department shall consider opportunities to assess the efficacy of the rules promulgated pursuant to this section.

Source: L. 2023: L. 2023: Entire section added, (SB 23-039), ch. 191, p. 953, § 2, effective January 1, 2024.

Cross references: For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of San Andreas 2023.

PART 2

COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

Law reviews: For article, "CASA--A Powerful Voice for a Child", see 36 S.A. Law. 97 (Oct. 2007).

19-1-201. Legislative intent. (1) (a) The general assembly hereby finds and declares that quality representation for children requires legal expertise and thorough case monitoring.

(b) The work of community volunteers has been proven to be effective in addressing the needs of children. Partnerships between guardians ad litem and community volunteers can enhance the quality of representation for children.

(c) The general assembly further finds and declares that the state should promote volunteerism and the exercise of responsible citizenship to enable members of local communities to become advocates for children.

(2) Therefore, the general assembly hereby authorizes the creation of volunteer court-appointed special advocate (CASA) programs in order to enhance the quality of representation of children.

Source: L. 96: Entire part added, p. 1090, § 4, effective May 23. **L. 2003:** (2) amended, p. 754, § 5, effective March 25.

19-1-202. Creation of CASA programs. (1) CASA programs may be established in each judicial district or any two or more judicial districts and shall operate pursuant to a memorandum of understanding between the chief judge of the judicial district and the CASA program. The memorandum of understanding must identify the roles and responsibilities of any CASA volunteer appointed in the judicial district or districts and must indicate whether any CASA volunteer may be made a party to the action. The memorandum of understanding may be

amended or modified at any time to add or delete roles and responsibilities pursuant to this part 2.

(2) A CASA program established pursuant to the provisions of this part 2 must:

(a) Be a community organization that screens, trains, and supervises CASA volunteers to advocate for the best interests of children in actions brought pursuant to this title and titles 14 and 15, S.A.R.S., or for a child in a truancy proceeding pursuant to the "School Attendance Law of 1963", part 1 of article 33 of title 22, S.A.R.S.;

(b) Be a member in good standing of the San Andreas CASA association and the national CASA association and adhere to the guidelines established by those associations;

(c) Appoint a program director who shall have the responsibilities set forth in section 19-1-203;

(d) Have adequate supervisory and support staff who shall be easily accessible, hold regular case conferences with CASA volunteers to review case progress, and conduct annual performance reviews for all CASA volunteers;

(e) Provide staff and CASA volunteers with written program policies, practices, and procedures;

(f) Provide the training required pursuant to section 19-1-204; and

(g) Attempt to maintain a CASA volunteer-to-supervisor ratio of thirty-to-one.

Source: L. 96: Entire part added, p. 1090, § 4, effective May 23. **L. 2008:** (1) amended, p. 30, § 1, effective March 13. **L. 2015:** (1), IP(2), and (2)(a) amended, (SB 15-004), ch. 254, p. 925, § 1, effective August 5.

19-1-203. Program director. (1) The program director shall be responsible for the administration of the CASA program, including recruitment, selection, training, and supervision and evaluation of staff and CASA volunteers.

(2) The program director shall serve as a professional liaison between the court and community agencies serving children.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23.

19-1-204. Training requirements. (1) All CASA volunteers shall participate fully in preservice training, including instruction on recognizing child abuse and neglect, cultural awareness, child development, education standards, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy, information gathering, and documentation. CASA volunteers shall be required to participate in observation of court proceedings prior to appointment.

(2) All CASA volunteers shall receive a training manual that shall include guidelines for their service and duties.

(3) Each CASA program shall provide a minimum of ten hours of in-service training per year to CASA volunteers.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23. **L. 2015:** (1) amended, (SB 15-004), ch. 254, p. 926, § 2, effective August 5.

19-1-205. Selection of CASA volunteers. (1) Each CASA program shall adopt regulations consistent with subsection (2) of this section and with the San Andreas CASA association and national CASA association guidelines governing qualifications and selection of CASA volunteers. Each CASA program's regulations shall include provisions that qualified adults shall not be discriminated against based on gender, socioeconomic, religious, racial, ethnic, or age factors.

(2) The minimum qualifications for any prospective CASA volunteer are that he or she shall:

(a) Be at least twenty-one years of age or older and have demonstrated an interest in children and their welfare;

(b) Be willing to commit to the court for a minimum of one year of service to a child;

(c) Complete an application, including providing background information required pursuant to subsection (3) of this section;

(d) Participate in a screening interview;

(e) Participate in the training required pursuant to section 19-1-204; and

(f) Meet other qualifications as determined by the CASA program director and the chief judge of the judicial district.

(3) A prospective CASA volunteer's application shall include:

(a) A copy of any criminal history record and motor vehicle record;

(a.5) Written authorization for the CASA program to obtain information contained in any records or reports of child abuse or neglect concerning the prospective CASA volunteer;

(b) At least three references who can address his or her character, judgment, and suitability for the position; and

(c) Records from any other jurisdictions in which he or she resided during the one-year time period prior to the date of the application if the prospective CASA volunteer has resided in the state of San Andreas for less than twelve months.

Source: L. 96: Entire part added, p. 1091, § 4, effective May 23. **L. 2003:** (3)(a) amended and (3)(a.5) added, p. 1401, § 7, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (3)(a) and enacting subsection (3)(a.5), see section 1 of chapter 196, Session Laws of San Andreas 2003.

19-1-206. Appointment of CASA volunteers. (1) (a) A judge or magistrate may appoint a CASA volunteer in any action brought pursuant to this title and titles 14 and 15, S.A.R.S., when, in the opinion of the judge or magistrate, a child who may be affected by such action requires services that a CASA volunteer can provide. At the discretion of the judge or magistrate, a CASA volunteer may be a party to the action if so provided for in the memorandum of understanding.

(b) A judge or magistrate may appoint a CASA volunteer in any action brought in a proceeding pursuant to the "School Attendance Law of 1963", part 1 of article 33 of title 22, S.A.R.S., provided that at least one parent or legal guardian of the child involved is provided with notice of the appointment of a CASA volunteer.

(2) A CASA volunteer shall be appointed at the earliest stages of an action pursuant to a court order that gives him or her the authority to review all relevant documents and interview all parties involved in the case, including parents, other parties in interest, and any other persons having significant information relating to the child.

(3) The CASA volunteer's appointment concludes:

(a) When the court's jurisdiction over the child terminates; or

(b) Upon discharge by the court on its own motion or at the request of the program director of the CASA program to which the CASA volunteer is assigned.

Source: L. 96: Entire part added, p. 1092, § 4, effective May 23. **L. 2015:** (1) and IP(3) amended, (SB 15-004), ch. 254, p. 926, § 3, effective August 5.

19-1-207. Restrictions. (1) A CASA volunteer shall not:

(a) Accept any compensation for the duties and responsibilities of his or her appointment;

(b) Have any association that creates a conflict of interest with his or her duties;

(c) Be related to any party or attorney involved in a case;

(d) Be employed in a position that could result in a conflict of interest or give rise to the appearance of a conflict;

(e) Use the CASA volunteer position to seek or accept gifts or special privileges.

Source: L. 96: Entire part added, p. 1093, § 4, effective May 23.

19-1-208. Duties of CASA volunteer. (1) **Independent case investigation.** Upon appointment in an action, a CASA volunteer may:

(a) Conduct an independent investigation regarding the best interests of the child that will provide factual information to the court regarding the child and the child's family. The investigation shall include interviews with and observations of the child, interviews with other appropriate individuals, and the review of relevant records and reports.

(b) Determine if an appropriate treatment plan, as described in section 19-1-103, has been created for the child, whether appropriate services are being provided to the child and family, and whether the treatment plan is progressing in a timely manner;

(c) Determine if additional services are necessary to ensure educational success for a child in a proceeding pursuant to the "School Attendance Law of 1963", part 1 of article 33 of title 22, S.A.R.S.

(2) **Recommendations.** Unless otherwise ordered by the court, the CASA volunteer, with the support and supervision of the CASA program staff, shall make recommendations consistent with the best interests of the child or youth regarding placement, family time, and appropriate services for the child or youth and family and shall prepare a written report to be distributed to the parties of the action.

(3) **Reports.** The CASA volunteer shall assure that the child's best interests are being advocated at every stage of the case and prepare written reports to be distributed to the parties of the action.

(4) **Case monitoring.** The CASA volunteer shall monitor the case to which he or she has been appointed to assure that the child's essential needs are being met and that the terms of the court's orders have been fulfilled in an appropriate and timely manner.

(5) **Witness.** The CASA volunteer may be called as a witness in an action by any party or the court and may request of the court the opportunity to appear as a witness.

(6) **Foster youth in transition program.** With the consent of the youth, a CASA volunteer may be appointed in a foster youth in transition program case filed pursuant to part 3 of article 7 of this title 19 and may support the youth in planning for the youth's future and accessing necessary services, supports, and assistance consistent with the youth's expressed interests and the program's goals. A CASA volunteer appointed to a youth in a foster youth in transition program case shall not make best interests recommendations to the court or others and must not have access to or share confidential information about the youth without the youth's express consent to access or share such information.

Source: L. 96: Entire part added, p. 1093, § 4, effective May 23. **L. 98:** (1)(b) amended, p. 821, § 24, effective August 5. **L. 2015:** (1)(c) added, (SB 15-004), ch. 254, p. 926, § 4, effective August 5. **L. 2021:** IP(1) and (1)(b) amended, (SB 21-059), ch. 136, p. 729, § 68, effective October 1. **L. 2023:** (2) amended, (HB 23-1027), ch. 284, p. 1681, § 9, effective June 1. **L. 2024:** (6) added, (HB 24-1377), ch. 254, p. 1674, § 2, effective August 7.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-1-209. Role and responsibilities of guardians ad litem - other parties. (1) (a) Any guardian ad litem, and all state and local agencies, departments, authorities, and institutions shall cooperate and share information with any CASA volunteer appointed to serve on a case and with each local CASA program to facilitate the implementation of its program.

(b) The CASA program will help facilitate the cooperation and sharing of information among CASA volunteers, the attorneys, the county department of human or social services, and other community agencies.

(2) In any case in which the court has appointed both a CASA volunteer and a guardian ad litem, the CASA volunteer and the guardian ad litem shall cooperate to represent the best interests of the child.

(3) The CASA volunteer shall be notified of hearings, staffings, meetings, and any other proceedings concerning the case to which he or she has been appointed.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23. **L. 2018:** (1)(b) amended, (SB 18-092), ch. 38, p. 410, § 35, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-1-210. Access to information. Upon appointment of a CASA volunteer, the court shall issue an order authorizing access to such records and other information relating to the child, parent, legal guardian, or other parties in interest as the court deems necessary.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-211. Confidentiality. A CASA volunteer shall not disclose the contents of any document, record, or other information relating to a case to which the CASA volunteer has access in the course of an investigation. All such information shall be considered confidential and shall not be disclosed to persons other than the court and parties to the action.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-212. Liability. CASA program directors and volunteers participating in a CASA program shall have the same civil immunity and liability as described in sections 13-21-115.5 and 13-21-115.7, S.A.R.S.

Source: L. 96: Entire part added, p. 1094, § 4, effective May 23.

19-1-213. State CASA entity - duties - state court administrator duties - state court-appointed special advocate fund - definitions. (1) For the purposes of this section, unless the context otherwise requires:

(a) "Local CASA program" means a CASA program established in a judicial district, or any two or more judicial districts, pursuant to section 19-1-202.

(b) "Office of the child's representative" means the office of the child's representative created in section 13-91-104.

(c) "State CASA entity" means the nonprofit entity that has entered into a contract with the office of the child's representative as described in subsection (2) of this section.

(2) The office of the child's representative shall contract with a nonprofit entity that is in good standing with the national CASA association to enhance the CASA program in San Andreas. The state CASA entity shall:

(a) Aid and develop local CASA programs in each judicial district or in adjacent judicial districts;

(b) Ensure that local CASA programs adhere to state and national CASA standards;

(c) Ensure the provision and availability of high-quality accessible training for local CASA programs and volunteers;

(d) Seek to enhance existing funding sources, develop private-public partnership funding, and study the availability of new funding sources for the provision of high-quality local CASA programs in each judicial district or in adjacent judicial districts.

(3) Beginning July 1, 2019, and at least annually thereafter, the office of the child's representative shall allocate money appropriated to the state judicial department for CASA programs to the state CASA entity for allocation to local CASA programs. The state CASA entity shall report to the office of the child's representative regarding its duties described in subsection (2) of this section within one month before receiving an allocation.

(4) The state CASA entity, in consultation with local CASA programs, shall annually establish a formula for the allocation of money appropriated and shall allocate money to the local CASA programs in accordance with the established allocation formula. The allocation formula must be provided to the office of the child's representative no later than June 15, 2019, and each June 15 thereafter, prior to the state CASA entity receiving its annual allocation. On a schedule

described in the contract, but at least annually, the state CASA entity shall provide to the office of the child's representative a certification from each local CASA program of the amount that program received from each allocation since the prior certification.

(5) On or before November 1, 2020, and on or before November 1 each year thereafter, the state CASA entity shall report its activities and the activities of each local CASA program to the office of the child's representative.

(6) (a) The state court-appointed special advocate fund, referred to in this subsection (6) as the "fund", is hereby created in the state treasury. The fund consists of money credited to the fund pursuant to subsection (6)(b) of this section and any other money that the general assembly may appropriate or transfer to the fund. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund. The money in the fund is subject to annual appropriation by the general assembly to the state judicial department for the purposes of funding local CASA programs established in each judicial district, or in adjacent judicial districts, pursuant to this part 2, and the enhancement of local CASA programs. Any money not appropriated remains in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

(b) The office of the child's representative may seek, accept, and expend gifts, grants, or donations from private or public sources to fund the work of the state CASA entity. The office of the child's representative shall transmit all money received through gifts, grants, or donations to the state treasurer, who shall credit the money to the fund.

Source: L. 2019: Entire section added, (HB 19-1282), ch. 312, p. 2813, § 1, effective May 28.

PART 3

RECORDS AND INFORMATION

Editor's note: This part 3 was added with relocations in 1996, effective January 1, 1997. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated.

19-1-301. Short title. This part 3 shall be known and may be cited as the "Children's Code Records and Information Act".

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997.

19-1-302. Legislative declaration. (1) (a) The general assembly declares that information obtained by public agencies in the course of performing their duties and functions under this title is considered public information under the "San Andreas Open Records Act", part 2 of article 72 of title 24, S.A.R.S. The general assembly, however, recognizes that certain information obtained in the course of the implementation of this title is highly sensitive and has an impact on the privacy of children and members of their families. The disclosure of sensitive information carries the risk of stigmatizing children; however, absolute confidentiality of such information may result in duplicated services in some cases, fragmented services in others, and

the delivery of ineffective and costly programs and, in some situations, may put other members of the public at risk of harm. In addition, disclosure may result in serving the best interests of the child and may be in the public interest.

(b) Furthermore, the general assembly specifically finds that schools, school districts, and criminal justice agencies attempting to protect children and the public are often frustrated by their lack of ability to exchange information concerning disruptive children who may have experienced disciplinary actions at school or whose actions outside of a school setting may have resulted in contact with local law enforcement. The general assembly finds that schools, school districts, and criminal justice agencies are often better able to assist such disruptive children and to preserve school safety when they are equipped with knowledge concerning a child's history and experiences. The general assembly, however, recognizes that any such sharing of information among and between schools, school districts, and agencies to promote school safety or otherwise to assist disruptive children mandates an awareness of the responsibility on the part of those schools, school districts, and agencies receiving or providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved. The general assembly finds, therefore, that it is desirable to authorize and encourage open communication among appropriate agencies, including criminal justice agencies, assessment centers for children, school districts, and schools, in order to assist disruptive children and to maintain safe schools.

(c) The general assembly further finds that partners in multi-agency assessment centers for children are often frustrated by their lack of ability to exchange information with each other when attempting to serve children and the public. The general assembly finds that assessment centers for children are better able to assist children when they are equipped with knowledge concerning a child's history and experiences. The general assembly, however, recognizes that any such sharing of information among agencies who are part of a multi-agency assessment center for children mandates an awareness of the responsibility on the part of the agencies receiving or providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved.

(d) The general assembly recognizes the importance of children receiving support from all responsible parties and further finds that the state child support enforcement agency and the delegate child support enforcement units have a need to exchange information with other state, federal, and local agencies in order to effectively locate responsible parties; establish paternity and child support, including child support debt pursuant to section 14-14-104, S.A.R.S.; enforce support orders; disburse collected child support payments; and facilitate the efficient and effective delivery of services under articles 13 and 13.5 of title 26, S.A.R.S. Therefore, the general assembly recognizes that the state child support enforcement agency and the delegate child support enforcement units need access to the records and databases of the judicial department, the contents of which are otherwise protected under the provisions of this part 3. The general assembly, however, recognizes that any such information sharing mandates an awareness of responsibility on the part of the state child support enforcement agency and the delegate child support enforcement units receiving information that it be used only for its intended purposes as authorized by law and in accordance with the provisions of section 26-13-102.7, S.A.R.S., and that the confidential nature of the information be preserved.

(e) The general assembly recognizes the need to make recommendations to the court concerning the many aspects of a child's legal status, including but not limited to existing court

orders on placement of the child, legal custody of the child, and orders of protection. Because the population of this state is transitory, and jurisdictional lines for the purpose of court actions are arbitrary, communication of certain information available electronically on a statewide basis may assist state and county agencies, attorneys representing state or county agencies, and attorneys appointed by the court in making recommendations to the court. The general assembly recognizes that any such sharing of information among agencies, attorneys representing agencies, and attorneys appointed by the court mandates an awareness of the responsibility on the part of these agencies, attorneys representing agencies, and attorneys appointed by the court in receiving and providing the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information be preserved.

(f) (I) The general assembly further recognizes the need for the command authority of military installations under the United States secretary of defense to receive notice and information regarding any report that is assigned for an assessment by the state department of human services or a county department of known or suspected instances of child abuse or neglect in which the person having care of the child in question is a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces. The general assembly recognizes the need for the state department of human services and county departments to collect information concerning the military affiliation of the individual having custody or control of a child who is the subject of an investigation of child abuse or neglect.

(II) To further the fulfillment of these needs, the state department of human services and county departments should be able to enter into memorandums of understanding with the command authority of military installations. The memorandums of understanding may establish protocols for the sharing of information related to assessments of known or suspected instances of child abuse or neglect and for collaboration on the oversight of child abuse or neglect investigations involving a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces.

(III) The general assembly, however, recognizes that any sharing of such information is critical for an awareness of the responsibility of the involved agencies and military installations that receive or provide the information that it be used only for its intended and limited purpose as authorized by law and that the confidential nature of the information must be preserved.

(IV) The general assembly finds, therefore, that it is desirable to authorize and encourage open communication between the state department of human services, county departments, and command authority of military installations to better serve children and families of San Andreas.

(2) Therefore, in an effort to balance the best interests of children and the privacy interests of children and their families with the need to share information among service agencies and schools and the need to protect the safety of schools and the public at large, the general assembly enacts the provisions of this part 3.

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997. **L. 2000:** Entire section amended, p. 314, § 1, effective April 7. **L. 2003:** (1)(d) added, p. 1266, § 55, effective July 1. **L. 2008:** (1)(e) added, p. 1241, § 3, effective August 5. **L. 2009:** (1)(a) amended, (SB 09-292), ch. 369, p. 1949, § 35, effective August 5. **L. 2017:** (1)(f) added, (SB 17-028), ch. 332, p. 1782, § 1, effective August 9.

19-1-303. General provisions - delinquency and dependency and neglect cases - exchange of information - civil penalty - rules - definitions. (1) (a) The judicial department or any agency that performs duties and functions under this title with respect to juvenile delinquency or dependency and neglect cases or any other provisions of this title may exchange information, to the extent necessary, for the acquisition, provision, oversight, or referral of services and support with the judicial department or any other agency or individual, including an attorney representing state or county agencies and an attorney appointed by the court, that performs duties and functions under this title with respect to such cases. In order to receive such information, the judicial department, attorney, or agency shall have a need to know for purposes of investigations and case management in the provision of services or the administration of their respective programs. The judicial department or the agencies shall exchange information in accordance with paragraph (b) of this subsection (1).

(b) The judicial department, an agency, an attorney representing an agency, or an attorney appointed by the court described in paragraph (a) of this subsection (1) shall exchange information with the judicial department or similar agencies or individuals who have a need to know to the extent necessary for the acquisition, provision, oversight, and referral of services and support and if provided in the course of an investigation or for case management purposes. The provision of information by the judicial department shall include electronic read-only access to the name index and register of actions for agencies or attorneys appointed by the court to those case types necessary to carry out their statutory purpose and the duties of their court appointment as provided in this part 3. The state court administrator of the judicial department and the executive directors of the affected agencies shall ensure that there is a process for electronically exchanging information pursuant to this section. Agencies, attorneys, and individuals shall maintain the confidentiality of the information obtained.

(c) Nothing in this section shall require the exchange of information that is subject to the attorney-client privilege under section 13-90-107 (1)(b), S.A.R.S.

(2) (a) School personnel may obtain from the judicial department or agencies described in paragraph (a) of subsection (1) of this section any information required to perform their legal duties and responsibilities. Said personnel shall maintain the confidentiality of the information obtained.

(b) Notwithstanding any other provision of law to the contrary, any criminal justice agency or assessment center for children in the state may share any information or records concerning a specific child who is or will be enrolled as a student at a school with that school's principal or with the principal's designee and, if the student is or will be enrolled at a public school, with the superintendent of the school district in which the student is or will be enrolled or the superintendent's designee as follows:

(I) Any information or records, except mental health or medical records, relating to incidents that, in the discretion of the agency or center, rise to the level of a public safety concern including, but not limited to, any information or records of threats made by the child, any arrest or charging information, any information regarding municipal ordinance violations, and any arrest or charging information relating to acts that, if committed by an adult, would constitute misdemeanors or felonies; or

(II) Any records, except mental health or medical records, of incidents that such agency or center may have concerning the child that, in the discretion of the agency or center, do not rise to the level of a public safety concern but that relate to the adjudication or conviction of a child

for a municipal ordinance violation or that relate to the charging, adjudication, deferred prosecution, deferred judgment, or diversion of a child for an act that, if committed by an adult, would have constituted a misdemeanor or a felony.

(c) Notwithstanding any other provision of law to the contrary, a criminal justice agency investigating a criminal matter or a matter under the "School Attendance Law of 1963", part 1 of article 33 of title 22, S.A.R.S., concerning a child may seek disciplinary and truancy information from the principal of a school, or the principal's designee, at which the child is or will be enrolled as a student and, if the student is enrolled in a public school, from the superintendent of the school district in which the student is enrolled, or such superintendent's designee. Upon written certification by the criminal justice agency that the information will not be disclosed to any other party, except as specifically authorized or required by law, without the prior written consent of the child's parent, either the principal of the school in which the child is enrolled, or such principal's designee, or, if the student is enrolled in a public school, the superintendent of the school district in which the student is enrolled, or such superintendent's designee, shall provide the child's attendance and disciplinary records to the requesting criminal justice agency. The criminal justice agency receiving such information shall use it only for the performance of its legal duties and responsibilities and shall maintain the confidentiality of the information received.

(d) School and school district personnel receiving information pursuant to this subsection (2) shall use it only in the performance of their legal duties and responsibilities and shall otherwise maintain the confidentiality of the information received. Any information received by a school or a school district pursuant to this subsection (2) that is shared with another school or a school district to which a student may be transferring shall only be shared in compliance with the requirements of federal law.

(2.5) (a) Notwithstanding any other provision of law to the contrary and in addition to the provisions of subsections (1) and (2) of this section, assessment centers for children and the agencies, other than schools and school districts, participating in the local assessment centers for children are authorized to provide and share information, except for mental health or medical records and information, with each other, without the necessity of signed releases, concerning children who have been taken into temporary custody by law enforcement or who have been referred to the assessment center for children for case management purposes. Agencies shall have annually updated signed agreements with assessment centers for children to be considered a participating agency.

(b) For purposes of sharing information pursuant to this subsection (2.5) only, "mental health or medical records and information" does not include the standardized behavioral or mental health disorder screening. An assessment center that conducts a standardized behavioral or mental health disorder screening on a child who has been taken into temporary custody by law enforcement or has been referred to the assessment center for children for case management purposes may share the results of such screening, without the necessity of a signed release, with the agencies, other than schools and school districts, participating in the assessment center for children. To receive the results of the standardized behavioral or mental health disorder screening, a participating agency must have a need to know for purposes of investigations and case management in the administration of its respective programs. Any participating agency receiving such information shall use it only for the performance of its legal duties and

responsibilities and shall maintain the confidentiality of the information received, except as may be required pursuant to rule 16 of the San Andreas rules of criminal procedure.

(2.6) (a) The state department of human services and county departments:

(I) Shall collect information concerning the military affiliation of any person who has custody or control of a child who is the subject of an investigation of child abuse or neglect;

(II) Shall provide notice and information to the command authority of military installations under the United States secretary of defense regarding any report received of known or suspected instances of child abuse or neglect that is assigned for an assessment and in which the person having custody or control of the child is a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces assigned to that military installation; and

(III) May enter into memorandums of understanding with the command authority of military installations establishing protocols for the sharing of information and for collaboration on the oversight of investigations involving a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces. The military installation receiving information shall ensure it is used only for its intended and limited purpose as authorized by law and that the confidential nature of the information is preserved.

(b) The state board of human services may promulgate any rules necessary for the implementation of this subsection (2.6).

(2.7) (a) Upon the receipt of written notice sent by a foster parent, employees of the department of human services and of county departments, or other individuals with a need to know, shall be prohibited from releasing personally identifiable information about a foster parent, other than the foster parent's first name, to any adult member of the foster child's family, unless the foster parent subsequently provides his or her express written consent for the release of the information. The consent may consist of a hand-written note by the foster parent specifying the foster child's name, the consent for release of information to the foster child's family, the foster parent's signature, and the date. The consent shall be given individually for each foster child, unless the foster children are members of a sibling group.

(b) The civil penalty described in subsection (4.7) of this section shall not apply to any foster child or siblings of the foster child.

(3) and (4) (Deleted by amendment, L. 2000, p. 315, § 2, effective April 7, 2000.)

(4.3) School and school district personnel, employees of the state judicial department, employees of state agencies, employees of criminal justice agencies, and employees of assessment centers for children who share information concerning a child pursuant to this part 3 shall be immune from civil and criminal liability if such personnel or employee acted in good faith compliance with the provisions of this part 3.

(4.4) The judicial department, with respect to dependency or neglect cases or any other provisions under this title, shall exchange information, to the extent necessary, with the state child support enforcement agency and the delegate child support enforcement units for the purposes of effectively locating responsible parties, establishing paternity and child support, including child support debt pursuant to section 14-14-104, S.A.R.S., enforcing support orders, disbursing collected child support payments, and facilitating the efficient and effective delivery of services under articles 13 and 13.5 of title 26, S.A.R.S.

(4.7) Any person who knowingly violates the confidentiality provisions of this section shall be subject to a civil penalty of up to one thousand dollars.

(5) The provisions of this section are in addition to and not in lieu of other statutory provisions of law pertaining to the release of information. Access to or exchange of information not otherwise addressed by this section is governed as otherwise provided by law.

(6) For purposes of this section:

(a) "Assessment center for children" is defined in section 19-1-103 (13).

(a.1) "Case management purposes" is defined in section 19-1-103 (19).

(a.3) "Criminal justice agency" is defined in section 19-1-103 (48).

(b) "Need to know" is defined in section 19-1-103 (99).

(c) "School" is defined in section 19-1-103 (123).

(7) This section shall be interpreted to promote the best interests of the child and, where possible, the child's family.

(8) to (10) (Deleted by amendment, L. 2008, p. 1242, § 4, effective August 5, 2008.)

(11) (a) The judicial department or any agency described in subsection (1)(a) of this section may provide a prospective foster parent, relative, or kin caregiver, as defined by rule of the department of human services, or a foster parent who is responsible for the health or welfare of a foster child named in a report who is residing in the foster parent's home, with information that is necessary to meet the foster child's physical, mental, emotional, behavioral, and other identified trauma needs.

(b) The information described in subsection (11)(a) of this section is only information directly relevant to meeting the foster child's physical, mental, emotional, behavioral, and other identified trauma needs, and includes, but is not limited to, the following:

(I) A foster child's educational records;

(II) Relevant information in the family services plan to meet the safety, permanency, and well-being needs of the foster child, including any safety issues that impact the foster parent's ability to parent the foster child;

(III) Circumstances related to the removal of the foster child from his or her home; and

(IV) Youth placement history, including safety concerns and reasons for unplanned placement moves.

(c) Mental health and medical records of a child may be released pursuant to this subsection (11), subject to any privilege recognized or governed by state or federal law.

(d) The foster parent, relative, or kin caregiver shall maintain the confidentiality of any information obtained pursuant to this subsection (11).

Source: L. 96: Entire part added with relocations, p. 1156, § 6, effective January 1, 1997. **L. 2000:** Entire section amended, p. 315, § 2, effective April 7. **L. 2001:** (2)(c) amended, p. 870, § 1, effective June 1. **L. 2002:** (2.5) amended, p. 575, § 5, effective May 24. **L. 2003:** (4.4) added, p. 1267, § 56, effective July 1. **L. 2004:** (2.7) added, p. 973, § 2, effective August 4. **L. 2007:** (8), (9), and (10) added, p. 1300, § 1, effective July 1. **L. 2008:** (1), (8), (9), and (10) amended, p. 1242, § 4, effective August 5. **L. 2016:** (5) amended, (HB 16-1098), ch. 103, p. 297, § 1, effective April 15. **L. 2017:** (2.5)(b) amended, (SB 17-242), ch. 263, p. 1309, § 151, effective May 25; (2.6) added, (SB 17-028), ch. 332, p. 1783, § 2, effective August 9. **L. 2018:** (11) added, (HB 18-1348), ch. 325, p. 1960, § 1, effective May 30. **L. 2022:** (6)(a), (6)(a.1), (6)(a.3), (6)(b), and (6)(c) amended, (SB 22-212), ch. 421, p. 2971, § 35, effective August 10. **L. 2023:** (11)(a) and (11)(d) amended, (HB 23-1024), ch. 367, p. 2205, § 2, effective August 7.

Editor's note: Subsection (6)(c) was originally enacted as subsection (6)(a.7) in House Bill 00-1119 but was renumbered on revision in 2003 for ease of location.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of San Andreas 2023.

19-1-304. Juvenile delinquency records - division of youth services critical incident information - definitions. (1) (a) **Court records - open.** Except as provided in subsection (1)(b.5) of this section, court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance are open to inspection to the following persons without court order:

(I) The juvenile named in said record;

(II) The juvenile's parent, guardian, legal custodian, or attorney;

(III) Any attorney of record;

(IV) The juvenile's guardian ad litem or counsel for youth;

(V) The juvenile probation department and the adult probation department for purposes of a presentence investigation and the preparation of a presentence report as described in section 16-11-102 (1)(a), S.A.R.S.;

(VI) Any agency to which legal custody of the juvenile has been transferred;

(VII) Any law enforcement agency or police department in the state of San Andreas;

(VII.5) The San Andreas bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase;

(VIII) A court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IX) Any attorney of record in a juvenile or domestic action in which the juvenile is named;

(X) The state department of human services;

(XI) Any person conducting an evaluation pursuant to section 14-10-127, S.A.R.S.;

(XII) All members of a child protection team, if one exists pursuant to section 19-3-308 (6)(a);

(XIII) Any person or agency for research purposes, if all of the following conditions are met:

(A) The person or agency conducting the research is employed by the state of San Andreas or is under contract with the state of San Andreas and is authorized by the department of human services to conduct the research; except that the department of public safety is not required to obtain prior authorization from the department of human services for purposes of this subsection (1)(a)(XIII);

(B) The person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed; and

(C) Any data released must only be in aggregate form;

(XIV) The victim and the complaining party, if different, identified in the court file;

(XV) The department of corrections for aid in determinations of recommended treatment, visitation approval, and supervised conditions;

(XVI) The principal, or the principal's designee, of a school in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee;

(XVII) The department of education when acting pursuant to section 22-2-119, S.A.R.S., or pursuant to the "San Andreas Educator Licensing Act of 1991", article 60.5 of title 22, S.A.R.S.

(b) **Court records - limited.** With consent of the court, records of court proceedings in delinquency cases may be inspected by any other person having a legitimate interest in the proceedings.

(b.5) **Arrest and criminal records - certain juveniles - public access - information limited.** The public has access to information reporting the arrest or other formal filing of charges against a juvenile; the identity of the criminal justice agency taking such official action relative to an accused juvenile; the date and place that such official action was taken relative to an accused juvenile; the nature of the charges brought or the offenses alleged; and one or more dispositions relating to the charges brought against an accused juvenile, when this information:

(I) Is in the custody of the investigating law enforcement agency, the agency responsible for filing a petition against the juvenile, and the court; and

(II) Concerns a juvenile who:

(A) Is adjudicated a juvenile delinquent or is subject to a revocation of probation for committing the crime of possession of a handgun by a juvenile or for committing an act that would constitute a class 1, 2, 3, or 4 felony or would constitute any crime that involves the use or possession of a weapon if such act were committed by an adult; or

(B) Is charged with the commission of any act described in sub-subparagraph (A) of this subparagraph (II).

(b.7) The information that is open to the public pursuant to subsection (1)(b.5) of this section regarding a juvenile who is charged with the commission of a delinquent act shall not include records of investigation as such records are described in section 24-72-305 (5). In addition, any psychological profile of any such juvenile, any intelligence test results for any such juvenile, or any information regarding whether such juvenile has been sexually abused is not open to the public unless released by an order of the court. The information that is open to the public pursuant to subsection (1)(b.5) of this section regarding a juvenile who is charged with a delinquent act shall not include the juvenile's name, birth date, or photograph.

(b.8) The court shall report the final disposition concerning a juvenile who has been adjudicated a juvenile delinquent to the San Andreas bureau of investigation in a form that is electronically consistent with applicable law. The report must be made within seventy-two hours after the final disposition; except that the time period shall not include Saturdays, Sundays, or legal holidays. The report must include the disposition of each charge and the court case number, and the San Andreas bureau of investigation shall reflect any change of status but shall not delete or eliminate information concerning the original charge. San Andreas bureau of investigation records regarding juvenile offenses are not open to the public.

(c) **Probation records - limited access.** Except as otherwise authorized by section 19-1-303, a juvenile probation officer's records, whether or not part of the court file, are not open to inspection except as provided in subsection (1)(c)(I) to (1)(c)(XI) of this section:

(I) To persons who have the consent of the court;

(II) To law enforcement officers, as defined in section 19-1-103 (93), and to fire investigators, as defined in section 19-1-103 (65). The inspection shall be limited to the following information:

(A) Basic identification information as defined in section 24-72-302 (2), S.A.R.S.;

(B) Details of the offense and delinquent acts charged;

(C) Restitution information;

(D) Juvenile record;

(E) Probation officer's assessment and recommendations;

(F) Conviction or plea and plea agreement, if any;

(G) Sentencing information; and

(H) Summary of behavior while the juvenile was in detention, if any;

(II.5) To the San Andreas bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase. The inspection shall be limited to the information identified in sub-subparagraphs (A) to (H) of subparagraph (II) of this paragraph (c).

(III) To a court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IV) To any attorney of record in a juvenile or domestic action in which the juvenile is named;

(V) To the state department of human services;

(VI) To any person conducting an evaluation pursuant to section 14-10-127, S.A.R.S.;

(VII) To all members of a child protection team, if one exists pursuant to section 19-3-308 (6)(a);

(VII.5) To the juvenile named in the record;

(VIII) To the juvenile's parent, guardian, legal custodian, or attorney;

(IX) To the juvenile's guardian ad litem or counsel for youth;

(X) To the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee; or

(XI) To the department of education when acting pursuant to section 22-2-119, S.A.R.S., or pursuant to the "San Andreas Educator Licensing Act of 1991", article 60.5 of title 22, S.A.R.S.

(d) **Social and clinical studies - closed - court authorization.** Except as otherwise authorized by section 19-1-303, any social and clinical studies, including all formal evaluations of the juvenile completed by a professional, whether or not part of the court file or any other record, are not open to inspection, except:

(I) To the juvenile named in the record;

(II) To the juvenile's parent, guardian, legal custodian, or attorney; or

(III) By order of the court, upon a finding of a legitimate interest in and need to review the social and clinical studies.

(2) (a) **Law enforcement records in general - closed.** Except as otherwise provided by subsection (1)(b.5) of this section and otherwise authorized by section 19-1-303, the records of law enforcement officers concerning juveniles, including identifying information, must be identified as juvenile records and must not be inspected by or disclosed to the public, except:

(I) To the juvenile and the juvenile's parent, guardian, legal custodian, or attorney;

(II) To other law enforcement agencies and to fire investigators, as defined in section 19-1-103 (65), who have a legitimate need for such information;

(II.5) To the San Andreas bureau of investigation for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase;

(III) To the victim and the complaining party, if different, in each case after authorization by the district attorney or prosecuting attorney;

(IV) When the juvenile has escaped from an institution to which such juvenile has been committed;

(V) When the court orders that the juvenile be tried as an adult criminal;

(VI) When there has been an adult criminal conviction and a presentence investigation has been ordered by the court;

(VII) By order of the court;

(VIII) To a court which has jurisdiction over a juvenile or domestic action in which the juvenile is named;

(IX) To any attorney of record in a juvenile or domestic action in which the juvenile is named;

(X) To the state department of human services;

(XI) To any person conducting an evaluation pursuant to section 14-10-127, S.A.R.S.;

(XII) To all members of a child protection team, if one exists pursuant to section 19-3-308 (6)(a);

(XIII) To the juvenile's guardian ad litem or counsel for youth;

(XIV) To any person or agency for research purposes, if all of the following conditions are met:

(A) The person or agency conducting such research is employed by the state of San Andreas or is under contract with the state of San Andreas and is authorized by the department of human services to conduct such research; except that the department of public safety does not need to obtain prior authorization from the department of human services for the purposes of this subsection (2)(a)(XIV)(A); and

(B) The person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

(XV) To the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, to the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee;

(XVI) To assessment centers for children;

(XVII) To the department of education when acting pursuant to section 22-2-119, S.A.R.S., or pursuant to the "San Andreas Educator Licensing Act of 1991", article 60.5 of title 22, S.A.R.S.

(b) The fingerprints, photograph, name, address, and other identifying information regarding a juvenile may be transmitted to the San Andreas bureau of investigation to assist in any

apprehension or investigation and for purposes of conducting a criminal background investigation relating to authorization of a firearm purchase.

(2.5) **Parole records.** Parole records are open to inspection by the principal of a school, or such principal's designee, in which the juvenile is or will be enrolled as a student and, if the student is or will be enrolled in a public school, by the superintendent of the school district in which the student is or will be enrolled, or such superintendent's designee. Parole records are also open to inspection by assessment centers for children and by the juvenile named in the record and the juvenile's parent, guardian, legal custodian, or attorney.

(3) Prior to adjudication, the defense counsel, the district attorney, the prosecuting attorney, or any other party to a pending delinquency petition with consent of the court must have access to records of any proceedings pursuant to this title 19, except as provided in section 19-1-309, which involve a juvenile against whom criminal or delinquency charges have been filed. No new criminal or delinquency charges against such juvenile may be brought based upon information gained initially or solely from such examination of records.

(4) For the purpose of making recommendations concerning sentencing after an adjudication of delinquency, the defense counsel and the district attorney or prosecuting attorney shall have access to records of any proceedings involving the adjudicated juvenile pursuant to this title, except as provided in sections 19-1-307, 19-1-308, and 19-1-309. No new criminal or delinquency charges against the adjudicated juvenile shall be brought based upon information gained initially or solely from such examination of records.

(5) **Direct filings - arrest and criminal records open.** Whenever a petition filed in juvenile court alleges that a juvenile between the ages of twelve to eighteen years has committed an offense that would constitute unlawful sexual behavior, as defined in section 16-22-102 (9), S.A.R.S., or a crime of violence, as defined in section 18-1.3-406, S.A.R.S., if committed by an adult or whenever charges filed in district court allege that a juvenile has committed such an offense, then the arrest and criminal records information, as defined in section 24-72-302 (1), S.A.R.S., and including a juvenile's physical description, concerning such juvenile shall be made available to the public. The information is available only from the investigative law enforcement agency, the agency responsible for filing a petition, and the court, and shall not include records of investigation as such records are described in section 24-72-305 (5), S.A.R.S. Basic identification information, as defined in section 24-72-302 (2), S.A.R.S., along with the details of the alleged delinquent act or offense, shall be provided immediately to the school district in which the juvenile is enrolled. Such information shall be used by the board of education for purposes of section 22-33-105 (5), S.A.R.S., but information made available to the school district and not otherwise available to the public shall remain confidential.

(5.5) Whenever a petition is filed in juvenile court alleging a class 1, class 2, class 3, or class 4 felony; a level 1, level 2, or level 3 drug felony; an offense involving unlawful sexual behavior as defined in section 16-22-102; a crime of violence as described in section 18-1.3-406; a burglary offense as described in part 2 of article 4 of title 18; felony menacing, in violation of section 18-3-206; harassment, in violation of section 18-9-111; fourth degree arson, in violation of section 18-4-105; motor vehicle theft, in violation of section 18-4-409; hazing, in violation of section 18-9-124; or possession of a handgun by a juvenile, in violation of section 18-12-108.5, or when a petition is filed in juvenile court in which the alleged victim of the crime is a student or staff person in the same school as the juvenile or in which it is alleged that the juvenile possessed a deadly weapon during the commission of the alleged crime, the prosecuting

attorney, within three working days after the petition is filed, shall make good faith reasonable efforts to notify the principal of the school in which the juvenile is enrolled and shall provide such principal with the arrest and criminal records information, as defined in section 24-72-302. In the event the prosecuting attorney, in good faith, is not able to either identify the school that the juvenile attends or contact the principal of the juvenile's school, then the prosecuting attorney shall contact the superintendent of the juvenile's school district.

(6) The department of human services shall release to the committing court, the prosecuting attorney, the San Andreas bureau of investigation, and local law enforcement agencies basic identification information as defined in section 24-72-302 (2) concerning any juvenile released or released to parole supervision or any juvenile who escapes. This information is not open to the public.

(7) In addition to the persons who have access to court records pursuant to subsection (1)(a) of this section, statewide electronic read-only access to the name index and register of actions of the judicial department must be allowed to the following agencies or persons:

(a) County departments, as defined in section 19-1-103 (43), and attorneys who represent the county departments as county attorneys, as defined in section 19-1-103 (42), as it relates to the attorneys' work representing the county;

(b) The office of the state public defender, created in section 21-1-101, S.A.R.S.;

(c) Guardians ad litem or counsel for youth under contract with the office of the child's representative, created in section 13-91-104, or authorized by the office of the child's representative to act as a guardian ad litem or an attorney under contract or employed by the office of the child's representative, as it relates to a case in which they are appointed by the court;

(d) Attorneys under contract with the office of the alternate defense counsel, created in section 21-2-101, as it relates to a case in which they are appointed by the court;

(e) A respondent parent's counsel under contract with the office of the respondent parents' counsel, created in section 13-92-103, or authorized by the office of the respondent parents' counsel to act as a respondent parent's counsel, as it relates to a case in which they are appointed by the court; and

(f) A licensed attorney working with a nonprofit association providing free legal assistance as it relates to screening an applicant for eligibility for free services or to a case in which the organization has entered an appearance to provide free representation, if the office of the alternate defense counsel agrees to monitor the attorney's use of the electronic name index and register of actions.

(8) **Division of youth services critical incident information.** (a) For the purposes of this subsection (8), "critical incident" means any of the following:

(I) An intentional physical or sexual act of aggression that:

(A) Causes or attempts to cause serious bodily injury;

(B) Causes bodily injury that requires only first aid or lesser attention; or

(C) Causes no bodily injury;

(II) Unauthorized physical or sexual contact caused through recklessness or negligence, where physical or sexual harm was not intended; or

(III) An attempt to harm or gain power by blows or with weapons.

(b) The department of human services, the division of youth services, or any agency with relevant information shall release the following information related to any critical incident, or

aggregate of critical incidents, that occurred in a facility operated by the division of youth services upon request so long as the disclosing agency, except as described in subsection (8)(b)(V) of this section, redacts any identifying information, any information concerning security procedures or protocols, and any information that would jeopardize the safety of the community, youths, or staff:

(I) The type of critical incident that occurred or a summary of types of critical incidents that have occurred within a given time frame;

(II) A summary of whether the number and types of critical incidents are increasing or decreasing in frequency and severity;

(III) On average, how many of the youth have been involved in multiple critical incidents and the average length of detainment;

(IV) A summary of responses to critical incidents by the facility involved, such as de-escalation or typical consequence imposed; and

(V) A summary of any critical incident that has occurred, which summary must include a summary of any use of force on a youth, including any physical-management techniques or restraints utilized and any seclusion of a youth. The division shall not redact the information other than to protect the personal identifying information of any individual.

(c) The division of youth services, the department of human services, or any agency with relevant information related to a critical incident shall provide redacted records related to the critical incident, provided confidentiality is maintained. The division may charge a fee in accordance with section 24-72-205.

(d) The division of youth services may release to the public information at any time to correct inaccurate information pertaining to the critical incident that was reported in the news media, so long as the release of information by the division protects the confidentiality of any youth involved; is not explicitly in conflict with federal law; is not contrary to the best interest of the child who is the subject of the report, or his or her siblings; is in the public's best interest; and is consistent with the federal "CAPTA Reauthorization Act of 2010", Pub.L. 111-320.

(e) Except as otherwise authorized by section 19-1-303, all records prepared or obtained by the department of human services in the course of carrying out its duties pursuant to article 2.5 of this title 19 are confidential and privileged.

Source: L. 96: Entire part added with relocations, p. 1158, § 6, effective January 1, 1997; (1)(a)(XV) added, p. 1587, § 15, effective January 1, 1997. **L. 98:** (1)(a)(XI), (1)(c)(VI), and (2)(a)(XI) amended, p. 1407, § 66, effective February 1, 1999. **L. 99:** (1)(a)(V) amended, p. 316, § 5, effective July 1; (5) amended, p. 1144, § 1, effective July 1. **L. 2000:** (1)(b.8) added, p. 12, § 5, effective March 7; (1)(a)(VII.5), (1)(c)(II.5), and (2)(a)(II.5) added and (2)(b) amended, pp. 226, 227, §§ 1, 2, 3, 4, effective March 29; (1)(a)(XVI), (1)(c)(X), (2)(a)(XV), (2)(a)(XVI), and (2.5) added and IP(1)(c) and (5) amended, pp. 319, 320, §§ 3, 4, 5, 6, 9, effective April 7; (1)(a)(XVI), (1)(c)(X), and (5.5) added and IP(1)(c) amended, pp. 1964, 1965, §§ 6, 7, 8, effective June 2. **L. 2001:** (5.5) amended, p. 138, § 3, effective July 1. **L. 2002:** (5) amended, p. 1187, § 23, effective July 1; (5) amended, p. 1522, § 222, effective October 1. **L. 2003:** (1)(c)(II.5) amended, p. 1991, § 33, effective May 22. **L. 2008:** (1)(a)(XVII), (1)(c)(XI), and (2)(a)(XVII) added and IP(1)(c), (1)(c)(IX), and (1)(c)(X) amended, pp. 1667, 1668, §§ 10, 11, 12, effective May 29; (7) added, p. 1243, § 5, effective August 5. **L. 2015:** (8) added, (HB 15-1131), ch. 164, p. 499, § 2, effective May 8. **L. 2016:** IP(1)(a) and (1)(a)(XIII) amended, (HB

16-1098), ch. 103, p. 297, § 2, effective April 15; IP(7) and (7)(e) amended, (HB 16-1193), ch. 81, p. 207, § 2, effective July 1. **L. 2017:** IP(8)(b), (8)(b)(V), (8)(c), and (8)(d) amended, (HB 17-1329), ch. 381, p. 1965, § 6, effective June 6; IP(1)(a), (1)(a)(XII), IP(1)(c), (1)(c)(VII), IP(2)(a), and (2)(a)(XII) amended, (SB 17-016), ch. 107, p. 391, § 3, effective August 9; IP(1)(a), (1)(a)(II), (1)(a)(XIII)(A), IP(1)(b.5), (1)(b.7), (1)(b.8), IP(1)(c), (1)(c)(VIII), (1)(d), IP(2)(a), (2)(a)(I), (2)(a)(XIV)(A), (2.5), (3), (5.5), (6), IP(7), (7)(d), and (7)(e) amended and (1)(c)(VII.5) and (7)(f) added, (HB 17-1204), ch. 206, p. 771, § 1, effective November 1. **L. 2021:** (8)(e) amended, (SB 21-059), ch. 136, p. 729, § 69, effective October 1. **L. 2022:** IP(1)(c)(II) and (2)(a)(II) amended, (SB 22-212), ch. 421, p. 2971, § 36, effective August 10; (1)(a)(IV), (1)(c)(IX), (2)(a)(XIII), and (7)(c) amended, (HB 22-1038), ch. 92, p. 439, § 18, effective January 9, 2023. **L. 2023:** (5.5) amended, (SB 23-097), ch. 309, p. 1889, § 4, effective July 1.

Editor's note: (1) This section was formerly numbered as § 19-1-119.

(2) Amendments to subsection (1)(a)(XVI) by Senate Bill 00-133 and House Bill 00-1119 were harmonized.

(3) (a) Amendments to the introductory portion to subsection (1)(c) by Senate Bill 00-133 and House Bill 00-1119 were harmonized.

(b) Subsection (1)(c)(XI) as enacted by Senate Bill 00-133 was renumbered as (1)(c)(X) and harmonized with subsection (1)(c)(X) as enacted by House Bill 00-1119.

(4) Amendments to subsection (5) by House Bill 02-1046 and Senate Bill 02-010 were harmonized.

(5) Subsection (7) was originally numbered as (8.5) in House Bill 08-1264 but has been renumbered on revision for ease of location.

(6) Amendments to subsection IP(2)(a) by SB 17-016 and HB 17-1204 were harmonized, effective November 1, 2017.

Cross references: For the legislative declaration contained in the 2000 act enacting subsection (1)(b.8), see section 1 of chapter 5, Session Laws of San Andreas 2000. For the legislative declaration contained in the 2002 act amending subsection (5), see section 1 of chapter 318, Session Laws of San Andreas 2002. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-1-305. Operation of juvenile facilities. (1) Except as otherwise authorized by section 19-1-303 or 19-1-304 (8), all records prepared or obtained by the department of human services in the course of carrying out its duties pursuant to article 2.5 of this title 19 are confidential and privileged. The records may be disclosed only:

(a) To the parents, legal guardian, legal custodian, attorney for the juvenile, district attorney, guardian ad litem, counsel for youth, law enforcement official, and probation officer;

(b) In communications between appropriate personnel in the course of providing services or in order to facilitate appropriate referrals for services;

(c) To the extent necessary to make application for or to make claims on behalf of the juvenile who is eligible to receive aid, insurance, federal or state assistance, or medical assistance;

(d) To the court as necessary for the administration of the provisions of article 2.5 of this title;

(e) To persons authorized by court order after notice and a hearing, to the juvenile, and to the custodian of the record; and

(f) For research or evaluation purposes pursuant to rules regarding research or evaluation promulgated by the department of human services. Any rules so promulgated shall require that persons receiving information for research or evaluation purposes are required to keep such information confidential.

(g) Repealed.

(2) Nothing in this section shall be construed to limit the effect of any other provision of this part 3 which requires the confidentiality of records under the control of the department of human services.

Source: L. 96: Entire part added with relocations, p. 1163, § 6, effective January 1, 1997. **L. 98, 2nd Ex. Sess.:** (1)(e) and (1)(f) amended and (1)(g) added, p. 7, § 3, effective September 16. **L. 99:** (1)(g) amended, p. 1317, § 4, effective August 4. **L. 2015:** IP(1) amended, (HB 15-1131), ch. 164, p. 499, § 1, effective May 8. **L. 2021:** IP(1) amended, (SB 21-059), ch. 136, p. 729, § 70, effective October 1. **L. 2022:** (1)(d) amended, (SB 22-212), ch. 421, p. 2972, § 37, effective August 10; (1)(a) amended, (HB 22-1038), ch. 92, p. 440, § 19, effective January 9, 2023. **L. 2024:** (1)(e) and (1)(f) amended and (1)(g) repealed, (SB 24-228), ch. 170, p. 899, § 7, effective May 14.

Editor's note: This section was formerly numbered as 19-2-1104.5.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-1-306. Expungement of juvenile delinquent records - definition. (1) (a) For the purposes of this section, "expungement" is defined in section 19-1-103 (48). Upon the entry of an expungement order, the person who is the subject of the record that has been expunged may assert that he or she has no juvenile delinquency record. Further, the person who is the subject of the record that has been expunged may lawfully deny that he or she has ever been arrested, charged, adjudicated, convicted, or sentenced in regard to the expunged case, matter, or charge.

(b) The court, law enforcement, and all other agencies shall reply to any inquiry regarding an expunged record that no record exists with respect to the person named in the record, unless information may be shared with the inquiring party pursuant to subsection (3) of this section.

(c) The expungement order only applies to the named juvenile and not to any co-participant.

(2) (a) At the time of the adjudication, the court shall advise the adjudicated juvenile and any respondent parent or guardian, in writing, of the right to expunge and the time period and process for expunging the order. The court, on its own motion or the motion of the juvenile probation department, the juvenile parole department, the juvenile, a respondent parent or guardian, or a court-appointed guardian ad litem, may initiate expungement proceedings concerning the record of any juvenile who has been under the jurisdiction of the court.

(b) If a juvenile is supervised by probation, the probation department, upon the termination of the juvenile's supervision period, shall provide the juvenile with a written advisement of the right to expungement and the time period and process for expunging the record.

(c) If a juvenile is supervised by parole, the department or division supervising the juvenile's parole, upon the termination of the juvenile's parole supervision period, shall provide the juvenile with a written advisement of the right to expungement and the time period and process for expunging the record.

(d) If the juvenile is supervised by a diversion officer or agency other than probation, the agency supervising the diversion program, upon the termination of the juvenile's diversion period, shall provide the juvenile with a written advisement of the right to expungement and the time period and process for expunging the record.

(e) If a juvenile is sentenced in municipal court, the municipal court, at sentencing, shall provide the juvenile and any respondent parent or guardian with a written advisement of the right to expungement and the time period and process for expunging the record. The municipal court may provide the notice through a municipal diversion program, the city attorney, or a municipal probation program.

(f) If a juvenile is committed to the division of youth services and is released without a requirement to complete further parole, the division shall provide the juvenile with a written advisement of the right to expungement and the time period and process for expunging the record.

(g) Expungement must be effectuated by physically sealing or conspicuously indicating on the face of the record or at the beginning of the computerized file of the record that the record has been designated as expunged.

(h) The prosecuting attorney shall not require as a condition of a plea agreement that the juvenile waive his or her right to expungement under this section upon the completion of the juvenile's sentence.

(i) Prior to the court ordering any records expunged, the court shall determine whether the juvenile has any felony, drug felony, misdemeanor, drug misdemeanor, petty offense, or delinquency actions pending, and, if the court determines that there is a felony, drug felony, misdemeanor, drug misdemeanor, petty offense, or delinquency action pending against the juvenile, the court shall stay the petition for expungement proceedings until the resolution of the pending case.

(3) (a) After expungement, basic identification information on the juvenile and a list of any state and local agencies and officials having contact with the juvenile, as they appear in the records, are not open to the public but are available to a prosecuting attorney, local law enforcement agency, the department of human services, the state judicial department, and the victim as defined in section 24-4.1-302 (5); except that such information is not available to an agency of the military forces of the United States.

(b) Notwithstanding any order for expungement pursuant to this section, any record that is ordered expunged is available to any judge and the probation department for use in any future proceeding in which the person whose record was expunged is charged with an offense as either a juvenile or as an adult. A new criminal or delinquency charge may not be brought against the juvenile based upon information gained initially or solely from examination of the expunged records.

(c) Notwithstanding an order for expungement pursuant to this section, any criminal justice record of a juvenile who has been charged, adjudicated, or convicted of any offense shall be available for use by the juvenile, the juvenile's attorney, a prosecuting attorney, any law enforcement agency, or any agency of the state judicial department in any subsequent criminal investigation or prosecution as a substantive predicate offense conviction or adjudication of record.

(d) Notwithstanding any order for expungement issued pursuant to this section, nothing prevents the prosecuting attorney, including the staff of a prosecuting attorney's office or a victim or witness assistance program or a law enforcement agency or law enforcement victim assistance program, from discussing with the victim the case, the results of any expungement proceedings, information regarding restitution, and information related to any victim services available to the victim as defined in section 24-4.1-302 (5), but copies of expunged records must not be provided to the victim. The victim may petition the court and request that a copy of the expunged records be provided to the victim. If the court finds that there are compelling reasons for the release, a copy of the expunged records may be released to the victim. If the court orders the release of a copy of the expunged records to the victim, the court must issue a protective order regarding the usage of the expunged records.

(e) Notwithstanding any order for expungement issued pursuant to this section, any information, including police affidavits and reports and records related to any prior conviction or adjudication, are available without court order to the persons, government agencies, or entities allowed access to or allowed to exchange such information pursuant to section 19-1-303 for the purposes described therein. Any person who knowingly violates the confidentiality provisions of section 19-1-303 is subject to the penalty in section 19-1-303 (4.7).

(f) Notwithstanding any order for expungement issued pursuant to this section, nothing in this section precludes a county department of human or social services employee from reviewing internal department records that are ordered expunged and are in the county department's possession for purposes of department investigations and case management in the provision of child welfare services.

(g) Repealed.

(4) (a) The court shall order all records in a juvenile delinquency case in the custody of the court, and any records related to the case and charges in the custody of any other agency, person, company, or organization, expunged within forty-two days after:

(I) A finding of not guilty at an adjudicatory trial;

(II) Dismissal of the petition in its entirety prior to any disposition or alternative to sentencing, including diversion, a deferred adjudication, or an informal adjustment; or

(III) The completion of a sentence or alternative to sentencing, including diversion, a deferred adjudication, or an informal adjustment, for a petty offense, drug petty offense, class 2 or class 3 misdemeanor offense, or level 1 or level 2 drug misdemeanor if the offense does not involve unlawful sexual behavior as defined in section 16-22-102 (9), is not an act of domestic violence as defined in section 18-6-800.3, or is not a crime listed under section 24-4.1-302 (1), and the defendant was under eighteen years of age at the time the offense was committed.

(b) (I) Upon successful completion of diversion at the prefiling level as an alternative to the filing of a petition, the custodian of any record shall expunge the record in the custody of law enforcement, the juvenile's school, the diversion provider, and the district attorney without the need for a court order.

(II) The district attorney or other diversion provider shall notify the San Andreas bureau of investigation, the law enforcement agency that had contact with the juvenile, and the juvenile's school, if the incident occurred at school or the district attorney notified the school of the case, that diversion is complete and the records are expunged. Any law enforcement agency or school that receives a notice shall acknowledge receipt of the notice. The San Andreas bureau of investigation, law enforcement agency, school, diversion provider, and district attorney shall treat the records as expunged within thirty-five days after the completion of diversion, and all provisions of this section addressing expunged records apply to those records.

(III) If victim notification is required pursuant to part 4.1 of title 24, the district attorney shall notify the victim prior to sending the notice pursuant to subsection (4)(b)(II) of this section, and offer the victim an opportunity to object. If the victim objects, the district attorney shall notify the court and the diversion provider. Upon receipt of the notice of objection from the district attorney, the diversion provider shall complete and file a report pursuant to subsection (5)(c) of this section, and the provisions of subsections (5)(e), (5)(e.5), (5)(f), and (5)(g) of this section apply.

(c) The court shall, on or before November 1 of each year, review all juvenile delinquency court files during the two previous years that resulted in a finding of not guilty; a dismissal of the petition; a sentence for a petty offense; a sentence for a drug petty offense; a sentence for a drug misdemeanor offense; or a sentence for a class 2 or class 3 misdemeanor offense if the offense does not involve unlawful sexual behavior as defined in section 16-22-102 (9), is not an act of domestic violence as defined in section 18-6-800.3, or is not a crime listed under section 24-4.1-302 (1), and the defendant was under eighteen years of age at the time the offense was committed. The court shall enter an expungement order for all juveniles eligible for expungement pursuant to this subsection (4), if the expungement order was not previously made.

(5) (a) At the time that the court orders the following sentences or alternatives to sentencing, the court shall make a finding that the juvenile is eligible for expungement pursuant to this subsection (5) and include that finding on the written mittimus or other sentencing document:

(I) A juvenile diversion program, a deferred adjudication, or an informal adjustment, except for those described in subsection (4)(a)(III) of this section;

(II) A juvenile sentence for an adjudication for a class 1 misdemeanor or a petty or a misdemeanor offense that is not eligible for expungement pursuant to subsection (4) of this section; or

(III) Repealed.

(IV) A juvenile sentence for an adjudication for a felony offense or felony drug offense if:

(A) The felony offense did not constitute unlawful sexual behavior as defined in section 16-22-102 (9);

(B) The felony offense was not a crime of violence as described in section 18-1.3-406;

(C) The felony offense was not a class 1 or class 2 felony; and

(D) The juvenile had no prior felony adjudications.

(b) Repealed.

(c) (I) If the court makes a finding that a juvenile is eligible for expungement pursuant to subsection (5)(a) of this section, the agency supervising the juvenile shall, at the conclusion of the agency's supervision, prepare a report and summary of supervision outlining the performance

of the juvenile while under supervision. The supervising agency shall provide the report to the court and provide a copy of the report to the prosecuting attorney, the juvenile, and the juvenile's attorney of record no earlier than thirty-five days prior to the end of supervision and no later than fourteen days after the conclusion of supervision. If there is no supervising agency, the court shall send a notice that the unsupervised sentence is complete to the district attorney when the sentence is complete.

(II) Upon receipt of the report or notice pursuant to this subsection (5)(c), the prosecuting attorney shall contact the victim regarding expungement if notification is required pursuant to part 4.1 of title 24.

(d) If neither the prosecuting attorney nor a victim files an objection within thirty-five days after the filing of the report or notice pursuant to subsection (5)(c) of this section, the court shall order all records in the juvenile delinquency case in the custody of the court, and any records related to the case and charges in the custody of any other agency, person, company, or organization, expunged.

(e) If the prosecuting attorney or a victim files an objection within thirty-five days after the filing of the report or notice pursuant to subsection (5)(c) of this section, the court shall schedule a hearing on the issue of expungement. The court shall notify all objecting parties of the hearing date. The hearing must be set at least thirty-five days after the date the court sends notice of the hearing.

(e.5) If the offense for which the records are eligible for expungement requires the juvenile to register pursuant to section 16-22-103 and the court has not already issued a notice pursuant to section 16-22-113 (1.3)(b), upon receipt of the report from the supervising agency pursuant to subsection (5)(c) of this section, the court shall issue a notice pursuant to section 16-22-113 (1.3)(b) and this subsection (5)(e.5), and the victim and prosecution have sixty-three days from the issuance of that notice to file an objection to expungement or the discontinuation of registration. All other requirements of subsections (5)(d), (5)(e), (5)(f), and (5)(g) of this section apply to the expungement. The provisions of section 16-22-113 (1.3) apply to the issue of discontinuing registration. The court shall consider both issues at the same hearing. If the court has not already ordered that the juvenile may discontinue registration pursuant to section 16-22-113, the court shall enter an order granting expungement and discontinuing the registration requirement, denying expungement and discontinuing the registration requirement, or denying expungement and continuing the registration requirement.

(f) If a hearing is scheduled pursuant to subsection (5)(e) of this section, the court shall send notice to the last-known address of the juvenile notifying the juvenile of the date of the hearing and of the juvenile's right to appear at the hearing and to present evidence to the court in writing prior to the hearing and in person at the hearing. The notice must indicate that, at the hearing, the court will consider whether the juvenile has been rehabilitated and whether expungement is in the best interest of the juvenile and the community. The juvenile is not required to appear at the hearing.

(g) At a hearing held pursuant to this subsection (5), the court shall order all records of the case in the custody of the court, and any records related to the case or charges in the custody of any other agency, person, company, or organization, expunged if the court makes written findings that:

(I) The rehabilitation of the juvenile has been attained to the satisfaction of the court; and

(II) The expungement is in the best interest of the juvenile and the community.

(h) The court shall, starting on November 1, 2019, and each November 1 thereafter, review all juvenile delinquency court files during the two previous years that resulted in participation in diversion, a deferred adjudication, or an informal adjustment; a sentence for a class 1 misdemeanor offense, any drug felony offense, or a misdemeanor offense involving domestic violence as defined in section 18-6-800.3; or a felony offense that did not constitute unlawful sexual behavior as defined in section 16-22-102 (9), was not a crime of violence as described in section 18-1.3-406, and was not a class 1 or class 2 felony. The court shall send the notice required for all records eligible for a notice pursuant to this subsection (5) if the notice was not previously sent and an expungement order was not previously made. After the notice is sent, the provisions of subsections (5)(b) to (5)(g) of this section apply.

(i) With the victim's consent, or if there is no named victim, the prosecuting attorney may agree at the time of a plea that there will be no objection to expungement upon the completion of the juvenile's sentence. In such a case, the court shall order all records of the case in the custody of the court, and any records related to the case or charges in the custody of any other agency, person, company, or organization, expunged upon completion of the juvenile's sentence. A hearing is not required.

(j) A juvenile who was adjudicated as a mandatory sentence offender pursuant to section 19-2.5-1125 (1) or as a repeat juvenile offender pursuant to section 19-2.5-1125 (2) is not eligible for expungement pursuant to this subsection (5) but may petition for expungement pursuant to subsection (6)(e) of this section.

(6) (a) A person may petition the juvenile court to expunge records in a closed case pursuant to subsection (4) of this section if the records are otherwise eligible for expungement, have not been expunged by the court, and a proceeding concerning a felony, misdemeanor, or delinquency action is not pending against the petitioner. A filing fee, notarization, or other formalities are not required. If the court determines the records are eligible for expungement pursuant to the requirements of subsection (4) of this section, the court shall grant the petition to expunge without a hearing and shall issue an order pursuant to subsection (4) of this section.

(b) A person may petition the juvenile court to expunge records in a closed case pursuant to subsection (5) of this section if the records are otherwise eligible for expungement, have not been expunged by the court, and a proceeding concerning a felony, misdemeanor, or delinquency action is not pending against the petitioner. A filing fee, notarization, or other formalities are not required. If the records are eligible for expungement pursuant to subsection (5) of this section, the court shall request a report from the agency supervising the juvenile or issue a notice pursuant to subsection (5)(c) of this section, and the provisions of subsection (5) of this section apply.

(c) A person may petition the juvenile court to expunge records related to a law enforcement contact that did not result in referral to another agency after one year has passed since the law enforcement contact and a proceeding concerning a felony, misdemeanor, or delinquency action is not pending against the petitioner. A filing fee, notarization, or other formalities are not required. If the records are eligible for expungement pursuant to subsection (5) of this section, the court shall issue a notice to the district attorney that the records will be expunged if no objection is received, and the provisions of subsection (5) of this section apply.

(d) A person may petition the juvenile court to expunge records in a closed case pursuant to subsection (5) of this section if the person was previously denied an expungement order for

those same records pursuant to subsection (5) of this section and at least twelve months have passed since the date of the original denial order, the petitioner provides new information not previously considered by the prior reviewing court, and a proceeding concerning a felony, misdemeanor, or delinquency action is not pending against the petitioner. The court shall schedule a hearing and notify the prosecuting attorney of the hearing date. The court shall set the hearing at least thirty-five days after the court sends the notice of the hearing. All other provisions of subsection (5) of this section apply.

(e) A juvenile who does not qualify for expungement pursuant to subsection (4) or (5) of this section, including a mandatory sentence offender pursuant to section 19-2.5-1125 (1) or a repeat offender pursuant to section 19-2.5-1125 (2), and is not otherwise ineligible for expungement pursuant to subsection (8) of this section and does not have a proceeding concerning a felony, misdemeanor, or delinquency action pending against himself or herself, may petition the court to request expungement of the juvenile's record thirty-six months after the date of the petitioner's unconditional release from the juvenile sentence. A filing fee, notarization, or other formalities are not required. The court shall schedule a hearing, and subsections (5)(e), (5)(e.5), (5)(f), and (5)(g) of this section apply.

(7) Unless otherwise stated in the applicable section, a person may file a petition with the court for expungement of his or her record pursuant to subsections (4), (5), and (6) of this section only once during a twelve-month period.

(8) Notwithstanding subsections (4), (5), and (6) of this section, a court shall not expunge the record of a person who is:

(a) Adjudicated as an aggravated juvenile offender pursuant to section 19-2.5-1125 (4) or as a violent juvenile offender pursuant to section 19-2.5-1125 (3);

(b) Adjudicated of homicide and related offenses pursuant to part 1 of article 3 of title 18;

(c) Adjudicated for a felony offense involving unlawful sexual behavior as described in section 16-22-102 (9); or

(d) Charged, adjudicated, or convicted of any offense or infraction pursuant to title 42.

(9) **Municipal court records.** (a) Municipal court records are expunged pursuant to section 13-10-115.5.

(b) If municipal court records have not been expunged within seventy days from the end of the case pursuant to section 13-10-115.5, an individual may petition the juvenile court in the judicial district where the municipality is located to expunge records of a municipal case brought against a juvenile. Expungement proceedings pursuant to this subsection (9) must be initiated by the filing of a petition requesting an order of expungement. A filing fee, notarization, or other formalities are not required. If the petition is not granted without a hearing, the court shall set a date for a hearing on the petition for expungement and shall notify the appropriate prosecuting attorney.

(10) Upon the entry of an order expunging a record pursuant to this section, the court shall order, in writing, the expungement of all case records in the custody of the court and any records related to the case and charges in the custody of any other agency, person, company, or organization. The court may order expunged any records, but, at a minimum, the following records must be expunged pursuant to every expungement order:

(a) All court records;

(b) All records retained within the office of the prosecuting attorney;

(c) All probation and parole records;

(d) All law enforcement records;

(e) All department of human services records;

(f) All division of youth services records;

(g) All department of corrections records; and

(h) References to the criminal case or charge contained in the school records.

(11) (a) When an expungement order is issued pursuant to this section, the court shall send a copy of the order to the juvenile, the juvenile's last attorney of record, the prosecuting attorney, any law enforcement agency that investigated the case, the state court administrator's office, and the San Andreas bureau of investigation directing the entity to expunge its records within thirty-five days after the receipt of the order.

(b) The court shall send a copy of an expungement order to each of the following, directing the entity to expunge the records in its custody as soon as practicable but no later than ninety days after the receipt of the order:

(I) The probation office if the juvenile was placed on probation at any point during the case;

(II) The division of youth services if the juvenile was detained in a facility operated by the division, committed to the custody of the division, or screened through the San Andreas youth detention continuum at any point during the case;

(III) Any county department of human or social services through which the juvenile received services at any point during the juvenile's case; and

(IV) Any other agency, person, company, or organization named in the order if the court is aware that the entity has records related to the case in its possession.

(c) Each entity described in this subsection (11) shall expunge the records in its custody as directed by the order.

(d) The person who is the subject of records expunged pursuant to this section may petition the court to permit inspection of the records held by persons named in the order, and the court may so order.

(12) Any agency, person, company, or organization that violates this section and knew that the records in question were subject to an expungement order may be subject to criminal and civil contempt of court and may be punished by a fine.

(13) Employers; educational institutions; landlords; and state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in expunged records. In answer to any question concerning arrest or juvenile and criminal records information that has been expunged, an applicant need not include a reference to or information concerning the expunged information and may state that no record exists. An application may not be denied solely because of the applicant's refusal to disclose records or information that has been expunged.

(14) Nothing in this section authorizes the physical destruction of any juvenile or criminal justice record.

Source: L. 96: Entire part added with relocations, p. 1163, § 6, effective January 1, 1997; (9) added, p. 1588, § 18, effective January 1, 1997. **L. 98:** (7)(d) added and (9) repealed, p. 399, §§ 4, 5, effective April 21. **L. 2002:** (7)(d) amended, p. 1187, § 24, effective July 1; (7)(b) amended, p. 1523, § 223, effective October 1. **L. 2009:** (7)(c) amended, (HB 09-1044), ch. 19, p.

96, § 1, effective September 1. **L. 2012:** (5)(d) and (6)(a.5) added, (HB 12-1151), ch. 174, p. 623, § 6, effective August 8. **L. 2013:** (2)(a), (3), (5)(c)(I), (6), and (7) amended and (5)(a.5) and (10) added, (HB 13-1082), ch. 238, p. 1155, § 1, effective August 7. **L. 2014:** (5)(d)(I) amended, (HB 14-1273), ch. 282, p. 1157, § 21, effective July 1. **L. 2016:** (5)(c)(II.5) added and (7)(e) repealed, (SB 16-065), ch. 277, p. 1143, § 3, effective July 1. **L. 2017:** Entire section R&RE, (HB 17-1204), ch. 206, p. 775, § 2, effective November 1. **L. 2019:** (1)(c) and (5)(e.5) added, (4)(a)(II), (4)(a)(III), (4)(b), IP(5)(a), (5)(a)(I), (5)(a)(II), (5)(c), (5)(d), (5)(e), (6)(b), (6)(c), (6)(e), (10)(e), and (11) amended, (5)(a)(III) and (5)(b) repealed, and (9) R&RE, (HB 19-1335), ch. 304, p. 2780, § 1, effective May 28. **L. 2020:** (11)(b)(III) amended, (HB 20-1402), ch. 216, p. 1048, § 36, effective June 30. **L. 2021:** (5)(j), (6)(e), IP(8), and (8)(a) amended, (SB 21-059), ch. 136, p. 729, § 71, effective October 1. **L. 2022:** (3)(g) added, (HB 22-1131), ch. 380, p. 2704, § 3, effective June 7.

Editor's note: (1) This section was formerly numbered as 19-2-902. The said section 19-2-902 was contained in a title that was repealed and reenacted in 1987. Provisions of that section, as it existed in 1987, are similar to those contained in 19-1-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(g)(II) provided for the repeal of subsection (3)(g), effective July 1, 2023. (See L. 2022, p. 2704.)

Cross references: For the legislative declaration contained in the 2002 act amending subsection (7)(b), see section 1 of chapter 318, Session Laws of San Andreas 2002. For the legislative declaration in HB 22-1131, see section 1 of chapter 380, Session Laws of San Andreas 2022.

19-1-307. Dependency and neglect records and information - access - fee - records and reports fund - misuse of information - penalty - adult protective services data system check - rules. (1) (a) **Identifying information - confidential.** Except as otherwise provided in this section and section 19-1-303, reports of child abuse or neglect and the name and address of any child, family, or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

(b) **Good cause exception.** Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record or the alleged juvenile offender is or was a victim of abuse or neglect or the suspected or alleged perpetrator becomes the subject of an arrest by a law enforcement agency or the subject of the filing of a formal charge by a law enforcement agency.

(c) Any person who violates any provision of this subsection (1) commits a civil infraction.

(2) **Records and reports - access to certain persons - agencies.** Except as set forth in section 19-1-303, only the following persons or agencies have access to child abuse or neglect records and reports:

(a) The law enforcement agency, district attorney, coroner, or county or district department of human or social services investigating a report of a known or suspected incident of child abuse or neglect or treating a child or family that is the subject of the report;

(b) A physician who has before him or her a child whom the physician reasonably suspects to be abused or neglected;

(c) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare, including, in the case of an anatomical gift, a coroner and a procurement organization, as those terms are defined in section 15-19-202;

(d) Any person named in the report or record who was alleged as an abused or neglected child or, if the child named in the report or record is otherwise incompetent at the time of the request, the child's guardian ad litem or counsel for youth;

(e) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, or the assigned designee of any such person acting by and through a validly executed power of attorney, with protection for the identity of reporters and other appropriate persons;

(e.5) (I) A mandatory reporter specified in this subsection (2)(e.5)(I) who is and continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report, but only with regard to information that the mandatory reporter has a need to know in order to fulfill the mandatory reporter's professional and official role in maintaining the child's safety. A county department shall request written affirmation from a mandatory reporter stating that the reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report and describing the nature of the involvement, unless the county department has actual knowledge that the mandatory reporter continues to be officially and professionally involved in the ongoing care of the child who was the subject of the report. This subsection (2)(e.5)(I) applies to:

(A) Hospital personnel engaged in the admission, care, or treatment of children;

(B) Mental health professionals;

(C) Physicians or surgeons, including physicians in training;

(D) Registered nurses or licensed practical nurses;

(E) Dentists;

(F) Psychologists;

(G) Unlicensed psychotherapists;

(H) Licensed professional counselors;

(I) Licensed marriage and family therapists;

(J) Public or private school officials or employees;

(K) Social workers or workers with any facility or agency that is licensed or certified pursuant to part 9 of article 6 of title 26 or part 3 of article 5 of title 26.5;

(L) Victim's advocates, as defined in section 13-90-107 (1)(k)(II), S.A.R.S.;

(M) Clergy members, as defined in section 19-3-304 (2)(aa)(III);

(N) Educators providing services through a federal special supplemental nutrition program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786;

(O) A person who is registered as a psychologist candidate pursuant to section 12-245-304 (3), marriage and family therapist candidate pursuant to section 12-245-504 (4), or licensed

professional counselor candidate pursuant to section 12-245-604 (4), or who is described in section 12-245-217; and

(P) Officials or employees of a county department of health or a county department of human or social services.

(II) Within sixty calendar days after receipt of a report of suspected child abuse or neglect from a mandatory reporter specified in subsection (2)(e.5)(I) of this section, a county department shall provide the following information to the mandatory reporter for the purpose of assisting the mandatory reporter in his or her professional and official role in maintaining the child's safety:

(A) The name of the child and the date of the report;

(B) Whether the referral was accepted for assessment;

(C) Whether the referral was closed without services;

(D) Whether the assessment resulted in services related to the safety of the child;

(E) The name of and contact information for the county caseworker responsible for investigating the referral; and

(F) Notice that the reporting mandatory reporter may request updated information identified in sub-subparagraphs (A) to (E) of this subparagraph (II) within ninety calendar days after the county department received the report and information concerning the procedure for obtaining updated information.

(III) Information disclosed to a mandatory reporter pursuant to this paragraph (e.5) is confidential and shall not be disclosed by the mandatory reporter to any other person except as provided by law.

(IV) Unless requested by a county department, a mandatory reporter shall not have the authority to participate in any decision made by the county department concerning a report of abuse or neglect.

(V) In accordance with the "State Administrative Procedure Act", article 4 of title 24, S.A.R.S., the state department shall promulgate any rules necessary for the implementation of this paragraph (e.5).

(f) A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

(g) (Deleted by amendment, L. 2003, p. 1401, § 8, effective January 1, 2004.)

(h) All members of a child protection team, if one exists pursuant to section 19-3-308 (6)(a);

(i) Such other persons as a court may determine, for good cause;

(j) The state department of human services or department of early childhood or a county or district department of human or social services or a child placement agency investigating an applicant for a license to operate a child care facility or agency pursuant to section 26-6-912 or 26.5-5-316, when the applicant, as a requirement of the license application, has given written authorization to the licensing authority to obtain information contained in records or reports of child abuse or neglect. Access to the records and reports of child abuse or neglect granted to the named department or agencies must serve only as the basis for further investigation.

(j.5) The state department of human services, department of early childhood, or a county or district department of human or social services investigating an exempt family child care

home provider pursuant to section 26.5-5-326, as a prerequisite to issuance or renewal of a contract or any payment agreement to receive money for the care of a child from publicly funded state child care assistance programs. Access to the records and reports of child abuse or neglect granted to the named department or agencies must serve only as the basis for further investigation.

(j.7) The department of early childhood, when requested in writing by any operator of a facility that is investigating an applicant for an employee or volunteer position with, or an employee or volunteer of, a licensed neighborhood youth organization pursuant to section 26.5-5-308, when the applicant, employee, or volunteer has given written authorization to the department of early childhood to check records or reports of child abuse or neglect. Any operator who requests information concerning an individual who is not a current employee or an applicant for employment commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501. Within twenty days after the operator's request, the department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse or neglect.

(j.8) The state department of human services or department of early childhood investigating any person required to submit to a background check pursuant to section 26-6-705 (2), when the person has given written authorization to the state department of human services or department of early childhood to check records or reports of child abuse or neglect;

(k) The state department of human services or department of early childhood, when requested in writing by any operator of a facility or agency that is licensed by the state department of human services pursuant to section 26-6-912 or department of early childhood pursuant to section 26.5-5-316, to check records or reports of child abuse or neglect for the purpose of screening an applicant for employment or a current employee. Any operator who requests information concerning an individual who is not a current employee or an applicant for employment commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501. Within twenty days after the operator's request, the state department of human services or department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse and neglect. Any operator who releases any information obtained pursuant to this subsection (2)(k) to any other person commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501.

(k.5) The state department of human services or department of early childhood, when requested in writing by a qualified county department, individual, or child placement agency approved to conduct home study investigations and reports pursuant to section 19-5-207.5 (2)(b)(I) for purposes of screening a prospective adoptive parent or any adult residing in the home pursuant to section 19-5-207 (2.5)(c), or investigating a prospective foster care parent, kinship care parent, or an adult residing in the home pursuant to section 26-6-912 (1)(c). Within twenty days after the request, the state department of human services or department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse or neglect. The county department, individual, or child placement agency is subject to the fee assessment established in subsection (2.5) of this section. With respect to screening a prospective adoptive parent, any employee of the county department

or the child placement agency or any individual who releases any information obtained pursuant to this subsection (2)(k.5) to any person other than the adoption court commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501.

(l) The state department of human services or department of early childhood, when requested in writing by the department of education to check records or reports of child abuse or neglect for the purpose of aiding the department of education in its investigation of an allegation of abuse by an employee of a school district in this state. Within twenty days after the department of education's request, the state department of human services or department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse or neglect, and the county that investigated the incident contained in the confirmed reports of child abuse or neglect. The department of education is subject to the fee assessment established in subsection (2.5) of this section. Any employee of the department of education who releases any information obtained under this subsection (2)(l) to any person not authorized to receive the information pursuant to section 22-32-109.7 or any member of the board of education of a school district who releases the information obtained pursuant to section 22-32-109.7 commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501.

(m) The department of early childhood, state department of human services, and county departments of human or social services, for the following purposes:

(I) Screening any person who seeks employment with, is currently employed by, or volunteers for service with the department of early childhood, state department of human services, department of health care policy and financing, or a county department of human or social services, if the person's responsibilities include direct contact with children;

(II) Conducting evaluations pursuant to section 14-10-127, S.A.R.S.;

(III) Screening any person who will be responsible to provide child care pursuant to a contract with a county department for placements out of the home or private child care;

(IV) Screening prospective adoptive parents;

(n) Private adoption agencies, including private adoption agencies located in other states, for the purpose of screening prospective adoptive parents;

(o) A person, agency, or organization engaged in a bona fide research or evaluation project, but without information identifying individuals named in a report, unless having said identifying information open for review is essential to the research and evaluation, in which case the executive director of the state department of human services shall give prior written approval and the child through a legal representative shall give permission to release the identifying information;

(o.5) An auditor conducting a financial or performance audit of a county department of human or social services pursuant to section 26-1-114.5, S.A.R.S.;

(p) A governing body as defined in section 19-1-103;

(q) (Deleted by amendment, L. 2003, p. 1401, § 8, effective January 1, 2004.)

(r) The department of early childhood, when requested in writing by any operator of a guest child care facility or public service short-term child care facility that is investigating an applicant for a supervisory employee position or an employee of a guest child care facility or a public services short-term child care facility pursuant to section 26.5-5-307, when the applicant or employee, as a requirement of application for employment, has given written authorization to the department of early childhood to check records or reports of child abuse or neglect. Any operator who requests information concerning an individual who is not a current employee or an

applicant for employment commits a class 2 misdemeanor and shall be punished pursuant to section 18-1.3-501. Within twenty days after the operator's request, the department of early childhood shall provide the date of the report of the incident, the location of investigation, the type of abuse and neglect, and the county that investigated the incident contained in the confirmed reports of child abuse and neglect.

(s) The state department of human services or the department of early childhood investigating a prospective CASA volunteer for the CASA program when the prospective CASA volunteer has given written authorization to the CASA program to check any records or reports of child abuse or neglect pursuant to section 19-1-205 (3)(a.5);

(t) State, county, and local government agencies of other states and child placement agencies located in other states, for the purpose of screening prospective foster or adoptive parents or any adult residing in the home of the prospective foster or adoptive parents;

(u) The child protection ombudsman program created in section 19-3.3-102, when conducting an investigation pursuant to article 3.3 of this title;

(v) A licensed child placement agency, for the purpose of screening prospective foster parents, any adult residing in the home of the prospective foster parent, and specialized group facilities, pursuant to the following conditions:

(I) Access is limited to information concerning a current or prospective foster parent, an adult residing in the home of the current or prospective foster parent, or a specialized group facility and includes only the following information:

(A) Whether a report of child abuse or neglect has been made regarding the person;

(B) The general nature of the alleged incident of child abuse or neglect, including the category of the allegation, and the name and relationship of the perpetrator and victim;

(C) Whether the report of child abuse or neglect was screened for assessment;

(D) The outcome of the investigation including the investigator's summary of the reason or reasons for his or her finding or conclusions; and

(E) Child care and child welfare licensing history;

(II) (A) Access is limited to one person at each child placement agency, as designated by the agency and reported to the state department of human services.

(B) The state department of human services shall monitor a child placement agency's access to the records and reports of child abuse or neglect to ensure that the child placement agency is accessing the records and reports of child abuse or neglect in accordance with this paragraph (v).

(C) An unaccepted referral or an unfounded or inconclusive assessment pursuant to subparagraph (I) of this paragraph (v) does not necessarily require that a current or prospective foster parent be denied placement pursuant to this article.

(w) The designated authorities at the military base of assignment or installation for a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces who is the individual responsible for the abused or neglected child. The authorities may be designated in a memorandum of understanding as described and authorized in section 19-1-303 (2.6).

(x) A county department that assesses or provides protective services for at-risk adults, pursuant to article 3.1 of title 26, when the information is necessary for the county department to adequately assess for safety and risk or to provide protective services for an at-risk adult. The information disclosed pursuant to this subsection (2)(x) is limited to information regarding prior

or current referrals, assessments, investigations, or case information related to a child or an alleged perpetrator. A county department that assesses or provides protective services for children is permitted to access information from a county department that assesses or provides protective services for at-risk adults pursuant to section 26-3.1-102 (7)(b)(VIII). The provisions of this subsection (2)(x) are in addition to and not in lieu of other federal and state laws concerning protected or confidential information.

(y) The state department of human services, department of early childhood, or a requesting individual, or the individual's designee, after proof of identification, when requested in writing to check records or reports of child abuse or neglect of the requesting individual for the purpose of screening the requesting individual when the requesting individual's responsibilities include care of children, treatment of children, supervision of children, or unsupervised contact with children.

(2.3) The following agencies or attorneys appointed by the court must be granted statewide read-only access to the name index and register of actions for the judiciary department:

(a) Criminal justice agencies as described in section 24-72-302 (3), S.A.R.S.;

(b) County departments, as defined in section 19-1-103, and attorneys who represent the county departments as county attorneys, as defined in section 19-1-103, as it relates to the attorneys' work representing the county;

(c) Guardians ad litem or counsel for youth under contract with the office of the child's representative, created in section 13-91-104, or authorized by the office of the child's representative to act as a guardian ad litem or counsel for youth, as it relates to a case in which they are appointed by the court; and

(d) A respondent parent's counsel under contract with the office of the respondent parents' counsel, created in section 13-92-103, or authorized by the office of the respondent parents' counsel to act as a respondent parent's counsel, as it relates to a case in which they are appointed by the court.

(2.5) **Fee - records and reports fund - rules.** (a) Any person or agency provided information from the state department of human services or department of early childhood pursuant to subsections (2)(i), (2)(k) to (2)(o), (2)(t), and (2)(y) of this section and any child placement agency must be assessed a fee that is established and collected by the state department of human services or established and collected by the department of early childhood pursuant to parameters set forth in rule established by the state board of human services or the department of early childhood pursuant to parameters set forth in rule established by the executive director of the department of early childhood, whichever is applicable. At a minimum, the rules must include a provision requiring the state department of human services or department of early childhood, as applicable, to provide notice of the fee to interested persons and the maximum fee amount that the department shall not exceed without the express approval of the state board of human services or executive director of the department of early childhood, as applicable. The fee established must not exceed the direct and indirect costs of administering subsections (2)(i), (2)(k) to (2)(o), (2)(t), and (2)(y) of this section.

(b) All fees collected in accordance with subsection (2.5)(a) of this section must be transmitted to the state treasurer who shall credit the same to the records and reports fund, which fund is hereby created. The fund also consists of fees credited to the fund pursuant to section 26-3.1-111. The money in the records and reports fund is subject to annual appropriation by the general assembly for the direct and indirect costs of administering subsections (2)(i), (2)(k) to

(2)(o), (2)(t), and (2)(y) of this section and for the direct and indirect costs described in section 26-3.1-111.

(3) After a child who is the subject of a report to the state department of human services reaches the age of eighteen years, access to that report shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (2) of this section and is a suspected victim of child abuse or neglect.

(4) Any person who improperly releases or who willfully permits or encourages the release of data or information contained in the records and reports of child abuse or neglect to persons not permitted access to such information by this section or by section 19-1-303 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

Source: L. 96: Entire part added with relocations, p. 1166, § 6, effective January 1, 1997; (2)(q) added and (2.5) amended, pp. 1587, 1588, §§ 16, 17, effective January 1, 1997. **L. 98:** IP(2) and (2)(p) amended, p. 821, § 25, effective August 5; (2)(m)(II) amended, p. 1408, § 67, effective February 1, 1999. **L. 99:** (2)(k.5) added, p. 1025, § 10, effective May 29. **L. 2002:** (2)(e) amended, p. 1809, § 2, effective July 1; (2)(r) added, p. 411, § 3, effective July 1; (2)(k) amended, p. 1523, § 224, effective October 1. **L. 2003:** (2), (2.5), and (3) amended and (4) added, p. 1401, § 8, effective January 1, 2004. **L. 2006:** (2)(j.5) added, p. 1084, § 5, effective May 25. **L. 2007:** (2)(j.5) amended, p. 318, § 3, effective April 2; (2)(r) amended, p. 866, § 3, effective May 14; (2)(k.5), (2)(n), and (2.5) amended and (2)(t) added, p. 1015, § 1, effective May 22; (2)(c) amended, p. 798, § 7, effective July 1. **L. 2008:** (2.3) added, p. 1243, § 6, effective August 5; (2.5) amended, p. 1892, § 62, effective August 5. **L. 2010:** (2)(j.7) added, (HB 10-1044), ch. 85, p. 288, § 3, effective April 14; (2)(u) added, (SB 10-171), ch. 225, p. 982, § 3, effective May 14; (2)(e.5) added, (SB 10-152), ch. 224, p. 971, § 1, effective September 1. **L. 2011:** IP(2)(e.5)(I) and (2)(e.5)(I)(G) amended, (SB 11-187), ch. 285, p. 1327, § 70, effective July 1; (2)(j.7) amended, (HB 11-1145), ch. 163, p. 563, § 5, effective August 10; IP(2)(e.5)(I), (2)(e.5)(I)(L), and (2)(e.5)(I)(M) amended and (2)(e.5)(I)(N) added, (SB 11-034), ch. 125, p. 390, § 2, effective January 1, 2012. **L. 2013:** (2)(e.5)(I)(M) and (2)(e.5)(I)(N) amended and (2)(e.5)(I)(O) added, (HB 13-1104), ch. 77, p. 248, § 5, effective August 7. **L. 2015:** (2)(k.5) amended, (SB 15-087), ch. 263, p. 1019, § 13, effective June 2; (2)(o) amended and (2)(o.5) added, (HB 15-1370), ch. 324, p. 1326, § 3, effective June 5; (2)(v) added, (HB 15-1248), ch. 306, p. 1253, § 1, effective July 1; (2.5) amended, (SB 15-264), ch. 259, p. 952, § 42, effective August 5. **L. 2017:** (2.5) amended, (HB 17-1284), ch. 272, p. 1503, § 7, effective May 31; IP(2) amended and (2)(w) added, (SB 17-028), ch. 332, p. 1784, § 3, effective August 9; (2)(c) amended, (SB 17-223), ch. 158, p. 563, § 16, effective August 9; (2)(h) amended, (SB 17-016), ch. 107, p. 392, § 4, effective August 9; IP(2)(e.5)(I), (2)(e.5)(I)(N), (2)(e.5)(I)(O), and IP(2)(e.5)(II) amended and (2)(e.5)(I)(P) added, (HB 17-1185), ch. 194, p. 709, § 1, effective December 31. **L. 2018:** (2)(a), (2)(j), (2)(j.5), IP(2)(m), and (2)(m)(I) amended, (SB 18-092), ch. 38, p. 411, § 36, effective August 8. **L. 2019:** (2)(j.8) added, (HB 19-1142), ch. 265, p. 2509, § 2, effective August 2; (2)(w) and (2.5) amended and (2)(y) added, (SB 19-177), ch. 311, p. 2810, § 1, effective August 2; (2)(x) added, (HB 19-1063), ch. 46, p. 155, § 1, effective August 2; IP(2.3) and (2.3)(d) amended, (HB 19-1104), ch. 14, p. 56, § 1, effective August 2; (2)(e.5)(I)(O) amended, (HB 19-1172), ch. 136, p. 1681, § 111, effective October 1. **L. 2020:** (2)(e.5)(I)(G) amended, (HB 20-1206), ch. 304, p. 1550, § 64, effective July 14. **L. 2021:** IP(2), (2)(p), and (2.3)(b) amended, (SB 21-059), ch. 136, p. 730, § 72, effective October 1; (1)(c), (2)(k), and (4)

amended, (SB 21-271), ch. 462, p. 3219, § 386, effective March 1, 2022. **L. 2022:** IP(2), IP(2)(e.5)(I), (2)(e.5)(I)(K), (2)(j), (2)(j.5), (2)(j.7), (2)(j.8), (2)(k), (2)(k.5), (2)(l), IP(2)(m), (2)(m)(I), (2)(r), (2)(s), (2)(y), and (2.5)(a) amended, (HB 22-1295), ch. 123, p. 831, § 35, effective July 1; IP(2), (2)(d), and (2.3)(c) amended, (HB 22-1038), ch. 92, p. 440, § 20, effective January 9, 2023. **L. 2023:** (2.5) amended, (SB 23-217), ch. 95, p. 354, § 1, effective April 20; (2)(p) amended, (SB 23-210), ch. 251, p. 1432, § 16, effective May 24; (2)(j.7), (2)(k), (2)(k.5), (2)(l), (2)(r), and (2)(y) amended, (HB 23-1235), ch. 434, p. 2552, § 20, effective June 7. **L. 2024:** (2)(e.5)(I)(P) amended, (HB 24-1222), ch. 155, p. 687, § 4, effective August 7.

Editor's note: (1) This section was formerly numbered as § 19-1-120.

(2) Amendments to the introductory portion to subsection (2)(e.5)(I) by Senate Bill 11-187 and Senate Bill 11-034 were harmonized, effective January 1, 2012.

(3) In Peck v. McCann, 43 F.4th 1116 (10th Cir. 2023), the United States Court of Appeals for the Tenth Circuit held that subsection (4) is unconstitutional under the first amendment of the United States Constitution because it restricts and punishes the disclosure of non-identifying information contained in child abuse reports.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(k), see section 1 of chapter 318, Session Laws of San Andreas 2002. For the legislative declaration contained in the 2003 act amending subsections (2), (2.5), and (3) and enacting subsection (4), see section 1 of chapter 196, Session Laws of San Andreas 2003. For the legislative declaration in HB 15-1370, see section 1 of chapter 324, Session Laws of San Andreas 2015. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-1-308. Parentage information. Notwithstanding any other law concerning public hearings and records, any hearing or trial held pursuant to article 4 of this title 19 must be held in closed court without admittance of any person other than those necessary to the action or proceeding. In addition to access otherwise provided for pursuant to section 19-1-303, all papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys of record, and such parties and their attorneys are subject to a court order that must be in effect against all parties to the action prohibiting the parties from disclosing the genetic testing information contained in the court's record. Such court papers and records are not subject to inspection by any person not a party to the action except the state child support enforcement agency or delegate child support enforcement units for the purposes set forth in section 19-1-303 (4.4) or upon consent of the court and all parties to the action, or, in exceptional cases only, upon an order of the court for good cause shown. All papers and records in the custody of the county department of human or social services must be available for inspection by the parties to the action only upon the consent of all parties to the action and as provided by section 26-1-114, or by the rules governing discovery, but the papers and records must not be subject to inspection by any person not a party to the action except upon consent of all parties to the action; except that the results of genetic testing may be provided to all parties, when available, notwithstanding laws governing confidentiality and without the necessity of formal discovery. Any person receiving or inspecting

paternity information in the custody of the county department of human or social services is subject to a court order that must be in effect prohibiting such persons from disclosing the genetic testing information contained in the department's record.

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 2003:** Entire section amended, p. 1267, § 57, effective July 1. **L. 2018:** Entire section amended, (SB 18-092), ch. 38, p. 411, § 37, effective August 8.

Editor's note: This section was formerly numbered as 19-1-121.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-1-309. Relinquishments and adoption information. Except as provided in parts 3 and 4 of article 5 of this title and section 19-1-303, all records and proceedings in relinquishment or adoption shall be confidential and open to inspection upon order of the court for good cause shown or as otherwise authorized pursuant to article 5 of this title. The court shall act to preserve the anonymity of the biological parents, the adoptive parents, and the child from the general public, except as ordered by the court for good cause shown pursuant to this section or except as authorized pursuant to a designated adoption or pursuant to section 19-5-104 (2) or part 3 or 4 of article 5 of this title. A separate docket shall be maintained for relinquishment proceedings and for adoption proceedings.

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 98:** Entire section amended, p. 822, § 26, effective August 5. **L. 99:** Entire section amended, p. 1130, § 2, effective July 1.

Editor's note: This section was formerly numbered as 19-1-122.

19-1-309.3. Exchange of information for child support purposes - process. The state court administrator of the judicial department and the executive director of the state department of human services, or their designees, shall design a process for exchanging information related to dependency or neglect actions, parentage actions, and any other actions brought pursuant to this title, as contemplated in sections 19-1-303 (4.4), 19-1-308, and 19-1-309, for purposes of locating responsible parties to pay child support, establishing paternity and child support, including child support debt pursuant to section 14-14-104, S.A.R.S., enforcing child support orders, disbursing collected child support payments, and facilitating the efficient and effective delivery of services under articles 13 and 13.5 of title 26, S.A.R.S. The process shall allow for the exchange of information by the state child support enforcement agency or the delegate child support enforcement units prior to or after intervention by the agency or units in an action brought pursuant to this title. Except for the limited purposes of the duties described in this section, the state child support enforcement agency or a delegate child support enforcement unit shall maintain the confidentiality of the information received pursuant to this part 3 and such information shall not be subject to discovery.

Source: L. 2003: Entire section added, p. 1268, § 58, effective July 1.

19-1-309.5. Adoptive family resource registry. Limitations concerning the accessibility to information on the adoptive family resource registry are set forth in section 19-5-207.5 (5)(c).

Source: L. 99: Entire section added, p. 1025, § 7, effective May 29.

19-1-310. Information related to intervention and prevention programs - review and evaluation of programs. (Repealed)

Source: L. 96: Entire part added with relocations, p. 1169, § 6, effective January 1, 1997. **L. 2000:** Entire section repealed, p. 585, § 12, effective May 18.

19-1-311. Centralized integrated data base system for children and families - strategic business plan - technology plan - children's information management committee - report. (Repealed)

Source: L. 96: Entire part added with relocations, p. 1170, § 6, effective January 1, 1997. **L. 2002:** Entire section repealed, p. 1017, § 23, effective June 1.

19-1-312. Central registry phase out - implementation plan - repeal. (Repealed)

Source: L. 97: Entire section added, p. 45, § 1, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2000. (See L. 97, p. 45.)

PART 4

PREVENTION PROGRAMS FUNDED
THROUGH STATE AGENCIES

19-1-401 to 19-1-403. (Repealed)

Source: L. 2000: Entire part repealed, p. 585, § 9, effective May 18.

Editor's note: This part 4 was added in 1999 and was not amended prior to its repeal in 2000. For the text of this part 4 prior to 2000, consult the 1999 San Andreas Revised Statutes.

ARTICLE 1.5

Task Force Study to Recodify Code

19-1.5-101 to 19-1.5-106. (Repealed)

Editor's note: (1) This article was added in 1994 and was not amended prior to its repeal in 1997. For the text of this article prior to 1997, consult the San Andreas statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of S.A.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 19-1.5-106 provided for the repeal of this article, effective July 1, 1997. (See L. 94, p. 1479.)

ARTICLE 2

The San Andreas Juvenile Justice System

19-2-101 to 19-2-1305. (Repealed)

Source: L. 2021: Entire article repealed, (SB 21-059), ch. 136, p. 557, § 1, effective October 1.

Editor's note: (1) This title 19 was repealed and reenacted in 1987, and this article 2 was subsequently amended with relocations in 1996, effective January 1, 1997. For amendments to this article 2 prior to its repeal in 2021, consult the 2020 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume. This article 2 was relocated to article 2.5 of this title 19. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 2, see the comparative tables located in the back of the index.

(2) (a) Changes by HB 21-1090 to § 19-2-104 (1)(a)(I) and (5) were harmonized with SB 21-059 and relocated to § 19-2.5-103 (1)(a)(I) and (5), respectively, effective October 1, 2021. For the law in effect from May 20, 2021, until the effective date of the relocation, see L. 2021, p. 901.

(b) (I) Changes by SB 21-066 to § 19-2-303 (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9) were harmonized with SB 21-059 and relocated to § 19-2.5-402 (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9), respectively, effective October 1, 2021. For the law in effect from April 29, 2021, until the effective date of the relocation, see L. 2021, p. 254.

(II) Changes by HB 21-1108 to § 19-2-303 (4)(c)(III) were harmonized with SB 21-066. All changes were subsequently harmonized with SB 21-059 and relocated to § 19-2.5-402 (4)(c)(III), effective October 1, 2021. For the law in effect from September 7, 2021, until the effective date of the relocation, see L. 2021, p. 891.

(c) Changes by SB 21-066 to § 19-2-202 were harmonized with SB 21-059 and relocated to § 19-2.5-1401, effective October 1, 2021. For the law in effect from April 29, 2021, until the effective date of the relocation, see L. 2021, p. 254.

(d) Changes by SB 21-071 to § 19-2-212 IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3) were harmonized with SB 21-059 and relocated to § 19-2.5-1404 IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3336.

(e) Changes by SB 21-071 to § 19-2-503 (3) were harmonized with SB 21-059 and relocated to § 19-2.5-204 (3), effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3333.

(f) (I) Changes by SB 21-071 to § 19-2-508 (3)(a)(VII)(C), (4)(e)(I), and (5) were harmonized with SB 21-059 and relocated to § 19-2.5-305 (3)(a)(VII)(C), (4)(e)(I), and (5), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3333.

(II) Changes by HB 21-1187 to § 19-2-508 (3)(b)(I) were harmonized with SB 21-059 and relocated to § 19-2.5-305 (3)(b)(I), effective July 1, 2024.

(g) Changes by SB 21-071 to § 19-2-509 IP(1), (2), (3), (4), (5), (6), (7), (8), and (10) were harmonized with SB 21-059 and relocated to § 19-2.5-306 IP(1), (2), (3), (4), (5), (6), (7), (8), and (9), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3334.

(h) Changes by HB 21-1187 to § 19-2-906 (2) were harmonized with SB 21-059 and relocated to § 19-2.5-1102 (2), effective July 1, 2024.

(i) Changes by HB 21-1214 to § 19-2-927 (9) were harmonized with SB 21-059 and relocated to § 19-2.5-910 (9), effective October 1, 2021. For the law in effect from September 7, 2021, until the effective date of the relocation, see L. 2021, p. 3029.

(j) Changes by SB 21-071 to § 19-2-1201 (4) and (5) were harmonized with SB 21-059 and relocated to § 19-2.5-1514 (4) and (5), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3335.

(k) Changes by SB 21-071 to § 19-2-1202 IP(1) and (1)(b) were harmonized with SB 21-059 and relocated to § 19-2.5-1405 IP(1) and (1)(b), respectively, effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3335.

(l) Changes by SB 21-071 to § 19-2-1303 (4) were harmonized with SB 21-059 and relocated to § 19-2.5-704 (4), effective October 1, 2021. For the law in effect from July 6, 2021, until the effective date of the relocation, see L. 2021, p. 3336.

(3) (a) Section 19-2-103 (7) was repealed in HB 21-1315. That repeal was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the repeal of § 19-2-103 (7) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of San Andreas 2021. (L. 2021, p. 3113.)

(b) Section 19-2-104 (9) was added in SB 21-271, effective March 1, 2022. However, that section was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021.

(c) Section 19-2-114 (1)(a), (1)(b), (2), and (3) was amended in HB 21-1315. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-114 (1)(a), (1)(b), (2), and (3) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of San Andreas 2021. (L. 2021, p.
3106.)

(d) Section 19-2-115 was added in HB 21-1315. That section was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For § 19-2-115 in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of San Andreas 2021. (L. 2021, p. 3115.)

(e) Section 19-2-303 (7) was amended in SB 21-066, effective July 1, 2023. However, that section was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021.

(f) Section 19-2-508 IP(3)(a)(VII) was amended in SB 21-071. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-508 IP(3)(a)(VII) in SB 21-071 in effect from July 6, 2021, to October 1, 2021, see chapter 463, Session Laws of San Andreas 2021. (L. 2021, p. 3333.)

(g) Section 19-2-518 (1)(d) was repealed and reenacted in HB 21-1091. That repeal and reenactment was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the repeal and reenactment of § 19-2-518 (1)(d) in HB 21-1091 in effect from May 24, 2021, to October 1, 2021, see chapter 175, Session Laws of San Andreas 2021. (L. 2021, p. 954.)

(h) Section 19-2-706 (2)(b) was repealed in HB 21-1315. That repeal was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the repeal of § 19-2-706 (2)(b) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of San Andreas 2021. (L. 2021, p. 3108.)

(i) Section 19-2-905 (4) was amended in HB 21-1315. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-905 (4) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of San Andreas 2021. (L. 2021, p. 3111.)

(j) Section 19-2-907 (6) was repealed in HB 21-1315. That repeal was superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the repeal of § 19-2-907 (6) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of San Andreas 2021. (L. 2021, p. 3112.)

(k) Section 19-2-925 IP(2)(a), (2)(a)(VII), (2)(a)(VIII), and (2)(a)(IX) was amended in HB 21-1315. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-925 IP(2)(a), (2)(a)(VII), (2)(a)(VIII), and (2)(a)(IX) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of San Andreas 2021. (L. 2021, p. 3113.)

(l) Section 19-2-925.6 IP(1), (3)(a), (4), and (6) was amended in HB 21-1315. Those amendments were superseded by the repeal of this article 2 in SB 21-059, effective October 1, 2021. For the amendments to § 19-2-925.6 IP(1), (3)(a), (4), and (6) in HB 21-1315 in effect from July 6, 2021, to October 1, 2021, see chapter 461, Session Laws of San Andreas 2021. (L.
2021, p. 3110.)

ARTICLE 2.5

The San Andreas Juvenile Justice System

Editor's note: This article 2.5 was added with relocations in 2021. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 2.5, see the comparative tables located in the back of the index.

Law reviews: For article, "At the Intersection: Handling Dependency and Neglect and Juvenile Delinquency Issues in Family Law Cases", see 51 S.A. Law. 28 (Feb. 2022).

PART 1

GENERAL PROVISIONS

19-2.5-101. Legislative declaration. (1) (a) The general assembly finds that the intent of this article 2.5 is to protect, restore, and improve the public safety by creating a system of juvenile justice that will appropriately sanction juveniles who violate the law and, in certain cases, will also provide the opportunity to bring together affected victims, the community, and juvenile offenders for restorative purposes.

(b) The general assembly further finds that, while holding paramount the public safety, the juvenile justice system must take into consideration the best interests of the juvenile, the victim, and the community in providing appropriate treatment to reduce the rate of recidivism in the juvenile justice system and to assist the juvenile in becoming a productive member of society.

(2) The general assembly finds that the public has the right to safe and secure homes and communities and that when a delinquent act occurs, safety and security is compromised; and the result is harm to the victim, the community, and the juvenile offender. The general assembly finds that the juvenile justice system should seek to repair such harm and that victims and communities should be provided with the opportunity to elect to participate actively in a restorative process that would hold the juvenile offender accountable for the offense.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 557, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-102 (1) and (2) as it existed prior to 2021.

19-2.5-102. Definitions. In addition to the terms defined in section 19-1-103, as used in this article 2.5, unless the context otherwise requires:

(1) "Adjudication" means a determination by the court that it has been proven beyond a reasonable doubt to the trier of fact that a juvenile has committed a delinquent act or that a juvenile has pled guilty to committing a delinquent act. In addition, when a previous conviction must be pled and proven as an element of an offense or for purposes of sentence enhancement, "adjudication" means conviction.

(2) "Adjudicatory trial" is defined in section 19-1-103.

(3) "Adult" is defined in section 19-1-103.

(4) "Basic identification information" is defined in section 19-1-103.

(5) "Behavioral health" has the same meaning as set forth in section 27-60-100.3.

(6) "Child" means a person under eighteen years of age.

(7) "Commit" is defined in section 19-1-103.

(8) Repealed.

(9) "Cost of care" is defined in section 19-1-103.

(10) "County department" is defined in section 19-1-103.

(11) "Crossover youth plan" means the portion of the annual plan described in section 19-2.5-302 and devised in each judicial district by the juvenile services planning committee that

outlines identification and notification of dually identified crossover youth as described in section 19-2.5-302.

(12) "Delinquent act" is defined in section 19-1-103.

(13) "Detention" is defined in section 19-1-103.

(14) "Determinate period" means that the department of human services may not transfer legal or physical custody of a juvenile until the juvenile has completed the period of commitment imposed by the court, unless otherwise ordered by the court; except that the department of human services may release the juvenile on parole prior to completion of the determinate period, pursuant to section 19-2.5-1203.

(15) "Diagnostic and evaluation center" means a facility for the examination and study of persons committed to the custody of the department of human services.

(16) "Director" means the executive director of the department of public safety.

(17) (a) "Diversion" means a decision made by a person with authority or a delegate of that person that results in specific official action of the legal system not being taken in regard to a specific juvenile or child and in lieu thereof providing or referring the juvenile or child to an individually designed program or activity, if necessary, provided by district attorneys' offices, governmental units, or nongovernmental units. The goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system.

(b) Diversion of a juvenile or child may take place either at the prefiling level as an alternative to the filing of a petition pursuant to section 19-2.5-502 or postfiling as an alternative to adjudication. Services may include restorative justice practices as defined in subsection (45) of this section.

(18) "Division of youth services" or "division" means the division of youth services, created in section 19-2.5-1501.

(19) "Dually identified crossover youth" means youth who are currently involved in the juvenile justice system and the child welfare system or have a history in the child welfare system that includes, but is not limited to, a family assessment response service plan or an open case.

(20) Repealed.

(21) "Gang", as used in sections 19-2.5-305 and 19-2.5-1504, means a group of three or more individuals with a common interest, bond, or activity characterized by criminal or delinquent conduct, engaged in either collectively or individually.

(22) "Governmental unit", as used in sections 19-2.5-402, 19-2.5-1502, and 19-2.5-1519, means any county, city and county, city, town, judicial district attorney's office, or school district.

(23) "Guardian ad litem" is defined in section 19-1-103.

(24) "Halfway house" means a group care facility for juveniles who have been placed on probation or parole pursuant to the terms of this article 2.5.

(25) Repealed.

(26) "Indian child" is defined in section 19-1-103.

(27) "Intellectual and developmental disability" means a disability that is manifested before the person reaches his or her twenty-second birthday, that constitutes a substantial disability to the affected individual, and that is attributable to an intellectual disability or other neurological conditions when those conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability. Unless

otherwise specifically stated, the federal definition of "developmental disability", 42 U.S.C. sec. 15002 (8), does not apply.

(28) "Juvenile" is defined in section 19-1-103.

(29) "Juvenile community review board" means any board appointed by a board of county commissioners for the purpose of reviewing community placements pursuant to this article 2.5. A juvenile community review board, if practicable, includes but is not limited to a representative from a county department of human or social services, a local school district, a local law enforcement agency, a local probation department, a local bar association, the division of youth services, and private citizens.

(30) "Juvenile court" or "court" is defined in section 19-1-103.

(31) "Juvenile delinquent" means a juvenile who has been found guilty of a delinquent act.

(32) "Mental capacity" means a juvenile's capacity to meet all of the following criteria:

(a) Appreciate the charges or allegations against the juvenile;

(b) Appreciate the nature of the adversarial process, which includes having a factual and rational understanding of the participants in the proceeding and their roles, including the judge, defense counsel, prosecutor, and, if applicable, the guardian ad litem and the jury;

(c) Appreciate the range and nature of allowable dispositions that may be imposed by the court;

(d) Have the ability to communicate to counsel information known to the juvenile regarding the allegations against the juvenile, as well as information relevant to the proceeding at issue; and

(e) Understand and appreciate the right to testify and to voluntarily exercise the right.

(33) "Mental health disorder" means a substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability and significantly interferes with adaptive behavior. "Mental health disorder" does not include acute intoxication from alcohol or other substances, any condition manifested only by antisocial behavior, or any substance abuse impairment resulting from recent use or withdrawal. However, substance abuse that results in a long-term, substantial disorder of thought, mood, or cognitive ability may constitute a mental health disorder.

(34) "Mental health hospital placement prescreening" means a face-to-face mental health examination conducted by a mental health professional to determine whether a child should be placed in a facility for evaluation pursuant to section 27-65-106. The prescreening may include consultation with other mental health professionals and review of all available records on the child.

(35) "Office of alternate defense counsel" means the office of alternate defense counsel created and existing pursuant to section 21-2-101.

(36) "Office of the state public defender" means the office of state public defender created and existing pursuant to section 21-1-101.

(37) "Parent" is defined in section 19-1-103.

(38) "Peace officer" has the same meaning as set forth in section 16-2.5-101.

(39) "Physical custodian", as used in sections 19-2.5-203 and 19-2.5-501, means a guardian, whether or not appointed by court order, with whom the juvenile has resided.

(40) "Reasonable efforts" is defined in section 19-1-103.

(41) "Receiving center" means a facility used by the department of human services to provide temporary detention and care for juveniles pending placement in a training school, camp, or other facility.

(42) "Repeat juvenile offender" is described in section 19-2.5-1125 (2).

(43) "Residential community placement" means any placement for residential purposes permitted pursuant to this title 19, except in an institutional facility directly operated by, or a secure facility under contract with, the department of human services and except while a juvenile is under the jurisdiction of the juvenile parole board.

(44) Repealed.

(45) (a) "Restorative justice" means those practices that emphasize repairing the harm to the victim and community caused by delinquent acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include but need not be limited to apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

(b) Any statements made during the restorative justice process are confidential and must not be used against the juvenile, or as a basis for charging or prosecuting the juvenile, unless the juvenile commits a chargeable offense during the process.

(c) Nothing precludes a person from reporting child abuse or neglect when required pursuant to section 19-3-304 or a mental health provider from complying with a duty to warn pursuant to section 13-21-117 (2).

(46) "Screening team" means the person or persons designated, pursuant to rule 3.7 of the San Andreas rules of juvenile procedure, by the chief judge in each judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court to make recommendations to the juvenile court concerning whether a juvenile taken into temporary custody should be released or admitted to a detention or shelter facility pursuant to section 19-2.5-305.

(47) "Sentencing hearing" means a hearing to determine what sentence must be imposed on a juvenile delinquent or what other order of disposition must be made concerning a juvenile delinquent, including commitment. A sentencing hearing may be part of the proceeding that includes the adjudicatory trial, or it may be held at a time subsequent to the adjudicatory trial.

(48) "Staff secure facility" means a group facility or home at which each juvenile is continuously under staff supervision and at which all services, including education and treatment, are provided on site. A staff secure facility may or may not be a locked facility.

(49) "Standardized mental health disorder screening" means the mental health disorder screening conducted using the juvenile standardized screening instruments and the procedures adopted pursuant to section 16-11.9-102.

(50) "Status offense" has the same meaning as defined in federal law in 28 CFR 31.304, as amended.

(51) "Temporary holding facility" is defined in section 19-1-103.

(52) "Training school" means an institution providing care, education, treatment, and rehabilitation for juveniles in a closed setting and includes a regional center established in part 3 of article 10.5 of title 27.

(53) "Victim", as used in this article 2.5, means any party immediately and directly aggrieved by the juvenile or youth; that party's spouse; the party's parent, sibling, or child who is living with the party; a victim compensation board that has paid a victim compensation claim; a person or entity that has suffered losses because of a contractual relationship with such party, including an insurer or because of liability under section 14-6-110; or, in the absence of any of the above, the state.

(54) "Youth" is defined in section 19-1-103.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 558, § 2, effective October 1; (20) repealed, (HB 21-1315), ch. 461, p. 3118, § 29, effective October 1. **L. 2022:** (34) amended, (HB 22-1256), ch. 451, p. 3229, § 29, effective August 10. **L. 2023:** (8), (25), and (44) repealed, (HB 23-1012), ch. 205, p. 1043, § 1, effective August 7.

Editor's note: This section is similar to former § 19-2-103 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021.

19-2.5-103. Jurisdiction. (1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings:

(a) Concerning any juvenile ten years of age or older who has violated:

(I) Any federal or state law, except nonfelony state traffic, game and fish, and parks and recreation laws or rules; the offense specified in section 18-13-122, concerning the illegal possession or consumption of ethyl alcohol or marijuana by an underage person or illegal possession of marijuana paraphernalia by an underage person; the offenses specified in section 18-18-406 (5)(b)(I) and (5)(b)(II), concerning marijuana and marijuana concentrate; the offenses specified in section 18-18-434, concerning natural medicine and natural medicine product; and the civil infraction in section 18-7-109 (3), concerning exchange of a private image by a juvenile;

(II) Any county or municipal ordinance except traffic ordinances, the penalty for which may be a jail sentence of more than ten days; or

(III) Any lawful order of the court made pursuant to this title 19;

(b) Concerning a juvenile to whom section 19-2.5-802 applies; except that, after filing charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to section 19-2.5-801. Upon such filing or indictment in the district court, the juvenile court no longer has jurisdiction over proceedings concerning such charges.

(2) The juvenile court has limited jurisdiction in matters to which section 19-2.5-801 applies.

(3) The fact that a juvenile has been prosecuted or convicted in the county court for a nonfelony violation pursuant to title 42 is not a bar to a subsequent or parallel proceeding

pursuant to this title 19 for delinquent acts arising out of the same criminal episode; nor are proceedings pursuant to this title 19 a bar to a subsequent or parallel prosecution in the county court for a nonfelony violation pursuant to title 42 for the same delinquent acts arising from the same criminal episode.

(4) Notwithstanding any other provision of this section to the contrary, the juvenile court may exercise jurisdiction over a juvenile who is under sixteen years of age and who has violated a traffic law or ordinance if the juvenile's case is transferred to the juvenile court from the county court. Such a transfer is subject to approval by the juvenile court.

(5) Notwithstanding any other provision of this section to the contrary, the juvenile court and the county court have concurrent jurisdiction over a juvenile who is under eighteen years of age and who is charged with a violation of section 18-13-122, 18-18-406 (5)(b)(I) and (5)(b)(II), 18-18-428, 18-18-429, 18-18-430, 18-18-434, or 42-4-1301; except that, if the juvenile court accepts jurisdiction over such a juvenile, the county court jurisdiction terminates.

(6) The juvenile court may retain jurisdiction over a juvenile until all orders have been fully complied with by such person, or any pending cases have been completed, or the statute of limitations applicable to any offense that may be charged has run, regardless of whether such person has attained the age of eighteen years, and regardless of the age of such person.

(7) This section does not confer any jurisdiction upon the court over a person for any offense committed after the person attains the age of eighteen years.

(8) Notwithstanding any other provision of this section to the contrary, the juvenile court may exercise jurisdiction over a juvenile to determine the legal custody of a juvenile or to appoint a guardian of the person or legal custodian of any child who comes within the juvenile court's jurisdiction pursuant to section 19-1-104.

(9) If a juvenile is charged with a civil infraction and is not charged with an additional offense that would constitute a criminal offense if charged against an adult, the county court has jurisdiction over the civil infraction.

Source: L. 2021: (1)(a)(I) and (5) amended, (HB 21-1090), ch. 157, p. 901, § 5, effective May 20; entire article added with relocations, (SB 21-059), ch. 136, p. 564, § 2, effective October 1; (9) added, (SB 21-271), ch. 462, p. 3220, § 388, effective March 1, 2022. **L. 2023:** (1)(a)(I) and (5) amended, (SB 23-290), ch. 249, p. 1420, § 36, effective July 1.

Editor's note: (1) This section is similar to former § 19-2-104 as it existed prior to 2021.

(2) Subsections (1)(a)(I) and (5) were numbered as 19-2-104 (1)(a)(I) and (5) in HB 21-1090 (see L. 2021, p. 901). Those provisions were harmonized with subsections (1)(a)(I) and (5) of this section as they appear in SB 21-059.

19-2.5-104. Venue. (1) (a) Proceedings in cases brought pursuant to this article 2.5 must be commenced in the county in which the alleged violation of the law, ordinance, or court order took place; except that the court may order a change of venue based upon written findings that a change of venue is necessary to ensure that the juvenile receives a fair trial, in which case venue must be transferred to an appropriate jurisdiction prior to the findings of fact. When the court in which the petition was filed is in a county other than where the juvenile resides, such court may transfer venue to the court of the county of the juvenile's residence for the purposes of

supervision after sentencing and entry of any order for payment of restitution. A transfer of venue may not be rejected for any reason except where venue would be improper.

(b) For purposes of determining proper venue, a juvenile who is placed in the legal custody of a county department of human or social services is deemed for the entire period of placement to reside in the county in which the juvenile's legal custodian is located, even if the juvenile is physically residing in a residential facility located in another county. If a juvenile is placed in the legal custody of a county department of human or social services, the court shall not transfer venue during the period of placement to any county other than the county in which the juvenile's legal custodian is located.

(2) In determining proper venue, section 18-1-202 applies.

(3) A court transferring venue pursuant to this section shall transmit all documents and legal social records, or certified copies of such documents, to the receiving court. The receiving court shall then proceed with the case as if the petition had been originally filed or the adjudication had been originally made in such court.

(4) Upon transfer of venue, the receiving court shall set a date not more than thirty-five days following the date upon which the change of venue is ordered for the juvenile and the juvenile's parent or guardian to appear.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 565, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-105 as it existed prior to 2021.

19-2.5-105. Representation of petitioner. In all matters pursuant to this article 2.5, the district attorney shall represent the petitioner.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 566, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-106 as it existed prior to 2021.

19-2.5-106. Victim's right to attend dispositional, review, and restitution proceedings. The victim of any delinquent act, or a relative of the victim, if the victim has died, has the right to attend all dispositional, review, and restitution proceedings resulting from the adjudication of such act. The victim or the victim's relative has the right to appear at the proceedings personally or with counsel and to adequately and reasonably express the victim's views concerning the act, the juvenile, the need for restitution, and the type of dispositional orders that the court should issue. When issuing such orders, the court shall consider the statements made by the victim, or the victim's relative, and shall make a finding, on the record, when appropriate, as to whether the juvenile would pose a threat to public safety if granted probation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 566, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-112 as it existed prior to 2021.

19-2.5-107. Parental accountability - legislative intent. (1) (a) The parent, guardian, or legal custodian of any juvenile subject to proceedings pursuant to this article 2.5 is required to attend all proceedings that may be brought pursuant to this article 2.5 concerning the juvenile. The court may impose contempt sanctions against the parent, guardian, or legal custodian for failure, without good cause, to attend any proceeding concerning the juvenile; except that, if the juvenile's legal custodian is a county department of human or social services or the state department of human services, the legal custodian need not attend any proceeding at which the juvenile's guardian ad litem is present.

(b) For any juvenile adjudicated pursuant to this article 2.5, the court may specify its expectations for the juvenile's parent, guardian, or legal custodian, so long as the parent, guardian, or legal custodian is a party to the delinquency proceedings.

(2) (a) The general assembly determines that families play a significant role in the cause and cure of delinquent behavior of children. It is therefore the intent of the general assembly that parents cooperate and participate significantly in the assessment and treatment planning for their children.

(b) Any treatment plan developed pursuant to this article 2.5 may include requirements to be imposed on the juvenile's parent, so long as the parent is a party to the delinquency proceedings. These requirements may include, but are not limited to, the following:

(I) Maximum parent involvement in the sentencing orders;

(II) Participation by the parent in parental responsibility training;

(III) Cooperation by the parent in treatment plans for the juvenile;

(IV) Performance of public service by the parent;

(V) Cost of care reimbursement by the parent;

(VI) Supervision of the juvenile; and

(VII) Any other provisions the court deems to be in the best interests of the juvenile, the parent's other children, or the community.

(c) Any parent who is a party to the delinquency proceedings and who fails to comply with any requirements imposed on the parent in a treatment plan may be subject to contempt sanctions.

(d) The court has discretion to exempt the parent from participation in the juvenile's treatment.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 566, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-113 as it existed prior to 2021.

19-2.5-108. Effect of proceedings - definition. (1) An adjudication or proceeding pursuant to this article 2.5 is not equivalent to an adult conviction of a criminal offense and must not impose any civil disability upon a juvenile or disqualify or prejudice the juvenile from holding any position under the state personnel system or submitting any governmental or military service application or receiving any governmental or military service appointment or from holding public office.

(2) (a) An employer, whether a public entity or private individual or entity, shall not ask an applicant for employment of any age to disclose information related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the applicant was subject to the process and jurisdiction of the juvenile court and an applicant of any age is not required to disclose such information in response to any employer inquiry.

(b) Nothing in this section limits public access to information as set forth in section 19-1-304 (1)(b.5) or (5).

(c) The provisions of this subsection (2) do not apply to the screening of applicants who have direct contact with vulnerable persons pursuant to section 27-90-111 or the screening of applicants required by licensed child care centers pursuant to section 26-6-905 or 26.5-5-309.

(d) The provisions of this subsection (2) do not apply to any law enforcement agency of the state or to any political subdivision.

(e) As used in this subsection (2), a "condition of employment" means hiring, promotion, termination, participating in an apprenticeship training program, or a training program that leads to employment.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1. **L. 2022:** Entire section amended, (HB 22-1383), ch. 365, p. 2604, § 3, effective August 10.

Editor's note: This section is similar to former § 19-2-111 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 22-1383, see section 1 of chapter 365, Session Laws of San Andreas 2022.

19-2.5-109. Saving clause. The repeal of article 2 of this title 19 and the enactment of this article 2.5, effective October 1, 2021, do not affect the validity of any actions or proceedings initiated or in existence prior to such effective date and brought pursuant to the legislative provisions in place prior to such effective date.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1; entire section amended, (SB 21-266), ch. 423, p. 2800, § 15, effective October 1.

19-2.5-110. Outstanding balances owed by juveniles - report - repeal. (1) On and after October 1, 2021, the balance of any court-assessed or court-ordered costs imposed pursuant to section 19-2.5-605 (2)(b), 19-2.5-1101 (4), 19-2.5-1103 (1)(l) or (6),19-2.5-1108 (2)(a)(VIII) or (2)(a)(IX), 19-2.5-1119 (1), or 19-2.5-1120, other than payments required pursuant to Title IV of the federal "Social Security Act", against a juvenile, the parent or guardian of a juvenile, or other person who is liable for the support of a juvenile who was adjudged a ward of the juvenile court are unenforceable and not collectable.

(2) (a) Within six months after the effective date of section 19-2-115, as enacted by House Bill 21-1315, the court shall vacate the portion of a court order imposing the costs described in subsection (1) of this section.

(b) If the judicial department has referred the outstanding balance of the costs to a private collection agency for collection, the department shall inform the agency that the balance has been vacated and the balance is not collectable.

(c) On or before July 1, 2022, the state court administrator shall report to the house of representatives judiciary committee and the senate judiciary committee, or their successor committees, the number of orders vacated or partially vacated pursuant to this section, or section 19-2-115 prior to its repeal in 2021, in each judicial district and the amount of the balances vacated in each judicial district.

(3) This section is repealed, effective June 30, 2025.

Source: L. 2021: Entire section added, (HB 21-1315), ch. 461, p. 3119, § 31, effective October 1.

Cross references: (1) For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

PART 2

INVESTIGATIONS AND LAW ENFORCEMENT

19-2.5-201. Preliminary investigation. (1) Whenever it appears to a law enforcement officer or any other person that a juvenile is or appears to be within the court's jurisdiction, as provided in section 19-2.5-103, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the district attorney, who shall determine whether the interests of the juvenile or of the community require further action.

(2) Upon the district attorney's request, the matter may be referred to any agency for an investigation and recommendation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-510 as it existed prior to 2021.

19-2.5-202. Consent to search. In determining the voluntariness of a juvenile's consent to a search or seizure, the court shall consider the totality of the circumstances.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-506 as it existed prior to 2021.

19-2.5-203. Statements - definitions. (1) A statement or admission of a juvenile made as a result of the custodial interrogation of the juvenile by a law enforcement official concerning delinquent acts alleged to have been committed by the juvenile are not admissible in evidence

against the juvenile unless a parent, guardian, or legal or physical custodian of the juvenile was present at such interrogation and the juvenile and the juvenile's parent, guardian, or legal or physical custodian were advised of the juvenile's right to remain silent and that any statements made may be used against the juvenile in a court of law, of the juvenile's right to the presence of an attorney during such interrogation, and of the juvenile's right to have counsel appointed if the juvenile so requests at the time of the interrogation; except that, if a public defender or counsel representing the juvenile is present at such interrogation, such statements or admissions may be admissible in evidence even though the juvenile's parent, guardian, or legal or physical custodian was not present.

(2) (a) Notwithstanding subsection (1) of this section, statements or admissions of a juvenile may be admissible in evidence, notwithstanding the absence of a parent, guardian, or legal or physical custodian, if the court finds that, under the totality of the circumstances, the juvenile made a knowing, intelligent, and voluntary waiver of rights and:

(I) The juvenile is eighteen years of age or older at the time of the interrogation or the juvenile misrepresents his or her age as being eighteen years of age or older and the law enforcement official acts in good-faith reliance on such misrepresentation in conducting the interrogation;

(II) The juvenile is emancipated from the parent, guardian, or legal or physical custodian; or

(III) The juvenile is a runaway from a state other than San Andreas and is of sufficient age and understanding.

(b) For the purposes of this subsection (2), "emancipated juvenile" means a juvenile over fifteen years of age and under eighteen years of age who has, with the real or apparent assent of the juvenile's parents, demonstrated independence from the juvenile's parents in matters of care, custody, and earnings. The term may include, but is not limited to, any such juvenile who has the sole responsibility for the juvenile's own support, who is married, or who is in the military.

(3) Notwithstanding subsection (1) of this section, statements or admissions of a juvenile are not inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the juvenile was accompanied by a responsible adult who was a custodian of the juvenile or assuming the role of a parent at the time.

(4) For the purposes of this section, "physical custodian" is defined in section 19-2.5-102.

(5) Notwithstanding subsection (1) of this section, the juvenile and the juvenile's parent, guardian, or legal or physical custodian may expressly waive the requirement that the parent, guardian, or legal or physical custodian be present during the juvenile's interrogation. This express waiver must be in writing and must be obtained only after full advisement of the juvenile and the juvenile's parent, guardian, or legal or physical custodian of the juvenile's rights prior to the taking of the custodial statement by a law enforcement official. If said requirement is expressly waived, statements or admissions of the juvenile are not inadmissible in evidence by reason of the absence of the juvenile's parent, guardian, or legal or physical custodian during interrogation. Notwithstanding the requirements of this subsection (5), a county department of human or social services and the state department of human services, as legal or physical custodian, may not waive said requirement.

(6) Notwithstanding subsection (1) of this section, statements or admissions of a juvenile are not inadmissible into evidence by reason of the absence of a parent, guardian, or legal or

physical custodian, if the juvenile makes any deliberate misrepresentations affecting the applicability or requirements of this section and a law enforcement official, acting in good faith and in reasonable reliance on such deliberate misrepresentation, conducts a custodial interrogation of the juvenile that does not comply with the requirements of subsection (1) of this section.

(7) (a) Notwithstanding any provisions of this section to the contrary, if the juvenile asserts that statements made during the custodial interrogation are inadmissible because a responsible adult had an interest adverse to the juvenile, the prosecution, as part of its burden of proof at a hearing on a motion to suppress the statements, must show by a preponderance of the evidence that the person interrogating the juvenile reasonably believed that the responsible adult did not have any interests adverse to those of the juvenile and that the responsible adult was able to provide protective counseling to the juvenile concerning the juvenile's rights during the interrogation.

(b) For purposes of this subsection (7):

(I) "Protective counseling" means an ongoing opportunity to offer guidance and advice concerning the juvenile's right to remain silent and to obtain retained or appointed counsel associated with the custodial interrogation; and

(II) "Responsible adult" means a parent, guardian, legal or physical custodian, or other responsible adult who was a custodian of the juvenile or who assumed the role of a parent at the time of the interrogation.

(8) (a) A statement or admission by a juvenile made as a result of the juvenile's custodial interrogation by a law enforcement official or agent is presumptively inadmissible against the juvenile at trial if the law enforcement official or agent knowingly communicated any untruthful information or belief to obtain the statement or admission, unless the prosecution establishes at an evidentiary hearing prior to trial, by a preponderance of the evidence and based on the totality of the circumstances, that the statement or admission was made voluntarily despite the untruthful information or belief used to obtain the statement or admission or that the law enforcement official in good faith reasonably believed the information or belief was true at the time it was used. In assessing the totality of the circumstances, the court shall consider all evidence presented concerning the juvenile's vulnerability to any untruthful information or belief used during the custodial interrogation.

(b) A law enforcement official or agent shall electronically record all juvenile custodial interrogations pursuant to section 16-3-601 without regard to the nature of the offense that the law enforcement official or agent reasonably believes is being investigated.

(c) Law enforcement agencies are encouraged to adopt and follow national model policies that are included in P.O.S.T. rules concerning law-enforcement-conducted interrogations involving a juvenile.

(d) As used in this subsection (8):

(I) "Agent" means a person who acts with the motive of assisting law enforcement efforts to obtain a confession, as shown by the totality of the circumstances.

(II) "Untruthful information or belief" means any untruthful information or belief knowingly used or communicated to a juvenile who is the subject of a custodial interrogation. "Untruthful information or belief" may include but is not limited to statements regarding evidence or unauthorized statements regarding potential leniency by a law enforcement official, prosecutor, judge, juror, or any other juvenile officer.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 567, § 2, effective October 1. **L. 2023:** (8) added, (HB 23-1042), ch. 221, p. 1146, § 1, effective August 7.

Editor's note: This section is similar to former § 19-2-511 as it existed prior to 2021.

19-2.5-204. Issuance of a lawful warrant taking a juvenile into custody. (1) A lawful warrant taking a juvenile into custody may be issued pursuant to this section by any judge of a court of record or by a juvenile magistrate upon receipt of an affidavit relating facts sufficient to establish probable cause to believe that a delinquent act has been committed and probable cause to believe that a particular juvenile committed that act. Upon receipt of such affidavit, the judge or magistrate shall issue a lawful warrant commanding any peace officer to take the juvenile named in the affidavit into custody and to take the juvenile without unnecessary delay before the nearest judge of the juvenile court or magistrate pursuant to section 19-2.5-305 (4)(e)(I).

(2) Upon filing of a petition in the juvenile court, the district attorney may request a warrant to issue that authorizes the taking of a juvenile into temporary custody. If a warrant is requested, the petition must be accompanied by a verified affidavit relating facts sufficient to establish probable cause that the juvenile has committed the delinquent act set forth in the petition.

(3) A warrant for the arrest of a juvenile for violation of the conditions of probation or of a bond may be issued by any judge of a court of record or juvenile magistrate upon the report of a juvenile probation officer or upon the verified complaint of any person, establishing to the satisfaction of the judge or juvenile magistrate probable cause to believe that a condition of probation or of a bond has been violated and that the arrest of the juvenile is reasonably necessary. The warrant may be executed by any juvenile probation officer or by a peace officer authorized to execute warrants in the county in which the juvenile is found. If the warrant is for a juvenile found in contempt of court in a truancy proceeding, the court shall follow the procedures set forth in section 22-33-108 (7).

Source: L. 2021: (3) amended, (SB 21-071), ch. 463, p. 3333, § 1, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 569, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 19-2-503 as it existed prior to 2021.

(2) Subsection (3) was numbered as 19-2-503 (3) in SB 21-071 (see L. 2021, p. 3333). That provision was harmonized with subsection (3) of this section as it appears in SB 21-059.

19-2.5-205. Search warrants - issuance - grounds. (1) A search warrant authorized by this section may be issued by any judge of a court of record or by a juvenile magistrate.

(2) A search warrant may be issued pursuant to this section to search for and seize any property:

(a) That is stolen or embezzled; or

(b) That is designed or intended for use as a means of committing a delinquent act; or

(c) That is or has been used as a means of committing a delinquent act; or

(d) The possession of which is illegal; or

(e) That would be material evidence in a subsequent criminal prosecution or delinquency adjudication in this state or in another state; or

(f) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or

(g) That is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order or to public health.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 570, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-504 as it existed prior to 2021.

19-2.5-206. Search warrants - application. (1) A search warrant shall issue only on affidavit sworn to or affirmed before the judge or juvenile magistrate and relating facts sufficient to:

(a) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(b) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(c) Establish the grounds for issuance of the warrant or probable cause to believe that such grounds exist; and

(d) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant must be attached to the search warrant filed with the court.

(3) The supreme court may establish rules for procedures governing application for and issuance of search warrants consistent with this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 570, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-505 as it existed prior to 2021.

19-2.5-207. Fingerprinting - juvenile under arrest - ordered by court - definition. (1) For purposes of this section, "juvenile" means any juvenile who is charged with committing, summoned, or held in detention for committing a delinquent act that constitutes a felony, a class 1 misdemeanor, or a misdemeanor pursuant to section 42-4-1301 or a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3 (1), as if committed by an adult.

(2) (a) Any juvenile detained pursuant to this article 2.5 must be fingerprinted by the entity authorized by the court or the local law enforcement agency to obtain fingerprints, except for juvenile detention centers and alternative service programs, otherwise known as "SB 91-94

programs", described in section 19-2.5-606. Such entity or local agency shall forward a set of the juvenile's fingerprints to the San Andreas bureau of investigation in the form and manner prescribed by the bureau.

(b) Any fingerprints required by this section to be forwarded to the San Andreas bureau of investigation must be forwarded within twenty-four hours after completion of the fingerprinting, excluding Saturdays, Sundays, and legal holidays.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 571, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-503.5 (1), (2), and (4) as it existed prior to 2021.

19-2.5-208. Petty tickets - summons - contracts - data. (1) (a) If a law enforcement officer contacts a juvenile ten years of age or older for a delinquent act that would be a petty offense if committed by an adult or a municipal ordinance violation, the officer may issue the juvenile a petty ticket that requires the juvenile to go through an assessment process or procedure as designated by the municipal, county, or district court, including assessment by a law enforcement officer, assessment officer, or a screening team, referred to in this section as the "screening entity". When a petty ticket is issued, an assessment officer or screening team officer shall offer a petty offense contract to the juvenile and the juvenile's parent or legal guardian if:

(I) The juvenile has no prior adjudication or non-traffic conviction in a municipal, county, juvenile, or district court;

(II) The alleged offense would be a class 1, class 2, or unclassified petty offense;

(III) The juvenile admits to the offense; and

(IV) The petty offense contract is in the best interests of the juvenile.

(b) If the juvenile is otherwise eligible for a petty offense contract pursuant to this subsection (1), but the screening entity finds that the issuance of a petty offense contract is not in the best interests of the juvenile, the screening entity shall state the reasons in writing. The screening entity shall provide a copy of the written statement to the juvenile and shall maintain a copy of the written statement. If there is no agreement resulting in a signed contract pursuant to this section, the prosecuting attorney may file a petition of delinquency.

(2) Every contract entered into pursuant to this section must be in writing and contain the following:

(a) Consent to the contract terms by the juvenile and the juvenile's parent or legal guardian;

(b) An agreement to pay restitution, when applicable;

(c) An agreement to perform useful community service, when applicable;

(d) An agreement to attend school unless the juvenile is in a certified home study program or is otherwise legally excused from such attendance;

(e) A requirement of restorative justice practices, when appropriate;

(f) A requirement that the juvenile not commit a delinquent act during the term of the contract; and

(g) Any other conditions determined appropriate by the screening entity.

(3) The term of the contract may not exceed ninety-one days; except that the contract may be extended for an additional thirty-five days for good cause.

(4) Upon the successful completion of the contract to the satisfaction of the screening entity, the juvenile is released from any further obligation, and the prosecuting attorney shall not file a petition in delinquency for the admitted act. The completed contract remains confidential except to the ticketing agency, the screening and supervisory entity, the juvenile, and the juvenile's parent or legal guardian.

(5) (a) If a juvenile fails to comply with a written condition of the contract within a specific time designated in the contract, the prosecuting attorney may file charges with the court. The contract and any statements contained in the contract or made by the juvenile to the screening entity administering the contract must not be used against the juvenile.

(b) If there is no agreement resulting in a signed contract, any statement made by the juvenile to the screening entity administering the assessment must not be used against the juvenile.

(c) Notwithstanding subsections (5)(a) and (5)(b) of this section, statements or admissions of a juvenile contained in the contract or made by the juvenile to the screening entity are admissible into evidence, if the juvenile makes any deliberate misrepresentations affecting the applicability or requirements of this section.

(6) (a) Each law enforcement agency that issues petty offense tickets pursuant to this section shall maintain annual data on the number of tickets issued and the age, ethnicity, gender, and final disposition for each ticket.

(b) The data collected pursuant to subsection (6)(a) of this section is public and must be made available upon request.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 571, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-302.5 as it existed prior to 2021.

19-2.5-209. Taking juvenile into custody. (1) A juvenile may be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe that the juvenile has committed a delinquent act.

(2) A juvenile may be taken into temporary custody by a law enforcement officer executing a lawful warrant taking a juvenile into custody issued pursuant to section 19-2.5-204.

(3) A juvenile probation officer may take a juvenile into temporary custody:

(a) Under the circumstances stated in subsection (1) of this section; or

(b) If the juvenile has violated the conditions of probation and is under the continuing jurisdiction of the juvenile court.

(4) A juvenile may be detained temporarily by an adult other than a law enforcement officer if the juvenile has committed or is committing a delinquent act in the presence of such adult. Any person detaining a juvenile shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said juvenile.

(5) The taking of a juvenile into temporary custody pursuant to this section is not an arrest, nor does it constitute a police record.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 573, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-502 as it existed prior to 2021.

PART 3

DETENTION

19-2.5-301. Legislative declaration. The general assembly declares that the placement of children and juveniles in a detention facility exacts a negative impact on the mental and physical well-being of the child or juvenile, and such detention may make it more likely that the child or juvenile will reoffend. Children and juveniles who are detained are more likely to penetrate deeper into the juvenile justice system than similar children or juveniles who are not detained, and community-based alternatives to detention should be based on the principle of using the least-restrictive setting possible and returning a child or juvenile to his or her home, family, or other responsible adult whenever possible consistent with public safety. It is the intent of the general assembly in adopting section 19-2.5-304 and amending sections 19-2.5-303, 19-2.5-305, and 19-2.5-1404 to limit the use of detention to only those children and juveniles who pose a substantial risk of serious harm to others or that are a flight risk from prosecution.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 573, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-211.5 as it existed prior to 2021.

19-2.5-302. Local juvenile services planning committee - creation - duties - identification and notification of dually identified crossover youth. (1) If all of the boards of commissioners of each county or the city council of each city and county in a judicial district agree, there may be created in the judicial district a local juvenile services planning committee that is appointed by the chief judge of the judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court, from persons recommended by the boards of commissioners of each county or the city council of each city and county within the judicial district. The committee, if practicable, must include, but need not be limited to, a representative from a county department of human or social services, a local school district, a local law enforcement agency, a local probation department, the division of youth services, private citizens, the district attorney's office, the public defender's office, a community mental health representative, and a representative of the concerns of municipalities. The committee, if created, shall meet as necessary to develop a plan for the allocation of resources for local juvenile services within the judicial district for the fiscal year. The committee is strongly encouraged to consider programs with restorative justice components when developing the plan. The state department of human services shall approve the plan. A local juvenile services planning committee may be consolidated with other local advisory boards pursuant to section 24-1.7-103.

(1.5) If all of the boards of commissioners for Douglas, Elbert, and Lincoln counties agree, on and after November 1, 2024, there is created in the twenty-third judicial district a local

juvenile services planning committee that is appointed initially by the administrative judge of the twenty-third judicial district from persons recommended by the boards of commissioners of such counties. After January 7, 2025, the chief judge of the twenty-third judicial district shall appoint members of the committee. If practicable, the committee must include the members identified in subsection (1) of this section. The committee has the duties specified in subsection (1) of this section.

(2) The plan must provide for the management of dually identified crossover youth. The plan must contain descriptions and processes to include:

(a) A process for the identification of dually identified crossover youth at the earliest reasonable point of contact;

(b) A method for collaborating and exchanging information with other judicial districts, including with the collaborative management program described in section 24-1.9-102 and consistent with the data-sharing policies of the collaborative management program;

(c) A process for promptly communicating information about the youth's crossover status between the child welfare and juvenile justice systems and to notify each other of the new involvement in the respective system or information that may aid in the identification of dually identified crossover youth. The following parties should be notified of a youth's status as a dually identified crossover youth if applicable: Public defenders, district attorneys, local juvenile services planning committee coordinators, human or social services department representatives, probation representatives, juvenile court representatives, parents, and guardians ad litem.

(d) A process for identifying the appropriate services or placement-based assessment for a dually identified crossover youth;

(e) A process for sharing and gathering information in accordance with applicable laws, rules, and county policy;

(f) A process for the development of a single case management plan and identification of the lead agency for case management purposes and the engagement of dually identified crossover youth and their caregivers;

(g) A process that facilitates the sharing of assessments and case planning information and includes policies around sharing information with other judicial districts;

(h) A process for a multidisciplinary group of professionals to consider decisions that include youth and community safety, placement, provision of needed services, alternatives to detention and commitment, probation, parole, permanency, education stability, and case closure; and

(i) A requirement that dually identified crossover youth placed in a secure detention facility who are deemed eligible for release by the court be placed in the least restrictive setting whenever possible to reduce the disparity between dually identified crossover youth and nondually identified crossover youth in secure detention.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 574, § 2, effective October 1. **L. 2024:** (1.5) added, (HB 24-1212), ch. 8, p. 20, § 2, effective February 27.

Editor's note: This section is similar to former § 19-2-211 as it existed prior to 2021.

19-2.5-303. Duty of officer - screening teams - notification - release or detention. (1) When a juvenile is taken into temporary custody and not released pending charges, the officer

shall notify the screening team for the judicial district in which the juvenile is taken into custody. The screening team shall notify the juvenile's parent, guardian, or legal custodian without unnecessary delay and inform the juvenile's parent, guardian, or legal custodian that, if the juvenile is placed in detention or a temporary holding facility, all parties have a right to a prompt hearing to determine whether the juvenile is to be detained further. Such notification may be made to a person with whom the juvenile is residing if a parent, guardian, or legal custodian cannot be located. If the screening team is unable to make such notification, the notification may be made by any law enforcement officer, juvenile probation officer, detention center counselor, or detention facility staff in whose physical custody the juvenile is placed.

(2) (a) If the law enforcement officer does not release the juvenile to the care of the juvenile's parents, legal guardian, kin, or other responsible adult, the screening team shall administer a validated detention screening instrument developed or adopted pursuant to section 19-2.5-1404. The law enforcement officer, screening team, or juvenile court shall not remove the juvenile from the custody of the parent or legal guardian pursuant to this section unless the screening team or the juvenile court:

(I) (A) First finds that a validated detention screening instrument selected or adopted pursuant to section 19-2.5-1404 has been administered and the juvenile scored as detention-eligible; or

(B) There are grounds to override the results of the detention screening instrument based on the criteria developed in accordance with section 19-2.5-1404; and

(II) Finds that the juvenile poses a substantial risk of serious harm to others or a substantial risk of flight from prosecution and finds that community-based alternatives to detention are insufficient to reasonably mitigate that risk. Flight from prosecution is distinguished from simple failure to appear and must generally be evidenced by a demonstrated record of repeat, recent willful failures to appear at a scheduled court appearance.

(b) The screening team shall administer the detention screening instrument for each juvenile under consideration for detention. The detention screening instrument must be administered by a screener who has completed training to administer the detention screening instrument.

(c) Any information concerning a juvenile that is obtained during the administration of the detention screening instrument must be used solely for the purpose of making a recommendation to the court regarding the continued detention of the juvenile. The information is not subject to subpoena or other court process, for use in any other proceeding, or for any other purpose.

(d) Court records and division of youth services records must include data on detention screening scores and, if the score does not mandate detention, the explanation for the override placing the juvenile in detention.

(e) A juvenile who must be taken from the juvenile's home but who does not require physical restriction must be given temporary care with a grandparent, kin, or other suitable person; in a temporary shelter facility designated by the court; or with the county department of human or social services and must not be placed in detention.

(f) The screening team and the juvenile court shall use the results from the detention screening instrument in making a release determination. The court is encouraged to take into consideration the juvenile's educational progress and ability to achieve credits toward graduation. Release options include allowing a juvenile to return home with no supervision, or

with limited supervision such as a location monitoring device, or a referral to a preadjudication alternative to detention or service program established pursuant to section 19-2.5-606.

(3) (a) The juvenile must be released to the care of the juvenile's parents, kin, or other responsible adult, unless a determination has been made in accordance with subsection (2) of this section that the juvenile's substantial risk of serious harm to others requires that the juvenile be detained. The court may make reasonable orders as conditions of release pursuant to section 19-2.5-305 (5). In addition, the court may provide that any violation of such orders may subject the juvenile to contempt sanctions of the court. The parent, kin, or other person to whom the juvenile is released is required to sign a written promise, on forms supplied by the court, to bring the juvenile to the court at a time set or to be set by the court. Failure, without good cause, to comply with the promise subjects the juvenile's parent or any other person to whom the juvenile is released to contempt sanctions of the court.

(b) Parents or legal guardians of a juvenile released from detention pursuant to this section shall complete the relative information form described in section 19-2.5-1404 (1)(b)(VIII) no later than the next hearing on the matter.

(4) (a) Except as required in subsection (4)(b) of this section, a law enforcement officer shall not detain a juvenile any longer than is reasonably necessary to obtain basic identification information and to contact the juvenile's parents, guardian, or legal custodian.

(b) If the juvenile is not released as required in subsection (3) of this section, the juvenile must be taken directly to the court or to the place of detention, a temporary holding facility, a temporary shelter designated by the court, or a preadjudication service program established pursuant to section 19-2.5-606 without unnecessary delay.

(5) (a) As an alternative to taking a juvenile into temporary custody pursuant to subsections (1), (3), and (4) of this section, a law enforcement officer may, if authorized by the establishment of a policy that permits such service by order of the chief judge of the judicial district or the presiding judge of the Denver juvenile court, which policy is established after consultation between such judge and the district attorney and law enforcement officials in the judicial district, serve a written promise to appear for juvenile proceedings based on any act that would constitute a felony, misdemeanor, or petty offense upon the juvenile and the juvenile's parent, guardian, or legal custodian.

(b) A promise to appear served pursuant to subsection (5)(a) of this section must state any charges against the juvenile and the date, time, and place where the juvenile is required to answer such charges. The promise to appear must also state:

(I) That the juvenile has the right to have the assistance of counsel;

(II) That counsel can be appointed for the juvenile if the juvenile and the juvenile's parent, guardian, or legal custodian lack adequate resources to retain counsel or the juvenile's parent, guardian, or legal custodian refuses to retain counsel for the juvenile;

(III) That, to determine if the juvenile is eligible for court-appointed counsel, or to apply for court-appointed counsel, the juvenile's parent, guardian, or legal custodian is advised to call the office of the state public defender, visit the state public defender's office, or visit the state public defender's internet website;

(IV) That, to avoid delay in obtaining counsel, the juvenile's parent, guardian, or legal custodian is advised to apply for court-appointed counsel at least five days, excluding Saturdays, Sundays, and legal holidays, before the juvenile's promised date of appearance; and

(V) The contact information for the local office of the state public defender, including the office's telephone number and address, and the address of the internet website of the office of the state public defender.

(c) Repealed.

(d) The juvenile shall sign the promise to appear. The promise to appear must be served upon the juvenile's parent, guardian, or legal custodian by personal service or by certified mail, return receipt requested. The date established for the juvenile and the juvenile's parent, guardian, or legal custodian to appear must not be earlier than seven days nor later than thirty-five days after the promise to appear is served upon both the juvenile and the juvenile's parent, guardian, or legal custodian.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 575, § 2, effective October 1. **L. 2022:** (5)(c) repealed, (SB 22-018), ch. 191, p. 1274, § 6, effective July 15. **L. 2024:** (2)(f) amended, (HB 24-1216), ch. 314, p. 2114, § 2, effective August 7.

Editor's note: This section is similar to former § 19-2-507 as it existed prior to 2021.

19-2.5-304. Limitations on detention. (1) Detention is not permitted for the following:

(a) Juveniles who have not committed, or have not been accused of committing, a delinquent act unless otherwise found in contempt of court;

(b) Delinquent and nondelinquent juveniles who have been placed in the legal custody of a county department of human or social services pursuant to a petition in dependency or neglect and are solely awaiting out-of-home placement;

(c) Juveniles who at admission require medical care, are intoxicated, or are under the influence of drugs, to an extent that custody of the juvenile is beyond the scope of the detention facility's medical service capacity;

(d) Juveniles who are solely assessed as suicidal or exhibit behavior placing them at imminent risk of suicide; and

(e) Juveniles who have not committed a delinquent act but present an imminent danger to self or others or appear to be gravely disabled as a result of a mental health disorder or an intellectual and developmental disability.

(2) A juvenile court shall not order a juvenile who is ten years of age and older but less than thirteen years of age to detention unless the juvenile has been arrested for a felony or weapons charge pursuant to section 18-12-102, 18-12-105, 18-12-106, or 18-12-108.5. A preadjudication service program created pursuant to section 19-2.5-606 shall evaluate a juvenile described in this subsection (2). The evaluation may result in the juvenile:

(a) Remaining in the custody of a parent or legal guardian;

(b) Being placed in the temporary legal custody of kin, for purposes of a kinship foster care home or noncertified kinship care placement, as defined in section 19-1-103, or other suitable person under such conditions as the court may impose;

(c) Being placed in a temporary shelter facility; or

(d) Being referred to a local county department of human or social services for assessment for placement.

(3) A juvenile shall not be placed in detention solely:

(a) Due to lack of supervision alternatives, service options, or more appropriate facilities;

(b) Due to the community's inability to provide treatment or services;

(c) Due to a lack of supervision in the home or community;

(d) In order to allow a parent, guardian, or legal custodian to avoid legal responsibility;

(e) Due to a risk of the juvenile's self-harm;

(f) In order to attempt to punish, treat, or rehabilitate the juvenile;

(g) Due to a request by a victim, law enforcement, or the community;

(h) In order to permit more convenient administrative access to the juvenile;

(i) In order to facilitate further interrogation or investigation; or

(j) As a response to technical violations of probation unless the results of a detention screening instrument indicate that the juvenile poses a substantial risk of serious harm to others or if the applicable graduated responses system adopted pursuant to section 19-2.5-1108 allows for such a placement.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 578, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-507.5 as it existed prior to 2021.

19-2.5-305. Detention and shelter - hearing - time limits - findings - review - guardian ad litem appointed - confinement with adult offenders - restrictions. (1) Unless placement is prohibited pursuant to section 19-2.5-304, when a juvenile is placed in a detention facility, in a temporary holding facility, or in a temporary shelter facility designated by the court, the screening team shall promptly notify the court, the district attorney, and the local office of the state public defender. The screening team shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the county, the person with whom the juvenile has been residing and inform such person of the right to a prompt hearing to determine whether the juvenile is to be detained further. The court shall hold the detention hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays. For a juvenile being held in detention on a warrant for violating a valid court order on a status offense, the court shall hold the detention hearing within twenty-four hours, excluding Saturdays, Sundays, and legal holidays.

(2) A juvenile who is detained for committing a delinquent act must be represented at the detention hearing by counsel. If the juvenile has not retained his or her own counsel, the court shall appoint the office of the state public defender or, in the case of a conflict, the office of alternate defense counsel to represent the juvenile. This appointment continues if the court appoints the office of the state public defender or the office of alternate defense counsel pursuant to section 19-2.5-605 (2)(a) unless:

(a) The juvenile retains his or her own counsel; or

(b) The juvenile makes a knowing, intelligent, and voluntary waiver of the right to counsel, as described in section 19-2.5-605 (2)(c).

(2.5) The court shall, at the juvenile's detention hearing, appoint a guardian ad litem for a juvenile detained pursuant to this article 2.5. An appointment made pursuant to this subsection

(2.5) terminates upon the release of the juvenile from detention unless the court also finds a basis for the appointment pursuant to section 19-1-111 (2)(a).

(3) (a) (I) A juvenile taken into custody pursuant to this article 2.5 and placed in a detention or temporary shelter facility or a temporary holding facility is entitled to a hearing within forty-eight hours after such placement, excluding Saturdays, Sundays, and legal holidays, to determine if the juvenile should be detained. The time of the detention hearing must allow defense counsel sufficient time to consult with the juvenile before the detention hearing. This consultation may be performed by secure electronic means if the conditions under which the electronic consultation is held allow the consultation to be confidential. The time in which the hearing must be held may be extended for a reasonable time by order of the court upon good cause shown.

(II) The law enforcement agency that arrested the juvenile shall promptly provide to the court and to defense counsel the affidavit supporting probable cause for the arrest and the arrest report, if the arrest report is available, and the screening team shall promptly provide to the court and to defense counsel results from the detention risk screening prepared pursuant to the juvenile's arrest. Upon completion of the detention hearing, the defense shall return any materials received pursuant to this subsection (3)(a)(II) unless the appointment is continued at the conclusion of the hearing.

(III) The only purposes of a detention hearing are to determine if a juvenile should be detained further and to define conditions under which the juvenile may be released, if release is appropriate. A detention hearing must not be combined with a preliminary hearing or a first advisement. Due to the limited scope of a detention hearing, the representation of a juvenile by appointed counsel at a detention hearing does not, by itself, create a basis for disqualification in the event that such counsel is subsequently appointed to represent another individual whose case is related to the juvenile's case.

(IV) With respect to this section, the court may further detain the juvenile only if the court finds from the information provided at the hearing that:

(A) Probable cause exists to believe that the juvenile committed the delinquent act charged;

(B) On and after thirty-five days after the screening instrument has been developed or adopted pursuant to section 19-2.5-1404, the validated detention screening instrument has been administered and the juvenile scored as detention-eligible; or there are grounds to override the result of the detention screening instrument based on the criteria developed in accordance with section 19-2.5-1404; and

(C) The juvenile poses a substantial risk of serious harm to others or a substantial risk of flight from prosecution and community-based alternatives to detention are insufficient to reasonably mitigate that risk. Flight from prosecution is distinguished from simple failure to appear and must generally be evidenced by a demonstrated record of repeat, recent willful failures to appear at a scheduled court appearance.

(V) A court shall not order further detention for a juvenile who is ten years of age and older but less than thirteen years of age unless the juvenile has been arrested or adjudicated for a felony or weapons charge pursuant to section 18-12-102, 18-12-105, 18-12-106, or 18-12-108.5. The court shall receive any information having probative value regardless of its admissibility under the rules of evidence. In determining whether a juvenile requires detention, the court shall

consider the results of the detention screening instrument. There is a rebuttable presumption that a juvenile poses a substantial risk of serious harm to others if:

(A) The juvenile is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406; or

(B) The juvenile is alleged to have used, or possessed and threatened to use, a firearm during the commission of any felony offense against a person, as such offenses are described in article 3 of title 18; or

(C) The juvenile is alleged to have committed possessing a dangerous or illegal weapon, as described in section 18-12-102; possession of a defaced firearm, as described in section 18-12-103; unlawfully carrying a concealed weapon, as described in section 18-12-105; unlawfully carrying a concealed weapon on school, college, or university grounds, as described in section 18-12-105.5; prohibited use of weapons, as described in section 18-12-106; illegal discharge of a firearm, as described in section 18-12-107.5; or illegal possession of a handgun by a juvenile, as described in section 18-12-108.5.

(VI) Notwithstanding subsection (3)(a)(IV) of this section, there is no presumption pursuant to subsection (3)(a)(V) of this section that a juvenile poses a substantial risk of serious harm to others if the item in the possession of the juvenile is alleged to be a BB gun, a pellet gun, or a gas gun.

(VII) Except as provided in subsection (3)(a)(IX) of this section, at the conclusion of the hearing, the court shall enter one of the following orders, while ensuring efforts are made to keep the juvenile with a parent, guardian, or legal custodian:

(A) That the juvenile be released to the custody of a parent, guardian, legal custodian, kin, or other suitable person without the posting of bond;

(B) That the juvenile be placed in a temporary shelter facility;

(C) That an unsecured personal recognizance bond be set and that the juvenile be released accordingly;

(D) That no bail be set and that the juvenile be detained without bail upon a finding that the juvenile poses a substantial risk of serious harm to others. A juvenile who is detained without bail must be tried on the charges in the petition filed pursuant to subsection (3)(a)(IX) of this section within the time limits set forth in section 19-2.5-904, unless the juvenile is deemed to have waived the time limit for an adjudicatory trial pursuant to section 19-2.5-610 (4).

(E) That no bail be set and that, upon the court's finding that the juvenile poses a substantial risk of serious harm to others, the juvenile be placed in a preadjudication service program established pursuant to section 19-2.5-606. This subsection (3)(a)(VII)(E) does not apply to any case in which the juvenile's alleged offense is one of the offenses described in subsection (3)(a)(V) of this section.

(VIII) A preadjudication service program created pursuant to section 19-2.5-606 shall evaluate a juvenile described in subsection (8) of this section. The evaluation may result in the juvenile:

(A) Remaining in the custody of a parent, guardian, or legal custodian; or

(B) Being placed in the temporary legal custody of kin, for purposes of a kinship foster care home or noncertified kinship care placement, as defined in section 19-1-103, or other suitable person under such conditions as the court may impose; or

(C) Being placed in a temporary shelter facility; or

(D) Being referred to a local county department of human or social services for assessment for placement.

(IX) When the court orders further detention of the juvenile or placement of the juvenile in a preadjudication service program after a detention hearing, the district attorney shall file a petition alleging the juvenile to be a delinquent within seventy-two hours after the detention hearing, excluding Saturdays, Sundays, and legal holidays. The juvenile must be held or must participate in a preadjudication service program pending a hearing on the petition. Upon a showing of good cause, the court may extend such time for the filing of charges.

(X) Following the detention hearing, if the court orders that the juvenile be released and, as a condition of such release, requires the juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of such requirement.

(XI) If the court orders further detention of a juvenile pursuant to this section, the order must contain specific findings as follows:

(A) Whether placement of the juvenile out of the juvenile's home would be in the juvenile's and the community's best interests;

(B) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home, whether it is reasonable that such efforts not be provided due to the existence of an emergency situation that requires the immediate removal of the juvenile from the home, or whether such efforts not be required due to the circumstances described in section 19-1-115 (7); and

(C) Whether procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's placement in a community placement, or any determination affecting family time of the juvenile.

(b) (I) **If it appears that a juvenile being held in detention or temporary shelter may have an intellectual and developmental disability, as described in article 10.5 of title 27, the court or detention personnel shall refer the juvenile to the nearest case management agency, as defined in section 25.5-6-1702, for an eligibility determination. If it appears that a juvenile being held in a detention or temporary shelter facility pursuant to this article 2.5 may have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact a mental health professional to do a mental health hospital placement prescreening on the juvenile. The court must be notified of the contact and may take appropriate action. If a mental health hospital placement prescreening is requested, it must be conducted in an appropriate place accessible to the juvenile and the mental health professional. A request for a mental health hospital placement prescreening must not extend the time within which a detention hearing must be held pursuant to this section. If a detention hearing has been set but has not yet occurred, the mental health hospital placement prescreening must be conducted prior to the hearing; except that the prescreening must not extend the time within which a detention hearing must be held.**

(II) If a juvenile has been ordered detained pending an adjudication, disposition, or other court hearing, and the juvenile subsequently appears to have a mental health disorder, as described in section 27-65-106, the intake personnel or other appropriate personnel shall contact the court with a recommendation for a mental health hospital placement prescreening. A mental health hospital placement prescreening must be conducted at any appropriate place accessible to the juvenile and the mental health

professional within twenty-four hours after the request, excluding Saturdays, Sundays, and legal holidays.

(III) When the mental health professional finds, as a result of the prescreening, that the juvenile may have a mental health disorder, the mental health professional shall recommend to the court that the juvenile be evaluated pursuant to section 27-65-106.

(IV) Nothing in this subsection (3)(b) precludes the use of procedures for an emergency mental health hold pursuant to section 27-65-106 (1)(a).

(c) (I) A juvenile taken to a detention or temporary shelter facility or a temporary holding facility pursuant to section 19-2.5-209 as the result of an allegedly delinquent act that constitutes any of the offenses described in subsection (3)(a)(V) of this section must not be released from such facility if a law enforcement agency has requested that a detention hearing be held to determine whether the juvenile's substantial risk of serious harm to others requires that the juvenile be detained. A juvenile must not be released from detention except after a hearing, reasonable advance notice of which has been given to the district attorney, alleging new circumstances concerning the juvenile's further detention.

(II) Following a detention hearing held in accordance with subsection (3)(c)(I) of this section, a juvenile who is to be tried as an adult for criminal proceedings pursuant to a direct filing or transfer must not be held at any adult jail or pretrial facility unless the district court finds, after a hearing held pursuant to subsection (3)(c)(IV), (3)(c)(V), or (3)(c)(VI) of this section, that an adult jail is the appropriate place of confinement for the juvenile.

(III) In determining whether an adult jail is the appropriate place of confinement for the juvenile, the district court shall consider the following factors:

(A) The juvenile's age;

(B) Whether, in order to provide physical separation from adults, the juvenile would be deprived of contact with other people for a significant portion of the day or would not have access to recreational facilities or age-appropriate educational opportunities;

(C) The juvenile's current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma, and the risk to the juvenile caused by placement in an adult jail, which risk may be evidenced by mental health or psychological assessments or screenings made available to the district attorney and to defense counsel;

(D) Whether detention in a juvenile facility will adequately serve the need for community protection pending the outcome of the criminal proceedings;

(E) Whether detention in a juvenile facility will negatively impact the functioning of the juvenile facility by compromising the goals of detention to maintain a safe, positive, and secure environment for all juveniles within the facility;

(F) The relative ability of the available adult and juvenile detention facilities to meet the juvenile's needs, including the juvenile's need for mental health and educational services;

(G) Whether the juvenile presents an imminent risk of serious harm to others within a juvenile facility;

(H) The juvenile's physical maturity; and

(I) Any other relevant factors.

(IV) After charges are filed directly in district court against a juvenile pursuant to section 19-2.5-801 or a juvenile is transferred to district court pursuant to section 19-2.5-802, the division of youth services may petition the district court to transport the juvenile to an adult jail. The district court shall hold a hearing on the place of pretrial detention for the juvenile as soon as practicable, but no later than twenty-one days after the receipt of the division's petition to transport. The district attorney, sheriff, or juvenile may file a response to the petition and participate in the hearing. The juvenile remains in a juvenile detention facility pending hearing and decision by the district court.

(V) If a juvenile is placed in the division of youth services and is being tried in district court, the division of youth services may petition the court for an immediate hearing to terminate juvenile detention placement if the juvenile's placement in a juvenile detention facility presents an imminent danger to the other juveniles or to staff at the detention facility. In making its determination, the court shall review the factors set forth in subsection (3)(c)(III) of this section.

(VI) If, after the initial hearing, the district court determines that an adult jail is the appropriate place of confinement for the juvenile, the juvenile may petition the court for a review hearing. The juvenile may petition for a review hearing within thirty days after the initial confinement decision or within thirty days after any subsequent review hearing. Upon receipt of the petition, the court may set the matter for a hearing if the juvenile has alleged facts or circumstances that, if true, would warrant reconsideration of the juvenile's placement in an adult jail based upon the factors set forth in subsection (3)(c)(III) of this section and the factors previously relied upon by the court. The court shall, upon petition of the juvenile, hold a hearing to review whether continuing to permit the juvenile to be held in an adult jail or to have sight or sound restriction serves the interest of justice. The juvenile shall not be held in any adult jail or lockup, or be permitted to have sight or sound contact with adult inmates, for more than one hundred eighty consecutive days, unless the court, in writing, determines there is good cause for an extension or the juvenile expressly waives this limitation.

(VII) If the court must determine that it is in the interest of justice to detain a juvenile pursuant to the factors set forth in subsection (3)(c)(III) of this section, the court shall hold a hearing at least every thirty days, or at least every forty-five days in a rural jurisdiction, to review whether it is still in the interest of justice to continue to detain the juvenile in an adult jail. The review hearings may occur by paper if the juvenile does not petition the court for a review hearing.

(VIII) The maximum amount of time that a juvenile charged as an adult may be detained in an adult jail is one hundred eighty days, unless the court determines, in writing, that there is good cause for an extension, or the juvenile expressly waives the one-hundred-eighty-day limit. If the court holds a good cause hearing to establish the juvenile's continued detention in the adult jail, the court shall proceed with holding thirty- and forty-five-day review hearings as required by subsection (3)(c)(VII) of this section.

(4) (a) A jail shall not receive a juvenile for detention following a detention hearing pursuant to this section unless the juvenile has been ordered by the court to be held for criminal proceedings as an adult pursuant to a transfer or unless the juvenile is to be held for criminal proceedings as an adult pursuant to a direct filing. A juvenile under the age of fourteen and, except upon order of the court, a juvenile fourteen years of age or older, shall

not be detained in a jail, lockup, or other place used for the confinement of adult offenders. The exception for detention in a jail applies only if the juvenile is being held for criminal proceedings as an adult pursuant to a direct filing or transfer.

(b) Whenever a juvenile is held pursuant to a direct filing or transfer in a facility where adults are held, the juvenile must be physically segregated from the adult offenders.

(c) (I) When a juvenile who is to be held for criminal proceedings as an adult pursuant to a direct filing or transfer of charges, as provided in sections 19-2.5-801 and 19-2.5-802, respectively, is received at a jail or other facility for the detention of adult offenders, the official in charge of the jail or facility, or the official's designee, shall, as soon as practicable, contact the person designated pursuant to section 22-32-141, by the school district in which the jail or facility is located to request that the school district provide educational services for the juvenile for the period during which the juvenile is held at the jail or facility. The school district shall provide the educational services in accordance with section 22-32-141. The official, in cooperation with the school district, shall provide an appropriate and safe environment to the extent practicable in which the juvenile may receive educational services.

(II) Notwithstanding subsection (4)(c)(I) of this section, if either the official in charge of the jail or facility or the school district determines that an appropriate and safe environment cannot be provided for a specific juvenile, the official and the school district are exempt from the requirement to provide educational services to the juvenile until such time as an environment that is determined to be appropriate and safe by both the official and the school district can be provided. If the school district will not be providing educational services to a juvenile because of the lack of an appropriate and safe environment, the official in charge of the jail or facility shall notify the juvenile, the juvenile's parent or legal guardian, the juvenile's defense attorney, and the court having jurisdiction over the juvenile's case.

(III) The official in charge of the jail or facility for the detention of adult offenders, or the official's designee, in conjunction with each school district that provides educational services at the jail or facility, shall annually collect nonidentifying data concerning:

(A) The number of juveniles held at the jail or facility who are awaiting criminal proceedings as an adult pursuant to a direct filing or transfer of charges, pursuant to sections 19-2.5-801 and 19-2.5-802, respectively, for the year;

(B) The length of stay of each of the juveniles in the jail or facility;

(C) The number of the juveniles in the jail or facility who received educational services pursuant to this subsection (4)(c);

(D) The number of days on which school districts provided educational services to the juveniles in the jail or facility and the number of hours for which school districts provided the educational services each day;

(E) The number of juveniles in the jail or facility who were exempt from receiving educational services pursuant to section 22-32-141 (2)(c), (2)(e), (2)(f), and (2)(g);

(F) The number of juveniles in the jail or facility who had previously been determined pursuant to section 22-20-108 to be eligible for special education services and had an individualized education program; and

(G) The number of juveniles in the jail or facility who, while receiving educational services at the jail or facility, were determined to be eligible for special education services

pursuant to section 22-20-108 and had subsequently received an individualized education program.

(IV) The official in charge of the jail or facility shall submit the information collected pursuant to subsection (4)(c)(III) of this section to the division of criminal justice in the department of public safety. The division of criminal justice shall make the information available to a member of the public upon request.

(d) The official in charge of a jail or other facility for the detention of adult offenders shall immediately inform the court that has jurisdiction of the juvenile's alleged offense when a juvenile who is or appears to be under eighteen years of age is received at the facility, except for a juvenile ordered by the court to be held for criminal proceedings as an adult.

(e) (I) Any juvenile arrested and detained for an alleged violation of any article of title 42, or for any alleged violation of a municipal or county ordinance, and not released on bond, must be taken before a judge with jurisdiction of such violation within forty-eight hours for the fixing of bond and conditions of bond pursuant to subsection (3)(a)(VII) of this section. A juvenile may be detained in a jail, lockup, or other place used for the confinement of adult offenders only for processing for no longer than six hours and during such time must be placed in a setting that is physically segregated by sight and sound from the adult offenders, and in no case may the juvenile be detained in such place overnight. After six hours, the juvenile may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time pursuant to this subsection (4), Saturdays, Sundays, and legal holidays are included.

(II) A sheriff or police chief who violates subsection (4)(e)(I) of this section may be subject to a civil fine of no more than one thousand dollars. The decision to fine must be based on prior violations of subsection (4)(e)(I) of this section by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with subsection (4)(e)(I) of this section.

(f) The official in charge of a jail, lockup, or other facility for the confinement of adult offenders that receives a juvenile for detention should, wherever possible, take such measures as are reasonably necessary to restrict the confinement of any such juvenile with known past or current affiliations or associations with any gang so as to prevent contact with other inmates at such jail, lockup, or other facility. The official should, wherever possible, also take such measures as are reasonably necessary to prevent recruitment of new gang members from among the general inmate population. For purposes of this subsection (4)(f), "gang" is defined in section 19-2.5-102.

(g) A person who is eighteen years of age or older who is being detained for a delinquent act or criminal charge over which the juvenile court has jurisdiction, or for which charges are pending in district court pursuant to a direct filing or transfer if the person has not already been transferred to the county jail pursuant to subsection (3)(c)(IV) of this section, must be detained in the county jail in the same manner as if such person is charged as an adult.

(h) A juvenile court shall not order a juvenile offender who is under eighteen years of age at the time of sentencing to enter a secure setting or secure section of an adult jail or lockup as a disposition for an offense or as a means of modifying the juvenile offender's behavior.

(5) A juvenile has the right to bond as limited by this section.

(6) Except for a juvenile described in section 19-2.5-304 (2), the court may also issue temporary orders for legal custody pursuant to section 19-1-115.

(7) Any law enforcement officer, employee of the division of youth services, or another person acting under the direction of the court who in good faith transports any juvenile, releases any juvenile from custody pursuant to a written policy of a court, releases any juvenile pursuant to any written criteria established pursuant to this title 19, or detains any juvenile pursuant to court order or written policy or criteria established pursuant to this title 19 is immune from civil or criminal liability that might otherwise result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person is presumed.

(8) (a) A juvenile who allegedly commits a status offense or is convicted of a status offense must not be held in a secure area of a jail or lockup.

(b) A sheriff or police chief who violates subsection (8)(a) of this section may be subject to a civil fine of no more than one thousand dollars. The decision to fine must be based on prior violations of subsection (8)(a) of this section by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with subsection (8)(a) of this section.

Source: L. 2021: (3)(a)(VII)(C), (4)(e)(I), and (5) amended, (SB 21-071), ch. 463, p. 3333, § 2, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 579, § 2, effective October 1; (3)(b)(I) amended, (HB 21-1187), ch. 83, p. 326, § 8, effective July 1, 2024. **L. 2022:** (3)(b)(I), (3)(b)(II), (3)(b)(III), and (3)(b)(IV) amended, (HB 22-1256), ch. 451, p. 3230, §§ 30, 31, effective August 10. **L. 2023:** (3)(c)(VI) amended and (3)(c)(VII) and (3)(c)(VIII) added, (HB 23-1145), ch. 39, p. 156, § 1, effective March 23; (3)(a)(XI)(C) amended, (HB 23-1027), ch. 284, p. 1681, § 10, effective June 1; (2.5) added, (HB 23-1307), ch. 442, p. 2587, § 3, effective June 7.

Editor's note: (1) This section is similar to former § 19-2-508 as it existed prior to 2021.

(2) (a) Subsections (3)(a)(VII)(C), (4)(e)(I), and (5) were numbered as 19-2-508 (3)(a)(VII)(C), (4)(e)(I), and (5) in SB 21-071 (see L. 2021, p. 3333). Those provisions were harmonized with subsections (3)(a)(VII)(C), (4)(e)(I), and (5) of this section as they appear in SB 21-059.

(b) Subsection (3)(b)(I) was numbered as 19-2-508 (3)(b)(I) in HB 21-1187 (see L. 2021, p. 326). That provision was harmonized with subsection (3)(b)(I) of this section as it appears in SB 21-059, effective July 1, 2024.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023. For the legislative declaration in HB 23-1307, see section 1 of chapter 442, Session Laws of San Andreas 2023.

19-2.5-306. Conditions of release - personal recognizance bond. (1) Unless the district attorney consents, a juvenile charged or accused of having committed a delinquent act

that constitutes a felony or a class 1 misdemeanor shall not be released without an unsecured personal recognizance bond, if:

(a) The juvenile has been found guilty of a delinquent act constituting a felony or class 1 misdemeanor within one year prior to the juvenile's detention;

(b) The juvenile is currently at liberty on another bond of any type; or

(c) The juvenile has a delinquency petition alleging a felony pending in any district or juvenile court for which probable cause has been established.

(2) In lieu of an unsecured personal recognizance bond, a juvenile who the court determines poses a substantial risk of serious harm to others may be placed in a preadjudication service program established pursuant to section 19-2.5-606.

(3) An application for the revocation or modification of the conditions of an unsecured personal recognizance bond must be made in accordance with section 16-4-109; except that the presumption described in section 19-2.5-305 (3)(a)(V) must continue to apply for the purposes of this section.

(4) (a) In determining the conditions of release for the juvenile, the judge or magistrate fixing the same shall consider the criteria set forth in section 16-4-103. If the juvenile is a pregnant or postpartum juvenile who has complied with the notice requirement set forth in section 19-2.5-1118.5, the judge or magistrate shall consider the juvenile's pregnancy or postpartum status in determining the conditions of release.

(a.5) The judge or magistrate is encouraged to take into consideration the juvenile's educational progress and ability to achieve credits toward graduation.

(b) In setting, modifying, or continuing an unsecured personal recognizance bond, it must be a condition that the released juvenile appear at any place and upon any date to which the proceeding is transferred or continued. Further conditions of the unsecured personal recognizance bond must be that the released juvenile not commit any delinquent acts or harass, intimidate, or threaten any potential witnesses. Except as described in subsection (9) of this section, the judge or magistrate may set any other conditions or limitations on the juvenile's release as are reasonably necessary for the protection of the community. A juvenile who is ordered held at the detention hearing or pursuant to an order entered at any time after the initial detention hearing and who remains in custody or detention must be tried on the charges within sixty days after the entry of the court order detaining the juvenile or within sixty days after the juvenile's entry of a plea, whichever date is earlier; except that, if the juvenile requests a jury trial pursuant to section 19-2.5-610, section 19-2.5-610 (4) applies.

(5) Repealed.

(6) The court shall not order that any personal recognizance bond be secured by monetary or property conditions of the juvenile, the juvenile's parent, guardian, legal custodian, or other responsible adult.

(7) The parent, guardian, legal custodian, or any other responsible adult for a juvenile released on a personal recognizance bond pursuant to this section may petition the court to revoke the bond and remand the juvenile into custody if the parent, guardian, legal custodian, or other responsible adult determines that he or she is unable to control the juvenile. The court shall apply the presumption specified in section 19-2.5-305 (3)(a)(V) in determining whether to revoke the personal recognizance bond.

(8) A juvenile may be released on an unsecured personal recognizance bond, or as otherwise provided in this section regardless of whether the juvenile appears in court pursuant to a summons or a warrant.

(9) A judge or magistrate may only impose an unsecured personal recognizance bond without monetary or property conditions to secure the juvenile's future appearance. A judge or magistrate shall not impose a bond with secured monetary or property conditions for a juvenile.

Source: L. 2021: IP(1), (2), (3), (4), (6), (7), and (8) amended, (5) repealed, and (9) added, (SB 21-071), ch. 463, p. 3334, § 3, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 588, § 2, effective October 1. **L. 2023:** (4)(a) amended, (HB 23-1187), ch. 246, p. 1347, § 8, effective August 7. **L. 2024:** (4)(a.5) added, (HB 24-1216), ch. 314, p. 2115, § 3, effective August 7.

Editor's note: (1) This section is similar to former § 19-2-509 (1) to (8) as it existed prior to 2021.

(2) Subsections IP(1), (2), (3), (4), (5), (6), (7), (8), and (9) were numbered as 19-2-509 IP(1), (2), (3), (4), (5), (6), (7), (8), and (10) in SB 21-071 (see L. 2021, p. 3334). Those provisions were harmonized with subsections IP(1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section as they appear in SB 21-059.

PART 4

DIVERSION

19-2.5-401. Diversion. As an alternative to a petition filed pursuant to section 19-2.5-502, an adjudicatory trial pursuant to part 9 of this article 2.5, or disposition of a juvenile delinquent pursuant to section 19-2.5-1103, the district attorney may agree to allow a juvenile to participate in a diversion program established in accordance with section 19-2.5-402.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 589, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-704 as it existed prior to 2021.

19-2.5-402. Juvenile diversion program - authorized - report - allocation of money - legislative declaration - definitions. (1) (a) In order to more fully implement the stated objectives of this title 19, the general assembly declares its intent to establish a juvenile diversion program that integrates restorative justice practices to provide community-based alternatives to the formal court system to reduce juvenile crime and recidivism and improve positive juvenile outcomes, change juvenile offenders' behavior and attitudes, promote juvenile offenders' accountability, recognize and support the rights of victims, heal the harm to relationships and the community caused by juvenile crime, and reduce the costs within the juvenile justice system.

(b) Research has shown that court involvement for juveniles not identified as a risk of harm to others is harmful, and most low-risk juveniles grow out of their behavior and stop reoffending without system intervention.

(c) The goals of the diversion programs are to:

(I) Prevent further involvement of a juvenile in the formal legal system;

(I.5) Consider a juvenile who demonstrates behaviors or symptoms consistent with an intellectual and developmental disability, a mental or behavioral health issue, or lack of mental capacity, and divert the juvenile out of the juvenile justice system and into a community treatment program;

(II) Provide an eligible juvenile with cost-effective alternatives to adjudication that require the least amount of supervision and restrictive conditions necessary consistent with public safety and the juvenile's risk of reoffending;

(III) Serve the best interest of a juvenile while emphasizing acceptance of responsibility and repairing any harm caused to victims and communities;

(IV) Reduce recidivism and improve positive outcomes for each juvenile through the provision of services, if warranted, that address the juvenile's specific needs and are proven effective; and

(V) Ensure appropriate services are available for all eligible juveniles.

(2) The division of criminal justice of the department of public safety, referred to in this section as the "division of criminal justice", is authorized to establish and administer a juvenile diversion program that seeks to divert juveniles from the juvenile justice system and integrate restorative justice practices. To effectuate the program, the division shall allocate money within each judicial district and may contract with district attorneys' offices, governmental units, and nongovernmental agencies for reasonable and necessary expenses and services to serve each judicial district to divert juveniles and provide services, if warranted, for each eligible juvenile through community-based programs providing an alternative to entry into the formal legal system, a petition filed pursuant to section 19-2.5-502, or an adjudicatory hearing pursuant to section 19-2.5-907.

(3) For purposes of this section:

(a) "Director" means the executive director of the department of public safety.

(b) "Diversion" is defined in section 19-2.5-102.

(c) "Governmental unit" means any county, city and county, city, town, district or judicial attorney's office, or school district.

(d) "Nongovernmental agency" means a person, private nonprofit agency, corporation, association, or other nongovernmental agency.

(d.5) "Restorative justice" has the same meaning as set forth in section 19-1-103.

(e) "Services" may include, but are not limited to, provision of diagnostic needs assessment, general counseling and counseling during a crisis situation, behavioral health services, services for juveniles with developmental disabilities, specialized tutoring, job training and placement, restitution programs, community service, constructive recreational activities, day reporting and day treatment programs, and follow-up activities.

(4) District attorneys' offices or the office's designees shall:

(a) On and after January 1, 2021, conduct a risk screening using a risk screening tool selected pursuant to section 24-33.5-2402 (1)(c), as it existed prior to its repeal in 2022, for all juveniles referred to the district attorney pursuant to section 19-2.5-201, unless the juvenile is

currently committed or on parole, a determination has already been made to divert the juvenile, or the district attorney declines to file charges, dismisses the case, or charges the juvenile with a class 1 or class 2 felony. The district attorney's office shall conduct the risk screening or contract with an alternative agency that has been formally designated by the district attorney's office to conduct the screening, in which case the results of the screening must be made available to the district attorney's office. The entity conducting the screening shall make the results of the risk screening available to the juvenile and the juvenile's family. All individuals using the risk screening tool must receive training on the appropriate use of the tool. The risk screening tool is for informing decisions about diversion. The risk screening tool and any information obtained from a juvenile in the course of any screening, including any admission, confession, or incriminating evidence, obtained from a juvenile in the course of any screening or assessment in conjunction with proceedings pursuant to this section or made in order to participate in a diversion or restorative justice program is not admissible into evidence in any adjudicatory hearing in which the juvenile is accused and is not subject to subpoena or any other court process for use in any other proceeding or for any other purpose.

(a.5) Use the results of the risk screening to inform eligibility for participation in a juvenile diversion program and the level and intensity of supervision for juvenile diversion;

(b) Repealed. / (Deleted by amendment, L. 2021.)

(b.5) Consider the use of diversion to prevent a juvenile who demonstrates behaviors or symptoms consistent with an intellectual and developmental disability, a mental health or behavioral health issue, or a lack of mental capacity from further involvement in formal delinquency proceedings.

(c) Not deny diversion to a juvenile based on the juvenile's:

(I) Ability to pay;

(II) Previous or current involvement with the state or county departments of human or social services;

(III) Age, race or ethnicity, gender, gender identity, gender expression, or sexual orientation;

(IV) Legal representation; or

(V) Behaviors or symptoms consistent with an intellectual and developmental disability, a mental health or behavioral health issue, or a lack of mental capacity, unless the behaviors or symptoms are so severe that the juvenile cannot understand or participate in diversion.

(c.5) In a case in which a juvenile demonstrates behaviors or symptoms that are so severe that the juvenile cannot understand or participate in diversion, consider all available alternatives, including, but not limited to, referral to the state department or a collaborative management program in lieu of adjudication if it is likely that a juvenile would be found incompetent and unlikely to be restored in the foreseeable future.

(d) Align the juvenile diversion program's policies and practices with evidence-based practices and with the definition of "diversion" pursuant to section 19-2.5-102;

(e) Collect and submit data to the division of criminal justice pursuant to subsection (5) of this section; and

(f) Establish and make public any eligibility criteria for participation in a juvenile diversion program and use the results of the risk screening to make decisions on eligibility criteria.

(4.5) Diversion programs may use the results of an approved validated assessment tool to inform:

(a) The level and intensity of supervision for juvenile diversion;

(b) The length of supervision for juvenile diversion; and

(c) What services, if any, may be offered to the juvenile. Professionals involved with the juvenile's needs, treatment, and service planning, including district attorneys, public defenders, probation, behavioral health treatment providers, providers who offer services to juveniles for developmental disabilities, and state and local governmental entities, such as the state department of human services and county departments of human or social services, nongovernmental agencies, and individuals collaborating to provide appropriate diversion services.

(5) (a) The division of criminal justice, in collaboration with district attorneys or diversion program directors who accept formula money and programs providing juvenile diversion services, shall establish minimum data collection requirements and outcome measures that each district attorney's office, governmental unit, and nongovernmental agency shall collect and submit annually for all juveniles referred to the district attorney pursuant to section 19-2.5-201. The data summary must include, at a minimum:

(I) Demographic data on age, race or ethnicity, gender, sexual orientation, and gender identity;

(II) Risk screening conducted;

(III) Risk level as determined by the risk screening or, if a screening was not completed, the reason why a screening was not completed;

(IV) Offense;

(V) Diversion status;

(VI) Service participation and whether the service was provided by community partners or in-house;

(VII) Program completion data;

(VIII) Referral to restorative justice services;

(IX) Child welfare involvement; and

(X) Identifying data necessary to track the long-term outcomes of diverted juveniles.

(b) Notwithstanding the requirements of section 19-1-303 to the contrary, on or before August 1, 2021, and continuing every August 1 thereafter, each district attorney shall report to the division of criminal justice the name and demographic data for any juvenile who was granted juvenile diversion for a ticket, summons, or offense since the date of the previous report. The demographic data must include age, race and ethnicity, gender, sexual orientation, and gender identity. The reports must cover the state fiscal years from July 1 through June 30.

(c) On or before August 1, 2021, and every August 1 thereafter, each agency that receives diversion money pursuant to subsection (7) of this section shall report on the number of juveniles who were screened for eligibility for diversion since the date of the previous report but subsequently rejected. The report must include, at a minimum, demographic data such as age, race and ethnicity, gender, sexual orientation, and gender identity. The reports must cover the state fiscal years from July 1 through June 30.

(d) For the purposes of this subsection (5), when collecting demographic data from a youth, district attorneys' offices, governmental units, and nongovernmental agencies shall provide the youth with an option to decline to disclose demographic information.

(6) (a) In collaboration with the division of criminal justice in the department of public safety, each program providing services pursuant to this section shall develop objectives and report progress toward such objectives as required by rules promulgated by the director.

(b) The director shall regularly monitor these diversion programs to ensure that progress is being made to accomplish the objectives of this section. The division of criminal justice shall offer technical assistance to district attorneys' offices, governmental units, nongovernmental agencies, and diversion programs to support the uniform collection and reporting of data and to support program development and adherence to program requirements. The division of criminal justice shall provide annual program-level reports to district attorneys' offices and submit a consolidated statewide report annually to the governor and to the judiciary committees of the senate and the house of representatives, the health and human services committee of the senate, and the public health care and human services committee of the house of representatives, or any successor committees. Notwithstanding section 24-1-136 (11)(a)(I), these reports continue indefinitely.

(7) The formula established by the division of criminal justice in the department of public safety must be used to allocate money within each judicial district in the state of San Andreas for juvenile diversion programs. The division of criminal justice in the department of public safety shall review the formula every three years. The division of criminal justice shall prioritize funding for programs that include restorative justice practices. The division of criminal justice may contract with district attorneys' offices, governmental units, and nongovernmental agencies for reasonable and necessary expenses for services to serve each judicial district to utilize in diverting juveniles and to provide services, if warranted, for eligible juveniles through community-based programs that provide an alternative to entry into the formal legal system, a petition filed pursuant to section 19-2.5-502, or an adjudicatory hearing held pursuant to section 19-2.5-907.

(8) (a) The director may implement a behavioral or mental health screening program to screen juveniles who participate in the juvenile diversion program. If the director chooses to implement a behavioral or mental health screening program, the director shall use the mental health screening tool selected pursuant to section 24-33.5-2402 (1)(b), as it existed prior to its repeal in 2022, and conduct the screening in accordance with procedures established pursuant to that section.

(b) Prior to implementation of a behavioral or mental health screening program pursuant to this subsection (8), if implementation of the program would require an increase in appropriations, the director shall submit to the joint budget committee a request for funding in the amount necessary to implement the behavioral or mental health screening program. If implementation of the behavioral or mental health screening program would require an increase in appropriations, implementation of the program is conditional upon approval of the funding request.

(9) (a) The division of criminal justice in the department of public safety shall review, and approve if appropriate, any assessment instrument for use pursuant to subsection (4.5) of this section.

(b) The division of criminal justice in the department of public safety shall reevaluate any instrument approved pursuant to subsection (9)(a) of this section at least once every three years.

Source: L. 2021: (1)(a), (2), (4), (5), and (6)(a) amended and (3)(d.5), (4.5), and (9) added, (SB 21-066), ch. 64, p. 254, § 2, effective April 29; (4)(c)(III) amended, (HB 21-1108), ch. 156, p. 891, § 20, effective September 7; entire article added with relocations, (SB 21-059), ch. 136, p. 590, § 2, effective October 1; (4)(b) repealed, (SB 21-066), ch. 64, p. 259, § 6, effective October 1; (7) amended, (SB 21-066), ch. 64, p. 259, § 7, effective July 1, 2023. **L. 2022:** (4)(a) and (8)(a) amended, (HB 22-1211), ch. 79, p. 393, § 5, effective December 31. **L. 2024:** (1)(c)(I.5), (4)(b.5), (4)(c)(V), and (4)(c.5) added and (3)(e), (4)(c)(III), (4)(c)(IV), and (4.5)(c) amended, (SB 24-006), ch. 30, p. 94, § 1, effective March 22.

Editor's note: (1) This section is similar to former § 19-2-303 as it existed prior to 2021.

(2) (a) Subsections (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9) were numbered as § 19-2-303 (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9) in SB 21-066 (see L. 2021, p. 254). Those provisions were harmonized with subsections (1)(a), (2), (3)(d.5), (4), (4.5), (5), (6)(a), and (9) of this section, respectively, as they appear in SB 21-059.

(b) Subsection (4)(c)(III) was numbered as § 19-2-303 (4)(c)(III) in HB 21-1108 and SB 21-066. Those amendments were harmonized. Effective October 1, 2021, those amendments were harmonized with subsection (4)(c)(III) of this section as it appears in SB 21-059.

Cross references: For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of San Andreas 2021.

19-2.5-403. Juvenile diversion cash fund - creation. (1) Fifty percent of the money collected pursuant to section 18-4-509 (2)(a) must be transmitted to the state treasurer, who shall credit the same to the juvenile diversion cash fund, which fund is created and referred to in this section as the "fund". The money in the fund is subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of the juvenile diversion program pursuant to section 19-2.5-402.

(2) The division of criminal justice of the department of public safety, referred to in this section as the "division of criminal justice", is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of implementing the juvenile diversion program pursuant to section 19-2.5-402. All private and public money received through gifts, grants, or donations must be transmitted to the state treasurer, who shall credit the same to the fund.

(3) Any money in the fund not expended for the purpose of the juvenile diversion program may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of money in the fund must be credited to the fund.

(4) Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year must remain in the fund and must not be credited or transferred to the general fund or another fund.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 593, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-303.5 as it existed prior to 2021.

PART 5

INITIATION OF PROCEEDINGS

19-2.5-501. Summons - issuance - contents - service - legislative declaration. (1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons must also state, in a separate box, in bold, and in capitalized letters, the following text, inserting the telephone number and address of the local office of the state public defender and the internet website address of the state public defender, as indicated:

1. YOU HAVE THE RIGHT TO HAVE YOUR OWN LAWYER HELP YOU AT YOUR HEARING.

2. YOU MAY BE ELIGIBLE FOR THIS LAWYER AT NO CHARGE.

3. TO FIND OUT IF YOU ARE ELIGIBLE, YOU OR YOUR PARENT, GUARDIAN, OR LEGAL CUSTODIAN SHOULD CALL THE OFFICE OF THE STATE PUBLIC DEFENDER AT _____, VISIT THE OFFICE OF THE STATE PUBLIC DEFENDER AT _____, OR VISIT THE STATE PUBLIC DEFENDER'S WEBSITE AT _____.

4. YOU ARE MORE LIKELY TO HAVE A FREE LAWYER PRESENT AT YOUR HEARING IF YOU OR YOUR PARENT, GUARDIAN, OR LEGAL CUSTODIAN CALLS OR VISITS THE OFFICE OF THE STATE PUBLIC DEFENDER AT LEAST FIVE DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, BEFORE YOUR HEARING.

(2) A summons must not issue to any juvenile or respondent who appears voluntarily, or waives service, or has promised in writing to appear at the hearing, but any such person must be provided with a copy of the petition and summons upon appearance or request.

(3) (a) The court may, when the court determines that it is in the best interests of the juvenile, join the juvenile's parent or guardian and the person with whom the juvenile resides, if other than the juvenile's parent or guardian, as a respondent to the action and shall issue a summons requiring the parent or guardian and the person with whom the juvenile resides, if other than the juvenile's parent or guardian, to appear with the juvenile at all proceedings pursuant to this article 2.5 that involve the juvenile. If the juvenile's parent or guardian cannot be found, the court, in its discretion, may proceed with the case without the presence of the parent or guardian. For the purposes of this section and section 19-2.5-611, "parent" is defined in section 19-1-103. This subsection (3) does not apply to any person whose parental rights have been terminated pursuant to the provisions of this title 19 or the parent of an emancipated minor. For the purposes of this section, "emancipated minor" has the same meaning as set forth in section 13-21-107.5.

(b) The general assembly declares that every parent or guardian whose juvenile is the subject of a juvenile proceeding pursuant to this article 2.5 shall attend any such proceeding.

(c) A parent or legal guardian of a juvenile who is the subject of a juvenile proceeding shall complete the relative information form described in section 19-2.5-1404 (1)(b)(VIII) no later than seven business days after the hearing or prior to the juvenile's next hearing, whichever occurs first.

(4) The summons must require the person or persons having the physical custody of the juvenile, if other than a parent or guardian, to appear and to bring the juvenile before the court at a time and place stated not more than thirty-five days after issuance of the summons.

(5) The court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on the party's own behalf or on the juvenile's behalf.

(6) If it appears that the welfare of the juvenile or of the public requires that the juvenile be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the juvenile into custody at once.

(7) The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear. The payments must not exceed the amount allowed to witnesses for travel by the district court.

(8) (a) A summons issued pursuant to this section may be served in the same manner as the summons in a civil action or by mailing the summons to the juvenile's last-known address by certified mail with return receipt requested not less than seven days prior to the time the juvenile is requested to appear in court. Service by mail is complete upon return of the receipt signed by the juvenile, the juvenile's parents, guardian, legal custodian, physical custodian, or spousal equivalent as defined in section 19-1-103.

(b) Service upon the parent, guardian, legal custodian, or physical custodian who has physical care of a juvenile of a summons that contains wording commanding the parent, guardian, legal custodian, or physical custodian to produce the juvenile in court constitutes valid service compelling the attendance of both the juvenile and the juvenile's parent, guardian, legal custodian, or physical custodian in court. In addition, service of a summons as described in this subsection (8)(b) compels the juvenile's parent, guardian, legal custodian, or physical custodian either to make all necessary arrangements to ensure that the juvenile is available to appear before the court or to appear in court and show good cause for the juvenile's failure to appear.

(9) If the juvenile's parents, guardian, or other legal custodian required to be summoned pursuant to subsection (4) of this section cannot be found within the state, the fact of the juvenile's presence in the state confers jurisdiction on the court as to any absent parent, guardian, or legal custodian.

(10) When the residence of the person to be served outside the state is known, a copy of the summons and petition must be sent by certified mail with postage prepaid to such person at the person's place of residence with a return receipt requested. Service of summons is deemed complete seven days after return of the requested receipt.

(11) Repealed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 594, § 2, effective October 1. **L. 2022:** (11) repealed, (SB 22-018), ch. 191, p. 1274, § 7, effective July 15.

Editor's note: This section is similar to former § 19-2-514 as it existed prior to 2021.

19-2.5-502. Petition initiation - petition form and content. (1) If the district attorney determines that the interests of the juvenile or of the community require that further action be taken, the district attorney may file a petition in delinquency on the form specified in subsections (3), (4), and (5) of this section, which the court shall accept. If the district attorney chooses to file a petition in delinquency on any juvenile who receives a detention hearing pursuant to section 19-2.5-305, the district attorney shall file the petition within seventy-two hours after the detention hearing, excluding Saturdays, Sundays, and legal holidays. Upon filing the petition, the court, if practicable, shall send notice of the pendency of such action to the juvenile's parent, guardian, or legal custodian.

(2) If the petition is the first juvenile petition filed against the juvenile in any jurisdiction and is initiated in a jurisdiction that has restorative justice practices available, the district attorney or the district attorney's designee may determine whether the juvenile is suitable for restorative justice practices. The district attorney shall consider whether the victim, having been informed about restorative justice practices pursuant to section 24-4.1-303 (11)(g), is requesting consideration of restorative justice practices as an alternative to formal prosecution; the seriousness of the crime; the crime's impact on the victim; the best methodology to involve the victim; whether the juvenile accepts responsibility for, expresses remorse for, and is willing to repair the harm caused by the juvenile's actions; whether the juvenile's parent or legal guardian is willing to support the juvenile in the process; and other programmatic support available. If a juvenile wants to participate in restorative justice practices, the juvenile shall make the request to the district attorney or the law enforcement agency administering the program and may not make the request to the victim. If requested by the juvenile, restorative justice practices may only be conducted after the district attorney consults with the victim and offers the victim an opportunity to participate or submit a victim impact statement. If a victim elects not to attend, a victim-offender conference may be held with a suitable victim surrogate or victim advocate, and the victim may submit a victim impact statement. The district attorney may offer dismissal of charges as an option for the successful completion of these and any other conditions imposed and designed to address the harm done to the victim and the community by the offender, subject to approval by the court.

(3) **Form and content.** The petition and all subsequent court documents in any proceedings brought pursuant to section 19-1-104 (1)(a) or (1)(b) must be titled "The People of the State of San Andreas, in the Interest of ....., a juvenile (or juveniles) and Concerning
,
Respondent". The petition may be filed using the language of the statutes defining the offense, including either conjunctive or disjunctive clauses. Pleading in either the conjunctive or the disjunctive places a respondent on notice that the prosecution may rely on any or all of the alternatives alleged.

(4) The petition must plainly set forth the facts that bring the juvenile within the court's jurisdiction. If the petition alleges that the juvenile is delinquent, it must cite the law or municipal or county ordinance that the juvenile is alleged to have violated. The petition must also state the name, age, and residence of the juvenile and the names and residences of the juvenile's parents, guardian, or other legal custodian or of the nearest known relative if a parent, guardian, or other legal custodian is unknown.

(5) (a) Pursuant to section 19-1-126, in those delinquency proceedings to which the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., as amended, applies, including but not limited to status offenses such as the illegal possession or consumption of ethyl alcohol or marijuana by an underage person or illegal possession of marijuana paraphernalia by an underage person, as described in section 18-13-122, and possession of handguns by juveniles, as described in section 18-12-108.5, the petition must:

(I) Include a statement indicating what continuing inquiries the district attorney or the district attorney's representative has made in determining whether the juvenile is an Indian child;

(II) Identify whether the juvenile is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts must be attached to the petition and filed with the court or filed within fourteen days after the filing of the petition, as specified in section 19-1-126 (1)(c).

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 596, § 2, effective October 1.

Editor's note: This section is similar to former §§ 19-2-512 and 19-2-513 as they existed prior to 2021.

19-2.5-503. Aggravated juvenile offender. (1) (a) In any action in delinquency alleging that a juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the petition must allege by separate count that the juvenile is an aggravated juvenile offender and that increased commitment is authorized.

(b) If the petition alleges that the juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the petition must identify by separate counts each alleged former adjudication or probation revocation and, for each such count, must include the date of adjudication or probation revocation, the court, and the specific act that formed the basis for the adjudication or probation revocation. If the alleged prior adjudication or probation revocation occurred outside of this state, the petition must so allege and state that the delinquent act that formed the basis for the adjudication or probation revocation would constitute a felony in this state.

(2) (a) In any action in delinquency in which it is alleged that a juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the court shall, at the juvenile's first appearance, advise the juvenile of the effect and consequences of the allegation that the juvenile is an aggravated juvenile offender.

(b) If a juvenile is alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the juvenile is required, at the juvenile's first appearance before the court, to admit or deny any previous adjudications or probation revocations alleged in the petition. A refusal to admit or deny any such adjudication or probation revocation is considered a denial.

(3) (a) In addition to the rights specified in section 19-2.5-605, a juvenile who is alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125 (4), may file a written request that adjudication of the act that is the subject of the petition must be to a jury of twelve

persons, and the court shall so order it. A juvenile who requests a jury is deemed to have waived the time limit for an adjudicatory trial pursuant to section 19-2.5-610 (4).

(b) When a jury is requested pursuant to this subsection (3), the following challenges are allowed:

(I) If the petition alleges that one juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the state and the juvenile are each entitled to five peremptory challenges.

(II) If the petition alleges that more than one juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), and the adjudicatory trials on the acts that are the subject of the petition are not severed, the state and the defense are entitled to two additional challenges for every juvenile after the first, not to exceed fifteen peremptory challenges per side; when multiple juveniles are adjudicated in a single hearing, each peremptory challenge made on the part of the juveniles must be made and considered as the joint peremptory challenge of all of the juveniles.

(c) When more than one petition concerning different juveniles are consolidated for the adjudication of the delinquent acts that are the subjects of the petitions, peremptory challenges are allowed as if the juveniles had been joined in the same petition in delinquency.

(4) (a) If a juvenile alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125 (4), admits the previous adjudications or probation revocations alleged in the petition pursuant to subsection (2) of this section, further proof of such previous adjudications or probation revocations is not required. Upon a finding that the juvenile has committed the delinquent acts that are the subject of the petition alleging that the juvenile is an aggravated juvenile offender, as described in section 19-2.5-1125 (4), the court may enter any sentence authorized by this section.

(b) If a juvenile alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125 (4), denies one or more of the previous adjudications or probation revocations alleged in the petition pursuant to subsection (2) of this section, the court, after a finding of guilty of the acts that are the subject of this petition, shall conduct a separate hearing in which the court shall be the trier of fact to determine whether the juvenile has suffered such adjudications or probation revocations. Each count alleging a previous adjudication or probation revocation must be proven beyond a reasonable doubt.

(c) In any hearing before the court pursuant to subsection (4)(b) of this section, a duly authenticated copy of the record of an adjudication or probation revocation is prima facie evidence that the juvenile suffered the adjudication or probation revocation. In addition, any basic identification information that is part of the record of the former adjudication or probation revocation at the place the juvenile was incarcerated after disposition of the adjudication or probation revocation may be introduced into evidence in any hearing before the court pursuant to subsection (4)(b) of this section and is prima facie evidence of the identity of the juvenile.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 598, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-601 (1) to (4) as it existed prior to 2021.

PART 6

COURT PROCEEDINGS

19-2.5-601. Appointment of guardian ad litem. The court may appoint a guardian ad litem pursuant to section 19-1-111 for a juvenile in a proceeding brought pursuant to this article 2.5.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 599, § 2, effective October 1.

19-2.5-602. General procedure for juvenile hearings. (1) The San Andreas rules of juvenile procedure apply in all proceedings conducted pursuant to this article 2.5.

(2) Hearings must be held before the court without a jury, except as set forth in sections 19-2.5-610 and 19-2.5-503 (3), and may be conducted in an informal manner.

(3) A verbatim record must be taken of all proceedings, including any hearing conducted by a magistrate.

(4) When more than one juvenile is named in a petition or individual petitions are filed against more than one juvenile alleging delinquent acts arising from the same delinquent episode, any proceedings, including trials, may be consolidated.

(5) Juvenile cases must be heard separately from adult cases, and the juvenile or the juvenile's parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

(6) The juvenile's parent, guardian, or legal custodian is required to attend all proceedings, including all hearings, concerning the juvenile. Failure, without good cause, to attend a proceeding concerning the juvenile may subject the parent, guardian, or legal custodian to contempt sanctions; except that, if the juvenile's legal custodian is a county department of human or social services or the state department of human services, the legal custodian need not attend any proceeding at which the juvenile's guardian ad litem is present.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 599, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-109 as it existed prior to 2021.

19-2.5-603. Notification. (Repealed)

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 600, § 2, effective October 1. **L. 2022:** Entire section repealed, (SB 22-018), ch. 191, p. 1274, § 8, effective July 15.

Editor's note: This section is similar to former § 19-2-509 (9) as it existed prior to 2021.

19-2.5-604. Open hearings. The general public must not be excluded from hearings held pursuant to this article 2.5 unless the court determines that it is in the best interest of the

juvenile or of the community to exclude the general public. In such event, the court shall admit only such persons as have an interest in the case or work of the court, including persons whom the district attorney, the juvenile, or the juvenile's parents or guardian wishes to be present.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 600, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-110 as it existed prior to 2021.

19-2.5-605. Advisement - right to counsel - waiver of right to counsel - definition. (1) (a) At the juvenile's first appearance before the court, after the detention hearing or at the first appearance if the juvenile appears on a summons, the court shall advise the juvenile and the juvenile's parents, guardian, or other legal custodian of the juvenile's constitutional rights and legal rights as set forth in rule 3 of the San Andreas rules of juvenile procedure, including but not limited to the right to counsel. The advisement must include the possibility of restorative justice practices, including victim-offender conferences if restorative justice practices are available in the jurisdiction. The advisement regarding restorative justice practices does not establish any right to restorative justice practices on the juvenile's behalf.

(b) If the respondent has made an early application for appointed counsel for the juvenile and the office of the state public defender has made a preliminary determination that the juvenile is eligible for appointed counsel as set forth in section 21-1-103 or if the court has appointed counsel for the juvenile pursuant to section 19-2.5-305 (2), an attorney from the office of the state public defender or, in the case of a conflict, from the office of alternate defense counsel, shall be available to represent the juvenile at the juvenile's first appearance, as described in subsection (1)(a) of this section.

(c) If the respondent has not made an early application for appointed counsel for the juvenile but the juvenile requests appointment of counsel at the first appearance, the court shall determine if the juvenile is eligible for counsel pursuant to subsection (2)(a) of this section.

(d) As used in this subsection (1), unless the context otherwise requires, "early application" means that the respondent has contacted the office of the state public defender and applied for representation of the juvenile by the state public defender not less than five days, excluding Saturdays, Sundays, and legal holidays, before the juvenile's scheduled court date for the first appearance and has provided sufficient information to the office of the state public defender to allow that office to make a preliminary determination of eligibility for representation.

(e) Failure of the juvenile's parent, guardian, or legal custodian to apply for court-appointed counsel may not be construed as a waiver of the right to counsel or any other rights held by the juvenile.

(2) (a) If the juvenile and the juvenile's parents, guardian, or other legal custodian are found to be indigent pursuant to section 21-1-103 (3), or the juvenile's parents, guardian, or other legal custodian refuses to retain counsel for the juvenile, or the court, on its own motion, determines that counsel is necessary to protect the interests of the juvenile or other parties, or the juvenile is in the custody of the state department of human services or a county department of human or social services, the court shall appoint the office of state public defender or, in the case

of a conflict, the office of alternate defense counsel for the juvenile; except that the court shall not appoint the office of the state public defender or the office of alternate defense counsel if:

(I) The juvenile has retained the juvenile's own counsel; or

(II) The juvenile has made a knowing, intelligent, and voluntary waiver of the juvenile's right to counsel, as described in subsection (2)(c) of this section.

(b) Repealed.

(c) The court may accept a waiver of counsel by a juvenile only after finding on the record, based on a dialogue conducted with the juvenile, that the juvenile:

(I) Is of a sufficient maturity level to make a voluntary, knowing, and intelligent waiver of the right to counsel;

(II) Understands the sentencing options that are available to the court in the event of an adjudication or conviction of the offense with which the juvenile is charged;

(III) Has not been coerced by any other party, including but not limited to the juvenile's parent, guardian, or legal custodian, into making the waiver;

(IV) Understands that the court will provide counsel for the juvenile if the juvenile's parent, guardian, or legal custodian is unable or unwilling to obtain counsel for the juvenile; and

(V) Understands the possible consequences that may result from an adjudication or conviction of the offense with which the juvenile is charged, which consequences may occur in addition to the actual adjudication or conviction itself.

(d) The appointment of counsel pursuant to this subsection (2) continues until:

(I) The court's jurisdiction is terminated;

(II) The juvenile or the juvenile's parent, guardian, or legal custodian retains counsel for the juvenile;

(III) The court finds that the juvenile or the juvenile's parents, guardian, or other legal custodian has sufficient financial means to retain counsel or that the juvenile's parents, guardian, or other legal custodian no longer refuses to retain counsel for the juvenile; or

(IV) The court finds the juvenile has made a knowing, intelligent, and voluntary waiver of the juvenile's right to counsel, as described in subsection (2)(c) of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 600, § 2, effective October 1; (2)(b) repealed, (HB 21-1315), ch. 461, p. 3116, § 25, effective October 1.

Editor's note: This section is similar to former § 19-2-706 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021.

19-2.5-606. Preadjudication service program - creation. (1) (a) The chief judge of any judicial district may issue an order that any juvenile who applies for preadjudication release be evaluated for placement by a preadjudication service program established pursuant to this section. In evaluating the juvenile, the service program shall follow criteria for the placement of a juvenile established pursuant to section 19-2.5-1404. Upon evaluation, the service program shall make a recommendation to the court concerning placement of the juvenile with a preadjudication service program.

(b) Parents or legal guardians of a juvenile evaluated by a preadjudication service program shall complete the information form described in section 19-2.5-1404 (1)(b)(VIII) no later than two business days after the evaluation or prior to the juvenile's first detention hearing, whichever occurs first. If available, the screening team or preadjudication service program shall file the original completed information form with the court. If the information form has not been completed at the time of the detention hearing, the court shall direct the parent or legal guardian to immediately complete the form and file it with the court. The screening team, preadjudication service program, or the court shall deliver a copy of the information form to the division of youth services; the guardian ad litem, if any; and the county department of human or social services no later than seven business days after the date of the detention hearing.

(2) Any county or city and county or judicial district in the state may establish a preadjudication service program for use by the district court for the county or city and county or judicial district. Such program must be established in accordance with a local justice plan developed pursuant to section 19-2.5-302.

(3) The local justice plan must provide for the assessment of juveniles taken into custody and detained by law enforcement officers. The assessment must be based on criteria for the placement of juveniles established pursuant to section 19-2.5-1404, so that relevant information may be presented to the judge presiding over the detention hearing. The information provided to the court through the screening process, including the record of any prior adjudication of the juvenile, is intended to enhance the court's ability to make a more appropriate detention and bond decision, based on facts relative to the juvenile's substantial risk of serious harm to others.

(4) The plan may include different methods and levels of community-based supervision as conditions for preadjudication release, including the possibility of release without formal supervision. The plan may provide for the use of the same supervision methods that have been established for adult defendants as a pretrial release method to reduce pretrial incarceration or that have been established as sentencing alternatives for juvenile or adult offenders placed on probation or parole. The use of such supervision methods is intended to reduce preadjudication detentions without sacrificing the protection of the community from juveniles who may be risks to the public. The plan may allow for the release of the juvenile to the juvenile's home with no formal supervision or provide for the use of any of the following supervision methods as conditions of preadjudication release:

(a) Periodic telephone communications with the juvenile;

(b) Periodic office visits by the juvenile to the preadjudication service program;

(c) Periodic home visits to the juvenile's home;

(d) If a validated mental health or substance use screening and subsequent mental health or substance use assessment indicates that the juvenile has a need:

(I) Periodic drug testing of the juvenile; or

(II) Behavioral or mental health or substance use treatment for the juvenile, which may include residential treatment;

(e) Periodic visits to the juvenile's school;

(f) Domestic violence or child abuse counseling for the juvenile, if applicable;

(g) Electronic or global position monitoring of the juvenile;

(h) Work release for the juvenile, if school attendance is not applicable or appropriate under the circumstances; or

(i) Juvenile day reporting and day treatment programs.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 603, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-302 as it existed prior to 2021.

19-2.5-607. Mandatory protection order. (1) (a) A mandatory protection order is created against any juvenile charged with the commission of a delinquent act and the juvenile's parents or legal guardian. The order remains in effect from the time that the juvenile is advised of the juvenile's rights and informed of the order at the juvenile's first appearance before the court until final disposition of the action or, in the case of an appeal, until disposition of the appeal. The order restrains the juvenile and the juvenile's parents or legal guardian from harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victim of the delinquent act charged.

(b) The protection order issued pursuant to this section must be on a standardized form prescribed by the judicial department, and a copy must be provided to the protected parties.

(2) At the time of the juvenile's first appearance before the court, the court shall inform the juvenile and the juvenile's parents or legal guardian of the protection order effective pursuant to this section and shall also inform the juvenile and the juvenile's parents or legal guardian that a violation of such order is punishable as contempt of court.

(3) Nothing in this section precludes the juvenile or the juvenile's parents or legal guardian from applying to the court at any time for modification or dismissal of the protection order issued pursuant to this section or the district attorney from applying to the court at any time for additional provisions under the protection order, modification of the order, or dismissal of the order. The trial court shall retain jurisdiction to enforce, modify, or dismiss the protection order during the pendency of any appeal that may be brought.

(4) The duties of peace officers enforcing orders issued pursuant to this section are in accordance with section 18-6-803.5 and any rules adopted by the San Andreas supreme court pursuant to said section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 604, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-707 as it existed prior to 2021.

19-2.5-608. Fingerprinting - ordered by court - definition. (1) For purposes of this section, "juvenile" means any juvenile who is charged with committing, summoned, or held in detention for committing a delinquent act that constitutes a felony, a class 1 misdemeanor, or a misdemeanor pursuant to section 42-4-1301 or a crime, the underlying factual basis of which included an act of domestic violence, as defined in section 18-6-800.3 (1), as if committed by an adult.

(2) If a juvenile has not been fingerprinted prior to the juvenile's first appearance before the court, the court shall order the juvenile to report to an entity authorized by the court or the local law enforcement agency for fingerprinting, except for juvenile detention centers and alternative service programs, otherwise known as "SB 91-94 programs", described in section 19-2.5-606. The authorized entity or local law enforcement agency shall endorse upon a copy of the

order the completion of the fingerprinting and return the same to the court. The authorized entity or local law enforcement agency shall forward a set of fingerprints ordered pursuant to this subsection (2) to the San Andreas bureau of investigation in the form and manner prescribed by the bureau.

(3) Any fingerprints required by this section to be forwarded to the San Andreas bureau of investigation must be forwarded within twenty-four hours after completion of the fingerprinting, excluding Saturdays, Sundays, and legal holidays.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 605, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-503.5 (1), (3), and (4) as it existed prior to 2021.

19-2.5-609. Preliminary hearing - dispositional hearing. (1) The district attorney or a juvenile who is accused in a petition of a delinquent act that constitutes a class 1, 2, or 3 felony may demand and receive a preliminary hearing to determine if there is probable cause to believe that the delinquent act alleged in the petition was committed by the juvenile. In addition, the district attorney or a juvenile who is accused in a petition of only those delinquent acts that constitute class 4, 5, or 6 felonies, which felonies require mandatory sentencing, constitute crimes of violence as defined in section 18-1.3-406, or constitute sexual offenses pursuant to part 4 of article 3 of title 18, may demand and receive a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the delinquent act alleged in the petition. A preliminary hearing may be heard by a judge of the juvenile court or by a magistrate and conducted as follows:

(a) At the juvenile's advisement hearing and after the filing of the delinquency petition, the prosecution shall make available to the juvenile the discovery material required by the San Andreas rules of juvenile procedure. The juvenile or the prosecution may file a written motion for a preliminary hearing, stating the basis therefor. Upon the filing of the motion, the court shall set the matter for a hearing. The juvenile or the prosecution shall file a written motion for a preliminary hearing not later than fourteen days after the advisement hearing.

(b) If the juvenile is being detained because of the delinquent act alleged in the petition, the preliminary hearing must be held within thirty-five days after the filing of the motion, unless good cause for continuing the hearing beyond that time is shown to the court. If the juvenile is not being detained, it must be held as promptly as the calendar of the court permits.

(c) At the preliminary hearing, the juvenile shall not be called upon to plead, although the juvenile may cross-examine the prosecution witnesses and may introduce evidence in the juvenile's own behalf. The prosecution has the burden of establishing probable cause. The court at the hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(d) If the court determines that probable cause exists, it shall enter a finding to that effect and schedule an adjudicatory trial. If from the evidence it appears to the court that probable cause does not exist, it shall dismiss the delinquency petition and the court shall discharge the juvenile from any restriction or other previous temporary order stemming from the petition.

(2) (a) The district attorney and the juvenile who is accused in a petition of a delinquent act that constitutes a class 4, 5, or 6 felony, except those that require mandatory sentencing, that

constitute crimes of violence as defined in section 18-1.3-406, or that constitute sexual offenses pursuant to part 4 of article 3 of title 18, do not have the right to demand or receive a preliminary hearing but shall participate in a dispositional hearing for the purposes of case evaluation and potential resolution. A judge of the juvenile court or a magistrate may hear the dispositional hearing.

(b) Any juvenile accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing pursuant to subsection (2)(a) of this section may demand and shall receive a preliminary hearing within a reasonable time pursuant to subsection (1) of this section if the juvenile is in custody; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the juvenile has been released from custody prior to the preliminary hearing.

(3) A request for review of a preliminary hearing finding entered by a magistrate must be filed pursuant to section 19-1-108 (5.5), and review must be conducted pursuant to said section.

(4) The prosecution may file a motion to refile the petition in delinquency, which motion must be accompanied by a verified affidavit stating the grounds therefor.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 605, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-705 as it existed prior to 2021.

19-2.5-610. Right to jury trial. (1) In any action in delinquency in which a juvenile is alleged to be an aggravated juvenile offender, as described in section 19-2.5-1125, or is alleged to have committed an act that would constitute a crime of violence, as defined in section 18-1.3-406, if committed by an adult, the juvenile or the district attorney may demand a trial by a jury of not more than six persons, except as provided in section 19-2.5-503 (3)(a), or the court, on its own motion, may order the jury to try any case brought pursuant to this title 19, except as provided in subsection (2) of this section.

(2) The juvenile is not entitled to a trial by jury when the petition alleges a delinquent act that is a misdemeanor, a petty offense, a violation of a municipal or county ordinance, or a violation of a court order.

(3) Unless a jury is demanded pursuant to subsection (1) of this section, it is deemed waived.

(4) Notwithstanding any other provisions of this article 2.5, in any action in delinquency in which a juvenile requests a jury pursuant to this section, the juvenile is deemed to have waived the sixty-day requirement for holding the adjudicatory trial established in section 19-2.5-902. In such a case, the juvenile's right to a speedy trial is governed by section 18-1-405 and rule 48 (b) of the San Andreas rules of criminal procedure.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 607, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-107 as it existed prior to 2021.

19-2.5-611. Contempt - warrant - legislative declaration. (1) Except as otherwise set forth in subsection (3) of this section, any person summoned or required to appear pursuant to section 19-2.5-501 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served or if the welfare of the juvenile requires that the juvenile be brought immediately into the custody of the court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the juvenile.

(3) (a) When a parent or other person who signed a written promise to appear and bring the juvenile to court or who has waived or acknowledged service fails to appear with the juvenile on the date set by the court, a bench warrant may be issued for the parent or other person, the juvenile, or both.

(b) Whenever a parent or guardian or person with whom the juvenile resides, if other than the parent or guardian, who has received a summons to appear fails, without good cause, to appear on any other date set by the court, a bench warrant must be issued for the parent, guardian, or person with whom the juvenile resides, and the parent, guardian, or person with whom the juvenile resides is subject to contempt.

(c) For purposes of this subsection (3), good cause for failing to appear includes but is not limited to a situation where a parent or guardian:

(I) Does not have physical custody of the juvenile and resides outside of San Andreas;

(II) Has physical custody of the juvenile but resides outside of San Andreas and appearing in court will result in undue hardship to the parent or guardian; or

(III) Resides in San Andreas but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to the parent or guardian.

(d) The nonappearance of the parent, guardian, or person with whom the juvenile resides is not the basis for a continuance.

(e) This subsection (3) is not applicable to any proceeding in a case that has been transferred to the district court pursuant to section 19-2.5-802.

(f) The general assembly declares that every parent or guardian whose juvenile is the subject of a juvenile proceeding pursuant to this article 2.5 shall attend any such proceeding.

(g) Nothing in this subsection (3) creates a right for any juvenile to have the juvenile's parent or guardian present at any proceeding at which the juvenile is present.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 607, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-515 as it existed prior to 2021.

19-2.5-612. Mental health services for juvenile - how and when issue raised - procedure - definitions. (1) At any stage of a delinquency proceeding, if the court, prosecution, probation officer, guardian ad litem, parent, or legal guardian has reason to believe that the juvenile could benefit from mental health services, the party shall immediately advise the court of that belief.

(2) After the party advises the court of the party's belief that the juvenile could benefit from mental health services, the court shall immediately order a mental health screening of the

juvenile pursuant to section 16-11.9-102 using the mental health screening tool selected pursuant to section 24-33.5-2402 (1)(b), as it existed prior to its repeal in 2022, unless the court already has sufficient information to determine whether the juvenile could benefit from mental health services or unless a mental health screening of the juvenile has been completed within the last three months. Before sentencing a juvenile, the court shall order a mental health screening using the mental health screening tool selected pursuant to section 24-33.5-2402 (1)(b), as it existed prior to its repeal in 2022, or make a finding that the screening would not provide information that would be helpful in sentencing the juvenile. The court shall not stay or suspend delinquency proceedings pending the results of the mental health screening ordered pursuant this section. However, the court may continue the dispositional and sentencing hearing to await the results of the mental health screening.

(3) If the mental health screening indicates that the juvenile could benefit from mental health services, the court may order a mental health assessment.

(4) At the time the court orders a mental health assessment, the court shall specify the date upon which the assessment must be completed and returned to the court. The court may assign responsibility for the cost of the assessment to any party having legal custody or legal guardianship of the juvenile.

(5) The assessment, at a minimum, must include an opinion regarding whether the juvenile could benefit from mental health services. If the assessment concludes that the juvenile could benefit from mental health services, the assessment must identify the juvenile's mental health issues and the appropriate services and treatment.

(6) Evidence or treatment obtained as a result of a mental health screening or assessment ordered pursuant to this section, including any information obtained from the juvenile in the course of a mental health screening or assessment, must be used only for purposes of sentencing; to determine what mental health treatment, if any, to provide to the juvenile; and to determine whether the juvenile justice or another service system is most appropriate to provide this treatment, and must not be used for any other purpose. The mental health screening or assessment or any information obtained in the course of the mental health screening or assessment is not subject to subpoena or any other court process for use in any other court proceeding and is not admissible on the issues raised by a plea of not guilty unless the juvenile places the juvenile's mental health at issue. If the juvenile places the juvenile's mental health at issue, then either party may introduce evidence obtained as a result of a mental health screening or assessment. The court shall keep any mental health screening or assessment in the court file under seal.

(7) For purposes of this section:

(a) "Assessment" means an objective process used to collect pertinent information in order to identify a juvenile who may have mental health needs and identify the least restrictive and most appropriate services and treatment.

(b) "Juvenile could benefit from mental health services" means a juvenile exhibits one or more of the following characteristics:

(I) A chronic or significant lack of impulse control or of judgment;

(II) Significant abnormal behaviors under normal circumstances;

(III) Severe or frequent changes in sleeping or eating patterns or in levels of activity;

(IV) A pervasive mood of unhappiness or of depression; or

(V) A history that includes mental health treatment, a suicide attempt, or the use of psychotropic medication.

(c) "Screening" means a short validated mental health screening adopted by the committee on juvenile justice reform pursuant to section 24-33.5-2402 (1)(b), as it existed prior to its repeal in 2022, to identify juveniles who may have mental health needs.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 608, § 2, effective October 1. **L. 2022:** (2) and (7)(c) amended, (HB 22-1211), ch. 79, p. 393, § 6, effective December 31.

Editor's note: This section is similar to former § 19-2-710 as it existed prior to 2021.

19-2.5-613. Advisement of services. (1) For any juvenile who is sixteen years of age or older, before terminating jurisdiction, the court shall advise the juvenile that:

(a) If the juvenile was in foster care at sixteen years of age or older, or in noncertified kinship care and adjudicated dependent and neglected, then the juvenile has the right to begin voluntarily receiving child welfare services on or after reaching eighteen years of age through the foster youth in transition program, established in part 3 of article 7 of this title 19, until the juvenile's twenty-first birthday, or such greater age of foster care eligibility as required by federal law;

(b) The foster youth in transition program provides the juvenile with access to financial support for housing and other services, as outlined in section 19-7-305; and

(c) If the juvenile is eligible for the foster youth in transition program, the juvenile has the right to counsel through the office of the child's representative.

Source: L. 2022: Entire section added, (HB 22-1245), ch. 88, p. 417, § 2, effective August 10.

PART 7

COMPETENCY TO PROCEED

19-2.5-701. Legislative declaration. (1) The general assembly finds and declares that:

(a) The juvenile justice system is civil in nature and focused on rehabilitation rather than punishment;

(b) Juveniles differ in significant and substantive ways from adults; therefore, different standards for competency are necessary for juveniles and adults; and

(c) Notwithstanding the differences between adults and juveniles, age alone is not determinative of incompetence without a finding that the juvenile actually lacks the relevant capacities for competence.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 610, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1300.2 as it existed prior to 2021.

19-2.5-701.5. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Competency evaluation" means an evaluation conducted by a competency evaluator that meets the requirements described in section 19-2.5-703 (4). "Competency evaluation" includes both court-ordered evaluations performed by the department and second evaluations.

(2) "Competency evaluator" means an individual with the qualifications described in section 19-2.5-703 (4)(b).

(3) "Competency hearing" means an initial hearing to determine whether a juvenile is competent to proceed.

(4) "Competent to proceed" means that a juvenile has the sufficient present ability to consult with the juvenile's attorney, with a reasonable degree of rational understanding, to assist the attorney in the juvenile's defense, and that the juvenile has a rational as well as factual understanding of the proceedings.

(5) "Incompetent to proceed" means that, based on an intellectual or developmental disability, mental health disorder, or lack of mental capacity, a juvenile does not have sufficient present ability to consult with the juvenile's attorney with a reasonable degree of rational understanding in order to assist the attorney in the juvenile's defense or that the juvenile does not have a rational as well as a factual understanding of the proceedings.

(6) "Restoration evaluation" means an evaluation conducted by a competency evaluator to determine if the juvenile has become competent to proceed or will be able to be restored to competency in the reasonably foreseeable future. "Restoration evaluation" includes both court-ordered evaluations by the department and second evaluations.

(7) "Restoration progress review hearing" means a hearing in which the juvenile's progress in restoration to competency education and other applicable services is reviewed, based on restoration education, treatment records, and any prior competency evaluation reports.

(8) "Restoration to competency hearing" means a hearing to determine whether a juvenile who has previously been determined to be incompetent to proceed is now competent to proceed.

(9) "Second evaluation" means an evaluation in response to a court-ordered competency evaluation or court-ordered restoration evaluation requested by the juvenile that is performed by a competency evaluator and that is not performed by, under the direction of, or paid for by the department.

Source: L. 2023: Entire section added, (HB 23-1012), ch. 205, p. 1043 § 2, effective August 7.

19-2.5-702. Incompetent to proceed - effect - how and when raised. (1) This part 7 applies only to proceedings brought pursuant to this title 19.

(2) A juvenile must not be tried or sentenced if the juvenile is incompetent to proceed, as defined in section 19-2.5-701.5, at that stage of the proceedings. Juveniles, like adults, are presumed competent to proceed, as defined in section 19-2.5-701.5, until such time as they are found incompetent to proceed through a decision by the court. A determination of competency must include an evaluation of intellectual and developmental disabilities, mental health disorders, and mental capacity. Age alone is not determinative of incompetence without a finding that the juvenile actually lacks the relevant capacities for competence.

(3) When a party specified in this subsection (3) has reason to believe that a juvenile is incompetent to proceed in a delinquency action, the party shall raise the question of the juvenile's competency in the following manner:

(a) On its own motion, the court shall suspend the proceeding and determine the competency or incompetency of the juvenile pursuant to section 19-2.5-703;

(b) By motion of the prosecution, probation officer, guardian ad litem, or defense, made in advance of the commencement of the particular proceeding. The motion may be filed after the commencement of the proceeding if, for good cause shown, the juvenile's mental health was unknown or unapparent before the commencement of the proceeding.

(c) By the juvenile's parent or legal guardian.

(4) If the issue of competency is raised at the time charges are filed or at any time thereafter and the juvenile is not represented by counsel, the court may immediately appoint counsel and may also appoint a guardian ad litem to ensure the best interests of the juvenile are addressed in accordance with existing law.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 610, § 2, effective October 1. **L. 2023:** (2) amended, (HB 23-1012), ch. 205, p. 1044, § 3, effective August 7.

Editor's note: This section is similar to former § 19-2-1301 as it existed prior to 2021.

19-2.5-703. Determination of incompetency to proceed. (1) Whenever the question of a juvenile's competency to proceed is raised, the court shall make a preliminary finding that the juvenile is or is not competent to proceed. If the court feels that the information available to it is inadequate for making such a finding, it shall order a competency examination.

(2) The court shall immediately notify the prosecuting attorney and defense counsel of the preliminary finding regarding competency. The prosecuting attorney or the defense counsel may request a hearing on the preliminary finding by filing a written request with the court within fourteen days after the date on which the court issues the preliminary finding, unless the court extends the time period for good cause. The preliminary finding becomes a final determination if neither the prosecuting attorney nor defense counsel requests a hearing. Upon the timely written request of either the prosecuting attorney or defense counsel, the court shall hold a competency hearing. If the court did not order a competency examination or other evaluation prior to its preliminary determination and the court determines adequate mental health information is not available, the court shall refer the juvenile for a competency examination prior to the hearing. At the conclusion of the competency hearing, the court shall make a final determination regarding the juvenile's competency to proceed. At a competency hearing held pursuant to this subsection (2), the burden of submitting evidence and the burden of proof by a preponderance of the evidence are upon the party asserting the juvenile's incompetency.

(3) If the question of a juvenile's incompetency to proceed is raised after a jury is impaneled to try the issues raised by a plea of not guilty or after the court as the finder of fact begins to hear evidence and the court determines that the juvenile is incompetent to proceed or orders the juvenile referred for a competency examination, the court may declare a mistrial. If the court declares a mistrial under these circumstances, the juvenile must not be deemed to have been placed in jeopardy with regard to the charges at issue. The juvenile may be tried on, and

sentenced if adjudicated for, the same charges after the juvenile has achieved or been restored to competency.

(4) (a) If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least-restrictive environment, including home or community placement, if appropriate, taking into account the public safety and the best interests of the juvenile.

(b) A competency evaluation must be conducted by a licensed psychiatrist or licensed psychologist who is experienced in the clinical evaluation of juveniles and trained in forensic competency assessments, or a psychiatrist or psychologist who is in forensic training and under the supervision of a licensed forensic psychiatrist or licensed psychologist with expertise in forensic psychology.

(c) The competency evaluation must, at a minimum, include an opinion regarding whether the juvenile is incompetent to proceed as defined in section 19-2.5-701.5. If the evaluation concludes the juvenile is incompetent to proceed, the evaluation must include a recommendation as to whether there is a likelihood that the juvenile may achieve or be restored to competency in the reasonably foreseeable future and identify appropriate services to restore the juvenile to competency.

(d) The evaluator conducting the competency evaluation shall file the evaluation with the court within:

(I) Thirty-five days after issuance of the order for the competency evaluation, unless good cause is shown for a delay, if the juvenile is held in a secure detention facility;

(II) Forty-nine days after issuance of the order for the competency evaluation, unless good cause is shown for a delay, if the juvenile is not held in a secure detention facility.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 611, § 2, effective October 1. **L. 2023:** (4)(c) amended, (HB 23-1012), ch. 205, p. 1045, § 4, effective August 7.

Editor's note: This section is similar to former § 19-2-1302 as it existed prior to 2021.

19-2.5-703.5. Waiver of privilege - exchange of information - admissibility of statements. (1) When the court determines that a juvenile is incompetent to proceed, any claim of confidentiality or privilege by the juvenile or the juvenile's parent or legal guardian is deemed waived within the case to allow the court and parties to determine issues related to the juvenile's competency, restoration, and any management plan developed by the court pursuant to section 19-2.5-704 (3). The district attorney, defense attorney, guardian ad litem, the department, any competency evaluators, any restoration treatment providers, and the court are granted access, without written consent of the juvenile or further order of the court, to:

(a) Competency evaluations and restoration evaluations, including all second evaluations;

(b) Information and documents related to competency evaluations that are created, obtained, reviewed, or relied on by a competency evaluator performing a court-ordered competency evaluation;

(c) Information and documents relating to competency restoration that are created, obtained, reviewed, or relied on by a competency provider performing court-ordered restoration services;

(d) The competency evaluator, for the purpose of discussing the competency evaluation; and

(e) The providers of court-ordered restoration services for the purpose of discussing such services.

(2) Upon a request by either party or the court for information described in subsection (1) of this section, the competency evaluator or restoration services provider shall provide the information to the party or court for use in preparing for a competency hearing, restoration progress review hearing, restoration to competency hearing, or hearing regarding a management plan pursuant to section 19-2.5-704 (3) and for use in any such hearing.

(3) A competency evaluator or restoration services provider assigned pursuant to a court order issued pursuant to this article 2.5 shall provide procedural information to the district attorney, defense attorney, guardian ad litem, the department, any competency evaluators, any restoration treatment providers, and the court concerning:

(a) The juvenile's location;

(b) The juvenile's hospital or facility admission status;

(c) The status of evaluation procedures;

(d) The status of restoration services procedures; and

(e) Any other procedural information relevant to the juvenile's competency, restoration, or management plan.

(4) Nothing in this section limits the court's ability to order, in addition to the information set forth in subsections (1) and (3) of this section, additional information be provided to the district attorney, defense attorney, guardian ad litem, the department, any competency evaluator, any restoration treatment provider, and the court, unless it is otherwise protected from disclosure by other law. Nothing in this section limits the information that is available with the written consent of the juvenile.

(5) The court shall order the parties to exchange the names, addresses, reports, and statements of each physician or psychologist who examined or treated the juvenile for competency.

(6) Evidence obtained during a competency evaluation or during competency restoration services that is related to the juvenile's competency or incompetency is only admissible to determine the juvenile's competency, incompetency, or to determine orders related to restoration, restoration services, or a management plan and is not admissible on the issues raised by a plea of not guilty.

Source: L. 2023: Entire section added, (HB 23-1012), ch. 205, p. 1045, § 5, effective August 7.

19-2.5-704. Procedure after determination of competency or incompetency. (1) If the court finally determines pursuant to section 19-2.5-703 that the juvenile is competent to proceed, the court shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.

(2) (a) If the court finally determines pursuant to section 19-2.5-703 that the juvenile is incompetent to proceed but may be restored to competency in the reasonably foreseeable future, the court shall stay the proceedings and order that the juvenile receive services designed to restore the juvenile to competency, based upon recommendations in the competency evaluation, unless the court makes specific findings that the recommended services in the competency evaluation are not justified. The court shall order that the restoration services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the juvenile, and that the provision of the services and the juvenile's participation in those services occur in a timely manner. The court shall hold a restoration progress review hearing at least every ninety-one days until competency is restored, unless the juvenile is in custody, in which event the court shall hold a restoration progress review hearing every thirty-five days to ensure the prompt provision of services in the least-restrictive environment. The court shall not maintain jurisdiction longer than the maximum possible sentence for the most serious offense, unless the court makes specific findings of good cause to retain jurisdiction. However, the juvenile court's jurisdiction shall not extend beyond the juvenile's twenty-first birthday.

(b) Pursuant to section 27-60-105, the department is the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration.

(c) The court or a party may raise, at any time, the need for a restoration evaluation of a juvenile's competency. If raised, the court shall order a restoration evaluation only when there is credible information that the juvenile's circumstances have changed, the court cannot fairly determine whether the juvenile has been restored to competency or will be able to be restored to competency in the reasonably foreseeable future, and the cause for a restoration evaluation outweighs the negative impact of a restoration evaluation upon the juvenile and any delay that will be caused by a restoration evaluation. The court may hold a hearing to determine if a restoration evaluation must be ordered. If the court orders a restoration evaluation, such evaluation must meet the requirements of section 19-2.5-703 (4).

(2.5) (a) If the court finds a juvenile is incompetent to proceed and the juvenile has been incompetent to proceed for a period of time that exceeds the time limits set forth in this subsection (2.5), the court shall enter a finding that the juvenile is unrestorable to competency and shall determine whether a management plan for the juvenile is necessary pursuant to subsection (3)(a) of this section. The time limits are as follows:

(I) If the highest charged act constitutes a misdemeanor, a misdemeanor drug offense, a petty offense, or a traffic offense, and the juvenile is not restored to competency after a period of six months, the court shall find the juvenile unrestorable to competency;

(II) If the highest charged act constitutes a class 4, 5, or 6 felony, or a level 3 or 4 drug felony, and the juvenile is not restored to competency after a period of one year, the court shall find the juvenile unrestorable to competency;

(III) If the highest charged act constitutes a class 3 felony or a level 1 or 2 drug felony, except for a charge that constitutes an act that alleges the juvenile is an aggravated juvenile offender pursuant to section 19-2.5-1125 (4), and the juvenile is not restored to competency after a period of two years, the court shall find the juvenile unrestorable to competency; or

(IV) If the highest charged act constitutes a class 1 or 2 felony or for a charge that constitutes an act that alleges the juvenile is an aggravated juvenile offender pursuant to section

19-2.5-1125 (4) and the juvenile is not restored to competency after a period of five years, the court shall find the juvenile unrestorable to competency.

(b) Upon a motion from the prosecuting attorney filed prior to the expiration of the time limits set forth in subsection (2.5)(a) of this section, the court may extend the time limits set forth in subsection (2.5)(a) of this section for an additional three months if the court, after a hearing, makes factual findings that:

(I) The juvenile has failed to attend or substantially cooperate with restoration treatment;

(II) There is a reasonable likelihood of restoration in the foreseeable future if the juvenile cooperates with restoration treatment; and

(III) The juvenile's lack of cooperation is not the result of an intellectual and developmental disability, mental or behavioral health disorder, or a lack of mental capacity.

(c) Nothing in this subsection (2.5) precludes a court from determining a juvenile is unlikely to be restored to competency in the reasonably foreseeable future and entering an order that the juvenile is unrestorable to competency pursuant to subsection (3)(a) of this section through a competency hearing or restoration to competency hearing conducted at any time prior to the expiration of the time limits set forth in subsection (2.5)(a) of this section, based upon the available evidence.

(3) (a) If the court finally determines pursuant to section 19-2.5-703 or 19-2.5-703.5 that the juvenile is incompetent to proceed and cannot be restored to competency in the reasonably foreseeable future, the court shall enter an order finding the juvenile unrestorable to competency and shall determine whether a management plan for the juvenile is necessary, taking into account the public safety and the best interests of the juvenile. If the court determines a management plan is necessary, the court shall develop the management plan after ordering that the juvenile be placed in the least-restrictive environment, taking into account the public safety and best interests of the juvenile. If the court determines a management plan is unnecessary, the court may continue any treatment or plan already in place for the juvenile. The management plan must, at a minimum, address treatment for the juvenile, identify the party or parties responsible for the juvenile, and specify appropriate behavior management tools, if they are not otherwise part of the juvenile's treatment.

(b) The management plan may include:

(I) Placement options included in article 10.5 or 65 of title 27;

(II) A treatment plan developed by a licensed mental health professional;

(III) An informed supervision model;

(IV) Institution of a guardianship petition; or

(V) Any other remedy deemed appropriate by the court.

(c) If the charges are not dismissed earlier by the district attorney, the charges against a juvenile found to be incompetent and unrestorable must be dismissed no later than the maximum possible sentence for the original offense after the date of the court's finding of incompetent and unrestorable, unless the court makes specific findings of good cause to retain jurisdiction. However, the juvenile court's jurisdiction shall not extend beyond the juvenile's twenty-first birthday.

(4) A determination pursuant to subsection (2) of this section that a juvenile is incompetent to proceed must not preclude the court from considering the release of the juvenile on bond upon compliance with the standards and procedures for such release prescribed by statute. At any hearing to determine eligibility for release on bond, the court may consider any

effect the juvenile's incompetency may have on the juvenile's ability to ensure the juvenile's presence for trial.

Source: L. 2021: (4) amended, (SB 21-071), ch. 463, p. 3336, § 6, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 612, § 2, effective October 1. **L. 2022:** (2)(b) amended, (HB 22-1278), ch. 222, p. 1505, § 48, effective July 1; (3)(b)(I) amended, (SB 22-212), ch. 421, p. 2972, § 38, effective August 10. **L. 2023:** (2)(b) amended, (HB 23-1236), ch. 206, p. 1051, § 3, effective May 16; (2)(a) and (3)(a) amended and (2)(c) and (2.5) added, (HB 23-1012), ch. 205, p. 1046, § 6, effective August 7; (2)(b) amended, (HB 23-1138), ch. 423, p. 2485, § 4, effective July 1, 2024.

Editor's note: (1) This section is similar to former § 19-2-1303 as it existed prior to 2021.

(2) Subsection (4) was numbered as 19-2-1303 (4) in SB 21-071 (see L. 2021, p. 3336). That provision was harmonized with subsection (4) of this section as it appears in SB 21-059.

(3) Amendments to subsection (2)(b) by HB 23-1138 and HB 23-1236 were harmonized.

19-2.5-705. Restoration to competency hearing. (1) The court may order a restoration to competency hearing, as defined in section 19-2.5-701.5, at any time on its own motion, on motion of the prosecuting attorney, or on motion of the juvenile. The court shall order a restoration of competency hearing if a competency evaluator with the qualifications described in section 19-2.5-703 (4)(b) files a report certifying that the juvenile is competent to proceed.

(2) At the hearing, if the question is contested, the burden of submitting evidence and the burden of proof by a preponderance of the evidence is on the party asserting that the juvenile is competent.

(3) At the restoration to competency hearing, the court shall determine whether the juvenile has achieved or is restored to competency.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 613, § 2, effective October 1. **L. 2023:** (1) amended, (HB 23-1012), ch. 205, p. 1049, § 7, effective August 7.

Editor's note: This section is similar to former § 19-2-1304 as it existed prior to 2021.

19-2.5-706. Procedure after restoration to competency hearing. (1) If a juvenile is found to have achieved or been restored to competency after a restoration to competency hearing, pursuant to section 19-2.5-705, or by the court during a review, pursuant to section 19-2.5-704 (2), the court shall resume or recommence the trial or sentencing proceeding or order the sentence carried out. The court may credit any time the juvenile spent in confinement or detention while incompetent to proceed against any term of commitment imposed after achievement of or restoration to competency.

(2) If the court determines that the juvenile remains incompetent to proceed and the delinquency petition is not dismissed, the court may continue or modify any orders entered at the time of the original determination of incompetency or enter any new order necessary to facilitate the juvenile's achievement of or restoration to competency.

(3) Evidence obtained during a competency evaluation or during treatment related to the juvenile's competency or incompetency and the determination as to the juvenile's competency or incompetency are not admissible on the issues raised by a plea of not guilty.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 614, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1305 as it existed prior to 2021.

19-2.5-707. Evaluation at the request of the juvenile. A juvenile has the right to request a second evaluation in response to a court-ordered competency evaluation or a court-ordered restoration evaluation within seven days after the receipt of an evaluation. If a juvenile wants a second evaluation to be conducted by a competency evaluator of the juvenile's choice in connection with a proceeding held pursuant to this article 2.5, the court, upon timely motion, shall order that the competency evaluator be given reasonable opportunity to conduct the second evaluation prior to any competency or restoration hearing.

Source: L. 2023: Entire section added, (HB 23-1012), ch. 205, p. 1049, § 8, effective August 7.

PART 8

DIRECT FILING AND TRANSFER HEARINGS

19-2.5-801. Direct filing - definition. (1) A juvenile may be charged by the direct filing of an information in the district court or by indictment only if the juvenile is sixteen years of age or older at the time of the commission of the alleged offense and:

(a) Is alleged to have committed a class 1 or class 2 felony; or

(b) Is alleged to have committed a sexual assault that is a crime of violence pursuant to section 18-1.3-406 or a sexual assault under the circumstances described in section 18-3-402 (5)(a); or

(c) (I) Is alleged to have committed a felony enumerated as a crime of violence pursuant to section 18-1.3-406, other than a sexual assault as described in subsection (1)(b) of this section, or is alleged to have committed sexual assault pursuant to section 18-3-402, sexual assault on a child pursuant to section 18-3-405, or sexual assault on a child by one in a position of trust pursuant to section 18-3-405.3; and

(II) Is found to have a prior adjudicated felony offense; or

(d) Has previously been subject to proceedings in district court as a result of a direct filing pursuant to this section or a transfer pursuant to section 19-2.5-802; except that:

(I) If the juvenile is found not guilty in district court of the prior felony or any lesser included offense, the subsequent charge must be remanded to the juvenile court; and

(II) If the juvenile is convicted in district court in the prior case of a lesser included or nonenumerated offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section, the subsequent charge may be remanded to the juvenile court.

(2) If, after a preliminary hearing, the district court does not find probable cause for an offense that may be charged by direct filing, or if the direct file eligible offense is dismissed at a later date, the court shall remand the case to the juvenile court.

(3) Notwithstanding section 19-2.5-802, after filing charges in the juvenile court but before the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to this section. Upon the filing or indictment in the district court, the juvenile court no longer has jurisdiction over proceedings concerning the charges.

(4) (a) After a juvenile case has been charged by direct filing of information or by an indictment in district court, the juvenile may file in district court a motion to transfer the case to juvenile court. The juvenile must file the motion no later than the time to request a preliminary hearing. Upon receipt of the motion, the court shall set the reverse-transfer hearing with the preliminary hearing. The court shall permit the district attorney to file a response to the juvenile's motion to transfer the case to juvenile court. The district attorney shall file the response no later than fourteen days before the reverse-transfer hearing.

(b) In determining whether the juvenile and the community would be better served by adjudicative proceedings pursuant to this article 2.5 or by proceedings pursuant to title 16, the court shall consider the following factors:

(I) The seriousness of the alleged offense and whether the protection of the community requires response or consequence beyond that afforded by this article 2.5;

(II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(IV) The age of the juvenile and the maturity of the juvenile, as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(V) The juvenile's record and previous history in prior court-related matters;

(VI) The juvenile's current and past mental health status, as evidenced by relevant mental health or psychological assessments or screenings that are made available to both the district attorney and defense counsel;

(VII) The likelihood of the juvenile's rehabilitation by use of the sentencing options available in the juvenile courts and district courts;

(VIII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;

(IX) The impact of the offense on the victim;

(X) Whether the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony; and

(XI) Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of the delinquent act.

(c) If the district court determines pursuant to subsection (4)(b) of this section that the juvenile and the community would be better served by adjudicative proceedings pursuant to this article 2.5, the court shall enter an order directing that the offenses against the juvenile be adjudicated in juvenile court pursuant to this article 2.5.

(5) (a) If a juvenile is convicted following the filing of criminal charges by information or indictment in the district court pursuant to this section, the district judge shall sentence the juvenile either:

(I) As an adult; except that a juvenile is excluded from the mandatory minimum sentencing provisions in section 18-1.3-406, unless the juvenile is convicted of a class 1 felony or a sex offense that is subject to part 9 of article 1.3 of title 18; or

(II) To the youthful offender system in the department of corrections in accordance with section 18-1.3-407; except that a juvenile is ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

(A) A class 1 felony;

(B) Any sexual offense described in section 18-6-301 or 18-6-302 or part 4 of article 3 of title 18; or

(C) A second or subsequent offense, if the juvenile received a sentence to the department of corrections or to the youthful offender system for the prior offense.

(b) The district court judge may sentence a juvenile pursuant to this article 2.5 if the juvenile is convicted of a lesser included or nonenumerated felony offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section. If the juvenile is convicted of only a misdemeanor offense or misdemeanor offenses, the court shall adjudicate the juvenile a delinquent and sentence the juvenile pursuant to this article 2.5.

(c) If a juvenile is convicted of an offense that is not eligible for district court jurisdiction pursuant to either this section or section 19-2.5-802, the juvenile must be remanded to juvenile court.

(6) In the case of a person who is sentenced as a juvenile pursuant to subsection (5) of this section, the following provisions apply:

(a) Section 19-2.5-1126 (1)(a), regarding mandatory sentence offenders;

(b) Section 19-2.5-1126 (1)(b), regarding repeat juvenile offenders;

(c) Section 19-2.5-1126 (1)(c), regarding violent juvenile offenders; and

(d) Sections 19-2.5-503 and 19-2.5-1127, regarding aggravated juvenile offenders.

(7) The court in its discretion may appoint a guardian ad litem for a juvenile charged by the direct filing of an information in the district court or by indictment pursuant to this section.

(8) When a juvenile is sentenced pursuant to this article 2.5, the juvenile's conviction must be adjudicated as a juvenile delinquency adjudication.

(9) For purposes of this section, "violent juvenile offender" has the same meaning as set forth in section 19-2.5-1125 (3).

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 614, § 2, effective October 1; (1) amended, (SB 21-266), ch. 423, p. 2800, § 16, effective October 1.

Editor's note: This section is similar to former § 19-2-517 as it existed prior to 2021.

19-2.5-802. Transfers. (1) (a) The juvenile court may enter an order certifying a juvenile to be held for criminal proceedings in the district court if:

(I) A petition filed in juvenile court alleges the juvenile is:

(A) Twelve or thirteen years of age at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a class 1 or class 2 felony or a crime of violence, as defined in section 18-1.3-406; or

(B) Fourteen years of age or older at the time of the commission of the alleged offense and is a juvenile delinquent by virtue of having committed a delinquent act that constitutes a felony; and

(II) After investigation and a hearing, the juvenile court finds it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction.

(b) A petition may be transferred from the juvenile court to the district court only after a hearing as provided in this section.

(c) If the crime alleged to have been committed is a felony defined by section 18-8-208, and no other crime is alleged to have been committed and the juvenile has been adjudicated a juvenile delinquent for a delinquent act that constitutes a class 4 or 5 felony, then the charge for the crime may not be filed directly in the district court, but the juvenile court may transfer the charge to the district court pursuant to subsection (1)(a) of this section.

(d) (I) If a juvenile is convicted in cases in which criminal charges are transferred to the district court pursuant to this section, the district court judge shall sentence the juvenile either:

(A) As an adult; except that a juvenile is excluded from the mandatory minimum sentencing provisions in section 18-1.3-406, unless the juvenile is convicted of a class 1 felony or a sex offense that is subject to part 9 of article 1.3 of title 18; or

(B) To the youthful offender system in the department of corrections in accordance with section 18-1.3-407; except that a juvenile is not eligible for sentencing to the youthful offender system if the juvenile is convicted of a class 1 felony; any sexual offense described in section 18-6-301 or 18-6-302, or part 4 of article 3 of title 18; or a second or subsequent offense, if the juvenile received a sentence to the department of corrections or to the youthful offender system for the prior offense.

(II) The district court judge may sentence a juvenile pursuant to this article 2.5 if the juvenile is convicted of a lesser included or nonenumerated felony offense in cases in which criminal charges are transferred to the district court pursuant to this section. If the juvenile is convicted of only a misdemeanor offense or misdemeanor offenses, the court shall adjudicate the juvenile a delinquent and sentence the juvenile pursuant to this article 2.5.

(III) If a juvenile is convicted of an offense that is not eligible for district court jurisdiction pursuant to either this section or section 19-2.5-801, the juvenile shall be remanded to juvenile court for sentencing pursuant to this article 2.5.

(IV) In the case of a person who is sentenced as a juvenile pursuant to this subsection (1)(d), the following provisions apply:

(A) Section 19-2.5-1126 (1)(a), regarding mandatory sentence offenders;

(B) Section 19-2.5-1126 (1)(b), regarding repeat juvenile offenders;

(C) Section 19-2.5-1126 (1)(c), regarding violent juvenile offenders; and

(D) Section 19-2.5-1127, regarding aggravated juvenile offenders.

(V) The court in its discretion may appoint a guardian ad litem for a juvenile following the transfer of charges to the district court pursuant to this section.

(VI) When a juvenile is sentenced pursuant to this article 2.5, the juvenile's conviction shall be adjudicated as a juvenile delinquency adjudication.

(VII) For purposes of this subsection (1)(d), "violent juvenile offender" has the same meaning as defined in section 19-2.5-1125 (3).

(e) Whenever a juvenile under the age of fourteen years is sentenced pursuant to section 18-1.3-401 as provided in subsection (1)(d) of this section, the department of corrections shall contract with the department of human services to house and provide services to the juvenile in a facility operated by the department of human services until the juvenile reaches the age of fourteen years. On reaching the age of fourteen years, the juvenile must be transferred to an appropriate facility operated by the department of corrections for the completion of the juvenile's sentence.

(2) After filing charges in the juvenile court but prior to the time that the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to section 19-2.5-801. Upon the filing or indictment in the district court, the juvenile court no longer has jurisdiction over proceedings concerning the charges.

(3) At the transfer hearing, the court shall consider:

(a) Whether there is probable cause to believe that the juvenile has committed a delinquent act for which waiver of juvenile court jurisdiction over the juvenile and transfer to the district court may be sought pursuant to subsection (1) of this section; and

(b) Whether the interests of the juvenile or of the community would be better served by the juvenile court's waiving its jurisdiction over the juvenile and transferring jurisdiction over the juvenile to the district court.

(4) (a) The hearing must be conducted as set forth in section 19-1-106, and the court shall make certain that the juvenile and the juvenile's parents, guardian, or legal custodian have been fully informed of their right to be represented by counsel.

(b) In considering whether to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(I) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(IV) The juvenile's maturity, as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;

(V) The juvenile's record and previous history;

(VI) The likelihood of the juvenile's rehabilitation by use of facilities available to the juvenile court;

(VII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;

(VIII) The impact of the offense on the victim;

(IX) Whether the juvenile was twice previously adjudicated a delinquent juvenile for delinquent acts that constitute felonies;

(X) Whether the juvenile was previously adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406;

(XI) Whether the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony;

(XII) Whether the juvenile is sixteen years of age or older at the time of the offense and the present act constitutes a crime of violence, as defined in section 18-1.3-406;

(XIII) Whether the juvenile is sixteen years of age or older at the time of the offense and has been twice previously adjudicated a juvenile delinquent for delinquent acts against property that constitute felonies; and

(XIV) Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of a delinquent act.

(c) The amount of weight to be given to each of the factors listed in subsection (4)(b) of this section is discretionary with the court; except that a record of two or more previously sustained petitions for delinquent acts that constitute felonies or a record of two or more juvenile probation revocations based on acts that constitute felonies establish prima facie evidence that to retain jurisdiction in juvenile court would be contrary to the best interests of the juvenile or of the community.

(d) The insufficiency of evidence pertaining to any one or more of the factors listed in subsection (4)(b) of this section is not in and of itself determinative of the issue of waiver of juvenile court jurisdiction.

(5) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history may be considered by the court, but the court, if so requested by the juvenile, the juvenile's parent or guardian, or other interested party, shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) (a) If the court finds that its jurisdiction over a juvenile should be waived, it shall enter an order to that effect; except that such order of waiver is null and void if the district attorney fails to file an information in the criminal division of the district court within five days after issuance of the written order of waiver, exclusive of Saturdays, Sundays, and court holidays. Upon failure of the district attorney to file an information within five days of the issuance of the written order of waiver, exclusive of Saturdays, Sundays, and court holidays, the juvenile court shall retain jurisdiction and shall proceed pursuant to this article 2.5.

(b) As a condition of the waiver of jurisdiction, the court in its discretion may provide that a juvenile shall continue to be held in custody pending the filing of an information in the criminal division of the district court. Where the juvenile has made bond in proceedings in the juvenile court, the bond may be continued and made returnable in and transmitted to the district court, where it must continue in full force and effect unless modified by order of the district court.

(7) If the court finds that it is in the best interests of the juvenile and of the public for the court to retain jurisdiction, it shall proceed with the adjudicatory trial pursuant to part 9 of this article 2.5.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 618, § 2, effective October 1; (1)(d) R&RE, (HB 21-1091), ch. 175, p. 956, § 4, effective October 1.

Editor's note: This section is similar to former § 19-2-518 as it existed prior to 2021.

PART 9

ADJUDICATORY PROCEEDINGS

19-2.5-901. Informal adjustment. (1) The district attorney may request of the court at any time, either before, during, or after the filing of a petition, that the matter be handled as an informal adjustment if:

(a) The juvenile and the juvenile's parents, guardian, or legal custodian have been informed of their constitutional and legal rights, including the right to have counsel at every stage of the proceedings;

(b) There are sufficient facts to establish the court's jurisdiction; and

(c) The juvenile and the juvenile's parents, guardian, or legal custodian have waived the right to a speedy trial.

(2) An informal adjustment must be for an initial period of no longer than six months. One additional extension of up to six months may be ordered by the court upon showing of good cause.

(3) During any informal adjustment, the court may place the juvenile under the supervision of the probation department or other designated agency. The court may require further conditions of conduct, as requested by the district attorney, probation department, or designated agency.

(4) A juvenile shall not be granted an informal adjustment if the juvenile has been adjudicated a juvenile delinquent within the preceding twelve months, has had a prior deferred adjudication, or has had an informal adjustment granted within the preceding twelve months.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 622, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-703 as it existed prior to 2021.

19-2.5-902. Entry of plea. (1) Upon the entry of a plea of not guilty to the allegations contained in the petition, the court shall set the matter for an adjudicatory trial. Except as set forth in section 19-2.5-610, the court shall hold the adjudicatory trial within sixty days after the entry of a plea of not guilty.

(2) Upon the entry of a plea of guilty to one or more of the allegations contained in the petition, the court shall advise the juvenile in accordance with rule 3 of the San Andreas rules of juvenile procedure. The advisement must include the possibility of restorative justice practices, including victim-offender conferences if restorative justice practices are available in the jurisdiction. The advisement regarding restorative justice practices does not establish any right to restorative justice practices on the juvenile's behalf.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 622, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-708 as it existed prior to 2021.

19-2.5-903. Deferral of adjudication. (1) Except as set forth in subsection (2) of this section, in any case in which the juvenile has agreed with the district attorney to enter a plea of guilty, the court, with the consent of the juvenile and the district attorney, upon accepting the guilty plea and entering an order deferring adjudication, may continue the case for a period not to exceed one year after the date of entry of the order deferring adjudication. The court may continue the case for an additional one-year period for good cause.

(2) In a case in which the juvenile has agreed with the district attorney to enter a plea of guilty, resulting in a conviction, as defined in section 16-22-102 (3), for unlawful sexual behavior, as defined in section 16-22-102 (9), the court, with the consent of the juvenile and district attorney, upon accepting the guilty plea and entering an order deferring adjudication, may continue the case for a period of time not to exceed two years after the date of the order deferring adjudication. Upon a showing of good cause, the court may continue the case for additional time, not to exceed five years after the date of the order deferring adjudication.

(3) A juvenile granted a deferral of adjudication pursuant to this section may be placed under the supervision of a probation department. The court may impose any conditions of supervision that it deems appropriate that are stipulated to by the juvenile and the district attorney.

(4) Upon full compliance with the conditions of supervision, the plea of the juvenile or the finding of guilt by the court must be withdrawn and the case dismissed with prejudice.

(5) The district attorney or a probation officer may make an application for entry of adjudication and imposition of sentence at any time within the term of the deferred adjudication or within thirty-five days thereafter.

(6) If the juvenile fails to comply with the terms of supervision, the court shall enter an order of adjudication and proceed to sentencing pursuant to section 19-2.5-1102. Lack of compliance is a matter to be determined by the court without a jury, upon written application of the district attorney or probation department. At least seven days' notice must be given to the juvenile and the juvenile's parents, guardian, or legal custodian. The burden of proof is the same as if the matter were being heard as a probation revocation proceeding.

(7) If the juvenile agrees to a deferral of adjudication, the juvenile waives all rights to a speedy trial and sentencing.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 622, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-709 as it existed prior to 2021.

19-2.5-904. Speedy trial - procedural schedule. (1) The juvenile's right to a speedy trial is governed by section 18-1-405 and rule 48(b) of the San Andreas rules of criminal procedure.

(2) In bringing an adjudicatory action against a juvenile pursuant to this article 2.5, the district attorney and the court shall comply with the deadlines for:

(a) Holding the detention hearing, as specified in section 19-2.5-305 (3)(a)(I);

(b) Filing the petition, as specified in section 19-2.5-305 (3)(a)(IX);

(c) Setting the first appearance, as specified in section 19-2.5-501 (4); and

(d) Holding the adjudicatory trial, as specified in section 19-2.5-902 (1).

(3) The court may grant a continuance with regard to any of the deadlines specified in subsection (2) of this section upon making a finding of good cause.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 623, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-108 as it existed prior to 2021.

19-2.5-905. Evidentiary considerations. (1) All statutes and rules of this state that apply to evidentiary considerations in adult criminal proceedings apply to proceedings pursuant to this title 19 except as otherwise specifically provided.

(2) In any case brought pursuant to this title 19, the credibility of any witness may be challenged because of the witness's prior adult felony convictions and juvenile felony adjudications. The fact of such conviction or adjudication may be proved either by the witness through testimony or by other competent evidence.

(3) Prior to the juvenile resting the juvenile's case, the trial court shall advise the juvenile outside the presence of the jury that:

(a) The juvenile has a right to testify in the juvenile's own behalf;

(b) If the juvenile wants to testify, no one, including the juvenile's attorney, can prevent the juvenile from doing so;

(c) If the juvenile testifies, the prosecutor will be allowed to cross-examine the juvenile;

(d) If the juvenile has been convicted or adjudicated for a felony, the prosecutor is entitled to ask the juvenile about it and thereby disclose it to the jury;

(e) If a felony conviction or adjudication is disclosed to the jury, the jury can be instructed to consider it only as it bears upon the juvenile's credibility;

(f) The juvenile has a right not to testify and that, if the juvenile does not testify, the jury must be instructed about such right.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 624, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-802 as it existed prior to 2021.

19-2.5-906. Admissibility of evidence - legislative declaration - definitions. (1) It is the intent of the general assembly that, when evidence is sought to be excluded from the trier of fact in a delinquency proceeding because of the conduct of a peace officer leading to its discovery, such evidence should not be suppressed if otherwise admissible when the proponent of the evidence can show that the conduct in question was taken in a reasonable, good-faith belief that it was proper. It is further declared to be the general assembly's intent to identify the characteristics of admissible evidence and not to address or attempt to prescribe court procedure.

(2) For purposes of this section:

(a) "Good-faith mistake" means a reasonable error of judgment concerning the existence of facts or law that, if true, would be sufficient to constitute probable cause.

(b) "Peace officer" has the meaning set forth in section 16-2.5-101.

(c) "Technical violation" means a reasonable, good-faith reliance upon a statute that is later ruled unconstitutional, a warrant that is later invalidated due to a good-faith mistake, or a court precedent that is later overruled.

(3) The court shall not suppress evidence sought to be excluded in a delinquency proceeding because of the conduct of the peace officer leading to its discovery if the court finds that the evidence was seized by the peace officer as a result of a good-faith mistake or a technical violation and the evidence is otherwise admissible.

(4) The court shall not supress in a delinquency proceeding evidence that is obtained as a result of a confession voluntarily made in a noncustodial setting if the evidence is otherwise admissible.

(5) It is prima facie evidence that the conduct of the peace officer was taken in the reasonable good-faith belief that it was proper if there is a showing that the evidence was obtained pursuant to and within the scope of a warrant, unless the warrant was obtained through intentional and material misrepresentation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 624, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-803 as it existed prior to 2021.

19-2.5-907. Procedures at trial. (1) At the adjudicatory trial, that must be conducted pursuant to section 19-1-106, the court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt. Jurisdictional matters of the age and residence of the juvenile are deemed admitted by or on behalf of the juvenile unless specifically denied within a reasonable time prior to the trial.

(2) If the juvenile is found not guilty after an adjudicatory trial, the court shall order the petition dismissed and the juvenile discharged from any detention or restriction previously ordered. The juvenile's parents, guardian, or other legal custodian are also discharged from any restriction or other previous temporary order.

(3) If the juvenile is found guilty after an adjudicatory trial, the court may proceed to sentencing or direct that the matter be set for a separate sentencing hearing within forty-nine days following completion of the adjudicatory trial.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 625, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-804 as it existed prior to 2021.

19-2.5-908. Method of jury selection. Examination and selection of jurors are governed by rule 47 of the San Andreas rules of civil procedure; except that challenges for cause are governed by rule 24 of the San Andreas rules of criminal procedure.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 625, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-805 as it existed prior to 2021.

19-2.5-909. Motion for new trial. (1) All motions for a new trial must be made pursuant to rule 33 of the San Andreas rules of criminal procedure.

(2) If the juvenile was not represented by counsel, the court shall inform the juvenile and the juvenile's parent, guardian, or legal custodian at the conclusion of the trial that they have the right to file a motion for a new trial and that, if such motion is denied, they have the right to appeal.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 626, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-902 as it existed prior to 2021.

19-2.5-910. Adjudication - collateral relief - application - definitions. (1) At the time of the entry of adjudication or at any time thereafter, upon the request of the adjudicated juvenile or upon the court's own motion, a court may enter an order of collateral relief in the juvenile's case for the purpose of improving the juvenile's likelihood of success in the community.

(2) **Application contents.** (a) An application for an order of collateral relief must cite the grounds for granting the relief, the type of relief sought, and the specific collateral consequence from which the applicant is seeking relief and must include a copy of a recent criminal history record check. The state court administrator may produce an application form that an applicant may submit in application.

(b) The applicant shall provide a copy of the application to the district attorney and to the regulatory or licensing body that has jurisdiction over the collateral consequence from which the applicant is seeking relief, if any, by certified mail or personal service within fourteen days after filing the application with the court.

(c) An application filed after an adjudication order has been entered must include a copy of a recent San Andreas bureau of investigation fingerprint-based criminal history record check, the filing fee required by law, and an additional filing fee of thirty dollars to cover the actual costs related to the application. A court shall waive the filing fees if it finds that the juvenile is indigent.

(3) An order of collateral relief may relieve an adjudicated juvenile of any collateral consequences of the adjudication, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including but not limited to statutory, regulatory, or other collateral consequences that the court may see fit to relieve that will assist the adjudicated juvenile in successfully reintegrating into the community.

(4) (a) Notwithstanding any other provision of law, an order of collateral relief cannot relieve any collateral consequences imposed by law for licensure by the department of education or any collateral consequences imposed by law for employment with the judicial branch, the department of corrections, the division of youth services in the department of human services, or any other law enforcement agency in the state of San Andreas.

(b) A court shall not issue an order of collateral relief if the adjudicated juvenile:

(I) Has been adjudicated for a felony that included an element that requires a victim to suffer a serious bodily injury and the victim suffered a permanent impairment of the function of any part or organ of the body;

(II) Has been adjudicated for a crime of violence as described in section 18-1.3-406; or

(III) Is required to register as a sex offender pursuant to section 16-22-103.

(5) **Hearing.** (a) The court may conduct a hearing on any matter relevant to the granting or denying of an application or include a hearing on the matter at the adjudicated juvenile's sentencing hearing and may take testimony under oath.

(b) The court may hear testimony from victims or any proponent or opponent of the application and may hear arguments from the applicant and the district attorney.

(6) **Standard for granting relief.** (a) A court may issue an order of collateral relief if the court finds that:

(I) The order of collateral relief is consistent with the applicant's rehabilitation; and

(II) Granting the application would improve the applicant's likelihood of success in reintegrating into society and is in the public's interest.

(b) The court that previously issued an order of collateral relief, on its own motion or either by cause shown by the district attorney or on grounds offered by the applicant, may at any time issue a subsequent judgment to enlarge, limit, or circumscribe the relief previously granted.

(c) Upon the motion of the district attorney or probation officer or upon the court's own motion, a court may revoke an order of collateral relief upon evidence of a subsequent criminal conviction or adjudication or proof that the adjudicated juvenile is no longer entitled to relief. Any bars, prohibitions, sanctions, and disqualifications relieved may be reinstated as of the date of the written order of revocation. The court shall provide a copy of the order of revocation to the holder and to any regulatory or licensing entity that the adjudicated juvenile noticed in the juvenile's motion for relief.

(7) If the court issues an order of collateral relief, it shall send a copy of the order of collateral relief through the San Andreas integrated criminal justice information system to the San Andreas bureau of investigation, and the San Andreas bureau of investigation shall note in the applicant's record in the San Andreas crime information center that the order of collateral relief was issued.

(8) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Adjudication" or "adjudicated" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or an adjudication for a crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be a crime. "Adjudication" or "adjudicated" also includes having received a deferred adjudication.

(b) "Collateral consequence" means a collateral sanction or a disqualification.

(c) "Collateral sanction" means a penalty, prohibition, bar, or disadvantage, however denominated, imposed on an individual as a result of the individual's adjudication for an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privilege.

(d) "Disqualification" means a penalty, prohibition, bar, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's adjudication for an offense.

(9) The provisions of this section apply to adjudications entered before, on, or after September 7, 2021.

Source: L. 2021: (9) added, (HB 21-1214), ch. 455, p. 3029, § 2, effective September 7; entire article added with relocations, (SB 21-059), ch. 136, p. 626, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 19-2-927 as it existed prior to 2021.

(2) Subsection (9) was numbered as 19-2-927 (9) in HB 21-1214 (see L. 2021, p. 3029). That provision was harmonized with subsection (9) of this section as it appears in SB 21-059.

PART 10

TEEN COURTS

19-2.5-1001. Short title. The short title of this part 10 is the "San Andreas Teen Court Program".

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 628, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1101 as it existed prior to 2021.

19-2.5-1002. Definitions. As used in this part 10, unless the context otherwise requires:

(1) "Minor offense" means any offense denominated a misdemeanor in title 18 or violation of a municipal ordinance where the maximum penalty authorized does not exceed imprisonment for more than six months.

(2) "Supervising court" means the juvenile court for the city and county of Denver, the district courts of the state other than that of Denver, and any municipal court that establishes a teen court program pursuant to this part 10.

(3) "Teen" means any person thirteen years of age or older and under nineteen years of age who is enrolled in school.

(4) "Teen court judge" means a volunteer, licensed to practice law in the state of San Andreas, approved by and serving at the pleasure of the chief judge of the supervising court.

(5) "Teen defendant" means a teen ordered to participate in a teen court program pursuant to this part 10.

(6) "Teen defense attorney" means a teen who is chosen by a teen court judge to speak on behalf of a teen defendant.

(7) "Teen jury" means not less than three teens who have been chosen by a teen court judge to decide what sentence should be imposed against a teen defendant.

(8) "Teen prosecutor" means a teen who has been chosen by a teen court judge to advocate on behalf of a school or community for any sentence to be imposed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 628, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1102 as it existed prior to 2021.

19-2.5-1003. Teen court program - supervising courts. (1) Any supervising court is authorized to establish a teen court program pursuant to the this part 10. In any jurisdiction where a teen court program is established, a teen charged with a minor offense may receive a deferred judgment, a condition of which is successful participation in the teen court program.

(2) The procedure for determining the eligibility for and imposition of the deferred judgment is as follows:

(a) The teen, in the presence of at least one of the teen's parents or legal guardian, enters a plea of guilty to the minor offense charged;

(b) The teen requests to participate in the teen court program, agrees to the deferral of further proceedings in the supervising court for a period of six months or until the teen has successfully completed the teen court program, and provides the court with addresses for mailing notices to both the teen and the teen's parent or legal guardian;

(c) The supervising court finds that the teen will benefit more from participation in the teen court program than from any other sentence that may be imposed;

(d) The supervising court may accept the teen's plea, order that the teen participate in the teen court program, and defer further proceedings in the supervising court for up to six months; and

(e) In addition to ordering the teen to participate in the teen court program, the supervising court may enter an order that the teen pay any restitution otherwise authorized by law.

(3) If the supervising court receives a report from the teen court judge that the teen has not successfully completed the teen court program, or if within six months after the entry of the order for deferred judgment the supervising court has not received a report that the teen has successfully completed the teen court program, the court shall schedule a sentencing hearing, send notice to the teen and the teen's parent or legal guardian at the addresses given at the time of the order for deferred judgment or any changed address, and at the sentencing hearing impose any other sentence authorized for the offense charged.

(4) If the supervising court receives a report from the teen court judge that the teen has successfully completed the teen court program, the court shall dismiss all charges against the teen. The dismissal does not constitute a conviction for any purpose.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 629, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1103 as it existed prior to 2021.

19-2.5-1004. Procedures - hearings. (1) Subject to any applicable rules of the San Andreas supreme court, the supervising court is responsible for establishing procedures for any teen court program under its jurisdiction, including but not limited to:

(a) The use of its courtroom and other facilities during times when they are not required for other court business;

(b) The approval of teen court judges;

(c) The collection of a fee from any teen defendant; and

(d) The range of sentencing options that may be imposed upon a teen defendant. Sentencing options must not include a term of imprisonment nor the payment of restitution, but may include:

(I) Community service supervised by the supervising court;

(II) Participation in law-related education classes, counseling, treatment, or other programs; or

(III) Participation as a juror or other teen court member in proceedings involving teen defendants.

(2) Whenever a teen, as a condition of a deferred judgment, is ordered to participate in a teen court program, the teen and the teen's parent or legal guardian must be ordered to appear at a teen court sentencing hearing. The teen court judge shall preside over the sentencing hearing. The teen defendant may represent himself or herself or be represented by a teen defense attorney. The following procedures must be followed at the teen court sentencing hearing:

(a) The teen court judge shall select a teen jury;

(b) The teen prosecutor and either the teen defendant or teen defense attorney may question the jury on their knowledge of the defendant or the facts of the offense for which the teen defendant was charged;

(c) The teen court judge may order that a teen juror be replaced if the judge finds that the juror may be biased;

(d) The teen prosecutor and either the teen defendant or teen defense attorney may make an opening statement;

(e) The teen defendant is subject to cross-examination by the teen prosecutor concerning the circumstances or facts surrounding the offense or the character of the teen defendant and may either make a statement or be subject to direct examination by the teen defense attorney;

(f) Each side may offer witnesses and documents concerning the circumstances or facts surrounding the offense or the character of the teen defendant;

(g) The teen prosecutor and either the teen defendant or teen defense attorney may make a closing statement;

(h) Unless otherwise ordered by the teen court judge, the teen jury shall deliberate in private and shall unanimously agree upon the sentence to be imposed against the teen defendant, pursuant to guidelines adopted by the court; and

(i) If the jury is unable to unanimously agree on a sentence, then the teen court judge shall impose the sentence, pursuant to guidelines adopted by the court.

(3) The teen court judge shall enter a written order that:

(a) Orders the teen defendant to complete the sentence imposed by the teen jury;

(b) Orders the teen defendant to submit a written report to the teen court judge within three months after the sentencing hearing showing satisfactory completion of the terms of the sentence; and

(c) Notifies the teen defendant that if the teen court judge does not receive the written report within the time required, the teen court judge shall file with the supervising court a report stating that the teen defendant has not satisfactorily completed the teen court program.

(4) Within six months after the order for deferred judgment, the teen court judge shall file a written report with the supervising court notifying the court whether the teen defendant has satisfactorily completed the teen court program.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 629, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1104 as it existed prior to 2021.

19-2.5-1005. Alternative procedures. Nothing contained in this part 10 impairs the authority of courts to adopt different or alternative procedures for the establishment and operation of teen court programs within their respective jurisdictions.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 631, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1105 as it existed prior to 2021.

PART 11

SENTENCING

SUBPART A

IN GENERAL

19-2.5-1101. Presentence investigation. (1) (a) Prior to the sentencing hearing, juvenile probation for the judicial district in which the juvenile is adjudicated shall conduct a presentence investigation unless waived by the court on its own determination or on recommendation of the prosecution or the juvenile. The presentence investigation must take into consideration and build on the intake assessment performed by the screening team. The presentence investigation may address, but is not limited to, the following:

(I) The details of the offense;

(II) Statements made by the victims of the offense;

(III) The amount of restitution, if any, that should be imposed on the juvenile or the juvenile's parent, guardian, or legal custodian;

(IV) The juvenile's previous criminal record, if any, if the juvenile has not been adjudicated for an act that constitutes unlawful sexual behavior as defined in section 16-22-102 (9);

(V) Any history of substance abuse by the juvenile;

(VI) The juvenile's education history, including any special education history and any current individualized education program the juvenile may have pursuant to section 22-20-108;

(VII) The juvenile's employment history;

(VIII) The juvenile's family, kin, and persons having a significant relationship with the juvenile;

(IX) The juvenile's peer relationships;

(X) The status of juvenile programs and community placements in the juvenile's judicial district of residence;

(XI) Other related material;

(XII) Review of placement and commitment criteria adopted pursuant to section 19-2.5-1404, which are the criteria for any sentencing recommendations included in the presentence investigation;

(XIII) Assessment of the juvenile's needs; and

(XIV) Recommendations and a proposed treatment plan for the juvenile.

(b) If the juvenile has been adjudicated for an act that constitutes unlawful sexual behavior, as defined in section 16-22-102 (9), then the report on the presentence investigation must include the juvenile's previous criminal and juvenile delinquency records, if any.

(2) (a) The probation department shall conduct a presentence investigation in each case unless waived by the court on its own determination or on recommendation of the prosecution or the juvenile. The level of detail included in the presentence investigation may vary, as appropriate, with the services being considered for the juvenile.

(b) (I) Except as set forth in subsection (2)(b)(II) of this section, if the juvenile is adjudicated on or after July 1, 2018, the report described in subsection (1)(a) of this section must include the following statement:

Each adjudicated juvenile may, at the time of adjudication or at any time thereafter, apply to the court for an order of collateral relief of the consequences of the juvenile's adjudication pursuant to section 19-2.5-910, San Andreas Revised Statutes.

(II) The report described in subsection (1)(a) of this section need not include the statement described in subsection (2)(b)(I) of this section if the juvenile:

(A) Has been adjudicated for a felony that included an element that requires a victim to suffer a serious bodily injury and the victim suffered a permanent impairment of the function of any part or organ of the body;

(B) Has been adjudicated for a crime of violence as described in section 18-1.3-406; or

(C) Is required to register as a sex offender pursuant to section 16-22-103.

(3) (a) The state court administrator may implement a behavioral or mental health disorder screening program to be used by the juvenile court. If the state court administrator chooses to implement a behavioral or mental health disorder screening program, the juvenile court shall use the standardized behavioral or mental health disorder screening developed pursuant to section 16-11.9-102 and conduct the screening in accordance with the procedures established pursuant to section 16-11.9-102. The findings and results of any standardized behavioral or mental health disorder screening conducted pursuant to this subsection (3) must be included in the written report to the court prepared and submitted pursuant to this section.

(b) Prior to implementation of a behavioral or mental health disorder screening program pursuant to this subsection (3), if implementation of the program would require an increase in appropriations, the state court administrator shall submit to the joint budget committee a request for funding in the amount necessary to implement the behavioral or mental health disorder

screening program. If implementation of the behavioral or mental health disorder screening program would require an increase in appropriations, implementation of the program is conditional upon approval of the funding request.

(4) Prior to sentencing a juvenile who was adjudicated for an offense that would be a felony or misdemeanor not contained in title 42 if committed by an adult, the court may order the juvenile to participate in an assessment to determine whether the juvenile would be suitable for participation in restorative justice practices that would be a part of the juvenile's sentence; except that the court may not order participation in a restorative justice practice if the juvenile was adjudicated a delinquent for unlawful sexual behavior, as defined in section 16-22-102 (9); a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1); stalking, as defined in section 18-3-602; or violation of a protection order, as defined in section 18-6-803.5. If the court orders a suitability assessment, the assessor shall provide the services for a fee of no more than forty dollars based on a sliding scale consistent with guidelines used to determine eligibility for appointment of counsel. The court shall not include payment of this fee as part of any court order. If a juvenile wants to participate in restorative justice practices, the juvenile must make the request to the district attorney or the law enforcement agency administering the program and may not make the request to the victim. If requested by the juvenile or law enforcement agency, a victim-offender conference may only be conducted after the victim is consulted by the district attorney and offered an opportunity to participate or submit a victim impact statement. If a victim elects not to attend, a victim-offender conference may be held with a suitable victim surrogate or victim advocate, and the victim may submit a victim impact statement. If the juvenile participates in a restorative justice practices victim-offender conference, the facilitator shall provide these services for a fee of no more than one hundred twenty-five dollars based on a sliding scale consistent with guidelines used to determine eligibility for appointment of counsel. The court shall not include payment of this fee as part of any court order.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 631, § 2, effective October 1; (4) amended, (HB 21-1315), ch. 461, p. 3117, § 27, effective October 1.

Editor's note: This section is similar to former § 19-2-905 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021.

19-2.5-1102. Sentencing hearing. (1) (a) After making a finding of guilt, the court shall hear evidence on the question of the proper disposition best serving the interests of the juvenile and the public. Such evidence includes but is not necessarily limited to the social study and other reports as provided in section 19-1-107.

(b) In cases in which the juvenile is adjudicated a juvenile delinquent for an act that constitutes unlawful sexual behavior, as defined in section 16-22-102 (9), the court shall consider the juvenile's previous criminal and juvenile delinquency records, if any, set forth in the presentence investigation report prepared pursuant to section 19-2.5-1101 (1)(b) in determining the proper disposition for the juvenile and the public.

(2) If the court has reason to believe that the juvenile may have an intellectual and developmental disability, the court shall refer the juvenile to the case management agency, as defined in section 25.5-6-1702, in the defined service area where the action is pending for an eligibility determination pursuant to article 10.5 of title 27. If the court has reason to believe that the juvenile may have a behavioral or mental health disorder, the court shall order a mental health placement prescreening to be conducted in any appropriate place.

(3) If the court receives a mental health screening or mental health assessment pursuant to section 19-2.5-612 determining that the juvenile could benefit from mental health services, or the court already has sufficient information to determine that the juvenile could benefit from mental health services, the court may order mental health services as a part of the disposition.

(4) (a) The court may continue the sentencing hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence; except that the court shall determine sentencing within forty-nine days after completion of the adjudicatory trial.

(b) If the hearing is continued, the court shall make an appropriate order for detention of the juvenile or for the juvenile's release in the custody of the juvenile's parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(c) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a juvenile who is in detention or who has otherwise been removed from the home before an order of disposition has been made.

(5) In any case in which the sentence is placement out of the home, except for juveniles committed to the department of human services, the court shall, at the time of placement, set a review within ninety-one days to determine if continued placement is necessary and is in the best interest of the juvenile and of the community. The court shall give notice of the review to all parties and to the director of the facility or agency in which the juvenile is placed and any person who has physical custody of the juvenile and any attorney or guardian ad litem of record.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 634, § 2, effective October 1; (2) amended, (HB 21-1187), ch. 83, p. 327, § 9, effective July 1, 2024.

Editor's note: (1) This section is similar to former § 19-2-906 as it existed prior to 2021.

(2) Subsection (2) was numbered as 19-2-906 (2) in HB 21-1187 (see L. 2021, p. 327). That provision was harmonized with subsection (2) of this section as it appears in SB 21-059, effective July 1, 2024.

19-2.5-1103. Sentencing schedule - options. (1) Upon completion of the sentencing hearing pursuant to section 19-2.5-1102, the court shall enter a decree of sentence or commitment imposing any of the following sentences or combination of sentences, as appropriate:

(a) Commitment to the department of human services pursuant to section 19-2.5-1117;

(b) Confinement in the county jail or in community corrections pursuant to section 19-2.5-1118;

(c) Detention pursuant to section 19-2.5-1123;

(d) Placement of legal custody of the juvenile with a relative or other suitable person pursuant to section 19-2.5-1112;

(e) Probation pursuant to section 19-2.5-1106;

(f) Commitment to the community accountability program pursuant to section 19-2.5-1111;

(g) Placement of legal custody of the juvenile in the county department of human or social services or a child placement agency pursuant to section 19-2.5-1115;

(h) Placement of the juvenile in a hospital or other suitable facility for receipt of special care pursuant to section 19-2.5-1114;

(i) Imposition of a fine pursuant to section 19-2.5-1105;

(j) Ordering the juvenile to pay restitution pursuant to section 19-2.5-1104;

(k) Ordering the juvenile to complete an anger management treatment program or any other appropriate treatment program pursuant to section 19-2.5-1122;

(l) Participation in an evaluation to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's sentence; except that the court may not order participation in restorative justice practices if the juvenile was adjudicated a delinquent for unlawful sexual behavior, as defined in section 16-22-102 (9); a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1); stalking, as defined in section 18-3-602; or violation of a protection order, as defined in section 18-6-803.5. If the court orders participation in restorative justice practices, the facilitator shall provide these services for a fee of no more than one hundred twenty-five dollars based on a sliding scale consistent with guidelines used to determine eligibility for appointment of counsel. The court shall not include payment of this fee as part of any court order. Nothing in this subsection (1)(l) requires a victim to participate in a restorative justice victim-offender conference.

(2) The judge shall sentence any juvenile adjudicated as a special offender pursuant to section 19-2.5-1126.

(3) Any sentence imposed on a juvenile pursuant to this section may include the juvenile's parent or guardian pursuant to section 19-2.5-1110.

(4) If, as a condition of or in connection with any sentence imposed pursuant to this section, the court requires a juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of such requirement.

(5) (a) Except as otherwise set forth in section 19-2.5-1127 for an aggravated juvenile offender, if the court finds that placement out of the home is necessary and is in the best interests of the juvenile and the community, the court shall place the juvenile, following the criteria established pursuant to section 19-2.5-1404, in the facility or setting that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107 or the evaluation for placement required by section 19-1-115 (8)(e). Any placement recommendation in the evaluation prepared by the county department of human or social services must be accorded great weight as the placement that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. A recommendation prepared by the county department of human or social services must set forth specific facts and reasons for the placement recommendation. If the evaluation for placement recommends placement in a facility located in San Andreas that can provide appropriate treatment and that will accept the

juvenile, then the court shall not place the juvenile in a facility outside this state. If the court places the juvenile in a facility located in San Andreas other than one recommended by the evaluation for placement, in a facility located outside this state in accordance with the evaluation for placement, or in a facility in which the average monthly cost exceeds the amount established by the general assembly in the general appropriation bill, it shall make specific findings of fact, including the monthly cost of the facility in which the juvenile is placed, relating to its placement decision. A copy of the findings must be sent to the chief justice of the supreme court, who shall, notwithstanding section 24-1-136 (11)(a)(I), report monthly to the joint budget committee and annually to the house and senate committees on health and human services, or any successor committees, on such placements. If the court commits the juvenile to the state department of human services, it shall not make a specific placement, nor is this subsection (5) relating to specific findings of fact applicable.

(b) If the court sentences a juvenile to an out-of-home placement funded by the state department of human services or any county, or commits a juvenile to the state department of human services, and the receiving agency determines that the placement or commitment does not follow the criteria established pursuant to section 19-2.5-1404, including the placement recommended by the receiving agency, the receiving agency may, after assessing the juvenile's needs, file a petition with the court for reconsideration of the placement or commitment. The petition must be filed not later than thirty-five days after the placement or commitment. The court shall hear the petition and enter an order thereon not later than thirty-five days after the filing of the petition, and after notice to all agencies or departments that might be affected by the resolution of the petition, and after all such agencies or departments have had an opportunity to participate in the hearing on the petition. Failure of any such agency or department to appear may be a basis for refusal to accept a subsequent petition by the agency or department that had an opportunity to appear and be present at the original petition hearing. The notification to the parties required pursuant to this subsection (5)(b) must be made by the petitioning party, and proof of the service must be filed with the court. If the court sentences a juvenile to an out-of-home placement funded by the county department of human or social services, temporary legal custody of the juvenile must be placed with the county department of human or social services, and the placement recommended by the county department must be accorded great weight as the placement that most appropriately meets the needs of the juvenile, the juvenile's family, and the community. Any deviation from the recommendation must be supported by specific findings on the record of the case detailing the specific extraordinary circumstances that constitute the reasons for deviations from the placement recommendation of the county department of human or social services.

(6) Repealed.

(7) The juvenile court in each judicial district may implement a behavioral or mental health disorder screening program to screen juveniles sentenced pursuant to this part 11. If the juvenile court chooses to implement a behavioral or mental health disorder screening program, the juvenile court shall use the standardized behavioral or mental health disorder screening developed pursuant to section 16-11.9-102 and conduct the screening in accordance with procedures established pursuant to section 16-11.9-102.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 635, § 2, effective October 1; (1)(l) amended and (6) repealed, (HB 21-1315), ch. 461, p. 3118, § 28, effective October 1.

Editor's note: This section is similar to former § 19-2-907 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021.

19-2.5-1104. Sentencing - restitution by juvenile. (1) If the court finds that a juvenile who receives a deferral of adjudication or who is adjudicated a juvenile delinquent has damaged a victim's personal or real property, that the victim's personal property has been lost, or that personal injury has been caused to a victim as a result of the juvenile's delinquent act, the court, in addition to any other sentence or commitment that it may impose on the juvenile pursuant to section 19-2.5-1103, shall enter a sentencing order requiring the juvenile to make restitution as required by article 18.5 of title 16 and part 6 of article 1.3 of title 18.

(2) Restitution must be ordered to be paid in a reasonable manner, as determined by the court and in accordance with article 18.5 of title 16 and part 6 of article 1.3 of title 18.

(3) Notwithstanding section 18-1.3-602 (4)(a)(III) or any other provision of law, a court shall not order a juvenile to pay restitution to an insurance company. A court may order a juvenile to pay restitution to a victim for the portion of a victim's pecuniary loss for which the victim cannot be compensated under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund.

(4) As used in this section, "victim" does not mean an insurance company, as defined in section 38-13-102 (13), for purposes of restitution in juvenile cases.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 637, § 2, effective October 1. **L. 2022:** (3) and (4) added, (HB 22-1373), ch. 392, p. 2772, § 1, effective June 7.

Editor's note: This section is similar to former § 19-2-918 as it existed prior to 2021.

19-2.5-1105. Sentencing - fines. Except as otherwise set forth in section 19-2.5-1127 for an aggravated juvenile offender, the court may, as the sole punishment or in addition to any other sentence or commitment specified in section 19-2.5-1103, impose on the juvenile a fine of not more than three hundred dollars.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 638, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-917 as it existed prior to 2021.

19-2.5-1106. Sentencing - probation - supervised community service or work program. (1) Except as otherwise provided in section 19-2.5-1127 for an aggravated juvenile offender:

(a) The court may place the juvenile on probation or under protective supervision in the legal custody of one or both of the juvenile's parents or guardian under such conditions as the court may impose;

(b) The court may place the juvenile on probation and place the juvenile in the juvenile intensive supervision program created pursuant to section 19-2.5-1409;

(c) The court may require as a condition of probation that the juvenile report for assignment to a supervised work program, place the juvenile in a child care facility that provides a supervised work program, or require that the juvenile's custodial parent or guardian assist the juvenile in participating in a supervised work program, if:

(I) The juvenile is not deprived of the schooling that is appropriate to the juvenile's age, needs, and specific rehabilitative goals;

(II) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the juvenile's age level and physical ability, and is combined with counseling from a juvenile probation officer or other guidance personnel; and

(III) The supervised work program assignment is made for a period of time consistent with the juvenile's best interest, but not exceeding one hundred eighty days.

(2) Except as set forth in subsection (1) of this section, as a condition of a deferral of adjudication or of probation, in conjunction with other dispositional orders, or otherwise, the court may order the juvenile to participate in a supervised community service or community work program if the court finds that the program will promote the purposes of this title 19 as set forth in section 19-1-102.

(3) Participation by the juvenile, or by both the juvenile and the juvenile's parent or guardian, in a community service or work program may be ordered in addition to or in conjunction with an order to pay restitution pursuant to section 19-2.5-1104 or 19-2.5-1110.

(4) With the written consent of the victim of the juvenile's delinquent act, the juvenile, or both the juvenile and the custodial parent, the juvenile's parent who has parental responsibilities, or the juvenile's guardian may be ordered to perform work for the victim.

(5) Any order issued by the court pursuant to this section must be structured to allow the juvenile to continue regular school attendance and any employment, if appropriate, and must be suitable to the juvenile's age and abilities. The amount of community service or work ordered must be reasonably related to the seriousness of the juvenile's delinquent act.

(6) The court may order any agency or person supervising a juvenile in a community service or work program to advise the court concerning the juvenile's participation in the program in such manner as the court requires.

(7) The court may order, as a condition of probation, that the juvenile be placed out of the home in a residential child care facility providing a supervised work program or that the juvenile in such facility report to a supervised work program if the court finds the following:

(a) That the juvenile will not be deprived of the education that is appropriate to the juvenile's age, needs, and specific rehabilitative goals;

(b) That the supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the juvenile's age level and physical ability, and is combined with counseling from a probation officer or other guidance personnel; and

(c) That the supervised work program assignment is made for a period of time consistent with the juvenile's best interest but not exceeding one hundred eighty days.

(8) The probation department of the court is responsible for establishing and identifying suitable work programs and assignments. Boards of county commissioners, county sheriffs, and political subdivisions shall cooperate to establish work programs. The cooperation of suitable nonprofit organizations and other entities may be sought to establish suitable work programs.

(9) For purposes of the "San Andreas Governmental Immunity Act", article 10 of title 24, "public employee" does not include any juvenile who is ordered to participate in a work or community service program pursuant to this section.

(10) A governmental entity or cooperating nonprofit organization is not liable pursuant to the "Workers' Compensation Act of San Andreas", articles 40 to 47 of title 8, or pursuant to the "San Andreas Employment Security Act", articles 70 to 82 of title 8, for any benefits on account of any juvenile who is ordered to participate in a work or community service program pursuant to this section, but nothing in this subsection (10) prohibits a governmental entity or cooperating nonprofit organization from electing to accept the provisions of the "Workers' Compensation Act of San Andreas" by purchasing and keeping in force a policy of workers' compensation insurance covering the person.

(11) A general public liability insurance policy obtained to cover juveniles performing work or community service pursuant to this section and to provide coverage for injuries caused to or by juveniles performing work or community service pursuant to this section must be in a sum of not less than the current limit on government liability under the "San Andreas Governmental Immunity Act", article 10 of title 24.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 638, § 2, effective October 1.

Editor's note: This section is similar to former §§ 19-2-913 and 19-2-308 as they existed prior to 2021.

19-2.5-1107. Juvenile probation officers - powers and duties. (1) A juvenile probation officer appointed pursuant to section 19-2.5-1406 shall investigate and keep written records of such investigations as the court may direct.

(2) When a juvenile is placed on probation, the juvenile probation officer shall give the juvenile a written statement of the terms and conditions of the juvenile's probation and shall explain fully the terms and conditions to the juvenile, unless the court gave and explained the statement to the juvenile pursuant to section 19-2.5-1108.

(3) (a) Each juvenile probation officer shall keep informed as to the condition and conduct of each juvenile placed under the juvenile probation officer's supervision and shall report to the court as directed.

(b) Each juvenile probation officer shall use all suitable methods, including counseling, to aid each juvenile under the juvenile probation officer's supervision and shall perform such other duties in connection with the care and custody of juveniles as the court may direct.

(c) Each juvenile probation officer shall keep complete records of all work done, as well as complete accounts of all money collected from those under supervision.

(d) Unless inconsistent with other conditions imposed by the court, in directing that a juvenile under the juvenile probation officer's supervision meet with the juvenile probation officer, the probation officer shall:

(I) Schedule, in good faith, meetings with the juvenile on probation at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other probation requirements; and

(II) Allow a juvenile to meet with the juvenile probation officer through a telephone call or audio-visual communication technology.

(4) A juvenile probation officer, for the purpose of performing the juvenile probation officer's duties, has all the powers of a peace officer, as described in sections 16-2.5-101 and 16-2.5-138.

(5) (a) When a juvenile probation officer learns that a juvenile under the juvenile probation officer's supervision has changed residence to another county, temporarily or permanently, the juvenile probation officer shall immediately notify the court.

(b) If, after the court is notified pursuant to subsection (5)(a) of this section, the court determines that it is in the best interest of the juvenile to transfer jurisdiction to the court in the county in which the juvenile resides or is to reside, the court shall immediately notify such court and shall enter an order transferring jurisdiction to such court. The court transferring jurisdiction pursuant to this subsection (5)(b) shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, together with the order transferring jurisdiction. The receiving court shall proceed with the case as if the petition had been originally filed in said court.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 640, § 2, effective October 1. **L. 2024:** (3)(d) added, (HB 24-1445), ch. 353, p. 2407, § 5, effective September 1.

Editor's note: This section is similar to former § 19-2-926 as it existed prior to 2021.

19-2.5-1108. Probation - terms - release - revocation - graduated responses system - rules - report - definition. (1) (a) The terms and conditions of probation must be specified by rules or orders of the court. The court, as a condition of probation for a juvenile who is ten years of age or older but less than eighteen years of age on the date of the sentencing hearing, may impose a commitment or detention. The aggregate length of any such commitment or detention, whether continuous or at designated intervals, must not exceed forty-five days; except that such limit does not apply to any placement out of the home through a county department of human or social services. Each juvenile placed on probation must be given a written statement of the terms and conditions of the juvenile's probation and have the terms and conditions fully explained.

(b) The court, as a condition of probation for a youth eighteen years of age or older at the time of sentencing for delinquent acts committed prior to the youth's eighteenth birthday, may impose as a condition of probation a sentence to the county jail that must not exceed ninety days; except that the sentence may be for a period of up to one hundred eighty days if the court orders the youth released for school attendance, job training, or employment.

(2) (a) Conditions of probation must be customized to each juvenile based on the guidelines developed by the committee on juvenile justice reform pursuant to section 24-33.5-2402, as it existed prior to its repeal in 2022. The court shall, as minimum conditions of probation, order that the juvenile:

(I) Not violate any federal or state statutes, municipal ordinances, or orders of the court;

(II) Not use or possess a firearm, a dangerous or illegal weapon, or an explosive or incendiary device, unless granted written permission by the court or probation officer;

(III) Meet with a probation officer at reasonable times as directed by the court or probation officer. Unless inconsistent with other conditions imposed by the court, the court shall allow a juvenile under the probation officer's supervision to meet with the probation officer at reasonable times through a telephone call or audio-visual communication technology. Unless inconsistent with other conditions imposed by the court, in directing that a juvenile meet with a probation officer at reasonable times, the court or the probation officer shall schedule, in good faith, meetings with the juvenile on probation at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other probation requirements.

(IV) Permit the probation officer to visit the juvenile at reasonable times at the juvenile's home or elsewhere;

(V) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer;

(VI) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;

(VII) Make restitution as ordered by the court; and

(VIII) and (IX) Repealed.

(X) May be evaluated to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's probation program; except that the court may not order participation in restorative justice practices if the juvenile was adjudicated a delinquent for unlawful sexual behavior, as defined in section 16-22-102 (9); a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1); stalking, as defined in section 18-3-602; or violation of a protection order, as defined in section 18-6-803.5.

(b) The court shall use the results from a validated risk and needs assessment adopted by the committee on juvenile justice reform pursuant to section 24-33.5-2402, as it existed prior to its repeal in 2022, to inform the court of additional conditions of probation, as necessary.

(3) (a) The court may periodically review the terms and conditions of probation and the progress of each juvenile placed on probation. Counsel for the juvenile does not have to be present at any probation review hearing unless notified by the court that a petition to revoke probation has been filed.

(b) The court may release a juvenile from probation prior to the completion of the juvenile's term of probation, pursuant to this section, or modify the terms and conditions of the juvenile's probation at any time, but a juvenile who has complied satisfactorily with the terms and conditions of the juvenile's probation for a period of two years must be released from probation and the jurisdiction of the court terminated.

(4) Before January 1, 2021, the state court administrator shall establish rules to develop a statewide system of structured community-based graduated responses, including incentives and sanctions, to guide probation officers in determining how best to motivate positive juvenile behavior change and the appropriate response to a violation of terms and conditions of juvenile probation. "Graduated responses" means an accountability-based series of sanctions and services designed to respond to a juvenile's violation of probation quickly, consistently, and

proportionally and incentives to motivate positive behavior change and successful completion of probation and treatment goals. Juvenile probation shall adopt and use a state juvenile graduated responses and incentives system developed pursuant to this subsection (4) or develop and use a locally developed system that is aligned to best practices. Policies and procedures for the graduated responses system must:

(a) Include incentives that encourage the completion of treatment milestones as well as compliance with the terms and conditions of a juvenile's probation and that reward behavior aligned with the expectations of supervision and the juvenile's case plan; and

(b) Require that a response to a juvenile's violation of the terms and conditions of the juvenile's supervision take into consideration:

(I) The juvenile's risk to reoffend, as determined by the results of a validated risk and needs assessment;

(II) The previous history of violations and the underlying cause of the juvenile's behavior leading to the violation;

(III) The severity of the current violation;

(IV) The juvenile's case plan; and

(V) The juvenile's previous responses to past violations.

(5) Whenever a probation office has reasonable cause to believe that a juvenile has committed a violation of the terms and conditions of probation and that graduated responses developed pursuant to subsection (4) of this section have previously been applied, or when the nature of the violation poses a substantial risk of serious harm to others, the probation officer, following the approval of the chief probation officer or the chief's designee, shall petition the court for revocation and shall file written information with the court concerning the juvenile's violation behavior history and the responses applied using the graduated response system developed pursuant to subsection (4) of this section.

(6) Unless there is reason to believe that a juvenile would not appear, would interfere with the juvenile justice process, or poses substantial risk of serious harm to others, the probation officer shall issue a summons, or other method approved by local court rule, rather than a warrant when filing a petition for revocation.

(7) The state court administrator shall collect data related to the use of the graduated responses and incentives system developed pursuant to subsection (4) of this section and report the data annually to the judiciary committees of the senate and house of representatives, the health and human services committee of the senate, and the public health care and human services committee of the house of representatives, or any successor committees, and the chief justice of the San Andreas supreme court. Notwithstanding section 24-1-136 (11)(a)(I), the reports to the committees continue indefinitely. Data collected by the state court administrator must include, at a minimum, the types of responses and incentives that were issued, the number of formal violations filed, and the behavior resulting in the violation.

(8) (a) When it is alleged that a juvenile has violated the terms and conditions of probation, and graduated responses have been imposed and exhausted, pursuant to subsection (5) of this section, the court shall set a hearing on the alleged violation and shall give notice to the juvenile and the juvenile's parents, guardian, or other legal custodian and any other parties to the proceeding as provided in section 19-2.5-501.

(b) The juvenile and the juvenile's parents, guardian, or other legal custodian must be given a written statement concerning the alleged violation, and have the right to be represented

by counsel at the hearing, and are entitled to the issuance of compulsory process for the attendance of witnesses.

(c) When the juvenile has been taken into custody because of the alleged violation, sections 19-2.5-303, 19-2.5-304, and 19-2.5-305 apply.

(d) (I) The hearing on the alleged violation must be conducted pursuant to section 19-1-106.

(II) Pursuant to section 19-2.5-1103, if the court finds that the juvenile violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this article 2.5 that is in the best interest of the juvenile and the public.

(III) If the court finds that the juvenile did not violate the terms and conditions of probation as alleged, it shall dismiss the proceedings and continue the juvenile on probation under the terms and conditions previously prescribed.

(e) If the court revokes the probation of a person eighteen years of age or older, in addition to other action permitted by this article 2.5, the court may sentence the person to the county jail for a period not to exceed one hundred eighty days, during which time the person may be released during the day for school attendance, job training, or employment, as ordered by the court; except that, if the sentence imposed exceeds ninety days, the court shall order the person released for school attendance, job training, or employment while serving the sentence.

(9) Following specification of the terms and conditions of probation, where the conditions of probation include requiring the juvenile to attend school, the court shall notify the school district in which the juvenile is enrolled of the requirement.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 641, § 2, effective October 1; (2)(a)(VII) amended and (2)(a)(VIII) and (2)(a)(IX) repealed, (HB 21-1315), ch. 461, p. 3119, § 30, effective October 1. **L. 2022:** IP(2)(a) and (2)(b) amended, (HB 22-1211), ch. 79, p. 394, § 7, effective December 31. **L. 2024:** (2)(a)(III) amended, (HB 24-1445), ch. 353, p. 2407, § 6, effective September 1.

Editor's note: This section is similar to former § 19-2-925 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021.

19-2.5-1109. Juvenile probation standards - development. (1) Before July 1, 2021, the state court administrator, in consultation with judges, the judicial branch, district attorneys, defense counsel, the delivery of child welfare services task force created in section 26-5-105.8, and other interested parties shall establish statewide standards for juvenile probation supervision and services that are aligned with research-based practices and based on the juvenile's risk of reoffending, as determined by a validated risk and needs assessment tool adopted pursuant to section 24-33.5-2402, as it existed prior to its repeal in 2022. The state court administrator shall at least annually provide training to juvenile probation on the adoption and implementation of these standards. Juvenile standards must include, but need not be limited to:

(a) Guidelines to support juvenile probation in adopting the most effective staffing and workloads in order to allocate probation resources most appropriately;

(b) Standards for minimum case contacts, including contacts with juveniles as well as their family members;

(c) (I) Common elements for written individualized case plans for each juvenile placed under the supervision of a probation officer. In developing such a case plan, juvenile probation shall use, but need not be limited to:

(A) The results of a validated risk and needs assessment;

(B) The results of a validated mental health screening, and full assessment if conducted;

(C) The trauma, if any, experienced by the juvenile;

(D) The juvenile's education level and any intellectual and developmental disability;

(E) The seriousness of the offense committed by the juvenile; and

(F) Any relevant information provided by the juvenile's family, including the juvenile's pro-social interests.

(II) A case plan developed pursuant to this section must:

(A) Address the risks the juvenile presents and the juvenile's service needs based on the results of the validated risk and needs assessment, including specific treatment goals;

(B) Specify the level of supervision and intensity of services that the juvenile must receive;

(C) Provide referrals to treatment providers that may address the juvenile's risks and needs;

(D) Be developed in consultation with the juvenile and the juvenile's family or guardian;

(E) Specify the responsibilities of each person or agency involved with the juvenile; and

(F) Provide for the full reentry of the juvenile into the community.

(d) (I) Criteria and policies for the early termination of the juvenile's supervised probation.

(II) Juvenile probation and the juvenile court shall consider the following factors, among others, in determining the early termination of supervision:

(A) The seriousness of the offense committed by the juvenile resulting in placement under the supervision of a probation officer;

(B) The results of a validated risk and needs assessment, which must be conducted at least every six months to determine whether the juvenile's risk of reoffending or risk scores in key domains have been reduced;

(C) The juvenile's progress in meeting the goals of the juvenile's individualized case plan; and

(D) The juvenile's offense history, if any, during the juvenile's probation term.

(e) Common criteria for when juvenile probation officers may recommend the use of out-of-home placements and commitment to the division of youth services. The court shall consider the results of a validated risk and needs assessment, a validated mental health screening, and, if applicable, a full mental health assessment to make decisions concerning the juvenile's placement.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 644, § 2, effective October 1. **L. 2022:** IP(1) and (1)(e) amended, (HB 22-1211), ch. 79, p. 394, § 8, effective December 31.

Editor's note: This section is similar to former § 19-2-925.2 as it existed prior to 2021.

19-2.5-1110. Sentencing - requirements imposed on parents - definition. (1) In addition to any requirements specified in sections 19-2.5-1103 to 19-2.5-1106, 19-2.5-1111 to 19-2.5-1115, 19-2.5-1117, 19-2.5-1118, 19-2.5-1123, and 19-2.5-1126, any sentence imposed pursuant to section 19-2.5-1103 may require:

(a) The juvenile or both the juvenile and the juvenile's parent or guardian to perform volunteer service in the community designed to contribute to the juvenile's rehabilitation or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile;

(b) The juvenile's parent or guardian or both the parent or guardian and the juvenile to attend the parental responsibility training program described in section 19-2.5-1411. The court may make reasonable orders requiring proof of completion of the training course within a certain time period and may provide that any violation of such orders subjects the parent or guardian to the contempt sanctions of the court.

(c) The juvenile or both the juvenile and the juvenile's custodial parent or parent with parental responsibilities or guardian to perform services for the victim pursuant to section 19-2.5-1106, designed to contribute to the juvenile's rehabilitation, if the victim consents in writing to such services. However, the value of the services required to be rendered by the parent, guardian, legal custodian of, or parent with parental responsibilities with respect to the juvenile pursuant to this subsection (1)(c) must not exceed twenty-five thousand dollars for any one delinquent act.

(2) In addition to any sentence imposed pursuant to section 19-2.5-1103 or subsection (1) of this section and regardless of whether the court orders the juvenile to pay restitution pursuant to section 19-2.5-1104, the court may order:

(a) The juvenile's guardian or legal custodian or the parent allocated parental responsibilities with respect to the juvenile to make restitution to one or more victims pursuant to the terms and conditions set forth in this subsection (2); except that the liability of the juvenile's guardian or legal custodian or parent allocated parental responsibilities with respect to the juvenile pursuant to this subsection (2) must not exceed twenty-five thousand dollars for any one delinquent act. If the court finds, after a hearing, that the juvenile's guardian or legal custodian or the parent allocated parental responsibilities with respect to the juvenile has made diligent, good-faith efforts to prevent or discourage the juvenile from engaging in delinquent activity, the court shall absolve the guardian or legal custodian or parent allocated parental responsibilities with respect to the juvenile of liability for restitution pursuant to this subsection (2).

(b) The juvenile's parent, so long as the parent is a party to the delinquency proceedings, to make restitution to one or more victims pursuant to the terms and conditions set forth in this subsection (2)(b); except that the liability of the juvenile's parent pursuant to this subsection (2)(b) must not exceed the amount of twenty-five thousand dollars for any one delinquent act. Notwithstanding the requirements of this subsection (2), the court may not enter an order of restitution against a juvenile's parent unless the court, prior to entering the order of restitution, holds a restitution hearing at which the juvenile's parent is present. If the court finds, after the hearing, that the juvenile's parent has made diligent, good-faith efforts to prevent or discourage the juvenile from engaging in delinquent activity, the court shall absolve the parent of liability for restitution pursuant to this subsection (2)(b). For purposes of this subsection (2)(b), "parent" is defined in section 19-1-103.

(3) An order of restitution entered pursuant to this section may be collected pursuant to article 18.5 of title 16.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 646, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-919 as it existed prior to 2021.

19-2.5-1111. Sentencing - community accountability program. Except as otherwise required by section 19-2.5-1127, the court may sentence the juvenile to participate in the community accountability program as set forth in section 19-2.5-1410. Such a sentence is a condition of probation for higher-risk juveniles who would have otherwise been sentenced to detention or out-of-home placement or committed to the department of human services. A sentence pursuant to this section is conditioned on the availability of space in the community accountability program and on a determination by the division of youth services that the juvenile's participation in the program is appropriate. In the event that the division of youth services determines the program is at maximum capacity or that a juvenile's participation is not appropriate, the juvenile must be ordered to return to the sentencing court for another sentencing hearing.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 647, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-914 as it existed prior to 2021.

19-2.5-1112. Sentencing - placement with relative. Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court may place the juvenile in the legal custody of a relative or other suitable person under such conditions as the court may impose, which may include placing the juvenile on probation pursuant to section 19-2.5-1106 or under protective supervision.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 647, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-912 as it existed prior to 2021.

19-2.5-1113. Sentencing - alternative services - detention. Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender and except as required by section 19-2.5-1123, the court may sentence the juvenile to alternative services funded through section 19-2.5-1404 or other alternative services programs. If a juvenile who is thirteen years of age or older fails to make satisfactory progress in the alternative services to which the juvenile is sentenced or if the court finds that a sentence to alternative services would be contrary to the community interest, the court may sentence a juvenile adjudicated for an offense that would constitute a class 3, class 4, class 5, or class 6 felony or a misdemeanor weapons charge if committed by an adult to detention for a period not to exceed forty-five days. Release for

purposes of work, therapy, education, or other good cause may be granted by the court. The court may not sentence to detention a juvenile adjudicated for an offense that would constitute a class 1 or class 2 felony if committed by an adult.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 648, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-911 (1) as it existed prior to 2021.

19-2.5-1114. Sentencing - placement based on special needs of the juvenile. (1) Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court may order that the juvenile be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that the juvenile receive other special care and may place the juvenile in a hospital or other suitable facility for such purposes; except that a juvenile may not be placed in a mental health facility operated by the department of human services until the juvenile has received a mental health placement prescreening resulting in a recommendation that the juvenile be placed in a facility for an evaluation pursuant to section 27-65-106, or a hearing has been held by the court after notice to all parties, including the department of human services. An order for an emergency mental health hold must not be entered unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented by a mental health professional that indicates that the juvenile has a behavioral or mental health disorder. The court shall make, prior to the hearing, orders regarding temporary custody of the juvenile as are deemed appropriate.

(2) Placement in any mental health facility operated by the department of human services must continue for such time as ordered by the court or until the professional person in charge of the juvenile's treatment concludes that the treatment or placement is no longer appropriate. If placement or treatment is no longer deemed appropriate, the court must be notified and a hearing held for further disposition of the juvenile within five days excluding Saturdays, Sundays, and legal holidays. The court shall make, prior to the hearing, orders regarding temporary custody of the juvenile as are deemed appropriate.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 648, § 2, effective October 1. **L. 2022:** (1) amended, (HB 22-1256), ch. 451, p. 3231, § 32, effective August 10.

Editor's note: This section is similar to former § 19-2-916 as it existed prior to 2021.

19-2.5-1115. Sentencing - legal custody - county department of human or social services. Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court, following the criteria for out-of-home placement established pursuant to section 19-2.5-1404, may place legal custody of the juvenile in the county department of human or social services.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 648, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-915 as it existed prior to 2021.

19-2.5-1116. Orders - community placement - reasonable efforts required - reviews. (1) If the court orders legal custody of a juvenile to a county department of human or social services pursuant to this article 2.5, the order must contain specific findings as follows:

(a) Whether placement of the juvenile out of the home would be in the juvenile's and the community's best interests;

(b) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home, whether it is reasonable that such efforts are not made because an emergency situation exists that requires the immediate removal of the juvenile from the home, or whether such efforts are not required because of circumstances described in section 19-1-115 (7); and

(c) Whether reasonable efforts have been made to identify kin or a suitable adult with whom to place the juvenile.

(2) For all hearings and reviews concerning the juvenile, the court shall ensure that notice is provided to the juvenile and to the following persons with whom the juvenile is placed:

(a) Foster parents;

(b) Pre-adoptive parents;

(c) Relatives; or

(d) Kin, as defined in section 19-1-103.

(3) (a) Every six months after the sentencing hearing held pursuant to section 19-2.5-1102, the court shall hold a hearing to review an order of community placement or, if there is no objection by a party to the action, the court may require the department of human services to conduct an administrative review. The entity scheduling the review shall provide notice of the review to the juvenile; the juvenile's parents or guardian; any service providers working with the juvenile; the juvenile's guardian ad litem, if one has been appointed; and all attorneys of record to allow appearances of any of said persons at the review. At the review conducted pursuant to this subsection (3), the reviewing entity shall determine whether:

(I) Continued community placement is in the best interests of the juvenile and the community;

(II) The juvenile's safety is protected in the community placement;

(III) Reasonable efforts have been made to return the juvenile to the home or the juvenile should be permanently removed from the home;

(IV) Continued community placement is necessary and appropriate;

(V) There has been compliance with the juvenile's case plan;

(VI) Progress has been made toward alleviating or mitigating the causes that necessitated the community placement; and

(VII) There is a date projected by which the juvenile will be returned and safely maintained in the home, placed for legal guardianship, or placed in a planned permanent living arrangement.

(b) If the juvenile resides in an out-of-state placement, the entity conducting the review shall make a determination that the out-of-state placement continues to be appropriate and in the best interests of the juvenile.

(4) (a) If the juvenile is in the legal custody of a county department and is placed in a community placement for a period of twelve months or longer, the district court, another court of

competent jurisdiction, or an administrative body appointed or approved by the court that is not under the county department's supervision shall conduct a permanency hearing within twelve months and every twelve months thereafter for as long as the juvenile remains in community placement. At the permanency hearing, the entity conducting the hearing shall determine whether:

(I) Continued community placement is in the best interests of the juvenile and the community;

(II) The juvenile's safety is protected in the community placement;

(III) Reasonable efforts have been made to finalize the juvenile's permanency plan that is in effect at that time;

(IV) Continued community placement is necessary and appropriate;

(V) There has been compliance with the juvenile's case plan;

(VI) Progress has been made toward alleviating or mitigating the causes that necessitated the community placement;

(VII) There is a date projected by which the juvenile will be returned and safely maintained in the home, placed for legal guardianship, or placed in a planned permanent living arrangement; and

(VIII) Procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's community placement, or any determination affecting family time.

(b) If the juvenile resides in an out-of-state placement, the entity conducting the review shall make a determination that the out-of-state placement continues to be appropriate and in the best interests of the juvenile.

(c) The entity conducting the permanency hearing shall consult with the juvenile, in an age-appropriate manner, concerning the juvenile's permanency plan.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 649, § 2, effective October 1. **L. 2023:** IP(4)(a) and (4)(a)(VIII) amended, (HB 23-1027), ch. 284, p. 1681, § 11, effective June 1.

Editor's note: This section is similar to former § 19-2-906.5 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-2.5-1117. Sentencing - commitment to the department of human services - definitions. (1) (a) Except as otherwise required in subsection (6) of this section and section 19-2.5-1127 for an aggravated juvenile offender, the court may commit a juvenile to the department of human services for a determinate period of up to two years if the juvenile is adjudicated for an offense that would constitute a felony or a misdemeanor if committed by an adult; except that, if the juvenile is younger than twelve years of age and is not adjudicated an aggravated juvenile offender, the court may commit the juvenile to the department of human services only if the juvenile is adjudicated for an offense that would constitute a class 1, class 2, or class 3 felony if committed by an adult. If the court commits a justice-engaged student, as defined in section 22-108-102, to the department of human services for any offense that does not include a physical

threat or bodily injury to another person, the court is encouraged to order that the commitment take place in a manner that allows the justice-engaged student to continue to attend school prior to commitment to avoid disruption of the justice-engaged student's academic progress and ability to achieve credits for a semester. When possible, the court may order commitment as follows:

(I) If the sentencing takes place in the fall semester, the justice-engaged student may remain in school to complete the fall semester and begin commitment at the beginning of the spring semester;

(II) If the sentencing takes place in the spring semester, the justice-engaged student may remain in school to complete the spring semester and begin commitment at the beginning of the summer semester; and

(III) If the sentencing takes place in the summer semester, the justice-engaged student may remain in school to complete the summer semester and begin commitment at the beginning of the fall semester.

(b) Any commitment to the department of human services pursuant to section 19-2.5-1127 or subsection (1)(a) of this section must be followed by a mandatory period of parole of six months, unless the period of parole is extended by the juvenile parole board pursuant to section 19-2.5-1203 (5).

(c) For purposes of this section:

(I) "Determinate period" is defined in section 19-2.5-102.

(II) "Period of parole" means the period between the parole period start date and the parole period end date as determined by the juvenile parole board. The period of parole applies to both mandatory six-month parole and extended parole pursuant to section 19-2.5-1203 (5). The period of parole continues unless the juvenile is deemed to be on escape status, parole has been suspended pursuant to section 19-2.5-1203, or the juvenile returns to commitment status pursuant to section 19-2.5-1206. In such circumstances, the period of parole stops until the juvenile has returned to parole status.

(d) Notwithstanding any other provision of this section, a local education provider retains the right to suspend or expel a justice-engaged student pursuant to sections 22-33-105 and 22-33-106.

(2) A juvenile committed to the department of human services may be placed in the Lookout Mountain school, the Mount View school, or any other training school or facility, or any other disposition may be made that the department may determine as provided by law.

(3) (a) When a juvenile is committed to the department of human services, the court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the juvenile's care and treatment.

(b) The department of human services shall provide the court with any information concerning a juvenile committed to its care that the court at any time may require.

(4) (a) When a court commits a juvenile to the state department of human services pursuant to this article 2.5, the court shall make the following specific determinations:

(I) Whether placement of the juvenile outside the home would be in the juvenile's and community's best interest; and

(II) Whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the home; whether it is reasonable that such efforts are not made because an emergency situation exists that requires the immediate removal of the juvenile from

the home; or whether such efforts are not required because of circumstances described in section 19-1-115 (7).

(III) How to assist in the evaluation of the impact of San Andreas's implementation of the federal "Family First Prevention Services Act" on the state's juvenile justice system and make a finding of whether the lack of available and appropriate congregate care placements is a contributing factor in committing a juvenile to the division of youth services.

(b) If a juvenile is making a transition from the legal custody of a county department of human or social services to commitment with the state department of human services, the court shall conduct a permanency hearing in combination with the sentencing hearing. The court shall consider multidisciplinary recommendations for sentencing and permanency planning. In conducting such a permanency hearing, the court shall make determinations pursuant to section 19-2.5-1116 (4)(a).

(5) (a) The department of human services shall designate receiving centers for juveniles committed to the department.

(b) If the department of human services makes a change in the designation of a receiving center, it shall notify the juvenile courts at least thirty-five days prior to the date that the change takes effect.

(6) (a) Pursuant to section 19-2.5-1103, commitment of a juvenile to the department of human services must be for a determinate period.

(b) (I) The juvenile court may commit any juvenile adjudicated as an aggravated juvenile offender pursuant to section 19-2.5-1127 for an offense other than an offense that would constitute a class 1 or class 2 felony if committed by an adult to the department of human services for a determinate period of up to five years.

(II) The juvenile court shall commit any juvenile adjudicated as an aggravated juvenile offender pursuant to section 19-2.5-1127 for an offense that would constitute a class 2 felony if committed by an adult to the department of human services for a determinate period of at least three but not more than five years.

(III) The juvenile court shall commit any juvenile adjudicated as an aggravated juvenile offender pursuant to section 19-2.5-1127 for an offense that would constitute a class 1 felony if committed by an adult to the department of human services for a determinate period of at least three but not more than seven years.

(c) The juvenile court may commit any juvenile who is not adjudicated an aggravated juvenile offender pursuant to section 19-2.5-1127 but who is adjudicated for an offense that would constitute a felony or a misdemeanor to the department of human services, and the determinate period of commitment must not exceed two years; except that, if the juvenile is ten or eleven years of age and is not adjudicated an aggravated juvenile offender pursuant to section 19-2.5-1127, the juvenile may be committed to the department of human services only if the juvenile is adjudicated for an offense that would constitute a class 1, class 2, or class 3 felony if committed by an adult.

(7) (a) On or before January 1, 2021, the department of human services, in consultation with the committee on juvenile justice reform established pursuant to section 24-33.5-2401, as it existed prior to its repeal in 2022, shall develop a length of stay matrix and establish criteria to guide the release of juveniles from a state facility that are based on:

(I) A juvenile's risk of reoffending, as determined by the results of a validated risk and needs assessment adopted pursuant to section 24-33.5-2402 (1)(a), as it existed prior to its repeal in 2022;

(II) The seriousness of the offense for which the juvenile was adjudicated delinquent;

(III) The juvenile's progress in meeting treatment goals; and

(IV) Other criteria as determined by the department.

(b) In making release and discharge decisions, the department of human services shall use the matrix and release criteria developed pursuant to this subsection (7).

(8) For all hearings and reviews concerning a juvenile who is committed to the department of human services, the entity conducting the hearing or review shall ensure that notice is provided to the juvenile and to any of the following persons with whom the juvenile is placed:

(a) Foster parents;

(b) Pre-adoptive parents; or

(c) Relatives.

(9) The department of human services may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition must set forth the reasons why it would be in the best interest of the juvenile or the public to extend the commitment. Upon filing the petition, the court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 651, § 2, effective October 1. **L. 2022:** IP(7)(a), (7)(a)(I), and (7)(a)(IV) amended, (HB 22-1211), ch. 79, p. 395, § 9, effective December 31. **L. 2024:** (1)(a) amended and (1)(d) added, (HB 24-1216), ch. 314, p. 2115, § 4, effective August 7.

Editor's note: This section is similar to former §§ 19-2-909 and 19-2-921 (1), (1.5), (2), (3), (3.3), (3.5), and (4) as they existed prior to 2021.

Cross references: For the federal "Family First Prevention Services Act", see Pub.L. 115-123.

19-2.5-1118. Sentencing - persons eighteen years of age or older - county jail - community corrections - definitions. (1) Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court may commit a person eighteen years of age or older but less than twenty-one years of age to the department of human services if the person is adjudicated a juvenile delinquent for an act committed prior to the person's eighteenth birthday or upon revocation of probation.

(2) Except as otherwise required by section 19-2.5-1127 for an aggravated juvenile offender, the court may sentence a person who is eighteen years of age or older on the date of a sentencing hearing to the county jail for a period not to exceed six months or to a community correctional facility or program for a period not to exceed one year, which may be served consecutively or in intervals, if the person is adjudicated a juvenile delinquent for an act committed prior to the person's eighteenth birthday.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 654, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-910 as it existed prior to 2021.

19-2.5-1118.5. Sentencing - alternative options for pregnant and postpartum juveniles - legislative declaration - definitions. (1) (a) The general assembly finds and declares that:

(I) While no system is perfect in responding to the medical conditions of pregnancy, juvenile facilities are particularly ill-equipped to do so;

(II) During juvenile delinquency cases involving a pregnant or postpartum juvenile, the physical and mental health needs of the pregnant juvenile or postpartum juvenile and newborn must be considered at all stages of the proceeding as a matter of community health and safety;

(III) Timely attention to medical conditions and mental health during the perinatal period can improve health and welfare for multiple generations of a family unit;

(IV) Pregnancy is a time-sensitive process that has many potential outcomes and variations. A pregnant person may feel healthy and experience no complications. A pregnant person may also experience sudden, harmful medical conditions, such as preeclampsia or placental abruption, or develop complex medical conditions that result in the early termination of a pregnancy or threaten the life of the pregnant person, such as an ectopic pregnancy. At any stage of the perinatal period, situations can occur that cause long-term physical and mental health trauma for the pregnant person.

(V) Adjudicatory proceedings are not responsive to the timeline or complexity of the perinatal period;

(VI) When a substance use disorder intersects with a pregnancy, it is best handled as a health condition. Increasing the time a pregnant person with a substance use disorder is in a juvenile facility is counter to public health and may drive the pregnant person away from medical care and support services.

(VII) The end of pregnancy does not immediately terminate the effects of the pregnancy on the person who was pregnant;

(VIII) The postpartum period is an essential time frame for both the person who gave birth and the newborn. It is an opportunity for the newborn:

(A) To develop healthy physiologic responses; and

(B) To benefit from the attachment and bonding that occurs during this period;

(IX) Bonding between a newborn and parent during the postpartum period can improve conditions for other children and care providers in the same family unit and prevent child abuse and neglect; and

(X) Bonding between a newborn and a parent can improve the overall health of the newborn and the parent and may prevent or reduce long-term health risks that may be increased by separating the newborn from the parent. For example:

(A) A postpartum person who does not breastfeed or chestfeed a newborn may have an increased likelihood of premenopausal breast cancer, ovarian cancer, or type 2 diabetes;

(B) A newborn who is not breastfed or chestfed may have an increased likelihood of childhood obesity, asthma, type 1 or type 2 diabetes, leukemia, or sudden infant death syndrome; and

(C) A child who is separated from any parent may experience stress hormones, which may lead to difficulty sleeping, developmental regression, heart disease, hypertension, obesity, diabetes, or decreased life span. A newborn who is separated from a parent may also experience permanent architectural changes in the brain, including a lower intelligence quotient or an increased likelihood of depression, suicidal ideation, or addiction to alcohol or gambling.

(b) The general assembly finds, therefore, that all alternatives to juvenile proceedings, adjudication, and commitment of a pregnant or postpartum juvenile must be considered, including a stay of criminal proceedings or sentencing to reduce the likelihood of negative health and social outcomes for the parent, newborn child, and community.

(c) It is the intent of the general assembly that a person who coerces or extorts a pregnant or postpartum person in the commission of crimes should be subject to being investigated and, as appropriate, prosecuted for a criminal act pursuant to title 18.

(2) As used in this section, unless the context otherwise requires:

(a) "Juvenile" means a person who is under eighteen years of age when the delinquent act is committed and under twenty-one years of age at the time of sentencing.

(b) "Newborn" means a person who has been born and who is less than one year old.

(c) "Postpartum period" means a period of one year after the end of a pregnancy, regardless of whether the pregnancy ends with a live birth.

(d) "Pregnant or postpartum juvenile" means a juvenile who is pregnant or in a postpartum period who has been accused of a delinquent act.

(e) "Stay of execution" means delaying the imposition of a sentence or the commitment portion of the sentence for a pregnant or postpartum juvenile after it is announced by a court.

(3) (a) There is a rebuttable presumption against detention and commitment of a pregnant or postpartum juvenile if the juvenile provides the court and district attorney with notice of the juvenile's status as a pregnant or postpartum juvenile at each applicable stage of the proceedings. Subject to subsection (5) of this section and if the court decides to detain or commit the pregnant or postpartum juvenile after weighing the applicable legal standards and considerations set forth in subsections (3)(a)(I) to (3)(a)(VI) of this section, the court shall make specific findings on the record that the risk to public safety or any other factor the court is required to consider is substantial enough to outweigh the risk of detention or commitment. The court shall apply the rebuttable presumption described in this subsection (3)(a) to a pregnant or postpartum juvenile in determining whether to:

(I) Issue bond pursuant to section 19-2.5-306;

(II) Accept entry into the juvenile diversion program pursuant to section 19-2.5-402;

(III) Accept or continue deferred judgments pursuant to section 18-1.3-102;

(IV) Impose a sentence pursuant to section 19-2.5-1103, including whether to grant juvenile probation pursuant to section 19-2.5-1106;

(V) Impose an alternative sentence pursuant to section 19-2.5-1113; or

(VI) Grant a stay of execution pursuant to this section.

(b) A court shall not use a pregnant or postpartum juvenile's pregnancy or postpartum period as a basis for imposing a greater restriction on the juvenile's liberty than a similarly situated juvenile who is not pregnant or postpartum, including circumstances in which a pregnant or postpartum juvenile has a substance use disorder.

(4) (a) A juvenile who may be pregnant who is arrested or in custody in a juvenile facility may request a pregnancy test upon or following admission to the juvenile facility. Staff

at the juvenile facility shall provide a pregnancy test upon request and allow the juvenile to take the pregnancy test within twenty-four hours after the request.

(b) Requesting a pregnancy test, taking a pregnancy test, and the results of a pregnancy test are confidential medical information. This confidential medical information must not be disclosed to outside parties unless the information is required for the juvenile to receive medical care or to allow staff at the juvenile facility to provide necessary care.

(c) If a juvenile is represented by an attorney in a criminal proceeding and the juvenile facility has a signed medical release from the juvenile, the juvenile facility shall notify the juvenile's attorney within forty-eight hours, excluding state holidays and weekends, concerning the juvenile's request for a pregnancy test pursuant to subsection (4)(a) of this section.

(5) (a) A pregnant or postpartum juvenile may raise that the juvenile is pregnant or postpartum at any time during adjudicatory proceedings or while serving a sentence. If the pregnancy or postpartum period is raised, the pregnant or postpartum juvenile shall provide notice to the district attorney by providing evidence of the pregnancy or the start of the postpartum period with a limited waiver of privilege. A positive pregnancy test or medical record confirming pregnancy or the end of pregnancy, or a birth certificate of a newborn, is prima facie evidence of pregnancy or the start of the postpartum period.

(b) If the prosecution contests that the juvenile is pregnant or postpartum, the court shall hold a hearing to make a determination as soon as practicable, but no later than fourteen days after the issue is raised, unless the juvenile requests the hearing be held later than fourteen days after the issue is raised. If the juvenile requests a later hearing, the court shall make the determination within the timeline as requested. The court shall hold the hearing immediately if the circumstances of the juvenile or the juvenile's newborn require it. The juvenile shall prove, by a preponderance of the evidence, that the juvenile is a pregnant or postpartum juvenile.

(c) The court shall protect medical information provided to the court as confidential medical information. A juvenile's waiver of medical privilege to present medical evidence of pregnancy or the end of a pregnancy in court is limited to information relevant to determine whether the juvenile is or was pregnant and whether the pregnancy has ended.

(6) (a) Notwithstanding the provisions of this section, a court shall not:

(I) Set or release the pregnant or postpartum juvenile on bond if the pregnant or postpartum juvenile is ineligible for bond;

(II) Accept or impose an alternative sentence if the pregnant or postpartum juvenile is ineligible for a diversion program, deferred judgment, probationary sentence, or another form of alternative sentence; or

(III) Apply the rebuttable presumption pursuant to this section if a pregnant or postpartum juvenile was adjudicated of a crime of violence, as defined in section 18-1.3-406 (2).

(b) The court shall impose any mandatory sentence required by law on a pregnant or postpartum juvenile, but the court may grant a stay of execution as set forth in subsection (7) of this section.

(7) (a) Any pregnant or postpartum juvenile may request a stay of execution by filing a written request to the court if the pregnant or postpartum juvenile is detained or committed in a juvenile facility for any period of time through the end of the pregnancy or the postpartum period.

(b) The court shall hold a hearing to determine the matter as soon as practicable, but no later than fourteen days after the pregnant or postpartum juvenile requests a stay of execution,

unless the pregnant or postpartum juvenile requests a later hearing. If the pregnant or postpartum juvenile requests a later hearing, the court shall make the determination within the timeline requested. The court shall hold the hearing immediately if the circumstances of the pregnant or postpartum juvenile or newborn require it. The juvenile shall prove, by a preponderance of the evidence, that the juvenile is a pregnant or postpartum juvenile.

(c) In ruling upon the pregnant or postpartum juvenile's request pursuant to subsection (7)(b) of this section, the court shall apply the rebuttable presumption set forth in subsection (3)(a) of this section.

(d) The district attorney and the court shall comply with the requirements of the "Victim Rights Act" pursuant to part 3 of article 4.1 of title 24 in any proceeding conducted pursuant to this section.

(e) Following the hearing conducted pursuant to subsection (7)(b) of this section, the court may order a stay of execution of the sentence for any period of time through the end of the pregnancy or the postpartum period. The court shall order a date, time, and place for the juvenile to appear to serve the sentence upon completion of the stay of execution.

(f) If the court grants a stay of execution pursuant to subsection (7)(e) of this section, the court shall order the bond and the conditions of the bond to remain in effect until the date the pregnant or postpartum juvenile is ordered to start serving the juvenile's sentence.

(g) Notwithstanding this section, a pregnant or postpartum juvenile who is ineligible for bail pursuant to section 19-2.5-306 is not eligible for a stay of execution.

(h) If the pregnant or postpartum juvenile is charged with a new violation or the court receives a verified motion from the district attorney or any agency responsible for supervising the pregnant or postpartum juvenile that establishes a prima facie case that the pregnant or postpartum juvenile has violated the conditions of the stay of execution and presents a substantial risk to public safety, the court shall set a hearing and require the pregnant or postpartum juvenile to appear. After the hearing, the court may end the stay of execution, add new conditions, issue a warrant, or continue the stay of execution.

(8) If a juvenile who is sentenced to detention or commitment learns that the juvenile is pregnant following the sentencing hearing, or a postpartum juvenile experiences changes to the juvenile's postpartum condition following the sentencing hearing, this section does not preclude the pregnant or postpartum juvenile from requesting reduction of the sentence pursuant to rule 35 (b) of the San Andreas rules of criminal procedure. During the reconsideration hearing, this section applies.

Source: L. 2023: Entire section added, (HB 23-1187), ch. 246, p. 1342, § 7, effective August 7.

19-2.5-1119. Genetic testing of adjudicated offenders - definitions. (1) Beginning July 1, 2007, each of the following adjudicated offenders shall submit to collection and a chemical testing of the offender's biological substance sample to determine the offender's genetic markers, unless the offender has already provided a biological substance sample for such testing pursuant to a statute of this state:

(a) Every offender who, on or after July 1, 2007, is in the custody of the department of human services for a commitment imposed before that date, including an offender on parole, based on adjudication for an offense involving unlawful sexual behavior, or for which the

underlying factual basis involved an offense involving unlawful sexual behavior. The department shall collect the sample as soon as possible.

(b) Every offender who, on or after July 1, 2007, is on probation or supervision for a sentence that was imposed before that date, or is on a deferred adjudication that was before that date, for an offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The judicial department shall collect the sample at least thirty-five days prior to the offender's scheduled termination of probation, supervision, or deferred adjudication.

(c) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility for a sentence imposed before that date based on adjudication for an offense that would constitute a felony if committed by an adult. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(d) Every offender who, on or after July 1, 2007, is in a county jail or a community corrections facility for a sentence imposed before that date based on adjudication for a misdemeanor offense involving unlawful sexual behavior or for which the factual basis involved an offense involving unlawful sexual behavior. The sheriff or the community corrections program shall collect the sample at least thirty-five days prior to the offender's release from the custody of the county jail or community corrections facility.

(e) Every offender sentenced on or after July 1, 2007, for an offense that would constitute a felony if committed by an adult. This subsection (1)(e) does not apply to an offender granted a deferred adjudication, unless otherwise required to submit to a sample pursuant to this section or unless the deferred adjudication is revoked and a sentence is imposed. The sample must be collected:

(I) From an offender committed to the department of human services, by the department during the intake process but in any event within thirty-five days after the offender is received by the department;

(II) From an offender sentenced to county jail or to community corrections, by the sheriff or by the community corrections program within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty-five days after the offender is placed on probation; and

(IV) From an offender who receives any other sentence, by the judicial department within thirty-five days after the offender is sentenced.

(f) Every offender who, on or after July 1, 2007, is sentenced for an adjudication of, or who receives a deferred adjudication for, an offense involving unlawful sexual behavior or for which the underlying factual basis involves unlawful sexual behavior. The sample must be collected:

(I) From an offender committed to the department of human services, by the department during the intake process but in any event within thirty-five days after the offender is received by the department;

(II) From an offender sentenced to county jail or community corrections, by the sheriff or by the community corrections facility within thirty-five days after the offender is received into the custody of the county jail or the community corrections facility;

(III) From an offender sentenced to probation, by the judicial department within thirty-five days after the offender is placed on probation;

(IV) From an offender who receives a deferred adjudication, by the judicial department within thirty-five days after the offender is granted the deferred adjudication; and

(V) From an offender who receives any other sentence, by the judicial department within thirty-five days after the offender is sentenced.

(2) An order for payment toward the cost of care entered by the court pursuant to subsection (1) of this section constitutes a judgment enforceable by the state or the governmental agency that would otherwise incur the cost of care for the juvenile in the same manner as are civil judgments.

(a) "Adjudicated" means having received a verdict of guilty by a judge or jury or having pled guilty or nolo contendere. Except where otherwise indicated, "adjudicated" does not include deferred adjudication unless the deferred adjudication is revoked and a sentence is imposed.

(b) "Unlawful sexual behavior" has the same meaning as in section 16-22-102 (9).

(3) The judicial department, the department of human services, a sheriff, or a contractor may:

(a) Use reasonable force to obtain biological substance samples in accordance with this section using medically recognized procedures. In addition, an offender's refusal to comply with this section may be grounds for revocation or denial of parole, probation, or deferred adjudication.

(b) Collect biological substance samples notwithstanding that the collection was not accomplished within an applicable deadline set forth in this section.

(4) Repealed.

(5) The San Andreas bureau of investigation shall conduct the chemical testing of the biological substance samples obtained pursuant to this section. The San Andreas bureau of investigation shall file and maintain the results of the chemical testing of biological samples obtained pursuant to this section and shall furnish the results to a law enforcement agency upon request. The San Andreas bureau of investigation shall store and preserve all biological substance samples obtained pursuant to this section.

(6) A juvenile must not be charged a processing fee for the procurement and analysis of samples described in this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 654, § 2, effective October 1; IP(1) and (3)(a) amended, (4) repealed, and (6) added, (HB 21-1315), ch. 461, p. 3117, § 26, effective October 1.

Editor's note: This section is similar to former § 19-2-925.6 as it existed prior to 2021.

Cross references: For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021.

19-2.5-1120. Cost of care. (1) (a) Notwithstanding section 19-1-115 (4)(d), if a juvenile is sentenced to an out-of-home placement or is granted probation as a result of an adjudication, deferral of adjudication, or direct filing in or transfer to district court, the court may order the

juvenile's parent to make payments toward the cost of care only as required pursuant to Title IV of the federal "Social Security Act".

(b) (Deleted by amendment, L. 2021.)

(2) and (3) (Deleted by amendment, L. 2021.)

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 656, § 2, effective October 1; entire section amended, (HB 21-1315), ch. 461, p. 3115 § 24, effective October 1.

Editor's note: This section is similar to former § 19-2-114 as it existed prior to 2021.

Cross references: (1) For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of San Andreas 2021.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

19-2.5-1121. Fees for transporting juveniles. It is the duty of the sheriff, undersheriff, or deputy, or in their absence any suitable person appointed by the court for such purpose, to convey any juvenile committed pursuant to section 19-2.5-1103 or 19-2.5-1127 to facilities of the division of youth services. All officers performing services pursuant to this part 11 must be paid the same fees as are allowed for similar services in criminal cases, to be paid by the county from which the juvenile was committed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 657, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-415 as it existed prior to 2021.

SUBPART B

OFFENSE-SPECIFIC SPECIALIZED SENTENCING

19-2.5-1122. Sentencing - animal cruelty - anger management treatment. (1) In addition to any sentence imposed pursuant to this section, a juvenile who has been adjudicated a juvenile delinquent for the commission of cruelty to animals, as described in section 18-9-202, in which the underlying factual basis has been found by the court to include the knowing torture or torment of an animal and that needlessly injured, mutilated, or killed an animal, may be ordered to complete an anger management treatment program, a mental health treatment program, or any other appropriate treatment program designed to address the underlying causative factors for the violation.

(2) The court may order an evaluation to be conducted prior to disposition if an evaluation would assist the court in determining an appropriate disposition. The parents or legal guardian of the juvenile ordered to undergo an evaluation shall pay the cost of the evaluation. If the evaluation results in a recommendation of treatment and if the court so finds, the juvenile must be ordered to complete an anger management treatment program, a mental health treatment

program, or any other appropriate treatment program designed to address the underlying causative factors for the violation.

(3) The disposition for a juvenile who has been adjudicated a juvenile delinquent a second or subsequent time, the underlying factual basis of which has been found by the court to include an act of cruelty to animals, as described in section 18-9-202, must include the completion of an anger management treatment program, a mental health treatment program, or any other appropriate treatment program designed to address the underlying causative factors for the violation.

(4) In addition to any sentence imposed pursuant to this section for any juvenile who has been adjudicated a juvenile delinquent for the commission of cruelty to animals, as described in section 18-9-202, the court may enter an order prohibiting the juvenile or other party from owning, possessing, or caring for a pet animal as defined in section 35-80-102 (10), unless the juvenile's treatment provider makes a specific recommendation not to impose the ban and the court agrees with the recommendation.

(5) Nothing in this section precludes the court from ordering treatment in any appropriate case.

(6) This section does not apply to the treatment of pack or draft animals by negligently overdriving, overloading, or overworking them, or the treatment of livestock and other animals used in the farm or ranch production of food, fiber, or other agricultural products when the treatment is in accordance with accepted animal husbandry practices, the treatment of animals involved in activities regulated pursuant to article 32 of title 44, the treatment of animals involved in research if the research facility is operating under rules set forth by the state or federal government, the treatment of animals involved in rodeos, the treatment of dogs used for legal hunting activities, or to statutes regulating activities concerning wildlife and predator control in the state, including trapping.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 657, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-918.5 as it existed prior to 2021.

19-2.5-1123. Sentencing - mandatory detention - weapons and crimes of violence. (1) In the case of a juvenile who has been adjudicated a juvenile delinquent for the commission of one of the offenses described in section 19-2.5-305 (3)(a)(V), the court shall sentence the juvenile to a minimum mandatory period of detention of not fewer than five days.

(2) A juvenile who is less than thirteen years of age may not be sentenced to detention unless the juvenile has been adjudicated for a felony or weapons charge pursuant to section 18-12-102, 18-12-105, 18-12-106, or 18-12-108.5. As an alternative, the juvenile probation department may conduct a presentence investigation pursuant to section 19-2.5-1101. The investigation may result in the juvenile:

(a) Remaining in the custody of a parent, guardian, or legal custodian; or

(b) Being placed in the temporary legal custody of kin, for purposes of a kinship foster care home or noncertified kinship care placement, as defined in section 19-1-103, or other suitable person under such conditions as the court may impose; or

(c) Being placed in a shelter facility; or

(d) Being referred to a local county department of human or social services for assessment for placement.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 658, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-911 (2) and (3) as it existed prior to 2021.

19-2.5-1124. (Reserved)

SUBPART C

SENTENCING - SPECIAL OFFENDERS

19-2.5-1125. Petitions - special offenders. (1) **Mandatory sentence offender.** A juvenile is a mandatory sentence offender if the juvenile:

(a) Has been adjudicated a juvenile delinquent twice; or

(b) Has been adjudicated a juvenile delinquent and if the juvenile's probation has been revoked for a delinquent act, and:

(I) Is subsequently adjudicated a juvenile delinquent; or

(II) Has probation revoked for a delinquent act.

(2) **Repeat juvenile offender.** A juvenile is a repeat juvenile offender if the juvenile has been previously adjudicated a juvenile delinquent and is adjudicated a juvenile delinquent for a delinquent act that constitutes a felony or if the juvenile's probation is revoked for a delinquent act that constitutes a felony.

(3) **Violent juvenile offender.** A juvenile is a violent juvenile offender if the juvenile is adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence as defined in section 18-1.3-406 (2).

(4) **Aggravated juvenile offender.** (a) A juvenile offender is an aggravated juvenile offender if the juvenile is:

(I) Adjudicated a juvenile delinquent for a delinquent act that constitutes a class 1 or class 2 felony or if the juvenile's probation is revoked for a delinquent act that constitutes a class 1 or class 2 felony; or

(II) Adjudicated a juvenile delinquent for a delinquent act that constitutes a felony and either is subsequently adjudicated a juvenile delinquent for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406 (2), or has probation revoked for a delinquent act that constitutes a crime of violence, as defined in section 18-1.3-406 (2); or

(III) Adjudicated a juvenile delinquent or if the juvenile's probation is revoked for a delinquent act that constitutes felonious unlawful sexual behavior pursuant to part 4 of article 3 of title 18, incest pursuant to section 18-6-301, or aggravated incest pursuant to section 18-6-302.

(b) Provisions concerning aggravated juvenile offenders are located in sections 19-2.5-503 and 19-2.5-1127.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 659, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-516 as it existed prior to 2021.

19-2.5-1126. Sentencing - special offenders. (1) The court shall sentence a juvenile adjudicated as a special offender as follows:

(a) **Mandatory sentence offender.** The court shall place or commit a juvenile adjudicated as a mandatory sentence offender, as described in section 19-2.5-1125 (1), out of the home for not less than one year, unless the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate; except that:

(I) If the person adjudicated as a mandatory sentence offender is eighteen years of age or older on the date of the sentencing hearing, the court may sentence that person to the county jail or to a community correctional facility or program for a period not to exceed two years, if the person has been adjudicated a mandatory sentence offender pursuant to this article 2.5 for acts committed prior to the person's eighteenth birthday; or

(II) The juvenile or person may be released by the committing judge upon a showing of exemplary behavior.

(b) **Repeat juvenile offender.** The court shall sentence a juvenile adjudicated as a repeat juvenile offender, as described in section 19-2.5-1125 (2), out of the home for not less than one year, unless the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate; except that:

(I) If the person adjudicated as a repeat juvenile offender is eighteen years of age or older on the date of the sentencing hearing, the court may sentence that person to the county jail or to a community correctional facility or program for a period not to exceed two years, if the person has been adjudicated a repeat juvenile offender pursuant to this article 2.5 for acts committed prior to the person's eighteenth birthday; or

(II) The juvenile or person may be released by the committing judge upon a showing of exemplary behavior.

(c) **Violent juvenile offender.** (I) (A) Upon adjudication as a violent juvenile offender, as described in section 19-2.5-1125 (3), the juvenile must be placed or committed out of the home for not less than one year; except that this subsection (1)(c) does not apply to a juvenile who is ten years of age or older, but less than twelve years of age, when the court finds that an alternative sentence or a commitment of less than one year out of the home would be more appropriate.

(B) Upon adjudication as a violent juvenile offender, if the person is eighteen years of age or older on the date of the sentencing hearing, the court may sentence such person to the county jail or to a community correctional facility or program for a period not to exceed two years, if the person has been adjudicated a violent juvenile offender pursuant to this article 2.5 for acts committed prior to the person's eighteenth birthday.

(II) The court may commit a violent juvenile offender to the department of human services. The court may impose a minimum sentence during which the juvenile must not be released from a residential program without prior written approval of the court that made the commitment.

(d) **Aggravated juvenile offender.** The court shall sentence an aggravated juvenile offender as described in section 19-2.5-1127.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 660, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-908 as it existed prior to 2021.

19-2.5-1127. Aggravated juvenile offender - definition. (1) (a) (I) Upon adjudication as an aggravated juvenile offender:

(A) For an offense other than an offense that would constitute a class 1 or 2 felony if committed by an adult, the court may commit the juvenile to the department of human services for a determinate period of up to five years;

(B) For an offense that would constitute a class 2 felony if committed by an adult, the court shall commit the juvenile to the department of human services for a determinate period of at least three but not more than five years;

(C) For an offense that would constitute a class 1 felony if committed by an adult, the court shall commit the juvenile to the department of human services for a determinate period of at least three but not more than seven years; and

(D) When the petition alleges the offense of murder in the first degree or murder in the second degree, or sexual assault pursuant to section 18-3-402 (3.5) or (4) and the juvenile is adjudicated a delinquent for either murder in the first degree or murder in the second degree, then the court may sentence the juvenile consecutively or concurrently for any crime of violence as described in section 18-1.3-406 or for a delinquent act contained in the petition for which the juvenile is an aggravated juvenile offender.

(II) An aggravated juvenile offender thus committed to the department of human services must not be transferred to a nonsecure or community setting for a period of more than forty-eight hours, excluding Saturdays, Sundays, and court holidays, nor released before the expiration of the determinate term imposed by the court without prior order of the court.

(b) (I) Upon court order, the department of human services may transfer a juvenile committed to its custody pursuant to subsection (1)(a) of this section to the department of corrections if the juvenile has reached eighteen years of age and the department of human services has certified that the juvenile is no longer benefitting from its programs.

(II) The department of human services shall initiate such transfer by filing a request for transfer with the court of commitment that must state the basis for the request. Upon receipt of such a request, the court shall notify the interested parties and set the matter for a hearing.

(III) The court shall authorize the transfer only upon a finding by a preponderance of the evidence that the juvenile is no longer benefitting from the programs of the department of human services.

(IV) Upon entering an order of transfer to the department of corrections, pursuant to this subsection (1)(b), the court shall amend the mittimus and transfer all further jurisdiction over the juvenile to the department of corrections. Thereafter the juvenile is governed by the provisions for adult felony offenders in titles 16 and 17 as if the juvenile had been sentenced as an adult felony offender for the unserved portion of sentence that remains upon transfer to the department of corrections.

(2) (a) After a juvenile who is sentenced pursuant to subsection (1)(a)(I)(B) or (1)(a)(I)(C) of this section has been in the custody of the department of human services for three years or more, the department may petition the court for an order authorizing the department to place the juvenile on juvenile parole upon approval by the juvenile parole board pursuant to section 19-2.5-1203. After a juvenile who is sentenced pursuant to subsection (1)(a)(I)(A) of this section has served the minimum mandatory period of the commitment or three years, whichever is sooner, the department of human services may petition the court for an order authorizing the department to place the juvenile on juvenile parole upon approval by the juvenile parole board pursuant to section 19-2.5-1203. The department of human services shall conduct the parole supervision. Upon filing the petition, the court shall notify the interested parties and set the matter for a hearing. The court shall authorize the department of human services to place the juvenile on juvenile parole upon approval of the juvenile parole board pursuant to section 19-2.5-1203, only upon finding by a preponderance of the evidence that the safety of the community will not be jeopardized by the juvenile's release.

(b) Parole supervision of a juvenile who has been transferred to the department of corrections is governed by the provisions for adult felony offenders in titles 16, 17, and 18 as if the juvenile had been sentenced as an adult felony offender; except that, if the juvenile was adjudicated and sentenced for a class 1 felony, then the juvenile must serve a ten-year period of mandatory parole after completion of the juvenile's sentence.

(3) Upon filing a petition with the committing court for transfer of the juvenile to a nonsecure or community setting, or for early release from the custody of the department of corrections or human services, the court shall notify the interested parties and set the matter for a hearing. The court shall order such transfer or release only upon a finding by a preponderance of the evidence that the safety of the community will not be jeopardized by the transfer or release; except that early release of the juvenile from the department of corrections is governed by the provisions for adult felony offenders in titles 16 and 17 as if the juvenile had been sentenced as an adult felony offender.

(4) (a) (I) When a juvenile in the custody of the department of human services pursuant to this section reaches the age of twenty years and six months, the department of human services shall file a motion with the court of commitment regarding further jurisdiction of the juvenile. Upon the filing of such a motion, the court shall notify the interested parties, appoint counsel for the juvenile, and set the matter for a hearing. The court shall, as part of this hearing, reconsider the length of the remaining sentence and consider the factors as set forth in subsection (4)(c) of this section.

(II) When the court notifies the interested parties, the court shall order that the juvenile submit to and cooperate with a psychological evaluation and risk assessment by a mental health professional to determine whether the juvenile is a danger either to himself or herself or to others. The mental health professional shall prepare a written report and provide a copy of the report to the court that ordered it, the prosecuting attorney, and counsel for the juvenile at least fourteen days before the hearing.

(b) At the hearing upon the motion, the court may either transfer the custody of and jurisdiction over the juvenile to the department of corrections for placement in a correctional facility, the youthful offender system, or a community corrections program; authorize early release of the juvenile pursuant to subsection (3) of this section; place the juvenile on adult parole for a period of five years; or order that custody and jurisdiction over the juvenile must

remain with the department of human services; except that the custody of and jurisdiction over the juvenile by the department of human services terminates when the juvenile reaches twenty-one years of age.

(c) In considering whether to transfer the custody of and jurisdiction over the juvenile to the department of corrections, the court shall consider all relevant factors including, but not limited to, the court-ordered psychological evaluation and risk assessment; the nature of the crimes committed; the offender's prior criminal history; the offender's maturity; the offender's behavior in custody; the offender's progress and participation in classes, programs, and educational improvement; the impact of the crimes on the victims; the likelihood of rehabilitation; the placement where the offender is most likely to succeed in reintegrating in the community; and the interest of the community in the imposition of punishment commensurate with the gravity of the offense.

(5) At any postadjudication hearing held pursuant to this section, the state is represented by the district attorney and the attorney general; except that the attorney general may be excused from participation in the hearing with the permission of the district attorney and of the court. At any postadjudication hearing held pursuant to this section, the department of corrections is considered an interested party and must be sent notice of such hearing.

(6) As used in this section, "mental health professional" means a person who is employed by the department of human services or is employed under contract with the department of human services and is:

(a) A licensed physician with the appropriate training and expertise in psychiatry; or

(b) A licensed psychologist.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 661, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-601 (5) to (10) as it existed prior to 2021.

PART 12

JUVENILE PAROLE

19-2.5-1201. Juvenile parole board - creation - membership - authority - rules. (1) There is created a juvenile parole board, referred to in this part 12 as the "board". The board consists of nine members appointed by the governor and confirmed by the senate. Members are appointed for terms of three years; except that the terms shall be staggered so that one-third of the membership of the board becomes vacant each year. There are no term limits for the members of the board. Any vacancy that occurs when the general assembly is not in session may be filled by the governor, and such member serves temporarily until confirmed at the next regular session of the general assembly. The board is a **type 1** entity, as defined in section 24-1-105.

(2) All nine members are voting members. All members must be residents of the state of San Andreas. Of the nine members:

(a) One member is from the department of human services;

(b) One member is from the department of education;

(c) One member is from the department of public safety;

(d) One member is from the department of labor and employment; and

(e) Five members are from the public at large and must not be employees of the state government. At least one of the members from the public at large must be a resident of the area west of the continental divide.

(3) All members serve at the pleasure of the governor, and the governor shall designate one member of the board to act as chairperson.

(4) The full board meets not less than once a month, and the presence of five members, at least two of whom are members described in subsection (2)(e) of this section, constitutes a quorum to transact official business of the full board.

(5) All members of the board are reimbursed for expenses necessarily incurred in the performance of their duties. In addition to the reimbursement of expenses, the five at-large board members shall receive a per diem of one hundred fifty dollars per full day and seventy-five dollars per half day spent transacting official business of the board.

(6) The department of human services shall furnish clerical and other assistance for the board. A juvenile parole board administrator appointed by the executive director of the department of human services shall supervise such clerical and other assistance provided pursuant to this subsection (6).

(7) (a) The board may grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole for any juvenile committed to the department of human services pursuant to section 19-2.5-1103 or 19-2.5-1127 in a manner that is in the best interests of the juvenile and the public. In addition to any other conditions, the board may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or the successful completion of a high school equivalency examination, as that term is defined in section 22-33-102 (8.5); except that the board shall not require any such juvenile to attend a school from which the juvenile has been expelled without the prior approval of that school's local board of education. The board shall promulgate rules that establish criteria under which its parole decisions are made. The board has the duties and responsibilities specified in this part 12.

(b) Unless inconsistent with other conditions imposed by the board, the board shall allow a juvenile to have periodic meetings with the juvenile parole officer at reasonable times through a telephone call or audio-visual communication technology. Unless inconsistent with other conditions imposed by the board, in directing the juvenile to have periodic meetings with a juvenile parole officer at reasonable times, the juvenile parole officer shall schedule, in good faith, the meetings with the juvenile on parole at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other parole requirements.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 664, § 2, effective October 1. **L. 2022:** (1), IP(2), and (5) amended, (SB 22-013), ch. 2, p. 26, § 31, effective February 25; (1) amended, (SB 22-162), ch. 469, p. 3375, § 64, effective August 10. **L. 2024:** (7) amended, (HB 24-1445), ch. 353, p. 2408, § 7, effective September 1.

Editor's note: (1) This section is similar to former §§ 19-2-206 and 19-2-207 as they existed prior to 2021.

(2) Amendments to subsection (1) by SB 22-013 and SB 22-162 were harmonized.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

19-2.5-1202. Juvenile parole - organization. (1) Juvenile parole services are administered by the division of youth services in the department of human services, under the direction of the director of the division of youth services, appointed pursuant to section 19-2.5-1501.

(2) The director of the division shall appoint juvenile parole officers and other personnel of the division of youth services pursuant to section 13 of article XII of the state constitution and with the consent of the department of human services. Juvenile parole officers have the powers and duties specified in section 19-2.5-1204 and the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138.

(3) The division of youth services may divide juvenile parole supervision into regions throughout the state. Within each region there may be more than one office location for parole officers.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 665, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-209 as it existed prior to 2021.

19-2.5-1203. Juvenile parole - hearing panels - definition. (1) **Juvenile parole board - hearing panels authority.** (a) The juvenile parole board, established pursuant to section 19-2.5-1201, may grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole for any juvenile committed to the department of human services pursuant to sections 19-2.5-1103 and 19-2.5-1127. In addition to any other conditions, the board may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or the successful completion of a high school equivalency examination, as that term is defined in section 22-33-102 (8.5); except that the board shall not require any juvenile to attend a school from which the juvenile has been expelled without the prior approval of that school's local board of education. The board may modify any of its decisions, or those of the hearing panel, except an order of discharge.

(b) Unless inconsistent with other conditions imposed by the board, the board shall allow a juvenile to have periodic meetings with a juvenile parole officer at reasonable times through a telephone call or audio-visual communication technology. Unless inconsistent with other conditions imposed by the board, in directing the juvenile to have periodic meetings with a juvenile parole officer at reasonable times, the juvenile parole officer shall schedule, in good faith, meetings with the juvenile on parole at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other parole requirements.

(2) (a) The board or a hearing panel has subpoena power and the power to administer oaths to secure attendance and testimony at hearings before the board. All relevant records pertaining to the juvenile must be made available to the board.

(b) (I) The board or hearing panel shall take into consideration the results of the validated risk and needs assessment administered by the department of human services.

(II) In making release and discharge decisions, the board or hearing panel shall use the length of stay matrix and release criteria developed pursuant to section 19-2.5-1117 (7).

(3) (a) Hearing panels consisting of two members of the board shall interview and review the record of each juvenile who comes before the board for the granting of parole. Whenever possible, one of the hearing panel members must be a representative of an executive department, and the other must be a member from the public at large. A hearing panel may grant, deny, defer, suspend, revoke, or specify or modify the conditions of any parole of a juvenile that are in the best interests of the juvenile and the public; except that:

(I) If the members of a hearing panel disagree, a review of that case must be referred to the board for review and a decision made by a majority vote of the board members present. At least a quorum of the board, as defined in section 19-2.5-1201 (4), must be present to make a decision pursuant to this subsection (3)(a)(I).

(II) The hearing panel does not have authority to grant parole to juveniles committed as violent juvenile offenders as described in section 19-2.5-1125 (3) or aggravated juvenile offenders as described in section 19-2.5-1125 (4). In such cases, the board shall conduct a hearing and make a decision by a majority vote of the board members present at the hearing. However, if expiration of the juvenile's commitment is imminent, as defined by the board, the hearing panel shall hold a hearing and make a recommendation to the board. The board shall review the case and make a decision by a majority vote of the board members present.

(III) If a written request is made by the juvenile, the juvenile's parents or guardian, or the executive director of the department of human services or the executive director's designee, the board may review the case of any juvenile who has been interviewed by a hearing panel. If such a review is made, the board has the authority to affirm or reverse the decision of the hearing panel or to impose such additional conditions for parole as the board deems appropriate.

(b) If a juvenile, while under a juvenile commitment, is in jail pending adult charges, the board may conduct a parole hearing without the juvenile's presence.

(c) When the board conducts a hearing pursuant to subsection (3)(a) or (3)(b) of this section, a quorum, as defined in section 19-2.5-1201 (4), must be present.

(d) In addition to any other conditions, the hearing panel may require, as a condition of parole, any adjudicated juvenile to attend school or an educational program or to work toward the attainment of a high school diploma or the successful completion of a high school equivalency examination, as that term is defined in section 22-33-102 (8.5); except that the hearing panel shall not require any such juvenile to attend a school from which the juvenile has been expelled without the prior approval of that school's local board of education.

(4) The juvenile parole board administrator appointed pursuant to section 19-2.5-1201 (6) shall assist the hearing panel in its duties. The administrator shall also arrange training for the members of the board in all aspects of the juvenile justice system. It is mandatory for members of the board to attend such training.

(5) (a) If the hearing panel or the board determines that parole should be granted, the hearing panel shall establish six months as the length of the parole supervision. However, for a

juvenile committed to the department of human services due to an adjudication for an offense specified in subsection (5)(b) of this section, the hearing panel may extend the period of parole supervision up to an additional fifteen months if the hearing panel makes findings of special circumstances that warrant an extended period of parole services for the juvenile.

(b) Subsection (5)(a) of this section allowing for extension of the period of parole applies to juveniles committed to the department of human services due to an adjudication for one or more of the following offenses:

(I) Any offense specified in article 3 of title 18 or in part 3 of article 4 of title 18 that would constitute a felony if committed by an adult;

(II) Incest, as described in section 18-6-301;

(III) Aggravated incest, as described in section 18-6-302;

(IV) Child abuse, as described in section 18-6-401, that would constitute a felony if committed by an adult;

(V) Fourth degree arson, as described in section 18-4-105, that would constitute a felony if committed by an adult;

(VI) Assault during escape, as described in section 18-8-206, that would constitute a felony if committed by an adult;

(VII) Felony illegal possession of a handgun by a juvenile, as described in section 18-12-108.5, that would constitute a felony if committed by an adult;

(VIII) Misdemeanor illegal possession of a handgun by a juvenile, as described in section 18-12-108.5, that would constitute a misdemeanor if committed by an adult, if the juvenile is contemporaneously committed to the department of human services for an offense that would constitute a felony if committed by an adult; or

(IX) Attempt, conspiracy, or solicitation to commit any of the offenses specified in this subsection (5)(b), which attempt, conspiracy, or solicitation would constitute a felony if committed by an adult.

(c) Upon completion of the period of parole supervision as established by the board, the juvenile is deemed to have discharged the juvenile's sentence to commitment in the same manner as if the sentence were discharged pursuant to law.

(d) (I) If the juvenile court commits a juvenile to the department of human services for concurrent sentences based on the commission of two or more offenses or consecutive sentences based on commission of two or more offenses, the juvenile is subject to one six-month mandatory period of parole, unless the period of parole is extended pursuant to subsection (5)(a) of this section.

(II) As used in this subsection (5)(d), "concurrent sentence" means sentences identified by the court as concurrent and any sentences, or portions thereof, that are served simultaneously and that are the basis of the juvenile's treatment services during the juvenile's commitment.

(e) (I) If a juvenile's parole is revoked pursuant to section 19-2.5-1206, the juvenile shall serve all or a portion of the remainder of the sentence to commitment, and the period of reparole or extended period of reparole imposed pursuant to subsection (5)(a) of this section must be reduced by any time served on parole prior to the revocation. This subsection (5)(e) does not limit the board's authority to grant, deny, defer, suspend, revoke, or modify a juvenile's parole within the period of parole.

(II) If a juvenile's parole is revoked or modified pursuant to section 19-2.5-1206, and the juvenile has completed the period of commitment imposed by the court, the period of parole, or

extended period of parole imposed pursuant to subsection (5)(a) of this section must continue pursuant to section 19-2.5-1117 (1)(c)(II). The period of parole continues regardless of whether the revocation or modification authorizes the department of human services to place the juvenile in a residential placement while on parole status. This does not limit the board's authority to grant, deny, defer, suspend, revoke, or modify a juvenile's parole within the period of parole.

(6) If the hearing panel or the board determines that parole should be granted, the hearing panel or board shall order the parolee to pay any unpaid restitution that has previously been ordered as a condition of parole.

(7) **Notice.** (a) The board, prior to consideration of the case of a juvenile for parole, shall notify the committing court, any affected juvenile community review board, the prosecuting attorney, and any victims of the juvenile's actions whose names and addresses have been provided by the district attorney of the time and place of the juvenile's hearing before the board or a hearing panel of the board. The notice must be given in order that the persons notified have an opportunity to present written testimony to the hearing panel or the board. The board, in its sole discretion, may allow oral testimony at any hearing and has sole discretion regarding who may attend a juvenile parole hearing.

(b) (I) (A) Prior to consideration of the case of a juvenile for parole, the board shall provide notice of the time and place of the juvenile's hearing before the board or a hearing panel of the board to a victim who has provided to the division of youth services or the board a written statement pursuant to sections 24-4.1-302.5 and 24-4.1-303. The notice and subsequent interactions with the victim must be consistent with article 4.1 of title 24.

(B) The board shall notify the victim of changes in the juvenile's parole pursuant to section 24-4.1-303 (14.3).

(II) For a juvenile who is currently serving parole that implicates article 4.1 of title 24, the division of youth services shall notify the board of any discharge as a matter of law and any placement change that may impact public safety or victim safety as determined by the division of youth services, including any escape or recapture.

(8) **Representation of juvenile - parent.** The juvenile and the juvenile's parents or guardian must be informed that they may be represented by counsel in any hearing before the board or a hearing panel to grant, modify, or revoke parole.

(9) **Parole discharge.** (a) The board may discharge a juvenile from parole after the juvenile has served the mandatory parole period of six months but prior to the expiration of the period of parole supervision when it appears to the board that there is a reasonable probability that the juvenile will remain at liberty without violating the law.

(b) (I) Based upon a request and recommendation by the division of youth services, the board may discharge all or a portion of a juvenile's period of parole, as defined in section 19-2.5-1117 (1)(b), without holding a hearing before the board or a hearing panel of the board, if the board finds that:

(A) The juvenile is unavailable to complete the period of parole or the extended period of parole and the juvenile is not likely to become available in a time or manner in which the juvenile will benefit from parole services and neither community safety nor restorative justice interests will be served through the imposition or continuation of the juvenile's parole; or

(B) The community interest in safety or restorative justice will not be served through the imposition or continuation of juvenile parole because the juvenile is under the adult probation supervision of the district court.

(II) As used in this subsection (9), a juvenile is unavailable to complete the period of parole if:

(A) The juvenile, pursuant to an adult sentence, has been placed in a department of corrections facility, adult community corrections, the youthful offender system, or a local jail, as defined in section 17-1-102; or

(B) The juvenile has been or will be transferred out of the state of San Andreas and the division of youth services determines that the discharge is not in conflict with the interstate compact on juveniles, part 7 of article 60 of title 24; or

(C) The juvenile is in a medical, mental health, treatment facility, or similar institution; or

(D) The board finds any other circumstance that constitutes unavailability as established in rule.

(c) The board may discharge a juvenile from parole before completion of the mandatory six-month parole period when the board finds that the juvenile meets, at a minimum, all of the following conditions of special achievement:

(I) Graduation from a high school or successful completion of a high school equivalency examination, as that term is defined in section 22-33-102 (8.5);

(II) Payment of one hundred percent of any restitution the juvenile has been ordered to pay;

(III) Certification by the juvenile's parole officer that the juvenile is ready for discharge from parole, that takes into consideration the results of an objective risk assessment conducted by the department of human services and is based upon researched factors that have been demonstrated to be correlative to risk to the community; and

(IV) Presentation to the board of a plan of action prepared by the juvenile that includes the steps the juvenile will accomplish to ensure a transition to law-abiding citizenship. If the juvenile's plan of action includes an intent to enlist in military service, the plan must specify the interim steps that the juvenile will take prior to entering military service.

(d) A discharge from parole pursuant to this subsection (9) has the same legal effect as if parole had been discharged upon completion of juvenile parole or when the sentence to commitment was discharged as a matter of law.

(e) (I) If the board of parole decides to discharge parole supervision pursuant to this subsection (9) for a juvenile adjudicated of any offenses described in section 16-22-102 (9) or 24-4.1-302 (1) prior to the juvenile's mandatory parole supervision discharge date, the board shall set the juvenile's date of parole supervision discharge at least fifteen days after notice is provided to the victim of the discharge. If the victim elected not to receive notifications otherwise required by law, the board shall set the date of discharge at least fifteen days after the decision to grant early discharge of parole supervision.

(II) Notwithstanding subsection (9)(e)(I) of this section, the board shall not set a juvenile's discharge of parole supervision date later than the juvenile's mandatory parole supervision discharge date.

(10) Notwithstanding any provisions of law to the contrary, the department of human services shall not retain custody of or jurisdiction over an individual who reaches twenty-one years of age. The sentence to commitment and the period of parole are discharged as a matter of law when a juvenile reaches twenty-one years of age.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 665, § 2, effective October 1. **L. 2023:** (9)(e) added, (SB 23-193), ch. 307, p. 1878, § 3, effective August 7. **L. 2024:** (1) amended, (HB 24-1445), ch. 353, p. 2408, § 8, effective September 1.

Editor's note: This section is similar to former § 19-2-1002 as it existed prior to 2021.

19-2.5-1204. Parole officers - powers - duties. (1) Under the direction of the director of the division of youth services, the juvenile parole officer or officers in each region established in section 19-2.5-1202 (3) shall supervise all juveniles living in the region who, having been committed to the department of human services, are on parole from one of its facilities.

(2) (a) The juvenile parole officer shall give to each juvenile granted parole a written statement of the conditions of the juvenile's parole, explain such conditions fully, and aid the juvenile to observe them. The juvenile parole officer shall have periodic meetings with the juvenile. The juvenile parole officer may conduct investigations or other activities as necessary to determine whether the conditions of parole are being met and to accomplish the juvenile's rehabilitation.

(b) Unless inconsistent with other conditions imposed by the board, in directing that a juvenile on parole have a periodic meeting with a juvenile parole officer, the juvenile parole officer shall:

(I) Schedule, in good faith, meetings with the juvenile on parole at mutually agreeable times that do not conflict with the juvenile's essential obligations, including work, education, job training, dependent care, medical appointments, and other parole requirements; and

(II) Allow a juvenile to meet with a parole officer through a telephone call or audio-visual communication technology.

(3) All juvenile parole officers have the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138, in performing the duties of their position.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 671, § 2, effective October 1. **L. 2024:** (2) amended, (HB 24-1445), ch. 353, p. 2409, § 9, effective September 1.

Editor's note: This section is similar to former § 19-2-1003 as it existed prior to 2021.

19-2.5-1205. Administrative law judges. An administrative law judge shall assist any hearing panel of the juvenile parole board that is considering the suspension, modification, or revocation of a juvenile's parole.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 671, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-208 as it existed prior to 2021.

19-2.5-1206. Parole violation and revocation. (1) The director of the division of youth services or any juvenile parole officer may arrest any parolee when:

(a) The director or officer has a warrant commanding that the parolee be arrested; or

(b) The director or officer has probable cause to believe that a warrant for the parolee's arrest has been issued in this state or another state for any criminal offense or for violation of a condition of parole; or

(c) Any offense under the laws of this state has been or is being committed by the parolee in the director's or officer's presence; or

(d) The director or officer has probable cause to believe that a violation of law has been committed by the parolee; or

(e) The director or officer has probable cause to believe that the parolee has violated a condition of the juvenile's parole and probable cause to believe that the parolee is leaving or about to leave the state, or that the parolee will fail or refuse to appear before the hearing panel to answer charges of violations of one or more conditions of parole, or that the parolee's arrest is necessary to prevent physical harm to the parolee or another person or to prevent the violation of a law.

(2) When an alleged parole violator is taken into custody, the director of the division of youth services or the juvenile parole officer shall notify the juvenile's parents, guardian, or legal custodian without unnecessary delay.

(3) When a juvenile parole officer has reasonable grounds to believe that a parolee has violated a condition of parole, the juvenile parole officer may issue a summons requiring the parolee to appear before the hearing panel at a specified time and place to answer charges of violation of one or more conditions of parole. The summons, unless accompanied by a copy of a complaint filed before the hearing panel seeking revocation or suspension of parole or modification of parole conditions, must contain a brief statement of the alleged parole violation and the date and place of the alleged parole violation. Failure of the parolee to appear before the hearing panel as required by the summons is a violation of a condition of parole.

(4) If, rather than issuing a summons, a parole officer arrests a parolee with or without a warrant or takes custody of a parolee who has been arrested by another, the parole officer shall place the parolee in the nearest local juvenile detention facility or shelter care facility approved by the department of human services, if under eighteen years of age, or in the nearest county jail, if eighteen years of age or older. Within forty-eight hours, not including Saturdays, Sundays, and legal holidays, the parole officer shall take one of the following actions:

(a) Notify the juvenile parole board that the parolee has been arrested or taken into custody and request that a juvenile parole preliminary hearing be conducted by an administrative law judge; or

(b) Obtain from the parolee a written agreement that the parolee waives the right to a juvenile parole preliminary hearing. The parolee's parent or guardian shall also sign the waiver of the parolee if the parolee is a juvenile; or

(c) Release the parolee if the parolee is not subject to other actions that require further detention.

(5) An administrative law judge shall, upon the request of the juvenile parole board, conduct a preliminary hearing in a case in which a parole violation has been alleged to determine whether there is probable cause to believe that the parolee has violated a condition of parole, pursuant to subsection (4) of this section.

(6) Whenever an administrative law judge schedules a preliminary hearing pursuant to subsection (5) of this section, the juvenile parole officer shall notify the parolee and the parolee's parent, guardian, or legal custodian of the following information:

(a) The date, the time, and the place of the preliminary hearing and the name of the administrative law judge;

(b) That the purpose of the hearing is to determine whether there is probable cause to believe that the parolee has violated parole;

(c) That at the preliminary hearing the parolee will be permitted to present evidence, either oral or documentary, in person or by other witnesses, in defense of any alleged parole violation;

(d) A statement of any alleged parole violation;

(e) A brief summary of the evidence tending to establish any alleged parole violation; and

(f) That the parolee has the right to counsel at the preliminary hearing.

(7) (a) At any preliminary hearing held pursuant to subsection (5) of this section, the administrative law judge shall hear any offered testimony and determine whether there is probable cause to believe that the parolee has violated parole. If probable cause has not been shown, the administrative law judge shall order the parolee's release and make a written report of the judge's findings to the juvenile parole board within fourteen days of the hearing.

(b) If the administrative law judge finds that probable cause exists to believe that the parolee has violated parole, the administrative law judge shall order that the parolee be held to answer the charge before a hearing panel and shall order that the juvenile parole officer return the parolee without unnecessary delay to any of the juvenile corrections facilities of the department of human services pending a hearing before a hearing panel on the complaint for revocation, suspension, or modification of the juvenile's parole.

(8) Within fourteen working days after the finding of probable cause by the preliminary administrative law judge, the juvenile parole officer shall complete the officer's investigation and either:

(a) File a complaint before the hearing panel in which the facts are alleged upon which a revocation of parole is sought; or

(b) Recommend to the director of the division of youth services, or the director's designee, that the parolee, if detained, be released and the violation proceedings be dismissed. The director, or the director's designee, shall determine whether to cause the violation proceedings to be dismissed, and, if he or she elects to cause dismissal, the parolee must be released or notified that the parolee is relieved of obligation to appear before the hearing panel. In such event, the director, or the director's designee, shall give written notification to the board of such action.

(9) A complaint filed by a juvenile parole officer in which revocation of parole is sought must contain the name of the parolee, identify the violation charged and the condition or conditions of parole alleged to have been violated, including the date and approximate location of the violation, and be signed by the juvenile parole officer. A copy must be given to the parolee and the parolee's parents, guardian, or legal custodian at least seven days before a hearing on the complaint is held before the hearing panel.

(10) The board may order the detention of any parolee for failure to appear as required by the summons issued pursuant to subsection (3) of this section.

(11) At least seven days before the appearance of a parolee before the hearing panel, the juvenile parole officer shall provide, in writing, to the parolee and the parolee's parents, guardian, or legal custodian the following:

(a) A statement of the nature of the charges that are alleged to justify revocation or suspension of parole and the substance of the evidence sustaining the charges;

(b) A copy of the complaint unless he or she has already received one;

(c) A listing of the consequences that may follow in the event parole is revoked; and

(d) An advisement that, if the parolee denies the charges, a hearing will be held before the hearing panel, that, at the hearing, the parolee may testify and present witnesses and documentary evidence in defense of the charges or in mitigation or explanation, and that the parolee has the right to counsel at the hearing.

(12) At the hearing before the hearing panel, if the parolee denies the violation, the division of youth services has the burden of establishing by a preponderance of the evidence the violation of a condition or conditions of parole. The hearing panel shall, when it appears that the alleged violation of conditions of parole consists of an offense with which the parolee is charged in a criminal case then pending, continue the parole violation hearing until the termination of the criminal proceeding. Any evidence having probative value is admissible regardless of its admissibility under exclusionary rules of evidence if the parolee is accorded a fair opportunity to rebut hearsay evidence. The parolee has the right to confront and to cross-examine adverse witnesses unless the administrative law judge specifically finds good cause for not allowing confrontation.

(13) If the hearing panel determines that a violation of a condition or conditions of parole has been committed, it shall hear further evidence related to the parolee's disposition. At the conclusion of the hearing, the hearing panel shall advise the parties of its findings and recommendations and of their right to request a review before the board. Such review may be held if a written request is filed within fourteen days after the conclusion of the hearing before the hearing panel. If a review before the board is not requested or the right to review is waived, the findings and recommendations of the hearing panel, if unanimous, become the decision of the juvenile parole board unless the board on its own motion orders a review.

(14) The case of a juvenile alleged or found to have violated the conditions of parole outside the state of San Andreas must be handled according to the interstate compact on juveniles, part 7 of article 60 of title 24.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 671, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1004 as it existed prior to 2021.

PART 13

APPEALS

19-2.5-1301. Appeals. (1) Appellate procedure is governed by the San Andreas appellate rules. Initials must appear on the record on appeal in place of the juvenile's and other respondents' names. Appeals must be advanced on the calendar of the appellate court and decided at the earliest practical time.

(2) The prosecution in a delinquency case may appeal any decision of the trial court as provided in section 16-12-102.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 675, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-903 as it existed prior to 2021.

19-2.5-1302. Posttrial bail. A juvenile's application for posttrial bail is governed by part 2 of article 4 of title 16 and section 19-2.5-306, as it relates to bail.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 675, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-904 as it existed prior to 2021.

PART 14

ADMINISTRATION

SUBPART A

IN GENERAL

19-2.5-1401. Responsible agencies. The department of human services is the single state agency responsible for the oversight of the administration of juvenile programs and the delivery of services for juveniles and their families in this state. In addition, the department of human services is responsible for juvenile parole. The state judicial department is responsible for the oversight of juvenile probation. The department of public safety is responsible for the oversight of community diversion programs and programs funded through the allocation authorized in section 19-2.5-402 (2). The state agencies described in this section shall jointly oversee the application by judicial districts of the placement criteria established by the working group pursuant to section 19-2.5-1404.

Source: L. 2021: Entire section amended, (SB 21-066), ch. 64, p. 254, § 1, effective April 29; entire article added with relocations, (SB 21-059), ch. 136, p. 675, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 19-2-202 as it existed prior to 2021.

(2) This section was numbered as 19-2-202 in SB 21-066 (see L. 2021, p. 254). Those provisions were harmonized with this section as they appear in SB 21-059.

19-2.5-1402. Juvenile community review board. (1) A board of county commissioners or the city council of the city and county of Denver or more than one board of county commissioners may adopt a written resolution requiring approval by a juvenile community review board of residential community placements within its county of juveniles under commitment to the department of human services. Upon the effective date of such resolution and

notice to the department of human services, a juvenile committed to the custody of the department of human services shall not be placed into a residential community placement in that county or region unless and until the placement is approved by the juvenile community review board.

(2) A juvenile community review board may be consolidated with other local advisory boards pursuant to section 24-1.7-103.

(3) Notification of any placement of a juvenile under the jurisdiction of the juvenile parole board must be made to the juvenile community review board prior to or at the time of placement.

(4) (a) Prior to placement of a juvenile in a residential community placement, the juvenile community review board shall review the juvenile's case file. It is the responsibility of the department of human services to provide accurate information regarding the juvenile and the proposed placement to the juvenile community review board. The information must include, but not be limited to, a history of delinquent adjudications, a social history, an educational history, a mental health treatment history, a drug and alcohol treatment history, and a summary of institutional progress. Each juvenile case referred to the board must be reviewed within fourteen days from the date the referral is received.

(b) The board shall review the juvenile's case file and make a decision regarding residential community placement, taking into consideration the results of a validated risk and needs assessment adopted pursuant to section 24-33.5-2402 (1), as it existed prior to its repeal in 2022, by the department of human services, the criteria established by the juvenile community review board based on the interests of the community, and guidance established by the department of human services in consultation with the committee on juvenile justice reform established pursuant to section 24-33.5-2401, as it existed prior to its repeal in 2022. The criteria must be based upon researched factors that have been demonstrated to be correlative to risk to the community.

(c) All names, addresses, and information regarding a juvenile case reviewed by the juvenile community review board are confidential and not disclosed except to the board or its designees, the San Andreas bureau of investigation, and any law enforcement agency, without express written permission of the juvenile and the legal custodian.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 675, § 2, effective October 1. **L. 2022:** (4)(b) amended, (HB 22-1211), ch. 79, p. 395, § 10, effective December 31.

Editor's note: This section is similar to former § 19-2-210 as it existed prior to 2021.

19-2.5-1403. Division of youth services - community boards. (Repealed)

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 676, § 2, effective October 1. **L. 2023:** Entire section repealed, (SB 23-210), ch. 251, p. 1426, § 1, effective May 24.

Editor's note: This section is similar to former § 19-2-203.5 as it existed prior to 2021.

19-2.5-1404. Working group for criteria for placement of juvenile offenders - establishment of formula - review of criteria - report. (1) (a) The executive director of the department of human services and the state court administrator of the judicial department, or any designees of such persons, shall form a working group that includes representatives from:

(I) The division of criminal justice of the department of public safety;

(II) The office of state planning and budgeting;

(III) The San Andreas district attorneys' council;

(IV) Law enforcement, including at least one representative from a statewide organization of county sheriffs;

(V) The public defender's office and the office of alternate defense counsel;

(VI) The office of the child representative;

(VII) Juvenile probation;

(VIII) Juvenile court judges and magistrates;

(IX) Local and county governments, including at least three representatives from county departments of human or social services;

(X) The division of youth services;

(XI) The division of child welfare;

(XII) The local juvenile services planning committees, created in section 19-2.5-302; and

(XIII) Organizations that advocate for youth involved in the juvenile justice system.

(a.5) The working group must also include at least two persons directly affected by the incarceration of youth, of whom, at least one person who is or was a youth in the custody of a division of youth services facility.

(b) The working group shall carry out the following duties:

(I) To establish a set of criteria for both detention and commitment for the purposes of determining which juvenile offenders are appropriate for placement in the physical or legal custody of the department of human services. The criteria must conform with section 19-2.5-305. This set of criteria, when adopted by the department of human services and the judicial department, must promote a more uniform system of determining which juveniles should be placed in the physical custody of the department of human services or in the legal custody of the department of human services so that decisions for placement of a juvenile are made based upon a uniform set of criteria throughout the state. In addition, the criteria must specifically take into account the juvenile's educational needs and ensure the juvenile's access to appropriate educational services. The working group established pursuant to this subsection (1) shall hold a meeting at least four times each year and as necessary to review and propose revision to the criteria established pursuant to this subsection (1) and the formula created pursuant to subsection (1)(b)(V) of this section.

(II) Before January 1, 2021, to develop or adopt by a majority vote of the working group a research-based detention screening instrument to be used statewide to inform placement of juveniles in a detention facility. In developing or adopting the detention screening instrument, the working group shall consult with expert organizations and review research and best practices from other jurisdictions. The working group is also responsible for:

(A) Ensuring that the instrument identifies and mitigates any disparate impacts based on disability, race or ethnicity, gender, sexual orientation, national origin, economic status, or child welfare involvement;

(B) Identifying measures and scoring for the detention screening instrument to determine eligibility for placement in a juvenile detention facility;

(C) Identifying how the instrument is validated and piloted; and

(D) Establishing statewide scoring override policies that minimize subjective decisions to hold a juvenile in a detention facility, while allowing for local flexibility;

(III) Before January 1, 2021, to develop a plan to provide training and technical assistance to screening teams on the implementation of the detention screening instrument, including at least annual refresher training;

(IV) Before January 1, 2021, to develop a plan for the division of youth services to collect, compile, and report to the judiciary committees of the senate and the house of representatives, the health and human services committee of the senate, and the public health care and human services committee of the house of representatives, or any successor committees, annually on the use of secure detention; number and justification of overrides of the detention screening instrument as conducted pursuant to section 19-2.5-303; and, if possible, an analysis of detention screening instrument data to determine if any disparate impacts resulted based on race, ethnicity, gender, sexual orientation, national origin, economic status, or child welfare involvement. The division of youth services shall recommend any necessary changes to appropriations that need to be made prior to fully implementing this section's recommendations. Notwithstanding section 24-1-136 (11)(a)(I), this reporting requirement continues indefinitely.

(V) To establish a formula for the purpose of allocating funds by each judicial district in the state of San Andreas for alternative services to placing juveniles in the physical custody of the department of human services or in the legal custody of the department of human services. The allocation must take into consideration such factors as the population of the judicial district, the incidence of offenses committed by juveniles in such judicial district, and other factors as deemed appropriate. The working group shall consider and take into account whether any federal money or matching funds are available to cover the costs of juveniles within the system, including parent fees and third-party reimbursement as authorized by law or reimbursements under Title IV-E of the federal "Social Security Act", as amended.

(VI) Before January 1, 2021, to establish criteria for juveniles served through alternative services funded pursuant to subsection (1)(b)(V) of this section. The criteria must prioritize:

(A) Preadjudicated juveniles eligible for placement in a detention facility as determined by results from a detention screening instrument;

(B) Juveniles who are in secure detention; and

(C) Juveniles under the supervision of probation when the results of a detention screening instrument indicate that the juvenile is eligible for detention.

(VII) At least annually review data collected by the division of youth services on the use of funding pursuant to subsection (1)(b)(V) of this section and its impact on the use of juvenile detention. The working group shall identify the measures that it will collect as part of its review of the impact of preadjudicated funding on detention pursuant to this section.

(VIII) Before January 1, 2021, to adopt a relative information form concerning a juvenile's potential need for services or placement. The information form must be available at each judicial district to each parent or legal guardian of a juvenile screened for detention and participation in alternative services. The information form must:

(A) Advise the parent or legal guardian that he or she is required to provide the requested information fully and completely; and

(B) Require the parent or legal guardian to list the names, addresses, e-mail addresses, and telephone numbers of every grandparent, relative, kin, and person with a significant relationship with the juvenile and any comments concerning the appropriateness of the juvenile's potential need for services from or placement with those persons.

(IX) Before January 1, 2021, to develop a system of graduated responses and rewards to guide parole officers in determining how best to motivate positive juvenile behavior change and the appropriate response to a violation of terms and conditions of juvenile parole. Graduated responses means an accountability-based series of sanctions and services designed to respond to a juvenile's violation of parole quickly, consistently, and proportionally and incentives to motivate positive behavior change and successful completion of parole and the juvenile's reentry and treatment goals.

(X) Before July 1, 2022, to create a formula for the allocation of money to judicial districts pursuant to section 19-2.5-1407 (3) for the provision of temporary shelter for juveniles.

(2) Of the members of the working group established pursuant to subsection (1) of this section, the executive director of the department of human services and the state court administrator of the judicial department, or any designees of such persons, have final authority to carry out the duty of creating the set of criteria pursuant to subsections (1)(b)(I) to (1)(b)(IV) of this section and creating the formula pursuant to subsections (1)(b)(V) to (1)(b)(VII) of this section. This authority can only be exercised after working with and participating in the working group process established in this section.

(3) (a) On or before October 31, 2021, and at least four times each year thereafter and as necessary to perform the duties described in this subsection (3), the working group shall convene for the purpose of examining the availability of alternatives to youth detention and the use of detention beds, and examining necessary investments in alternatives to youth detention, including less restrictive placements that serve alleged and adjudicated juvenile offenders and community-based services that allow alleged and adjudicated juvenile offenders to live with family or kin. The working group shall carry out the following duties:

(I) By October 31, 2022, the working group shall develop performance standards and outcome measures to evaluate the degree to which alleged and adjudicated offenders are in the least restrictive setting with appropriate services. The performance standards and outcome measures must:

(A) Evaluate whether the number of alternative placements, range of services offered by such placements, and community-based services available meet the needs of youth in each judicial district and county; and

(B) Determine whether and how specific data and outcome measures must be reported to evaluate the efficacy of less restrictive placements and community-based services.

(II) The working group shall advise the department of human services concerning policies, procedures, and best practices related to serving youth in the least restrictive setting.

(III) The working group shall review the data provided by the department of human services pursuant to subsection (3)(b) of this section, and provide recommendations:

(A) To enhance the continuum of community-based services and placement options for alleged and adjudicated juvenile offenders, including recommendations to improve availability and quality of less restrictive alternative placements and community-based services for youth;

(B) Regarding any changes to secure detention bed capacity limits and the allocation of detention beds across the state; and

(C) For future data collection and reporting to assist the working group in completing its duties.

(b) On or before July 1, 2023, and on or before July 1 each year thereafter, the department of human services shall submit a report to the working group, the judiciary committees of the senate and the house of representatives, or any successor committees, and the health and human services committee of the senate and the public and behavioral health and human services committee of the house of representatives, or any successor committees. The report must include the data collected pursuant to subsection (3)(d) of this section for the prior calendar year and the following:

(I) An analysis of the data collected in accordance with the performance standards and outcome measures developed pursuant to subsection (3)(a)(I) of this section, and an analysis of the progress toward meeting the performance standards and outcome measures developed pursuant to subsection (3)(a)(I) of this section;

(II) The status of implementation of efforts guided by the working group's recommendations pursuant to subsection (3)(a)(II) of this section;

(III) An analysis of the continuum of in-home and out-of-home placement options and supports for alleged juvenile offenders, including the current availability capacities of the options and supports, including:

(A) An analysis of the availability of and demand for less restrictive alternative placements in each judicial district and county, including but not limited to residential treatment facilities, qualified residential treatment programs, nonqualified residential treatment programs, residential community placements, shelter placements, and family-type settings, including but not limited to foster care;

(B) An analysis of the availability and use of funding for less restrictive alternative placements in each judicial district and county, including but not limited to residential treatment facilities, qualified residential treatment programs, nonqualified residential treatment programs, residential community placements, shelter placements, and family-type settings, including but not limited to foster care;

(C) An analysis of the availability of and demand for community-based services in each judicial district and county offered to alleged and adjudicated juvenile offenders that assist in allowing children to live with family or kin, including the types of community-based services available and capacity for each type of service in each judicial district and county; and

(D) An analysis of the availability and use of funding for community-based services in each judicial district and county offered to alleged and adjudicated juvenile offenders, including the amount of funding spent on different types of services.

(IV) An analysis of barriers to placing youth in less restrictive alternative placements;

(V) The number of youth in detention awaiting placement in a less restrictive community setting;

(VI) The number of youth in detention charged by direct filing pursuant to section 19-2.5-801 by judicial district or county, and the average length of stay in detention for these youth;

(VII) An analysis of the number of youth placed in less restrictive alternative placements, including but not limited to residential treatment facilities, qualified residential treatment programs, nonqualified residential treatment programs, residential community placements, shelter placements, and family-type settings, including but not limited to foster care, and the length of stay in these placements for alleged and adjudicated offenders;

(VIII) An analysis of the involvement of youth and their families, and their satisfaction with less restrictive alternative placements;

(IX) An analysis of the number of alleged and adjudicated juvenile offenders who are served by county departments through their child welfare systems and the impact on those county departments;

(X) The number of youth, by age and by judicial district, who at the time they received services from a county department, including, but not limited to, services received through prevention services, an assessment, or an open dependency and neglect case:

(A) Had an open delinquency case in a district court;

(B) Were on juvenile probation; or

(C) Had a juvenile deferred sentence;

(XI) The number of youth, by age and by judicial district, who at the time they were placed in out-of-home placement by a county department:

(A) Had an open delinquency case in a district court;

(B) Were on juvenile probation; or

(C) Had a juvenile deferred sentence;

(XII) The age, race, gender, and disability status for the children described in subsections (3)(b)(X) and (3)(b)(XI) of this section; and

(XIII) The recommendations of the working group made pursuant to subsection (3)(a)(III) of this section.

(XIV) The recommendations of the working group made pursuant to subsection (3)(a)(III) of this section.

(c) Notwithstanding section 24-1-136 (11)(a)(I), the report required in subsection (3)(b) of this section continues indefinitely.

(d) Beginning for state fiscal year 2023-24, and for each fiscal year thereafter, the state department shall collect data statewide concerning the following:

(I) The demographic information, including race, ethnicity, gender, age, sexual orientation, gender identity, and disability status, to the extent the information is available, of the youth in each detention facility who are eligible for release from a detention facility without an additional court order if services or a placement are available for the youth but who are being held in detention due to lack of available services or placement;

(II) The number of temporary emergency detention beds, described in section 19-2.5-1407.3 (4), used each day in each catchment area; and

(III) The number of youth released from detention solely because the number of youth detained statewide exceeded the statewide detention bed cap established in section 19-2.5-1514.

(e) (I) The working group shall conduct a study to determine how to identify, who possesses, and the best method to collect and report the following data and information related to juveniles who are detained:

(A) The number of court orders requested in each judicial district to release a youth who could not otherwise be released from detention and the order was requested solely because the number of youth detained in the judicial district exceeded the number of juvenile detention beds allocated by the division of youth services to the judicial district;

(B) The number of youth in each judicial district who could not otherwise be released from detention who were released pursuant to a court order to make a detention bed available in the catchment area; and

(C) The number of youth eligible for release from a detention facility without an additional court order who, after being held in detention for a period of time due to a lack of available services or placement, are released from detention without the identified services or placement, and the number of days between the identification of the need for services or placement and release, for each youth.

(II) The working group shall include the results of the study in its recommendations made pursuant to subsection (3)(a)(III) of this section.

(f) If the department is unable to provide any of the data required in the annual report pursuant to subsection (3)(b) of this section, the department shall include in the report its plan to collect and report on the data that is currently unavailable in the following year. The department shall report the missing data the following year.

Source: L. 2021: IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), and (1)(b)(I) amended and (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), and (3) added, (SB 21-071), ch. 463, p. 3336, § 7, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 677, § 2, effective October 1. **L. 2022:** (1)(b)(X) added, (HB 22-1056), ch. 383, p. 2740, § 2, effective June 7. **L. 2023:** (1)(b)(VII) and IP(3)(b) amended and (3)(d) and (3)(e) added, (HB 23-1307), ch. 442, p. 2588, § 4, effective June 7; (3)(b)(IX) and (3)(b)(X) amended and (3)(b)(XI), (3)(b)(XII), (3)(b)(XIII), (3)(b)(XIV), and (3)(f) added, (HB 23-1249), ch. 287, p. 1721, § 2, effective August 7. **L. 2024:** (3)(b) amended, (HB 24-1450), ch. 490, p. 3409, § 25, effective August 7.

Editor's note: (1) This section is similar to former § 19-2-212 as it existed prior to 2021.

(2) Subsections IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3) were numbered as 19-2-212 IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3) in SB 21-071 (see L. 2021, p. 3336). Those provisions were harmonized with subsections IP(1)(a), (1)(a)(IV), (1)(a)(VIII), (1)(a)(IX), (1)(a)(X), (1)(a)(XI), (1)(a)(XII), (1)(a)(XIII), (1)(a.5), (1)(b)(I), and (3) of this section as they appear in SB 21-059.

Cross references: (1) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

(2) For the legislative declaration in HB 23-1307, see section 1 of chapter 442, Session Laws of San Andreas 2023. For the legislative declaration in HB 23-1249, see section 1 of chapter 287, Session Laws of San Andreas 2023.

19-2.5-1405. Working group - allocation of beds. (1) The executive director of the department of human services and the state court administrator in the judicial department, or a designee of such persons, in consultation with the division of criminal justice of the department of public safety, the office of state planning and budgeting, the San Andreas district attorneys' council, and law enforcement representatives, shall form a working group that has the following duties:

(a) To annually allocate the number of juvenile detention beds to each catchment area in the state created pursuant to section 19-2.5-1513, based on the number of juvenile beds

established pursuant to section 19-2.5-1514. Once the allocation of juvenile detention beds is made to the catchment areas, the working group shall allocate detention beds within the catchment areas to the judicial districts within each catchment area. Judicial districts shall not exceed the number of beds allocated to them except for circumstances provided for in subsection (1)(b) of this section.

(b) To develop a mechanism for judicial districts to loan detention beds to other judicial districts in cases of need;

(c) To develop emergency release guidelines that must be used by each judicial district to prevent placement of a juvenile in a juvenile detention facility in excess of the number of beds allocated to the judicial district; and

(d) To develop juvenile detention placement guidelines for each judicial district to use in complying with the number of juvenile detention beds allocated to the judicial district.

Source: L. 2021: IP(1) and (1)(b) amended, (SB 21-071), ch. 463, p. 3335, § 5, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 680, § 2, effective October 1.

Editor's note: (1) This section is similar to former § 19-2-1202 as it existed prior to 2021.

(2) Subsections IP(1) and (1)(b) were numbered as 19-2-1202 IP(1) and (1)(b) in SB 21-071 (see L. 2021, p. 3335). Those provisions were harmonized with subsections IP(1) and (1)(b) of this section as they appear in SB 21-059.

19-2.5-1406. Juvenile probation departments or divisions - service agreements. (1) The juvenile court is authorized to establish juvenile probation departments or divisions.

(2) Subject to section 13-3-105, the juvenile court is authorized to appoint juvenile probation officers and such other professional and clerical personnel as may be required. Juvenile probation officers have the powers and duties specified in section 19-2.5-1107 and have the powers of peace officers, as described in sections 16-2.5-101 and 16-2.5-138.

(3) Upon the agreement of the juvenile court judges, the approval of the chief judge in each district or, for the second judicial district, the presiding judge of the Denver juvenile court, and the approval of the chief justice of the supreme court, two or more contiguous judicial districts may combine to form an interdistrict juvenile probation department.

(4) (a) The juvenile court judges are authorized to enter into agreements with the state department of human services, county departments of human or social services, other public agencies, private agencies, or with other juvenile courts to provide supervision or other services for juveniles placed on probation by the court.

(b) The conditions and terms of any such agreement must be set forth in writing, including any payments to be made by the court for the services provided.

(c) Any agreement made pursuant to this subsection (4) may be terminated with ninety-one days written notice by either party.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 681, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-204 as it existed prior to 2021.

19-2.5-1407. Appropriations to department of human services for services to juveniles - definition - repeal. (1) The general assembly shall appropriate money for the provision of services to juveniles to the department of human services. The department of human services shall allocate such money by each judicial district in the state. The appropriation and allocation must be made based upon the formula developed pursuant to section 19-2.5-1404 (1)(b)(V). The department of human services shall administer the appropriated money. The money appropriated to the department of human services for allocation by each judicial district must be expended in the judicial district by the department of human services for services to juveniles that are intended to prevent the juvenile from being held in detention prior to adjudication, including implementing options provided in the screening instrument described in section 19-2.5-1404; sentenced to detention; or committed to the department of human services or to reduce the length of time the juvenile is held in preadjudication or postadjudication detention or held in a commitment facility operated pursuant to section 19-2.5-1502. If a judicial district has a local juvenile services planning committee, the expenditure of money for juvenile services in the judicial district must be made in accordance with the plan developed pursuant to section 19-2.5-302.

(2) For the purposes of this section, a "juvenile" also includes a youth ten years of age or older but less than seventeen years of age who is habitually truant, as defined in section 22-33-102 (3.5), and who the court has ordered to show cause why the juvenile should not be held in contempt of court pursuant to section 22-33-108 (7), when funds are expended for services that are intended to prevent the youth from being held in detention or sentenced to detention.

(3) (a) The general assembly shall annually appropriate money to the department of human services for the provision of temporary shelter for juveniles by judicial districts. The general assembly shall appropriate an amount sufficient to fund five nights of care for each juvenile who, based on the results of a screening by the judicial district's screening team, is screened to temporary care in a licensed temporary shelter facility.

(b) On or before November 1, 2022, and annually thereafter, the department shall allocate money to judicial districts in accordance with the formula developed pursuant to section 19-2.5-1404 (1)(b)(X).

(c) (I) Repealed.

(II) For state fiscal year 2023-24 and each year thereafter, in order to receive an allocation, a juvenile services planning committee, or the judicial district if the judicial district has not established a juvenile services planning committee, shall include in its plan developed pursuant to section 19-2.5-302 a plan for providing temporary shelter in the judicial district. The plan must include that placement in licensed shelter care is voluntary and must not exceed five days.

(d) A judicial district's juvenile services planning committee, or the judicial district, may use money allocated pursuant to this subsection (3) for:

(I) The cost of care in a licensed temporary shelter, including any transportation costs, for up to five nights for each juvenile who, after screening by the judicial district's screening team, is referred to receive temporary care in a licensed temporary shelter facility;

(II) Providing support to a grandparent, kin, or other suitable person for care of a juvenile released to the person's care while emergency circumstances exist, as determined by the

judicial district's juvenile services planning committee that prevent the juvenile from returning home. Support provided to a grandparent, kin, or other suitable person must be based on the actual costs incurred by the person for caring for the juvenile.

(III) Services for and evaluation of a juvenile receiving temporary shelter; and

(IV) Establishing licensed temporary shelter through evaluation or recruitment and providing training needed to operate temporary shelter.

(e) (I) On or before January 31, 2024, and on or before January 31 of each year thereafter, the house of representatives public and behavioral health and human services committee and the senate health and human services committee, or their successor committees, shall hold a joint hearing to determine whether the recommendations of the working group described in section 19-2.5-1404 have been implemented in a manner that warrants the repeal of this subsection (3) prior to its scheduled repeal in 2026. At the hearing that occurs during the 2026 regular legislative session, the committees shall consider whether this subsection (3) should be continued.

(II) At the hearing, the department shall present on its most recent report issued pursuant to section 19-2.5-1404 (3)(b), the committees shall permit representatives of the working group to testify or provide information to the committees, and the committees shall take public testimony regarding implementation of the working group's recommendations.

(f) This subsection (3) is repealed, effective June 30, 2026.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 681, § 2, effective October 1. **L. 2022:** (1) amended and (3) added, (HB 22-1056), ch. 383, p. 2738, § 1, effective June 7.

Editor's note: (1) This section is similar to former § 19-2-310 as it existed prior to 2021.

(2) Subsection (3)(c)(I)(B) provided for the repeal of subsection (3)(c)(I), effective July 1, 2023. (See L. 2022, p. 2738.)

19-2.5-1407.3. Appropriation to the department of human services - allocation to judicial districts - provider incentives - temporary emergency detention beds. (1) For state fiscal year 2023-24, and for each state fiscal year thereafter, the general assembly shall appropriate three million three hundred forty thousand one hundred nineteen dollars from the general fund to the department for youth who are detained or can be placed in lieu of detention.

(2) Of the money appropriated pursuant to subsection (1) of this section, the department shall allocate two hundred thousand dollars for use by the division of youth services to support services for youth who are detained or can be placed in lieu of detention. The division may use the money for any of the following:

(a) Community-based outpatient therapeutic services, including mental and behavioral health services, family therapy services, and substance use treatment and therapy;

(b) Mentorship services for youth, including ensuring continuity of mentorship services after a youth is released from detention; and

(c) Supports to assist with moving youth who require out-of-home placement quickly from detention to the out-of-home placement, including, but not limited to:

(I) Support for a grandparent, kin, or other suitable person for care of a juvenile released to the person's care;

(II) Support for foster parents;

(III) Recruitment of foster parents; and

(IV) Respite child care.

(3) Of the money appropriated pursuant to subsection (1) of this section, the department shall use one million seven hundred eighty thousand one hundred thirty-seven dollars to provide incentives and remove barriers for licensed providers to serve youth who may be placed in community residential facilities or family-like settings in lieu of detention. In order to be eligible to receive an incentive or other funding pursuant to this subsection (3), a provider must be licensed to provide or operate any of the following: Temporary shelter, as defined in section 19-1-103; a residential child care facility, as defined in section 26-6-903; a qualified residential treatment program, as defined in section 26-5.4-102; a psychiatric residential treatment facility, as defined in section 25.5-4-103; therapeutic foster care or treatment foster care, as each is defined in section 26-6-903; or a foster care home, as defined in section 26-6-903 (10).

(4) (a) Of the money appropriated pursuant to subsection (1) of this section, the department shall use one million three hundred fifty-nine thousand nine hundred eighty-two dollars for the provision of temporary emergency detention beds described in subsection (4)(b) of this section.

(b) Twenty-two temporary emergency detention beds are available statewide. A temporary emergency detention bed does not count toward the limit of juvenile detention beds available pursuant to section 19-2.5-1514. The department shall annually allocate the number of temporary emergency detention beds to each catchment area in the state created pursuant to section 19-2.5-1513. A temporary emergency detention bed may be made available to a judicial district pursuant to a court order issued pursuant to, and subject to the restrictions set forth in, subsection (4)(c) of this section.

(c) (I) The district attorney of a judicial district or a county department of human or social services may petition the court no later than the next business day after the juvenile is detained to exceed the number of juvenile detention beds allocated to a judicial district pursuant to section 19-2.5-1405 for the period of time before the detention hearing for the juvenile who would utilize the requested temporary emergency detention bed, if:

(A) When all statutorily available detention beds allocated to the judicial district and any judicial district sharing the same facility are fully utilized, the judicial district is presented with a juvenile who is charged with committing a delinquent act who screens into detention based on the current detention screening instrument;

(B) Each bed loaned by the judicial district to another judicial district, as described in section 19-2.5-1405 (1)(b), has been relinquished to the loaning judicial district;

(C) No detention beds are available within the judicial district's catchment area; and

(D) There are no available juvenile detention beds in any facility within fifty miles of the initial receiving juvenile detention facility. This subsection (4)(c)(I)(D) does not apply to a petition for a temporary emergency detention bed if: The point of arrest of the juvenile was fifty miles or more from the initial receiving juvenile detention facility; or if the petition is for a juvenile to utilize a bed at the juvenile's initial receiving facility when the juvenile is returned to the initial receiving facility because the juvenile was utilizing a bed borrowed from another judicial district and the borrowed bed is no longer available for use by the juvenile.

(II) Upon receipt of a petition to exceed the number of juvenile detention beds allocated to a judicial district filed pursuant to this subsection (4)(c), a court shall issue an order permitting a judicial district to exceed the number of juvenile detention beds allocated to the catchment area up to the number of temporary emergency detention beds allocated to the catchment area by the department if the court specifically finds that the following circumstances exist:

(A) No detention beds are available in the catchment area;

(B) There is a legal basis for detaining each juvenile who is detained in the judicial district, which may include for each juvenile screened that the detention screening instrument does not support release because the juvenile presents a substantial risk of serious harm to others or is a flight risk from prosecution;

(C) Services are not available for any juvenile currently placed in detention in the judicial district that would mitigate the substantial risk of serious harm to others presented by the juvenile or the juvenile's risk of flight from prosecution; and

(D) Other forms of community-based supervision for the incoming juvenile are not sufficient to mitigate the substantial risk of serious harm to others presented by the juvenile or the juvenile's risk of flight from prosecution.

(III) If a detention bed within the judicial district's allocation that is under the statewide detention bed cap becomes available, the juvenile utilizing a temporary emergency detention bed shall revert to the nonemergency detention bed and the requirements in this subsection (4) no longer apply. If a detention bed becomes available within the judicial district's catchment area but at a different facility, the juvenile may, at the discretion of the judicial district, remain in the temporary emergency detention bed in lieu of transferring to the nonemergency detention bed in a different facility.

(IV) On the fifth business day following the issuance or renewal of each court order issued pursuant to this subsection (4)(c), if the circumstances described in subsection (4)(c)(I) of this section exist and the juvenile remains detained in the temporary emergency detention bed, the person who filed the initial petition pursuant to subsection (4)(c)(I) of this section, or the person's designee, shall inform the court that the circumstances still exist and the juvenile remains detained in the temporary emergency detention bed. At the time of informing the court, the person shall also provide the court with updated information about the circumstances the court is required to find pursuant to subsection (4)(c)(II) of this section. Upon notification from the person, the court shall hold a hearing to determine whether to renew the order. The court may renew its order for an additional five days if it makes the findings required in subsection (4)(c)(II) of this section for issuance of a court order.

(5) Repealed.

Source: L. 2023: Entire section added, (HB 23-1307), ch. 442, p. 2584, § 2, effective June 7.

Editor's note: Subsection (5)(b) provided for the repeal of subsection (5), effective June 30, 2024. (See L. 2023, p. 2584.)

Cross references: For the legislative declaration in HB 23-1307, see section 1 of chapter 442, Session Laws of San Andreas 2023.

SUBPART B

PROGRAMS

19-2.5-1408. Victim-offender conferences - pilot program. The division of youth services is authorized to establish a pilot program, when funds become available, in its facilities to facilitate victim-initiated victim-offender conferences whereby a victim of a crime may request a facilitated conference with the juvenile who committed the crime, if the juvenile is in the custody of the division of youth services. After such a pilot program is established, the division of youth services may establish policies and procedures for the victim-offender conferences using volunteers to facilitate the conferences. The volunteers shall complete the division of youth services' volunteer and facility-specific training programs and complete high-risk victim-offender training and victim-advocacy training. The division of youth services shall not compensate or reimburse a volunteer or victim for any expenses. If a pilot program is available, and subsequent to the victim's or the victim representative's request, the division of youth services shall arrange a conference only after determining that the conference would be safe and only if the juvenile agrees to participate. The purposes of the conference are to enable the victim to meet the juvenile, to obtain answers to questions only the juvenile can answer, to assist the victim in healing from the impact of the crime, and to promote a sense of remorse and acceptance of responsibility by the juvenile that may contribute to the juvenile's rehabilitation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 682, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-311 as it existed prior to 2021.

19-2.5-1409. Juvenile intensive supervision program - creation - elements - role of judicial department. (1) The judicial department may establish and operate, either directly or by contracting with one or more private organizations, a juvenile intensive supervision program, which may be utilized by any judge in sentencing any juvenile who has been placed on probation and who presents a high risk of future placement within juvenile correctional facilities according to assessment criteria developed pursuant to this section.

(2) The juvenile intensive supervision program created pursuant to subsection (1) of this section must include, but is not limited to, utilization of any or all of the following elements:

(a) Increased supervision of the juvenile by probation officers;

(b) Utilization of specific youth case management approaches;

(c) Community service work assignments;

(d) Restitution programs;

(e) Structured group training regarding problem solving, social skills, negotiation skills, emotion management, creative thinking, value enhancement, and critical reasoning;

(f) Use of electronic or global position monitoring and substance abuse testing to monitor the juvenile's compliance with the program and providing sanctions for failure to comply with the program; and

(g) Individual and family treatment.

(3) The judicial department, with the assistance of a juvenile intensive supervision advisory committee, shall develop assessment criteria for placement in the juvenile intensive supervision program, including the results of a validated risk and needs assessment tool, and judicial department guidelines for implementation of the program and measurement of the outcome of the program. The advisory committee is appointed by the state court administrator and includes, but is not limited to, representatives of the division of youth services in the department of human services and the division of criminal justice of the department of public safety.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 682, § 2, effective October 1.

Editor's note: This section is similar to former §§ 19-2-306 and 19-2-307 as they existed prior to 2021.

19-2.5-1410. Community accountability program - legislative declaration - creation. (1) It is the intent of the general assembly that the program established pursuant to this section benefit the state by providing a structured program combining residential and community reintegration components under which certain adjudicated juveniles are subject to an ordered environment affirming the dignity of self and others; promoting the value of education, work, and accountability; adhering to the principals of restorative justice; and developing useful skills that can be applied when the juvenile is reintegrated into the community.

(2) (a) The division of youth services, pursuant to a contract with one or more private entities, shall establish, maintain, and operate a community accountability program, referred to in this section as the "program".

(b) The program must provide a sentencing option for adjudicated juveniles who are at least fourteen years of age but younger than eighteen years of age. An adjudicated juvenile may be sentenced to participate in the program only as a condition of probation. A sentence to the program may be in addition to, but must not be in lieu of, a mandatory sentence required by section 19-2.5-1123. The juvenile court shall consider the program as a sentencing option for higher risk juveniles who would have otherwise been sentenced to detention or out-of-home placement or committed to the department of human services.

(c) A sentence imposed pursuant to this section is conditioned on the availability of space in the program and the division of youth services' determination of whether the juvenile's participation in the program is appropriate. A juvenile may be denied participation in the program upon a determination by the division of youth services that a physical or mental health condition, including severe substance abuse, will prevent the juvenile's full participation in the program. Any juvenile denied participation in the program must be returned to the juvenile court for resentencing.

(d) The judicial department shall provide information to the division of youth services concerning the juvenile's sentencing, including but not limited to the juvenile's criminal history, the presentence investigation report, the risk-need assessment, and demographics pertaining to the juvenile.

(e) The program must be established for up to eighty beds. Pursuant to the contract entered into pursuant to subsection (2)(a) of this section, the division of youth services shall pay only for the actual number of juveniles placed in the program.

(3) If feasible, the program may be established regionally, one in each of the division of youth services' regions. The division of youth services, through a competitive bid process, shall select one or more private entities to operate the program.

(4) (a) The program consists of two integrated components. Each selected entity shall provide both components within the contracted region as follows:

(I) **Component I.** Component I consists of a sixty-day residential program, which may contain, but need not be limited to, the following program elements:

(A) Assessment and treatment planning;

(B) Behaviorally based programming with appropriate sanctions and reinforcements;

(C) Life and cognitive skill development;

(D) Treatment interventions;

(E) Educational and vocational training;

(F) Competency development;

(G) Victim awareness and empathy;

(H) Gender-specific programming; and

(I) Restorative justice programming.

(II) **Component II.** The division of youth services shall administer component II, which consists of a community reintegration phase. For each juvenile entering component II, the division of youth services and the local probation department shall jointly establish a reintegration plan. Component II may contain, but need not be limited to, the following program elements:

(A) Multi-systemic therapy;

(B) Functional family therapy;

(C) Aggression replacement training;

(D) Life skills;

(E) Skills development;

(F) Behaviorally based programming with appropriate sanctions and reinforcements;

(G) Education and vocational training;

(H) Work experience;

(I) Victim empathy;

(J) Victim-offender mediation;

(K) Gender-specific programming; and

(L) Restorative justice programming.

(b) The program may be housed in a privately owned and operated facility or in a state-owned and privately operated facility. The state department of human services and any private contractors in each region shall involve local governments in identifying locations for residential facilities.

(c) The division of youth services shall include a community involvement component in the development of reintegration plans, which may include the creation of community advisory boards.

(5) If a juvenile in the first component of the program would substantially benefit, the division of youth services shall notify the local department of probation who may petition the

court for an extension of up to fifteen days in addition to the initial sixty-day period for the first component of the program. The period of time a juvenile spends in the second component of the program must not exceed one hundred twenty days. The entire period of a juvenile's participation in the program must not exceed the length of the juvenile's probation sentence. Whenever a juvenile fails to progress through or complete the first or second component of the program, the juvenile is subject to section 19-2.5-1108 (8) for violating a condition of probation.

(6) The division of youth services and the judicial department shall jointly establish guidelines for the program and for each of the components described in subsection (4) of this section. The division of youth services shall make available necessary support services for the juvenile and the juvenile's family under both components of the program.

(7) The division of youth services shall conduct an ongoing evaluation of the program. On or before January 15 each year, the division of youth services shall submit a report of the evaluation results to the general assembly. Notwithstanding section 24-1-136 (11)(a)(I), the reporting requirements in this subsection (7) continue indefinitely. The division of youth services may contract for the services and labor necessary to perform the ongoing evaluation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 683, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-309.5 as it existed prior to 2021.

19-2.5-1411. Parental responsibility training programs - criteria. (1) The state department of human services, after consultation with the state department of public safety and the judicial department, shall establish standards and guidelines for parental responsibility training programs for the parent, guardian, or legal custodian of a juvenile or juvenile delinquent. The standards and guidelines must include, but are not limited to, instruction in the following:

(a) Physical, mental, social, and emotional child growth and development;

(b) Skill development for parents in providing for the juvenile's learning and development, including teaching the juvenile responsibility for the juvenile's actions;

(c) Prevention of substance abuse;

(d) Family structure, function, and management; and

(e) The physical, mental, emotional, social, economic, and psychological aspects of interpersonal and family relationships.

(2) The state department of human services is authorized and directed to establish such standards and guidelines within the available resources of the state government and each of the state departments described in subsection (1) of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 686, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-304 as it existed prior to 2021.

19-2.5-1412. Youth corrections monetary incentives award program - designated monetary custodian. (1) The division of youth services in the department of human services is authorized to establish, at its discretion, a youth corrections monetary incentives award program,

referred to in this section as the "program". The purpose of the program is to provide monetary awards and incentives for academic, social, and psychological achievement to juveniles who were formerly committed to the division of youth services who are on parole, in community corrections, or now off of parole.

(2) If the division of youth services establishes a program, it shall devise, in collaboration with the nonprofit organization designated pursuant to subsection (3) of this section, appropriate participation criteria, application procedures, any necessary organizational structure, and criteria for awarding individual scholarships. Criteria may, but are not required to, include that the juvenile:

(a) Maintains the highest grades possible each academic term;

(b) Makes consistent progress in the juvenile's therapy or other assigned program, if applicable, during each academic term, as determined by the team of professionals who worked with the juvenile while committed to the division of youth services; and

(c) Uses the money earned only for expenses approved as necessary and valid by the division of youth services and the nonprofit organization designated pursuant to subsection (3) of this section.

(3) If the division of youth services establishes a program, it shall, in conjunction with the director of the legislative council, use a request for proposal process to contract with and designate a nonprofit organization, referred to in this section as the "designated nonprofit", to serve as the custodian of money donated to the program through the designated nonprofit. The designated nonprofit shall work with the division of youth services for the purpose of designing the program criteria, accepting funds for program scholarships, and providing a distribution mechanism for such scholarships.

(4) (a) The designated nonprofit and the division of youth services are authorized to solicit, accept, and expend monetary and in-kind gifts, grants, and donations on behalf of the program and for payment of scholarships to juveniles in the program. Any money donated or awarded to the designated nonprofit for the benefit of the program is not subject to appropriation by the general assembly. The designated nonprofit is not the custodian of any money appropriated by the state, which must be annually appropriated by the general assembly to the division of youth services in the department of human services. Any money obtained by the division of youth services or the designated nonprofit that is unexpended and unencumbered at such time the program is dissolved must be distributed according to appropriate federal and state laws governing nonprofit organizations.

(b) If a different nonprofit or private organization is subsequently designated as the custodian of donated money in accordance with this subsection (4), the former designated nonprofit shall promptly transfer to the newly designated nonprofit or private organization any money that is unexpended and unencumbered at the time of the change in designation.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 686, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-312 as it existed prior to 2021.

PART 15

FACILITIES

SUBPART A

IN GENERAL

19-2.5-1501. Division of youth services - created - interagency agreements - duties of administrators of facilities in connection with voter registration and casting of ballots - reports - definitions. (1) (a) There is created within the department of human services the division of youth services, referred to within this section as the "division", the head of which is the director of the division. The executive director of the department of human services shall appoint the director of the division pursuant to section 13 of article XII of the state constitution and the laws and rules governing the state personnel system. The director is a **type 2** entity, as defined in section 24-1-105, who exercises the director's powers and performs the director's duties and functions within the office of the executive director of the department of human services in accordance with this article 2.5.

(b) The purposes of the division are to:

(I) Increase public safety by providing rehabilitative treatment to help youth in the division's care make lasting behavioral changes to prepare themselves for successful transition back to the community;

(II) Promote the physical safety of youth and staff within the division;

(III) Promote a seamless continuum of care from the time of detention or commitment to discharge, in which youths' needs are met in a safe, structured environment with well-trained, caring staff who help youth identify and address their issues, be accountable, and accept responsibility for their actions;

(IV) Enable youth to develop healthy, supportive relationships with peers, adults, family, and members of their neighborhoods and communities;

(V) Provide youth with the tools necessary to become law-abiding, contributing members of the community upon their release; and

(VI) Ensure that the state department of human services upholds the rights established pursuant to sections 19-2.5-1502.5 and 19-2.5-1511 for youth detained or committed to the care and physical custody of a facility operated by the state department of human services.

(2) The division may enter into agreements with the judicial department to combine provision of juvenile parole and probation services. Juvenile probation and parole supervision programs implemented pursuant to such agreements may not include provisions for supervision of juveniles sentenced to the department of corrections.

(3) (a) This subsection (3) applies to any individual committed to a juvenile facility and in the custody of the division who is eighteen years of age or older on the date of the next election.

(b) The administrator of a facility in which an individual described in subsection (3)(a) of this section is committed shall facilitate the voting rights of the individual. In connection with such requirements, the administrator shall provide the individual with information regarding voting rights and how to register to vote and cast a mail ballot, provide the individual with voter information materials upon the individual's request, and ensure that any mail ballot cast by the individual is timely delivered to the designated election official. Notwithstanding any other

provision of law, to satisfy the requirements of this subsection (3)(b), the administrator is exempt from any restriction under law on the number of mail ballots an eligible elector may deliver in person to the designated election official.

(c) The administrator and the secretary of state shall post the type or kind of verification satisfying the requirements of section 1-1-104 (19.5)(d) in a prominent place on the public websites maintained by the department of human services and the secretary, respectively. The secretary shall provide notice to the county clerk and recorders as well as other designated election officials throughout the state that such verification constitutes an acceptable form of identification pursuant to section 1-1-104 (19.5) permitting the individuals possessing such identification to register to vote and cast a ballot.

(d) The administrator shall forward applications made pursuant to this subsection (3) on a weekly basis, or on a daily basis during the last week allowed for registration prior to any election, to the county clerk and recorder of the county in which the facility is located, and, if the applicant resides in a different county from the facility, the application must then be forwarded to the county clerk and recorder of the county in which the applicant resides.

(e) For purposes of this subsection (3), "administrator" and "voter information materials" have the same meaning as set forth in section 1-2-210.5 (5).

(4) On or before July 1, 2018, and on or before each July 1 thereafter, the department of human services shall collect recidivism data and calculate the recidivism rates and the educational outcomes for juveniles committed to the custody of the department of human services. Notwithstanding section 24-1-136 (11)(a)(I), the department of human services shall report the recidivism data, recidivism rates, and educational outcomes to the general assembly annually. The report must denote the demographic characteristics of the population considered in the report. In reporting on recidivism rates, the report must denote the types of criminal offenses committed, delineating between felonies and misdemeanors.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 687, § 2, effective October 1. **L. 2022:** (1)(a) amended, (SB 22-162), ch. 469, p. 3375, § 65, effective August 10. **L. 2024:** (4) amended, (SB 24-030), ch. 13, p. 33, § 2, effective March 6; (1)(b)(IV) and (1)(b)(V) amended and (1)(b)(VI) added, (HB 24-1170), ch. 386, p. 2632, § 2, effective August 7.

Editor's note: This section is similar to former § 19-2-203 as it existed prior to 2021.

Cross references: (1) For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

(2) For the legislative declaration in HB 24-1170, see section 1 of chapter 386, Session Laws of San Andreas 2024.

19-2.5-1502. Human services facilities - authority. (1) The department of human services shall establish and operate facilities necessary for the care, education, training, treatment, and rehabilitation of juveniles legally committed to its custody pursuant to section 19-2.5-1127 or 19-2.5-1103. As necessary and when money is available for such purposes, the facilities may include but are not limited to:

(a) Group care facilities and homes, including halfway houses, nonresidential transition programs, day reporting and day treatment centers, and staff secure facilities;

(b) Training schools;

(c) Conservation camps;

(d) Diagnostic and evaluation centers and receiving centers; and

(e) Any programs necessary to implement the purposes of this section for juveniles in community placement.

(2) The department of human services shall cooperate with other governmental units and agencies, including appropriate local units of government, state departments and institutions, and agencies of the federal government in order to facilitate youth training and rehabilitation.

(3) Once a juvenile is committed to the department of human services, the juvenile shall remain in a facility directly operated by the department of human services or in a secure facility contracted for by the department of human services until the juvenile's commitment expires as provided by law, parole status is granted pursuant to part 12 of this article 2.5, or a community placement is approved by order of the juvenile court and by a juvenile community review board, if one exists in the county of proposed placement.

(4) The department of human services shall contract with the department of corrections to house in an appropriate facility operated by the department of human services and, as appropriate, to provide services to any juvenile under the age of fourteen years who is sentenced as an adult to the department of corrections. On reaching fourteen years of age, any juvenile sentenced to the department of corrections shall be transferred to an appropriate facility operated by the department of corrections for the completion of the juvenile's sentence.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 689, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-403 as it existed prior to 2021.

19-2.5-1502.5. Bill of rights for youth in a juvenile facility. (1) To realize a vision of greater youth success and safer San Andreas communities, the state's policy is that a youth detained or committed to the care and physical custody of a facility, as described in section 19-2.5-1502 (1), has the right to:

(a) Be treated with dignity;

(b) Be free to practice the youth's religious faith, provided that the practices or activities do not pose a threat to the safety, order, or security of the juvenile facility;

(c) Be free from discrimination on the basis of race, color, religion, sex, pregnancy, disability, age, marital status, ethnicity, national origin, gender orientation, or sexual identity;

(d) Receive reasonable accommodations related to a disability;

(e) Vote if the youth has the legal right to do so; and

(f) Be free from corporal punishment; harassment; mental or physical abuse; intimidation; property damage; humiliation; or interference with the normal bodily functions of eating, sleeping, or using the bathroom.

(2) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the right to:

(a) Have reasonable access to media and information about the world outside the facility, both locally and nationally;

(b) Review the youth's own record, as allowed by law;

(c) Have reasonable access to phone calls to approved friends, family, and other supports;

(d) Exercise physically on a daily basis, in accordance with the youth's preferences, if reasonable and practicable;

(e) Be informed of facility rules within twenty-four hours after the youth's placement in the facility and have the same rules available on the division of youth services' website, at the juvenile facility, and upon request to the youth's parent or legal guardian;

(f) Be free from mandatory unpaid work outside of basic youth responsibilities such as daily clean-up and maintenance of living areas; and

(g) Live in a trauma-responsive environment informed by trauma-informed practices.

(3) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the following rights related to medical care:

(a) Access to a health-care provider within seventy-two hours after a request for care, or sooner if the circumstances warrant, to assess the need for medically necessary care;

(b) Access to behavioral health services within seventy-two hours after a request for care, or sooner if the circumstances warrant, to assess the need for medically necessary care;

(c) Under the direction of a division of youth services qualified health-care provider, access to necessary and appropriate medications, including medications for substance withdrawal and medication-assisted treatment;

(d) The right to refuse the administration of any pharmaceutical product;

(e) Access to health care related to pregnancy and reproductive health, including prenatal, perinatal, and postnatal care;

(f) The rights provided to a pregnant or postpartum juvenile pursuant to section 19-2.5-1118.5, including, but not limited to, the right to access a pregnancy test and keep the results confidential; the right to have the pregnancy and postpartum periods considered in seeking a stay of execution of sentence; and a consideration of sentence reduction;

(g) Freedom from leg and waist restraints while pregnant and immediately after delivery; and

(h) Access to gender-affirming care.

(4) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the following rights related to legal issues:

(a) Access to the youth's legal representative, unencumbered access to courts, confidential phone calls and visits with the youth's legal counsel, and the timely delivery of letters to the youth's legal counsel;

(b) Unimpeded phone access to the office of the child protection ombudsman hotline and the agency designated pursuant to the federal "Protection and Advocacy for Individuals with Mental Illness Act", 42 U.S.C. sec. 10801 et seq., as amended, as the state's protection and advocacy system;

(c) The right to file a grievance with staff or a complaint with the office of the child protection ombudsman or the agency designated pursuant to the federal "Protection and

Advocacy for Individuals with Mental Illness Act", 42 U.S.C. sec. 10801 et seq., as amended, as the state's protection and advocacy system and not to be subject to punishment or retaliation as a result;

(d) The right to file a grievance in accordance with the division of youth services' policies if the youth feels any of the rights accorded to the youth pursuant to this section have been violated and not to be subject to punishment or retaliation as a result; and

(e) The right to due process in a disciplinary proceeding.

(5) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the following rights:

(a) To not be placed in housing units solely allocated to groups of youth based on the youth's sexual orientation or status as a transgender, non-binary, or intersex youth;

(b) Freedom from searches that are intended solely to determine the youth's physical anatomy;

(c) After review and approval, use of the youth's preferred name and gender, even if not legally updated;

(d) The provision of clothing that fits appropriately; is in accordance with the youth's gender identity; and ensures the youth's safety, dignity, and comfort;

(e) Freedom of expression, provided the expression does not interfere with the rights or safety of others or the safety of the facility;

(f) Personal appearance of the youth's choosing, including facial and head hair, regardless of the youth's gender or gender identity, if it does not interfere with safety and allows for reasonable identification by staff;

(g) Participation in all activities, regardless of the youth's gender identity, unless the activity is a gender-responsive program and the facility director determines that participants of differing genders would be disruptive to the group;

(h) Searches that take into account the youth's privacy and dignity and access to written policies concerning who may perform searches at any time, including policies on cross-gender searches of transgender youth;

(i) After review and approval, an intake and search with an employee matching the youth's gender identity;

(j) Completion of a form with the youth upon intake that details the youth's gender identity;

(k) Confidentiality concerning the youth's gender identity and medical and mental health history, in accordance with existing law; and

(l) Access to separate showers and bathrooms consistent with the youth's gender identity.

(6) In addition to the other rights granted pursuant to this section, a youth detained or committed to the care and physical custody of a juvenile facility operated by the department of human services has the following rights related to education:

(a) Access to grade-level work and transferable credit for educational courses that will count toward a diploma, whether the youth is from a facility operated by the department of human services or a public school;

(b) The opportunity to take classes, to the extent feasible, that prepare the youth for the youth's desired future, including courses required for college admission, if that is the youth's goal;

(c) If the youth is committed to the care and physical custody of the department of human services and has obtained a GED or a high school diploma, access to post-secondary education;

(d) The full, fair, and equal opportunity to participate, to the extent feasible, in educational and vocational programs, including a school-to-work alliance program, if eligible. Before the department of human services may deny a youth the right to educational or vocational services, the department of human services shall present substantial evidence to justify the denial of this right.

(e) For a youth with a disability recognized by section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended; the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq., as amended; or San Andreas's "Exceptional Children's Educational Act", article 20 of title 22, access to a free and appropriate public education.

(7) The department of human services shall update the handbook used by the division of youth services to include the bill of rights set forth in subsections (1) to (6) of this section. The division of youth services shall ensure that every youth who is committed to the care and physical custody of the department of human services receives a copy of the handbook, including the bill of rights.

Source: L. 2024: Entire section added, (HB 24-1170), ch. 386, p. 2632, § 3, effective August 7.

Cross references: For the legislative declaration in HB 24-1170, see section 1 of chapter 386, Session Laws of San Andreas 2024.

19-2.5-1503. Eminent domain - detention facility site. (1) (a) Subject to the provisions of subsection (2) of this section, the department of human services has the right to acquire by eminent domain any real property that is located within the Denver metropolitan area that is necessary for the establishment of one or more juvenile detention facilities. Such real property must be acquired in accordance with articles 1 to 7 of title 38.

(b) Any real property specified in subsection (1)(a) of this section that is already devoted to a public use may be acquired by the department of human services pursuant to this section; except that property owned by the federal government may not be acquired without the consent of the federal government.

(2) Prior to the acquisition of any real property pursuant to subsection (1) of this section, the joint budget committee, established pursuant to section 2-3-201, must review and approve the proposed acquisition.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 690, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-403.5 as it existed prior to 2021.

19-2.5-1504. Facility directors - duties. (1) The director of the division of youth services shall appoint a director of each state-operated facility established by section 19-2.5-

1502 and sections 19-2.5-1527 to 19-2.5-1529 pursuant to section 13 of article XII of the state constitution.

(2) It is the duty of the director of each facility established by section 19-2.5-1502 and sections 19-2.5-1527 to 19-2.5-1529 to:

(a) Report to the executive director of the department of human services at such times and on such matters as the director may require;

(b) Receive juveniles committed to the custody of the department of human services and placed in the director's care pursuant to this article 2.5 and to keep them for rehabilitation, education, and training until discharged by law or pursuant to the rules of the department of human services or released on parole;

(c) Make a careful and thorough evaluation, at intervals no greater than six months, of every juvenile placed under the director's care. The purpose of each evaluation is to ascertain whether:

(I) The juvenile's program should be modified;

(II) The juvenile's transfer to another facility should be recommended to the director; or

(III) The juvenile's release should be recommended to the juvenile parole board;

(d) Take such measures as are necessary to prevent recruitment of new gang members from among the juveniles committed to the custody of the department of human services.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 691, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-205 as it existed prior to 2021.

19-2.5-1505. Juvenile facility employees - rules. (1) On and after April 1, 2004, the department of human services shall not hire a person who is required to register as a sex offender pursuant to the "San Andreas Sex Offender Registration Act", article 22 of title 16, to work at a juvenile facility.

(2) The department of human services shall ensure that any person who is employed to work at a juvenile facility as of April 1, 2004, and who is required to register as a sex offender pursuant to the "San Andreas Sex Offender Registration Act", article 22 of title 16, does not have unsupervised contact with a juvenile in the facility on and after April 1, 2004.

(3) If a person, while employed by the department of human services, is convicted of an offense that requires the employee to register as a sex offender pursuant to the "San Andreas Sex Offender Registration Act", article 22 of title 16, the employee shall immediately notify the department of human services of the conviction and the registration requirement. The department of human services shall ensure that the employee does not have unsupervised contact with a juvenile in the facility on and after the date it receives notice pursuant to this subsection (3).

(4) The executive director of the department of human services shall adopt such rules as may be necessary to ensure compliance with the requirements of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 692, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-403.3 as it existed prior to 2021.

19-2.5-1506. Detention center sexual assault prevention program - reports. (1) The division of youth services created in section 19-2.5-1501 shall develop, with respect to sexual assaults that occur in juvenile facilities, policies and procedures to:

(a) Require disciplinary action for employees who fail to report incidences of sexual assault to the inspector general;

(b) Require the inspector general, after completing an investigation for sexual assault, to submit the findings to the district attorney with jurisdiction over the facility in which the alleged sexual assault occurred;

(c) Prohibit retaliation and disincentives for reporting sexual assaults;

(d) Provide, in situations in which there is reason to believe that a sexual assault has occurred, reasonable and appropriate measures to ensure victim safety by separating the victim from the assailant, if known;

(e) Ensure the confidentiality of prison rape complaints and protection of juveniles who make complaints of prison rape;

(f) Provide acute trauma care for sexual assault victims, including treatment of injuries, HIV prophylaxis measures, and testing for sexually transmitted infections;

(g) Provide, at intake and periodically thereafter, division-of-youth-services-approved, easy-to-understand information developed by the division of youth services on sexual assault prevention, treatment, reporting, and counseling in consultation with community groups with expertise in sexual assault prevention, treatment, reporting, and counseling;

(h) Provide sexual-assault-specific training to division of youth services mental health professionals and all employees who have direct contact with juveniles regarding treatment and methods of prevention and investigation;

(i) Provide confidential mental health counseling to victims of sexual assault;

(j) Monitor victims of sexual assault for suicidal impulses, post-traumatic stress disorder, depression, and other mental health consequences resulting from the sexual assault; and

(k) Require termination of an employee who engages in a sexual assault on or sexual conduct with a juvenile consistent with constitutional due process protections and state personnel system laws and rules.

(2) Investigators trained in the investigation of sex crimes shall investigate allegations of sexual assault. The investigation must include, but need not be limited to, use of forensic rape kits, questioning of suspects and witnesses, and gathering and preserving relevant evidence.

(3) The division of youth services shall annually report the data that it is required to compile and report to the federal bureau of justice statistics as required by the federal "Prison Rape Elimination Act of 2003", Pub.L. 108-79, as amended, to the judiciary committees of the house of representatives and the senate, or any successor committees. Notwithstanding section 24-1-136 (11)(a)(I) to the contrary, the reporting requirements in this subsection (3) continue indefinitely.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 692, § 2, effective October 1. **L. 2022:** IP(1) amended, (SB 22-212), ch. 421, p. 2972, § 39, effective August 10.

Editor's note: This section is similar to former § 19-2-214 as it existed prior to 2021.

19-2.5-1507. Facilities - control and restraint - liability - duty to pursue runaways. (1) Any facility that houses or provides nonresidential services to adjudicated juveniles pursuant to this article 2.5, whether publicly or privately operated, for short-term or long-term commitment or detention is authorized to respond in a reasonable manner to issues of control and restraint of adjudicated juveniles when necessary. Each facility or program shall establish clearly defined policies and procedures for the short-term restraint and control of adjudicated juveniles housed within the facility or receiving services in the nonresidential program.

(2) Any facility that houses or provides nonresidential services to adjudicated juveniles pursuant to this article 2.5 and any person employed by the facility or program is not liable for damages arising from acts committed in the good-faith implementation of this section; except that the facility or program and any person employed by the facility or program may be liable for acts that are committed in a willful and wanton manner.

(3) Any facility that houses adjudicated juveniles pursuant to this article 2.5 has a duty to notify the court and the local law enforcement agency as soon as possible after discovering that an adjudicated juvenile housed at the facility has run away.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-404 as it existed prior to 2021.

19-2.5-1508. Out-of-home placement - runaways - duty to notify. When a juvenile who is sentenced to detention, committed to the department of human services, or otherwise sentenced or placed in out-of-home placement pursuant to section 19-2.5-1103 runs away from the facility or home in which the juvenile is placed, the person in charge of the facility or the foster parent shall notify the court and the local law enforcement agency as soon as possible after discovering that the juvenile has run away from the facility or home.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-920 as it existed prior to 2021.

19-2.5-1509. Administration or monitoring of medications to persons in juvenile institutional facilities. The executive director of the department of human services has the power to direct the administration or monitoring of medications to persons in juvenile institutional facilities, as defined in section 25-1.5-301 (2)(b), in a manner consistent with part 3 of article 1.5 of title 25.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-416 as it existed prior to 2021.

19-2.5-1510. Facility publications. Publications of any of the facilities established pursuant to section 19-2.5-1502 and sections 19-2.5-1527 to 19-2.5-1529 intended for circulation in quantity outside such facility is subject to the "Information Coordination Act", section 24-1-136.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-413 as it existed prior to 2021.

SUBPART B

BEDS AND FACILITIES

19-2.5-1511. Juvenile detention services and facilities to be provided by department of human services - education - expenses - definition. (1) (a) Except as set forth in subsection (1)(c) of this section, the department of human services shall provide detention services for temporary care of a juvenile, pursuant to this article 2.5. The department of human services shall consult on a regular basis with the court in any district where a detention facility is located concerning the detention program at that facility. The department of human services may use staff secure facilities to provide preadjudication and postadjudication detention services.

(b) Detention facilities operated by or under contract with the department of human services, subject to limitations on physical capacity and programs, shall receive and provide care for any juvenile arrested for or convicted of a violation of any provision of articles 1 to 15 of title 33, or any rule promulgated thereunder, or any article of title 42, or any municipal or county ordinance and for any juvenile found in contempt of court in connection with a violation or an alleged violation of any of those articles or any municipal or county ordinance.

(c) The department of human services is not required to receive and provide care for any juvenile who is ten years of age and older but less than thirteen years of age, unless such juvenile has been arrested or adjudicated for a felony or weapons charge pursuant to section 18-12-102, 18-12-105, 18-12-106, or 18-12-108.5.

(2) Detention facilities operated in part by a state court, pursuant to section 13-3-108, must be operated in the same manner by the department of human services, within the limits of available funds appropriated for such purpose.

(3) (a) (I) Juveniles in a juvenile detention facility are exempt from compulsory school attendance requirements pursuant to section 22-33-104 (2)(f). However, it is the intent of the general assembly that the juvenile detention facility and school district in which the facility is located cooperate to ensure that each juvenile who is in detention is offered educational services at the grade level identified for the juvenile in a time frame that aligns with the hourly requirements for attendance specified in section 22-33-104 (1).

(II) The school boards of the school districts that a juvenile detention facility serves or in which the juvenile detention facility is located, when requested by the judge of the juvenile court, shall furnish teachers and any books or equipment needed to provide educational services that align with, and are designed to assist each juvenile in achieving, the statewide model content standards adopted pursuant to section 22-7-1005 for each juvenile's identified grade level. The

school districts and the personnel at the detention facility shall cooperate to ensure that the educational services are available to the juveniles in the facility in a time frame that aligns with the hourly requirements for attendance specified in section 22-33-104 (1).

(b) The expenses incurred by a school district pursuant to subsection (3)(a) of this section, minus the total amount of per-pupil revenues that the school district receives pursuant to article 54 of title 22 for the juveniles in the juvenile detention facility, shall be shared and paid by each school district served in the proportion that the enrollment of each school district bears to the total enrollment of all the districts served.

(c) (I) For the 2006-07 budget year and each budget year thereafter, the expenses incurred by a school district pursuant to subsection (3)(b) of this section shall be shared and paid by the school district, each charter school of the district, and each institute charter school located in the school district. Each charter school of the district and institute charter school shall pay in the proportion that the charter school of the district's or institute charter school's enrollment bears to the total district enrollment.

(II) As used in this subsection (3)(c), "total district enrollment" means:

(A) For the 2022-23 budget year, the total of the pupil enrollment in the school district, plus the district online enrollment, the district preschool program enrollment, and the pupil enrollment in each institute charter school that is located within the school district, as determined in accordance with article 54 of title 22;

(B) For the 2023-24 budget year and budget years thereafter, the total of the pupil enrollment in the school district, plus the district online enrollment and the pupil enrollment in each institute charter school that is located within the school district, as determined in accordance with article 54 of title 22.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 694, § 2, effective October 1. **L. 2022:** (3)(c)(II) amended, (HB 22-1295), ch. 123, p. 834, § 36, effective July 1.

Editor's note: This section is similar to former § 19-2-402 as it existed prior to 2021.

19-2.5-1511.5. Policies concerning use of telephones and other communications services by juvenile detention facilities. (1) The department of human services shall provide voice communications services to juveniles in the department's custody and who are confined in a juvenile detention facility. The department of human services may supplement voice communications services with other communications services, including, but not limited to, video communication and electronic mail or messaging services. In administering the use of communications services, the department of human services shall not receive any revenue, including commissions or fees.

(2) In administering the use of communications services pursuant to subsection (1) of this section, access to communications services must not be limited beyond what is necessary for routine facility operations. Any communications service provided must be free of charge to the person initiating and the person receiving the communications service.

Source: L. 2023: Entire section added, (HB 23-1133), ch. 421, p. 2477, § 2, effective August 7.

19-2.5-1512. Use of juvenile detention beds. A juvenile committed to the department of human services pursuant to article 3 of this title 19 must not be placed in a juvenile detention bed unless the juvenile is subject to an action proceeding pursuant to this article 2.5.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 696, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1204 as it existed prior to 2021.

19-2.5-1513. Juvenile detention facilities - catchment areas. (1) (a) The executive director of the department of human services and the state court administrator in the judicial department shall together establish geographical catchment areas for the juvenile detention facilities operated by or under contract with the department of human services. To the extent practicable, the detention catchment areas must be established to ensure that the juvenile is held in a juvenile detention facility located within the judicial district in which the juvenile's offense is committed. For judicial districts in which a juvenile detention facility is not located, the department of human services shall establish the catchment areas based on considerations of proximity, bed availability, workload, and cost efficiency.

(b) On or before October 1, 1998, and each October 1 thereafter, the working group established in section 19-2.5-1404 shall submit recommendations to the executive director of the department of human services and the state court administrator concerning configuration of the detention catchment areas and the placement of detained juveniles.

(2) On or before December 1, 1998, the executive director of the department of human services and the state court administrator shall submit a description of the detention catchment areas to the joint budget committee and to the judiciary committees of the senate and house of representatives. The executive director and the state court administrator shall annually reexamine the detention catchment areas and submit a description of any changes in the detention catchment area boundaries to the joint budget committee and to the judiciary committees of the senate and house of representatives, or any successor committees, by December 1.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 696, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-402.5 as it existed prior to 2021.

19-2.5-1514. Juvenile detention bed cap. For the fiscal year 2021-22 and each fiscal year thereafter, the number of available juvenile detention beds statewide is limited to two hundred fifteen.

Source: L. 2021: (4) amended and (5) added, (SB 21-071), ch. 463, p. 3335, § 4, effective July 6; entire article added with relocations, (SB 21-059), ch. 136, p. 696, § 2, effective October 1. **L. 2022:** Entire section amended, (SB 22-212), ch. 421, p. 2972, § 40, effective August 10.

Editor's note: (1) This section is similar to former § 19-2-1201 as it existed prior to 2021.

(2) Subsections (4) and (5) were numbered as § 19-2-1201 (4) and (5) in SB 21-071 (see L. 2021, p. 3335). Those provisions were harmonized with this section as it appears in SB 21-059.

19-2.5-1515. Judicial districts - plans for the cap. Each judicial district shall annually develop a plan to manage the limit on the number of juvenile detention beds allocated to the judicial district by the working group pursuant to section 19-2.5-1405 (1)(a). The judicial district shall consider the emergency release guidelines and placement guidelines developed pursuant to section 19-2.5-1405 in its annual plan to manage the limit. The annual plan developed by the judicial district must ensure the judicial district does not exceed the number of juvenile detention beds allocated to it pursuant to section 19-2.5-1405.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 697, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-1203 as it existed prior to 2021.

19-2.5-1516. Juvenile detention facilities - behavioral or mental health disorder screening. (1) The executive director of the department of human services may implement a behavioral or mental health disorder screening program to screen juveniles held in juvenile detention facilities following adjudication. If the executive director chooses to implement a behavioral or mental health disorder screening program, the executive director shall use the standardized behavioral or mental health disorder screening developed pursuant to section 16-11.9-102 and conduct the screening in accordance with procedures established pursuant to said section.

(2) Prior to implementation of a behavioral or mental health disorder screening program pursuant to this section, if implementation of the program would require an increase in appropriations, the executive director shall submit to the joint budget committee a request for funding in the amount necessary to implement the behavioral or mental health disorder screening program. If implementation of the behavioral or mental health disorder screening program would require an increase in appropriations, implementation of the program is conditional upon approval of the funding request.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 697, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-417 as it existed prior to 2021.

19-2.5-1517. Transfer of detention facilities and equipment. Whenever the department of human services determines that any property, facilities, and equipment are no longer needed for juvenile detention facilities, the department shall transfer said property, facilities, and equipment back to the county without any cost to the county.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 697, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-412 as it existed prior to 2021.

SUBPART C

FACILITIES - COMMITMENT

19-2.5-1518. Commitment to department of human services. (1) (a) When a juvenile is placed in a community placement by the department of human services following commitment pursuant to section 19-2.5-1127 or 19-2.5-1103, an administrative review must be conducted every six months after the placement for as long as the juvenile remains in a community placement under the department of human services.

(b) When a juvenile is placed in a community placement for a period of twelve months or longer, a court of competent jurisdiction or an administrative body appointed or approved by the court that is not under the supervision of the department of human services shall conduct a permanency hearing pursuant to the federal "Social Security Act", 42 U.S.C. sec. 675 (5)(C) no later than the twelfth month of the community placement and at least every twelve months thereafter while the juvenile remains in a community placement. At the permanency hearing, the entity conducting the hearing shall determine whether:

(I) Continued community placement is in the best interests of the juvenile and the community;

(II) The juvenile's safety is protected in the community placement;

(III) Reasonable efforts have been made to finalize the juvenile's permanency plan that is in effect at that time;

(IV) Continued community placement is necessary and appropriate;

(V) There has been compliance with the juvenile's case plan;

(VI) Progress has been made toward alleviating or mitigating the causes that necessitated the community placement;

(VII) There is a date projected by which the juvenile will be returned and safely maintained in the home, placed for legal guardianship, or placed in a planned and permanent living arrangement; and

(VIII) Procedural safeguards to preserve parental rights have been applied in connection with the removal of the juvenile from the home, any change in the juvenile's community placement, or any determination affecting family time.

(c) The entity conducting the permanency hearing shall consult with the juvenile, in an age-appropriate manner, concerning the juvenile's permanency plan.

(2) Parole supervision of juveniles committed to the department of human services pursuant to section 19-2.5-1127 or 19-2.5-1103, as determined by the juvenile parole board, must not exceed six months, except as otherwise provided by statute.

(3) When a juvenile is released or released to parole supervision by the department of human services or escapes from the department, the department shall notify the committing court, the district attorney, the San Andreas bureau of investigation, and the initiating law enforcement agency. If the juvenile is on parole status, the division of youth services shall notify

the juvenile parole board, pursuant to section 19-2.5-1203 (7)(b)(II), of any discharge as a matter of law, any placement change that may impact public safety or victim safety as determined by the division of youth services, and any escape and recapture that occurs during the period of parole.

(4) If the terms and conditions of a juvenile's parole include the condition that the juvenile attend school, the department of human services shall notify the school district in which the juvenile will be enrolled of this condition.

(5) When a juvenile is released by the department of human services to parole supervision, the payment of any remaining restitution must be a condition of parole.

(6) At least ninety-one days prior to expiration of commitment to the department of human services, notification must be given to the responsible person who had custody of the juvenile immediately prior to the commitment. Reasonable efforts must be made to return custody of the juvenile to the family or responsible person who had custody of the juvenile immediately prior to the commitment, unless a court of competent jurisdiction orders that custody of the juvenile is with a different person.

(7) When custody of a juvenile who will be under the age of eighteen years at the time of expiration of commitment cannot be determined or none of the resources described in subsection (6) of this section exist, the division of youth services shall make a referral to the last-known county of residence of the responsible person having custody of the juvenile immediately prior to the commitment. The referral to the county must be made by the division of youth services at least ninety-one days prior to the expiration of the juvenile's commitment. The county department of human or social services shall conduct an assessment of the juvenile's child protection needs and, pursuant to rules adopted by the state board, provide services in the best interest of the juvenile. The division of youth services shall work in collaboration with the county department of human or social services conducting the assessment and shall provide parole supervision services as described in section 19-2.5-1204.

(8) If a juvenile who is committed to the department of human services escapes from a facility operated by the department or a facility with which the department contracts, the department shall not count the time the juvenile is on escape status toward completion of the juvenile's commitment.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 697, § 2, effective October 1. **L. 2023:** (1)(b)(VIII) amended, (HB 23-1027), ch. 284, p. 1682, § 12, effective June 1.

Editor's note: This section is similar to former § 19-2-921 (5) to (11) as it existed prior to 2021.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-2.5-1519. Contracts and agreements with public and private agencies. (1) The executive director of the department of human services shall, subject to available appropriations, enter into agreements or contracts deemed necessary and appropriate with any governmental unit or agency or private facility or provider cooperating or willing to cooperate in a program to carry

out the purposes of this article 2.5. The contracts or agreements may provide, among other things, for the type of work to be performed at a camp or other facility, the rate of payment for such work, and other matters relating to the care and treatment of juveniles.

(2) Placement of juveniles by the department of human services in any public or private facility not under the jurisdiction of the department shall not terminate the legal custody of the department.

(3) The department of human services has the right to inspect all facilities used by it and to examine and consult with persons in its legal custody who have been placed in any such facility.

(4) (a) On and after April 1, 2004, an entity that contracts with the department of human services for the operation of a private juvenile facility shall not employ a person who is required to register pursuant to the "San Andreas Sex Offender Registration Act", article 22 of title 16, to work in the private juvenile facility.

(b) For the purposes of a contract in existence as of April 1, 2004, if a contractor employs a person in a private juvenile facility who is required to register as a sex offender pursuant to the "San Andreas Sex Offender Registration Act", article 22 of title 16, the contractor shall ensure that the person does not have unsupervised contact with a juvenile in the facility on and after April 1, 2004. Failure to comply with this subsection (4) constitutes a breach and grounds for termination of the contract.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 699, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-410 as it existed prior to 2021.

19-2.5-1520. Private facilities for juvenile offenders - requests for proposals - rules. The executive director of the department of human services shall adopt rules and implement a process to issue requests for proposals with respect to contracts for designing, financing, acquiring, constructing, and operating private facilities for juvenile offenders. The process to issue requests for proposals and privatization contracts must meet the requirements set forth in part 2 of article 1 of title 17 with respect to private adult correctional facilities.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 700, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-411 as it existed prior to 2021.

19-2.5-1521. Juvenile facility - contract for operation. (Repealed)

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 700, § 2, effective October 1. **L. 2022:** (4) amended, (HB 22-1270), ch. 114, p. 518, § 21, effective April 21; entire section repealed, (SB 22-211), ch. 288, p. 2064, § 3, effective May 31.

Editor's note: (1) This section was similar to former § 19-2-411.5 as it existed prior to 2021.

(2) Subsection (4) was amended in HB 22-1270. Those amendments were superseded by the repeal of this section in SB 22-211.

19-2.5-1522. Juveniles committed to department of human services - emergency release. The department of human services and the judicial department shall establish guidelines for the emergency release of juveniles committed to the custody of the department of human services during periods of crisis overcrowding of facilities operated by the department of human services. The guidelines must take into consideration the best interests of juveniles, the capacity of individual facilities, and the safety of the public.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 701, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-924 as it existed prior to 2021.

19-2.5-1523. Receiving centers - designation. (1) The department of human services shall designate receiving centers for juvenile delinquents committed to the department pursuant to section 19-2.5-1127 or 19-2.5-1103.

(2) If a change is made in the designation of a receiving center by the department of human services, it shall notify the juvenile courts at least thirty-five days prior to the date that the change takes effect.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 702, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-405 as it existed prior to 2021.

19-2.5-1524. Juveniles - medical benefits application assistance - county of residence - rules. (1) Beginning as soon as practicable, but no later than January 1, 2009, no later than one hundred twenty days prior to release, commitment facility personnel or state personnel shall assist the parent or legal guardian of the following juveniles in applying for medical assistance pursuant to part 1 or 2 of article 5 of title 25.5 or in applying to the children's basic health plan pursuant to section 25.5-8-109:

(a) A juvenile who was receiving medical assistance pursuant to section 25.5-5-101 (1)(f) or 25.5-5-201 (1)(j), or pursuant to the children's basic health plan pursuant to section 25.5-8-109, immediately prior to entering the juvenile commitment facility and is likely to be terminated from receiving medical assistance while committed or is reasonably expected to meet the eligibility criteria specified in section 25.5-5-101 (1)(f), 25.5-5-201 (1)(j), or 25.5-8-109 upon release; and

(b) A juvenile who is committed to a juvenile commitment facility.

(2) If a juvenile is committed or placed for fewer than one hundred twenty days, commitment facility personnel or state personnel shall make a reasonable effort to assist the juvenile's parent or legal guardian in applying for medical assistance as soon as practicable.

(3) The department of health care policy and financing shall provide information and training on medical assistance eligibility requirements and assistance to the personnel at each

commitment facility to assist in and expedite the application process for medical assistance for a juvenile held in custody who meets the requirements of subsection (1)(a) of this section.

(4) (a) For purposes of determining eligibility pursuant to section 25.5-4-205, a juvenile's county of residence is the county specified by the juvenile upon the juvenile's release.

(b) The executive director of the department of health care policy and financing shall promulgate rules to simplify the processing of applications for medical assistance pursuant to subsection (1) of this section and to allow a juvenile determined to be eligible for medical assistance to access the medical assistance upon release and thereafter. If a county department of human or social services determines that a juvenile is eligible for medical assistance, the county shall enroll the juvenile in medical assistance or the children's basic health plan effective upon release of the juvenile. At the time of the juvenile's release, the commitment facility shall give the juvenile or the juvenile's parent or legal guardian information and paperwork necessary for the juvenile to access medical assistance. The applicable county department of human or social services shall provide the commitment facility with the necessary information.

(c) Each juvenile commitment facility administrator shall attempt to enter into prerelease agreements, if appropriate, with the county department of human or social services, the state department of human services, or the department of health care policy and financing in order to:

(I) Simplify the processing of applications for medical assistance or for the children's basic health plan benefits pursuant to section 25.5-8-109, to enroll, effective upon release, a juvenile who is eligible for medical assistance pursuant to section 25.5-5-101 (1)(f) or 25.5-5-201 (1)(j) or the children's basic health plan pursuant to section 25.5-8-109; and

(II) Provide the juvenile or the juvenile's parent or legal guardian with the information and paperwork necessary to access medical assistance immediately upon release.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 702, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-418 as it existed prior to 2021.

19-2.5-1525. Juveniles committed to department of human services - evaluation and placement. (1) (a) Each juvenile committed to the custody of the department of human services shall be examined and evaluated by the department prior to institutional placement or other disposition.

(b) The evaluation and examination must be conducted at a detention facility and be completed within thirty-five days. The department of human services may, by rule, determine the extent and scope of the evaluation and examination. To the extent possible and relevant, the evidence, reports, examination, studies, and other materials utilized in a sentencing hearing conducted pursuant to section 19-2.5-1102 must also be utilized in evaluation and examination conducted pursuant to this section. This subsection (1)(b) does not apply to an examination and evaluation conducted pursuant to section 19-2.5-1532 (1).

(c) The examination and evaluation must include the use of an objective risk assessment that is based upon researched factors that correlate to a risk to the community. The results of the objective risk assessment must be used to help identify treatment services for the juvenile during the juvenile's commitment and period of parole supervision.

(2) The department of human services shall then place each juvenile in the appropriate state institution or facility as provided in section 19-2.5-1530 or 19-2.5-1519, as indicated by the examination and evaluation.

(3) (a) When the department of human services determines that a juvenile requires placement in a state facility for children with intellectual and developmental disabilities, as defined in article 10.5 of title 27, it shall initiate proceedings pursuant to article 10.5 of title 27 and notify the court.

(b) (I) When the department of human services determines that a juvenile may require treatment for a behavioral or mental health disorder, it shall conduct or have a mental health professional conduct a mental health hospital placement prescreening on the juvenile.

(II) If the mental health hospital placement prescreening report recommends that the juvenile be evaluated, the juvenile may be transferred to a mental health facility operated by the department of human services for evaluation.

(III) If the evaluation report states that the juvenile has a mental health disorder, as described in section 27-65-106, the department of human services shall initiate proceedings pursuant to article 65 of title 27 and notify the court.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 703, § 2, effective October 1. **L. 2022:** (3)(b)(III) amended, (HB 22-1256), ch. 451, p. 3231, § 33, effective August 10.

Editor's note: This section is similar to former § 19-2-922 as it existed prior to 2021.

19-2.5-1526. Facility rules - academic and vocational courses. (1) It is the duty of the department of human services to develop rules necessary for imparting instruction, preserving health, and enforcing discipline of juveniles committed to the department of human services.

(2) The academic courses of study and vocational training and instruction given in the facilities established by section 19-2.5-1502 and sections 19-2.5-1527 to 19-2.5-1529 must include those approved by the department of education for the instruction of pupils in the primary and secondary schools of the state. Full credit must be given by school districts in this state for completion of any semester, term, or year of study instruction by any juvenile who has such earned credit.

(3) The director of the division of youth services may appoint, pursuant to section 13 of article XII of the state constitution, a director and such other officers, teachers, instructors, counselors, and other personnel as the director considers necessary to transact the business of the schools and may designate their duties. A person shall not be appointed as a teacher or instructor in the schools who is not qualified to serve as a teacher or instructor in the schools under the laws of the state and the standards established by the department of education.

(4) Repealed.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 704, § 2, effective October 1. **L. 2022:** (4) added, (HB 22-1383), ch. 365, p. 2604, § 2, effective August 10.

Editor's note: (1) This section is similar to former § 19-2-414 as it existed prior to 2021.

(2) Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2024. (See L. 2022, p. 2604.)

Cross references: For the legislative declaration in HB 22-1383, see section 1 of chapter 365, Session Laws of San Andreas 2022.

19-2.5-1527. Lookout Mountain school. (1) There is established at Golden, Jefferson county, a training school known as the Lookout Mountain school, under the supervision and control of the department of human services.

(2) The school shall provide care, education, training, and rehabilitation for juveniles ten years of age or older who have been committed to the custody of the department of human services pursuant to section 19-2.5-1127 or 19-2.5-1103. In addition, the school may provide care, education, training, and rehabilitation for any juvenile who has been sentenced to the department of corrections and is being housed in a facility operated by the department of human services pursuant to a contract with the department of corrections pursuant to section 19-2.5-1502 (4).

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 704, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-406 as it existed prior to 2021.

19-2.5-1528. Mount View school. (1) There is established near Morrison, Jefferson county, a training school known as the Mount View school under the supervision and control of the department of human services.

(2) The school shall provide care, education, training, and rehabilitation for juveniles ten years of age or older who have been committed to the custody of the department of human services pursuant to section 19-2.5-1127 or 19-2.5-1103. In addition, the school may provide care, education, training, and rehabilitation for any juvenile who has been sentenced to the department of corrections and is being housed in a facility operated by the department of human services pursuant to a contract with the department of corrections pursuant to section 19-2.5-1502 (4).

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 705, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-407 as it existed prior to 2021.

19-2.5-1529. Youth camps. The department of human services may establish and administer youth camps. Staff at youth camps shall provide care, education, training, rehabilitation, and supervision for juveniles ten years of age or older who have been committed to the custody of the department of human services pursuant to section 19-2.5-1127 or 19-2.5-1103.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 705, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-408 as it existed prior to 2021.

19-2.5-1530. Alternate placement. The executive director of the department of human services may assign any juvenile placed by the department of human services in any facility established pursuant to section 19-2.5-1502, 19-2.5-1527, or 19-2.5-1528 to any other facility established by said sections for educational training, treatment, or rehabilitation programs. The assignment and the transportation of a juvenile to and from such programs on a daily basis does not constitute a transfer or change of placement of the juvenile.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 705, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-409 as it existed prior to 2021.

19-2.5-1531. Juveniles committed to the department of human services - prohibition against the use of restraints on pregnant juveniles. (1) The staff of the department of human services, in restraining a female juvenile committed to the department of human services or detained in a juvenile facility, shall use the least restrictive restraints necessary to ensure safety if the staff have actual knowledge or a reasonable belief that the juvenile is pregnant. The requirement that staff use the least restrictive restraints necessary to ensure safety must continue during postpartum recovery and transport to or from a juvenile facility.

(2) (a) (I) Staff of the department of human services or medical facility staff shall not use restraints of any kind on a pregnant juvenile during labor and delivery of the child; except that staff may use restraints if:

(A) The medical staff determine that restraints are medically necessary for safe childbirth;

(B) The staff of the department of human services or medical staff determine that the juvenile presents an immediate and serious risk of harm to herself, to other patients, or to medical staff; or

(C) The staff of the department of human services determine that the juvenile poses a substantial risk of escape that cannot reasonably be reduced by the use of other existing means.

(II) Notwithstanding subsection (2)(a)(I) of this section to the contrary, under no circumstances shall staff use leg shackles or waist restraints on a juvenile during labor and delivery of the child, postpartum recovery while in a medical facility, or transport to or from a medical facility for childbirth.

(b) The staff of the department of human services or medical facility authorizing the use of restraints on a pregnant juvenile during labor or delivery of the child shall make a written record of the use of restraints. The record must include, at a minimum, the type of restraint used, the circumstances that necessitated the use of the restraint, and the length of time the restraint was used. The department of human services staff shall retain the record for a minimum of five years and shall make the record available for public inspection with individually identifying information redacted from the record unless the juvenile who is the subject of the record gives

prior written consent for the public release of the record. The written record of the use of restraint does not constitute a medical record under state or federal law.

(3) Upon return to a department of human services facility after childbirth, the juvenile is entitled to have a member of the department of human services' medical staff present during any strip search.

(4) When a juvenile's pregnancy is determined, the staff of the department of human services shall inform a pregnant juvenile committed to the department of human services in writing in a language and in a manner understandable to the juvenile of the provisions of this section concerning the use of restraints and the presence of medical staff during a strip search.

(5) The executive director of the department of human services shall ensure that the staff of the department of human services receive adequate training concerning the provisions of this section.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 705, § 2, effective October 1.

Editor's note: This section is similar to former § 19-2-924.7 as it existed prior to 2021.

19-2.5-1532. Juveniles committed to department of human services - transfers. (1) The executive director of the department of human services may transfer a juvenile committed pursuant to section 19-2.5-1127 or 19-2.5-1103 among the facilities established pursuant to sections 19-2.5-1502 and 19-2.5-1527 to 19-2.5-1529; except that, before the juvenile is transferred, the juvenile shall be examined and evaluated, and the executive director shall review the evaluation before approving the transfer.

(2) When the executive director of the department of human services finds that the welfare and protection of a juvenile or of others requires the juvenile's immediate transfer to another facility, the executive director shall make the transfer prior to having the juvenile examined and evaluated.

(3) (a) A juvenile committed to the department of human services may be transferred temporarily to any state treatment facility for persons with behavioral or mental health disorders or intellectual and developmental disabilities for purposes of diagnosis, evaluation, and emergency treatment; except that a juvenile may not be transferred to a state treatment facility for persons with mental health disorders until the juvenile has received a mental health hospital placement prescreening resulting in a recommendation that the juvenile be placed in a facility for evaluation pursuant to section 27-65-106. A juvenile committed to the department of human services as an aggravated juvenile offender pursuant to section 19-2.5-1127 or violent juvenile offender pursuant to section 19-2.5-1126 (1)(c) must not be transferred until the treatment facility has a secure setting in which to house the juvenile. The period of temporary transfer pursuant to this subsection (3)(a) must not exceed sixty days.

(b) When a juvenile has remained in the treatment facility for sixty days, the treatment facility shall determine whether the juvenile requires further treatment or services, and, if so, the treatment facility shall confer with the sending facility concerning continued placement. If both facilities agree that the juvenile should remain in the treatment facility, the executive director of the department of human services shall be notified of the recommendation and may authorize an

additional sixty-day placement. When an additional placement is authorized, the court must be notified of the transferred placement.

(c) During each subsequent sixty-day placement period, the juvenile shall be reevaluated by both the treatment facility and the sending facility to determine the need for continued transferred placement. The juvenile remains in transferred placement until the facilities agree that such placement is no longer appropriate. At that time the juvenile must be transferred back to the sending facility or to any other facility that the department of human services determines to be appropriate. The period of placement must not exceed the length of the original commitment to the department of human services unless authorized by the court after notice and a hearing.

(d) When a juvenile is in continued transferred placement and the treatment facility and the sending facility agree that the need for placement of the juvenile is likely to continue beyond the original period of commitment to the department of human services, the treatment facility shall initiate proceedings with the court having jurisdiction over the juvenile pursuant to article 65 of title 27 if the juvenile has a mental health disorder or pursuant to article 10.5 of title 27 if the juvenile has intellectual and developmental disabilities.

Source: L. 2021: Entire article added with relocations, (SB 21-059), ch. 136, p. 706, § 2, effective October 1. **L. 2022:** (3)(a) amended, (HB 22-1256), ch. 451, p. 3231, § 34, effective August 10.

Editor's note: This section is similar to former § 19-2-923 as it existed prior to 2021.

ARTICLE 3

Dependency and Neglect

Editor's note: This title was repealed and reenacted in 1987. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

Law reviews: For comment, "The Indian Child Welfare Act of 1978: Protecting Essential Tribal Interests", see 60 U. S.A. L. Rev. 131 (1989); for article, "Representing Foster Parents in Dependency and Neglect Proceedings", see 22 S.A. Law. 1697 (1993); for article, "Dependency and Neglect Law: New Legislation and Case Law", see 35 S.A. Law. 79 (Sept. 2006); for article, "San Andreas's Family-Integrated Problem-Solving Courts" see 42 S.A. Law. 75 (Nov. 2013); for article, "Representing Respondent Parents: Measuring the Impact of the ORPC", see 46 S.A. Law. 34 (Dec. 2017); for article, "At the Intersection: Handling Dependency and Neglect and Juvenile Delinquency Issues in Family Law Cases", see 51 S.A. Law. 28 (Feb. 2022).

PART 1

DEFINITIONS

19-3-100.5. Legislative declarations - reasonable efforts - movement of children and sibling groups. (1) The general assembly hereby finds and declares that the stability and preservation of the families of this state and the safety and protection of children are matters of statewide concern. The general assembly finds that the federal "Adoption Assistance and Child Welfare Act of 1980", federal Public Law 96-272, requires that each state make a commitment to make "reasonable efforts" to prevent the placement of abused and neglected children out of the home and to reunify the family whenever appropriate.

(2) The general assembly further finds that the federal "Adoption and Safe Families Act of 1997", federal Public Law 105-89, clarifies what constitutes "reasonable efforts" by decreeing that when deciding whether to make such efforts and in the process of making such efforts, the health and safety of the child is the paramount concern. This federal law further encourages expediting permanency planning for children in out-of-home placement by removing barriers to permanency and streamlining entitlement services. The law specifies that one of the goals of all placement decisions, whether leaving the child in the home or placing the child outside the home, is safety for the child.

(3) The general assembly further finds that the implementation of the federal "Adoption Assistance and Child Welfare Act of 1980", federal Public Law 96-272, is not the exclusive responsibility of the state department of human services or of county or district departments of human or social services. Elected officials at the state and local levels must ensure that resources and services are available through state and local social services agencies and through the involvement of the resources of public and private sources. Judges, attorneys, and guardians ad litem must be encouraged to take independent responsibility to ensure that "reasonable efforts" to prevent out-of-home placements have been made only when appropriate, that permanency occurs for children in foster care, and that safe child placements occur in each case.

(4) (a) The general assembly also hereby finds that:

(I) The American Academy of Pediatrics has found that emotional and cognitive disruptions in the early lives of children have the potential to impair brain development. Paramount in the lives of children in foster care is their need for continuity with their primary attachment figures and a sense of permanence that is enhanced when the child's placement is stable.

(II) The American Academy of Pediatrics has found that attachment to a primary caregiver is essential to the development of emotional security and social conscience; and

(III) According to the American Academy of Pediatrics, optimal child development occurs when a spectrum of needs is consistently met over an extended period. Separation of a child from his or her primary caregiver occurring between six months and three years of age is more likely to result in subsequent emotional disturbances for the child than if the separation occurs when the child is older. Repeated moves from home to home compound the adverse consequences of separation. Further, the younger the child and the more extended the period of uncertainty or separation, the more detrimental the separation will be to the child's well-being. Any intervention that separates a child from the child's primary caregiver or person who provides psychological support to the child should be cautiously considered and treated as a matter of urgency and profound importance.

(b) The general assembly further finds that older children in foster care are at a high risk of having long-term mental health issues, dropping out of school, developing alcohol and drug dependence, experiencing promiscuity, and interacting with the criminal justice system. Multiple

moves for older children lead to disruption in schooling and meaningful relationships and attachments, including relationships with peers and family of origin. As a result these children have few, if any, long-term connections when they leave foster care, resulting in little support for their growth into independent adults.

(c) The general assembly therefore declares that multiple moves for children in the dependency and neglect system should be discouraged in favor of permanent planning upon which these children can rely for their healthy mental, physical, and emotional development.

(5) Therefore, in order to carry out the requirements addressed in this section, to ensure stability in placements, to preserve families, and to decrease the need for out-of-home placement, the general assembly shall define "reasonable efforts" and identify the services and processes that must be in place to ensure that "reasonable efforts" have been made. The general assembly provides that "reasonable efforts" are deemed to be met when a county or city and county provides services in accordance with section 19-3-208 and when full consideration has been given to the provisions of section 24-34-805 (2).

Source: L. 93: Entire section added, p. 2012, § 1, effective July 1. **L. 94:** Entire section amended, p. 1053, § 2, effective May 4. **L. 98:** Entire section amended, p. 1416, § 1, effective July 1. **L. 2015:** Entire section amended, (HB 15-1337), ch. 328, p. 1340, § 1, effective June 5. **L. 2018:** (5) amended, (HB 18-1104), ch. 164, p. 1134, § 5, effective April 25. **L. 2024:** (3) amended, (HB 24-1222), ch. 155, p. 688, § 5, effective August 7.

19-3-101. Definitions. (Repealed)

Source: L. 87: Entire title R&RE, p. 759, § 1, effective October 1. **L. 93:** Entire section amended, p. 2013, § 2, effective July 1; (1) amended, p. 582, § 19, effective July 1. **L. 94:** (1) amended, p. 1084, § 3, effective May 4. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-3-102. Neglected or dependent child. (1) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(c) The child's environment is injurious to his or her welfare;

(d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;

(e) The child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;

(f) The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian;

(g) The child is born affected by alcohol or substance exposure, except when taken as prescribed or recommended and monitored by a licensed health care provider, and the newborn child's health or welfare is threatened by substance use.

(2) A child is neglected or dependent if:

(a) A parent, guardian, or legal custodian has subjected another child or children to an identifiable pattern of habitual abuse; and

(b) Such parent, guardian, or legal custodian has been the respondent in another proceeding under this article in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such parent's, guardian's, or legal custodian's abuse or neglect has caused the death of another child; and

(c) The pattern of habitual abuse described in paragraph (a) of this subsection (2) and the type of abuse described in the allegations specified in paragraph (b) of this subsection (2) pose a current threat to the child.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 97:** Entire section amended, p. 516, § 2, effective July 1; entire section amended, p. 1433, § 8, effective July 1. **L. 2005:** (1)(g) added, p. 587, § 2, effective July 1. **L. 2020:** (1)(g) amended, (SB 20-028), ch. 186, p. 854, § 5, effective June 30.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

19-3-103. Child not neglected - when. (1) No child who in lieu of medical treatment is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent within the purview of this article. However, the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability. In order to make a determination as to whether the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104 (3), order a medical evaluation of the child. If the court determines, on the basis of any relevant evidence before the court, including the medical evaluation ordered pursuant to this section, that the child is in a life-threatening situation or that the child's condition will result in serious disability, the court may, as provided under section 19-1-104 (3), order that medical treatment be provided for the child. A child whose parent, guardian, or legal custodian inhibits or interferes with the provision of medical treatment in accordance with a court order shall be considered to have been neglected or dependent for the purposes of this article and injured or endangered for the purposes of section 18-6-401, S.A.R.S.

(2) A method of religious healing shall be presumed to be a recognized method of religious healing if:

(a) (I) Fees and expenses incurred in connection with such treatment are permitted to be deducted from taxable income as medical expenses pursuant to regulations or rules promulgated by the United States internal revenue service; and

(II) Fees and expenses incurred in connection with such treatment are generally recognized as reimbursable health-care expenses under medical policies of insurance issued by insurers licensed by this state; or

(b) Such treatment provides a rate of success in maintaining health and treating disease or injury that is equivalent to that of medical treatment.

(3) Refusing an immunization on the grounds of medical, religious, or personal belief considerations, as set forth in section 25-4-903, or opting to exclude immunization notification information from the immunization tracking system established in section 25-4-2403 (7) by itself does not constitute child abuse or neglect by a parent or legal guardian for the purposes of this article 3.

(4) (a) A person who performs or has performed an action that is lawful pursuant to section 18-18-434, article 170 of title 12, or article 50 of title 44 does not constitute child abuse or neglect by a parent or legal guardian for purposes of this article 3, unless it threatens the health or welfare of a child.

(b) The court shall not restrict or prohibit family time, or determine that family time is not in the child's best interests, based solely on the fact that a person performs or has performed an action that is lawful pursuant to section 18-18-434, article 170 of title 12, or article 50 of title 44, unless the court finds that the child's safety or mental, emotional, or physical health is at risk as a result of the family time.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 89:** Entire section amended, p. 924, § 1, effective June 7. **L. 92:** Entire section amended, p. 174, § 2, effective April 16. **L. 93:** (1) amended, p. 1637, § 23, effective July 1. **L. 2020:** (3) added, (HB 20-1297), ch. 264, p. 1266, § 1, effective September 14. **L. 2023:** (4) added, (SB 23-290), ch. 249, p. 1420, § 37, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-104. Hearings - procedure. Any hearing conducted pursuant to this article 3 in a county designated pursuant to section 19-1-123 regarding a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2) must not be delayed or continued unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay or continuance. Whenever any such delay or continuance is granted, the court shall set forth the specific reasons necessitating the delay or continuance and shall schedule the matter within thirty days after the date of granting the delay or continuance. If appropriate, in any hearing conducted pursuant to this article 3 in a county designated pursuant to section 19-1-123 regarding a child who is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall include all other children residing in the same household whose placement is subject to determination pursuant to this article 3.

Source: L. 94: Entire section added, p. 2053, § 4, effective July 1. **L. 2019:** Entire section amended, (HB 19-1219), ch. 237, p. 2355, § 5, effective August 2.

PART 2

GENERAL PROVISIONS

19-3-201. Venue. (1) (a) Except as provided in subsection (1)(b) of this section, all proceedings brought pursuant to this article 3 must be commenced in the county in which the child resides or is present.

(b) A county department, guardian ad litem or counsel for youth, or other person filing a petition for reinstatement of the parent-child legal relationship as set forth in section 19-3-612 must file the petition for the reinstatement of the parent-child legal relationship in the county or city and county that has legal custody of the child.

(1.5) For purposes of determining proper venue, a child who is placed in the legal custody of a county department shall be deemed for the entire period of placement to reside in the county in which the child's legal parent or guardian resides or is located, even if the child is physically residing in a foster care or residential facility located in another county. In such circumstance, if a child is placed out of the home, the court shall not transfer venue pursuant to subsection (2) of this section during the period of out-of-home placement to any county other than the county in which the child's legal parent or guardian resides or is located.

(2) When proceedings are commenced pursuant to this article 3 in a county other than that of the child's residence, the court in which proceedings were initiated may, on its own motion or on the motion of any interested party, transfer the case to the court in the county where the child's legal parent or guardian resides or is located unless any of the following circumstances exist:

(a) The transfer would be detrimental to the best interests of the child;

(b) Adjudication has not taken place and the case has not been continued pursuant to section 19-3-505 (5);

(c) The legal parent or guardian has a history of frequent moves unless there is evidence of stability in the most recent move indicating an intent to remain in the new residence for six or more months, such as the legal parent or guardian has signed a lease whose term is six or more months;

(d) The case is likely to be closed within three to six months;

(e) The transfer will disrupt continuity or provisions of services; or

(f) The case is an expedited permanency planning case, unless the requirements of subsection (3) of this section have been met. Pursuant to subsection (3) of this section, the presumption that a transfer of the proceedings is not in the child's best interest has been rebutted by a preponderance of the evidence.

(2.5) The county attorney of a county that files a motion to change venue pursuant to this section shall immediately provide notice of the motion to the proposed receiving county. Upon receipt of a motion to change venue, the court shall set a hearing to rule on the motion. The requesting county attorney shall provide fourteen days written notice of the hearing to the office of the county attorney in the proposed receiving county, who shall have a right to file responsive pleadings and appear at the hearing.

(3) In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), it shall be presumed that any transfer of proceedings pursuant to subsection (2) of this section without good cause shown that results in a delay in the judicial proceedings would be detrimental to the child's best interests. Such presumption may be rebutted by a preponderance of the evidence.

(4) (a) An order granting a change of venue and transferring jurisdiction to the court in the county in which the child resides shall be effective fifteen days after the transferring court signs the order. Within thirty days after signing the order, the transferring court shall forward the court file, including originals or certified copies of all documents and reports, to the receiving court.

(b) The order granting a change of venue and transferring jurisdiction must include:

(I) Notice to the receiving court of whether a respondent parent's counsel and the guardian ad litem or counsel for youth appointed for the child will remain on the case. If a respondent parent's counsel or the guardian ad litem or counsel for youth for the child will not remain on the case, the order must inform the receiving court that the receiving court shall make a new appointment of counsel or guardian ad litem or counsel for youth.

(II) Notice that the transferring court shall vacate any existing hearing date after the effective date of the order.

(5) When venue is transferred, as set forth in subsection (2) of this section, the receiving court shall proceed with the case as if the petition had been originally filed or adjudication had been originally made in that court. The receiving court shall hold an initial hearing in the case within thirty days after the effective date of the order granting a change of venue and transferring jurisdiction to the receiving court.

(6) A motion for change of venue shall be made in writing and shall include a certification by the moving party that the moving party has complied with all statutory requirements. The motion for change of venue shall be mailed to all parties and attorneys of record in the case and to the county attorney in the receiving county.

Source: L. 87: Entire title R&RE, p. 760, § 1, effective October 1. **L. 94:** (2) amended, p. 2053, § 5, effective July 1. **L. 2010:** Entire section amended, (HB 10-1359), ch. 223, p. 968, § 1, effective September 1. **L. 2014:** (1) amended, (SB 14-062), ch. 77, p. 315, § 2, effective August 6. **L. 2016:** (2) amended and (1.5) and (2.5) added, (HB 16-1316), ch. 127, p. 362, § 1, effective August 10. **L. 2018:** IP(2) and (2)(b) amended, (HB 18-1257), ch. 197, p. 1291, § 1, effective August 8. **L. 2022:** (1), IP(4)(b), and (4)(b)(I) amended, (HB 22-1038), ch. 92, p. 440, § 21, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-3-201.5. Change of venue - county department and county attorney responsibilities - rules. (1) Each county department shall designate a change of venue coordinator to facilitate the transfer of jurisdiction of a case between county departments.

(2) Within fifteen days after a court signs an order pursuant to section 19-3-201 granting a change of venue and transferring jurisdiction, the transferring county department shall:

(a) Provide written case information to the designated change of venue coordinator in the receiving county, which information shall include, but need not be limited to, permanency goals, target dates relating to the case, evaluations, a current family services plan, court reports, dates of placement moves, the progress of the child in placement, all Title IV-E eligibility determinations pursuant to the federal "Social Security Act", as amended, and recommendations for continuing progress in the case;

(b) Update all documentation in the case file, including the record in the state automated system;

(c) Provide information concerning, to the extent known, the physical location of the child's parents, guardians, legal custodians, and relatives; and

(d) (I) Schedule a family engagement meeting involving all parties, county department caseworkers and supervisors, and community providers; or

(II) Conduct a case staffing between county caseworkers and supervisors in the transferring and receiving county departments; or

(III) Submit a written case transfer summary.

(3) Within fifteen days after a court signs an order pursuant to section 19-3-201 granting a change of venue and transferring jurisdiction, the transferring county attorney's office shall forward a complete copy of the case file, excluding any confidential attorney-client communications, to the county attorney's office in the receiving county.

(4) The state department shall promulgate, in accordance with the "State Administrative Procedure Act", article 4 of title 24, S.A.R.S., any rules necessary for the effective transfer of case responsibilities between county departments resulting from a change of venue pursuant to section 19-3-201.

Source: L. 2010: Entire section added, (HB 10-1359), ch. 223, p. 969, § 2, effective September 1.

Cross references: For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

19-3-202. Right to counsel and jury trial. (1) At the first appearance of a respondent parent, guardian, or legal custodian, the court shall fully advise the respondent of the respondent's legal rights, including the right to a jury trial, the right to be represented by counsel at every stage of the proceedings, and the right to seek the appointment of counsel through the office of respondent parents' counsel established in section 13-92-103, if the respondent is unable to financially secure counsel on the respondent's own. The court shall appoint counsel for a respondent who is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail; held in federal custody; or involuntarily committed, unless the court determines the respondent is able to financially secure counsel on the respondent's own or the respondent chooses to proceed without counsel. The

court shall fully explain to the respondent the informational notice of rights and remedies for families prepared pursuant to section 19-3-212 and shall recommend that the respondent discuss such notice with the respondent's counsel. Further, the court shall advise the respondent of the minimum and maximum time frames for the dependency and neglect process, including the minimum and maximum time frames for adjudication, disposition, and termination of parental rights for a child who is under six years of age at the time the petition is filed in a county designated pursuant to section 19-1-123. Nothing in this section limits the power of the court to appoint counsel prior to the filing of a petition for good cause.

(2) The petitioner, any respondent, the guardian ad litem for the child, or a child who is twelve years of age or older may demand a trial by jury of six persons at the adjudicatory hearing pursuant to section 19-3-505, or the court, on its own motion, may order such a jury to try any case at the adjudicatory hearing pursuant to section 19-3-505.

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 2003:** (1) amended, p. 1226, § 3, effective August 6. **L. 2014:** (1) amended, (SB 14-203), ch. 281, p. 1141, § 2, effective August 6. **L. 2015:** (1) amended, (HB 15-1149), ch. 116, p. 352, § 4, effective April 24. **L. 2022:** (2) amended, (HB 22-1038), ch. 92, p. 434, § 8, effective January 9, 2023. **L. 2023:** (1) amended, (SB 23-039), ch. 191, p. 953, § 3, effective January 1, 2024.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of San Andreas 2023.

19-3-203. Right to guardian ad litem and counsel for youth. (1) Upon the filing of a petition pursuant to section 19-3-502 that alleges abuse or neglect of a child, the court shall appoint a guardian ad litem for any child who is under twelve years of age. The guardian ad litem must be an attorney-at-law licensed to practice in San Andreas and approved by the office of the child's representative created in section 13-91-104. Nothing in this section limits the power of the court to appoint a guardian ad litem prior to the filing of a petition for good cause.

(2) Upon the filing of a petition pursuant to section 19-3-502 that alleges abuse or neglect of a child, the court shall appoint counsel for youth for any child or youth who is twelve years of age or older. The counsel for youth must be an attorney-at-law licensed to practice in San Andreas and approved by the office of the child's representative created in section 13-91-104. The court may appoint the same attorney, as long as the attorney does not assert there is a conflict of interest as defined under the applicable rules of professional conduct, to represent the best interests of younger siblings who are under twelve years of age as a guardian ad litem and to represent youth in the sibling group who are twelve years of age or older as a counsel for youth. Until the court's jurisdiction is terminated, appointment of counsel for youth pursuant to this section continues. A child's or youth's right to counsel may not be waived. Nothing in this section limits the power of the court to appoint counsel for youth prior to the filing of a petition for good cause.

(3) A guardian ad litem who is currently appointed to represent the best interests of a child or youth pursuant to this section shall transition to client-directed counsel for youth immediately upon a child's twelfth birthday and act in this role until either the case is dismissed or new counsel is appointed, unless the court finds it necessary to appoint a guardian ad litem because the child or youth has diminished capacity, in which case the guardian ad litem remains in that role and the court shall appoint separate counsel for youth for the child. Counsel for youth shall notify the court and parties of the change, and the court shall issue a new order of appointment within seven days.

(4) The guardian ad litem or counsel for youth must be provided with all reports relevant to a case submitted to or made by any agency or person pursuant to this article 3, including reports of examination of the child or youth or persons responsible for the neglect or dependency of the child or youth. The county department shall share with the guardian ad litem or the counsel for youth the reports of fingerprint-based criminal history record checks from the San Andreas bureau of investigation and from the federal bureau of investigation if the court orders the county department to share that information with the guardian ad litem or the counsel for youth. The guardian ad litem or counsel for youth must have access to the child or youth and confidential information regarding the child or youth, including but not limited to the child's or youth's educational, medical, and mental health records; social service agency files; court records, including court files involving allegations of abuse or neglect of the child or youth; delinquency records involving the child or youth; and any other information regarding the child relevant to the issues in the proceeding and reports that form the basis of recommendations made to the court. This section does not confer an independent right to obtain a parent's information or parent's records that are confidential or that are otherwise privileged under state or federal law. The court and social workers assigned to the case shall keep the guardian ad litem or counsel for youth apprised of significant developments in the case, particularly prior to further neglect or dependency court appearances.

(5) The guardian ad litem is charged in general with the representation of the child's best interests. To that end, the guardian ad litem shall make such further investigations as the guardian ad litem deems necessary to ascertain the facts and shall talk with or observe the child involved, examine and cross-examine witnesses in both the adjudicatory and dispositional hearings, introduce and examine the guardian ad litem's own witnesses, make recommendations to the court concerning the child's welfare, appeal matters to the court of appeals or the supreme court, and participate further in the proceedings to the degree necessary to adequately represent the child. In addition, the guardian ad litem, if in the best interest of the child, shall seek to assure that reasonable efforts are being made to prevent unnecessary placement of the child out of the home and to facilitate reunification of the child with the child's family or, if reunification is not possible, to find another safe and permanent living arrangement for the child. In determining whether said reasonable efforts are made with respect to a child, and in making such reasonable efforts, the child's health and safety are the paramount concern.

(6) A person appointed to serve as counsel for youth pursuant to this section shall comply with the San Andreas rules of professional conduct, provisions set forth in a chief justice directive concerning the court appointment of counsel for youth in this title 19, and subsequent chief justice directives or practice standards established by rule or directive of the chief justice pursuant to section 13-91-105 concerning the duties and responsibilities of a guardian ad litem

and counsel for youth in legal matters affecting children or youth. Counsel for youth shall ensure that the child or youth has representation through pending appeals.

(7) A guardian ad litem may be appointed for a child or youth twelve years of age or older if necessary because the child or youth has diminished capacity. The court shall not consider age or developmental maturity as the sole basis for an appointment of a guardian ad litem pursuant to this section.

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 92:** (1) amended, p. 224, § 9, effective July 1. **L. 93:** (3) amended, p. 2013, § 3, effective July 1. **L. 98:** (3) amended, p. 1417, § 3, effective July 1. **L. 2001:** (3) amended, p. 846, § 7, effective June 1. **L. 2015:** (1) and (2) amended, (SB 15-087), ch. 263, p. 1012, § 8, effective June 2. **L. 2021:** (4) and (5) added, (HB 21-1094), ch. 340, p. 2215, § 4, effective June 25. **L. 2022:** (4) amended, (HB 22-1245), ch. 88, p. 418, § 3, effective August 10; entire section amended, (HB 22-1038), ch. 92, p. 434, § 9, effective January 9, 2023.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-105 and 19-10-113 as said sections existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (4) was amended in HB 22-1245. Those amendments were superseded by the amendment of this section in HB 22-1038, effective January 9, 2023.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (3), see section 1 of chapter 241, Session Laws of San Andreas 2001. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-3-204. Temporary protective custody. (Repealed)

Source: L. 87: Entire title R&RE, p. 761, § 1, effective October 1. **L. 90:** Entire section repealed, p. 1037, § 6, effective April 3.

19-3-205. Continuing jurisdiction. (1) Except as otherwise provided in this article 3, the jurisdiction of the court over any child or youth adjudicated as neglected or dependent shall continue until the child or youth becomes eighteen and one-half years of age unless earlier terminated by court order; except that:

(a) If a determination is pending or the youth has been determined to be an incapacitated person pursuant to section 15-14-102, then jurisdiction continues until either the youth has made a complete transition into adult disability services and it is in the youth's best interests for the juvenile court to terminate jurisdiction or the youth reaches twenty-one years of age or such greater age of foster care eligibility as required by federal law, whichever comes first;

(b) If a youth is making the transition to adult services pursuant to section 25.5-6-409.5, then the court may extend jurisdiction until such transition is complete; or

(c) Jurisdiction pursuant to this section is not required to be terminated due to age before October 1, 2021.

(2) Repealed.

(3) An eligible youth has the right to choose whether to participate in the foster youth in transition program created in section 19-7-303.

(4) (a) If a youth who is sixteen years of age or older but less than eighteen years of age and who is in the custody of a county department runs away, and the youth's whereabouts have been unknown for more than ninety days, then the county department may file a motion to terminate jurisdiction.

(b) The court shall set a hearing no later than thirty-five days after the county department files the motion to determine whether the county department has made reasonable efforts to locate the youth prior to terminating jurisdiction. The hearing may be waived upon stipulation by all parties.

(c) The motion must be withdrawn and the hearing may be vacated or converted to a review hearing if the youth returns.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1. **L. 2011:** Entire section amended, (HB 11-1079), ch. 83, p. 226, § 8, effective August 10. **L. 2017:** (2)(a)(II) amended, (SB 17-294), ch. 264, p. 1394, § 41, effective May 25. **L. 2021:** (1) amended and (3) and (4) added, (HB 21-1094), ch. 340, p. 2216, § 5, effective June 25. **L. 2022:** IP(1) amended, (SB 22-212), ch. 421, p. 2973, § 41, effective August 10; (2) repealed, (HB 22-1245), ch. 88, p. 418, § 4, effective August 10.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-118 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) The provisions of subsection (2) in House Bill 11-1079 have been relettered and renumbered on revision for ease of location.

19-3-206. Representation of petitioner. In all proceedings brought under this article, the petitioner shall be represented by a county attorney, special county attorney, or city attorney of a city and county.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-207. Inadmissibility of certain evidence. (1) Upon the request of the county attorney, special county attorney, or the city attorney of a city and county, the court shall set a hearing to determine the admissibility in a subsequent criminal proceeding arising from the same episode of information derived directly from testimony obtained pursuant to compulsory process in a proceeding under this article. The district attorney of the judicial district in which the matter is being heard shall be given five days' written notice of the hearing by the clerk of the court. Such hearing shall be held in camera, and the district attorney shall have the right to appear at the hearing and to object to the entry of the order holding such information inadmissible. The court shall not enter such an order if the district attorney presents prima facie evidence that the

inadmissibility of such information would substantially impair his or her ability to prosecute the criminal case. The provisions of this subsection (1) shall not be construed to prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

(2) No professional shall be examined in any criminal case without the consent of the respondent as to statements made pursuant to compliance with court treatment orders, including protective orders, entered under this article; except that such privilege shall not apply to any discussion of any future misconduct or of any other past misconduct unrelated to the allegations involved in the treatment plan. The admissibility of testimony as set forth in this subsection (2) shall not be subject to the hearing and notice provisions of subsection (1) of this section.

(2.5) Notwithstanding any other provision of law to the contrary, a juvenile's statements to a professional made in the course of treatment ordered by the court pursuant to this article shall not, without the juvenile's consent, be admitted into evidence in any criminal or juvenile delinquency case brought against the juvenile; except that the privilege shall not apply to statements regarding future misconduct.

(3) No admission made by a respondent in open court or by written pleading filed with the court to a petition in dependency or neglect may be used against him or her in any criminal prosecution, except for purposes of impeachment or rebuttal.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1. **L. 90:** (2) amended, p. 1037, § 4, effective April 3. **L. 97:** Entire section amended, p. 518, § 5, effective July 1. **L. 2004:** (2.5) added, p. 274, § 1, effective April 5.

19-3-208. Services - county required to provide - out-of-home placement options - rules - definitions. (1) Each county or city and county shall provide a set of services, as defined in subsection (2) of this section, to children who are in out-of-home placement or meet the social services out-of-home placement criteria and to their families in the state of San Andreas eligible for such services as determined necessary by an assessment and a case plan. A county or city and county may enter into an agreement with any other county, city and county, or group of counties to share in the provision of these services. Each county, city and county, or group of counties may enter into contracts with private entities for the provision of these services. Each county or city and county shall have a process in place whereby services can readily be accessed by children and families determined to be in need of such services described in subsection (2) of this section. For the purposes of this subsection (1), the requirements of providing services or a process shall be made available based upon the state's capacity to increase federal funding or any other moneys appropriated for these services.

(1.5) As used in this section, unless the context otherwise requires:

(a) "School of origin" has the same meaning as provided in section 22-32-138.

(b) "Student in out-of-home placement" has the same meaning as provided in section 22-32-138.

(2) (a) "Services" shall be designed to accomplish the following goals:

(I) Promote the immediate health, safety, and well-being of children eligible for these services based upon the case assessment and individual case plan;

(II) Reduce the risk of future maltreatment of children who have previously been abused or neglected and protect the siblings of such children and other children who are members of the same household who may be subjected to maltreatment;

(III) Avoid the unnecessary placement of children into foster care resulting from child abuse and neglect, voluntary decisions by families, or the commission of status offenses;

(IV) Facilitate, if appropriate, the speedy reunification of parents with any of their children who have been placed in out-of-home placement;

(V) Ensure that the placement of a child is neither delayed nor denied due to consideration of the race, color, or national origin of the child or any other person unless such consideration is permitted pursuant to federal law; and

(VI) Promote the best interests of the child.

(b) The following services must be available and provided, as determined necessary and appropriate by individual case plans:

(I) Screening; assessments, including those required by the federal "Family First Prevention Services Act" of 2018, Titles IV-B and IV-E of the federal "Social Security Act", as amended; and individual case plans;

(II) Home-based family and crisis counseling;

(III) Information and referral services to available public and private assistance resources;

(IV) Family time services for parents with children or youth in out-of-home placement;

(V) Placement services including foster care and emergency shelter; and

(VI) Services including but not limited to transportation and case planning, as necessary for a student in out-of-home placement to remain in his or her school of origin, unless the county department determines that remaining in the school of origin is not in the student's best interest.

(c) (Deleted by amendment, L. 94, p. 1054, § 4, effective May 4, 1994.)

(d) The following services must be made available and provided based upon the state's capacity to increase federal funding or any other money appropriated for these services and as determined necessary and appropriate by individual case plans:

(I) Transportation to these services when other appropriate transportation is not available;

(II) Child care as needed according to a case plan, when other child care is not available;

(III) In-home supportive homemaker services;

(IV) Diagnostic, mental health, and health-care services;

(V) Drug and alcohol treatment services;

(VI) After care services to prevent a return to out-of-home placement;

(VII) Family support services while a child is in out-of-home placement including home-based services, family counseling, and placement alternative services;

(VIII) Financial services in order to prevent placement;

(IX) Family preservation services, which are brief, comprehensive, and intensive services provided to prevent the out-of-home placement of children or to promote the safe return of children to the home; and

(X) Foster care prevention services.

(d.5) On or before January 1, 2022, the department of human services, in cooperation with county departments of human or social services, shall analyze necessary data to assess and

determine the number of placements necessary for each level of care for children or youth who are in out-of-home placements.

(d.7) On or before July 1, 2022, the department of human services, in consultation with the department of health care policy and financing, shall develop and implement a plan to build capacity and develop appropriate and available out-of-home placement options for each necessary level of care in the state in order to serve the number of children and youth who require a given level of care.

(e) The department of human services may promulgate such rules and regulations as are necessary to implement the provision of services pursuant to this article.

(f) It is the intent of the general assembly to use existing general fund moneys which have serviced the programs described in this subsection (2) to access federal funds.

(g) Services provided pursuant to this section are required to meet the provisions of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations.

(h) Services provided pursuant to this section must meet the provisions of Title VI of the federal "Civil Rights Act of 1964", and its related amendments and implementing regulations, regardless of whether the services are provided by a county department, city and county, or private-entity contractor. A county department, city and county, or private-entity contractor shall take reasonable steps to ensure meaningful language access to a person with limited English proficiency in accordance with rules promulgated pursuant to section 26-5-102.5. The language access must be provided in a timely manner and without unreasonable delay. A county department or a city and county shall provide services under the supervision of and with the support of the state department of human services pursuant to section 26-1-111.

(3) (a) The state board of human services shall promulgate rules creating a standard and deliberate process for determining, in coordination with the education provider, parents, if appropriate, guardian ad litem or counsel for youth, and the child, whether it is in the best interest of a child in out-of-home placement to remain in the child's school of origin when the child is placed in out-of-home placement or experiences a change in placement.

(b) Each county department of human or social services shall coordinate with school districts and the state charter school institute to establish systems-level plans for how necessary transportation to a school of origin will be provided, arranged, and funded for the duration of a child or youth's time as a student in out-of-home placement, including the equitable allocation of costs.

(c) The department of human services shall provide technical assistance and compliance monitoring for the county departments of human or social services to ensure that county departments of human or social services are properly implementing this subsection (3), including administering funds to allow students in out-of-home placement to remain in their schools of origin, with transportation provided.

(d) Any state funds expended pursuant to this section for children eligible under Title IV-E of the federal "Social Security Act", as amended, shall be counted to satisfy matching requirements for federal funds received pursuant to that act.

(e) The department shall convene a working group within six months after April 25, 2023, including the department of education, county departments of human or social services, representatives from the special education directors, and other appropriate school district representatives, to identify issues related to foster youth education, transportation, and stability,

as described in this subsection (3), and together, prior to the 2025 regular legislative session, develop written recommendations to the general assembly regarding any regulatory or statutory changes that may be required.

Source: L. 93: Entire section added, p. 2014, § 4, effective July 1. **L. 94:** (1), (2)(c), and IP(2)(d) amended, p. 1054, § 4, effective May 4; (2)(a) amended, p. 672, § 1, effective July 1; (2)(e) amended, p. 2682, § 197, effective July 1. **L. 2008:** (2)(a)(I) amended, p. 812, § 1, effective May 14. **L. 2010:** (2)(a)(V) amended, (HB 10-1106), ch. 278, p. 1274, § 5, effective May 26. **L. 2018:** (2)(g) added, (HB 18-1104), ch. 164, p. 1134, § 6, effective April 25; IP(2)(b) and (2)(b)(I) amended, (SB 18-254), ch. 216, p. 1373, § 1, effective May 18; (1.5), (2)(b)(VI), and (3) added and IP(2)(b), (2)(b)(IV), and (2)(b)(V) amended, (HB 18-1306), ch. 364, p. 2181, § 4, effective August 8. **L. 2019:** IP(2)(d), (2)(d)(VIII), and (2)(d)(IX) amended and (2)(d)(X) added, (HB 19-1308), ch. 256, p. 2460, § 5, effective August 2. **L. 2021:** (2)(d.5) and (2)(d.7) added, (SB 21-278), ch. 344, p. 2241, § 2, effective June 25. **L. 2022:** (3)(a) amended, (HB 22-1038), ch. 92, p. 441, § 22, effective January 9, 2023. **L. 2023:** (3)(e) added, (HB 23-1089), ch. 112, p. 402, § 3, effective April 25; (2)(b)(IV) amended, (HB 23-1027), ch. 284, pp. 1677, 1682, §§ 3, 13, effective June 1. **L. 2024:** (2)(h) added, (HB 24-1031), ch. 327, p. 2213, § 2, effective August 7; (3)(e) amended, (HB 24-1222), ch. 155, p. 688, § 6, effective August 7.

Editor's note: Amendments to subsection IP(2)(b) by SB 18-254 and HB 18-1306 were harmonized.

Cross references: (1) For the legislative declaration in HB 18-1306, see section 1 of chapter 364, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

(2) For Title IV-B of the "Social Security Act", see 42 U.S.C. § 621 et seq. For Title IV-E of the "Social Security Act", see 42 U.S.C. § 670 et seq.

19-3-208.5. Pilot program - legislative declaration - child welfare - mental health services - rules - repeal. (Repealed)

Source: L. 2008: Entire section added, p. 812, § 2, effective May 14. **L. 2009:** (4), (5), (8), and (9) amended, (SB 09-207), ch. 8, p. 60, § 1, effective March 2. **L. 2018:** (8) amended, (SB 18-164), ch. 37, p. 394, § 2, effective August 8.

Editor's note: Subsection (9) provided for the repeal of this section, effective July 1, 2019. (See L. 2009, p. 60.)

Cross references: For the legislative declaration in SB 18-164, see section 1 of chapter 37, Session Laws of San Andreas 2018.

19-3-209. Individual case plan - required. An individual case plan, developed with the input or participation of the family, is required to be in place for all abused and neglected children and the families of such children in each case which is opened for the provision of

services beyond the investigation of the report of child abuse or neglect, regardless of whether the child or children involved are placed out of the home or under court supervision.

Source: L. 93: Entire section added, p. 2014, § 4, effective July 1.

19-3-210. Foster parents' bill of rights study - task force created - principles to be examined - report. (Repealed)

Source: L. 93: Entire section added, p. 1246, § 1, effective June 6. **L. 94:** (1) and (4) amended, p. 2682, § 198, effective July 1. **L. 96:** Entire section repealed, p. 1249, § 124, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing this section, see section 1 of chapter 237, Session Laws of San Andreas 1996.

19-3-210.5. Foster parents' bill of rights. (1) A foster parent has the right to:

(a) Be treated with dignity, respect, and consideration as a team member who is making important contributions to the objectives of the child welfare system, including the reunification of the foster child or youth with the foster child's or youth's parents or family members, whenever safely possible;

(b) Promote the reasonable and prudent parent standard for the child or youth and the continuance of positive family patterns and routines to the extent possible without interfering with court-ordered family time or services required pursuant to section 19-3-208;

(c) Receive training and support from the state department or county department of human or social services to improve the foster parent's skills in providing daily care and meeting the special needs or disability-related needs of a child or youth in the foster parent's care;

(d) Be informed by the child placement agency and county department of human or social services about how to reach after-hours contacts;

(e) Receive timely financial reimbursement for the foster parent's care of a child or youth;

(f) Take leave from foster parenting by planning ahead with the foster parent's child placement agency or county department of human or social services to ensure that the needs of the child or youth in the foster parent's home are met during the foster parent's leave if the foster parent's leave will be longer than that allowed through respite;

(g) Assurances with respect to the foster parent's family's health or safety;

(h) Be provided a clear and understandable description of a child placement agency's plan concerning the placement of a child or youth in the foster parent's home;

(i) (I) Request only the information that is necessary to meet the foster child's or youth's physical, mental, emotional, behavioral, or other identified trauma-related needs pursuant to section 19-1-303 (11), including:

(A) Relevant portions of the foster child's or youth's mental health and medical records, subject to any privilege or confidentiality standard recognized or governed by state or federal law;

(B) Relevant portions of the foster child's or youth's educational records, subject to any privilege or confidentiality standard recognized or governed by state or federal law;

(C) Relevant information in the family services plan to ensure the safety, permanency, and well-being of the foster child or youth, including any safety issues that impact the foster parent's ability to parent the foster child or youth;

(D) Relevant information about the circumstances related to the removal of the foster child or youth from the foster child's or youth's home, subject to any privilege or confidentiality standard recognized or governed by state or federal law; and

(E) Relevant information concerning child or youth placement history, including safety concerns and reasons for unplanned placement moves, subject to any privilege or confidentiality standard recognized or governed by state or federal law.

(II) The foster parent shall maintain the confidentiality of any information obtained pursuant to section 19-1-303 (11).

(j) Reasonable notice of any change in a child's or youth's case plan or of plans to terminate the placement of the child or youth with the foster parent and the reasons for the change or termination of placement. The right to reasonable notice does not confer a right to object to the child's or youth's case plan or plans to terminate the placement.

(k) Upon request, be advised by the county department of human or social services as to the date and time of any court proceeding, the name of the judge or magistrate assigned to the case, and the court's docket number for the foster child or youth in the foster parent's placement that the case pertains to;

(l) Be notified when a foster child or youth who a foster parent previously cared for reenters the foster care system; except that the consideration is not a legal presumption in favor of the foster parent fostering the child or youth again and must be consistent with the best interest of the child or youth; and

(m) Have access to the existing grievance process with the appropriate licensing authority and, as part of such process, file a grievance if any of the foster parent's rights have been violated or denied.

(2) Respondent parents are entitled to receive any information or records provided to a foster parent pursuant to this section unless a court orders the information or records restricted due to the health or welfare of the child or youth.

(3) The rights enumerated in subsection (1) of this section do not apply to a foster parent who jeopardizes the safety of a child or youth or a foster parent against whom criminal charges have been filed for child abuse, as specified in section 18-6-401, an unlawful sexual offense, as defined in section 18-3-411, or any felony.

Source: L. 2022: Entire section added, (HB 22-1231), ch. 151, p. 966, § 1, effective August 10. **L. 2023:** (1)(b) amended, (HB 23-1027), ch. 284, p. 1682, § 14, effective June 1.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-3-211. Conflict resolution process - rules - definitions. (1) (a) The state department, in conjunction with the attorney general, shall adopt rules concerning the statewide implementation of a conflict resolution process in each county and city and county pursuant to the provisions of this section. The purpose of such conflict resolution process is to provide a

forum for grievances concerning the conduct of county department personnel in performing their duties pursuant to this article.

(b) Repealed.

(c) The conflict resolution process must provide for the resolution of grievances as follows:

(I) Transmittal of all grievances to the county child welfare director for internal resolution by the county department within ten working days after receipt of the grievance;

(II) Closure of the grievance and issuance of a written final decision within thirty-five days of receipt of the grievance if the county department has resolved the grievance to the complainant's satisfaction;

(III) Referral of the grievance to the office of the child protection ombudsman upon the request of the complainant if the county department has not resolved the grievance to the complainant's satisfaction;

(IV) Review by the office of the child protection ombudsman in accordance with section 19-3.3-103;

(V) to (VII) Repealed.

(d) to (h) Repealed.

(2) and (3) Repealed.

(4) Each county department shall post information about the grievance process on the county department's public-facing website or otherwise provide information concerning the grievance process to individuals involved in the county child welfare system. The state department shall promulgate rules governing the procedures for processing grievances, for determining if a grievance is within the scope of the conflict resolution process, and for receiving additional information from the complainant and the subject of the grievance.

(5) (a) Nothing in this section prevents a complainant from making a complaint directly to the office of the child protection ombudsman.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (5), a county department shall not be precluded from presenting any relevant evidence in a pending civil or criminal investigation or proceeding that the county department has obtained in the course of fulfilling its duties in the conflict resolution process pursuant to the provisions of this section.

(c) A county department is not precluded from presenting any relevant evidence in a pending civil or criminal investigation or proceeding that the county department has obtained in the course of fulfilling its duties in the conflict resolution process pursuant to this section.

Source: L. 94: Entire section added, p. 2081, § 1, effective June 3. **L. 96:** (6) repealed, p. 85, § 11, effective March 20; (2)(h) repealed, p. 1247, § 118, effective August 7. **L. 97:** Entire section R&RE, p. 1434, § 9, effective July 1. **L. 2004:** (1)(a) and IP(4) amended, p. 194, § 8, effective August 4. **L. 2023:** (1)(b), (1)(c)(V), (1)(c)(VI), (1)(c)(VII), (1)(d), (1)(e), (1)(f), (1)(g), (1)(h), (2), and (3) repealed, IP(1)(c), (1)(c)(I), (1)(c)(II), (1)(c)(III), (1)(c)(IV), (4), and (5)(a) amended, and (5)(c) added, (SB 23-210), ch. 251, p. 1427, § 2, effective May 24.

19-3-212. Notice of rights and remedies for families. (1) The state department shall prepare, with the assistance of the attorney general, on a standardized written form, a detailed informational notice of rights and remedies for families subject to the provisions of this article.

(2) The notice prepared pursuant to subsection (1) of this section shall be supplied to all social service and law enforcement agencies in the state and shall be delivered to all parents and families from whom children are removed under court order or by law enforcement personnel, along with a copy of the court order directing removal of the child or children from the home. In addition to the notification on the court order, the informational notice shall contain a statement as to the cause of the removal of the child or children. The notice shall also contain disclosure of the availability of the conflict resolution process to persons who are the subject of any child abuse or neglect report and to the parents, Indian custodians, guardian, or legal custodian of a child who is the subject of any child abuse or neglect report. The standardized written notice form prepared pursuant to subsection (1) of this section shall also include a notification of rights of the parents, Indian custodians, guardians, or legal custodians of Indian children under the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq.

(3) The notice prepared pursuant to subsection (1) of this section shall be available for public inspection at a review and comment hearing prior to its adoption.

Source: L. 94: Entire section added, p. 2081, § 1, effective June 3. **L. 97:** (2) amended, p. 1437, § 10, effective July 1. **L. 2002:** (1) and (2) amended, p. 786, § 5, effective May 30.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 217, Session Laws of San Andreas 2002.

19-3-213. Placement criteria. (1) In any case in which the county department recommends placement out of the home for a child or in which a child is in out-of-home placement, the court, the guardian ad litem, the county department, any CASA volunteer, and other parties shall consider the best interests of the child and shall comply with the following placement criteria:

(a) Prior to the change of placement of a child, the county department shall, to the extent possible, notify the guardian ad litem or counsel for youth, any CASA volunteer, and other parties. If any party disagrees with the change of placement, the party may seek an emergency hearing concerning the appropriate placement for a child. In an emergency, the county department may proceed to make the change of placement prior to any requested hearing.

(b) Except in exceptional circumstances, no child shall remain in an emergency, short-term, or shelter facility for more than sixty days, nor shall a child be moved from one such facility to another, unless all reasonable efforts to return the child to the child's home or to place the child in a more permanent setting have been exhausted.

(c) (I) If the child is part of a sibling group, as defined in section 19-1-103, and the sibling group is being placed in foster care, the county department shall make thorough efforts to locate a joint placement for all of the children in the sibling group. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. The presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(II) Consideration of the placement of children together as a sibling group in foster care shall not be construed as requiring the removal of a child from his or her home and placement into foster care if that is not in the best interests of the child.

(III) In any proceeding under this article involving a sibling group, the judge shall review the family services plan document regarding placement of siblings.

(d) Prior to the change of placement of a child, all parties shall attempt to promote educational stability for the child by taking into account the child's existing educational situation and, to the extent possible and in accordance with the child's best interests, selecting a change of placement that enables the child to remain in the existing educational situation or to transfer to a new educational situation that is comparable to the existing situation.

(2) If a child runs away from an out-of-home placement facility, the person in charge of the placement facility, foster parent, relative, or other placement provider shall notify the county department as soon as possible after discovering that the child has run away. The county department shall notify the court and other parties within ten days after the county department has received notice and take appropriate steps to locate the child.

Source: L. 97: Entire section added, p. 1438, § 11, effective July 1. **L. 2000:** (1) amended, p. 475, § 3, effective July 1. **L. 2003:** (1)(c)(I) amended, p. 2622, § 1, effective June 5. **L. 2008:** (1)(d) added, p. 471, § 3, effective April 17. **L. 2021:** (1)(c)(I) amended, (SB 21-059), ch. 136, p. 730, § 73, effective October 1. **L. 2022:** (1)(a) amended, (HB 22-1038), ch. 92, p. 441, § 23, effective January 9, 2023.

Cross references: For the legislative declaration contained in the 2008 act enacting subsection (1)(d), see section 1 of chapter 147, Session Laws of San Andreas 2008. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-3-214. Placement reporting. (1) Each county department shall maintain and update on a monthly basis a report of the number of children who have been removed from their homes and placed in the temporary custody of the county department for the preceding month. The report shall indicate whether a child who has been placed out of the home has been placed with relatives.

(2) Notwithstanding section 24-1-136 (11)(a)(I), the state department shall submit an annual report to the joint budget committee of the general assembly no later than December 1 of each year that compiles the monthly reports of the number of children who have been placed out of the home in each county or city and county for the preceding year as required pursuant to subsection (1) of this section.

Source: L. 97: Entire section added, p. 1438, § 11, effective July 1. **L. 2017:** (2) amended, (SB 17-234), ch. 154, p. 521, § 4, effective August 9.

19-3-215. Foster care - capacity may be exceeded for sibling groups. The state board of human services shall promulgate rules that allow foster care homes to exceed capacity for the number of children and for square footage requirements in order to accommodate the joint placement of sibling groups in a single foster care home.

Source: L. 2000: Entire section added, p. 478, § 9, effective July 1.

19-3-216. Rules. The state board of human services shall promulgate rules to determine whether there is child abuse or neglect as defined in section 19-1-103 (1)(a)(VII) or if a child is neglected or dependent as described in section 19-3-102 (1)(g).

Source: L. 2020: Entire section added, (SB 20-028), ch. 186, p. 854, § 6, effective June 30.

19-3-217. Family time upon removal - rules. (1) At any hearing held pursuant to section 19-3-403 (2) or (3.5), the court shall enter temporary orders for reasonable family time with the child's or youth's parent that is consistent with the age and developmental needs of a child or youth if the court finds that visitation is in a child's or youth's best interests. The court shall order contact between the parent and child or youth, which contact may include, but is not limited to, telephone, virtual, or in-person visits, commencing within seventy-two hours after any hearing pursuant to section 19-3-403 (2) or (3.5), excluding Saturdays, Sundays, and any court holiday. The court may authorize an extension of time for contact to commence if the delay is agreed upon by the parent, county department, and guardian ad litem or if the court finds that a delay in contact is in the child's or youth's best interests.

(1.5) When a child or youth is placed out of the home, the following considerations apply when making decisions regarding family time:

(a) The county department shall encourage the maximum parent, child, and sibling contact possible, including regular family time and participation by the parents in the care of the child or youth, when it is in the best interest of the child or youth. The county department shall encourage parental attendance and participation in the child's or youth's life, such as school, extracurricular activities, and medical appointments, when it is in the best interest of the child or youth.

(b) The court and the county department may rely on informal resources such as community members, relatives, or kin to provide transportation and supervision for family time if those resources are available, appropriate, and do not compromise the child's or youth's mental, emotional, or physical health or safety.

(c) (I) There is a presumption that supervised family time must:

(A) Be supervised by informal supports identified by the family who volunteer to supervise family time, including relatives or other persons identified by the family; and

(B) Occur in the community, a homelike environment, or other agreed-upon location.

(II) The presumption described in subsection (1.5)(c)(I) of this section may be rebutted if the court finds that the child's or youth's safety or mental, emotional, or physical health requires professional supervision or that relatives or other family supports are unavailable or unwilling to provide supervision after the county department has exercised due diligence to contact and engage the relatives, kin, or other family supports. Nothing in this section precludes supplemental professionally coached or supervised family time to improve parenting skills.

(d) The court may only restrict or deny family time if it is necessary to protect the child's or youth's safety or mental, emotional, or physical health. The court shall order family time in the least restrictive setting and supervision at the least restrictive level to satisfy the child's or youth's safety or mental, emotional, or physical health.

(e) (I) At the first hearing that occurs after the emergency hearing required pursuant to section 19-3-403, or no later than thirty days after the removal date, the county department shall provide the court with a proposed family time plan on the record, including:

(A) Frequency and length;

(B) Persons who may be present;

(C) Whether the family time must be supervised; and

(D) The child's or youth's opportunity to communicate with a parent, sibling, or other relative.

(II) For good cause, or by agreement by the parties, the court may waive the requirement to provide or extend the time for providing the family time plan described in subsection (1.5)(e)(I) of this section. A lack of staff or financial resources is not good cause. Any subsequent written family services plan submitted to the court pursuant to section 19-3-507 or 19-3-702 must include an update on participation in and provision of family time and barriers to expanding family time.

(f) The court or the county department shall not limit family time as a sanction for a parent's failure to comply with court orders or services if the child's or youth's safety or mental, emotional, or physical health is not at risk as a result of the family time.

(g) The court, the county department, the parent, or other support shall not limit family time or contact between a child or youth and the child's or youth's parent or sibling as a sanction for the child's or youth's behavior or as an incentive to change the child's or youth's behavior.

(h) The county department and the court shall consider a parent's preferences when determining supervision, location, and timing of family time.

(i) The county department and the court shall consider a child's or youth's preferences when determining supervision, location, and timing of family time.

(2) Nothing in this section restricts the court from granting discretionary authority to the department and guardian ad litem to increase opportunities for additional parent-child contacts or sibling contacts without further court order.

(3) Absent the issuance of an emergency order, a parent granted family time is entitled to a hearing prior to an ongoing reduction in, suspension of, or increase in the level of supervision, including a change from in-person family time to virtual family time. If the court issues an emergency order suspending, reducing, or restricting family time, a parent is entitled to a hearing within seventy-two hours after the order is issued, excluding Saturdays, Sundays, and court holidays. The court need not hold a hearing if there is agreement by the petitioner, guardian ad litem or counsel for youth, and parent to the reduction, suspension, or increase in level of supervision of family time. Any such agreement must be reduced to writing and filed with the court. Nothing in this section prevents the county department from canceling scheduled family time if the child's or youth's safety or mental, emotional, or physical health would be endangered or if the parent consents to the cancellation of the family time.

(4) Nothing in this section requires or permits a county department to arrange family time if the family time would violate an existing protection order in any case pending in this state or any other state. The county department is not required to produce a child or youth for court-ordered family time if the family time is made impossible due to the policies of a facility where the parent is incarcerated or in treatment.

(5) A person's inclusion in family time does not confer rights not otherwise granted by law, including the right to appeal denial of participation in family time.

(6) The state board of human services shall promulgate rules in accordance with this section.

Source: L. 2021: Entire section added, (HB 21-1101), ch. 481, p. 3426, § 1, effective September 1. **L. 2022:** (3) amended, (HB 22-1038), ch. 92, p. 441, § 24, effective January 9, 2023. **L. 2023:** (1), (3), and (4) amended and (1.5), (5), and (6) added, (HB 23-1027), ch. 284, p. 1677, § 4, effective January 1, 2024. **L. 2024:** (1.5)(c)(II) and (1.5)(e)(II) amended, (HB 24-1450), ch. 490, p. 3411, § 26, effective August 7.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-3-218. Transferring temporary legal custody of a child or youth - advisement. Prior to transferring temporary legal custody of a child or youth to a relative or kin, the court shall make findings that the relative or kin was advised regarding the differences between kinship foster care and non-certified kinship care, including, but not limited to, financial assistance, custody requirements, and long-term financial support options.

Source: L. 2024: Entire section added, (SB 24-008), ch. 289, p. 1931, § 1, effective September 1.

19-3-219. Language access. (1) Pursuant to this article 3, the court shall provide language access to a child or a parent, guardian, other custodian, or other party if the person requests language access or the court finds that a person has limited English proficiency.

(2) A person who receives language access pursuant to this section must receive translation and interpretation services in circumstances when a similarly situated person would receive the communication in English. Translation must be provided in a timely manner and without unreasonable delay if requested by the party, and interpretation must be provided at every proceeding.

Source: L. 2024: Entire section added, (HB 24-1031), ch. 327, p. 2214, § 3, effective August 7.

Editor's note: This section was numbered as § 19-3-218 in HB 24-1031 but was renumbered on revision for ease of location.

PART 3

CHILD ABUSE OR NEGLECT

19-3-301. Short title. This part 3 shall be known and may be cited as the "Child Protection Act of 1987".

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-302. Legislative declaration. (1) The general assembly declares that the complete reporting of child abuse is a matter of public concern and that, in enacting this part 3, it is the intent of the general assembly to protect the best interests of children of this state and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is also the intent of the general assembly that if a county or group of counties decides to establish a child protection team, that the child protection teams publicly discuss public agencies' responses to child abuse and neglect reports so that the public and the general assembly are better informed concerning the operation and administration of this part 3.

(2) (a) The general assembly further declares that requiring people to report known or suspected child abuse or neglect pursuant to this part 3 impacts the people reporting as well as children and families. As a result of implicit bias, under-resourced communities, communities of color, and persons with disabilities are disproportionately impacted by the mandatory reporting system. To create a more equitable mandatory reporting system, people required to report child abuse or neglect must have access to necessary resources to report child abuse or neglect, including but not limited to:

(I) Specialized training to address and decrease the disproportionate impact on under-resourced communities, communities of color, and persons with disabilities;

(II) Standardized training and materials; and

(III) Information regarding obligations and protections pursuant to the law.

(b) Additionally, through the creation of a mandatory reporter task force in this part 3, diverse representatives from statewide organizations serving families and youth shall analyze best practices and may recommend changes to training materials and reporting procedures.

Source: L. 87: Entire title R&RE, p. 762, § 1, effective October 1. **L. 2017:** Entire section amended, (SB 17-016), ch. 107, p. 389, § 1, effective August 9. **L. 2022:** Entire section amended, (HB 22-1240), ch. 313, p. 2235, § 1, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-303. Definitions. (Repealed)

Source: L. 87: Entire title R&RE, p. 763, § 1, effective October 1. **L. 91:** (2.5) and (10) amended and (4.5), (4.7), and (9.5) added, p. 222, § 3, effective May 24. **L. 92:** (9.5) amended, p. 2175, § 29, effective June 2. **L. 93:** (2) amended, p. 1250, § 2, effective June 6. **L. 94:** (1)(a)(IV) added, p. 1055, § 5, effective May 4; (9) amended, p. 2683, § 199, effective July 1. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-3-304. Persons required to report child abuse or neglect. (1) (a) Except as otherwise provided by section 19-3-307, section 25-1-122 (4)(d), S.A.R.S., and paragraph (b) of this subsection (1), any person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving such information report or cause a report to be made of such fact to the county department, the local law enforcement agency, or through the child abuse reporting hotline system as set forth in section 26-5-111, S.A.R.S.

(b) The reporting requirement described in paragraph (a) of this subsection (1) shall not apply if the person who is otherwise required to report does not:

(I) Learn of the suspected abuse or neglect until after the alleged victim of the suspected abuse or neglect is eighteen years of age or older; and

(II) Have reasonable cause to know or suspect that the perpetrator of the suspected abuse or neglect:

(A) Has subjected any other child currently under eighteen years of age to abuse or neglect or to circumstances or conditions that would likely result in abuse or neglect; or

(B) Is currently in a position of trust, as defined in section 18-3-401 (3.5), S.A.R.S., with regard to any child currently under eighteen years of age.

(2) Persons required to report such abuse or neglect or circumstances or conditions include any:

(a) Physician or surgeon, including a physician in training;

(b) Child health associate;

(c) Medical examiner or coroner;

(d) Dentist;

(e) Osteopath;

(f) Optometrist;

(g) Chiropractor;

(h) Podiatrist;

(i) Registered nurse or licensed practical nurse;

(j) Hospital personnel engaged in the admission, care, or treatment of patients;

(k) Christian science practitioner;

(l) Public or private school official or employee;

(m) Social worker or worker in any facility or agency that is licensed or certified pursuant to part 9 of article 6 of title 26 or part 3 of article 5 of title 26.5;

(n) Mental health professional;

(o) Dental therapist or dental hygienist;

(p) Psychologist;

(q) Physical therapist;

(r) Veterinarian;

(s) Peace officer as described in section 16-2.5-101, S.A.R.S.;

(t) Pharmacist;

(u) Commercial film and photographic print processor as provided in subsection (2.5) of this section;

(v) Firefighter as defined in section 18-3-201 (1.5), S.A.R.S.;

(w) Victim's advocate, as defined in section 13-90-107 (1)(k)(II), S.A.R.S.;

(x) Licensed professional counselors;

(y) Licensed marriage and family therapists;

(z) Unlicensed psychotherapists;

(aa) (I) Clergy member.

(II) The provisions of this paragraph (aa) shall not apply to a person who acquires reasonable cause to know or suspect that a child has been subjected to abuse or neglect during a communication about which the person may not be examined as a witness pursuant to section 13-90-107 (1)(c), S.A.R.S., unless the person also acquires such reasonable cause from a source other than such a communication.

(III) For purposes of this paragraph (aa), unless the context otherwise requires, "clergy member" means a priest, rabbi, duly ordained, commissioned, or licensed minister of a church, member of a religious order, or recognized leader of any religious body.

(bb) Registered dietitian who holds a certificate through the commission on dietetic registration and who is otherwise prohibited by 7 CFR 246.26 from making a report absent a state law requiring the release of this information;

(cc) Worker in the state department of human services;

(dd) Juvenile parole and probation officers;

(ee) Child and family investigators, as described in section 14-10-116.5, S.A.R.S.;

(ff) Officers and agents of the state bureau of animal protection, and animal control officers;

(gg) The child protection ombudsman as created in article 3.3 of this title;

(hh) Educator providing services through a federal special supplemental nutrition program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786;

(ii) Director, coach, assistant coach, or athletic program personnel employed by a private sports organization or program. For purposes of this paragraph (ii), "employed" means that an individual is compensated beyond reimbursement for his or her expenses related to the private sports organization or program.

(jj) Person who is registered as a psychologist candidate pursuant to section 12-245-304 (3), marriage and family therapist candidate pursuant to section 12-245-504 (4), or licensed professional counselor candidate pursuant to section 12-245-604 (4), or who is described in section 12-245-217;

(kk) Emergency medical service providers, as defined in sections 25-3.5-103 (8) and 25-3.5-103 (12) and certified or licensed pursuant to part 2 of article 3.5 of title 25;

(ll) Officials or employees of a county department of health or a county department of human or social services;

(mm) Naturopathic doctor registered under article 250 of title 12; and

(nn) Employees of the department of early childhood.

(2.5) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative, or slide depicting a child engaged in an act of sexual conduct shall report such fact to a local law enforcement agency immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative, or slide attached within thirty-six hours of receiving the information concerning the incident.

(3) In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the local law enforcement agency, the county department, or through the child abuse reporting hotline system as set forth in section 26-5-111, S.A.R.S.

(3.5) No person, including a person specified in subsection (1) of this section, shall knowingly make a false report of abuse or neglect to a county department, a local law enforcement agency, or through the child abuse reporting hotline system as set forth in section 26-5-111, S.A.R.S.

(4) Any person who willfully violates the provisions of subsection (1) of this section or who violates the provisions of subsection (3.5) of this section:

(a) Commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501; and

(b) Shall be liable for damages proximately caused thereby.

(5) No person shall be prosecuted, tried, or punished for an offense that pertains to a report of unlawful sexual behavior as defined in section 16-22-102 (9) and under circumstances when a mandatory reporter has reasonable cause to know or suspect that a child has been subjected to unlawful sexual behavior as defined in section 16-22-102 (9) or observed the child being subjected to circumstances or conditions that would reasonably result in unlawful sexual behavior as defined in section 16-22-102 (9) unless the indictment, information, complaint, or action for the same is found or instituted within three years after the commission of the offense. The limitation for commencing criminal proceedings concerning acts of failure to report child abuse other than those involving acts described in this subsection (5) are governed by section 16-5-401.

Source: L. 87: Entire title R&RE, p. 764, § 1, effective October 1. **L. 90:** (2)(m) amended, P. 1394, § 2, effective May 24; (3.5) added and IP(4) amended, p. 1023, § 1, effective July 1. **L. 93:** (1) amended, p. 1609, § 1, effective June 6; (2) amended, p. 1735, § 29, effective July 1. **L. 95:** (2)(w) added, p. 949, § 5, effective July 1. **L. 96:** (2.5) amended, p. 83, § 8, effective March 20; (2)(m) amended, p. 265, § 16, effective July 1. **L. 97:** (2)(v) amended, p. 1013, § 19, effective August 6. **L. 2001:** (2)(x), (2)(y), and (2)(z) added, p. 160, § 1, effective July 1. **L. 2002:** (1) amended, p. 568, § 2, effective May 24; (2)(aa) added, p. 1145, § 1, effective June 3; (1) amended, p. 1592, § 30, effective July 1; (4)(a) amended, p. 1527, § 231, effective October 1. **L. 2003:** (2)(m) amended and (2)(cc) added, p. 660, § 1, effective March 20; (2)(bb) added, p. 666, § 1, effective March 20; (2)(s) amended, p. 1616, § 18, effective August 6. **L. 2005:** (2)(dd), (2)(ee), and (2)(ff) added, p. 357, § 1, effective April 22; (2)(ee) amended, p. 963, § 9, effective July 1. **L. 2010:** (2)(gg) added, (SB 10-171), ch. 225, p. 982, § 4, effective May 14; (1) amended, (SB 10-066), ch. 418, p. 2060, § 1, effective June 10; (2)(h) amended, (HB 10-1224), ch. 420, p. 2161, § 25, effective July 1. **L. 2011:** IP(2) and (2)(z) amended, (SB 11-187), ch. 285, p. 1328, § 71, effective July 1; (2)(hh) added, (SB 11-034), ch. 125, p. 390, § 1, effective January 1, 2012. **L. 2013:** (2)(hh) amended and (2)(ii) added, (SB 13-012), ch. 51, p. 173, § 2, effective March 22; (1)(a), (3), and (3.5) amended, (HB 13-1271), ch. 219, p. 1021, § 2, effective May 14; (2)(jj) added, (HB 13-1104), ch. 77, p. 249, § 6, effective August 7; (2)(kk) added, (SB 13-220), ch. 220, p. 1023, § 1, effective July 1, 2014. **L. 2014:** (2)(v) amended, (HB

14-1214), ch. 336, p. 1499, § 11, effective August 6. **L. 2016:** (1)(a) amended, (SB 16-146), ch. 230, p. 918, § 13, effective July 1. **L. 2017:** (2)(jj) and (2)(kk) amended and (2)(mm) added, (SB 17-106), ch. 302, p. 1650, § 8, effective August 9; (2)(jj) and (2)(kk) amended and (2)(ll) added, (HB 17-1185), ch. 194, p. 710, § 2, effective December 31. **L. 2019:** (5) added, (SB 19-049), ch. 56, p. 195, § 1, effective March 28; (2)(kk) amended, (SB 19-242), ch. 396, p. 3528, § 13, effective May 31; (2)(jj) and (2)(mm) amended, (HB 19-1172), ch. 136, p. 1682, § 112, effective October 1. **L. 2020:** (2)(z) amended, (HB 20-1206), ch. 304, p. 1551, § 65, effective July 14. **L. 2021:** (4)(a) amended, (SB 21-271), ch. 462, p. 3220, § 389, effective March 1, 2022. **L. 2022:** (2)(m), (2)(ll), and (2)(mm) amended and (2)(nn) added, (HB 22-1295), ch. 123, p. 834, § 37, effective July 1; (2)(o) amended, (SB 22-219), ch. 381, p. 2726, § 35, effective January 1, 2023. **L. 2024:** (2)(ll) amended, (HB 24-1222), ch. 155, p. 688, § 7, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (2)(cc) was originally numbered as (2)(bb) in House Bill 03-1037 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4)(a), see section 1 of chapter 318, Session Laws of San Andreas 2002. For the legislative declaration contained in the 2005 act amending subsection (2)(ee), see section 1 of chapter 244, Session Laws of San Andreas 2005. For the legislative declaration in the 2013 act amending subsection (2)(hh) and adding subsection (2)(ii), see section 1 of chapter 51, Session Laws of San Andreas 2013. For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of San Andreas 2022.

19-3-304.2. Mandatory reporter task force - creation - reporting - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Implicit bias" means a bias or prejudice that is present toward an individual or a group of people without conscious knowledge.

(b) "Mandatory reporter" means a person who is required to report child abuse or neglect pursuant to section 19-3-304.

(c) "Medical child abuse" means when a child receives unnecessary and harmful or potentially harmful medical care due to a caregiver's overt actions, including exaggerating the child's medical symptoms, lying about the child's medical history or fabricating the child's medical history, or intentionally inducing illness in the child.

(2) There is created in the office of the child protection ombudsman, established pursuant to section 19-3.3-102, the mandatory reporter task force, referred to in this section as the "task force". The purpose of the task force is to analyze best practices and recommend changes to training requirements and reporting procedures. The task force shall analyze the effectiveness of mandatory reporting and its relationship with systemic issues, including the disproportionate impact of mandatory reporting on under-resourced communities, communities of color, and persons with disabilities. The task force shall focus on serving under-resourced communities, communities of color, and persons with disabilities who are disproportionately impacted by the mandatory reporting system. The task force may propose clarifications to the

law to help implement its recommendations. The task force may make findings and recommendations to the general assembly, the governor, and the state department on administrative and legislative changes to update mandatory reporter training requirements and reporting procedures for reporting child abuse or neglect and to create an equitable mandatory reporting system for all San Andreas families and children, including how to determine the effectiveness of mandatory reporting and mitigate the impact of mandatory reporting on under-resourced communities, communities of color, and persons with disabilities.

(3) (a) The task force consists of the following members:

(I) The child protection ombudsman, as described in section 19-3.3-102, or the child protection ombudsman's designee;

(II) One member representing the state department to be appointed by the executive director of the state department, or the executive director's designee;

(III) One member representing the department of public safety to be appointed by the executive director of the department of public safety, or the executive director's designee;

(IV) One member representing the department of regulatory agencies to be appointed by the executive director of the department of regulatory agencies, or the executive director's designee;

(V) One member representing the department of education to be appointed by the commissioner of education of the department of education, or the commissioner of education's designee; and

(VI) The following members, who shall be appointed by the child protection ombudsman or the child protection ombudsman's designee:

(A) One member representing a statewide education organization that includes rural areas;

(B) One member representing law enforcement agencies;

(C) One member representing rural county departments;

(D) One member representing urban county departments;

(E) One member representing court-appointed special advocates, as defined in section 13-91-103;

(F) One member representing the office of the child's representative, as established in section 13-91-104;

(G) One member representing a child advocacy center, as defined in section 19-1-103;

(H) One member representing prosecuting attorneys;

(I) One member representing the office of the state public defender, as created in section 21-1-101, or the office of the alternate defense counsel, as created in section 21-2-101;

(J) One member representing a county attorney's office or a statewide organization representing county attorneys' offices;

(K) One member representing the office of the respondent parents' counsel, as created in section 13-92-103;

(L) One member representing family law attorneys;

(M) One member representing a statewide nongovernmental organization specializing in the prevention of child maltreatment;

(N) One member from a statewide organization representing hospitals;

(O) One member from a statewide organization representing medical professionals;

(P) One member from a statewide organization representing mental health professionals;

(Q) One member from a statewide organization representing children and youth;

(R) One member from a statewide organization representing people with disabilities;

(S) Five members representing individuals with lived experience in the mandatory reporting system;

(T) One member from a statewide organization serving under-resourced communities;

(U) One member who is an academic expert on the mandatory reporting system employed at a state institution of higher education;

(V) One member representing a statewide organization serving or representing victims and survivors of domestic violence;

(W) One member representing a statewide organization serving or representing victims and survivors of sexual violence;

(X) One member representing confidential victim advocates; and

(Y) One member representing a state-licensed child care provider, as defined in section 26.5-5-303 (4).

(b) The appointing authorities shall make appointments on or before December 1, 2022. In making appointments, the appointing authorities shall select members who represent diverse geographic locations, genders, religions, socioeconomic statuses, immigration statuses, and languages. The term of the appointment is for the duration of the task force. The appointing authorities shall fill any vacancy subject to the same qualifications as the initial appointment.

(4) Each member of the task force serves without compensation. Nongovernmental members may be reimbursed for reasonable expenses incurred in the performance of their duties pursuant to this section.

(5) The child protection ombudsman or the child protection ombudsman's designee shall serve as the chair, and the task force shall select a vice-chair from among its members. The chair and the vice-chair shall serve for the duration of the task force as the chair and the vice-chair.

(6) (a) The child protection ombudsman, or the child protection ombudsman's designee, shall convene the first meeting of the task force no later than January 1, 2023. The task force shall meet at least once every other month until the task force submits its final report. The chair may call additional meetings as necessary for the task force to fulfill its duties. The task force shall establish procedures to allow members of the task force to participate in meetings remotely.

(b) The child protection ombudsman, or the child protection ombudsman's designee, shall open the meetings to the public, provide advance public notice of the meetings, and allow public comments at the meetings. The child protection ombudsman, or the child protection ombudsman's designee, shall conduct outreach and encourage community participation in the public meetings.

(7) (a) Pursuant to subsection (2) of this section, the task force, at a minimum, shall analyze:

(I) Whether a study should be conducted to determine the effectiveness of mandatory reporting in serving children and families and determine the necessary funding for a study. If the task force determines there should be a study, the study must include an analysis on whether enhanced screening techniques for accepting reports may mitigate the disproportionate impact of mandatory reporting on under-resourced communities, communities of color, and persons with disabilities.

(II) The disproportionate impact of mandatory reporting on under-resourced communities, communities of color, and persons with disabilities;

(III) Standardized training that addresses implicit bias;

(IV) Alternative processes and services for families who do not present mandatory reporters with child abuse or neglect concerns but who would benefit from alternative services;

(V) Standardized training that addresses the requirements of the law pursuant to this part 3;

(VI) The definition of "immediately" and how reporting time frames affect mandatory reporters from different professions;

(VII) Reporting time frames for mandatory reporters who are creating a safety plan for victims of domestic violence, sexual assault, or stalking to ensure the safety of the victim and the victim's family members while creating the safety plan;

(VIII) Medical child abuse and the process to report medical child abuse;

(IX) Whether mandatory reporters should report incidents observed outside of a mandatory reporter's professional capacity;

(X) Whether a mandatory reporter who is employed by, an agent of, or a contractor for an attorney who is providing legal representation is exempt from the reporting requirements described in section 19-3-304;

(XI) Mandatory reporting requirements for mandatory reporters who have knowledge or reasonable cause to know or suspect that a child or youth is the victim of dating violence or sexual assault;

(XII) A reporting process for two or more mandatory reporters to report child abuse or neglect who have joint knowledge or joint reasonable cause to make a report of child abuse or neglect;

(XIII) Whether the duty to report remains with the mandatory reporter who has reasonable cause to know or suspect that a child has been subjected to child abuse or neglect;

(XIV) Whether institutions that employ mandatory reporters may develop procedures to assist mandatory reporters in fulfilling reporting requirements, as described in section 19-3-307;

(XV) Training requirements for people applying for or renewing a professional license for a profession that is identified as a profession required to report child abuse or neglect pursuant to section 19-3-304;

(XVI) The personal information of a child, as set forth in section 19-3-307 (2), that is collected for a report;

(XVII) Standardized training regarding the county departments' process to determine which reports meet the threshold for assessment and investigation;

(XVIII) The benefits of an electronic reporting platform for the state; and

(XIX) A process for inter- and intra-agency communications, confirming receipt of reports, and, in some circumstances, sharing the outcome of reports with certain mandatory reporters.

(b) The task force may establish standing subcommittees to study the issues identified in subsection (7)(a) of this section.

(8) The task force shall analyze national best practices and consult with additional stakeholders as needed to address all additional questions necessary to finalize its findings and recommendations for mandatory reporter training requirements, reporting procedures, and creating a more equitable mandatory reporting system for under-resourced communities, communities of color, and persons with disabilities who are disproportionately impacted by mandatory reporting.

(9) On or before January 1, 2024, the task force shall submit its first-year status report, including its initial findings and recommendations on issues identified in subsection (7) of this section, to the house of representatives public and behavioral health and human services committee and the senate health and human services committee, or their successor committees; the governor; and the state department.

(10) On or before January 1, 2025, the task force shall submit its final report, including its findings and recommendations on the issues identified in subsection (7) of this section, to the house of representatives public and behavioral health and human services committee and the senate health and human services committee, or their successor committees; the governor; and the state department.

(11) This section is repealed, effective July 1, 2025.

Source: L. 2022: Entire section added and (3)(a)(VI)(Y) amended, (HB 22-1240), ch. 313, pp. 2236, 2241, §§ 2, 3, effective August 10.

19-3-304.3. Domestic abuse task force - creation - best practices and training for recognition of domestic abuse as child abuse or neglect - policies and procedures - rules. (1) (a) The state department shall create a domestic abuse task force, referred to in this section as the "task force". The task force must be formed for no more than two years. The task force shall review recommendations from the state department's domestic violence program and child welfare workgroup to develop a statutory definition for this title 19 that defines domestic abuse and recognizes the impact domestic abuse may have on the emotional and developmental well-being of a child.

(b) The membership of the task force must represent the broad cultural and socioeconomic diversity of the state, including persons with lived experiences or professional expertise. The task force may include members from the state department's domestic violence program and child welfare workgroup.

(c) The state department shall report to the health and human services committee of the senate and the public and behavioral health and human services committee of the house of representatives, or any successor committees, with the recommended definition pursuant to subsection (1)(a) of this section no later than December 2022.

(2) On or before July 1, 2023, the state department shall promulgate rules based on recommendations from the domestic violence program and child welfare workgroup regarding the best practices and training for recognition of child abuse or neglect related to domestic abuse, including, but not limited to:

(a) Creating, implementing, and updating assessment policies and procedures for child welfare caseworkers to recognize, respond, and assess child abuse or neglect related to domestic abuse while appropriately considering the role of the non-abusive caregiver and cultural considerations;

(b) Creating, implementing, and updating training materials for mandatory reporters to recognize and report child abuse or neglect related to domestic abuse;

(c) Establishing training standards to implement updated assessment policies and procedures for child welfare caseworkers to recognize and respond to child abuse or neglect related to domestic abuse while appropriately considering the role of the non-abusive caregiver and cultural considerations; and

(d) Establishing training standards to implement updated assessment policies and procedures for child welfare caseworkers to recognize and respond to child abuse or neglect related to domestic abuse while appropriately considering the role of the abusive parent and cultural considerations.

Source: L. 2021: Entire section added, (HB 21-1099), ch. 179, p. 972, § 2, effective September 7.

Cross references: For the legislative declaration in HB 21-1099, see section 1 of chapter 179, Session Laws of San Andreas 2021.

19-3-304.4. Pre-adolescent services task force - duties - report - repeal. (Repealed)

Source: L. 2022: Entire section added, (HB 22-1131), ch. 380, p. 2700, § 2, effective June 7. **L. 2023:** (1)(d)(I)(J) amended, (HB 23-1236), ch. 206, p. 1051, § 4, effective May 16.

Editor's note: (1) Subsection (2) provided for the repeal of this section, effective July 1, 2023. (See L. 2022, p. 2700.)

(2) For the amendment to subsection (1)(d)(I)(J) in SB 23-1236 in effect from May 16, 2023, until July 1, 2023, see chapter 206, Session Laws of San Andreas 2023. (See L. 2023, p. 1051.)

Cross references: For the legislative declaration in HB 22-1131, see section 1 of chapter 380, Session Laws of San Andreas 2022.

19-3-304.5. Emergency possession of certain abandoned children - definition. (1) If a parent voluntarily delivers a child to a firefighter, as defined in section 18-3-201 (1.5), or a staff member who engages in the admission, care, or treatment of patients at a hospital or community clinic emergency center, as defined in subsection (9) of this section, when the firefighter is at a fire station or the staff member is at a hospital or community clinic emergency center, as defined in subsection (9) of this section, the firefighter or staff member of the hospital or community clinic emergency center shall, without a court order, take temporary physical custody of the child if:

(a) The child is seventy-two hours old or younger; and

(b) The parent did not express an intent to return for the child.

(2) If a firefighter or staff member of a hospital or community clinic emergency center takes temporary physical custody of a child pursuant to subsection (1) of this section, the firefighter or staff member shall:

(a) Perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health or safety of the child during the temporary physical custody; and

(b) Notify a law enforcement officer and the county department of the abandonment within twenty-four hours after the abandonment.

(3) A firefighter or staff member of a hospital or community clinic emergency center shall incur no civil or criminal liability for any good faith acts or omissions performed pursuant to this section.

(4) Upon receipt of notice pursuant to subsection (2) of this section, a law enforcement officer shall take the abandoned child into temporary custody pursuant to section 19-3-401.

(4.5) Any document prepared by a firefighter, a hospital or community clinic emergency center staff member, or a law enforcement officer pursuant to this section is a dependency and neglect record and is subject to the confidentiality provisions of section 19-1-307.

(5) Each county department of human or social services shall maintain and update on a monthly basis a report of the number of children who have been abandoned pursuant to this section. Each county department of human or social services shall submit such information to the state department of human services.

(6) Notwithstanding section 24-1-136 (11)(a)(I), the state department of human services shall submit an annual report to the general assembly not later than March 1 that compiles the monthly reports, required pursuant to subsection (5) of this section, of the number of children abandoned pursuant to this section.

(7) The general assembly hereby finds, determines, and declares that a county department of human or social services shall place an abandoned child with a potential adoptive parent as soon as possible. The general assembly further declares that, as soon as lawfully possible, a county department of human or social services shall proceed with a motion to terminate the parental rights of a parent who abandons a child.

(8) A parent who utilizes the provisions of this section shall not, for that reason alone, be found to be responsible in a confirmed report of abuse or neglect.

(9) "Community clinic emergency center" means a community clinic licensed by the department of public health and environment pursuant to section 25-3-101 (2)(a)(I)(B) that:

(a) Delivers emergency services; and

(b) Provides emergency care twenty-four hours per day and seven days a week throughout the year, except if located in a rural or frontier area that does not have the demand to support twenty-four-hour service or only operates each year during a specified time period due to seasonal population influx.

Source: L. 2000: Entire section added, p. 2004, § 2, effective June 3. **L. 2002:** (4.5) added, p. 168, § 1, effective April 1. **L. 2003:** (2)(b) amended and (8) added, p. 769, § 1, effective March 25. **L. 2006:** (8) amended, p. 1493, § 24, effective June 1. **L. 2014:** IP(1) amended, (HB 14-1214), ch. 336, p. 1499, § 12, effective August 6. **L. 2017:** (6) amended, (SB 17-234), ch. 154, p. 521, § 5, effective August 9. **L. 2018:** IP(1), IP(2), (3), and (4.5) amended and (9) added, (SB 18-050), ch. 20, p. 270, § 3, effective March 7; (5) and (7) amended, (SB 18-092), ch. 38, p. 417, § 52, effective August 8. **L. 2024:** (6) amended, (SB 24-135), ch. 34, p. 107, § 5, effective March 22.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-3-305. Required report of postmortem investigation. (1) Any person who is required by section 19-3-304 to report known or suspected child abuse or neglect who has

reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to a local law enforcement agency and to the appropriate medical examiner. The local law enforcement agency and the medical examiner shall accept such report for investigation and shall report their findings to the local law enforcement agency, the district attorney, and the county department.

(2) The county department shall forward a copy of such report to the state department of human services.

Source: L. 87: Entire title R&RE, p. 765, § 1, effective October 1. **L. 2003:** (2) amended, p. 1405, § 9, effective January 1, 2004.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (2), see section 1 of chapter 196, Session Laws of San Andreas 2003.

19-3-306. Evidence of abuse - color photographs and X rays. (1) Any child health associate, person licensed to practice medicine in this state, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care, or treatment of patients, medical examiner, coroner, social worker, psychologist, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X rays of the child.

(2) Copies or duplicate originals of any color photographs which show evidence of child abuse shall be immediately forwarded to the county department or to the local law enforcement agency. Original photographs shall be made available upon the request of such department or agency. X rays which show evidence of child abuse or copies of the X-ray report, or both, shall be made available upon request to the county department or the local law enforcement agency. Any person who forwards original photographs or X rays pursuant to this section shall maintain copies or duplicate originals thereof.

Source: L. 87: Entire title R&RE, p. 766, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-307. Reporting procedures - definitions. (1) Reports of known or suspected child abuse or neglect made pursuant to this article shall be made immediately to the county department, the local law enforcement agency, or through the child abuse reporting hotline system as set forth in section 26-5-111, S.A.R.S., and shall be followed promptly by a written report prepared by those persons required to report. The county department shall submit a report

of confirmed child abuse or neglect within sixty days of receipt of the report to the state department in a manner prescribed by the state department.

(2) Reports of known or suspected child abuse or neglect made pursuant to this article 3 must include the following information whenever possible:

(a) The name, address, age, sex, and race of the child;

(b) The name and address of the person responsible for the suspected abuse or neglect;

(c) The nature and extent of the child's injuries, including any evidence of previous cases of known or suspected abuse or neglect of the child or the child's siblings;

(c.5) Any evidence of known domestic violence or intimate partner violence in the child's home, including any evidence of previous cases of known domestic violence or intimate partner violence in the child's home;

(d) The names and addresses of the persons responsible for the suspected abuse or neglect, if known;

(e) The family composition;

(f) The source of the report and the name, address, and occupation of the person making the report;

(g) Any action taken by the reporting source;

(h) Any other information that the person making the report believes may be helpful in furthering the purposes of this part 3;

(i) The military affiliation of the individual who has custody or control of the child who is the subject of the investigation of child abuse or neglect, if such individual is a member of the armed forces or a spouse, or a significant other or family member residing in the home of the member of the armed forces. This information shall be shared with the appropriate military installation authorities pursuant to the requirements set forth in sections 19-1-303 (2.6) and 19-1-307 (2)(w).

(2.5) Notwithstanding the requirements set forth in subsection (2) of this section, any officer or employee of a county, district, or municipal public health agency or state department of public health and environment who makes a report pursuant to section 25-1-122 (4)(d) or 25-4-405, S.A.R.S., shall include only the information described in said section.

(3) (a) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the county department to the district attorney's office and to the local law enforcement agency.

(b) When the county department reasonably believes a criminal act of abuse or neglect of a child in foster care has occurred, the county department shall transmit immediately a copy of the written report prepared by the county department in accordance with subsection (1) of this section to the district attorney's office and to the local law enforcement agency.

(4) A written report from persons or officials required by this part 3 to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding relating to child abuse, subject to the limitations of section 19-1-307.

(5) As used in this section, unless the context otherwise requires:

(a) "Coercion" means compelling a person by force, threat of force, or intimidation to engage in conduct from which the person has the right or privilege to abstain, or to abstain from conduct in which the person has the right or privilege to engage.

(b) "Domestic violence", commonly known as "intimate partner violence" means a pattern of violent behavior or an act, attempted act, or perceived threat of violence, stalking,

harassment, or coercion that is committed by a person against another person with whom the actor is involved or has been involved in an intimate relationship. A sexual relationship may be an indicator of an intimate relationship but is never a necessary condition for finding an intimate relationship.

Source: L. 87: Entire title R&RE, p. 766, § 1, effective October 1. **L. 90:** (4) amended, p. 1012, § 6, effective July 1. **L. 93:** (2.5) added, p. 1609, § 2, effective June 6. **L. 94:** (2.5) amended, p. 2737, § 364, effective July 1. **L. 98:** (4) amended, p. 822, § 27, effective August 5. **L. 2001:** (3) amended, p. 758, § 9, effective June 1. **L. 2003:** (1) amended, p. 1406, § 10, effective January 1, 2004. **L. 2010:** (2.5) amended, (HB 10-1422), ch. 419, p. 2075, § 36, effective August 11. **L. 2013:** (1) amended, (HB 13-1271), ch. 219, p. 1022, § 3, effective May 14. **L. 2016:** (2.5) amended, (SB 16-146), ch. 230, p. 919, § 14, effective July 1. **L. 2017:** IP(2) amended and (2)(i) added, (SB 17-028), ch. 332, p. 1784, § 4, effective August 9. **L. 2024:** (2)(c.5) and (5) added, (HB 24-1046), ch. 262, p. 1731, § 2, effective May 28.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1), see section 1 of chapter 196, Session Laws of San Andreas 2003. For the legislative declaration in HB 24-1046, see section 1 of chapter 262, Session Laws of San Andreas 2024.

19-3-308. Action upon report of intrafamilial, institutional, or third-party abuse - investigations - child protection team - rules - report. (1) (a) The county department shall respond immediately upon receipt of any report of a known or suspected incident of intrafamilial abuse or neglect to assess the abuse involved and the appropriate response to the report. The assessment must be in accordance with rules adopted by the state board of human services to determine the risk of harm to such child and the appropriate response to such risks. Appropriate responses include, but are not limited to, screening reports that do not require further investigation, providing appropriate intervention services, pursuing reports that require further investigation, and conducting immediate investigations. The immediate concern of any assessment or investigation is the protection of the child, and, where possible, the preservation of the family unit.

(b) Repealed.

(c) It shall be an appropriate response to a report of a known or suspected incident of intrafamilial abuse or neglect for a county department to require a parent or a child placement agency assisting a parent to verify that a petition for relinquishment has been filed or is imminent and to deem that a report does not require additional investigation pending finalization of the relinquishment in the following circumstance:

(I) When the report of a known or suspected incident of intrafamilial abuse or neglect involves a case in which the child tests positive at birth for either a schedule I or a schedule II controlled substance; and

(II) The parents of the child have filed or a child placement agency assisting the parents has filed a petition for relinquishment or anticipates filing a petition for relinquishment pursuant to the expedited relinquishment process described in section 19-5-103.5.

(1.5) (a) Upon referral to the county department, the county department shall assess the possibility of abuse or neglect.

(b) If, during the investigation and assessment process, the county department determines that the family's issues may be attributable to the child's mental health status, rather than dependency or neglect issues, and that mental health treatment services pursuant to section 27-67-104 may be more appropriate, the county department shall contact the mental health agency, as that term is defined in section 27-67-103 (10). Within ten days after the commencement of the investigation, the county department shall meet with a representative from the mental health agency and the family. The county department, in conjunction with the mental health agency, shall jointly determine whether mental health services should be provided pursuant to section 27-67-104 or whether the provision of services through the county department is more appropriate.

(c) On and after April 15, 2010, if a county department of human or social services that is participating in the differential response program pursuant to section 19-3-308.3 determines from an assessment performed pursuant to paragraph (a) of this subsection (1.5) that the known or suspected incident of intrafamilial abuse or neglect that was the basis for the assessment is of low or moderate risk, the county department, in lieu of performing an investigation pursuant to this section, may proceed in accordance with the provisions of section 19-3-308.3.

(2) The investigation, to the extent that it is reasonably possible, shall include:

(a) The credibility of the source or the report;

(b) The nature, extent, and cause of the abuse or neglect;

(c) The identity of the person responsible for such abuse or neglect;

(d) The names and conditions of any other children living in the same place;

(e) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;

(f) All other data deemed pertinent.

(3) (a) The investigation shall include an interview with or observance of the child who is the subject of a report of abuse or neglect. The investigation may include a visit to the child's place of residence or place of custody or wherever the child may be located, as indicated by the report. In addition, in connection with any investigation, the alleged perpetrator shall be advised as to the allegation of abuse and neglect and the circumstances surrounding such allegation and shall be afforded an opportunity to respond.

(b) If admission to the child's place of residence cannot be obtained, the juvenile court or the district court with juvenile jurisdiction, upon good cause shown, shall order the responsible person or persons to allow the interview, examination, and investigation. Should the responsible person or persons refuse to allow the interview, examination, and investigation, the juvenile court or the district court with juvenile jurisdiction shall hold an immediate proceeding to show cause why the responsible person or persons shall not be held in contempt of court and committed to jail until such time as the child is produced for the interview, examination, and investigation or until information is produced that establishes that said person or persons cannot aid in providing information about the child. Such person or persons may be held without bond. During the course of any such hearing, the responsible person or persons, or any necessary

witness, may be granted use immunity by the district attorney against the use of any statements made during such hearing in a subsequent or pending criminal action.

(4) (a) The county department, except as provided in subsections (5) and (5.3) of this section, shall be the agency responsible for the coordination of all investigations of all reports of known or suspected incidents of intrafamilial abuse or neglect. The county department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The county department shall conduct the investigation in conjunction with the local law enforcement agency, to the extent a joint investigation is possible and deemed appropriate, and any other appropriate agency. The county department may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The county department shall provide for persons to be continuously available to respond to such reports. Contiguous counties may cooperate to fulfill the requirements of this subsection (4). The county department or other agency authorized to conduct the investigation pursuant to this subsection (4), for the purpose of such investigation, shall have access to the records and reports of child abuse or neglect maintained by the state department for information under the name of the child or the suspected perpetrator.

(b) Upon the receipt of a report, if the county department reasonably believes that an incident of intrafamilial abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family and may file a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of such child. If, before the investigation is completed, the opinion of the investigators is that assistance of the local law enforcement agency is necessary for the protection of the child or other children under the same care, the local law enforcement agency shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with sections 19-3-401 (1)(a) and 19-3-405.

(c) Upon the receipt of a report, if the county department assessment concludes that a child has been a victim of intrafamilial, institutional, or third-party abuse or neglect in which he or she has been subjected to human trafficking of a minor for sexual servitude, as described in section 18-3-504, or commercial sexual exploitation of a child, it shall, when necessary and appropriate, immediately offer social services to the child who is the subject of the report and to his or her family, and it may file a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of such child. If, at any time after the commencement of an investigation, the county department has reasonable cause to suspect that the child or any other child under the same care is a victim of human trafficking, the county department shall notify the local law enforcement agency as soon as it is reasonably practicable to do so. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with sections 19-3-401 (1)(a) and 19-3-405. In instances of third-party abuse or neglect as it relates to human trafficking, a county department of human or social services may, but is not required to, interview the person alleged to be responsible for the abuse or neglect or prepare an investigative report pursuant to subsection (5.3)(a) of this section. If a county department elects to interview the third-party individual, it shall first confer with its local law enforcement agency.

(4.5) (a) The state department shall adopt rules setting forth procedures for the investigation of reports of institutional abuse. Such rules may provide for investigations to be conducted by an agency that contracts with the state and has staff trained to conduct

investigations, the county departments, or any other entity the state department deems appropriate. The procedures may include the use of a review team responsible to make recommendations to the state department concerning the procedures for investigating institutional abuse.

(a.5) (I) The state department shall adopt rules that specify that, prior to notice of an investigation being sent to the parents or legal guardians of children cared for at a child care center, as that term is defined in section 26-6-903 or 26.5-5-303, or a family child care home, as that term is defined in section 26.5-5-303, which children were not involved in the incident being investigated, the state department or the county department shall ensure that:

(A) The incident of alleged child abuse or neglect that prompted the investigation is at the level of a medium, severe, or fatal incident of abuse or neglect, as defined by rule of the state board, or involves sexual abuse;

(B) The state department or county department has made a determination as to whether notice to the parents or legal guardians of the uninvolved children is essential to the investigation of the specific allegation or is necessary for the safety of children cared for at the facility; and

(C) The state department or county department has stated in writing the basis for the determination and a state department or county department supervisor has provided written approval of the determination, which basis and approval may be in electronic form.

(II) The rules adopted pursuant to subparagraph (I) of this paragraph (a.5) shall require the notice of investigation to be sent to the parents or legal guardians within seventy-two hours after the determination described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a.5) is made.

(b) If, as a result of an investigation conducted pursuant to rules adopted in accordance with this subsection (4.5), institutional abuse is found to have occurred, the entity that conducted such investigation may:

(I) If the institutional abuse is the result of a single act or occurrence at the facility, request that the owner, operator, or administrator of the facility formulate a plan of remedial action. Such request shall be made within a period established by the state department. Within thirty days of the agency's request, the owner, operator, or administrator of the facility shall notify the agency, in writing, of a plan for remedial action. Within ninety days of the request, the owner, operator, or administrator shall complete the plan for remedial action.

(II) If the institutional abuse is one of several similar incidents that have occurred at the facility, request that the owner, operator, or administrator of the facility make administrative, personnel, or structural changes at the facility. Such request shall be made within a period established by the state department. Within thirty days of such request, the owner, operator, or administrator of the facility shall notify the agency of the progress in complying with the request. The agency and the owner, operator, or administrator shall establish the period in which the requested changes shall be completed.

(III) If an owner, operator, or administrator of a facility does not formulate or implement a plan for remedial action in accordance with subparagraph (I) of this paragraph (b) or make requested changes in accordance with subparagraph (II) of this paragraph (b), recommend to the entity that licenses, oversees, certifies, or authorizes the operation of the facility that appropriate sanctions or actions be imposed against the facility.

(c) A teacher, employee, volunteer, or staff person of an institution who is alleged to have committed an act of child abuse shall be temporarily suspended from his position at the

institution with pay, or reassigned to other duties which would remove the risk of harm to the child victim or other children under such person's custody or control, if there is reasonable cause to believe that the life or health of the victim or other children at the institution is in imminent danger due to continued contact between the alleged perpetrator and a child at the institution. A public employee suspended pursuant to this paragraph (c) shall be accorded and may exercise due process rights, including notice of the proposed suspension and an opportunity to be heard, and any other due process rights provided under the laws of this state governing public employment and under any applicable individual or group contractual agreement. A private employee suspended pursuant to this subsection (4.5) shall be accorded and may exercise due process rights provided for under the laws of this state governing private employment and under any applicable individual or group employee contractual agreement.

(d) Nothing in this subsection (4.5) shall be construed to abrogate or limit any other enforcement action provided by law.

(5) If a local law enforcement agency receives a report of a known or suspected incident of intrafamilial abuse or neglect, it shall forthwith attempt to contact the county department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the county department, it shall forthwith make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care. As a part of an investigation pursuant to this subsection (5), the local law enforcement agency shall have access to the records and reports of child abuse or neglect maintained by the state department for information under the name of the child or the suspected perpetrator. The local law enforcement agency, upon the receipt of a report and upon completion of any investigation it may undertake, shall forthwith forward a summary of the investigatory data plus all relevant documents to the county department.

(5.3) (a) Local law enforcement agencies have the responsibility for the coordination and investigation of all reports of third-party abuse or neglect by persons ten years of age or older. Upon receipt of a report, if the local law enforcement agency reasonably believes that the protection and safety of a child is at risk due to an act or omission on the part of persons responsible for the child's care, such agency shall notify the county department of human or social services for an assessment regarding neglect or dependency. In addition, the local law enforcement agency shall refer to the county department of human or social services any report of third-party abuse or neglect in which the person allegedly responsible for such abuse or neglect is under age ten. Upon the completion of an investigation, the local law enforcement agency shall forward a copy of its investigative report to the county department of human or social services. The county department shall review the law enforcement investigative report and shall determine whether the report contains information that constitutes a case of confirmed child abuse and requires it to be submitted to the state department, which report, upon such determination, shall be submitted to the state department in the manner prescribed by the state department within sixty days after the receipt of the report by the county department.

(b) If, before an investigation is completed, the local law enforcement agency determines that social services are necessary for the child and, if applicable, the child's family or that assistance from the county department of human or social services is otherwise required, the agency may request said services or assistance from the county department. The county department shall immediately respond to a law enforcement agency's request for services or assistance in a manner deemed appropriate by the county department.

(c) When the investigation involves a suspected perpetrator who was acting in his official capacity as an employee of a school district, the local law enforcement agency shall coordinate such investigation with any concurrent abuse investigation being conducted by the department of education or the school district to the extent such coordination is possible and deemed appropriate.

(5.5) Upon the receipt of a report, if the county department reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the local law enforcement agency responsible for investigation of violations of criminal child abuse laws. The local law enforcement agency may conduct an investigation to determine if a violation of any criminal child abuse law has occurred. It is the general assembly's intent that, in each county of the state, law enforcement agencies and the respective county departments of human or social services develop and implement cooperative agreements to coordinate duties of both agencies in connection with the investigation of all child abuse or neglect cases and that the focus of such agreements is to ensure the best protection for the child. The agreements must provide for special requests by one agency for assistance from the other agency and for joint investigations by both agencies.

(5.7) Upon initial investigation of a report alleging abuse or neglect in which the suspected perpetrator was acting in his official capacity as an employee of a school district, if the county department or the local law enforcement agency reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the superintendent of the school district who shall consider such report to be confidential information; except that the superintendent shall notify the department of education of such investigation.

(6) (a) It is the intent of the general assembly to encourage the creation of one or more child protection teams in each county or contiguous group of counties. The creation of a child protection team in any given county is left to the discretion of the county director or the directors of a contiguous group of counties. If a county director or the directors of a contiguous group of counties decides to form a child protection team, the child protection team may be consolidated with other local advisory boards pursuant to section 24-1.7-103. If a child protection team is formed pursuant to this section in a county or contiguous group of counties, the director or directors of the county department or departments of human or social services may, at their discretion, implement the provisions of this section.

(b) If a child protection team is established pursuant to subsection (6)(a) of this section, it may review an assessment or the investigatory reports of a case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

(c) At each meeting, each member of a child protection team established pursuant to subsection (6)(a) of this section may be provided with the investigatory reports on each assessment or case being considered.

(d) and (e) (Deleted by amendment, L. 91, p. 223, § 4, effective May 24, 1991.)

(f) Immediately after any executive session at which a child abuse or neglect case is discussed, a child protection team established pursuant to subsection (6)(a) of this section shall publicly review the responses of public and private agencies to each reported incident of child abuse or neglect, publicly state whether the responses were timely, adequate, and in compliance with the provisions of this part 3, and publicly report nonidentifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.

(g) After this mandatory public discussion of agency responses, a child protection team established pursuant to subsection (6)(a) of this section shall go into executive session upon the vote of a majority of the child protection team members to consider identifying details of the case being discussed; discuss confidential reports, including but not limited to the reports of physicians, including psychiatrists; or, when the members of the child protection team desire, act as an advisory body concerning the details of treatment or evaluation programs. The child protection team shall state publicly, before going into executive session, its reasons for doing so. Any recommendation based on information presented in the executive session shall be discussed and formulated at the immediately succeeding public session of the child protection team, without publicly revealing identifying details of the case.

(h) At the next regularly scheduled meeting of a child protection team established pursuant to subsection (6)(a) of this section, or at the earliest possible time, the child protection team shall publicly report whether there were any lapses and inadequacies in the child protection system and if they have been corrected.

(i) A child protection team established pursuant to subsection (6)(a) of this section may make a report of its recommendations to the county department with suggestions for further action or stating that the child protection team has no recommendations or suggestions. Contiguous counties may cooperate in meeting the requirements of this subsection (6).

(7) If a county or group of contiguous counties decides to establish a child protection team pursuant to subsection (6)(a) of this section, each member of the child protection team is appointed by the agency he or she represents, and each child protection team member serves at the pleasure of his or her appointing agency; except that the county director may appoint the representatives of the lay community, including the representatives of any ethnic, racial, or linguistic minority, as well as persons with disabilities, and may actively recruit all interested individuals and consider their applications for appointment as lay-community representatives on the team.

(8) The county director or his or her designee is the local coordinator of the child protection team, if one is established pursuant to subsection (6)(a) of this section.

(9) Repealed.

(10) In the event that the local department initiates a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of the child who is the subject of a report, the department shall notify, in writing, the guardian ad litem or counsel for youth appointed by the court pursuant to section 19-3-312 to represent the child's interest. Such notice must include:

(a) The reason for initiating the petition;

(b) Suggestions as to the optimum disposition of this particular case; and

(c) Suggested therapeutic treatment and social services available within the community for the subject child and the responsible person.

(11) Upon a finding that a report contains information that constitutes a case of confirmed child abuse or neglect that requires it to be submitted to the state department, the person who is found to be responsible for the abuse or neglect of a child in the confirmed report shall be given timely notice of this finding and of the right to appeal pursuant to rules established by the state board pursuant to section 19-3-313.5 (3).

(12) The state department shall include a summary and description of work of child protection teams that were implemented pursuant to this section in its annual presentation to the legislative committees during the committees' hearings held prior to the 2017 regular session

under the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act", part 2 of article 7 of title 2.

(13) Upon the receipt of a report of intrafamilial abuse or neglect or human trafficking, or a report that a family may be eligible for foster care prevention services, as defined in section 26-5.4-102 (1), the county department may provide foster care prevention services for a child and the parents or kin caregivers of the child when the needs of the child are directly related to the safety, permanent placement, or well-being of the child or to prevent the child from entering the foster care system.

Source: L. 87: Entire title R&RE, p. 767, § 1, effective October 1. **L. 88:** (5.5) added, p. 744, § 13, effective July 1. **L. 90:** (4)(a) amended and (5.7) added, p. 1023, § 2, effective July 1. **L. 91:** (1), (3)(a), (4), (5), (5.5), (6), (9), and (10) amended and (4.5) and (5.3) added, p. 223, § 4, effective May 24; (4)(b) amended, p. 1912, § 22, effective June 1. **L. 93:** (1)(b) amended, p. 1169, § 1, effective June 3; (1)(a) amended, p. 1169, § 1, effective January 1, 1994. **L. 96:** (4)(a) amended, p. 84, § 9, effective March 20. **L. 97:** (2) amended, p. 1438, § 12, effective July 1; (6)(a) amended, p. 1191, § 15, effective July 1. **L. 99:** (1.5) added, p. 1076, § 2, effective May 29. **L. 2001:** (5.3)(a) amended, p. 854, § 2, effective July 1. **L. 2003:** (4)(a), (5), and (5.3)(a) amended and (11) added, p. 1406, § 11, effective January 1, 2004. **L. 2004:** (4.5)(a.5) added, p. 1758, § 1, effective June 4; (1)(b) repealed, p. 194, § 9, effective August 4. **L. 2005:** (1)(c) added, p. 588, § 3, effective July 1. **L. 2010:** (1.5)(c) added, (HB 10-1226), ch. 129, p. 425, § 2, effective April 15; (1.5)(b) amended, (SB 10-175), ch. 188, p. 791, § 42, effective April 29. **L. 2015:** (1.5)(c) amended, (HB 15-1358), ch. 193, p. 641, § 2, effective May 14. **L. 2016:** IP(4.5)(a.5)(I) amended, (SB 16-189), ch. 210, p. 760, § 31, effective June 6; (4)(c) added, (HB 16-1224), ch. 101, p. 290, § 2, effective January 1, 2017. **L. 2017:** (6), (7), and (8) amended, (9) repealed, and (12) added, (SB 17-016), ch. 107, p. 389, § 2, effective August 9. **L. 2018:** (1.5)(b) amended, (HB 18-1094), ch. 343, p. 2044, § 9, effective June 30; (4)(c), (5.3)(a), (5.3)(b), and (5.5) amended, (SB 18-092), ch. 38, p. 418, § 53, effective August 8. **L. 2019:** (13) added, (HB 19-1308), ch. 256, p. 2460, § 6, effective August 2. **L. 2022:** IP(4.5)(a.5)(I) amended, (HB 22-1295), ch. 123, p. 835, § 38, effective July 1; IP(10) amended, (HB 22-1038), ch. 92, p. 442, § 25, effective January 9, 2023. **L. 2024:** (1)(a) amended, (HB 24-1222), ch. 155, p. 688, § 8, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (4) in House Bill 91-1002 and Senate Bill 91-243 were harmonized.

Cross references: For the legislative declaration contained in the 2003 act amending subsections (4)(a), (5), and (5.3)(a) and enacting subsection (11) see section 1 of chapter 196, Session Laws of San Andreas 2003. For the legislative declaration in the 2010 act adding subsection (1.5)(c), see section 1 of chapter 129, Session Laws of San Andreas 2010. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-3-308.3. Differential response program for child abuse or neglect cases of low or moderate risk - rules - evaluation. (1) (a) There is created the differential response program, referred to in this section as the "program". The program will allow county departments of human or social services that choose to participate to address known or suspected incidents of intrafamilial abuse or neglect that have been assessed as low or moderate risk, pursuant to rule of the state board. The executive director of the state department shall approve any county department of human or social services that chooses to participate in the program, referred to in this section as a "participating county department".

(b) The state department is authorized to solicit, accept, and expend gifts, grants, and donations for the implementation and administration of the program.

(2) Participation in the program by families who are referred to the program is voluntary.

(3) For each family referred to the program, neither the state department nor a county department of human or social services is required to make a finding concerning the alleged intrafamilial abuse or neglect in the family.

(4) The state department and the participating county departments shall administer the program in accordance with rules promulgated by the state board pursuant to subsection (6) of this section.

(5) To the extent permitted by law and by any rules promulgated by the state board pursuant to subsection (6) of this section, the participating county departments, in administering the program, shall cooperate with local community service organizations in addressing known or suspected incidents of intrafamilial abuse or neglect.

(6) The state board shall promulgate rules to define and implement differential response and for the administration of the program.

(7) to (9) (Deleted by amendment, L. 2015.)

Source: L. 2010: Entire section added, (HB 10-1226), ch. 129, p. 425, § 3, effective April 15. **L. 2012:** (1)(a), (6), and (7) amended, (SB 12-011), ch. 55, p. 202, § 1, effective March 24. **L. 2015:** Entire section amended, (HB 15-1358), ch. 193, p. 640, § 1, effective May 14.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 129, Session Laws of San Andreas 2010.

19-3-308.5. Recorded interviews of child. (1) Any interview of a child conducted pursuant to section 19-3-308, concerning a report of child abuse, may be audiotaped or videotaped. However, interviews concerning reports of sexual child abuse are strongly encouraged to be videotaped. A competent interviewer at a child advocacy center, as that term is defined in section 19-1-103, that has a memorandum of understanding with the agency responsible for the investigation or a competent interviewer for the agency responsible for the investigation in accordance with such section shall conduct an audiotaped or videotaped interview; except that an interview must not be videotaped when doing so is impracticable under the circumstances or will result in trauma to the child, as determined by the investigating agency. No more than one videotaped interview is required unless the interviewer or the investigating agency determines that additional interviews are necessary to complete an investigation. The same interviewer shall conduct additional interviews, to the extent possible. The recordings must be preserved as evidence in the manner and for a period provided by law for maintaining such

evidence. In addition, access to the recordings is subject to the rules of discovery under the San Andreas rules of criminal and civil procedure.

(2) The provisions of this section shall not apply to a videotaped deposition taken in accordance with and governed by section 18-3-413, S.A.R.S., or section 13-25-132, S.A.R.S., and rule 15 (d) of the San Andreas rules of criminal procedure. In addition, this section shall not apply to interviews of the child conducted after a dependency and neglect action or a criminal action has been filed with the court.

(3) Any agency subject to the provisions of this section shall provide equipment necessary to videotape or audiotape the interviews or shall enter into a memorandum of understanding with a child advocacy center authorizing the use of such equipment. The investigating agency shall train persons responsible for conducting videotaped interviews in accordance with this section; except that the agency shall not be responsible for training interviewers employed by a child advocacy center. The agency shall adopt standards for persons conducting such interviews.

(4) An agency that enters into a memorandum of understanding with a child advocacy center that employs interviewers shall assure that such interviewers meet the training standards for persons conducting interviews adopted by the agency pursuant to subsection (3) of this section. In addition, an agency that enters into a memorandum of understanding with a child advocacy center that provides technical assistance for forensic interviews, forensic medical examinations, or evidence collection or preservation may require that the child advocacy center meets the national performance standards for children's advocacy centers as established by the national accrediting body. These standards include, but are not limited to, standards for forensic interviews to be conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing.

Source: L. 91: Entire section added, p. 229, § 5, effective May 24. **L. 93:** Entire section amended, p. 1169, § 2, effective January 1, 1994. **L. 2004:** (1)(a) and (1)(e) amended and (1)(f) added, p. 806, § 1, effective May 21; (1)(e)(II) repealed, p. 194, § 10, effective August 4. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 760, § 32, effective June 6. **L. 2021:** (1) amended, (SB 21-059), ch. 136, p. 731, § 74, effective October 1.

Editor's note: Amendments to subsection (1)(e) by House Bill 04-1061 and Senate Bill 04-067 were harmonized.

19-3-309. Immunity from liability - persons reporting. Any person, other than the perpetrator, complicitor, coconspirator, or accessory, participating in good faith in the making of a report, in the facilitation of the investigation of such a report, or in a judicial proceeding held pursuant to this title, the taking of photographs or X rays, or the placing in temporary protective custody of a child pursuant to section 19-3-405 or otherwise performing his duties or acting pursuant to this part 3 shall be immune from any liability, civil or criminal, or termination of employment that otherwise might result by reason of such acts of participation, unless a court of competent jurisdiction determines that such person's behavior was willful, wanton, and malicious. For the purpose of any proceedings, civil or criminal, the good faith of any such person reporting child abuse, any such person taking photographs or X rays, and any such person who has legal authority to place a child in protective custody shall be presumed.

Source: L. 87: Entire title R&RE, p. 770, § 1, effective October 1. **L. 89:** Entire section amended, p. 916, § 7, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-309.5. Preconfirmation safety plan agreement - first-time minor incidents of child abuse or neglect - rules. (1) The county department and any person who is believed to be responsible for the abuse or neglect of a child as a result of an investigation of a report of child abuse or neglect pursuant to section 19-3-308 may agree to defer the filing of a confirmed report of child abuse or neglect with the state department as required by section 19-3-307 and enter into a safety plan agreement when the following circumstances exist:

(a) The person who is believed to be responsible for the child abuse or neglect has had no previous allegation of child abuse or neglect investigated;

(b) The child abuse or neglect that the person is believed to be responsible for is at the level of a minor incident of abuse or neglect, as defined by rule of the state board;

(c) The person who is believed to be responsible for the minor incident of child abuse or neglect and the county department decide on a mutually agreeable method for resolving the issues related to the report; and

(d) The requirements set forth in the safety plan agreement for resolving the issues related to the report can be completed within sixty days after the report of child abuse or neglect is made to the county department or the local law enforcement agency.

(2) (a) If a person who is believed to be responsible for the child abuse or neglect completes the mutually agreed upon safety plan agreement entered into pursuant to subsection (1) of this section, then the county department shall release him or her from the terms of the agreement and shall not file a confirmed report of child abuse or neglect related to the incident with the state department.

(b) If a person who is believed to be responsible for the child abuse or neglect does not complete the mutually agreed upon safety plan agreement entered into pursuant to subsection (1) of this section, as determined by the county department, then the county department shall file a confirmed report of child abuse or neglect with the state department.

(c) Nothing in this section shall be construed to eliminate a county department's obligation to report to the state department that there was an investigation of a report of abuse or neglect of a child and to further report the county department's assessment of risk, the county department's decision regarding a referral of the matter to child welfare services, and any county department decision to defer the filing of a confirmed report of child abuse or neglect pursuant to this section.

(3) Participation in a safety plan agreement by any county department and by any person who is believed to be responsible for child abuse or neglect shall be at the discretion of the person believed to be responsible for the child abuse or neglect. Nothing in this section shall be construed to confer a right upon a person who is believed to be responsible for the abuse or neglect of a child to enter into a safety plan agreement or to require a county department to enter into a safety plan agreement with a person who is believed to be responsible for the abuse or neglect of a child.

(4) Nothing in this section shall be construed to obligate a county department to expend moneys to provide services to persons for the purpose of entering into a safety plan agreement pursuant to this section.

(5) For purposes of this section, "safety plan agreement" means an agreement between the county department and the person who is believed to be responsible for the abuse or neglect of a child, developed pursuant to this section after a safety assessment is completed by the county department that identifies conditions that will endanger the child, in order to fully address all obvious safety concerns identified in the safety assessment.

(6) The state board shall promulgate rules to implement this section.

(7) An agreement to enter into a safety plan agreement pursuant to this section shall not negate a person's right to appeal a later finding of child abuse or neglect.

Source: L. 2004: Entire section added, p. 580, § 1, effective July 1.

19-3-310. Child abuse and child neglect diversion program. (1) The district attorney, upon recommendation of the county department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a nonjudicial source of treatment or assistance, upon conditions set forth by the county department and the district attorney. If a person is so diverted from the criminal justice system, the district attorney shall not file charges in connection with the case if the person participates to the satisfaction of the county department and the district attorney in the diversion program offered.

(2) The initial diversion shall be for a period not to exceed two years. This diversion period may be extended for one additional one-year period by the district attorney if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the district attorney and the county department.

(3) If the person diverted successfully completes the diversion program to the satisfaction of the county department and the district attorney, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

(4) Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-310.5. Mediation - pilot program. (Repealed)

Source: L. 94: Entire section added, p. 1742, § 1, effective July 1. **L. 95:** (5) amended, p. 516, § 10, effective July 1. **L. 98:** (10) repealed, p. 732, § 23, effective May 18.

Editor's note: Subsection (11) provided for the repeal of this section, effective July 1, 1999. (See L. 94, p. 1742.)

19-3-311. Evidence not privileged. (1) The incident of privileged communication between patient and physician, between patient and registered professional nurse, or between any person licensed pursuant to article 245 of title 12, or certified or licensed school psychologist and client, which is the basis for a report pursuant to section 19-3-304, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3. In addition, privileged communication shall not apply to any discussion of any future misconduct or of any other past misconduct that could be the basis for any other report under section 19-3-304.

(2) The privileged communication between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this part 3.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 89:** Entire section amended, p. 699, § 6, effective June 7. **L. 90:** Entire section amended, p. 1024, § 3, effective July 1. **L. 2008:** (1) amended, p. 1893, § 65, effective August 5. **L. 2019:** (1) amended, (HB 19-1172), ch. 136, p. 1682, § 113, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-10-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-312. Court proceedings. (1) The county department or local law enforcement agency receiving a report under section 19-3-304 or 19-3-305, in addition to taking such immediate steps pursuant to sections 19-3-401 and 19-3-308 (4) as may be required to protect a child, shall inform, within seventy-two hours, the appropriate juvenile court or district court with juvenile jurisdiction that the child appears to be within the court's jurisdiction. Upon receipt of such information, the court shall make an immediate investigation to determine whether protection of the child from further abuse is required and, upon such determination, may authorize the filing of a petition, as provided for in section 19-3-501 (2).

(2) In any proceeding initiated pursuant to this section, the court shall name as respondents all persons alleged by the petition to have caused or permitted the abuse or neglect alleged in the petition. In every such case, the responsible person shall be named as respondent. Summonses shall be issued for all named respondents in accordance with section 19-3-503.

(3) Repealed.

(4) If a report under section 19-3-304 or 19-3-305 is based solely on an allegation of emotional abuse as defined in section 19-1-103 (1)(a), if requested by any party to the proceeding or upon its own motion, the court shall order a report to be prepared by an independent mental health-care provider. The independent mental health-care provider shall interview the child and the alleged perpetrator of the abuse. The costs of the report shall be split equally between the county and the party requesting the report, unless the court finds that paying such costs would cause a hardship to the party.

(5) If a petition is filed alleging that a child is neglected or dependent based upon section 19-3-102 (2), the county department shall engage in concurrent planning to expedite the permanency planning process for the child who is the subject of such petition.

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 97:** (4) and (5) added, p. 1439, § 13, effective July 1. **L. 2014:** (3) repealed, (SB 14-203), ch. 281, p. 1142, § 3, effective August 6.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-313. Central registry. (Repealed)

Source: L. 87: Entire title R&RE, p. 771, § 1, effective October 1. **L. 91:** (3) to (7) amended and (14) added, p. 230, § 6, effective May 24. **L. 96:** (14) amended, p. 1586, § 12, effective July 1; (4), (5), and (7) amended and (5.5) added, p. 1287, § 2, effective January 1, 1997; (6)(b), (7)(b)(III), and (14) amended, p. 1173, § 9, effective January 1, 1997. **L. 99:** (5.5)(a) and (5.5)(b)(I) amended and (5.5)(b)(III) added, p. 1026, § 11, effective May 29; (5.5)(a) and (5.5)(b)(I) amended and (5.5)(b)(III) added, p. 1207, § 11, effective June 2. **L. 2000:** (1), (2)(e), (5), (5.5)(c), (7)(c)(I)(A), (7)(c)(I)(B), and (7)(c)(II) amended and (2)(f) and (7)(d) added, pp. 1720, 1721, §§ 1, 2, 3, effective June 1. **L. 2001:** (7)(b)(I), (7)(c), and (7)(d) amended and (7)(e) added, p. 854, § 3, effective July 1. **L. 2002:** (10) amended, p. 1527, § 232, effective October 1. **L. 2003:** (8) amended, p. 1622, § 37, effective August 6; entire section repealed, p. 1398, § 2, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act repealing this section, see section 1 of chapter 196, Session Laws of San Andreas 2003.

19-3-313.5. State department duties - reports of child abuse or neglect - training of county departments - rules - notice and appeal process - confidentiality. (1) **Legislative declaration.** As a result of the report of the state auditor evaluating the performance of the state central registry of child protection released in November of 2001 and the subsequent repeal of the state central registry of child protection, the general assembly hereby finds and declares that it is in the best interests of the children and the citizens of the state of San Andreas for the state department to modify the processing of records and reports of child abuse or neglect. These modifications are intended to ensure that the state department is able to provide reliable, accurate, and timely information concerning records and reports of child abuse or neglect. In addition, these modifications are intended to ensure compliance with federal law regarding the prompt expungement of any records or reports that are used for purposes of employment checks or other background checks in cases determined to be unsubstantiated or false, while allowing the state department to maintain such records and reports in case files for the purpose of assisting in determinations of future risk and safety assessments. Finally, these modifications are intended to ensure that the state department's procedural systems related to records and reports of child abuse or neglect provide adequate protection to the children and the citizens of the state of San Andreas.

(2) **Training of county departments.** On or before January 1, 2004, the state department shall modify the training provided to county departments to achieve consistency and standardization in the performance of the following duties:

(a) Investigating reports of child abuse or neglect;

(b) Reporting confirmed incidents of child abuse or neglect to the state department;

(c) Preparing documents related to records and reports of child abuse or neglect;

(d) Entering data into computer systems maintaining information related to records and reports of child abuse or neglect; and

(e) Maintaining confidentiality in accordance with federal and state law.

(3) **Notice and appeals process - rules.** On or before January 1, 2004, the state board, in consideration of input and recommendations from the county departments, shall promulgate rules to establish a process at the state level by which a person who is found to be responsible in a confirmed report of child abuse or neglect filed with the state department pursuant to section 19-3-307 may appeal the finding of a confirmed report of child abuse or neglect to the state department. At a minimum, the rules established pursuant to this subsection (3) must address the following matters, consistent with federal law:

(a) The provision of adequate and timely written notice by the county departments of human or social services or, for an investigation pursuant to section 19-3-308 (4.5), by the agency that contracts with the state, using a form created by the state department, to a person found to be responsible in a confirmed report of child abuse or neglect of the person's right to appeal the finding of a confirmed report of child abuse or neglect to the state department;

(b) The timeline and method for appealing the finding of a confirmed report of child abuse or neglect;

(c) Designation of the entity, which entity must be one other than a county department of human or social services, with the authority to accept and respond to an appeal by a person found to be responsible in a confirmed report of child abuse or neglect at each stage of the appellate process;

(d) The legal standards involved in the appellate process and a designation of the party who bears the burden of establishing that each standard is met;

(e) The confidentiality requirements of the appeals process; and

(f) Provisions requiring, and procedures in place that facilitate, the prompt expungement of and prevent the release of any information contained in any records and reports that are accessible to the general public or are used for purposes of employment or background checks in cases determined to be unsubstantiated or false; except that the state department and the county departments of human or social services may maintain information concerning unsubstantiated reports in casework files to assist in future risk and safety assessments.

(4) **Confidentiality - rules.** On or before January 1, 2004, the state board shall promulgate rules to establish guidelines for the release of information contained in records and reports of child abuse or neglect for screening purposes to assure compliance with sections 19-1-303 and 19-1-307 and any other state or federal law relating to confidentiality of records and reports of child abuse or neglect. Rules promulgated by the state board shall address the following:

(a) How a request for information is to be processed;

(b) Who may be granted access to information;

(c) What information in the records and reports is to be made available to the person or entity granted access;

(d) The purposes for which information contained in the records and reports may be made available to the person or entity granted access; and

(e) The consequences of improper release of information related to records and reports of child abuse or neglect.

Source: L. 2003: Entire section added, p. 1398, § 3, effective January 1, 2004. **L. 2018:** IP(3), (3)(a), (3)(c), and (3)(f) amended, (SB 18-092), ch. 38, p. 419, § 54, effective August 8.

Cross references: For the legislative declaration contained in the 2003 act enacting this section, see section 1 of chapter 196, Session Laws of San Andreas 2003. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-3-314. Confidentiality of records. (Repealed)

Source: L. 87: Entire title R&RE, p. 773, § 1, effective October 1. **L. 90:** (2)(j) and (2)(k)(I) amended, p. 1392, § 8, effective May 4; entire section repealed, p. 1012, § 8, effective July 1.

Editor's note: Subsections (2)(j) and (2)(k)(I) were amended in House Bill 90-1075. Those amendments were superseded by the repeal of the entire section in Senate Bill 90-61. Identical provisions were located in section 19-1-120 (2)(j) and (2)(k) until it was repealed in 1994. These provisions are now located in section 19-1-307 (2)(j) and (2)(k).

19-3-315. Federal funds. The department of human services is authorized to accept federal funds such as child abuse and neglect state grants which are available for the implementation of programs which would further the purposes of this part 3.

Source: L. 87: Entire title R&RE, p. 775, § 1, effective October 1. **L. 94:** Entire section amended, p. 2683, § 200, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-10-117 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-316. Protection orders and emergency protection orders. (Repealed)

Source: L. 88: Entire section added, p. 744, § 14, effective July 1. **L. 94:** (1)(a), (2)(b), (2)(f), and (3) amended and (5) added, p. 2015, § 10, effective January 1, 1995. **L. 2002:** (1)(d) amended, p. 1144, § 2, effective July 1. **L. 2003:** (1)(a) and (5) amended, p. 1015, § 25, effective July 1. **L. 2004:** Entire section repealed, p. 554, § 5, effective July 1.

19-3-317. Screening tool - human trafficking. On and after January 1, 2017, pursuant to the federal "Preventing Sex Trafficking and Strengthening Families Act", Pub.L. 113-183, the department and each county department, as defined in section 19-1-103, shall implement a uniform screening tool that includes questions that are intended to identify children who are victims of human trafficking of a minor for sexual servitude, as described in section 18-3-504, or commercial sexual exploitation of a child, or who are at risk of being such victims.

Source: L. 2016: Entire section added, (HB 16-1224), ch. 101, p. 291, § 3, effective January 1, 2017. **L. 2021:** Entire section amended, (SB 21-059), ch. 136, p. 731, § 75, effective October 1.

19-3-318. Study of child welfare caseworker resiliency programs - creation - membership - report - repeal. (Repealed)

Source: L. 2017: Entire section added, (HB 17-1283), ch. 227, p. 881, § 2, effective May 22.

Editor's note: Subsection (6) provided for repeal of this section, effective September 1, 2018. (See L. 2017, p. 881.)

PART 4

TEMPORARY CUSTODY AND SHELTER

19-3-401. Taking children into custody. (1) A child may be taken into temporary custody by a law enforcement officer without order of the court:

(a) When the child is abandoned, lost, or seriously endangered in such child's surroundings or seriously endangers others and immediate removal appears to be necessary for such child's protection or the protection of others;

(b) When there are reasonable grounds to believe that such child has run away or escaped from such child's parents, guardian, or legal custodian and the child's parents, guardian, or legal custodian has not made a report to a law enforcement agency that the child has run away from home; or

(c) When an arrest warrant has been issued for such child's parent or guardian on the basis of an alleged violation of section 18-3-304, S.A.R.S. No child taken into temporary custody pursuant to this paragraph (c) shall be placed in detention or jail.

(1.3) A child shall be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe the child has run away from the child's parents, guardian, or legal custodian and the child's parents, guardian, or legal custodian has made a report to a law enforcement agency that the child has run away from home.

(1.5) An emergency exists and a child is seriously endangered as described in paragraph (a) of subsection (1) of this section whenever the safety or well-being of a child is immediately at issue and there is no other reasonable way to protect the child without removing the child from the child's home. If such an emergency exists, a child shall be removed from such child's home and placed in protective custody regardless of whether reasonable efforts to preserve the family have been made.

(2) The taking of a child into temporary custody under this section shall not be deemed an arrest, nor shall it constitute a police record.

(3) (a) Notwithstanding subsections (1) and (1.5) of this section and except as otherwise provided in subsections (3)(b) and (3)(c) of this section, a newborn child, as defined in section 19-1-103, who is not in a hospital setting must not be taken into temporary protective custody for a period of longer than twenty-four hours without an order of the court made pursuant to section

19-3-405 (1). The order must include findings that an emergency situation exists and that the newborn child is seriously endangered as described in subsection (1)(a) of this section.

(b) A newborn child, as defined in section 19-1-103, who is in a hospital setting must not be taken into temporary protective custody without an order of the court made pursuant to section 19-3-405 (1). The order must include findings that an emergency situation exists and that the newborn child is seriously endangered as described in subsection (1)(a) of this section. A newborn child may be detained in a hospital by a law enforcement officer upon the recommendation of a county department or by a physician, registered nurse, licensed practical nurse, or physician assistant while an order of the court pursuant to section 19-3-405 (1) is being pursued, but the newborn child must be released if a court order pursuant to section 19-3-405 (1) is denied.

(c) The court orders required by subsections (3)(a) and (3)(b) of this section are not required in the following circumstances:

(I) When a newborn child is identified by a physician, registered nurse, licensed practical nurse, or physician assistant engaged in the admission, care, or treatment of patients as being affected by substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure;

(II) When the newborn child's only identifiable birth parent has been determined by a physician, registered nurse, or qualified mental health professional to meet the criteria specified in section 27-65-106 for custody, treatment, and evaluation of a mental health disorder or grave disability;

(III) When both of the newborn child's birth parents have been determined by a physician, registered nurse, or qualified mental health professional to meet the criteria specified in section 27-65-106 for custody, treatment, and evaluation of a mental health disorder or grave disability; or

(IV) When the newborn child is subject to an environment exposing the newborn child to a laboratory for manufacturing controlled substances as defined in section 18-18-102 (5), S.A.R.S.

(d) At the time a law enforcement officer takes a newborn child into temporary protective custody, the law enforcement officer shall provide the notices required by sections 19-3-402 and 19-3-212 directly to the newborn child's identifiable birth parent or parents in both verbal and written form. Such notices may be provided to the child's identifiable birth parent or parents in a language that the birth parent or parents understand, and the law enforcement officer may designate another person to assist him or her in providing such written and verbal notices to fulfill this requirement, if necessary.

(e) If a newborn child is taken into temporary protective custody pursuant to this subsection (3), the county department may contact the child's identifiable birth parent or parents to obtain the names of any relatives or other persons in the parent's or parents' community who may be appropriate, capable, and willing to care for the newborn child prior to the hearing required by section 19-3-403. In addition, if the identifiable parent or parents are not citizens of the United States, the county department may request the parent's or parents' consent to notify the parent's or parents' government of origin of the situation and, if consent is given, may contact the parent's or parents' government of origin.

Source: L. 87: Entire title R&RE, p. 775, § 1, effective October 1. **L. 93:** Entire section amended, p. 1016, § 5, effective July 1. **L. 2004:** (3) added, p. 429, § 2, effective July 1. **L. 2006:** (1)(b) amended and (1.3) added, p. 337, § 1, effective April 5. **L. 2010:** (3)(c)(II) and (3)(c)(III) amended, (SB 10-175), ch. 188, p. 791, § 43, effective April 29. **L. 2016:** (3)(b) and (3)(c)(I) amended, (SB 16-158), ch. 204, p. 727, § 16, effective August 10. **L. 2017:** IP(3)(c), (3)(c)(II), and (3)(c)(III) amended, (SB 17-242), ch. 263, p. 1314, § 161, effective May 25. **L. 2018:** (3)(b) amended, (SB 18-092), ch. 38, p. 420, § 55, effective August 8. **L. 2021:** (3)(a) and (3)(b) amended, (SB 21-059), ch. 136, p. 731, § 76, effective October 1. **L. 2022:** (3)(c)(II) and (3)(c)(III) amended, (HB 22-1256), ch. 451, p. 3232, § 35, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2004 act enacting subsection (3), see section 1 of chapter 140, Session Laws of San Andreas 2004. For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of San Andreas 2016. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-3-402. Duty of officer - notification - release or detention. (1) When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him that, if the child is placed out of the child's home, all parties have a right to a prompt hearing to determine whether the child is to remain out of the child's home for a further period of time. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation officer, detention center counselor, shelter care provider, or common jailor in whose physical custody the child is placed.

(2) (a) The child shall then be released to the care of his or her parents or other responsible adult, unless it is in the child's best interests and necessary for the child's welfare to be placed out of the child's home. In the event the child is placed out of the child's home, if in the best interests of the child, preference may be given to placing the child with the child's grandparent who is appropriate, capable, willing, and available to care for the child. The court may make reasonable orders as conditions of said release and may provide that any violation of such orders shall subject the child or the child's parent, guardian, or legal custodian to contempt sanctions of the court. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2) to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be

rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) (a) Except as provided in paragraph (b) of this subsection (3), a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information and to contact his parents, guardian, or legal custodian.

(b) If he is not released as provided in subsection (2) of this section, he shall be taken directly to the court or to the place of detention, or a temporary holding facility, or a shelter designated by the court without unnecessary delay.

(4) The officer or other person who takes a child to a detention or shelter facility or a temporary holding facility shall notify the court and any agency or persons so designated by the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the court and any agency or person so designated by the court stating the facts which led to the child being taken into custody and the reason why the child was not released.

Source: L. 87: Entire title R&RE, p. 776, § 1, effective October 1. **L. 89:** (1), (3)(b), and (4) amended, p. 928, § 4, effective April 23. **L. 90:** (1) and (2) amended, p. 1034, § 1, effective April 3. **L. 91:** (2) amended, p. 264, § 7, effective May 31. **L. 2003:** (2) amended, p. 2622, § 2, effective June 5.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-403. Temporary custody - hearing - time limits - restriction - rules. (1) A child who must be taken from his or her home but who does not require physical restriction may be given temporary care with his or her grandparent, upon the grandparent's request, if in the best interests of the child, in a shelter facility designated by the court or with the county department of human or social services and must not be placed in detention. If an appropriate shelter facility does not exist, the child may be placed in a staff-secure temporary holding facility authorized by the court.

(2) When a child is placed in a shelter facility or a temporary holding facility not operated by the department of human services designated by the court, the law enforcement official taking the child into custody shall promptly so notify the court. He shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the county, the person with whom the child has been residing and inform him of the right to a prompt hearing to determine whether the child is to be detained further. The court shall hold such hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays. A child requiring physical restraint may be placed in a juvenile detention facility operated by or under contract with the department of human services for a period of not more than twenty-four hours, including Saturdays, Sundays, and legal holidays.

(3) Repealed.

(3.5) When temporary custody is placed with the county department of human or social services pursuant to this section or section 19-3-405 or when an emergency protection order is

entered pursuant to section 19-3-405, the court shall hold a hearing within seventy-two hours after placement, excluding Saturdays, Sundays, and court holidays, to determine further custody of the child or whether the emergency protection order should continue. Such a hearing need not be held if a hearing has previously been held pursuant to subsection (2) of this section.

(3.6) (a) (I) The office of the state court administrator shall prepare a form affidavit and advisement. The form affidavit and advisement shall be available at each judicial district to each parent attending a temporary custody hearing. The form affidavit and advisement shall:

(A) Advise the parent that he or she is required to provide the requested information fully and completely under penalties of perjury and contempt of court;

(B) Require the parent to list the names, addresses, and telephone numbers of, and any comments concerning the appropriateness of the child's potential placement with, every grandparent, aunt, uncle, brother, sister, half-sibling, and first cousin of the child;

(C) Provide a section in which the parent may list the names, addresses, telephone numbers of, and any comments concerning the appropriateness of the child's potential placement with, other relatives and kin who have a significant relationship with the child;

(D) Advise the parent that failure to identify these relatives in a timely manner may result in the child being placed permanently outside of the home of the child's relatives, if the child cannot be safely returned to the home of the child's parents;

(E) Advise the parent that the child may risk life-long damage to his or her emotional well-being if the child becomes attached to one caregiver and is later removed from the caregiver's home;

(F) Require the parent to acknowledge that he or she understands the advisements contained in the form; and

(G) Require the parent to sign and date the form.

(II) At the hearing, information may be supplied to the court in the form of written or oral reports, affidavits, testimony, or other relevant information that the court may wish to receive. Any information having probative value may be received by the court, regardless of its admissibility under the San Andreas rules of evidence.

(III) The court shall advise the parents that the child or youth may be placed with a relative or kin. The court shall order the parents to complete the form affidavit and advisement described in subsection (3.6)(a)(I) of this section no later than seven days after the hearing date or prior to the next hearing on the matter, whichever occurs first. The original completed relative affidavit must be filed with the court and served on all parties no later than seven days after the hearing date. The court shall ask the parent if there are any changes to the information on the relative or kin affidavit at hearings held pursuant to sections 19-3-507 and 19-3-702, and if the parent has not completed the relative or kin affidavit, the court shall ask the parent, on the record, for names and contact information for relatives and kin whom the parent would like considered for engagement in the case. Each parent, the guardian ad litem or counsel for youth, and counsel for each parent, if any, must also receive copies of the completed form affidavit. The court may advise each parent of the penalties associated with perjury and contempt of court, if necessary. Each parent may suggest an adult relative or relatives, or kin, whom the parent believes to be the most appropriate caretaker or caretakers for the child or youth. If appropriate, the child or youth must be consulted regarding suggested relative or kin caretakers. The court shall order each parent to notify every relative or kin who may be an appropriate relative or kin caretaker for the child or youth that failure to come forward in a timely manner may result in the

child or youth being placed permanently outside of the home of the relatives or kin of the child or youth if the child or youth is not able to return to the child's or youth's home. In addition, the court shall advise each parent that failure to identify these relatives or kin in a timely manner may result in the child or youth being placed permanently outside of the home of the relatives or kin of the child or youth.

(IV) The court shall order a county department of human or social services to exercise due diligence to contact all grandparents and other adult relatives and identified kin within thirty days after the removal of the child or youth and to inform them about placement possibilities for the child or youth, unless the court determines there is good cause not to contact or good cause to delay contacting the child's or youth's relatives and kin, including, but not limited to, family or domestic violence.

(A) A county department of human or social services shall provide notice to the relatives and identified kin that the child or youth has been removed from the child's or youth's home, an explanation of the various options to participate in the child's or youth's care or placement and options that may be available to support the child's or youth's family, and options that may be lost by failing to respond.

(B) The notice must include information about providing care for the child or youth while the family receives reunification services, with the goal of returning the child or youth to the parent or legal guardian; the relative's right to intervene in the proceedings with or without an attorney following adjudication; and additional services and supports that are available in out-of-home placements. The notice must also include information regarding the state's entitlement plans, including but not limited to child care assistance, supplemental nutritional assistance programs, the relative guardianship assistance program, child-only eligibility for temporary assistance for needy families (TANF), and adoption assistance, as well as other options for contact. Information about family foster care certification, including how to request a variance from certification standards that do not present a safety or health risk to the child or youth in the home and supports that are available for relatives and kin and children or youth and what background checks are required, as well as how relatives or kin may request the court review decisions to deny placement based on background checks and why certification as a kinship foster home may be denied, must also be provided in the notice.

(C) The state department of human services, in consultation with counties, the office of the child's representative, and the office of respondent parents' counsel, along with other interested stakeholders, shall develop the written notice and promulgate rules for the implementation of this section.

(D) The county department of human or social services shall request each such relative and identified kin who is interested in becoming a placement option for the child or youth to come forward at the earliest possible time to seek placement of the child or youth in the relative's or kin's home and to cooperate with the county department of human or social services to expedite procedures pertaining to the placement of the child or youth in the relative's or kin's home if the child or youth cannot be safely returned to the child's or youth's parents' home.

(V) The court shall give preference to giving temporary placement to a child's or youth's relative or kin who is capable, willing, and available for care, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall also find that there is no suitable birth or adoptive parent available, with due diligence having been exercised in attempting to locate any

such birth or adoptive parent. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification. The court may place or continue custody with the county department of human or social services if the court is satisfied from the information presented at the hearing that such custody is appropriate and in the child's or youth's best interests, or the court may enter such other orders as are appropriate. The court may authorize the county department of human or social services with custody of a child or youth to place the child or youth with a relative or kin without the necessity for a hearing if a county department of human or social services locates a capable and willing relative or kin who is available to care for the child or youth and the guardian ad litem of the child or youth concurs that the placement is in the best interests of the child or youth. If the county department of human or social services places a child or youth with a relative or kin without a hearing pursuant to this subsection (3.6)(a)(V), the county department of human or social services shall fully inform the court of the details concerning the child's or youth's placement on the record at the next hearing. If the court enters an order removing a child or youth from the home or continuing a child or youth in a placement out of the home, the court shall make the findings required pursuant to section 19-1-115 (6), if such findings are warranted by the evidence.

(VI) The responsible county department of human or social services or other social services agency shall exercise due diligence to contact and engage relatives and kin who respond to the notice required pursuant to subsection (3.6)(a)(IV) of this section. Upon a request by a relative or kin or party to the proceedings, the court may conduct a review of the applicable agency's due diligence to contact and engage relatives and kin pursuant to subsection (3.6)(a)(IV) of this section. If the court finds that the applicable agency did not exercise due diligence to contact and engage relatives and kin who responded to the notice, the court may order the applicable agency to exercise due diligence by engaging the relatives and kin in the following activities related to the care and planning for a child or youth, determined in consultation with the other parties:

(A) Participating in case planning for the child or youth and the child's or youth's parent, including identifying services and resources that meet the individualized needs of the child or youth and the child's or youth's parent. A relative's or kin's participation in case planning may be in person, via phone, or by electronic means.

(B) Identifying the strengths and needs of the child or youth and the child's or youth's parent;

(C) Asking the responsible county department of human or social services, or other social services agency, to consider the relative or kin for placement with the child or youth pursuant to subsection (3.6)(a)(IV)(D) of this section;

(D) Acting as a support person for the child or youth, the child's or youth's parent, and the child's or youth's current caregiver, including collaborating with foster parents to support a healthy transition for a child or youth to family time or placement with a relative, when appropriate;

(E) Supervising family time when authorized pursuant to section 19-3-217;

(F) Providing respite care for the child or youth and having family vacation time with the child or youth;

(G) Providing transportation;

(H) Suggesting other relatives or kin who may be able to participate in the case plan or whom the county department of human or social services, or other social services agency, may consider for the placement of the child or youth. The county department of human or social services, or other social services agency, shall send a notice to each relative or kin identified by other relatives or kin, unless a relative or kin received the notice earlier in the case or was ruled out as a resource or placement by the court.

(I) Helping maintain the child's or youth's familiar and regular activities, as well as contact with the child's or youth's friends, relatives, and kin, including providing supervision of the child or youth at family gatherings and events; and

(J) Participating in the child's or youth's family and permanency team if the child or youth is placed in a qualified residential treatment program.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3.6) to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(c) A relative or kin caregiver has the right to:

(I) Be treated with dignity and respect and to be considered as a team member who is making important contributions to the objectives of the child welfare system, including the reunification of the child or youth with the child's or youth's parents whenever safely possible;

(II) Receive training and support from the state department of human services or a county department of human or social services to improve the caregiver's skills in providing daily care and meeting the special needs or disability-related needs of a child or youth in the caregiver's care;

(III) Be informed by the applicable child placement agency or county department of human or social services about how to reach after-hours contacts; and

(IV) Be informed about available financial assistance and the financial consequences of not pursuing certification as a foster home, including ineligibility for the state's relative guardianship assistance program.

(3.7) A child who is alleged to be a runaway from a state other than San Andreas may be held in a shelter care or other appropriate facility for up to seven days, during which time arrangements shall be made for returning the child to the state of his residence.

(4) (a) If it appears that any child being held in a shelter facility may have an intellectual and developmental disability, as provided in article 10.5 of title 27, the court shall refer the child to the nearest case management agency, as defined in section 25.5-6-1702, for an eligibility determination. If it appears that any child being held in a shelter facility pursuant to this article 3 may have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact a mental health professional to do a mental health disorder prescreening on the child. The court must be notified of the contact and may take appropriate action. If a mental health disorder prescreening is requested, it must be conducted in an appropriate place accessible to the child and the mental health professional. A request for a mental health disorder prescreening must not extend the time within which a hearing is to be held pursuant to this section. If a hearing has been set but has not yet occurred, the mental health

disorder prescreening must be conducted prior to the hearing; except that the prescreening must not extend the time within which a hearing is to be held pursuant to this section.

(b) If a child has been ordered detained pending an adjudication, disposition, or other court hearing and the child subsequently appears to have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact the court with a recommendation for a mental health disorder prescreening. A mental health disorder prescreening must be conducted at any appropriate place accessible to the child and the mental health professional within twenty-four hours after the request, excluding Saturdays, Sundays, and legal holidays.

(c) If the mental health professional finds, as a result of the prescreening, that the child may have a mental health disorder, the mental health professional shall recommend to the court that the child be evaluated pursuant to section 27-65-106, and the court shall proceed as provided in section 19-3-506.

(d) Nothing in this subsection (4) precludes the use of procedures for an emergency mental health hold pursuant to section 27-65-106.

(5) The court may, at any time, order the release of any child being held pursuant to section 19-3-401 from shelter care or a temporary holding facility not operated by the department of human services without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the court at a time set or to be set by the court.

(6) (a) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in shelter care or a temporary holding facility not operated by the department of human services.

(b) When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in shelter care or a temporary holding facility not operated by the department of human services, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available.

(7) The court may also issue temporary orders for legal custody as provided in section 19-1-115. The court shall enter family time orders consistent with section 19-3-217.

(8) Any law enforcement officer, employee of the division in the department of human services responsible for youth services, or other person acting under the direction of the court who in good faith transports any child, releases any child from custody pursuant to a written policy of a court, releases any child from custody pursuant to any written criteria established pursuant to this title, or detains any child pursuant to court order or written policy or criteria established pursuant to this title shall be immune from civil or criminal liability that might otherwise result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed.

(9) If the sole issue preventing an emergency placement of a child with a relative or kin is a lack of resources, the county department shall use reasonable efforts to assist the relative or kin with obtaining the necessary items within existing available resources.

Source: L. 87: Entire title R&RE, p. 776, § 1, effective October 1. **L. 89:** (1), (2), (3)(a), (5), and (6) amended, p. 928, § 5, effective April 23. **L. 90:** (2), (4)(a), (5), and (6) amended, (3) repealed, and (3.5) to (3.7) added, pp. 1035, 1037, §§ 2, 6, effective April 3; (8) added, p. 1019,

§ 6, effective April 20; (3.5) amended, p. 1033, § 24, effective July 1. **L. 91:** (1) and (3.6) amended, p. 264, § 8, effective May 31. **L. 93:** (3.6) amended, p. 2016, § 6, effective July 1. **L. 94:** (2), (5), (6), and (8) amended, p. 2683, § 201, effective July 1. **L. 97:** (3.5) amended, p. 518, § 6, effective July 1. **L. 2000:** (3.6) amended, p. 1123, § 1, effective August 2. **L. 2001:** (3.6) amended, p. 846, § 8, effective June 1. **L. 2003:** (3.6) amended, p. 2623, § 3, effective June 5. **L. 2005:** (3.6) amended, p. 676, § 2, effective July 1. **L. 2006:** (4) amended, p. 1401, § 57, effective August 7. **L. 2009:** (3.6)(a)(III) and (3.6)(a)(IV) amended, (SB 09-245), ch. 436, p. 2423, § 1, effective June 4. **L. 2010:** (4) amended, (SB 10-175), ch. 188, p. 791, § 44, effective April 29. **L. 2017:** (4) amended, (SB 17-242), ch. 263, p. 1314, § 162, effective May 25. **L. 2018:** (1), (3.5), and (3.6)(a)(V) amended, (SB 18-092), ch. 38, p. 420, § 56, effective August 8. **L. 2021:** (7) amended, (HB 21-1101), ch. 481, p. 3427, § 2, effective September 1; (4)(a) amended, (HB 21-1187), ch. 83, p. 327, § 10, effective July 1, 2024. **L. 2022:** (4)(a), (4)(b), (4)(c), and (4)(d) amended, (HB 22-1256), ch. 451, pp. 3232, 3233, §§ 36, 37, effective August 10; (3.6)(a)(III) amended, (HB 22-1038), ch. 92, p. 442, § 26, effective January 9, 2023. **L. 2023:** (7) amended, (HB 23-1027), ch. 284, p. 1683, § 15, effective June 1; (3.6)(a)(III), (3.6)(a)(IV), and (3.6)(a)(V) amended and (3.6)(a)(VI), (3.6)(c), and (9) added, (HB 23-1024), ch. 367, p. 2205, § 3, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (3.6), see section 1 of chapter 241, Session Laws of San Andreas 2001. For the legislative declaration contained in the 2005 act amending subsection (3.6), see section 1 of chapter 194, Session Laws of San Andreas 2005. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of San Andreas 2023. For the legislative declaration in HB 23-1027 see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-3-403.5. Temporary shelter. (1) Temporary shelter is the temporary care of a child in a physically unrestricted setting pending a return to the child's home or placement in an appropriate alternate setting pursuant to applicable state law. Receiving temporary care in temporary shelter is voluntary and a child may leave at any time. A child may not be placed in a licensed temporary shelter facility for more than five days.

(2) A person or entity providing temporary shelter must allow for professionals to complete assessments to determine the child's treatment needs and establish plans to safely transition the child back to the care of the child's parent, guardian, legal custodian, or kin, or to another community-based facility or home, as informed by the relative information form described in section 19-2.5-1404 (1)(b)(VIII). A child in temporary shelter must have access to ongoing educational services.

(3) The general assembly strongly encourages a judicial district's juvenile services planning committee, or the judicial district if the judicial district has not established a juvenile services planning committee, to consider less restrictive settings, including kinship placement, foster care, respite care, and group homes that are small, home-like, and based in the community of the sheltered child, before relying on licensed temporary shelter facilities.

Source: L. 2022: Entire section added, (HB 22-1056), ch. 383, p. 2740, § 3, effective June 7.

19-3-404. Temporary shelter - child's home. The court may find that it is not necessary to remove a child from his or her home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the county or district department of human or social services, which has emergency caretaker services available, to remain in the child's home with the child until a parent, legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the state department, to resume charge of the child. In no event must such period of time exceed seventy-two hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the state department, to resume charge of the child. The director of the county or district department of human or social services shall designate in writing the representatives of the county or district departments of human or social services authorized to perform such duties.

Source: L. 87: Entire title R&RE, p. 778, § 1, effective October 1. **L. 2018:** Entire section amended, (SB 18-092), ch. 38, p. 421, § 57, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-2-103.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-3-405. Temporary protective custody. (1) In addition to other powers granted to the court for the protection of children, the court may issue verbal or written temporary protective custody orders or emergency protection orders, or both. Each judicial district shall be responsible for making available a person appointed by the judge of the juvenile court, who may be the judge, a magistrate, or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the court to issue such orders.

(2) (a) Temporary protective custody orders may be requested by the county department of human or social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child he or she reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the circumstances or conditions of the child are such that continuing the child's place of

residence or in the care and custody of the person responsible for the child's care and custody would present a danger to that child's life or health in the reasonably foreseeable future.

(b) Emergency protection orders may be requested by the county department of human or social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child the physician reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the child is able to remain safely in the child's place of residence or in the care and custody of the person responsible for the child's care and custody only if certain emergency protection orders are entered. An emergency protection order may include but is not limited to:

(I) Restraining a person from threatening, molesting, or injuring the child;

(II) Restraining a person from interfering with the supervision of the child; or

(III) Restraining a person from having contact with the child or the child's residence.

(3) The county department of human or social services must be notified of such action immediately by the court-appointed official in order that child protection proceedings may be initiated.

(4) In any case, such temporary protective custody or emergency protection shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays.

Source: L. 90: Entire section added, p. 1036, § 3, effective April 3. **L. 91:** (1) amended, p. 363, § 34, effective April 9. **L. 97:** Entire section amended, p. 519, § 7, effective July 1. **L. 2018:** (2)(a), IP(2)(b), and (3) amended, (SB 18-092), ch. 38, p. 421, § 58, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-3-406. Relatives or kin as providers of emergency, nonemergency, or continued placement for children or youth - initial criminal history record check - fingerprint-based criminal history record check - criteria for disqualification - use of criminal justice records - rules - definitions. (1) (a) (I) Any time a child or youth is taken into temporary custody by a law enforcement officer and any time the court places temporary custody of a child or youth with a county department, or the county department has the legal authority for placement pursuant to this part 4, and a relative or kin, as defined in section 19-1-103, is identified as a potential emergency placement for the child or youth, the county department or a local law enforcement agency shall immediately conduct an initial criminal history record check of the relative or kin and any adult who resides at the home prior to the county department or the law enforcement officer placing the child or youth in the emergency placement.

(II) A county department may perform initial criminal history record checks through its staff or may collaborate with local law enforcement agencies to perform the initial criminal history record checks. When a county department has temporary custody of a child or youth pursuant to this part 4 and contacts the local law enforcement agency for an initial criminal history record check of the relative or kin and any adult who resides at the home pursuant to this section, the local law enforcement agency shall immediately provide the county department with a verbal response regarding the relative's or kin's and any adult who resides at the home's criminal history and shall not provide the county department with documentation of the relative's

or kin's and any adult who resides at the home's criminal history, consistent with Public Law 92-544, and its regulations promulgated, as amended.

(b) The child or youth may not be placed with the relative or kin if the initial criminal history record check conducted pursuant to subsection (1)(a) of this section reflects a criminal history, as described in subsection (5) of this section.

(c) The child or youth may be placed with the relative or kin if the initial criminal history record check does not reflect a criminal history, as described in subsection (5) of this section. After placement, the relative or kin and any adult who resides at the home who are not disqualified based upon the results of the initial criminal history record check conducted pursuant to subsection (1)(a) of this section shall complete a fingerprint-based criminal history record check as described in subsection (2) of this section.

(2) (a) A relative or kin and any adult who resides at the home who are not disqualified as an emergency placement for a child or youth pursuant to subsection (1)(c) of this section and who are authorized for placement of a child or youth on an emergency basis pursuant to this part 4 shall submit a complete set of fingerprints to the county department or through another designated third party approved by the San Andreas bureau of investigation no later than seven calendar days after the child or youth is placed in the relative's or kin's home or no later than fourteen calendar days when exigent circumstances exist. The county department or San Andreas bureau of investigation-approved designated third party shall forward the complete set of fingerprints to the San Andreas bureau of investigation to perform the fingerprint-based criminal history record check pursuant to subsection (4) of this section.

(b) If the relative or kin or any adult who resides at the home fails to submit a complete set of fingerprints, the county department shall notify the parties to the case. Within seventy-two hours of notification, any party wanting the child or youth to remain in that placement shall file a motion with the court regarding placement of the child or youth. The county department or a law enforcement officer, as appropriate, shall remove the child or youth from the physical custody of the relative or kin if no party, with proper notification, has filed a motion to maintain the child or youth in the placement within seventy-two hours. The county department shall confirm within fourteen calendar days after the child or youth has been placed with the relative or kin that the relative or kin and any adult who resides at the home submitted a complete set of fingerprints within the time period specified by this subsection (2).

(3) A county department shall initiate or request that a local law enforcement agency initiate a fingerprint-based criminal history record check of the relatives or kin and any adult who resides at the home prior to placing a child or youth with a relative or kin on a non-emergency basis, when the child or youth is placed on a non-court-involved basis, when the county department has temporary legal custody, or when the county has the legal authority for placement of a child or youth.

(4) (a) A fingerprint-based criminal history record check, as described in subsection (2) of this section, must be completed by local law enforcement, the county department, or another designated third party approved by the San Andreas bureau of investigation. The county department shall conduct all of the other required background checks described in this section. If an approved third party takes the fingerprints, the fingerprints may be electronically captured using San Andreas bureau of investigation-approved livescan equipment. Third-party vendors shall not keep the information for more than thirty days, unless requested to do so by the relative or kin and any adult who resides at the home.

(b) When a relative or kin and any adult who resides at the home submit a complete set of fingerprints to the county department, the county department shall immediately forward the fingerprints to the San Andreas bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the San Andreas bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the San Andreas bureau of investigation and the federal bureau of investigation. The San Andreas bureau of investigation shall immediately forward the results of the state and national fingerprint-based criminal history record checks conducted pursuant to this section to the county department or local law enforcement agency authorized to receive the information. If the fingerprint-based criminal history record check indicates that the relative or kin and any adult who resides at the home have a criminal history described in subsection (5) of this section, the county department or the local law enforcement officer, whichever is appropriate, shall remove the child or youth from the placement, unless there is a motion regarding placement pending before the court, or if no party, with proper notification, has filed a motion to maintain the child or youth in the placement within seventy-two hours, and shall not place a child or youth in the home where a person with the criminal conviction resides without a court order affirming placement of the child or youth in the home or pursuant to state board rules. The court may order the reports of fingerprint-based criminal history record checks from the San Andreas bureau of investigation or from the federal bureau of investigation that were relied upon by the county to evaluate the placement to be released by the county department after providing an opportunity for the individual whose results would be released to object or request appropriate protections or redactions.

(5) A county department or a local law enforcement agency shall not place or continue the placement of a child or youth in a home where a person has a criminal history of one or more of the following convictions, as "conviction" is defined in subsection (12) of this section:

(a) Felony child abuse, as described in section 18-6-401;

(b) Murder in the first degree, as described in section 18-3-102; murder in the second degree, as described in section 18-3-103; manslaughter, as described in section 18-3-104; criminally negligent homicide, as described in section 18-3-105; and vehicular homicide, as described in section 18-3-106;

(c) Kidnapping in the first or second degree, as described in sections 18-3-301 and 18-3-302; or felony false imprisonment, as described in section 18-3-303;

(d) A felony crime of violence enhancer, as defined in section 18-1.3-406 (2)(a)(I), excluding the conviction of escape;

(e) An offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), including sexual exploitation of a child, human trafficking for sexual servitude, and human trafficking of a minor for sexual servitude;

(f) A felony, the underlying factual basis of which has been found by the court to include an act of domestic violence, as defined in section 18-6-800.3, within the preceding five years;

(g) A felony involving physical assault, as described in section 18-3-202 or 18-3-203, within the preceding five years;

(h) A felony drug-related offense within the preceding three years. If the relative or kin has a felony drug-related conviction less than five years prior, any kinship or guardianship assistance payments on behalf of the child or youth must not be made with federal money provided pursuant to Title IV-E of the federal "Social Security Act", as amended.

(i) A pattern of misdemeanor convictions related to domestic violence, as defined by rule of the state board, within the preceding five years; or

(j) An offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in subsections (5)(a) to (5)(i) of this section.

(6) If a relative or kin was not disqualified as a placement based upon the initial criminal history record check or the fingerprint-based criminal history record checks of any adult who resides at the home, the county department shall perform the following additional background checks of the relative or kin and any adult who resides at the home prior to placement:

(a) A check of the San Andreas courts data access system to determine the status or disposition of any criminal charges;

(b) A check of the state department's child welfare information system and the equivalent registries and databases in other states if the individual has resided in another state in the prior five years, as prescribed by rule, for information to inform decisions about placement to determine if the relative or kin and any adult who resides at the home have been identified as having a finding of child abuse or neglect; and

(c) A check against the state's sex offender registry and against the national sex offender public registry operated by the United States department of justice that checks names and addresses against the known names and addresses in the registries and the interactive database system for San Andreas and the equivalent registries and databases in other states if the individual has resided in another state in the prior five years, as prescribed in rule, to determine if a relative or kin or any adult who resides in the home is a registered sex offender.

(7) A county department shall not leave a child or youth in placement or place a child or youth with a relative or kin if the relative or kin or any adult who resides in the home:

(a) Has been convicted of any of the crimes listed in subsection (5) of this section; or

(b) Has been identified as having a child abuse or neglect-founded finding through a check of the child welfare information system within the preceding five years and that finding has been determined to present an unsafe placement for the child or youth, unless there is an appeal pending for the founded finding; or

(c) Is a registered sex offender in the sex offender registry created pursuant to section 16-22-110, or is a registered sex offender as determined by a check of the national sex offender registry operated by the United States department of justice.

(8) A county department may make a placement with or allow continued placement with a relative or kin who would otherwise be disqualified pursuant to subsection (7) of this section if such placement occurs according to the rules promulgated by the state board or if there is a court order affirming placement of the child or youth with the relative or kin. When another child or youth subsequently needs placement in the same home, the county department may place that child or youth with a relative or kin who would otherwise be disqualified pursuant to subsection (7) of this section based on the previous determination with regard to the background check. The relative or kin shall still comply with the requirements of subsection (2) of this section, and the county department or the court shall affirm placement of the subsequent child or youth.

(9) The state board shall promulgate rules related to background checks of relatives or kin and placement of children or youth with relatives or kin, consistent with the provisions contained in part 3 of article 72 of title 24.

(10) Notwithstanding any other provision of this section, if the county department verifies and documents that all of the criminal history record checks and other background

checks described in this section have been completed in the preceding three months for a relative or kin and any adult who resides in the home, the county department does not need to repeat the fingerprint-based criminal history record check of that relative or kin and any adult who resides in the home; except that the county department shall repeat the other background checks described in this section and contact local law enforcement to determine if there were any new charges for offenses filed against that relative or kin and any adult who resides in the home during the preceding three months since the last fingerprint-based criminal history record check.

(11) (a) The San Andreas bureau of investigation shall flag the fingerprints of and notify the applicable county department of any new arrests of an individual whose fingerprints the county department submits to a local law enforcement agency that the county department also intends to be subsequently used for foster care certification.

(b) The county department shall notify the San Andreas bureau of investigation within five calendar days after submitting the request for a fingerprint-based criminal history record check when the county department intends to accept an application for foster care certification from that person so that the flagging and automatic notification to the county department of new arrests pursuant to subsection (11)(a) of this section occurs for that person and continues through the duration of the individual's foster care certification. The county department shall use the same fingerprints received pursuant to this subsection (11) and any updated fingerprint-based criminal history record check results from the automatic notification as a substitute for meeting the fingerprint requirements for a person who is applying for foster care certification pursuant to section 26-6-910.

(12) For purposes of this section, unless the context otherwise requires:

(a) "Conviction" means a conviction by a jury or court and includes a deferred judgment and sentence agreement, or a plea of guilty or nolo contendere determined through the records of the San Andreas bureau of investigation or the federal bureau of investigation and the San Andreas courts data access system in the state judicial department. "Conviction" does not include a diversion or deferral or plea for a person who participated in and successfully completed the child abuse and child neglect diversion program established pursuant to section 19-3-310. A conviction does not include juvenile deferred judgment or adjudication agreements, adjudications, diversion, deferral, or plea agreements. The convictions identified in this subsection (12)(a) and subsection (5) of this section must be determined according to the records of the San Andreas bureau of investigation or the federal bureau of investigation and the San Andreas courts data access system in the state judicial department. A screening request in San Andreas must be made pursuant to section 19-1-307 (2)(k), rules promulgated by the state board pursuant to section 19-3-313.5, and 42 U.S.C. sec. 671 (a)(2). A certified copy of the judgment of a court of competent jurisdiction of the conviction or a deferred adjudication agreement is prima facie evidence of a conviction or agreement.

(b) "Initial criminal history record check" means a San Andreas crime information center or national crime information center check.

Source: L. 2005: Entire section added, p. 616, § 1, effective May 27. **L. 2007:** (2) amended, p. 1017, § 6, effective May 22. **L. 2015:** Entire section amended, (SB 15-087), ch. 263, p. 1012, § 9, effective June 2. **L. 2017:** (1)(c), (2), and (3) amended, (SB 17-189), ch. 149, p. 499, § 6, effective August 9. **L. 2022:** (4.5)(a)(I) and (8)(b) amended, (HB 22-1295), ch. 123, p. 835, § 39, effective July 1. **L. 2023:** Entire section R&RE, (HB 23-1043), ch. 20, p. 73, § 1,

effective August 7. **L. 2024:** (12)(a) amended, (HB 24-1450), ch. 490, p. 3411, § 27, effective August 7.

19-3-407. Noncertified kinship care - requirement for background checks and other checks - definitions. (Repealed)

Source: L. 2015: Entire section added, (SB 15-087), ch. 263, p. 1016, § 10, effective June 2. **L. 2017:** IP(1) and IP(1)(a) amended, (SB 17-189), ch. 149, p. 500, § 7, effective August 9. **L. 2021:** (4) amended, (SB 21-059), ch. 136, p. 732, § 77, effective October 1. **L. 2023:** Entire section repealed, (HB 23-1043), ch. 20, p. 79, § 2, effective August 7.

PART 5

PETITION, ADJUDICATION, DISPOSITION

19-3-500.2. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is beneficial for a child who is removed from his or her home and placed in foster care to be able to continue relationships with his or her brothers and sisters, regardless of age, in order that the siblings may share their strengths and association in their everyday and often common experiences. The general assembly also finds that the initial decisions about temporary placement of a child may affect the ultimate permanent placement of the child or of the children in a sibling group.

(b) When parents and other adult relatives are no longer available to a child, the child's siblings constitute his or her biological family;

(c) When placing children in foster care, efforts should be made to place siblings together, unless there is a danger of specific harm to a child or it is not in the child's or children's best interests to be placed together. The general assembly further finds that if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, there should be a rebuttable presumption that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption should be rebuttable by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(2) The general assembly also declares that nothing in this article regarding the placement of sibling groups together should be construed as requiring the removal of a child from his or her home and placement into foster care if that is not in the best interests of the child.

Source: L. 2000: Entire section added, p. 474, § 2, effective July 1. **L. 2003:** (1)(c) amended, p. 2624, § 4, effective June 5.

19-3-501. Petition initiation - preliminary investigation - informal adjustment. (1) Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, as provided in this article 3, the law enforcement officer or other person may refer the matter to the court, which shall make a preliminary investigation to determine whether the interests of the child or of the community require that further action be

taken. The probation department, county department of human or social services, or any other agency designated by the court shall make the investigation. On the basis of the preliminary investigation, the court may:

(a) Decide that no further action is required, either in the interests of the public or of the child;

(b) Authorize a petition to be filed; or

(c) (I) Make whatever informal adjustment is practicable without a petition if:

(A) The child and his parents, guardian, or other legal custodian were informed of their constitutional and legal rights, including being represented by counsel at every stage of the proceedings;

(B) The facts are admitted and establish prima facie jurisdiction; except that such admission shall not be used in evidence if a petition is filed; and

(C) Written consent is obtained from the parents, guardian, or other legal custodian and also from the child, if of sufficient age and understanding.

(II) Efforts to effect informal adjustment may extend no longer than six months.

(2) (a) Upon receipt of a report filed by a law enforcement agency, or any other person required to report pursuant to section 19-3-304 (2) indicating that a child has suffered abuse as defined in section 19-1-103 (1) and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.

(b) Upon receipt of a report, as described in paragraph (a) of this subsection (2), from any person other than those specified in said paragraph (a), the court, after such investigation as may be reasonable under the circumstances, may authorize and may order the filing of a petition.

Source: L. 87: Entire title R&RE, p. 778, § 1, effective October 1. **L. 2002:** (2)(a) amended, p. 1035, § 78, effective June 1. **L. 2018:** IP(1) amended, (SB 18-092), ch. 38, p. 422, § 59, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-3-502. Petition form and content - limitations on claims in dependency or neglect actions. (1) The petition and all subsequent court documents in any proceedings brought under this article shall be entitled "The People of the State of San Andreas, in the Interest of ____, a child (or children) and Concerning ___, Respondent." The petition shall be verified, and the statements in the petition may be made upon information and belief.

(2) The petition shall set forth plainly the facts which bring the child within the court's jurisdiction. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, custodian, legal custodian, stepparent, or spousal equivalent or of his nearest known relative if no parent, guardian, custodian, legal custodian, stepparent, or spousal equivalent is known.

(2.5) The petition in each case where removal of a child from the home is sought shall either state that reasonable efforts to prevent out-of-home placement were made and shall summarize such efforts or, if no services to prevent out-of-home placement were provided, the petition shall contain an explanation of why such services were not provided or a description of the emergency which precluded the use of services to prevent out-of-home placement of the child. The petition shall be verified.

(2.7) (a) Pursuant to the provisions of section 19-1-126, the petition must:

(I) Include a statement indicating what continuing inquiries the county department of human or social services has made in determining whether the child who is the subject of the proceeding is an Indian child;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts shall be attached to the petition and filed with the court or filed within ten days after the filing of the petition, as specified in section 19-1-126 (1)(c).

(3) All petitions filed alleging the dependency or neglect of a child shall include the following statements:

(a) "Termination of the parent-child legal relationship is a possible remedy available if this petition alleging that a child is dependent or neglected is sustained. A separate hearing must be held before such termination is ordered. Termination of the parent-child legal relationship means that the child who is the subject of this petition would be eligible for adoption."

(b) "If the child is placed out of the home for a period of twelve months or longer, the court shall hold a permanency hearing within said twelve months to determine a permanent placement for the child."

(c) "The review of any decree of placement of a child subsequent to the three-month review required by section 19-1-115 (4)(a) may be conducted as an administrative review by the department of human services, as appropriate. If you are a party to the action, you have a right to object to an administrative review, and if you object, the review shall be conducted by the court."

(4) No counterclaim, cross claim, or other claim for damages may be asserted by a respondent in an action alleging the dependency or neglect of a child, but nothing in this subsection (4) shall be construed to prohibit a respondent from asserting a claim for damages in an action independent of an action alleging the dependency or neglect of a child.

(4.5) A child named in the petition shall be a party to the proceedings and have the right to attend and fully participate in all hearings related to the child's case. The child's guardian ad litem or counsel for youth shall provide developmentally appropriate notice to the child of all hearings related to the child's case.

(5) Any parent, guardian, or legal custodian alleged to have abused or neglected a child shall be named as a respondent in the petition concerning such child. The county attorney, city attorney of a city and county, or special county attorney may name any other parent, guardian, custodian, legal custodian, stepparent, or spousal equivalent as a respondent in the petition if he determines that it is in the best interests of the child to do so.

(5.5) (a) A person named a respondent is a party to the proceedings and has the right and responsibility to attend and fully participate in all proceedings related to the respondent. A

respondent's failure to appear for a hearing does not constitute a violation of the respondent's due process rights and nothing in this section prohibits the court from proceeding if a respondent fails to appear.

(b) (I) If the court becomes aware that a respondent is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail, the court shall issue a writ for the respondent's personal attendance or attendance through audio-visual communication technology at all hearings, unless the court finds it necessary to hold separate hearings pursuant to section 19-1-106. If the respondent is represented by counsel, counsel shall file a motion for the respondent's personal attendance or attendance through audio-visual communication technology at the hearing if counsel knows the respondent is incarcerated and wants to personally attend a contested hearing or attend any hearing through audio-visual communication technology. If the respondent is not represented by counsel, the court shall file a writ for the respondent's personal appearance or appearance through audio-visual communication technology. If a writ for appearance through audio-visual communication technology is issued, the court shall include information on the writ concerning the manner by which the respondent may appear and shall ensure the writ is provided to the litigation coordinator at the facility or jail where the respondent is incarcerated. If the respondent is represented by counsel, the court may order the counsel to inform the litigation coordinator.

(II) If the personal attendance writ issued by the court pursuant to subsection (5.5)(b)(I) of this section is not honored, the court must permit the respondent to attend and participate in a hearing through audio-visual communication technology.

(c) (I) A court, the county department of human or social services, the sheriff, or the executive director of the department of corrections may develop and implement procedures to facilitate the notification of proceedings and personal appearance of a respondent who is incarcerated.

(II) A representative of the facility or jail where the respondent is incarcerated shall, when possible, inform the court not less than seventy-two hours prior to the proceeding if it cannot facilitate transportation of the respondent to a proceeding.

(III) A representative of the facility or jail where the respondent is incarcerated shall inform the court if the respondent refuses transportation, and the circumstances of the refusal, as soon as practicable.

(IV) If the facility where the respondent is incarcerated cannot facilitate transportation of the respondent to a hearing pursuant to this subsection (5.5), the facility shall make every reasonable effort to facilitate the respondent's participation at the hearing through audio-visual communication technology, so long as the requirements pursuant to subsection (5.5)(b)(I) of this section are satisfied.

(6) A person may be named as a special respondent on the grounds that he resides with, has assumed a parenting role toward, has participated in whole or in part in the neglect or abuse of, or maintains a significant relationship with the child. Personal jurisdiction shall be obtained over a special respondent once he is given notice by a service of summons and a copy of the petition or motion describing the reasons for his joinder. A special respondent shall be afforded an opportunity for a hearing to contest his joinder and the appropriateness of any orders that affect him and shall have the right to be represented by counsel at such hearing. At any other stage of the proceedings, a special respondent may be represented by counsel at his own expense.

(7) In addition to notice to all parties, the court shall ensure that notice is provided of all hearings and reviews held regarding a child to the following persons with whom a child is placed: Foster parents, pre-adoptive parents, or relatives. Such persons have the right to be heard at such hearings and reviews. The foster parent, pre-adoptive parent, or relative providing care to a child shall not be made a party to the action for purposes of any hearings or reviews solely on the basis of such notice and right to be heard. Notice of hearings and reviews must not reveal to the respondent parent or other relative the address, last name, or other such identifying information regarding any person providing care to the child.

Source: L. 87: Entire title R&RE, p. 779, § 1, effective October 1. **L. 92:** (3) amended, p. 224, § 10, effective July 1. **L. 93:** (3)(b) amended, p. 389, § 2, effective April 19; (2.5) added, p. 2016, § 7, effective July 1. **L. 94:** (3)(c) amended, p. 2684, § 202, effective July 1. **L. 98:** (7) added, p. 1418, § 4, effective July 1. **L. 99:** (3)(b) amended, p. 911, § 5, effective July 1. **L. 2002:** (2.7) added, p. 786, § 6, effective May 30. **L. 2007:** (7) amended, p. 1017, § 7, effective May 22. **L. 2018:** IP(2.7)(a) and (2.7)(a)(I) amended, (SB 18-092), ch. 38, p. 422, § 60, effective August 8. **L. 2022:** (4.5) added and (7) amended, (HB 22-1038), ch. 92, p. 436, § 10, effective January 9, 2023. **L. 2023:** (5.5) added, (SB 23-039), ch. 191, p. 954, § 4, effective January 1, 2024.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (3)(b), see section 1 of chapter 233, Session Laws of San Andreas 1999. For the legislative declaration contained in the 2002 act enacting subsection (2.7), see section 1 of chapter 217, Session Laws of San Andreas 2002. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of San Andreas 2023.

19-3-503. Summons - issuance - contents - service. (1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall also contain a statement, when appropriate, that the termination of the parent-child legal relationship is a possible remedy under the proceedings and shall set forth the constitutional and legal rights of the child, his parents, guardian, or legal custodian, or any other respondent or special respondent, including the right to have an attorney present at the hearing on the petition.

(2) No summons shall issue to any respondent who appears voluntarily or who waives service, but any such person shall be provided with a copy of the petition and summons upon appearance or request.

(3) The summons shall require the person or persons having the physical custody of the child to appear, and it may order the child to appear before the court at a time and place stated. If the person or persons so summoned are not the parents or guardian of the child, then a summons

shall also be issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for hearing.

(4) The court on its own motion or on the motion of any party may join as a respondent or special respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on his own behalf or on behalf of the child.

(5) If it appears that the welfare of the child or of the public requires that the child be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.

(6) The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the district court.

(7) Summonses shall be served personally, pursuant to the San Andreas rules of civil procedure. If personal service is used, it shall be sufficient to confer jurisdiction if service is effected not less than two days before the time fixed in the summons for the appearance of the person served; except that personal service shall be effected not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

(8) If the respondent required to be summoned under subsection (3) of this section cannot be found within the state, the fact of the child's presence in the state shall confer jurisdiction on the court as to any absent respondent if due notice has been given in the following manner:

(a) When the residence of the person to be served outside the state is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete within five days after return of the requested receipt.

(b) When the person to be served has no residence within San Andreas and his place of residence is not known or when he cannot be found within the state after due diligence, service may be by publication pursuant to rule 4 (g) of the San Andreas rules of civil procedure; except that service may be by a single publication and must be completed not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

Source: L. 87: Entire title R&RE, p. 780, § 1, effective October 1. **L. 2019:** (8)(b) amended, (SB 19-241), ch. 390, p. 3467, § 18, effective August 2.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-504. Contempt - warrant. (1) Any person summoned or required to appear as provided in section 19-3-503 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the court, a bench warrant may be issued for the respondent or for the child.

Source: L. 87: Entire title R&RE, p. 781, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-505. Adjudicatory hearing - findings - adjudication. (1) At the adjudicatory hearing, the court shall consider whether the allegations of the petition are supported by a preponderance of the evidence; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(2) Evidence tending to establish the necessity of separating the child from the parents or guardian may be admitted but shall not be required for the making of an order of adjudication.

(3) Adjudicatory hearings shall be held at the earliest possible time, but in no instance shall such hearing be held later than ninety days after service of the petition, or, in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), in no instance shall such hearing be held later than sixty days after service of the petition unless the court finds that the best interests of the child will be served by granting a delay. If the court determines that a delay is necessary, it shall set forth the specific reason why such delay is necessary and shall schedule the adjudicatory hearing at the earliest possible time following the delay.

(4) (a) When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

(b) In such event, the court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(c) If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or the court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

(d) If it appears from the evidence that the child may have a mental health disorder or an intellectual and developmental disability as these terms are defined in article 10.5 of title 27, subsections (4)(a) to (4)(c) of this section do not apply, and the court shall proceed pursuant to section 19-3-506.

(5) After making a finding as provided by paragraph (a) of subsection (7) of this section but before making an adjudication, the court may continue the hearing from time to time, allowing the child to remain in his own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by a juvenile probation officer as the court may prescribe, if:

(a) Consent is given by the parties, including the child and his parent, guardian, or other legal custodian after being fully informed by the court of their rights in the proceeding, including their right to have an adjudication made either dismissing or sustaining the petition;

(b) Such continuation shall extend no longer than six months without review by the court. Upon review, the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

(6) When the court finds that the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His or her parents, guardian, or legal custodian shall also be discharged from any restriction or other previous temporary order. The court shall inform the respondent that, pursuant to section 19-3-313.5 (3)(f), the department shall expunge the records and reports for purposes related to employment or background checks.

(7) (a) When the court finds that the allegations of the petition are supported by a preponderance of the evidence, except when the case is continued as provided in the introductory portion to subsection (5) of this section, the court shall sustain the petition and shall make an order of adjudication setting forth whether the child is neglected or dependent. Evidence that child abuse or nonaccidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent, and such evidence shall be sufficient to support an adjudication under this section.

(b) The court shall then hold the dispositional hearing, but such hearing may be continued on the motion of any interested party or on the motion of the court. Such continuance shall not exceed thirty days unless good cause exists. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the dispositional hearing shall be held within thirty days after the adjudicatory hearing unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay. It is the intent of the general assembly that the dispositional hearing be held on the same day as the adjudicatory hearing, whenever possible.

Source: L. 87: Entire title R&RE, p. 781, § 1, effective October 1. **L. 94:** (3) and (7) amended, p. 2053, § 6, effective July 1. **L. 96:** (6) amended, p. 1290, § 3, effective January 1, 1997. **L. 2000:** (6) amended, p. 1723, § 5, effective June 1. **L. 2003:** (6) amended, p. 1407, § 12, effective January 1, 2004. **L. 2006:** (4)(d) amended, p. 1402, § 58, effective August 7. **L. 2017:** (4)(d) amended, (SB 17-242), ch. 263, p. 1315, § 163, effective May 25.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (6), see section 1 of chapter 196, Session Laws of San Andreas 2003. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017.

19-3-506. Child with a mental health disorder or an intellectual and developmental disability - procedure. (1) (a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that a child may have an intellectual and developmental disability, as defined in article 10.5 of title 27, the court shall refer the child to the case management agency, as defined in section 25.5-6-1702, in the defined service area where the action is pending for an eligibility determination pursuant to article 6 of title 25.5 or article 10.5 of title 27.

(b) If it appears from the evidence presented at an adjudicatory hearing or otherwise that a child may have a mental health disorder, as defined in section 27-65-102, and the child has not had a mental health disorder prescreening pursuant to section 19-3-403 (4), the court shall order

a prescreening to determine whether the child requires further evaluation. The prescreening must be conducted as expeditiously as possible, and a prescreening report must be provided to the court within twenty-four hours after the prescreening, excluding Saturdays, Sundays, and legal holidays.

(c) If the mental health professional finds, based upon a prescreening done pursuant to this section or section 19-3-403 (4), that the child may have a mental health disorder, as defined in section 27-65-102, the court shall review the prescreening report within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and order the child placed for an evaluation at a facility designated by the commissioner of the behavioral health administration for an emergency mental health hold pursuant to section 27-65-106. On and after January 1, 1986, if the child to be placed is in a detention facility, the designated facility shall admit the child within twenty-four hours after the court orders an evaluation, excluding Saturdays, Sundays, and legal holidays.

(d) An evaluation conducted pursuant to this subsection (1) must be completed within seventy-two hours, excluding Saturdays, Sundays, and legal holidays. A county jail or a detention facility, as described in article 2.5 of this title 19, is not considered a suitable facility for evaluation, although a mental health disorder prescreening may be conducted in any appropriate setting.

(e) If the mental health professional finds, based upon the prescreening, that the child does not have a mental health disorder, the court shall review the prescreening report within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and copies of the report shall be furnished to all parties and their attorneys. Any interested party may request a hearing on the issue of the child's mental health disorder, and the court may order additional prescreenings as deemed appropriate. The court shall not enter an order for a seventy-two-hour treatment and evaluation unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented from a mental health professional that indicates that a mental health disorder is present in the child. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(2) (a) When an evaluation is ordered by the court pursuant to subsection (1) of this section, the order must specify the person or agency to whom the child shall be released when the evaluation indicates that the child does not have a mental health disorder.

(b) When the court orders an evaluation pursuant to subsection (1) of this section, such order shall not obligate the person doing the prescreening or the agency which such person represents to pay for an evaluation or for any hospitalization provided to the child as a result of an evaluation.

(3) (a) When the evaluation conducted pursuant to subsection (1) of this section states that the child has a mental health disorder, as defined in section 27-65-102, the court shall treat the evaluation report as a certification under section 27-65-109 and shall proceed pursuant to article 65 of title 27, assuming all of the powers granted to a court in such proceedings.

(b) When, subsequent to referral to a case management agency, as defined in section 25.5-6-1702, pursuant to subsection (1) of this section, it appears that the child has intellectual and developmental disabilities, the court may proceed pursuant to article 10.5 of title 27 or may follow any of the recommendations contained in the report from the case management agency.

(c) If the child remains in treatment or receives services ordered pursuant to paragraph (a) or (b) of this subsection (3), the court may suspend the proceedings or dismiss any actions pending under this title.

(d) If a child receiving treatment or services ordered pursuant to paragraph (a) or (b) of this subsection (3) leaves a treatment facility or program without prior approval, the facility or program shall notify the court of the child's absence within twenty-four hours. When such child is taken into custody, the facility or program shall be notified by the court and shall readmit the child within twenty-four hours after receiving such notification, excluding Saturdays, Sundays, and legal holidays.

(4) (a) When the report of the evaluation or eligibility determination conducted pursuant to subsection (1) of this section states that the child does not have a mental health disorder or an intellectual and developmental disability, the child shall be released to the person or agency specified pursuant to subsection (2) of this section within twenty-four hours after the evaluation has been completed, excluding Saturdays, Sundays, and legal holidays. The child must not be detained unless a new detention hearing is held within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, and the court finds at that hearing that secure detention is necessary.

(b) When the evaluation report or eligibility determination states that the child does not have a mental health disorder or an intellectual and developmental disability, the court shall set a time for resuming the hearing on the petition or any other pending matters.

Source: L. 87: Entire title R&RE, p. 783, § 1, effective October 1; (1)(b) and (1)(c) amended, p. 1586, § 58, effective October 1. **L. 92:** (1)(a) amended, p. 1398, § 57, effective July 1. **L. 94:** (1)(c) amended, p. 2684, § 203, effective July 1. **L. 2006:** (1)(b), (1)(c), (1)(e), (2)(a), (3)(a), and (4) amended, p. 1402, § 59, effective August 7. **L. 2010:** (1)(b), (1)(c), and (3)(a) amended, (SB 10-175), ch. 188, p. 792, § 45, effective April 29. **L. 2017:** (1), (2)(a), (3)(a), and (4) amended, (SB 17-242), ch. 263, p. 1315, § 164, effective May 25. **L. 2021:** (1)(d) amended, (SB 21-059), ch. 136, p. 732, § 78, effective October 1; (1)(a) and (3)(b) amended, (HB 21-1187), ch. 83, p. 327, § 11, effective July 1, 2024. **L. 2022:** (1)(b), (1)(c), and (3)(a) amended, (HB 22-1256), ch. 451, p. 3233, § 38, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017.

19-3-507. Dispositional hearing - rules. (1) (a) After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interests of the child and the public. Such evidence shall include, but not necessarily be limited to, the social study and other reports as provided in section 19-1-107.

(b) Prior to any dispositional hearing, the caseworker of the county department assigned to the case shall submit to the court a statement that details the services that were offered to or provided to the family to prevent unnecessary out-of-home placement of the child and to

facilitate the reunification of the child with the family. The statement must contain an explanation of the services or actions that, had such services or actions been available, would have been necessary to enable the child to remain at home safely. In the alternative, the caseworker may submit a statement as to why no services or actions would have made it possible for the child to remain at home safely. If the child is part of a sibling group, as defined in section 19-1-103, and the child was not placed with his or her siblings, the caseworker shall submit to the court a statement about whether it continues to be in the best interests of the child or the children in the sibling group to be placed separately. If the caseworker locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(b.5) If the county department locates a capable, willing, and available relative or kin for the child or youth, it is presumed that placement of the child or youth with the relative or kin is in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification.

(b.7) Upon the motion of a party for placement of a child or youth with a relative or kin, if the party objects to the requested placement, the court shall hold a hearing within sixty-three days after the objection to determine whether the child or youth may be placed with the relative or kin. When a child or youth resides with a relative or kin, any other relative or kin seeking a placement change shall address the factors set forth in section 19-3-702 (6).

(c) If one or both of the parents have a disability, reasonable accommodations and modifications, as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations, are necessary to ensure the treatment plan components are accessible. If applicable, any identified accommodations and modifications must be listed in the report prepared for the dispositional hearing.

(d) If the court denies placement with a relative or kin, the court shall make detailed findings regarding the reasons for denial. A decision by a relative or kin to not be initially identified as a potential placement resource must not be the sole basis for the court to later rule out the relative or kin as the child's or youth's permanent placement. When determining whether a child or youth should be placed with a relative or kin, the court shall give primary consideration to a child's or youth's mental, physical, and emotional needs. The court shall not consider any of the following factors unless one of the factors would threaten the mental, physical, and emotional health or safety of the child or youth:

(I) The size of the home, including whether the child or youth would have a separate room;

(II) The socioeconomic status of the relative or kin compared to other available placement options;

(III) The ability of the relative or kin to support the child's or youth's participation in extracurricular activities;

(IV) Ordinary bonding or attachment that occurred during time spent in foster placement;

(V) Immigration status of the relative or kin; or

(VI) Age or any disability of the relative or kin.

(e) The court may consider the relative's or kin's criminal background, as permitted by section 19-3-406. When considering whether to allow a placement with a relative or kin who has been disqualified for placement pursuant to section 19-3-406, the court shall consider the following factors:

(I) Whether the child's or youth's mental, physical, or emotional needs would be adversely affected;

(II) The nature of the crime of conviction;

(III) Whether there is a direct relationship between the conviction and the relative's or kin's ability to provide competent and safe care to the child or youth;

(IV) Length of time since conviction; and

(V) Evidence of rehabilitation.

(f) (I) If a child is eligible for services pursuant to section 19-3-208, and the child's parent is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail, then prior to any dispositional hearing, the county department, upon knowledge of the incarceration, shall make reasonable efforts to involve the parent who is incarcerated in planning the services for the child, or document the caseworker's efforts to include the parent who is incarcerated in the planning. Reasonable efforts include:

(A) In any meeting customarily attended by a parent, permitting and facilitating, to the extent reasonably practicable, a parent's remote attendance and participation through audio-visual communication technology;

(B) Opportunities for meaningful family time between the child and parent. If in-person family time is not reasonably practicable, the caseworker shall communicate with the facility or jail regarding the facility's or jail's ability to facilitate family time between the child and parent through audio-visual communication technology and arrange for available virtual family time. The court shall consider the preferences of the child and parent when determining whether in-person family time should occur. Nothing in this subsection (1)(f) requires the court to order family time if a protection order prohibits contact between the child and the parent, or if the court determines that family time would jeopardize the child's mental, emotional, or physical health. The court shall not determine that family time is not in the child's best interests based solely on the fact that in-person family time would occur in a facility or jail.

(C) Communicating with the facility's or jail's designee.

(II) The department may promulgate rules necessary to comply with the requirements of this subsection (1)(f).

(2) If the court has reason to believe that the child may have an intellectual and developmental disability, the court shall refer the child to the case management agency, as defined in section 25.5-6-1702, in the defined service area where the action is pending for an eligibility determination pursuant to article 6 of title 25.5 or article 10.5 of title 27. If the court has reason to believe that the child may have a behavioral or mental health disorder, the court

shall order a behavioral or mental health disorder prescreening to be conducted in any appropriate place.

(3) (a) Except as provided in section 19-3-508 (1), the court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence.

(b) If the hearing is continued, the court shall make an appropriate order for detention of the child or for such child's release in the custody of such child's parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

(c) In scheduling investigations and hearings, the court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from such child's home before an order of disposition has been made.

(4) (a) In any case in which the disposition is placement out of the home, except for children or youth committed to the department of human services, the court shall, at the time of placement, set a review within ninety-one days to determine whether continued placement is necessary and in the best interests of the child or youth and the community, and whether reasonable efforts have been made to return the child or youth to the home or, in the case of a sibling group, whether it is in the best interests of the children or youth in the sibling group to be placed together. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children or youth in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children or youth. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child, children, or youth.

(b) If the county department locates a capable, willing, and available relative or kin for the child or youth, it is presumed that placement of the child or youth with a relative or kin is in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and the child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification.

(c) The judge shall review the family services plan document regarding placement of siblings and efforts to locate relatives or kin. If the child or youth is residing with a relative or kin, the family services plan must describe the efforts made by the county to maintain the child or youth in the relative or kinship home and to not remove the child or youth from the kinship or relative home except to effectuate a permanency goal of reunification or after finding that remaining in the kinship placement is contrary to the child's or youth's mental, physical, or emotional needs, or when the relative or kinship placement decides they are no longer able to care for the child or youth. The court shall give notice of the review to all parties and to the director of the facility or agency in which the child or youth is placed and any person who has physical custody of the child or youth and any attorney or guardian ad litem of record. The review shall be conducted in accordance with section 19-1-115 (8)(f).

(5) (a) Parents, grandparents, or relatives who have information or knowledge concerning the care and protection of the child or youth, or kin caregiver who has the child in the caregiver's care for more than three months, may intervene as a matter of right following adjudication with or without counsel.

(b) A county department of human or social services that placed a child in foster care shall provide the foster parent of the child and any pre-adoptive parent or relative providing care for the child with notice of any administrative review of the child's case.

(c) Upon the written request of the foster parent, pre-adoptive parent, or relative, notice of a court hearing for the child's case shall be provided in written form and may be provided through the caseworker at the usual periodic meetings with the person providing care for the child. The notice shall include, at a minimum:

(I) The child's court case number;

(II) The date and time of the next court hearing; and

(III) The name of the magistrate or judge and the court division to which the case has been assigned.

(d) Foster parents who have the child or youth in their care for twelve months or more may intervene, as a matter of right, with or without counsel, following adjudication. The purpose of intervention is to provide knowledge or information concerning the care and protection of the child or youth, including the child's or youth's mental, physical, and emotional needs.

(e) An intervenor may not, on the intervenor's own motion, seek to restrict family time between a child or youth and the parent or relatives, file a petition to terminate parental rights, or appeal a denial of termination of parental rights.

(6) In adopting a treatment plan, the court shall consider services and programs that provide the parent and child with language access and effective communication and identify the manner in which the county department ensures the provision of language access and effective communication consistent with the requirements of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, and its related amendments and implementing regulations, and Title IV of the federal "Civil Rights Act of 1964", 42 U.S.C. sec. 2000d et seq., as amended, and its related amendments and implementing regulations.

Source: L. 87: Entire title R&RE, p. 784, § 1, effective October 1. **L. 92:** (2) amended, p. 1398, § 58, effective July 1. **L. 93:** Entire section amended, p. 389, § 3, effective April 19; (1) amended, p. 2017, § 8, effective July 1. **L. 94:** (1)(b) and (4) amended, p. 2684, § 204, effective July 1. **L. 97:** (5) added, p. 1439, § 14, effective July 1. **L. 99:** (4) amended, p. 911, § 6, effective July 1. **L. 2000:** (1)(b) and (4) amended, p. 476, § 4, effective July 1. **L. 2003:** (1)(b) and (4) amended, p. 2624, § 5, effective June 5. **L. 2004:** (5) amended, p. 972, § 1, effective August 4. **L. 2006:** (2) amended, p. 1404, § 60, effective August 7. **L. 2008:** (4) amended, p. 1894, § 66, effective August 5. **L. 2017:** (2) amended, (SB 17-242), ch. 263, p. 1317, § 165, effective May 25. **L. 2018:** (1)(c) added, (HB 18-1104), ch. 164, p. 1135, § 7, effective April 25; (5)(b) amended, (SB 18-092), ch. 38, p. 422, § 61, effective August 8. **L. 2021:** (1)(b) amended, (SB 21-059), ch. 136, p. 732, § 79, effective October 1; (2) amended, (HB 21-1187), ch. 83, p. 328, § 12, effective July 1, 2024. **L. 2023:** (1)(b.5), (1)(b.7), (1)(d), (1)(e), (5)(d), and (5)(e) added and (4) and (5)(a) amended (HB 23-1024), ch. 367, p. 2210, § 4, effective August 7; (1)(f) added, (SB 23-039), ch. 191, p. 955, § 5, effective January 1, 2024. **L. 2024:** (6) added, (HB 24-1031), ch. 327, p. 2214, § 4, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-3-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 93-1058 and Senate Bill 93-28 were harmonized.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (4), see section 1 of chapter 233, Session Laws of San Andreas 1999. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of San Andreas 2023. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of San Andreas 2023.

19-3-508. Neglected or dependent child or youth - disposition - concurrent planning - definition. (1) When a child or youth has been adjudicated to be neglected or dependent, the court may enter a decree of disposition the same day, but in any event it shall do so within forty-two days, unless the court finds that the best interests of the child or youth will be served by granting a delay. In a county designated pursuant to section 19-1-123, if the child or youth is less than six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall enter a decree of disposition within twenty-eight days after the adjudication and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child or youth will be served by granting the delay. It is the intent of the general assembly that the dispositional hearing be held on the same day as the adjudicatory hearing, whenever possible. If a delay is granted, the court shall set forth the reasons why a delay is necessary and the minimum amount of time needed to resolve the reasons for the delay and shall schedule the hearing at the earliest possible time following the delay. When the proposed disposition is termination of the parent-child legal relationship, the hearing on termination must not be held on the same date as the adjudication, and the time limits set forth above for dispositional hearings do not apply. When the proposed disposition is termination of the parent-child legal relationship, the court may continue the dispositional hearing to the earliest available date for a hearing in accordance with subsection (3)(a) of this section and part 6 of this article 3. When the decree does not terminate the parent-child legal relationship, the court shall approve an appropriate treatment plan that must include, but not be limited to, one or more of the following provisions of subsections (1)(a) to (1)(d) of this section:

(a) The court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the court deems necessary and appropriate. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2) and is placed with a parent or guardian who is a named respondent in a petition filed pursuant to section 19-3-502, the treatment plan shall include a requirement that the family obtain services specific to the family's needs if available in the community where the family resides and based on the social study and reports provided pursuant to section 19-1-107 (2.5).

(b) The court may place the child or youth in the legal custody of a relative or kin, including the child's or youth's grandparent, or other suitable person, with or without protective

supervision, under such conditions as the court deems necessary and appropriate. If a child or youth is not placed with a parent pursuant to subsection (1)(a) of this section, the court shall give preference to placement with a grandparent or other relative or kin. If the county department locates a capable, willing, and available relative or kin for the child or youth, it is presumed that placement of the child or youth with a relative or kin is in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and the child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification.

(c) The court may place legal custody in the county department of human or social services or a child placement agency for placement in a foster care home or other child care facility. When the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(d) (I) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that the child receive other special care and may place the child in a hospital or other suitable facility for such purposes; except that the child may not be placed in a mental health facility operated by the department of human services until the child has received a behavioral or mental health disorder prescreening resulting in a recommendation that the child be placed in a facility for evaluation pursuant to section 27-65-106, or a hearing has been held by the court after notice to all parties, including the department of human services. An order for an emergency mental health hold must not be entered unless a hearing is held and evidence indicates that the prescreening report is inadequate, incomplete, or incorrect and that competent professional evidence is presented by a mental health professional that indicates that a behavioral or mental health disorder is present in the child. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(II) Placement in any facility operated by the department of human services shall continue for such time as ordered by the court or until the professional person in charge of the child's treatment concludes that the treatment or placement is no longer appropriate. If placement or treatment is no longer deemed appropriate, the court shall be notified and a hearing held for further disposition of the child within five days, excluding Saturdays, Sundays, and legal holidays. The court shall make, prior to the hearing, such orders regarding temporary custody of the child as are deemed appropriate.

(e) (I) Except where the proposed disposition is termination of the parent-child legal relationship, the caseworker assigned to the case shall submit an appropriate treatment plan and the court shall approve an appropriate treatment plan involving the child named and each respondent named and served in the action. If a child's parent is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail, the caseworker assigned to the case, upon knowledge of the incarceration, shall include information in the report that details the services and treatment available to a parent

at the facility or jail where the parent is incarcerated or the caseworker's efforts to obtain that information. The county department shall communicate with the facility or jail where the parent is incarcerated regarding the requirements of the court-ordered treatment plan. However, the court may find that an appropriate treatment plan cannot be devised as to a particular respondent because the child has been abandoned as set forth in section 19-3-604 (1)(a) and the parents cannot be located, or because the child has been adjudicated as neglected or dependent based upon section 19-3-102 (2), or due to the unfitness of the parents as set forth in section 19-3-604 (1)(b). When the court finds that an appropriate treatment plan cannot be devised, the court shall conduct a permanency hearing as set forth in section 19-3-702 (1), unless a motion for termination of parental rights has been filed within thirty days after the court's finding.

(II) Repealed.

(III) If, after the dispositional hearing, the child's parent becomes continuously incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail for more than thirty-five days, then the caseworker assigned to the case, upon knowledge of incarceration, shall provide information that details the services and treatment available to a parent at the facility or jail where the parent is incarcerated or the caseworker's efforts to obtain the information at the next scheduled court hearing.

(2) Before a disposition other than that provided in paragraph (a) of subsection (1) of this section is made, it shall be established by a preponderance of the evidence that a separation of the child from the parents or guardian is in the best interests of the child.

(3) (a) The court may enter a decree terminating the parent-child legal relationship of one or both parents pursuant to part 6 of this article. Pursuant to section 19-3-602 (1), in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall hear a motion for termination within one hundred twenty days after such motion is filed, and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay in accordance with the requirements of section 19-3-104.

(b) Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the only known parent, the court may:

(I) Vest the county department of human or social services or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the child for adoption; or

(II) Make any other disposition provided in paragraph (b), (c), or (d) of subsection (1) of this section that the court finds appropriate.

(b.5) In making a disposition pursuant to paragraph (b) of this subsection (3), the court may give preference to making a disposition as provided in paragraph (b) of subsection (1) of this section, if in the best interests of the child.

(c) Upon the entry of a decree terminating the parent-child legal relationship of one parent, the court may:

(I) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(II) Make any other disposition provided in subsection (1) of this section that the court finds appropriate.

(4) (Deleted by amendment, L. 97, p. 520, § 8, effective July 1, 1997.)

(5) (a) In placing the legal custody or guardianship of the person of a child or youth with an individual or a private agency, the court shall give primary consideration to the welfare of the child or youth but shall take into consideration the religious and cultural preferences of the child or youth or of the parents, whenever practicable.

(b) (I) If the court finds that placement out of the home is necessary and is in the best interests of the child or youth and the community, the court shall place the child or youth with a relative or kin, including the child's or youth's grandparent, as provided in subsection (1)(b) of this section. In considering the placement, the court shall give primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and the child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification. The court shall place the child or youth in the facility or setting that most appropriately meets the needs of the child or youth, the family, and the community. In making its decision as to proper placement, the court shall utilize the evaluation for placement prepared pursuant to section 19-1-107. If the court deviates from the recommendations of the evaluation for placement in a manner that results in a difference in the cost of the disposition ordered by the court and the cost of the disposition recommended in the evaluation, the court shall make specific findings of fact relating to its decision, including the monthly cost of the placement, if ordered. The court shall send a copy of such findings to the chief justice of the supreme court, who shall report annually on such orders and findings of fact to the joint budget committee, the public and behavioral health and human services committee of the house of representatives, and the health and human services committee of the senate, or any successor committees.

(II) Notwithstanding subsection (5)(b)(I) of this section to the contrary, when the child or youth is part of a sibling group and the sibling group is being placed out of the home, if the county department locates a capable, willing, and available joint placement for all of the children or youth in the sibling group, it is presumed that placement of the entire sibling group in the joint placement is in the best interests of the children or youth. The presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child, children, or youth.

(III) If the county department locates a capable, willing, and available relative or kin for the child or youth, it is presumed that placement of the child or youth with the relative or kin is in the best interests of the child or youth. The presumption may be rebutted by a preponderance of the evidence, giving primary consideration to the child's or youth's mental, physical, and emotional needs, including the child's or youth's preference regarding placement. The court shall consider whether a proposed placement would hinder efforts to reunite the parent and the child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification. Placement with a relative or kin must be considered and investigated when the child or youth enters foster care, is moved from a foster home, or returns to foster care after the child or youth has achieved permanency. As used in this subsection (5), "relative" includes a member of the child's or youth's birth family, adoptive family, and kin, regardless of whether parental rights were terminated.

(6) The court may grant a new hearing as provided in the San Andreas rules of juvenile procedure.

(7) Efforts to place a child for adoption or with a legal guardian or custodian, including identifying appropriate in-state and out-of-state permanent placement options, may be made concurrently with reasonable efforts to preserve and reunify the family.

(8) When entering a decree placing the child or youth in the legal custody of a relative or placing the child or youth in the legal custody of a county department for placement in a foster care home, the court shall ensure that the child's or youth's placement at the time of the hearing is in the best interests of the child or youth and shall inquire about documentation that the county department or a licensed child placement agency has adequately screened the foster care provider or the family member who is seeking to care for the child or youth and any adult residing in that home and that all of the criminal history record checks and other background checks have been completed as required pursuant to section 26-6-910 or 19-3-406.

Source: L. 87: Entire title R&RE, p. 785, § 1, effective October 1. **L. 91:** (1)(b), (3), and (5)(b) amended, p. 265, § 9, effective May 31. **L. 94:** IP(1), (1)(a), IP(4), and (4)(a) amended, p. 2054, § 7, effective July 1; (1)(d) amended, p. 2685, § 205, effective July 1. **L. 96:** (1)(e)(II) repealed, p. 85, § 11, effective March 20; IP(1) and (1)(c) amended, p. 265, § 17, effective July 1; (5)(b) amended, p. 1246, § 116, effective August 7. **L. 97:** IP(1), (1)(e)(I), and (4) amended, p. 520, § 8, effective July 1; (1)(e)(I) and (5)(b) amended, pp. 1439, 1441, §§ 15, 18, effective July 1. **L. 98:** (1)(e)(I) amended and (7) added, p. 1418, § 5, effective July 1. **L. 99:** (1)(e)(I) amended, p. 912, § 7, effective July 1. **L. 2001:** (2) amended, p. 847, § 9, effective June 1. **L. 2003:** (1)(c) and (5)(b) amended, p. 2625, § 6, effective June 5; IP(1) and (3)(a) amended, p. 1225, § 1, effective August 6. **L. 2007:** (7) amended, p. 1018, § 8, effective May 22. **L. 2010:** (1)(d)(I) amended, (SB 10-175), ch. 188, p. 793, § 46, effective April 29. **L. 2015:** (8) added, (SB 15-087), ch. 263, p. 1019, § 11, effective June 2. **L. 2017:** IP(1) and (1)(d)(I) amended, (SB 17-242), ch. 263, p. 1317, § 166, effective May 25. **L. 2018:** (1)(c) and (3)(b)(I) amended, (SB 18-092), ch. 38, p. 422, § 62, effective August 8. **L. 2022:** (8) amended, (HB 22-1295), ch. 123, p. 836, § 40, effective July 1; (1)(d)(I) amended, (HB 22-1256), ch. 451, p. 3234, § 39, effective August 10. **L. 2023:** IP(1), (1)(b), and (5) amended, (HB 23-1024), ch. 367, p. 2212, § 5, effective August 7; (1)(d)(I) amended, (HB 23-1301), ch. 303, p. 1821, § 23, effective August 7; (8) amended, (HB 23-1043), ch. 20, p. 79, § 3, effective August 7; (1)(e)(I) amended and (1)(e)(III) added, (SB 23-039), ch. 191, p. 956, § 6, effective January 1, 2024.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-3-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (1)(e)(I) by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

(3) Although subsection (7) refers to the term "custodian", references to the term "custody", and related terms, have been changed in other places in the San Andreas Revised Statutes to correspond with the use of the term "parental responsibilities" as described in § 14-10-124.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (5)(b), see section 1 of chapter 237, Session Laws of San Andreas 1996. For

the

legislative declaration contained in the 1999 act amending subsection (1)(e)(I), see section 1 of chapter 233, Session Laws of San Andreas 1999. For the legislative declaration contained in the 2001 act amending subsection (2), see section 1 of chapter 241, Session Laws of San Andreas 2001. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of San Andreas 2023. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of San Andreas 2023.

PART 6

TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP

Law reviews: For article, "Difficult Issues in Adoption - Part 1", see 24 S.A. Law. 851 (1994); for article, "Difficult Issues in Adoption - Part 2", see 24 S.A. Law. 1083 (1994).

19-3-601. Short title. This part 6 shall be known and may be cited as the "Parent-Child Legal Relationship Termination Act of 1987".

Source: L. 87: Entire title R&RE, p. 787, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-602. Motion for termination - separate hearing - right to counsel - no jury trial. (1) Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing. In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall hear the motion for termination within one hundred twenty days after such motion is filed, and shall not grant a delay unless good cause is shown and unless the court finds that the best interests of the child will be served by granting a delay in accordance with the requirements of section 19-3-104.

(1.5) (a) Pursuant to the provisions of section 19-1-126, the motion for termination must:

(I) Include a statement indicating what continuing inquiries the county department of human or social services has made in determining whether the child who is the subject of the termination proceeding is an Indian child;

(I.5) Include a statement indicating that a grandparent, aunt, uncle, brother, or sister of the child must file a request for guardianship and legal custody of the child within twenty days of the filing of the motion;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts, or copies thereof, shall be attached to the motion for termination and filed with the court or filed within ten days after the filing of the motion for termination, as specified in section 19-1-126 (1)(c).

(2) After a motion for termination of a parent-child legal relationship is filed pursuant to this part 6, the parent or parents shall be advised of the right to counsel if not already represented by counsel of record; and counsel shall be appointed in accordance with the provisions of section 19-1-105. The parent or parents shall also be advised that a grandparent, aunt, uncle, brother, or sister of the child must file a request for guardianship and legal custody of the child within twenty days of the filing of the motion. Advisement of right to counsel and the time for a relative to file a request may be done in open court or in a writing served as provided by law for motions and notices in a proceeding under section 19-1-104 (1)(b).

(3) Repealed.

(4) There shall be no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 2002:** (1.5) added, p. 787, § 7, effective May 30. **L. 2003:** (1) amended, p. 1226, § 2, effective August 6. **L. 2005:** (1.5)(a)(I.5) added and (2) amended pp. 94, 93, §§ 3, 2, effective March 31. **L. 2022:** (3)(b) added by revision, (HB 22-1038), ch. 92, pp. 437, 446, §§ 11, 37. **L. 2024:** IP(1.5)(a) and (1.5)(a)(I) amended, (HB 24-1222), ch. 155, p. 689, § 9, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(b) provided for the repeal of subsection (3), effective January 9, 2023. (See L. 2022, pp. 437, 446.)

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (1.5), see section 1 of chapter 217, Session Laws of San Andreas 2002. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-3-603. Notice - abandonment. Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file, only if the location of a parent remains unknown, an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 97:** Entire section amended, p. 521, § 9, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-604. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence of any one of the following:

(a) That the child has been adjudicated dependent or neglected and has been abandoned by the child's parent or parents as follows:

(I) That the parent or parents have surrendered physical custody of the child for a period of six months or more and have not manifested during such period the firm intention to resume physical custody of the child or to make permanent legal arrangements for the care of the child except in cases when voluntary placement is renewable under section 19-1-115 (8)(a);

(II) That the identity of the parent of the child is unknown and has been unknown for three months or more and that reasonable efforts to identify and locate the parent in accordance with section 19-3-603 have failed;

(b) That the child is adjudicated dependent or neglected and the court finds that an appropriate treatment plan cannot be devised to address the unfitness of the parent or parents. In making such a determination, the court shall find one of the following as the basis for unfitness:

(I) An emotional illness, a behavioral or mental health disorder, or an intellectual and developmental disability of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs and conditions of the child. The court shall make findings that the provision of reasonable accommodations and modifications pursuant to the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations, will not remediate the impact of the parent's disability on the health or welfare of the child.

(II) A single incident resulting in serious bodily injury or disfigurement of the child;

(III) Repealed.

(IV) Serious bodily injury or death of a sibling due to proven parental abuse or neglect;

(V) An identifiable pattern of habitual abuse to which the child or another child has been subjected and, as a result of which, a court has adjudicated another child as neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such abuse has caused the death of another child;

(VI) An identifiable pattern of sexual abuse of the child; or

(VII) The torture of or extreme cruelty to the child, a sibling of the child, or another child of either parent;

(c) That the child or youth is adjudicated dependent or neglected and all of the following exist:

(I) That an appropriate treatment plan approved by the court has not been reasonably complied with by the parent or parents or has not been successful or that the court has previously found, pursuant to section 19-3-508 (1)(e), that an appropriate treatment plan could not be devised. In a county designated pursuant to section 19-1-123, if a child or youth is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the court shall not find that a parent is or parents are in reasonable compliance with or to have been successful at a court-approved treatment plan when:

(A) The parent has not attended family time with the child or youth as set forth in the treatment plan, unless good cause can be shown for failing to attend; or

(B) The parent exhibits the same problems addressed in the treatment plan without adequate improvement, including but not limited to improvement in the relationship with the child, and is unable or unwilling to provide nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions despite earlier intervention and treatment for the family. The court may receive testimony regarding the family's progress under the treatment plan from the child's physician or therapist, foster parent, educational or religious teachers, CASA volunteer, or caseworker.

(II) That the parent is unfit; and

(III) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.

(2) In determining unfitness, conduct, or condition for purposes of paragraph (c) of subsection (1) of this section, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious bodily injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care to include, at a minimum, nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions. In making such determinations, the court shall consider, but not be limited to, the following:

(a) Any one of the bases for a finding of parental unfitness set forth in paragraph (b) of subsection (1) of this section;

(b) Conduct towards the child of a physically or sexually abusive nature;

(c) History of violent behavior;

(d) A single incident of life-threatening or serious bodily injury or disfigurement of the child;

(e) Excessive use of intoxicating liquors or controlled substances, as defined in section 18-18-102 (5), S.A.R.S., which affects the ability to care and provide for the child;

(f) Neglect of the child;

(g) Injury or death of a sibling due to proven parental abuse or neglect, murder, voluntary manslaughter, or circumstances in which a parent aided, abetted, or attempted the commission of or conspired or solicited to commit murder of a child's sibling;

(h) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents;

(i) That any parent who is a named respondent in the termination proceeding has had prior involvement with the department of human services concerning an incident of abuse or neglect involving the child and a subsequent incident of abuse or neglect occurs;

(j) Whether a parent committed felony assault that resulted in serious bodily injury to the child or to another child of the parent;

(k) That the child has been in foster care under the responsibility of the county department for fifteen of the most recent twenty-two months, unless:

(I) The child is placed with a relative of the child;

(II) The county department or a state agency has documented in the case plan, which shall be available for court review, that filing such a motion would not be in the best interests of the child;

(III) Where required to make reasonable efforts, services identified as necessary for the safe return of the child to the child's home have not been provided to the family consistent with the time period in the case plan; or

(IV) The child has been in foster care under the responsibility of the county department for such period of time due to circumstances beyond the control of the parent such as incarceration of the parent for a reasonable period of time, court delays or continuances that are not attributable to the parent, or such other reasonable circumstances that the court finds are beyond the control of the parent;

(l) Whether, on two or more occasions, a child in the physical custody of the parent has been adjudicated dependent or neglected in a proceeding under this article or comparable proceedings under the laws of another state or the federal government;

(m) Whether, on one or more prior occasions, a parent has had his or her parent-child legal relationship terminated pursuant to this article or section 19-5-105 or comparable proceedings under the laws of another state or the federal government.

(3) In considering the termination of the parent-child legal relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. For the purpose of determining termination of the parent-child legal relationship, written reports and other materials relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence; but the court, if so requested by the child, his parent or guardian, or any other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child so requires.

Source: L. 87: Entire title R&RE, p. 788, § 1, effective October 1. **L. 90:** (1)(a) amended, p. 1037, § 5, effective April 3. **L. 91:** (1)(a)(I) amended, p. 1159, § 5, effective July 1. **L. 92:** (3) amended, p. 224, § 11, effective July 1. **L. 94:** (1) and IP(2) amended and (2)(i) added, p. 2055, § 8, effective July 1. **L. 97:** IP(1) and (1)(b) amended, p. 521, § 10, effective July 1; (1)(b) amended, p. 1440, § 16, effective July 1. **L. 98:** (1)(b), IP(2), (2)(d), and (2)(g) amended and (2)(j) and (2)(k) added, pp. 1419, 1420, §§ 6, 7, effective July 1. **L. 2001:** (2)(l) and (2)(m) added, p. 499, § 1, effective May 4; (1)(b)(V) and (1)(b)(VI) amended and (1)(b)(VII) added, p. 847, § 10, effective June 1. **L. 2003:** (1)(c)(I)(B) amended, p. 754, § 6, effective March 25. **L. 2008:** (1)(a)(I) amended, p. 1894, § 67, effective August 5. **L. 2012:** (2)(e) amended, (HB 12-1311), ch. 281, p. 1625, § 61, effective July 1. **L. 2017:** (1)(b)(I) amended, (HB 17-1046), ch. 50, p. 158, § 10, effective March 16; (1)(b)(I) amended, (SB 17-242), ch. 263, p. 1318, § 167, effective May 25. **L. 2018:** IP(1)(b) and (1)(b)(I) amended, (HB 18-1104), ch. 164, p. 1135, § 8, effective April 25. **L. 2023:** IP(1)(c), IP(1)(c)(I), and (1)(c)(I)(A) amended, (HB 23-1027), ch. 284, p. 1683, § 16, effective June 1; (1)(b)(III)(B) added by revision, (SB 23-039), ch. 191, pp. 957, 962 §§ 7, 13.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-11-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments made to subsection (1)(b) by Senate Bill 97-218 and Senate Bill 97-71 were harmonized.

(3) Subsection (1)(b)(III)(B) provided for the repeal of subsection (1)(b)(III), effective January 1, 2024. (See L. 2023, pp. 957, 962.)

Cross references: For the legislative declaration contained in the 2001 act amending subsections (1)(b)(V) and (1)(b)(VI) and enacting subsection (1)(b)(VII), see section 1 of chapter 241, Session Laws of San Andreas 2001. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of San Andreas 2023.

19-3-605. Request for placement with family members. (1) Following an order of termination of the parent-child legal relationship, the court shall consider, but shall not be bound by, a request that guardianship and legal custody of the child be placed with a relative of the child. When ordering guardianship of the person and legal custody of the child, the court may give preference to a grandparent, aunt, uncle, brother, sister, half-sibling, or first cousin of the child when such relative has made a timely request therefor pursuant to the requirement of this subsection (1) and the court determines that such placement is in the best interests of the child. Such request must be submitted to the court no later than twenty days after the motion for termination is filed pursuant to section 19-3-602. Nothing in this section shall be construed to require the child placement agency with physical custody of the child to notify said relatives described in this section of the pending termination of parental rights.

(2) Notwithstanding the provisions of subsection (1) of this section to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) In making placement determinations concerning a child or youth following the order of termination of the parent-child legal relationship pursuant to the provisions of this section, the court shall consider all pertinent information related to modifying the placement of the child or youth prior to removing the child or youth from the child's or youth's placement, including:

(a) An individualized assessment of the child's needs created pursuant to Title IV-E of the federal "Social Security Act", as amended, and regulations promulgated thereunder, as amended;

(b) Whether the child's or youth's placement at the time of the hearing is a safe and potentially permanent placement for the child or youth, including documentation that a county department or a licensed child placement agency has adequately screened the family member who is seeking to care for the child or youth and any adult residing in the home and that all of the criminal history record checks and other background checks have been completed as required pursuant to section 26-6-910 or 19-3-406;

(c) The child's actual age and developmental stage and, in consideration of this information, the child's attachment needs;

(d) Whether the child has significant psychological ties to a person who could provide a permanent placement for the child, including a relative, and, if so, whether this person maintained contact with the child during the child's placement out of the home;

(e) Whether a person who could provide a permanent placement for the child is willing to maintain appropriate contact after an adoption of the child with the child's relatives, particularly sibling relatives, when such contact is safe, reasonable, and appropriate;

(f) Whether a person who could provide a permanent placement for the child is aware of the child's culture and willing to provide the child with positive ties to his or her culture;

(g) The child's medical, physical, emotional, or other specific needs, and whether a person who could provide a permanent placement for the child is able to meet the child's needs; and

(h) The child's attachment to the child's caregiver at the time of the hearing and the possible effects on the child's emotional well-being if the child is removed from the caregiver's home.

Source: L. 87: Entire title R&RE, p. 789, § 1, effective October 1. **L. 2003:** Entire section amended, p. 2626, § 7, effective June 5. **L. 2005:** (1) amended, p. 93, § 1, effective March 31; entire section amended, p. 678, § 3, effective July 1. **L. 2015:** (3)(b) amended, (SB 15-087), ch. 263, p. 1019, § 12, effective June 2; (3) amended, (HB 15-1337), ch. 328, p. 1342, § 2, effective June 5. **L. 2022:** (3)(b) amended, (HB 22-1295), ch. 123, p. 836, § 41, effective July 1. **L. 2023:** IP(3) and (3)(b) amended, (HB 23-1043), ch. 20, p. 79, § 4, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-105.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section by House Bill 05-1174 and House Bill 05-1173 were harmonized.

(3) Amendments to subsection (3)(b) by HB 15-1337 and SB 15-087 were harmonized.

Cross references: (1) For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 194, Session Laws of San Andreas 2005.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

19-3-606. Review of child's disposition following termination of the parent-child legal relationship. (1) The court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days after the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the court what disposition of the child, if any, has occurred. The guardian ad litem shall provide a written report stating the guardian ad litem's position to the court based upon an independent investigation and consultation with the child regarding the disposition that is in the best interests of the child and the necessary steps to finalize the child's permanency. Counsel for youth shall provide a position statement that conveys the child's position and objectives for the child's desired disposition and necessary steps to finalize permanency. Any report required pursuant to this subsection (1) is subject to the provisions of section 19-1-309.

(2) If no adoption has taken place within a reasonable time and the court determines that adoption is not immediately feasible or appropriate, the court may order that provision be made immediately for alternative long-term placement of the child.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1. **L. 89:** (1) amended, p. 944, § 5, effective March 27. **L. 90:** (1) amended, p. 1012, § 7, effective July 1. **L. 2022:** (1) amended, (HB 22-1038), ch. 92, p. 437, § 12, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-3-607. Expert testimony. (1) An indigent parent has the right to have appointed one expert witness of his or her own choosing whose reasonable fees and expenses, subject to the review and approval by the office of the respondent parents' counsel, shall be paid by the state of San Andreas pursuant to section 19-3-610.

(2) All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1. **L. 2016:** (1) amended, (SB 16-205), ch. 216, p. 830, § 1, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-608. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, but it shall not modify the child's status as an heir at law which shall cease only upon a final decree of adoption.

(2) No order or decree entered pursuant to this part 6 shall disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian tribe, any agency, any state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-609. Appeals - time requirements. (1) Appeals of court decrees made under this part 6 shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

(2) Whenever an appeal is made under this part 6, an indigent parent, upon request, shall be provided a transcript of the trial proceeding for the appeal at the expense of the state pursuant to section 19-3-610.

(3) All written orders by the district court from any appealable hearing must be made within thirty-five days after the hearing to provide timely permanency for the child or children who are the subject of the appeal.

Source: L. 87: Entire title R&RE, p. 790, § 1, effective October 1. **L. 2022:** (3) added, (HB 22-1113), ch. 56, p. 261, § 3, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in HB 22-1113, see section 1 of chapter 56, Session Laws of San Andreas 2022.

19-3-610. Budgetary allocation for expenses. The general assembly shall make annual appropriations to the office of the respondent parents' counsel for the purpose of meeting the expenses of sections 19-3-607 (1) and 19-3-609 (2).

Source: L. 87: Entire title R&RE, p. 791, § 1, effective October 1. **L. 2016:** Entire section amended, (SB 16-205), ch. 216, p. 830, § 2, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-11-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-3-611. Review of decisions regarding placement of children. (Repealed)

Source: L. 88: Entire section added, p. 755, § 2, effective May 31. **L. 91:** Entire section repealed, p. 883, § 1, effective June 5.

19-3-612. Reinstatement of the parent-child legal relationship - circumstances - petition - hearings - legislative declaration. (1) The general assembly finds that, for various reasons, some children are not adopted after the termination or voluntary relinquishment of the parent-child legal relationship and in some cases might benefit from a reinstatement of the parent-child legal relationship if the former parent has remediated the issues that led to the termination or voluntary relinquishment. The purpose of this section is to address the problem of children who linger in the child welfare system by giving them a second chance at achieving permanency with their rehabilitated former parent. The purpose of this section is to create a process by which the former parent's legal rights may be restored if certain conditions are met,

both the child and the former parent want reinstatement of the relationship, a trial period is successful, and it is found to be in the best interests of the child. Reinstatement is a recognition that the situation of the former parent and child has changed since the time of the termination or voluntary relinquishment of the parent-child legal relationship, and reunification is now appropriate and in the best interests of the child.

(2) A county department with custody of a child whose parent's rights were terminated voluntarily or involuntarily, including a child whose parent relinquished the child pursuant to the requirements of article 5 of this title 19, or the guardian ad litem of such a child, may file a petition to reinstate the parent-child legal relationship alleging the following:

(a) (I) The child is twelve years of age or older; or

(II) The child is younger than twelve years of age and is part of a sibling group, as defined in section 19-1-103, that includes a child described in subsection (2)(a)(I) of this section for whom a petition to reinstate the parent-child legal relationship has been filed, and the younger sibling independently meets the conditions set forth in subsections (2)(b) to (2)(f) of this section;

(b) Both the child and the former parent consent to the petition for reinstatement of the parent-child legal relationship;

(c) The child does not have a legal parent, is not in an adoptive placement, and is not likely to be adopted within a reasonable period of time, and other permanency options have been exhausted;

(d) The child is in the legal custody of a county department;

(e) The date of the final order terminating the parent-child legal relationship was at least three years before the filing of the petition or, if the court finds that it is in the best interests of the child to consider a petition for reinstatement of the parent-child legal relationship, less than three years from the date of the final order terminating the parent-child legal relationship; and

(f) The dependency and neglect action did not involve substantiated allegations of sexual abuse or an incident of egregious abuse or neglect against a child, a near fatality, or a suspicious fatality or near fatality as those terms are defined in section 26-1-139, S.A.R.S.

(3) A child who is twelve years of age or older, or the child's guardian ad litem, may also file a petition to reinstate the parent-child legal relationship alleging that the conditions set forth in subsections (2)(b) to (2)(f) of this section are met.

(4) If a former parent whose rights have been terminated contacts either the county department that has custody of the child or the child's guardian ad litem about the possible reinstatement of the parent-child legal relationship through a petition filed pursuant to this section, the county department or the guardian ad litem who was contacted shall notify the other party, as applicable, and the court within thirty days after the contact with the name and address of the former parent.

(5) If a petition to reinstate the parent-child legal relationship is filed, a former parent who is named in the petition and whose rights the petition seeks to have reinstated is entitled to appointed counsel through the office of the respondent parents' counsel pursuant to article 92 of title 13 if the former parent meets the income eligibility criteria for public counsel, or the former parent may retain counsel at his or her own expense.

(6) The petition must state the name and age of the child; the county department that has legal custody of the child; and the name and address of the former parent named in the petition. The petition shall be verified, and the statements in the petition may be made upon information

and belief. The party filing a petition to reinstate the parent-child legal relationship shall serve the petition on the following nonmovants:

(a) The child's guardian ad litem;

(b) The county department with legal custody of the child; and

(c) The former parent whose parent-child legal relationship the petition seeks to have reinstated.

(7) Upon receipt of the petition for reinstatement of the parent-child legal relationship, the court must set a date for an initial hearing to take place no more than sixty-three days after the filing of the petition. The court shall provide notice of all hearings and reviews to:

(a) The county department with legal custody of the child;

(b) The guardian ad litem;

(c) The former parent whose parent-child legal relationship the petition seeks to have reinstated;

(d) The foster parents, if any; and

(e) The child's tribe if the child is an Indian child.

(8) At the initial hearing and all subsequent hearings on the petition, the court shall consider information from the county department with legal custody of the child, the child, the child's guardian ad litem, the former parent, the person or agency that is providing care for the child, and any other person or agency that may aid the court in its review.

(9) At the initial hearing, the court shall consider and make findings about the following threshold conditions for pursuing a reinstatement of the parent-child legal relationship:

(a) Whether the allegations for filing the petition in paragraphs (a) to (f) of subsection (2) of this section or in subsection (3) of this section have been established by clear and convincing evidence;

(b) Whether the child is of a sufficient age and maturity and able to express his or her preference about reinstatement of the parent-child legal relationship;

(c) Whether the former parent has remedied the conditions that led to the child's removal and termination of the parent-child legal relationship, if applicable;

(d) What temporary transition services would be needed by the child and the former parent to have a successful reinstatement of the parent-child legal relationship;

(e) Whether the former parent can provide a safe and stable home for the child; and

(f) Whether the former parent has participated in an assessment that supports that the reinstatement of the parent-child legal relationship is in the best interests of the child. The state board may adopt rules defining the types of assessments that may be done to support reinstatement of the parent-child legal relationship. A previous finding of termination does not disqualify the former parent from being certified as an appropriate placement for a trial period under this section.

(10) At the conclusion of the initial hearing, the court shall either dismiss the petition because the threshold conditions for reinstatement set forth in subsection (9) of this section have not been met or enter an order finding that the threshold conditions for reinstatement set forth in subsection (9) of this section have been met and that it is in the best interests of the child or youth to work toward reinstatement of the parent-child legal relationship. If the court finds that it is in the best interests of the child or youth to pursue reinstatement of the parent-child legal relationship, the court must approve a transition plan developed by the county department and designed for reinstatement of the parent-child legal relationship, including family time or

placement of the child or youth with the former parent for a designated trial period of up to six months, during which time legal custody of the child or youth remains with the county department. As part of the transition plan, the county department shall provide transition services, as needed. The county department shall assess the family time or temporary placement of the child or youth with the former parent and prepare a report about the success of the family time or temporary placement. The county department shall submit the report to the court, the former parent, and the guardian ad litem not later than thirty days prior to the expiration of the designated trial period. The county department may stop the family time or remove the child or youth from placement with the former parent at any time, in accordance with the procedures outlined in sections 19-3-401 and 19-3-403, if it deems that the child or youth is not safe or that it is no longer in the best interests of the child or youth for the child or youth to remain with the former parent.

(11) (a) The court shall schedule a final hearing prior to the expiration of the designated trial period. At the final hearing, the court shall consider the following:

(I) Whether the threshold criteria for reinstatement of the parent-child legal relationship set forth in subsection (9) of this section are still met;

(II) Whether the trial period of family time or placement of the child or youth with the former parent was successful;

(III) Whether the child will lose or gain any benefits or services as a result of reinstatement and how this might affect the child; and

(IV) Whether reinstatement of the parent-child legal relationship is in the best interests of the child.

(b) The court shall make findings supporting the disposition of the petition for reinstatement. The court may make the following orders:

(I) The court may grant the petition and order the reinstatement of the parent-child legal relationship if the court finds by clear and convincing evidence that it is in the best interests of the child to reinstate the parent-child legal relationship; or

(II) The court may dismiss the petition, in which case:

(A) The county department retains the legal custody of the child; and

(B) The county department shall arrange for the immediate placement of the child in out-of-home placement; and

(C) The court shall set a hearing to determine the permanency plan in accordance with section 19-3-702; or

(III) The court may continue the matter for no more than sixty days and may issue an order requiring the former parent or the county department to take certain actions before the next hearing; except that the court shall either dismiss or grant a motion for reinstatement of the parent-child legal relationship within twelve months after the date the petition for reinstatement was filed.

(12) An order reinstating the parent-child legal relationship restores all rights, powers, privileges, immunities, duties, and obligations of the former parent as to the child, including those relating to custody, control, and support of the child. If the parent-child legal relationship is reinstated, the court may require periodic review within ninety days after reinstatement.

(13) The granting of a petition for reinstatement of the parent-child legal relationship does not vacate or otherwise affect the validity of the original order terminating the parent-child legal relationship.

(14) The granting of a petition for reinstatement of the parent-child legal relationship for one former parent does not restore or otherwise impact the rights or legal status of the other former parent.

(15) A parent whose parent-child legal relationship is restored pursuant to this section is not liable for child support or the costs of any services provided to the child from the date of the original order terminating the parent-child legal relationship to the date of the order reinstating the parent-child legal relationship.

(16) This section does not create a cause of action against the county department or its employees concerning the original order terminating the parent-child legal relationship. Nothing in this section shall be construed to limit or alter the protections granted to public entities and to their employees under the "San Andreas Governmental Immunity Act", article 10 of title 24, S.A.R.S.

Source: L. 2014: Entire section added, (SB 14-062), ch. 77, p. 310, § 1, effective August 6. **L. 2019:** (5) amended, (HB 19-1104), ch. 14, p. 56, § 2, effective August 2. **L. 2020:** (1), IP(2), and (4) amended, (HB 20-1104), ch. 50, p. 174, § 1, effective September 14. **L. 2021:** (2)(a)(II) amended, (SB 21-059), ch. 136, p. 733, § 80, effective October 1. **L. 2022:** (3) amended, (HB 22-1038), ch. 92, p. 437, § 13, effective January 9, 2023. **L. 2023:** (10) and (11)(a)(II) amended, (HB 23-1027), ch. 284, p. 1683, § 17, effective June 1.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

PART 7

REVIEW OF PLACEMENT

Law reviews. For article, "Achieving Safe, Permanent Homes for San Andreas Children", see 31 S.A. Law. 37 (Oct. 2002).

19-3-701. Petition for review of need for placement. (Repealed)

Source: L. 87: Entire title R&RE, p. 791, § 1, effective October 1. **L. 91:** (1) amended, p. 1159, § 4, effective July 1. **L. 92:** (2) amended, p. 225, § 12, effective July 1. **L. 93:** (1) amended, p. 1637, § 24, effective July 1; (1) amended, p. 1139, § 75, effective July 1, 1994. **L. 94:** (2)(c) and (6) amended, p. 2686, § 206, effective July 1. **L. 96:** (6) amended, p. 1247, § 117, effective August 7. **L. 97:** (6) amended, p. 1441, § 19, effective July 1. **L. 99:** (2)(c) and (6) amended, p. 912, § 8, effective July 1. **L. 2007:** Entire section repealed, p. 1509, § 5, effective May 31.

Cross references: For the legislative declaration contained in the 2007 act repealing this section, see section 1 of chapter 351, Session Laws of San Andreas 2007.

19-3-702. Permanency hearing. (1) (a) In order to provide stable, permanent homes for every child or youth placed out of the home, in as short a time as possible, a court shall conduct

a permanency planning hearing. The court shall hold the permanency planning hearing as soon as possible following the initial hearing held pursuant to a proceeding pursuant to part 3 of article 7 of this title 19 or the initial dispositional hearing pursuant to this article 3; except that the permanency planning hearing must be held no later than ninety-one days after the initial decree of disposition. After the initial permanency planning hearing, the court shall hold additional hearings at least every six months while the case remains open or more often in the discretion of the court, or upon the motion of any party. The initial permanency hearing must be held within twelve months after the child or youth enters foster care, even when a dispositional decree has not yet been entered. When possible, the permanency planning hearing must be combined with the in-person six-month review as provided for in section 19-1-115 (4)(c), subsection (6)(a) of this section, or section 19-7-312. The court shall hold all permanency planning hearings in person, provide proper notice to all parties, and provide all parties the opportunity to be heard. The court shall consult with the child or youth in a developmentally appropriate manner regarding the child's or youth's permanency goal.

(b) If the court finds that reasonable efforts to reunify the child or youth and the parent are not required pursuant to section 19-1-115 (7) or if there is a finding that no appropriate treatment plan can be devised pursuant to section 19-3-508 (1)(d)(I), the court shall hold a permanency planning hearing within thirty days after the finding. If the court finds that reasonable efforts to reunify the child or youth and the parent are not required and a motion for termination has been filed pursuant to section 19-3-602, the permanency planning hearing and the hearing on the motion for termination may be combined, and the court shall make all determinations required at both hearings in the combined hearing.

(2) (a) When the court schedules a permanency planning hearing pursuant to this section, the court or designee of the court shall promptly issue a notice stating the purpose of the hearing. The notice must set forth the constitutional and statutory rights of the child's or youth's parents or guardian and the statutory rights of the child or youth. The notice of the hearing must comply with the requirements stated in section 19-3-502 (7) and must be sent to parents or guardians, placement providers, and named children or youth.

(b) The county department of human or social services shall propose a permanency plan for each child or youth, which plan must be completed and submitted to the court in the family services plan no later than five days in advance of the permanency planning hearing.

(3) At any permanency planning hearing, the court shall first determine if the child or youth should be returned to the child's or youth's parent, named guardian, or legal custodian and, if applicable, the date on which the child or youth must be returned. If the child or youth cannot be returned home, the court shall also determine whether reasonable efforts have been made to find a safe and stable permanent home for the child or youth. The court shall not delay permanency planning by considering the placement of children or youth together as a sibling group or for purposes of maintaining financial support for a kinship foster care home or a non-certified kinship care home, unless there are exceptional circumstances approved by the court. At any permanency planning hearing, the court shall make the following determinations, when applicable:

(a) Whether procedural safeguards to preserve parental rights have been applied in connection with any change in the child's or youth's placement or any determination affecting family time of the child or youth;

(b) Whether reasonable efforts have been made to finalize the permanency goal;

(c) Whether ongoing efforts have been made to identify kin and relatives that are available to be a permanent placement for the child or youth;

(d) When the child or youth resides in a placement out of state, whether the out-of-state placement continues to be appropriate and in the best interests of the child or youth;

(e) Whether a child or youth who is fourteen years of age or older is receiving transition services to successful adulthood, regardless of his or her permanency goal; and

(f) Whether the current placement of the child or youth could be a permanent placement, if necessary.

(4) (a) If the child or youth cannot be returned to the physical custody of the child's or youth's parent or legal guardian on the date of the hearing, the court shall enter one or more of the following permanency goals, of which subsections (4)(a)(I) to (4)(a)(V) of this section may be adopted as concurrent goals pursuant to section 19-3-508 (7):

(I) Return home;

(II) Adoption with a relative;

(III) Permanent placement with a relative through legal guardianship or allocation of parental responsibilities;

(IV) Adoption with a nonrelative;

(V) Permanent placement with a nonrelative through legal guardianship or allocation of parental responsibilities;

(VI) (A) Other planned permanent living arrangements either through emancipation or long-term foster care.

(B) Other planned permanent living arrangements may only be used as a permanency goal for children or youth in exceptional circumstances for children sixteen years of age or older who have co-occurring complex conditions that preclude their return home, their adoption or legal guardianship, or allocation of parental responsibilities; or for children and youth who are in the unaccompanied refugee minor program, regardless of their age.

(C) Other planned permanent living arrangements may not be used as a concurrent goal.

(D) The court shall ask the child or youth about his or her desired permanency outcome when considering other planned permanent living arrangements.

(b) (I) The department shall document in the family services plan the compelling reasons why it is not in the best interest of the child or youth to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative. In addition, the department shall document intensive, ongoing, and unsuccessful efforts made to return the child or youth home or to a secure placement with a fit and willing relative, including adult siblings; a legal guardian; or an adoptive parent, including efforts that utilize search technology that includes social media to find biological family members for the children or youth.

(II) The department shall document in the family services plan and the court shall review whether the child's or youth's placement is following the reasonable and prudent parent standard and whether the child or youth has regular, ongoing opportunities to engage in age-appropriate activities.

(c) Prior to closing a case before a youth's eighteenth birthday, the court or the youth's guardian ad litem or counsel for youth shall notify the youth that the youth will lose the right to receive medicaid until the maximum age provided by federal law if the case is closed prior to the youth's eighteenth birthday. Prior to closing a case after a youth's sixteenth birthday, the court shall advise the youth of the youth's eligibility for the foster youth in transition program, created

in section 19-7-303, should the youth later determine the youth needs child welfare assistance from a county department.

(d) Every child who is eighteen years of age or older who is leaving foster or kinship care must be provided with his or her birth certificate, social security card, health insurance information, medical records, either a driver's license or state-issued identification card, and proof of foster care.

(e) If the court finds that there is not a substantial probability that the child or youth will be returned to a parent or legal guardian within six months and the child or youth appears to be adoptable and meets the criteria for adoption in section 19-5-203, the court may order the county department of human or social services to show cause why it should not file a motion to terminate the parent-child legal relationship pursuant to part 6 of this article 3. Cause may include, but is not limited to, any of the following conditions:

(I) The parent or legal guardian has maintained regular parenting time and contact with the child or youth, and the child or youth would benefit from continuing this relationship;

(II) A child who is twelve years of age or older objects to termination of the parent-child legal relationship;

(III) The child's foster parents are unable to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal responsibility for the child. The foster parents must be willing and capable of providing the child with a stable and permanent environment, and it must be shown that removal of the child from the physical custody of his or her foster parents would be seriously detrimental to the emotional well-being of the child.

(IV) The criteria for termination in section 19-3-604 have not yet been met; or

(V) If the parent:

(A) Is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail; detained by the United States department of homeland security; or deported; and

(B) Has a meaningful and safe relationship with the child or youth while incarcerated, detained, or deported.

(5) For a child or youth in a case designated pursuant to section 19-1-123 only:

(a) A permanent home is the place in which the child or youth may reside if the child or youth is unable to return home to a parent or legal guardian. If the court determines by a preponderance of the evidence that a permanent home is not currently available or that the child's or youth's current needs or situation prohibit placement, the court must be shown and the court must find that reasonable efforts, as defined in section 19-1-103, were made to find the child or youth an appropriate permanent home and such a home is not currently available or that a child's or youth's needs or situation prohibit the child or youth from a successful placement in a permanent home.

(b) Regardless of any permanent home findings made pursuant to this section, reasonable efforts shall continue to be made to return the child or youth home unless the court has previously found or finds that reunification is not an option pursuant to section 19-1-115 (7). Any findings by the court regarding a permanent home shall not delay or interfere with reunification of a child or youth with a parent or legal guardian.

(c) At a permanency planning hearing that occurs immediately prior to twelve months after the original placement of the child or youth out of the home, the court shall make a finding

identifying whether the child or youth is in a placement that can provide legal permanency. The court must make this finding to ensure that a child or youth who has been removed from his or her home is placed in a permanent home as expeditiously as possible.

(d) The court shall review the case at a permanency planning hearing at least every six months until the court finds that the child or youth is in a permanent home. The permanency planning hearings must continue as long as the court is unable to find that the child or youth is in a permanent home. At each hearing, the court must be provided evidence that a child or youth is in a permanent home or that reasonable efforts, as defined in section 19-1-103, continue to be made to find the child or youth an appropriate permanent home and such a home is not currently available or that a child's or youth's needs or situation prohibit the child or youth from successful placement in a permanent home.

(e) At each permanency planning hearing, the caseworker shall provide the court with a written or verbal report specifying what efforts have been made to identify a permanent home for the child or youth and what services have been provided to the child or youth to facilitate identification of a permanent home, including the department's ongoing efforts to identify relatives and kin and to engage the relatives and kin in providing support for the child or youth and family, and document that the relatives and kin have been provided notice as required by section 19-3-403 (3.6)(a)(IV). The department shall also report any decision regarding placing the child or youth with a relative or kin. If the department determines not to place the child or youth with a relative or kin, after giving primary consideration to the child's or youth's mental, physical, and emotional needs, or if the department decides not to place a child or youth with a relative or kin because the placement would hinder efforts to reunite the child or youth and parent, the department shall explain why any identified relatives or kin have been ruled out for placement.

(f) In determining whether a child or youth is in a permanent home, the court shall consider placement of the children or youth together as a sibling group pursuant to section 19-3-213.

(6) If a placement change is contested by a party and the child or youth is not reunifying with a parent or legal guardian, the court shall consider all pertinent information, including the child's or youth's wishes, related to modifying the placement of the child or youth prior to removing the child or youth from the child's or youth's placement, and including the following:

(a) An individualized assessment of the child's or youth's needs created pursuant to Title IV-E of the federal "Social Security Act", as amended, and regulations promulgated thereunder, as amended;

(b) Whether the child's or youth's placement at the time of the hearing is a safe and potentially permanent home for the child or youth;

(c) The child's or youth's actual age and developmental stage and, in consideration of this information, the child's or youth's attachment needs;

(d) Whether the child or youth has significant psychological ties to a person who could provide a permanent home for the child or youth, including a relative, and, if so, whether this person maintained contact with the child or youth during the child's or youth's placement out of the home;

(e) Whether a person who could provide a permanent home for the child or youth is willing to maintain appropriate contact after an adoption of the child or youth with the child's or

youth's relatives, particularly sibling relatives, when such contact is safe, reasonable, and appropriate;

(f) Whether a person who could provide a permanent home for the child or youth is aware of the child's or youth's culture and is willing to provide the child or youth with positive ties to his or her culture;

(g) The child's or youth's medical, physical, emotional, or other specific needs, and whether a person who could provide a permanent placement for the child or youth is able to meet the child's or youth's needs;

(h) The child's or youth's attachment to the child's or youth's caregiver at the time of the hearing and the possible effects on the child's or youth's emotional well-being if the child or youth is removed from the caregiver's home. However, placement with a child's or youth's relative or kin should not be denied based solely upon the ordinary bonding and attachment to a foster parent as a result of time spent in the home. The court shall consider the number of prior placements, the child's or youth's mental, physical, and emotional needs, and any subsequent caregivers' ability to provide emotional and psychological support when considering a change of placement.

(i) The child's or youth's preference regarding placement.

(7) (a) If a child's parent is incarcerated in a department of corrections facility, a private correctional facility under contract with the department of corrections, or a jail, and the parent has maintained a meaningful and safe relationship with the child while incarcerated, the court shall make findings regarding whether a permanent placement for the child exists that permits the parent to maintain a relationship with the child, including guardianship or allocation of parental responsibilities, giving primary consideration to the child's mental, physical, and emotional needs. If the proposed permanent placement would require the child to transfer to another placement, the court shall consider the factors in subsection (6) of this section in making its determination.

(b) In making a determination whether the parent who is incarcerated has maintained a meaningful and safe relationship with the child, the court shall give primary consideration to the child's mental, emotional, and physical needs, and whether the involvement of the parent who is incarcerated in the child's life serves the child's best interests. The court shall not find that the parent's incarceration is the sole reason that a relationship with the parent is not in the child's best interests, and shall consider the parent's efforts to comply with the treatment plan under the circumstances of incarceration.

Source: L. 89: Entire section added, p. 930, § 2, effective April 23. **L. 92:** (1), (2), (4), (6), and (8) amended, p. 225, § 13, effective July 1. **L. 93:** (1), (2), (4), (6), and (7) amended, p. 390, § 4, effective April 19; (5)(a)(I) amended, p. 582, § 20, effective July 1. **L. 94:** (1) and (3) amended and (2.5) added, p. 2057, § 9, effective July 1; (6) and (8) amended, p. 2687, § 207, effective July 1. **L. 98:** (1), (3), (4), and (6) amended, p. 1421, § 9, effective July 1. **L. 99:** (1), (2), (2.5), (3), (6), and (8) amended, p. 913, § 9, effective July 1. **L. 2000:** (2.7) added, p. 476, § 5, effective July 1. **L. 2001:** Entire section amended, p. 847, § 11, effective June 1. **L. 2003:** (1), (6)(a), (6)(b), and (8)(b) amended and (6.5) added, p. 2487, § 2, effective July 1. **L. 2005:** (9) added, p. 679, § 4, effective July 1. **L. 2007:** (1) and (1.5) amended and (3.7) added, p. 1018, § 9, effective May 22. **L. 2008:** (10) added, p. 1533, § 2, effective July 1. **L. 2015:** (9) amended, (HB 15-1337), ch. 328, p. 1342, § 3, effective June 5. **L. 2018:** (2), IP(2.5), and IP(5)(a) amended,

(SB 18-092), ch. 38, p. 423, § 63, effective August 8. **L. 2019:** Entire section R&RE, (HB 19-1219), ch. 237, p. 2349, § 1, effective August 2. **L. 2021:** (1)(a) and (4)(c) amended, (HB 21-1094), ch. 340, p. 2217, § 6, effective June 25; (5)(a) and (5)(d) amended, (SB 21-059), ch. 136, p. 733, § 81, effective October 1. **L. 2022:** (4)(c), (5)(e), and IP(6) amended, (HB 22-1038), ch. 92, p. 437, § 14, effective January 9, 2023. **L. 2023:** (1)(a) and (3)(a) amended, (HB 23-1027), ch. 284, p. 1684, § 18, effective June 1; (5)(e) and (6)(h) amended and (6)(i) added, (HB 23-1024), ch. 367, p. 2214, § 6, effective August 7; (4)(e)(III) and (4)(e)(IV) amended and (4)(e)(V) and (7) added, (SB 23-039), ch. 191, p. 957, § 8, effective January 1, 2024. **L. 2024:** IP(3) amended, (SB 24-008), ch. 289, p. 1931, § 2, effective September 1.

Cross references: (1) For the legislative declaration contained in the 1993 act amending subsection (5)(a)(I), see section 1 of chapter 165, Session Laws of San Andreas 1993. For the legislative declaration contained in the 1999 act amending subsections (1), (2), (2.5), (3), (6), and (8), see section 1 of chapter 233, Session Laws of San Andreas 1999. For the legislative declaration contained in the 2001 act amending this section, see section 1 of chapter 241, Session Laws of San Andreas 2001. For the legislative declaration contained in the 2005 act enacting subsection (9), see section 1 of chapter 194, Session Laws of San Andreas 2005. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023. For the legislative declaration in HB 23-1024, see section 1 of chapter 367, Session Laws of San Andreas 2023. For the legislative declaration in SB 23-039, see section 1 of chapter 191, Session Laws of San Andreas 2023.

(2) For Title IV-E of the federal "Social Security Act", see 42 U.S.C. § 670 et seq.

19-3-702.5. Periodic reviews. (1) The court shall conduct a periodic review at least every six months and, at the periodic review, shall determine the following:

(a) Whether the child's or youth's safety is protected in the placement;

(b) Whether reasonable efforts have been made to find safe and permanent placement for the child or youth;

(c) The continuing necessity for and the appropriateness of the child's or youth's placement;

(d) The extent of compliance with the individual case plan pursuant to section 19-3-209, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement out of the home;

(e) A likely time frame in which the child or youth will be returned to a parent or legal guardian or be in a safe and permanent home; and

(f) If the child or youth is not likely to be returned to a parent or legal guardian within six months, a finding about whether the child or youth is in a potential permanent placement and if not, a likely time frame when he or she will be in a safe and permanent home.

Source: L. 2019: Entire section added, (HB 19-1219), ch. 237, p. 2354, § 2, effective August 2.

19-3-703. Permanent home. (Repealed)

Source: L. 94: Entire section added, p. 2058, § 10, effective July 1. **L. 98:** Entire section amended, p. 822, § 28, effective August 5. **L. 2001:** Entire section amended, p. 851, § 12, effective June 1. **L. 2019:** Entire section repealed, (HB 19-1219), ch. 237, p. 2355, § 3, effective August 2.

Cross references: For the legislative declaration contained in the 2001 act amending this section, see section 1 of chapter 241, Session Laws of San Andreas 2001.

19-3-704. Youth with disabilities - incapacitated persons. (1) A party may request the court to determine whether a youth is an incapacitated person, as defined in section 15-14-102. The motion must be filed with the court prior to the youth's eighteenth birthday.

(2) If there has been a determination, or if a determination is pending, that a youth is an incapacitated person, as defined in section 15-14-102, then jurisdiction continues as provided in section 19-3-205.

Source: L. 2021: Entire section added, (HB 21-1094), ch. 340, p. 2217, § 7, effective June 25.

19-3-705. Transition hearing. (1) When a youth turns eighteen years of age while the youth is a named child or is a youth in a dependency and neglect case open through this article 3, the court shall hold a transition hearing within thirty-five days after the youth's eighteenth birthday. The purpose of the transition hearing is to determine whether the youth will opt into the foster youth in transition program, established in section 19-7-303, or, alternatively, choose to emancipate.

(2) At least seven days prior to a transition hearing, a county department shall file a report with the court that includes:

(a) A description of the county department's reasonable efforts toward achieving the youth's permanency goals and a successful transition to adulthood;

(b) An affirmation that the county department has provided the youth with all necessary records and documents, including copies of all documents listed in section 19-3-702 (4)(d), health records, education records, and written information concerning the youth's family history and contact information for siblings, if available and appropriate;

(c) An affirmation that the county department has informed the youth, in a developmentally appropriate manner, of the benefits and options available to the youth by participating in the foster youth in transition program created in section 19-7-303 and the voluntary nature of that program; and

(d) A statement of whether the youth has made a preliminary decision whether to emancipate or to enter the foster youth in transition program created in section 19-7-303 and either or both of the following:

(I) If it is anticipated that the youth will choose to emancipate, the report must include a copy of the youth's emancipation transition plan executed pursuant to section 19-7-310, finalized no more than ninety days prior to the youth's transition; or

(II) If it is anticipated that the youth will choose to enter the foster youth in transition program created in section 19-7-303, the county department shall file a petition pursuant to section 19-7-307.

(3) The court shall advise the youth that:

(a) Except as provided in section 19-3-704, the youth has the right to choose whether to emancipate or to voluntarily continue receiving services through the foster youth in transition program created in section 19-7-303;

(b) To participate in the foster youth in transition program created in section 19-7-303, the youth must enter into a voluntary services agreement with the county department. The transition program provides the youth with access to financial support with housing and other services, as outlined in section 19-7-305.

(c) Services provided through the foster youth in transition program created in section 19-7-303 are voluntary for the youth, and the youth may remain in the transition program until the last day of the month in which the youth turns twenty-one years of age, or such greater age of foster care eligibility as required by federal law, so long as the youth meets all other program eligibility requirements pursuant to section 19-7-304;

(d) If the youth chooses to emancipate but later decides support is needed, the youth has the right to begin receiving child welfare services again through the foster youth in transition program, created in section 19-7-303, until the youth's twenty-first birthday or such greater age of foster care eligibility as required by federal law; and

(e) The youth has the right to counsel, who shall represent the youth throughout the youth's participation in the foster youth transition program. The court shall advise the youth that the current emancipation transition hearing may be continued for up to one hundred nineteen days if the youth would like additional time to make a decision or to prepare for emancipation. The court shall ask the youth whether the youth has had sufficient opportunity to consult with counsel and if the youth is ready to make a decision at the current time or, alternatively, if the youth would like to request a continuance of up to one hundred nineteen days.

(4) Prior to a youth emancipating, the court shall:

(a) Review the youth's emancipation transition plan executed pursuant to section 19-7-310 and consult with the youth on readiness for emancipation;

(b) Determine whether the county department has made reasonable efforts toward the youth's permanency goal and a successful transition to adulthood;

(c) Determine whether the youth has been provided with all necessary records and documents described in subsection (2)(b) of this section; and

(d) Determine whether the youth has been enrolled in medicaid and advise the youth on the youth's eligibility for former foster care medicaid up to twenty-six years of age pursuant to section 26-5-113 and of the necessity of keeping the youth's contact information up to date.

(5) With the youth's consent, the court may continue the emancipation transition hearing for up to one hundred nineteen days to allow time to improve the youth's emancipation transition plan, gather necessary documents and records, or for any other reason necessary to allow the youth a successful transition to adulthood.

(6) If a youth is opting into the foster youth in transition program created in section 19-7-303 and a petition has been filed pursuant to section 19-7-307, the court shall dismiss the case pursuant to this article 3 or dismiss the youth from the case brought pursuant to this article 3, leave the case open for remaining siblings, and open a new case brought pursuant to part 3 of article 7 of this title 19. Such an action must not result in an interruption in case management services, housing, medicaid coverage, or in foster care maintenance payments.

Source: L. 2021: Entire section added, (HB 21-1094), ch. 340, p. 2217, § 7, effective June 25. **L. 2022:** (1) and (5) amended, (HB 22-1245), ch. 88, p. 418, § 5, effective August 10; (3)(e) amended, (HB 22-1038), ch. 92, p. 442, § 27, effective January 9, 2023.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

PART 8

TASK FORCE ON THE COLLECTION AND SECURITY OF DIGITAL IMAGES OF CHILD ABUSE OR NEGLECT

19-3-801 to 19-3-805. (Repealed)

Editor's note: (1) This part 8 was added in 2016 and was not amended prior to its repeal in 2019. For the text of this part 8 prior to its repeal in 2019, consult the 2018 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 19-3-805 provided for the repeal of this part 8, effective July 1, 2019. (See L. 2016, p. 1043.)

PART 9

TASK FORCE ON HIGH-QUALITY PARENTING TIME

19-3-901. Legislative declaration. (1) The general assembly finds and declares that:

(a) San Andreas has a strong interest in preserving and strengthening family ties and reducing separation trauma to children who are removed from their birth parents;

(b) The removal and subsequent continued separation between child and birth parent makes sustaining primary relationships difficult and reunification more problematic, and the loss a child experiences when separated from his or her birth parent or parents is profound, sometimes lasting into adulthood;

(c) For these reasons, it is important to establish clear standards to achieve consistent practices relating to the availability of high-quality parenting time for children who have been removed from a birth parent by government action; and

(d) Clear standards and consistent practices will help ensure that all parents and children have a fair process for determining a parenting time plan that is in the best interests of children and that promotes positive outcomes for families.

(2) Therefore, the general assembly declares that it is valuable to create a task force of persons with experience in or knowledge of the child welfare policy system to examine the current policies and statutes governing parenting time, to study best practices for the provision of and determination of individualized plans for parenting time, and to make recommendations to the executive branch and to the general assembly on administrative and legislative changes to support high-quality parenting time in San Andreas.

Source: L. 2021: Entire part added, (HB 21-1101), ch. 481, p. 3430, § 5, effective July 7.

19-3-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "County department" means a county department of human or social services.

(2) "Parenting time" means any form of contact or engagement between parents, legal custodians, or guardians and children when children are placed in out-of-home care in a case brought pursuant to this article 3.

(3) "State department" means the state department of human services.

(4) "Steering committee" means the task force steering committee created in section 19-3-903.

(5) "Task force" means the task force on high-quality parenting time created in section 19-3-903.

Source: L. 2021: Entire part added, (HB 21-1101), ch. 481, p. 3430, § 5, effective July 7.

19-3-903. Task force on high-quality parenting time - creation - steering committee - membership. (1) There is created in the office of the respondent parents' counsel created in section 13-92-103 the task force on high-quality parenting time, for the purpose of studying the issues set forth in section 19-3-904 and making findings and recommendations to the governor, the state department, the child welfare training academy, and the general assembly on administrative and legislative changes to improve high-quality parenting time services and practices in dependency and neglect cases.

(2) There is created a steering committee for the task force. The members of the steering committee serve as the executive committee of the task force. The steering committee is composed of a representative of the following agencies or organizations, selected by the executive director of the agency or organization:

(a) The office of the respondent parents' counsel;

(b) The division of child welfare in the department of human services;

(c) The office of the child's representative;

(d) The child protection ombudsman's office; and

(e) A statewide association of human and social services directors.

(3) The membership of the task force must not exceed twenty-five members and, to the extent practicable, must include persons from throughout the state and must reflect the racial, ethnic, and geographic diversity of the state. The steering committee members are members of the task force. The steering committee shall jointly appoint the remaining task force members by consensus, or, if no consensus is reached, by majority vote of the steering committee. The remaining task force members must meet the following criteria:

(a) One member representing the court improvement program;

(b) One member who is either retired or currently serving as a judge or magistrate with experience in the child protection system;

(c) Two members who represent service providers, with one member representing service providers who provide services in an urban county and one member representing service providers who provide services in a rural county;

(d) One member who is a director or administrator of a county department;

(e) Three members representing the county departments of human or social services, at least one of which must be a county attorney, with two members representing urban counties and one member representing a rural county;

(f) One member who is a licensed psychiatrist, psychologist, social worker, or therapist who works with children who have been abused or neglected;

(g) Two parents with lived experience in the child welfare system, including a parent who has a disability or has a child with a disability;

(h) Two members with lived experience in the child welfare system as children;

(i) One member who is a foster parent or kinship provider;

(j) A service provider who works with parents or children with disabilities;

(k) A social worker, family advocate, or parent advocate with experience serving families in dependency and neglect cases; and

(l) Any other individual or representative with relevant experience, as determined by the steering committee.

(4) (a) The executive directors of the agencies or organizations specified in subsection (2) of this section shall appoint the steering committee members not later than fifteen days after July 7, 2021. Steering committee members serve at the pleasure of the appointing authority.

(b) The steering committee shall appoint the remaining task force members described in subsection (3) of this section not later than forty-five days after July 7, 2021, unless the steering committee by majority vote extends the time frame in which to appoint task force members. Each member of the task force appointed by the steering committee serves at the pleasure of the steering committee and may be removed by a consensus of the steering committee, or, if consensus cannot be reached, by majority vote of the steering committee.

(5) The members of the task force serve without compensation and without reimbursement for expenses.

(6) (a) The task force shall convene within thirty days after the final member has been appointed to the task force.

(b) The task force shall elect a chair and vice-chair from among its members.

(c) The task force shall meet at least monthly through September 2022, and may meet thereafter to complete its duties.

(d) The steering committee may seek input from subject-matter experts or others to facilitate the work of the task force.

(e) The steering committee shall select a facilitator to be funded through gifts, grants, donations, or federally allocated funds that may be used for this purpose, and is authorized to seek, accept, and expend gifts, grants, or donations.

Source: L. 2021: Entire part added, (HB 21-1101), ch. 481, p. 3431, § 5, effective July 7. **L. 2023:** (1) amended, (HB 23-1027), ch. 284, p. 1685, § 19, effective June 1.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-3-904. Task force - purposes - issues to study - written reports. (1) The purpose of the task force is to:

(a) Study current laws, rules, and practices followed in the state including current capacity for supervised parenting time in dependency and neglect cases where children have been removed from a parent;

(b) Study and review research and best practices for parenting time in dependency and neglect cases while ensuring the safety and well-being of all participants;

(c) Study best practices for judicial review of family time and parenting time plans;

(d) Evaluate the rights and remedies for parents and children or youth pertaining to parenting time, including sibling family time;

(e) Consider whether the statutes and legal standards for ordering parenting time are consistent with best practices;

(f) Consider whether current language in the "San Andreas Children's Code" and rules should be updated or modernized, including replacing the term "visitation" with "parenting time" or "family time";

(g) Study best practices to meet the developmental needs of youth through parenting time in a trauma-informed manner;

(h) Study best practices for parenting time with incarcerated parents;

(i) Study best practices for use of levels of supervised parenting time and consistency in the availability and definitions of different levels of supervised parenting time;

(j) Recommend necessary changes to statute and rule to effectuate the recommended practices; and

(k) Recommend best practices to ensure that families across the state have consistent access to high-quality parenting time where children are in out-of-home care.

(2) In carrying out the purposes set forth in subsection (1) of this section, the task force shall consider:

(a) The United States constitution and state constitution, case law, statutes, rules, practices, and standards that govern family parenting time or family time in San Andreas;

(b) Best practices followed in other states or recommended by national child welfare experts to provide and determine parenting time plans that are in the best interests of children and which promote positive outcomes for families;

(c) Federal guidance from the Administration on Children, Youth and Families regarding best practices in parenting time and visitation for children and youth in out-of-home care; and

(d) Juvenile codes and rules from other states implementing best practices in parenting time.

(3) The task force shall consider and recommend:

(a) The best practices in parenting time for children placed in out-of-home care;

(b) Changes to statute, rule, and practice necessary to implement the recommendations;

(c) Considerations to ensure fair and equal access to high-quality parenting time for all families, including recommendations to ensure that culturally appropriate and inclusive services are equally available across the state; and

(d) Identification of barriers to implementing best practices across the state and recommendations for addressing the barriers.

(4) On or before October 1, 2022, the task force shall submit a written report to the governor; the state department; the child welfare training academy; the joint budget committee; and the house of representatives public and behavioral health and human services committee and the senate health and human services committee, or any successor committees. The report must

include, but is not limited to, the task force's findings concerning best practices to improve high-quality parenting time services and practices in dependency and neglect cases and recommendations concerning necessary changes in state statute and administrative rules to implement those best practices and recommendations.

(5) On or before December 1, 2024, the task force shall commission and evaluate a statewide study to:

(a) Identify the current strengths and needs for providing high-quality supervised family time services across the state;

(b) Identify necessary measures to build capacity to provide high-quality supervised family time services across the state;

(c) Inventory current funding sources and allowable costs for providing such services; and

(d) Make recommendations regarding best practices for funding high-quality parenting time. The task force shall provide the study and recommendations of the task force to the governor; the state department; the child welfare training academy; the joint budget committee; and the house of representatives public and behavioral health and human services committee and the senate health and human services committee, or any successor committees.

Source: L. 2021: Entire part added, (HB 21-1101), ch. 481, p. 3433, § 5, effective July 7. **L. 2023:** (1)(c), (1)(d), and (2)(a) amended and (5) added, (HB 23-1027), ch. 284, pp. 1685, 1680, §§ 20, 5, effective June 1.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-3-905. Repeal of part. This part 9 is repealed, effective July 1, 2025.

Source: L. 2021: Entire part added, (HB 21-1101), ch. 481, p. 3435, § 5, effective July 7. **L. 2023:** Entire section amended, (HB 23-1027), ch. 284, p. 1685, § 21, effective June 1.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

ARTICLE 3.1

Dependency Proceedings for Unaccompanied Children or Youth in Federal Custody

19-3.1-101. Petition for dependency order for unaccompanied children or youth in federal custody - definition. (1) When an unaccompanied child in the custody of the federal office of refugee resettlement housed in a facility in San Andreas has been subjected to parental abuse or neglect as defined in section 19-1-103 (1)(a) or subjected to the parental actions and omissions listed in section 19-3-102, that child may file a petition for a dependency order pursuant to this section with the juvenile court in the judicial district where the child is housed.

(2) (a) The petition must:

(I) Set forth the facts that bring the child under the court's jurisdiction pursuant to subsection (1) of this section;

(II) State the child's name, age, and country of birth; and

(III) Identify the facility in San Andreas where the child is housed in the custody of the federal office of refugee resettlement.

(b) The statements in the petition may be made upon information and belief.

(c) The petition must not name the child's parent as a respondent. The petition must state clearly that parental rights may not be terminated through proceedings under this section.

(3) (a) The court shall schedule a hearing within thirty-five days after the petition is filed, unless a motion is made for a forthwith hearing because the child is approaching eighteen years of age or other emergent circumstances, in which case the court shall schedule the hearing within seven days. If the court finds the statements in the petition are supported by a preponderance of the evidence, the court shall declare the child dependent on the court. A child declared dependent pursuant to this section may be eligible for oversight and services by the office of the child protection ombudsman pursuant to section 19-3.3-103 (1)(a.5). Upon request, the court may also issue an order establishing the child's eligibility for classification as a special immigrant juvenile under federal law, including:

(I) Declaring the child dependent;

(II) Determining that reunification of the child with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found pursuant to state law. For purposes of this subsection (3)(a)(II), "abandonment" includes, but is not limited to, the death of one or both parents.

(III) Determining that it is not in the best interests of the child to be returned to the child's or parents' previous country of nationality or country of last habitual residence.

(b) The order may be entered at any time following the filing of the petition or at the hearing.

(4) The court shall not alter the child's custody status or placement unless the federal department of health and human services provides specific consent.

(5) The court may retain jurisdiction over the child until the child reaches eighteen years of age or until further order of the court.

(6) For purposes of this section, "dependent on the court" means a youth is under the juvenile court's jurisdiction; the youth was at any time adjudicated dependent or neglected, as described in section 19-3-102, or that the court has found sufficient evidence that the youth has been subjected to child abuse or neglect, as defined in section 19-1-103 (1)(a); and the youth is in need of oversight and supportive services as determined by the court.

Source: L. 2022: Entire article added, (HB 22-1319), ch. 391, p. 2770, § 1, effective June 7. **L. 2024:** (3) amended, (SB 24-119), ch. 33, p. 103, § 5, effective August 7.

ARTICLE 3.3

Office of the Child Protection Ombudsman

19-3.3-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) Child abuse and neglect is a serious and reprehensible problem in society;

(b) The protection of children from abuse and neglect by applying prevention measures and observing best practices in treating children who are abused and neglected must be one of San Andreas's highest public policy priorities;

(c) The child protection system must protect and serve San Andreas's children in a manner that keeps them safe and healthy and promotes their well-being;

(d) The children and families served by the child protection system, as well as the public, must have a high level of confidence that the system will act in a child's best interests and will respond to the child's needs in a timely and professional manner;

(e) To engender this high level of confidence in the child protection system, it is important that children and families who become involved in the system, mandatory reporters, and the general public have a well-publicized, easily accessible, and transparent grievance process for voicing concerns regarding the child protection system along with the expectation that those concerns, once voiced, will be heard and addressed in a timely and appropriate manner; and

(f) To improve child protection outcomes and to foster best practices, there must be effective accountability mechanisms, including the review and evaluation of concerns voiced by children and families, mandatory reporters, persons involved in the child protection system, and members of the general public, that provide policymakers with the information necessary to formulate systemic changes, where appropriate.

(2) The general assembly further finds and declares that the establishment of the office of the child protection ombudsman will:

(a) Improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system; and

(b) Allow families, concerned citizens, mandatory reporters, employees of the state department and county departments, and other professionals who work with children and families to voice their concerns, without fear of reprisal, about the response by the child protection system to children experiencing, or at risk of experiencing, child maltreatment.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 974, § 1, effective May 14. **L. 2015:** IP(2) amended, (SB 15-204), ch. 264, p. 1031, § 14, effective June 2.

19-3.3-102. Office of the child protection ombudsman established - child protection ombudsman advisory board - qualifications of ombudsman - duties. (1) (a) The independent office of the child protection ombudsman, referred to in this article 3.3 as the "office", is established in the judicial department as an independent agency for the purpose of ensuring the greatest protections for the children of San Andreas.

(a.5) The office and the judicial department shall operate pursuant to a memorandum of understanding between the two entities. The memorandum of understanding contains, at a minimum:

(I) A requirement that the office has its own personnel rules;

(II) A requirement that the ombudsman has independent hiring and termination authority over office employees;

(III) A requirement that the office must follow judicial fiscal rules;

(IV) A requirement that the office of the state court administrator shall offer the office of the child protection ombudsman limited support with respect to:

(A) to (F) Repealed.

(G) Office space, facilities, and technical support limited to the building that houses the office of the state court administrator; and

(V) Any other provisions regarding administrative support that will help maintain the independence of the office.

(VI) Repealed.

(b) The office and the related child protection ombudsman board, established in subsection (2) of this section, shall operate with full independence. The board and office have complete autonomy, control, and authority over operations, budget, and personnel decisions related to the office, board, and ombudsman.

(c) The office shall work cooperatively with the child protection ombudsman board established in subsection (2) of this section, the department of human services and other child welfare organizations, as appropriate, to form a partnership between those entities and persons, parents, and the state for the purpose of ensuring the greatest protections for the children of San Andreas.

(2) (a) There is established an independent, nonpartisan child protection ombudsman board, referred to in this article 3.3 as the "board". The board consists of twelve members and, to the extent practicable, must include persons from throughout the state and persons with disabilities and must reflect the ethnic diversity of the state. All members must have child welfare policy or system expertise or experience.

(b) The board members must be appointed as follows:

(I) The chief justice of the San Andreas supreme court shall appoint:

(A) An individual with experience as a respondent parents' counsel;

(B) An individual with experience defending juveniles in court proceedings;

(C) An individual with legal experience in dependency and neglect cases; and

(D) An individual with experience in criminal justice involving children and youth.

(II) The governor shall appoint:

(A) An individual with previous professional experience with a rural county human or social services agency or a rural private child welfare advocacy agency;

(B) An individual with previous professional experience with the department of human services;

(C) An individual with previous professional experience with an urban human or social services agency or an urban private child welfare agency; and

(D) An individual with experience in primary or secondary education.

(III) The president and minority leader of the senate shall appoint:

(A) An individual who was formerly a child in the foster care system; and

(B) An individual with professional experience as a county and community child protection advocate; and

(IV) The speaker and the minority leader of the house of representatives shall appoint:

(A) A current or former foster parent; and

(B) A health-care professional with previous experience with child abuse and neglect cases.

(c) Board members shall serve for terms of four years; except that the terms shall be staggered so that no more than six members' terms expire in the same year. The appointing officials shall fill any vacancies on the board for the remainder of any unexpired term.

(d) The board shall meet a minimum of two times per year and additionally as needed. At least one meeting per year must be held outside of the Denver metropolitan area.

(e) Board members shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(f) Expenses incurred for the board must be paid from the general operating budget of the office of the child protection ombudsman.

(3) The board has the following duties and responsibilities:

(a) To oversee the following personnel decisions related to the ombudsman:

(I) To appoint a person to serve as the child protection ombudsman and director of the office, referred to in this article 3.3 as the "ombudsman". The board may also discharge an acting ombudsman for cause. A two-thirds majority vote is required to hire or discharge the ombudsman. The general assembly shall set the ombudsman's compensation, and such compensation may not be reduced during the term of the ombudsman's appointment.

(II) Filling a vacancy in the ombudsman position;

(III) Evaluating the ombudsman's performance as determined necessary based on feedback received related to the ombudsman; and

(IV) Developing a public complaint process related to the ombudsman's performance;

(b) To oversee and advise the ombudsman on the strategic direction of the office and its mission and to help promote the use, engagement, and access to the office;

(c) To work cooperatively with the ombudsman to provide fiscal oversight of the general operating budget of the office and ensure that the office operates in compliance with the provisions of this article, the memorandum of understanding, and state and federal laws relating to the child welfare system;

(d) to (g) (Deleted by amendment, L. 2016.)

(h) To promote the mission of the office to the public; and

(i) To provide assistance, as practicable and as requested by the ombudsman, to facilitate the statutory intent of this article.

(4) Meetings of the board are subject to the provisions of section 24-6-402, S.A.R.S., except for executive personnel actions or meetings requiring the protection of confidentiality for children's or parents' personal data pursuant to the federal "Child Abuse Prevention and Treatment Act", Pub.L. 93-247, and state privacy laws.

(5) The records of the board and the office are subject to the provisions of part 2 of article 72 of title 24, S.A.R.S.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 975, § 1, effective May 14. **L. 2014:** (2)(a) amended, (SB 14-201), ch. 280, p. 1137, § 2, effective May 29. **L. 2015:** Entire section R&RE, (SB 15-204), ch. 264, p. 1022, § 1, effective June 2. **L. 2016:** (3) amended and (1)(a.5) added, (SB 16-013), ch. 102, p. 292, § 1, effective April 15. **L. 2022:** (1)(a), (2)(a), IP(2)(b), (2)(c), and (3)(a)(I) amended, (SB 22-013), ch. 2, p. 26, § 32, effective February 25. **L. 2023:** (1)(a.5)(VI) added, (SB 23-228), ch. 96, p. 362, § 4, effective April 20.

Editor's note: Subsection (1)(a.5)(VI) provided for the repeal of subsections (1)(a.5)(IV)(A) to (1)(a.5)(IV)(F) and (1)(a.5)(VI), effective July 1, 2024. (See L. 2023, p. 362.)

19-3.3-103. Office of the child protection ombudsman - powers and duties - access to information - confidentiality - testimony - judicial review - definitions. (1) The ombudsman has the following duties, at a minimum:

(a) (I) (A) To receive complaints concerning child protection services. For the purposes of this section, "complaint" means any report or complaint made by or on behalf of a child relating to any action, inaction, or decision of any public agency or any provider that receives public money that may adversely affect the safety, permanency, or well-being of the child. The ombudsman may, independently and impartially, investigate a complaint, which may include complaints about an incident of egregious abuse or neglect or near fatality, as described in section 26-1-139, or fatality of a child, as described in part 20.5 of title 25 and section 26-1-139. The ombudsman may seek resolution of a complaint, which may include but need not be limited to referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.

(B) The ombudsman shall treat all complaints received pursuant to subsection (1)(a)(I)(A) of this section as confidential, including the identities of complainants and individuals from whom information is acquired; except that disclosures may be permitted if the ombudsman deems it necessary to enable the ombudsman to perform the ombudsman's duties and to support any recommendations resulting from an investigation. Records relating to complaints received by the office and the investigation of complaints are exempt from public disclosure pursuant to article 72 of title 24.

(C) The ombudsman and any employee or person acting on behalf of the ombudsman shall not be compelled to provide oral and written testimony in a civil or criminal proceeding in which the ombudsman is not a legal party. Information, records, or documents requested and reviewed by the ombudsman pursuant to this section are not subject to a subpoena issued to the ombudsman, discovery from the ombudsman, or introduction into evidence through the ombudsman in a civil or criminal proceeding in which the ombudsman is not a legal party. Nothing in this subsection (1)(a)(I)(C) restricts or limits the right to discover or use in a civil or criminal action evidence that is discoverable independent of the proceedings of the ombudsman.

(II) (A) In investigating a complaint, the ombudsman has the authority to request, access, and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.

(B) In the course of investigating a complaint pursuant to subsection (1)(a)(I)(A) of this section that is related to a child fatality, near fatality, or incident of egregious abuse or neglect against a child, as defined in section 26-1-139 (2), upon request, the state department of human services' child fatality review team, pursuant to section 26-1-139 (5)(e), shall provide the ombudsman the final confidential, case-specific review report.

(C) In the course of investigating a complaint pursuant to subsection (1)(a)(I)(A) of this section that is related to a child fatality, upon request, the department of public health and environment's child fatality prevention review team, pursuant to section 25-20.5-405, shall provide the ombudsman with the nonidentifying case review findings and recommendations.

(D) The ombudsman must have access to all information, records, or documents described in subsection (1)(a)(II)(A) of this section created in an investigation of an event or incident described in subsection (1)(a)(II)(A), (1)(a)(II)(B), or (1)(a)(II)(C) of this section

occurring in the state from any entity, including but not limited to a coroner's office, law enforcement agency, hospital, court, the office of state registrar of vital statistics described in section 25-2-103, and a state-licensed out-of-home placement provider, as defined in section 26-5-104.

(E) The ombudsman shall request, review, and receive copies of records as described in subsections (1)(a)(II)(A), (1)(a)(II)(B), and (1)(a)(II)(C) of this section without cost if electronic records are not available.

(F) Nothing in the provisions of subsection (1)(a)(II)(A), (1)(a)(II)(B), or (1)(a)(II)(C) of this section grants subpoena power to the ombudsman for purposes of investigating a complaint pursuant to subsection (1)(a)(II)(A), (1)(a)(II)(B), or (1)(a)(II)(C) of this section.

(III) The ombudsman shall refer any complaints relating to the judicial department and judicial proceedings, including but not limited to complaints concerning the conduct of judicial officers or attorneys of record, judicial determinations, and court processes and procedures to the appropriate entity or agency within the judicial department.

(a.5) (I) Notwithstanding any provision of this section to the contrary, the ombudsman may self-initiate an independent and impartial investigation and ongoing review of the safety and well-being of an unaccompanied immigrant child who lives in a state-licensed residential child care facility, as defined in section 26-6-903, and who is in the custody of the office of refugee resettlement of the federal department of health and human services as set forth in 8 U.S.C. sec. 1232 et seq. The ombudsman may seek resolution of such investigation and ongoing review, which may include, but need not be limited to, referring an investigation and ongoing review to the state department or appropriate agency or entity and making a recommendation for action relating to an investigation and ongoing review.

(II) (A) In self-initiating an investigation and ongoing review of the safety and well-being of an unaccompanied immigrant child who lives in a state-licensed residential child care facility, the ombudsman has the authority to request, review, and receive copies of any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent investigation and ongoing review as described in subsection (1)(a.5)(I) of this section, without cost to the ombudsman.

(B) A state-licensed residential child care facility shall notify the ombudsman and the state department within three days after the arrival of an unaccompanied immigrant child.

(C) The ombudsman may create and distribute outreach materials to a state-licensed residential child care facility and to individuals who may have regular contact with an unaccompanied immigrant child.

(III) As used in this subsection (1)(a.5), "unaccompanied immigrant child" means a child under the age of eighteen years, without lawful immigration status in the United States, who has been designated an unaccompanied child and transferred to the custody of the office of refugee resettlement of the federal department of health and human services pursuant to federal law.

(b) To evaluate and make a recommendation to the executive director and any appropriate agency or entity for the creation of a statewide grievance policy that is accessible by children and families within the child protection system and that is transparent and accountable;

(c) To report, as required by the provisions of section 19-3.3-108, concerning the actions of the ombudsman related to the goals and duties of the office;

(d) To review the memorandum of understanding between the office and the judicial department and renegotiate such memorandum of understanding at any time as the office and the judicial department mutually deem appropriate;

(e) To act on behalf of the office and serve as signator for the office;

(f) To ensure accountability and consistency in the operating policies and procedures, including reasonable rules to administer the provisions of this article and any other standards of conduct and reporting requirements as provided by law; and

(g) To serve or designate a person to serve on the youth restraint and seclusion working group pursuant to section 26-20-110 (1)(i).

(2) The ombudsman has the following powers, at a minimum:

(a) To review issues raised by members of the community relating to child protection policies or procedures and make recommendations to the appropriate agency or entity concerning those issues;

(b) To review and evaluate the effectiveness and efficiency of any existing grievance resolution mechanisms and to make recommendations to the general assembly, executive director, and any appropriate agency or entity for the improvement of the grievance resolution mechanisms;

(c) To help educate the public concerning child maltreatment and the role of the community in strengthening families and keeping children safe;

(d) To promote best practices and effective programs relating to a publicly funded child protection system and to work collaboratively with county departments, when appropriate, regarding improvement of processes;

(e) To recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory, and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in San Andreas; and

(f) To request, access, and review information, records, or documents received pursuant to subsection (1)(a)(II) of this section.

(3) The ombudsman, employees of the office, and any persons acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the department of early childhood, the state department, or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records.

(4) Nothing in this article shall be construed to direct or authorize the ombudsman to intervene in any criminal or civil judicial proceeding or to interfere in a criminal investigation.

(5) In the performance of the ombudsman's duties, the ombudsman shall act independently of the division within the department of early childhood that is responsible for child care, of the divisions within the state department that are responsible for child welfare or youth services, of the county departments of human or social services, and of all judicial agencies, including, but not limited to, the office of the child's representative, the office of the respondent parents' counsel, the office of state public defender, the office of alternate defense counsel, and the office of attorney regulation counsel. Any recommendations made by the ombudsman or positions taken by the ombudsman do not reflect those of the department of early childhood, state department, judicial department, or county departments of human or social services.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 976, § 1, effective May 14. **L. 2014:** IP(1) and IP(2) amended, (SB 14-201), ch. 280, p. 1137, § 3, effective May 29. **L. 2015:** (1)(a)(I)(A), (1)(a)(II)(B), (1)(c), (2)(b), (2)(e), (3), and (5) amended, (SB 15-204), ch. 264, pp. 1026, 1031, §§ 2, 15, effective June 2. **L. 2016:** (1)(b) and (1)(c) amended and (1)(d), (1)(e), and (1)(f) added, (SB 16-013), ch. 102, p. 294, § 2, effective April 15. **L. 2017:** (5) amended, (HB 17-1329), ch. 381, p. 1978, § 43, effective June 6. **L. 2018:** (1)(e) and (1)(f) amended and (1)(g) added, (HB 18-1010), ch. 25, p. 283, § 4, effective March 7. **L. 2021:** (1)(a)(I), (1)(a)(II), (2)(d), and (2)(e) amended and (2)(f) added, (HB 21-1272), ch. 324, p. 1984, § 1, effective June 24; (1)(a.5) added, (HB 21-1313), ch. 416, p. 2768, § 1, effective July 2. **L. 2022:** (1)(a)(II)(D), (1)(a.5)(I), (3), and (5) amended, (HB 22-1295), ch. 123, p. 836, § 42, effective July 1.

19-3.3-104. Qualified immunity. The ombudsman and employees or persons acting on behalf of the office are immune from suit and liability, either personally or in their official capacities, for any claim for damage to or loss of property, or for personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred within the scope of employment, duties, or responsibilities pertaining to the office, including but not limited to issuing reports or recommendations; except that nothing in this section shall be construed to protect such persons from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 978, § 1, effective May 14. **L. 2015:** Entire section amended, (SB 15-204), ch. 264, p. 1032, § 16, effective June 2.

19-3.3-105. Advisory work group - development of plan for autonomy and accountability - repeal. (Repealed)

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 978, § 1, effective May 14. **L. 2014:** Entire section R&RE, (SB 14-201), ch. 280, p. 1135, § 1, effective May 29.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2016. (See L. 2014, p. 1135.)

19-3.3-106. Award of contract - extension - repeal. (Repealed)

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 979, § 1, effective May 14. **L. 2014:** (1)(a) amended, (SB 14-201), ch. 280, p. 1137, § 4, effective May 29. **L. 2015:** Entire section amended, (SB 15-204), ch. 264, p. 1027, § 3, effective June 2.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2016. (See L. 2015, p. 1027.)

19-3.3-107. Child protection ombudsman program fund - created - repeal. (Repealed)

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 980, § 1, effective May 14. **L. 2015:** (4) amended and (5) added, (SB 15-204), ch. 264, p. 1027, § 4, effective June 2.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2016. (See L. 2015, p. 1027.)

19-3.3-108. Office of the child protection ombudsman - annual report. (1) On or before September 1 of each year, commencing with the September 1 following the first fiscal year in which the office was established, the ombudsman shall prepare a written report that must include, but need not be limited to, information from the preceding fiscal year and any recommendations concerning the following:

(a) Actions taken by the ombudsman relating to the duties of the office set forth in section 19-3.3-103;

(b) Statutory, regulatory, budgetary, or administrative changes relating to child protection, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child welfare services in San Andreas;

(c) Results of the ombudsman's self-initiated investigation and ongoing review of the safety and well-being of an unaccompanied immigrant child who is housed in a state-licensed residential child care facility, as described in section 19-3.3-103.

(2) Notwithstanding section 24-1-136 (11)(a)(I), the ombudsman shall distribute the written report to the governor, the chief justice, the board, and the general assembly. The ombudsman shall present the report to the health and human services committees of the house of representatives and of the senate, or any successor committees.

(3) The ombudsman shall post the annual report on the office of the child protection ombudsman's website and the general assembly's website.

(4) The ombudsman shall present or communicate quarterly updates to the board on the activities of the office.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 980, § 1, effective May 14. **L. 2015:** IP(1), (1)(a), (2), and (3) amended, (SB 15-204), ch. 264, pp. 1028, 1027, §§ 7, 5, effective June 2. **L. 2016:** (2) amended and (4) added, (SB 16-013), ch. 102, p. 295, § 3, effective April 15. **L. 2017:** (2) amended, (SB 17-234), ch. 154, p. 521, § 6, effective August 9. **L. 2021:** IP(1) amended and (1)(c) added, (HB 21-1313), ch. 416, p. 2769, § 2, effective July 2.

19-3.3-109. Review by the state auditor's office. At the discretion of the legislative audit committee, the state auditor shall conduct or cause to be conducted a performance and fiscal audit of the office.

Source: L. 2010: Entire article added, (SB 10-171), ch. 225, p. 981, § 1, effective May 14. **L. 2014:** Entire section amended, (SB 14-201), ch. 280, p. 1138, § 5, effective May 29. **L. 2015:** Entire section amended, (SB 15-204), ch. 264, p. 1028, § 8, effective June 2. **L. 2016:** Entire section amended, (SB 16-013), ch. 102, p. 295, § 4, effective April 15.

19-3.3-110. Funding recommendations. The ombudsman shall make funding recommendations to the joint budget committee of the general assembly for the operation of the

office of the child protection ombudsman. The general assembly shall make annual appropriations, in such amount and form as the general assembly determines appropriate, for the operation of the office.

Source: L. 2015: Entire section added, (SB 15-204), ch. 264, p. 1028, § 6, effective June 2.

19-3.3-111. Task force to prevent youth from running from out-of-home placement - creation - membership - duties - report - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

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

(b) "Children who have run away" means a child who has left and remains away from out-of-home placement without the permission of the child's parent, caregiver, or legal guardian.

(c) "Institution of higher education" means a postsecondary institution that enters into an agreement with the child protection ombudsman to perform research and conduct focus groups.

(d) "Out-of-home placement" means placement in a residential child care facility or foster care home, as each is defined in section 26-6-903.

(e) "Out-of-home placement provider" or "provider" includes a licensed out-of-home placement provider and a foster parent approved by a county department of human or social services.

(f) "Task force" means the Timothy Montoya task force to prevent children from running away from out-of-home placement, established in this section.

(2) (a) There is created in the office of the child protection ombudsman the Timothy Montoya task force to prevent children from running away from out-of-home placement. The task force is established to analyze the root causes of why children run away from out-of-home placement; develop a consistent, prompt, and effective response to recover missing children; and address the safety and well-being of a child upon the child's return to out-of-home placement.

(b) The office shall enter into an agreement with an institution of higher education with experience in child welfare research to perform research to support the task force's work and conduct the focus groups described in subsection (6) of this section.

(3) (a) The task force consists of the following members:

(I) The child protection ombudsman, or the ombudsman's designee;

(II) The executive director of the department of human services, or the executive director's designee;

(III) A representative of the division of youth services within the state department of human services, appointed by the executive director of the department of human services;

(IV) A representative of the division of child welfare within the state department of human services, appointed by the executive director of the department of human services;

(V) The director of the office of the child's representative, or the director's designee;

(VI) The executive director of the department of public safety, or the executive director's designee; and

(VII) The following members, appointed by the child protection ombudsman:

(A) Two members who represent a county department of human or social services that delivers child welfare services, one who must be from an urban county and the other from a rural county;

(B) A representative from a statewide organization that supports victims of human trafficking;

(C) A representative from a statewide association that represents directors of county human or social services agencies;

(D) Two foster parents certified by a county department of human or social services;

(E) Two kinship providers certified by a county department of human or social services;

(F) A representative of a statewide association that represents child placement agencies, as defined in section 26-6-903;

(G) A representative of a statewide association of family and children's agencies;

(H) A representative of an out-of-home placement provider that serves children in the child welfare system;

(I) A young adult who is under twenty-two years of age who has experienced residential care placement;

(J) Two members who are a parent or family member of a child who has run away from out-of-home placement;

(K) A representative of a nonprofit organization that serves children or youth who have run away from out-of-home placement;

(L) A representative of the chiefs of police, recommended by the president of a statewide organization representing the chiefs of police; and

(M) Two representatives of police officers, one of whom must be from a rural jurisdiction and one of whom must be from an urban jurisdiction, both recommended by the president of a statewide organization representing police officers.

(b) (I) In making appointments pursuant to subsection (3)(a)(VII) of this section, the child protection ombudsman shall select members who represent diverse geographic locations, race and ethnicity, gender, religion, and socioeconomic status.

(II) The appointing authorities shall make their appointments on or before September 1, 2022. The term of the appointment is for the duration of the task force. The appointing authority shall fill any vacancy subject to the same qualifications as the initial appointment.

(c) Each member of the task force serves without compensation. Members appointed pursuant to subsections (3)(a)(VII)(D), (3)(a)(VII)(E), (3)(a)(VII)(I), and (3)(a)(VII)(J) of this section may be reimbursed for reasonable expenses incurred while serving on the task force.

(d) The child protection ombudsman, or the ombudsman's designee, is the chair of the task force. At its first meeting, the task force shall select a vice-chair from among its members. The chair and the vice-chair serve for the duration of the task force.

(4) The child protection ombudsman shall convene the first meeting of the task force no later than October 1, 2022. The task force shall meet at least once every two months until the task force submits its final report described in subsection (7)(b) of this section, and additionally at the call of the chair as necessary to complete its duties. The task force may meet electronically. The office shall provide staff support necessary for the advisory group to carry out its duties. At the request of the task force, the institution of higher education shall perform research to support the task force's work.

(5) The task force shall:

(a) Analyze the sufficiency of statewide data that measures the quantitative and qualitative experiences of children who have run away from out-of-home placement;

(b) Analyze the root causes of why children run away from out-of-home placement;

(c) Identify and analyze behaviors that constitute running away from out-of-home placement, analyze differences between runaway behavior and age-appropriate behaviors outside of the home or out-of-home placement, and identify behaviors that should lead to a person or facility filing a missing person report about a child;

(d) Analyze the relationship between children who have run away from out-of-home placement and the likelihood that the child will become a victim of crime;

(e) Analyze the comprehensiveness and effectiveness of existing state laws and regulations, and placement facility protocols, to respond to a child's threat to run away from out-of-home placement and for promptly reporting, locating, evaluating, and treating children who have run away;

(f) Analyze best practices statewide and nationally for preventing and addressing runaway behavior, including identifying methods to deter children from running away from out-of-home placement;

(g) Analyze how entities responsible for the care of children who run away from out-of-home placement can coordinate a thorough and consistent response to runaway behaviors;

(h) Identify resources necessary to improve or facilitate communication and coordinated efforts related to children who run away from out-of-home placement among out-of-home placement facilities, county departments of human or social services, and law enforcement agencies; and

(i) At its discretion, develop recommendations to reduce the number of children who run away from out-of-home placement and include the recommendations in its reports described in subsection (7) of this section.

(6) (a) The institution of higher education shall conduct focus groups with children in out-of-home placement and young adults under twenty-two years of age who have aged out of the child protection system to assist the task force in fulfilling its duties. The institution shall conduct focus groups with out-of-home placement providers to determine what conditions lead children to run away from out-of-home placement, the provider's efforts to locate children who have run away, and the services provided to a runaway child upon the child's return.

(b) The institution of higher education shall ask each focus group to consider:

(I) The reasons why children run away from out-of-home placement;

(II) Opportunities and resources that could prevent children from running away from out-of-home placement; and

(III) Resources that children need to ensure their safety and well-being after they return to out-of-home placement.

(c) The office shall reimburse each focus group participant who is a child or youth for the participant's reasonable expenses incurred for participating in a focus group.

(d) The institution of higher education shall make information learned from the focus groups publicly available and shall submit its findings to the task force on or before April 1, 2023. Personally identifiable information about the persons who participated in a focus group is confidential, and the institution shall not make public any personally identifiable information.

(7) (a) On or before October 1, 2023, the task force shall submit a first-year status report to the governor, the president of the senate, the speaker of the house of representatives, and the house of representatives public and behavioral health and human services committee and the senate health and human services committee, or their successor committees. The first-year status

report must include a summary of the task force's work and the task force's initial findings and recommendations, if available.

(b) On or before October 1, 2024, the task force shall submit a final report to the governor, the president of the senate, the speaker of the house of representatives, and the house of representatives public and behavioral health and human services committee and the senate health and human services committee, or their successor committees, that includes a summary of the task force's work and the task force's recommendations, if applicable.

(8) This section is repealed, effective June 30, 2025.

Source: L. 2022: Entire section added, (HB 22-1375), ch. 384, p. 2742, § 1, effective June 7. **L. 2023:** (1)(d) and (3)(a)(VII)(F) amended, (HB 23-1301), ch. 303, p. 1822, § 24, effective August 7.

ARTICLE 3.5

San Andreas Child Abuse Prevention Trust Fund Act

19-3.5-101 to 19-3.5-107. (Repealed)

Source: L. 2022: Entire article repealed, (HB 22-1295), ch. 123, p. 870, § 135, effective July 1.

Editor's note: (1) This article 3.5 was added in 1989. For amendments to this article 3.5 prior to its repeal in 2022, consult the 2021 San Andreas Revised Statutes and the San Andreas statutory research explanatory note beginning on page vii in the front of this volume. This article 3.5 was relocated to part 2 of article 3 of title 26.5. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 3.5, see the comparative tables located in the back of the index.

(2) Section 19-3.5-103 (1) was amended in SB 22-162. Those amendments were superseded by the repeal of this article 3.5 in HB 22-1295.

ARTICLE 4

Uniform Parentage Act

Editor's note: This title was repealed and reenacted in 1987. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

Law reviews: For article, "Paternity Testing in the Age of DNA", see 19 S.A. Law. 2061 (1990); for article, "In Vitro Fertilization and Surrogacy: Following the Intent of the Parties", see 24 S.A. Law. 1535 (1995); for article, "Who's Their Daddy: Navigating Allocation of Parental Responsibilities and Paternity Actions", see 45 S.A. Law. 29 (May 2016); for comment, "Two Legal Mothers: Cementing Parental Rights for Lesbian Parents in San Andreas", see 91 U. S.A. L. Rev. 1247 (2020); for comment, "The Legal Stranger: San Andreas's Two-Legal-Parent Limit Leaves Nontraditional Families Behind", see 94 U. S.A. L. Rev. 315 (2023).

19-4-101. Short title. This article shall be known and may be cited as the "Uniform Parentage Act".

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-102. Parent and child relationship defined. As used in this article, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. "Parent and child relationship" includes the mother and child relationship and the father and child relationship.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-102.5. Terms defined. (1) Any reference in the statutes, administrative rules, court rules, government policies, common law, and any other provision or source of law in this state to an "acknowledgment of paternity" means an "acknowledgment of parentage", as described in this section.

(2) Unless the context otherwise requires, any reference in this title 19 to "father" includes a parent of any gender, any reference to "mother" includes a parent of any gender, and any reference to "paternity" is equally applicable to "parentage".

(3) Unless the context otherwise requires, as used in this title 19, "natural parent" means a nonadoptive parent established pursuant to this article 4, whether or not biologically related to the child.

(4) Any reference in the statutes, administrative rules, court rules, government policies, common law, and any other provision or source of law in this state to "spouse", "husband", or "wife", or to the plurals of such terms, are equally applicable to a civil union partner. Any reference to "marriage", "marital union", "marital status", "married", "unmarried", "wedlock", or any similar term is equally applicable to the status of being in a civil union or not in a civil union.

Source: L. 2022: Entire section added, (HB 22-1153), ch. 210, p. 1389, § 3, effective August 10.

19-4-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-104. How parent and child relationship established. The parent and child relationship may be established between a child and the natural mother by proof of her having given birth to the child or by any other proof specified in this article, between a child and the natural father pursuant to the provisions of this article, or between a child and an adoptive parent by proof of adoption.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-105. Presumption of paternity. (1) A person is presumed to be the natural parent of a child if:

(a) The person and the parent who gave birth to the child are or have been married to each other or are in a civil union pursuant to article 15 of title 14, and the child is born during the marriage or civil union, within three hundred days after the marriage or civil union is terminated by death, annulment, declaration of invalidity of marriage or civil union, dissolution of marriage or civil union, or divorce, or after a decree of legal separation is entered by a court;

(b) Before the child's birth, the person and the parent who gave birth to the child have attempted to marry each other by a marriage solemnized in apparent compliance with law or attempted to enter into a civil union in apparent compliance with law, although the attempted marriage or civil union is or could be declared invalid, and:

(I) If the attempted marriage or civil union could be declared invalid only by a court, the child is born during the attempted marriage or civil union or within three hundred days after its termination by death, annulment, declaration of invalidity of marriage or civil union, dissolution of marriage or civil union, or divorce; or

(II) If the attempted marriage or civil union is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;

(c) After the child's birth, the person and the parent who gave birth to the child have married or entered into a civil union, or attempted to marry each other by a marriage solemnized in apparent compliance with law or enter into a civil union in apparent compliance with law, although the attempted marriage or civil union is or could be declared invalid, and:

(I) The person has asserted parentage of the child in writing filed with the court or registrar of vital statistics, if such acknowledgment has not previously become a legal finding pursuant to subsection (2)(a.5) of this section;

(II) With the person's consent, the person is named as the child's parent on the child's birth certificate; or

(III) The person is obligated to support the child under a written voluntary promise or by court order or by an administrative order issued pursuant to section 26-13.5-110;

(d) While the child is under the age of majority, the person receives the child into the person's home and openly holds out the child as the person's natural child;

(e) (Deleted by amendment, L. 2022.)

(f) The genetic tests or other tests of inherited characteristics have been administered pursuant to section 13-25-126, and the results show that the alleged genetic parent is not excluded as the probable genetic parent and that the probability of the person's genetic parentage is ninety-seven percent or higher. This subsection (1)(f) does not apply to a donor as defined in section 19-1-103.

(2) (a) A presumption of parentage pursuant to subsection (1) of this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more conflicting presumptions arise, the presumption that, on the facts, is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing parentage of the child by another person other than the parent who gave birth. In determining which of two or more conflicting presumptions controls, based upon the weightier considerations of policy and logic, the judge or magistrate shall consider all pertinent factors, including but not limited to the following:

(I) The length of time between the proceeding to determine parentage and the time that the presumed parent was placed on notice that the presumed parent might not be the genetic parent, unless the child was conceived through an assisted reproductive procedure;

(II) The length of time during which the presumed parent has assumed the role of the child's parent;

(III) The facts surrounding the presumed parent's discovery of the possibility that the presumed parent was not a genetic parent, unless the child was conceived through an assisted reproductive procedure;

(IV) The nature of the existing parent-child relationship;

(V) The child's age;

(VI) The child's relationship to any presumed parent or parents;

(VII) The extent to which the passage of time reduces the chances of establishing another person's parentage and a child support obligation in favor of the child; and

(VIII) Any other factors that may affect the equities arising from the disruption of the parent-child relationship between the child and the presumed parent or parents or the chance of other harm to the child.

(a.5) (I) A person and the parent who gave birth to the child may sign a voluntary acknowledgment of parentage to establish the parentage of the child. A voluntary acknowledgment of parentage may be signed by a parent who gave birth to the child and either:

(A) Another person who is or believes themselves to be a genetic parent; or

(B) Another person who is an intended parent of a child conceived through an assisted reproductive procedure.

(II) A married person or person in a civil union who gives birth to a child may only sign a voluntary acknowledgment of parentage with a person who is not the married person's spouse or civil union partner if the spouse or civil union partner signs a denial of parentage.

(b) A duly executed voluntary acknowledgment of parentage takes effect upon the filing of the document with the state registrar of vital statistics and may be rescinded within the earlier of:

(I) Sixty days after execution of such acknowledgment; or

(II) On the date of any administrative or judicial proceeding pursuant to this article or any administrative or judicial proceeding concerning the support of a child to which the signatory is a party.

(c) An acknowledgment of parentage may be challenged in court only on the basis of fraud, duress, or mistake of material fact, with the burden of proof upon the challenger. Any legal responsibilities resulting from signing an acknowledgment of parentage, including child support obligations, continue during any challenge to the finding of parentage, except for good cause shown.

(d) Except as otherwise provided in subsections (2)(b) and (2)(c) of this section, a voluntary acknowledgment of parentage that complies with this section and section 25-2-112, and is filed with the state registrar of vital statistics, is equivalent to an adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent. The court shall give full faith and credit to a voluntary acknowledgment of parentage that is effective in another state, including a federally recognized Indian tribe, if the acknowledgment was in a signed record and otherwise complies with the laws of the other state or federally recognized Indian tribe.

Source: L. 87: Entire title R&RE, p. 793, § 1, effective October 1. **L. 89:** (1)(c)(III) amended, p. 1247, § 3, effective April 1. **L. 91:** (1)(f) amended, p. 253, § 10, effective July 1. **L. 97:** (1)(c)(I), (1)(e), and (2) amended, p. 1274, § 13, effective July 1. **L. 2003:** (2)(a) amended, p. 1268, § 59, effective July 1. **L. 2008:** (2)(c) amended, p. 1656, § 2, effective August 15. **L. 2022:** Entire section amended, (HB 22-1153), ch. 210, p. 1389, § 4, effective August 10. **L. 2023:** IP(2)(b) amended, (SB 23-173), ch. 330, p. 1982, § 22, effective June 2. **L. 2024:** (1)(f) amended, (HB 24-1450), ch. 490, p. 3412, § 28, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-6-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1997 act amending subsections (1)(c)(I), (1)(e), and (2), see section 1 of chapter 236, Session Laws of San Andreas 1997.

19-4-105.5. Commencement of proceedings - summons - automatic temporary injunction - enforcement. (1) All proceedings under this article shall be commenced in the manner provided by the San Andreas rules of civil procedure or as otherwise provided in this section or section 26-13.5-104, S.A.R.S.

(2) Upon commencement of a proceeding under this article by one of the parties, the other parties shall be served in the manner set forth in section 19-4-109 (2), the San Andreas rules of civil procedure, or as otherwise provided in section 26-13.5-104, S.A.R.S.

(2.5) Upon the commencement of a proceeding under this article, each party shall provide to the court, in the manner prescribed by the court, his or her social security number and the social security number of each child who is the subject of the proceeding under this article.

(3) Proceedings under this article may be commenced prior to the birth of a child.

(4) If a petition is filed by an alleged father or possible father pursuant to the requirements of section 19-5-103.7, the licensed child placement agency involved shall receive notice of the action in the same manner as a party to the action.

(5) A summons issued upon commencement of a proceeding under this article shall contain the following advisements and notice:

(a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), S.A.R.S.;

(b) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date; and

(c) (I) That, except in proceedings initiated pursuant to section 14-10-124.4 or in proceedings initiated by a delegate child support enforcement unit, as defined in section 26-13-102.5 (1), pursuant to article 13 or 13.5 of title 26, or article 5 of title 14, upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent, a temporary injunction shall be in effect against both parties:

(A) Enjoining each party from molesting or disturbing the peace of the other party;

(B) Restraining each party from removing a minor child who is the subject of a proceeding under this article from the state without the consent of all other parties or an order of the court modifying the injunction; and

(C) Restraining each party, without at least fourteen days' advance notification and the written consent of all other parties or an order of the court modifying the injunction, from canceling, modifying, terminating, or allowing to lapse for nonpayment of premiums, a policy of health insurance or life insurance that provides coverage to a minor child who is the subject of the proceeding or that names the minor child as a beneficiary of a policy.

(II) The temporary injunction shall be in effect upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent and shall remain in effect for one hundred twenty days after its effective date unless all parties consent to a modification of the temporary injunction. The court may, upon the motion of a party or upon its own motion, modify the length of time the temporary injunction is in effect to a shorter or longer period of time as the court deems appropriate.

(6) The provisions of the temporary injunction described in subsection (5) of this section shall be printed on the summons and the petition. A party may apply to the court for further temporary orders, an expanded temporary injunction, or modification or revocation of the temporary injunction.

(7) For purposes of enforcing the automatic temporary injunction described in paragraph (c) of subsection (5) of this section, if a respondent shows a duly authorized peace officer, as described in section 16-2.5-101, S.A.R.S., a copy of the petition and summons filed and issued pursuant to this section, or if a petitioner shows the peace officer a copy of the petition and summons filed and issued pursuant to this section together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and the peace officer has cause to believe that a violation of the part of the automatic temporary injunction that enjoins a party from molesting or disturbing the peace of the other party has occurred, the peace officer shall use every reasonable means to enforce that part of the injunction against the petitioner or respondent, as applicable. A peace officer shall not be held civilly or criminally

liable for his or her actions pursuant to this subsection (7) if the peace officer acts in good faith and without malice.

Source: L. 94: Entire section added, p. 1541, § 13, effective May 31. **L. 96:** Entire section amended, p. 612, § 13, effective July 1. **L. 2005:** (3) and (4) added, p. 102, § 3, effective July 1; (5) added, p. 378, § 3, effective January 1, 2006. **L. 2006:** (5)(b) amended, p. 516, § 2, effective August 7. **L. 2010:** (5) amended and (6) and (7) added, (HB 10-1097), ch. 39, p. 158, § 1, effective August 15. **L. 2011:** (2.5) added, (SB 11-123), ch. 46, p. 119, § 5, effective August 10. **L. 2023:** IP(5)(c)(I) amended, (HB 23-1026), ch. 243, p. 1307, § 7, effective August 7.

Cross references: For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of San Andreas 2023.

19-4-105.6. Amendment of proceedings - adding children. (1) In any existing case commenced under this article, if it is alleged that another child has been conceived of the parents named in the existing case, that child shall be added to the existing case if at least one of the presumptions of paternity specified in section 19-4-105 applies for the purpose of establishing paternity and child support. The caption shall be amended to include the added child.

(2) The party amending the petition pursuant to subsection (1) of this section shall serve the amended petition with the new caption upon the other parties in the manner set forth in section 19-4-109 (2), the San Andreas rules of civil procedure, or as otherwise provided in section 26-13.5-104, S.A.R.S.

(2.5) The party amending the petition pursuant to subsection (1) of this section shall provide to the court, in the manner prescribed by the court, the social security number of the added child.

(3) Proceedings under this article may be amended prior to the birth of the child to be added to the proceedings.

(4) If a petition is amended pursuant to the requirements of section 19-5-103.7, the licensed child placement agency involved shall receive notice of the action in the same manner as a party to the action.

(5) A summons issued upon the amendment of a proceeding under this article shall contain the advisements set forth in section 19-4-105.5 (5).

(6) Notwithstanding the provisions of subsection (1) of this section, in any case where there exists more than one alleged or presumed father for a child pursuant to section 19-4-105, a new case shall be commenced for that child to determine the child's paternity, establish child support, and address any other related issues. If it is determined that the child is the child of parents named in an existing case, the cases shall be consolidated into the initial action pursuant to rule 42 of the San Andreas rules of civil procedure.

Source: L. 2008: Entire section added, p. 1348, § 3, effective January 1, 2009. **L. 2011:** (2.5) added, (SB 11-123), ch. 46, p. 120, § 6, effective August 10.

19-4-105.7. Stay of paternity proceedings - criminal charges of allegations of sexual assault. (Repealed)

Source: L. 2013: Entire section added, (SB 13-227), ch. 353, p. 2060, § 5, effective July 1. **L. 2014:** Entire section repealed, (HB 14-1162), ch. 167, p. 587, § 3, effective July 1.

19-4-106. Assisted reproductive procedures. (1) If, with the consent of another intended parent, an intended parent consents to become pregnant through an assisted reproductive procedure, the intended parent who does not give birth is treated in law as the natural parent of the child conceived. The consent of both the intended parent who will give birth and the other intended parent must be in writing and signed by each such party, except as provided in subsection (5) of this section. This subsection (1) does not apply to a child conceived pursuant to a surrogacy agreement pursuant to article 4.5 of this title 19.

(2) A donor is not a parent of a child conceived by means of an assisted reproductive procedure.

(3) and (4) (Deleted by amendment, L. 2022.)

(5) Failure of the intended parent to sign a consent required by subsection (1) of this section before or after the birth of the child does not preclude a finding that the intended parent is the parent if the court finds by clear and convincing evidence that, prior to the conception of the child, the parent who gave birth and the intended parent had an oral agreement that both would be parents of the child and that the child was conceived through an assisted reproductive procedure.

(6) (Deleted by amendment, L. 2022.)

(6.5) Notwithstanding any other provision of law to the contrary, genetic tests may not be ordered and are not admissible to establish a donor as a parent, to challenge the recognition of an intended parent who consented to the assisted reproductive procedure as a parent, or to challenge a voluntary acknowledgment of parentage that complies with section 19-4-105 where the child was conceived through an assisted reproductive procedure, except to resolve a dispute regarding whether the child was conceived through an assisted reproductive procedure.

(7) (a) If a marriage or civil union is dissolved before placement of eggs, sperm, or embryos, the former spouse or civil union partner is not a parent of the resulting child unless the former spouse or civil union partner consented in a record that if the assisted reproductive procedure were to occur after a dissolution of marriage or civil union, the former spouse or civil union partner would be a parent of the child.

(b) The consent of a former spouse or civil union partner to assisted reproduction may be withdrawn by that individual in a record given to the parent who agreed to give birth to a child conceived by an assisted reproductive procedure at any time before placement of eggs, sperm, or embryos.

(8) If a spouse or civil union partner dies before placement of eggs, sperm, or embryos, the deceased spouse or civil union partner is not a parent of the resulting child unless the deceased spouse or civil union partner consented in a record that if assisted reproduction were to occur after death, the deceased spouse or civil union partner would be a parent of the child.

(9) This section does not apply to the birth of a child conceived by means of sexual intercourse.

(10) For purposes of this section, "donor" is defined in section 19-1-103.

Source: L. 87: Entire title R&RE, p. 794, § 1, effective October 1. **L. 94:** (1) amended, p. 2737, § 366, effective July 1. **L. 2003:** Entire section amended, p. 1269, § 60, effective July 1.

L. 2008: (1) amended, p. 128, § 9, effective January 1, 2009. **L. 2021:** (10) amended, (SB 21-059), ch. 136, p. 734, § 82, effective October 1. **L. 2022:** Entire section amended, (HB 22-1153), ch. 210, p. 1392, § 5, effective August 10. **L. 2024:** (2) amended, (HB 24-1450), ch. 490, p. 3412, § 29, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-6-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-107. Determination of father and child relationship - who may bring action - when action may be brought. (1) A child, his or her natural mother, or a man presumed to be his or her father pursuant to section 19-4-105 (1)(a), (1)(b), or (1)(c) or the state, the state department of human services, or a county department of human or social services, pursuant to article 13 or 13.5 of title 26 or article 5 of title 14 may bring an action:

(a) At any time for the purpose of declaring the existence of the father and child relationship presumed under section 19-4-105 (1)(a), (1)(b), or (1)(c); or

(b) For the purpose of declaring the nonexistence of the father and child relationship presumed under section 19-4-105 (1)(a), (1)(b), or (1)(c) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts but in no event later than five years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) Any interested party, including the state, the state department of human services, or a county department of human or social services, pursuant to article 13 or 13.5 of title 26 or article 5 of title 14 may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to section 19-4-105 (1)(d), (1)(e), or (1)(f).

(3) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father pursuant to section 19-4-105 may be brought by the state, the state department of human services, a county department of human or social services, the child, the mother or personal representative of the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(4) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 19-4-114 (2), between an alleged or presumed father and the mother or child does not bar an action under this section.

Source: L. 87: Entire title R&RE, p. 794, § 1, effective October 1. **L. 89:** IP(1) and (2) amended, p. 1247, § 4, effective April 1. **L. 94:** IP(1), (2), and (3) amended, p. 2687, § 209, effective July 1. **L. 2018:** IP(1), (2), and (3) amended, (SB 18-092), ch. 38, p. 424, § 64, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-4-107.3. When determination of parentage is final - modifications - exceptions. (1) (a) An order determining parentage pursuant to this article shall be modified or set aside, within the time frames specified in subsection (2) of this section, if genetic test results based on DNA testing, administered in accordance with section 13-25-126, S.A.R.S., establish the exclusion of the individual named as the father in the order as the biological parent of the child and the court determines that it is just and proper under the circumstances and in the best interests of the child.

(b) If the court modifies or sets aside an order determining parentage pursuant to paragraph (a) of this subsection (1), then the court shall modify the provisions of the order respecting child support for installments accruing subsequent to the filing of the motion pursuant to section 14-10-122 (6), S.A.R.S., and may vacate or deem as satisfied, in whole or in part, unpaid child support obligations arising from or based on the order determining parentage. The court shall not order restitution from the state for any sums paid to or collected by the state for the benefit of the child.

(2) (a) A motion to modify or set aside an order determining parentage pursuant to this section must be filed within two years from the date of the entry of the order.

(b) Repealed.

(3) Notwithstanding the provisions of subsection (1) of this section, neither a determination of parentage nor an order respecting child support shall be modified or set aside pursuant to this section if:

(a) The individual named in the order acknowledged paternity pursuant to section 19-4-105 (1)(c) or (1)(e) knowing that he was not the father of the child;

(b) The child was adopted by the individual named in the order; or

(c) The child was conceived by means of assisted reproduction.

(4) A motion filed pursuant to this section may be brought by the individual named as the father in the order and shall be served in the manner set forth in the San Andreas rules of civil procedure upon all other parties. The court shall not modify or set aside a final order determining parentage pursuant to this section without a hearing.

(5) For purposes of this section, "DNA" means deoxyribonucleic acid.

Source: L. 2008: Entire section added, p. 1655, § 1, effective August 15.

Editor's note: Subsection (2)(b)(II) provided for the repeal of subsection (2)(b), effective July 1, 2011. (See L. 2008, p. 1655.)

19-4-107.5. Required notice of prior civil protection orders to prevent domestic abuse - determination of parent and child relationship. When filing a proceeding under this article, the filing party shall have a duty to disclose to the court the existence of any prior temporary or permanent civil protection orders to prevent domestic abuse issued pursuant to article 14 of title 13, S.A.R.S., and any emergency protection orders issued pursuant to section 13-14-103, S.A.R.S., entered against either party by any court within ninety days prior to the filing of the proceeding to determine the parent and child relationship. The disclosure required pursuant

to this section shall address the subject matter of the previous protection orders, including the case number and jurisdiction issuing such orders.

Source: L. 95: Entire section added, p. 84, § 2, effective July 1. **L. 99:** Entire section amended, p. 503, § 14, effective July 1. **L. 2004:** Entire section amended, p. 556, § 14, effective July 1. **L. 2005:** Entire section amended, p. 766, § 30, effective June 1.

19-4-108. Statute of limitations. An action to determine the existence of the father and child relationship may be brought at any time prior to the child's eighteenth birthday by the mother or father of said child, by the child, or by the delegate child support enforcement agency. If, however, the statute of limitations in effect at the time of the child's birth was less than eighteen years, the delegate child support enforcement agency may bring an action on behalf of the said child at any time prior to the child's twenty-first birthday. An action brought by a child whose paternity has not been determined may be brought at any time prior to the child's twenty-first birthday. This section and section 19-4-107 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

Source: L. 87: Entire title R&RE, p. 795, § 1, effective October 1; entire section amended, p. 1587, § 59, effective October 1. **L. 88:** Entire section amended, p. 634, § 11, effective July 1. **L. 89:** Entire section amended, p. 794, § 19, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Prior to the repeal and reenactment of this title in 1987, the statute of limitations to determine a father and child relationship was contained in § 19-6-108. The statute of limitations as contained in that section was changed by L. 85, p. 596, § 18, to eighteen years. For the statute of limitations in effect prior to the change in 1985, see § 19-6-108 as contained in the 1978 Replacement Volume 8 and in annual supplements thereto prior to 1985.

19-4-109. Jurisdiction - venue. (1) Without limiting the jurisdiction of any other court, the juvenile court has jurisdiction of an action brought pursuant to this article 4. The juvenile court's jurisdiction includes concurrent jurisdiction with a dependency and neglect court, as set forth in section 19-3-205 (1), to determine a parent-child legal relationship. A delegate child support enforcement unit also has jurisdiction to establish paternity in noncontested paternities in accordance with the procedures specified in article 13.5 of title 26. The action may be joined with an action in another court of competent jurisdiction for dissolution of marriage, legal separation, declaration of invalidity of marriage, or support.

(1.5) A paternity determination made by another state, whether established through voluntary acknowledgment, administrative processes, or judicial processes, shall be enforced and otherwise treated in the same manner as a judgment of this state.

(2) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this article with respect to a child who may have been conceived by that act of intercourse. Upon filing of the petition, the court shall

issue a summons. The hearing shall be set for a day not less than ten days after service is completed or on such later date as the court may order. In addition to any other method provided by rule or statute, including rule 4 (e) of the San Andreas rules of civil procedure, when there is a basis for personal jurisdiction over an individual living outside this state pursuant to section 14-5-201, S.A.R.S., service may be accomplished by delivering a copy of the summons, together with a copy of the petition upon which it was issued, to the individual served. Such service may be by private process server or by sending such copies to such individual by certified mail with proof of actual receipt by such individual.

(3) The action may be brought in the county in which the child or the alleged father resides or is found, or in any county where public assistance was or is being paid on behalf of the child, or, if the father is deceased, in any county in which proceedings for probate of his estate have been or could be commenced.

Source: L. 87: Entire title R&RE, p. 795, § 1, effective October 1. **L. 89:** (1) amended, p. 1247, § 5, effective April 1; (3) amended, p. 794, § 20, effective July 1. **L. 94:** (1.5) added and (2) amended, p. 1541, § 14, effective May 31. **L. 2005:** (2) amended, p. 378, § 4, effective April 22. **L. 2021:** (1) amended, (HB 21-1220), ch. 212, p. 1129, § 5, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-110. Parties. The child may be made a party to the action. If the child is a minor, the court may appoint a guardian ad litem. The child's mother or father may not represent the child as guardian or otherwise. The court shall make the natural mother, each man presumed to be the father under section 19-4-105, and each man alleged to be the natural father parties or, if not subject to the jurisdiction of the court, provide notice of the action in a manner prescribed by the court and an opportunity to be heard. If a man who is alleged to be the natural father is deceased, the court shall make the personal representative of his estate, if one has been appointed, a party. If a personal representative has not been appointed, the court shall make the deceased man's spouse or an immediate blood relative a party. If a spouse or immediate blood relative is not known or does not exist, the court shall appoint a representative for the alleged natural father who is deceased. The court may align the parties. When the person to be served has no residence within San Andreas and his or her place of residence is not known or when he or she cannot be found within the state after due diligence, service must be by publication pursuant to rule 4 (g) of the San Andreas rules of civil procedure; except that service must be by a single publication and must be completed not less than five days prior to the time set for hearing on paternity adjudication.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 93:** Entire section amended, p. 954, § 3, effective May 28. **L. 2006:** Entire section amended, p. 517, § 4, effective August 7. **L. 2016:** Entire section amended, (HB 16-1165), ch. 157, p. 496, § 9, effective January 1, 2017.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the parent-child relationship has been brought, an informal hearing shall be held if it is determined by the court to be in the child's best interest. The court may order that the hearing be held before a magistrate. The public must be barred from the hearing if it is determined by the court to be in the best interest of any of the parties. A record of the proceeding or any portion thereof must be kept if any party requests or the court orders. Rules of evidence need not be observed. At the informal hearing, the judge or magistrate shall give a verbal advisement to the parties that a request for genetic tests must not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5). The judge or magistrate shall further advise the parties that, if genetic tests are not obtained prior to the legal establishment of parentage and submitted into evidence prior to the entry of the final order establishing parentage, the genetic tests may not be allowed into evidence at a later date. The judge or magistrate shall further advise the parties that subsequent to an adjudication of parentage, upon motion, the court shall enter orders for allocation of parental responsibilities pursuant to section 14-10-124 (1.5); except that, in matters involving a nonresident party, the court shall first determine whether it has authority to issue an order allocating parental responsibilities pursuant to article 13 of title 14.

(2) Upon the refusal of any witness, including a party, to testify under oath or produce evidence, the court may order such witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that such witness' testimony or evidence might tend to incriminate such witness, the court may grant such witness immunity from the use of the testimony or evidence the witness is required to produce to prove the commission of a criminal offense by the witness. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(4) Upon the filing of a petition under this article, any party may seek the issuance of a temporary protection order or injunction under the criteria set forth in section 14-10-108, S.A.R.S. Any party may further seek temporary orders as to the allocation of parental responsibilities, including allocation of decision-making responsibility and parenting time, and support once an order determining the existence of the parent and child relationship has been entered by the court. The filing of a motion for temporary orders shall not prevent a party or public agency from seeking other relief as may be provided by this article. Issues of temporary orders concerning the allocation of parental responsibilities, including decision-making responsibility and parenting time, and issues of support shall be determined in accordance with the criteria set forth in the "Uniform Dissolution of Marriage Act", article 10 of title 14, S.A.R.S. Any temporary protection order issued pursuant to this subsection (4) shall be on a standardized form prescribed by the judicial department, and a copy shall be provided to the protected person.

(5) At the time a protection order is requested pursuant to this section, the court shall inquire about, and the requesting party and such party's attorney shall have an independent duty to disclose, knowledge such party and such party's attorney may have concerning the existence

of any prior protection orders of any court addressing in whole or in part the subject matter of the requested protection order.

(6) The duties of peace officers enforcing orders issued pursuant to this section shall be in accordance with section 18-6-803.5, S.A.R.S., and any rules adopted by the San Andreas supreme court pursuant to said section.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 91:** (1) amended, p. 363, § 35, effective April 9. **L. 93:** (2) amended, p. 1737, § 30, effective July 1. **L. 94:** (4) to (6) added, p. 2016, § 11, effective January 1, 1995. **L. 98:** (4) amended, p. 1409, § 70, effective February 1, 1999. **L. 2003:** (4) and (5) amended, p.1016, § 26, effective July 1. **L. 2005:** (1) amended, p. 378, § 5, effective January 1, 2006. **L. 2023:** (1) amended, (SB 23-173), ch. 330, p. 1975, § 6, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-112. Genetic or other tests - administrative subpoena to compel genetic testing. (1) Upon motion of the court or any of the interested parties, genetic tests or other tests of inherited characteristics shall be ordered and the results received in evidence, as provided in section 13-25-126. Upon agreement of the mother and the presumed or alleged father or fathers, genetic tests or other tests of inherited characteristics may be administered prior to filing of an action. If the action is then filed, the test results must be admitted into evidence as provided in section 13-25-126.

(2) (a) A delegate child support enforcement unit is authorized to produce, issue, and serve a subpoena to compel a party in a juvenile court case to appear, at a specified location and time, for a genetic test sample that is collected for assistance in paternity determination. The subpoena must allow a lab-certified child support enforcement unit sample collector, an accredited genetic-testing laboratory company, a health clinic, or a hospital to conduct a buccal swab or other lab-approved collection method of the alleged father, mother, and child whose paternity is at issue. The sample may then be used for paternity testing purposes, provided appropriate chain-of-custody documentation is followed. Test results obtained through the subpoena may be admitted as evidence pursuant to section 13-25-126. The subpoena may be served by first-class mail or by electronic means, if that notice preference by the party is documented.

(b) If a party fails to honor the first subpoena, the delegate child support enforcement unit may issue a second subpoena or file the appropriate motion with the court to compel compliance with a judicial genetic testing order pursuant to section 13-25-126. If the delegate child support enforcement unit issues a second subpoena and that subpoena is not honored, the delegate child support enforcement unit may file the appropriate motion with the court to compel compliance with a judicial genetic testing order pursuant to section 13-25-126. A nonappearance default may be sought against a nonappearing party only after a judicial genetic testing order is not honored.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 11, effective July 1. **L. 2018:** Entire section amended, (HB 18-1363), ch. 389, p. 2322, § 2, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-113. Evidence relating to paternity. (1) Evidence relating to paternity may include:

(a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(c) Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(e) All other evidence relevant to the issue of paternity of the child.

(2) In any action brought pursuant to article 13 or 13.5 of title 26, S.A.R.S., the parties shall be required to use the laboratory designated by the delegate child support enforcement unit for genetic tests or other tests of inherited characteristics. Any subsequent test or other tests shall be determined by the court as provided in section 13-25-126, S.A.R.S.

Source: L. 87: Entire title R&RE, p. 796, § 1, effective October 1. **L. 92:** (2) added, p. 183, § 1, effective August 1. **L. 97:** (1)(c) amended, p. 562, § 9, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-114. Pretrial recommendations - temporary orders. (1) On the basis of the information produced at the pretrial hearing, the judge or magistrate conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) That the action be dismissed with or without prejudice;

(b) That the matter be compromised by an agreement among the alleged father, the mother, and the child in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or magistrate conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise

agreement, the judge or magistrate conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in section 19-4-116 (6), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

(c) That the alleged father voluntarily acknowledge his paternity of the child;

(d) That the action be consolidated with a relinquishment action filed pursuant to part 1 of article 5 of this title.

(2) If the parties accept a recommendation made in accordance with subsection (1) of this section, judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) of this section and genetic tests have not been taken, the court shall require the parties to submit to genetic tests, if practicable. Thereafter, the judge or magistrate shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial. If the evidence relating to paternity meets the requirements set forth in section 13-25-126 (1)(g), S.A.R.S., the court shall issue temporary orders establishing current child support, foster care maintenance, and medical support to remain in effect pending a final disposition of the proceeding.

(4) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(5) The informal hearing may be terminated and the action set for trial if the judge or magistrate conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3) of this section.

Source: L. 87: Entire title R&RE, p. 797, § 1, effective October 1. **L. 91:** (1), (3), and (5) amended, p. 363, § 36, effective April 9. **L. 93:** (1)(b) amended, p. 1780, § 43, effective June 6. **L. 97:** (3) amended, p. 562, § 10, effective July 1; (3) amended, p. 1275, § 14, effective July 1. **L. 2003:** (3) amended, p. 1270, § 61, effective July 1. **L. 2005:** (1)(d) added, p. 102, § 4, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments made to subsection (3) by House Bill 97-1205 and Senate Bill 97-114 were harmonized.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (3), see section 1 of chapter 236, Session Laws of San Andreas 1997.

19-4-115. Civil action. An action under this article is a civil action governed by the San Andreas rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 19-4-111 (2) and (3), 19-4-112, and 19-4-113 apply.

Source: L. 87: Entire title R&RE, p. 798, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 12, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-116. Judgment or order - birth-related costs - evidence. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate or if the court enters a judgment or order determining the existence of a parent and child relationship during the course of a proceeding held pursuant to article 3 of this title, the court shall order that a new birth certificate be issued under section 19-4-124.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the recovery of child support debt pursuant to section 14-14-104, S.A.R.S., the allocation of parental responsibilities with respect to the child and guardianship of the child, parenting time privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay for genetic testing and to pay the reasonable expenses of the mother's pregnancy and confinement.

(b) Repealed.

(c) Bills for pregnancy, childbirth expenses, and genetic testing are admissible as evidence without the necessity of third-party foundation testimony and shall constitute prima facie evidence of the amounts incurred for such services or for expenses incurred on behalf of the child.

(4) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court or delegate child support enforcement unit may enter an order directing the obligor to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period that occurred prior to the month the child support obligation begins. The court may limit the obligor's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) The judgment or order may include a provision requiring that the respondent initiate inclusion of the child under a medical insurance policy currently in effect for the benefit of the respondent, purchase medical insurance for the child, or in some other manner provide for the current or future medical needs of the child. At the same time, the court may make a determination of whose responsibility it shall be to pay required medical insurance deductibles and copayments. If the judgment or order does not contain a provision regarding medical support, such as insurance coverage, payment for medical insurance deductibles and copayments, or unreimbursed medical expenses, that fact may be grounds for a modification of the order under section 14-10-122, S.A.R.S.

(6) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) The needs of the child;

(b) The standard of living and circumstances of the parents;

(c) The relative financial means of the parents;

(d) The earning ability of the parents;

(e) The need and capacity of the child for education, including higher education;

(f) The age of the child;

(g) The financial resources and the earning ability of the child;

(h) The responsibility of the parents for the support of others;

(i) The value of services contributed by the parent with whom the child resides the majority of the time;

(j) The standard of living the child would have enjoyed had the parents been married; and

(k) The child support guidelines, as set forth in section 14-10-115, S.A.R.S.

(7) Any order of support made pursuant to subsections (4) to (6) of this section shall continue until the child is nineteen years of age, unless the support order is terminated sooner by court order.

(8) The court may order support to be continued after the child is nineteen years of age if the child is unable to care for himself or herself by reason of mental or physical disability or other reason justifiable in the opinion of the court.

(9) All child support orders entered pursuant to this article shall include the names and dates of birth of the parties and of the children who are the subject of the order and the parties' residential and mailing addresses. The social security numbers of the parties and children shall be collected pursuant to sections 14-14-113 and 26-13-127, S.A.R.S.

Source: L. 87: Entire title R&RE, p. 798, § 1, effective October 1; (6)(i) and (6)(j) amended and (6)(k) added, p. 1587, § 60, effective October 1. **L. 89:** (3), (5), and (7) amended, p. 794, § 21, effective July 1. **L. 93:** (3) amended, p. 582, § 21, effective July 1; (8) amended, p. 1638, § 25, effective July 1. **L. 94:** (4), (7), and (8) amended, p. 1542, § 15, effective May 31. **L. 95:** (3) amended, p. 1397, § 2, effective July 1. **L. 97:** (3)(a) amended and (3)(c) and (9) added, p. 1276, §§ 15, 16, effective July 1. **L. 98:** (3)(a) and (6)(i) amended, p. 1409, § 71, effective February 1, 1999. **L. 99:** (2) and (9) amended, p. 1086, § 5, effective July 1. **L. 2008:** (9) amended, p. 1348, § 4 effective July 1. **L. 2023:** (4) amended, (SB 23-173), ch. 330, p. 1976, § 7, effective September 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective June 30, 1999. (See L. 95, p. 1397.)

Cross references: For the legislative declaration contained in the 1993 act amending subsection (3), see section 1 of chapter 165, Session Laws of San Andreas 1993. For the legislative

declaration contained in the 1997 act amending subsection (3)(a) and adding subsections (3)(c) and (9), see section 1 of chapter 236, Session Laws of San Andreas 1997.

19-4-117. Costs. The court shall order reasonable fees of counsel, experts, and the child's guardian ad litem and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court. In any action brought pursuant to article 13 or 13.5 of title 26, S.A.R.S., the final costs of any genetic tests or other tests of inherited characteristics shall be assessed against the nonprevailing party on the parentage issue.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 92:** Entire section amended, p. 183, § 2, effective August 1. **L. 97:** Entire section amended, p. 563, § 11, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-117 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-118. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this article or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, or the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(2) The court may order support payments to be made to the obligee, the clerk of the court, in those cases in which the executive director of the department of human services has notified the state court administrator pursuant to section 26-13-114 (5), S.A.R.S., that the judicial district in which the court is situated is ready to participate in the family support registry, through the family support registry, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court. The court may not order payments to be made to the clerk of the court once payments may be made through the family support registry.

(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(4) In making any order for support pursuant to this section, the court shall take into consideration the capability of both parents to provide support.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 98:** (2) amended, p. 766, § 16, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-118 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-119. Modification of judgment or order. (1) The court has continuing jurisdiction to modify or revoke a judgment or order:

(a) For future education and support; and

(b) With respect to matters listed in sections 19-4-116 (3) and (4) and 19-4-118 (2); except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 19-4-116 (4) may specify that the judgment or order may not be modified or revoked.

(2) The court may modify an order of support only in accordance with the provisions of and the standard for modification in section 14-10-122, S.A.R.S.

(3) The trial court retains jurisdiction to modify an order concerning child support or concerning the allocation of parental rights and responsibilities based on a change in circumstances during the pendency of an appeal.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 90:** (2) added, p. 892, § 16, effective July 1. **L. 2021:** (3) added, (HB 21-1031), ch. 116, p. 451, § 7, effective May 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-119 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Section 8 of chapter 116 (HB 21-1031), Session Laws of San Andreas 2021, provides that the act changing this section applies to any request to modify an order appealed on, after, or before May 7, 2021.

Cross references: For the legislative declaration in HB 21-1031, see section 1 of chapter 116, Session Laws of San Andreas 2021.

19-4-120. Represented by counsel. At the pretrial hearing and in further proceedings, any party may be represented by counsel or a licensed legal paraprofessional, but a licensed legal paraprofessional shall not engage in any tasks or activities that are prohibited by the San Andreas supreme court pursuant to court rules.

Source: L. 87: Entire title R&RE, p. 799, § 1, effective October 1. **L. 2024:** Entire section amended, (HB 24-1291), ch. 131, p. 473, § 24, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-120 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-121. Hearings and records - confidentiality. (Repealed)

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-4-122. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this article applicable to the father and child relationship apply.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-122 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-123. Promise to render support. (1) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to section 19-4-107 (4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-123 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-124. Birth records. (1) Upon order of a court of this state or upon an order issued and filed pursuant to article 13.5 of title 26, S.A.R.S., or upon request of a court of another state, the state registrar of vital statistics shall prepare a new certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate, but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons or, in exceptional cases only, upon an order of the court for good cause shown.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1. **L. 89:** (1) amended, p. 1247, § 6, effective April 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-124 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-125. "Father" defined. In case of a maternity suit against a purported mother, where appropriate in the context, the word "father" shall mean "mother".

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-127 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-126. Uniformity of application and construction. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-128 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-127. Severability. If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and, to this end, the provisions of this article are severable.

Source: L. 87: Entire title R&RE, p. 800, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-129 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-4-128. Right to trial to court. Any party may demand a trial to the court to determine the existence or nonexistence of the parent and child relationship. No party may demand a jury trial, and notwithstanding any demand which may have been made, trial shall be to the court and not to a jury.

Source: L. 88: Entire section added, p. 746, § 15, effective July 1. **L. 92:** Entire section amended, p. 183, § 3, effective August 1. **L. 94:** Entire section amended, p. 1542, § 16, effective May 31. **L. 97:** Entire section amended, p. 1276, § 17, effective July 1.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of San Andreas 1997.

19-4-129. Child support - guidelines - schedule of basic support obligations. The provisions of section 14-10-115, S.A.R.S., shall apply to all child support obligations, established or modified, as part of any proceeding under this article, whether filed on or subsequent to July 1, 1988.

Source: L. 88: Entire section added, p. 746, § 15, effective July 1.

19-4-130. Temporary orders for allocation of parental responsibilities. (1) Upon the filing of any proceeding under this article 4 or under article 13.5 of title 26, the court shall, upon motion of a party, enter a temporary or permanent order allocating parental responsibilities that allocates the decision-making responsibility and parenting time of the child until further order of the court.

(2) Subsection (1) of this section does not apply to any parentage determination made pursuant to section 14-5-402.

Source: L. 92: Entire section added, p. 184, § 4, effective August 1. **L. 96:** Entire section amended, p. 612, § 14, effective July 1. **L. 98:** (1) amended, p. 1410, § 72, effective February 1, 1999. **L. 2015:** (2) amended, (HB 15-1198), ch. 173, p. 568, § 35, effective July 1. **L. 2023:** Entire section amended, (SB 23-173), ch. 330, p. 1982, § 23, effective June 2.

ARTICLE 4.5

San Andreas Surrogacy Agreement Act

19-4.5-101. Short title. The short title of this article 4.5 is the "San Andreas Surrogacy Agreement Act".

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 409, § 1, effective May 6.

19-4.5-102. Legislative declaration. (1) The general assembly finds and declares that surrogacy agreements executed pursuant to this article 4.5 are in accord with the public policy of this state.

(2) The general assembly further finds and declares that the purpose of this article 4.5 is to:

(a) Establish consistent standards and procedural safeguards to promote the best interests of the children who are born as a result of surrogacy agreements executed pursuant to this article 4.5;

(b) Protect all parties involved in surrogacy agreements executed pursuant to this article 4.5; and

(c) Recognize the technological advances in assisted reproductive medicine and allow the use of these advances by intended parents and gestational surrogates and genetic surrogates according to the public policy of this state.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 409, § 1, effective May 6.

19-4.5-103. Definitions. As used in this article 4.5, unless the context otherwise requires:

(1) "Assisted reproduction" means a method of causing pregnancy through means other than by sexual intercourse. In the foregoing context, the term includes, but is not limited to:

(a) Intrauterine or intracervical insemination;

(b) Donation of eggs or sperm;

(c) Donation of embryos;

(d) In vitro fertilization and embryo transfer;

(e) Intracytoplasmic sperm injection; and

(f) Assisted reproductive technology.

(2) "Child" means an individual or individuals born pursuant to assisted reproduction whose parentage may be determined under this article 4.5 or other law.

(3) "Compensation" means payment of any valuable consideration for time, effort, support, pain, or risk.

(4) "Donor" means an individual who provides gametes intended for use in assisted reproduction, whether or not for consideration. "Donor" does not include a person who gives birth to a child conceived by assisted reproduction, except in the case of genetic surrogacy, or an individual who is a parent under the rules governing the parentage of children conceived through assisted reproduction.

(5) "Embryo" means a fertilized egg that has the potential to develop into a fetus if transferred into a uterus.

(6) "Embryo transfer" or "transfer" means the placement of an embryo into a uterus.

(7) "Gamete" means a cell containing a haploid complement of DNA that has the potential to form an embryo when combined with another gamete. Sperm and eggs are gametes.

(8) "Genetic surrogate" means an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction using their own donated gametes, under a surrogacy agreement as provided in this article 4.5.

(9) "Gestational surrogate" means an individual who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not their own, under a surrogacy agreement as provided in this article 4.5.

(10) "Intended parent" means an individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.

(11) "Licensed mental health professional" means a certificate holder or licensee, as those terms are defined in section 12-245-202, certified or licensed pursuant to article 245 of title 12.

(12) "Medical evaluation" means a complete consultation with and evaluation by a licensed medical doctor.

(13) "Mental health consultation" means a consultation with and, when required by this article 4.5, an assessment by a licensed mental health professional.

(14) "Surrogacy agreement" means an agreement between one or more intended parents and an individual who is not an intended parent in which the individual agrees to become pregnant through assisted reproduction and that provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 410, § 1, effective May 6. **L. 2022:** (11) amended, (SB 22-212), ch. 421, p. 2973, § 42, effective August 10.

19-4.5-104. Eligibility requirements. (1) To execute an agreement to act as a gestational surrogate or genetic surrogate, an individual must:

(a) Be at least twenty-one years of age;

(b) Previously have given birth to at least one child;

(c) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(d) Complete a mental health consultation by a licensed mental health professional; and

(e) Have independent legal representation of their choice by an attorney licensed in this state throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(2) To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must:

(a) Be at least twenty-one years of age;

(b) Complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor; and

(c) Have independent legal representation of the intended parent's or parents' choice by an attorney licensed in this state throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 411, § 1, effective May 6.

19-4.5-105. Process requirements for a surrogacy agreement. (1) A surrogacy agreement must be executed in compliance with the following rules:

(a) At least one party must be a resident of this state, or the birth will occur or is anticipated to occur in this state, or the assisted reproduction performed pursuant to the surrogacy agreement will occur in this state;

(b) A gestational surrogate or genetic surrogate and each intended parent must meet the requirements of section 19-4.5-104;

(c) Each intended parent, the gestational surrogate or genetic surrogate, and the surrogate's spouse, if any, must be parties to the agreement;

(d) Each party listed in subsection (1)(c) of this section shall sign the agreement;

(e) The signature of each party to the agreement must be attested by a notarial officer;

(f) The intended parent or parents may pay for independent legal representation for the gestational surrogate or genetic surrogate; and

(g) The agreement must be executed before a medical procedure occurs related to the surrogacy agreement, other than the medical evaluation and mental health consultation required by section 19-4.5-104.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 412, § 1, effective May 6.

19-4.5-106. Required contents of surrogacy agreement. (1) A surrogacy agreement must comply with the following requirements:

(a) A gestational surrogate or genetic surrogate agrees to attempt to become pregnant by means of assisted reproduction;

(b) Except as otherwise provided in section 19-4.5-111, the gestational surrogate or genetic surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement;

(c) The gestational surrogate or genetic surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement;

(d) Except as otherwise provided in section 19-4.5-111, the intended parent, or, if there are two intended parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child, regardless of number of children born or gender or mental or physical condition of each child;

(e) Except as otherwise provided in section 19-4.5-111, the intended parent, or, if there are two intended parents, each parent jointly and severally, immediately on birth will assume responsibility for the financial support of the child, regardless of the number of children born or gender or mental or physical condition of each child;

(f) The agreement must include information disclosing how each intended parent will cover the agreed-upon expenses of the gestational surrogate or genetic surrogate, the assisted reproduction expenses, and the medical expenses for the surrogate and the child;

(g) The agreement must permit the gestational surrogate or genetic surrogate to make all health and welfare decisions regarding themselves and the pregnancy;

(h) The agreement must include information about each party's right under this article 4.5 to terminate the surrogacy agreement.

(2) A surrogacy agreement may provide for:

(a) Payment of compensation, support, and reasonable expenses; and

(b) Reimbursement of specific agreed-upon expenses if the agreement is terminated under this article 4.5.

(3) A right created under a surrogacy agreement is not assignable and there is no third-party beneficiary of the agreement other than the child.

(4) In the event that any of the requirements of this section are not met, a court of competent jurisdiction shall determine parentage based on the parties' intent.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 412, § 1, effective May 6.

19-4.5-107. Effect of subsequent change of marital status. (1) Unless a surrogacy agreement expressly provides otherwise:

(a) The marriage of a gestational surrogate or genetic surrogate after the agreement is signed by all parties does not affect the validity of the agreement, their spouse's consent to the agreement is not required, and their spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(b) The dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance of the gestational surrogate or genetic surrogate after the agreement is signed by all parties does not affect the validity of the agreement.

(2) Unless a surrogacy agreement expressly provides otherwise:

(a) The marriage of an intended parent after the agreement is signed by all parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent

is not required, and the spouse of the intended parent is not, based on the agreement, a parent of a child conceived by assisted reproduction under the agreement; and

(b) The dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance of an intended parent after the agreement is signed by all parties does not affect the validity of the agreement and, except as otherwise provided in section 19-4.5-110 or 19-4.5-112, the intended parents are the parents of the child.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 413, § 1, effective May 6.

19-4.5-108. Termination of surrogacy agreement. (1) A party to a surrogacy agreement may terminate the agreement, at any time before a gamete or an embryo transfer, by giving notice of termination in a record to all other parties. If a gamete or an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer.

(2) Unless a surrogacy agreement provides otherwise, on termination of the agreement pursuant to subsection (1) of this section, the parties are released from the agreement; except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the gestational surrogate or genetic surrogate through the date of termination.

(3) Except in a case involving fraud, no party is liable to any other party for a penalty or liquidated damages for terminating a surrogacy agreement under this section.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 414, § 1, effective May 6.

19-4.5-109. Establishment of parent-child relationship under surrogacy agreement. (1) Except as otherwise provided in subsection (3) of this section or section 19-4.5-110 (2) or 19-4.5-112, on birth of a child conceived by assisted reproduction under a surrogacy agreement, each intended parent is, by operation of law, a parent of the child.

(2) Except as otherwise provided in subsection (3) of this section or section 19-4.5-112, neither a gestational surrogate or genetic surrogate nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(3) If a child is alleged to be a genetic child of the individual who agreed to be a gestational surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the individual who agreed to be a gestational surrogate, parentage must be determined based on article 4 of this title 19.

(4) Except as otherwise provided in subsection (3) of this section or section 19-4.5-110 (2) or 19-4.5-112, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a surrogacy agreement is not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the gestational surrogate or genetic surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to any other claim of parentage.

(5) A donor is not a parent of a child conceived by assisted reproduction.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 414, § 1, effective May 6.

19-4.5-110. Parentage of deceased intended parent under surrogacy agreement. (1) Section 19-4.5-109 applies to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

(2) Except as otherwise provided in section 19-4.5-112, an intended parent is not a parent of a child conceived by assisted reproduction under a surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(a) The agreement provides otherwise; and

(b) The transfer of a gamete or embryo occurs not later than thirty-six months after the death of the intended parent or birth of the child occurs not later than forty-five months after the death of the intended parent.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 415, § 1, effective May 6.

19-4.5-111. Court order of parentage under surrogacy agreement. (1) Except as otherwise provided in section 19-4.5-110 (2) or 19-4.5-112, before, on, or after the birth of a child conceived by assisted reproduction pursuant to a surrogacy agreement, a party to the agreement may commence a proceeding in a juvenile court in this state by filing a petition for determination of parent-child relationship with admissions of parentage, as applicable by the intended parents, and admissions of nonparentage by the gestational surrogate or genetic surrogate and their spouse, if any, as applicable and for an order or judgment:

(a) Declaring that each intended parent is a parent of the child and ordering that parental rights and duties vest immediately on the birth of the child exclusively in each intended parent;

(b) Declaring that the gestational surrogate or genetic surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;

(c) Designating the content of the birth record in accordance with article 2 of title 25 and directing the San Andreas department of public health and environment or state registrar to designate each intended parent as a parent of the child;

(d) To protect the privacy of the child and the parties, declaring that the court record is not open to inspection;

(e) If necessary, that the child be surrendered to the intended parent or parents; and

(f) For other relief the court determines necessary and proper.

(2) The court may issue an order or judgment under subsection (1) of this section before the birth of the child. The court shall stay enforcement of the order or judgment until the birth of the child.

(3) Neither this state nor the San Andreas department of public health and environment is a necessary party to a proceeding under subsection (1) of this section.

(4) The petition described in subsection (1) of this section must set forth the facts of the surrogacy arrangement.

(5) If a court order of parentage is issued in another state, the order must be registered with a San Andreas court of competent jurisdiction before being valid in this state.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 415, § 1, effective May 6.

19-4.5-112. Effect of surrogacy agreement. (1) A surrogacy agreement that complies with sections 19-4.5-104, 19-4.5-105, and 19-4.5-106 is enforceable.

(2) If a child was conceived by assisted reproduction under a surrogacy agreement that does not comply with sections 19-4.5-104, 19-4.5-105, and 19-4.5-106, the court shall determine the rights and duties of the parties to the agreement consistent with the intent of the parties at the time of execution of the agreement. Each party to the agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement has standing to maintain a proceeding to adjudicate an issue related to the enforcement of the agreement.

(3) Except as expressly provided in a surrogacy agreement or in subsection (4) or (5) of this section, if the agreement is breached by the gestational surrogate or genetic surrogate or one or more intended parents, the nonbreaching party is entitled to the remedies available at law or in equity.

(4) Specific performance is not a remedy available for breach by a gestational surrogate or genetic surrogate of a provision in the agreement that the surrogate be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.

(5) Except as otherwise provided in subsection (4) of this section, if an intended parent is determined to be a parent of the child, specific performance is a remedy available for:

(a) Breach of the agreement by a gestational surrogate or genetic surrogate which prevents the intended parent from exercising immediately on birth of the child the full rights of parentage; or

(b) Breach by the intended parent which prevents the intended parent's acceptance, immediately on birth of the child conceived by assisted reproduction under the agreement, of the duties of parentage.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 416, § 1, effective May 6.

19-4.5-113. Duty to support. (1) The establishment of the parent and child relationship pursuant to a valid surrogacy agreement, court order of parentage, and this article 4.5 is the basis upon which an action for child support may be brought against the intended parent and acted upon by the court or the delegate child support enforcement unit without further evidentiary proceedings.

(2) The breach of the surrogacy agreement by the intended parent does not relieve the intended parent of the support obligations imposed by the parent and child relationship pursuant to the provisions of this article 4.5.

(3) The donor is not the legal parent of the child thereby conceived and has no rights or duties stemming from the conception of the child.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 417, § 1, effective May 6.

19-4.5-114. Certain provisions of law not applicable to surrogacy agreements. (1) A surrogacy agreement is not considered:

(a) An adoption pursuant to article 5 of this title 19; or

(b) A surrender of custody or termination of parental rights of the child by the donor in violation of the requirements of article 3 of this title 19.

(2) The payment of reasonable expenses and support in connection with a valid surrogacy agreement does not constitute a violation of section 19-5-213.

Source: L. 2021: Entire article added, (HB 21-1022), ch. 103, p. 417, § 1, effective May 6.

ARTICLE 5

Relinquishment and Adoption

Editor's note: This title was repealed and reenacted in 1987. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

Law reviews: For article, "Difficult Issues in Adoption - Part 1", see 24 S.A. Law. 851 (1994); for article, "Difficult Issues in Adoption - Part 2", see 24 S.A. Law. 1083 (1994); for casenote, "Inappropriate Application of the Best Interests of the Child Standard Leads to Worst Case Scenario: In re C.S.A.R.S.", see 68 U. S.A. L. Rev. 259 (1997).

PART 1

RELINQUISHMENT

19-5-100.2. Legislative declaration. (1) The general assembly hereby finds that parental relinquishment and adoption of children are important and necessary options to facilitate the permanent placement of minor children if the birth parents are unable or unwilling to provide proper parental care. The general assembly further finds that adoption offers significant psychological, legal, economic, and social benefits not only for children who might otherwise be homeless but also for parents who are unable to care for their children and for adoptive parents who desire children to nurture, care for, and support. Conversely, the general assembly recognizes that disrupted adoptive placements often have a profound and negative impact on individuals, particularly children, involved in the adoption proceedings.

(2) It is the purpose of this article 5 to promote the integrity and finality of adoptions to ensure that children placed in adoptive placements will be raised in stable, loving, and permanent families. It is the further intent of the general assembly that a prospective parent with a disability should not be denied the opportunity to provide a permanent adoptive placement for a child based solely on the parent's disability, as provided for in section 24-34-805 (2). The general assembly intends that by enacting this legislation, it will be protecting children from being uprooted from adoptive placements and from the life-long emotional and psychological trauma that often accompanies being indiscriminately moved.

Source: L. 94: Entire section added, p. 746, § 1, effective April 20. **L. 2018:** (2) amended, (HB 18-1104), ch. 164, p. 1135, § 9, effective April 25.

19-5-100.5. Applicability of article. Except where indicated otherwise, each provision of this article pertaining to relinquishment or adoption shall apply only to child welfare adoptions and not to private adoptions.

Source: L. 2010: Entire section added, (HB 10-1106), ch. 278, p. 1273, § 4, effective May 26.

19-5-101. Termination of the parent-child legal relationship. (1) The juvenile court may, upon petition, terminate the parent-child legal relationship between a parent or parents, or a possible parent or parents, and a child in:

(a) Proceedings under section 19-1-104 (1)(d);

(a.5) Proceedings under section 19-5-103.5 (2)(d);

(b) Proceedings under section 19-5-105;

(c) Proceedings under section 19-5-203 (1)(d), (1)(e), (1)(f), (1)(j), and (1)(k); or

(d) Proceedings under section 19-5-105.5.

(2) No parent shall relinquish the parent-child legal relationship with a child other than in accordance with the provisions of this article.

(3) A termination by a court of a parent-child legal relationship pursuant to proceedings under this section or any section described by subsection (1) of this section shall not be deemed to terminate a sibling relationship between sibling children who are parties to the termination of the parent-child legal relationship.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 99:** (1) amended, p. 1065, § 9, effective June 1. **L. 2007:** (1) amended, p. 113, § 1, effective July 1. **L. 2008:** (3) added, p. 2, § 2, effective August 5. **L. 2013:** (1)(b) and (1)(c) amended and (1)(d) added, (SB 13-227), ch. 353, p. 2057, § 2, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-102. Venue. (1) A petition for relinquishment of the parent-child relationship shall be filed in the county where the child resides or in the county where the petitioner resides. If a child placement agency is involved, the petition may be filed in the county where the child placement agency is located.

(2) A petition for termination of the parent-child legal relationship pursuant to section 19-5-105.5 or section 19-5-105.7 must be filed in the county where the child resides or in the county where the petitioner resides.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 88:** Entire section R&RE, p. 746, § 16, effective July 1. **L. 89:** Entire section amended, p. 938, § 1, effective March 21. **L. 2014:** Entire section amended, (HB 14-1162), ch. 167, p. 591, § 5, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-102.5. Relinquishment hearings - court docket priority. (1) On and after July 1, 2002, any hearing concerning a petition for relinquishment filed in a district court, the San Andreas court of appeals, or the San Andreas supreme court shall be given a priority on the court's docket. On and after July 1, 2002, if there is no determination on a case concerning a petition for relinquishment by any such court within two months of the filing of the petition, it shall be given a priority on the court's docket that supersedes the priority of any other priority civil hearing on the court's docket.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this section shall affect the priority of a hearing concerning the issuance of a temporary protection order pursuant to section 13-14-104.5, S.A.R.S.

(3) The provisions of this section shall be implemented within existing appropriations.

Source: L. 2002: Entire section added, p. 1644, § 2, effective July 1. **L. 2003:** (2) amended, p. 1016, § 27, effective July 1. **L. 2004:** (2) amended, p. 556, § 15, effective July 1. **L. 2013:** (2) amended, (HB 13-1259), ch. 218, p. 1016, § 21, effective July 1.

19-5-103. Relinquishment procedure - petition - hearings. (1) Any parent desiring to relinquish his or her child shall:

(a) Obtain counseling for himself or herself and the child to be relinquished as the court deems appropriate from the county department of human or social services in the county where the parent resides or from a licensed child placement agency, and, if the petitioner has not received the counseling required by the court, the petition must be continued until counseling is obtained, and the court shall refer the petitioner to counseling;

(b) (I) Petition the juvenile court upon a standardized form prescribed by the judicial department giving the following information: The name of both natural parents, if known; the name of the child, if named; the ages of all parties concerned; and the reasons for which relinquishment is desired.

(II) The petition shall be accompanied by a standardized affidavit of relinquishment counseling prescribed by the judicial department that includes:

(A) A statement indicating the nature and extent of counseling furnished to the petitioner, if any, and the recommendations of the counselor;

(B) A copy of the original birth certificate or a copy of the application therefor; and

(C) A statement disclosing any and all payments, gifts, assistance, goods, or services received, promised, or offered to the relinquishing parent in connection with the pregnancy, birth, or proposed relinquishment of the child and the source or sources of such payments, gifts, assistance, goods, or services.

(1.5) (a) Pursuant to the provisions of section 19-1-126, the petition for relinquishment shall:

(I) Include a statement indicating whether the child is an Indian child; and

(II) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts shall be attached to the petition and filed with the court or filed within fourteen days after the filing of the petition, as specified in section 19-1-126 (1)(c).

(2) The counseling specified in subsection (1)(a) of this section and provided by the department or the child placement agency shall include, but not be limited to, the following:

(a) Information to the relinquishing parent concerning the permanence of the decision and the impact of such decision on the relinquishing parent now and in the future;

(b) Information concerning each parent's complete medical and social histories;

(c) In the case of pregnancy, referral of the woman for medical care and for determination of eligibility for medical assistance;

(d) Information concerning alternatives to relinquishment and referral to private and public resources that may meet the parent's needs;

(e) Relinquishment services necessary to protect the interests and welfare of a child born in a state institution;

(f) Information to the child's parent that if he or she applies for public assistance for himself or herself and the child, he or she must cooperate with the child support enforcement unit for the establishment and enforcement of a child support order; and

(g) The confidentiality of all information, except for nonidentifying information as defined in section 19-1-103 that may be accessed pursuant to part 4 of this article 19, obtained by the department and the child placement agency in the course of relinquishment counseling unless the parent provides written permission or a release of information is ordered by a court of competent jurisdiction and except for a copy of an original birth certificate that may be obtained by an adult adoptee, adult descendant of an adoptee, or a legal representative of the adoptee or descendant as authorized by section 19-5-305. The counseling must also include notice that a birth parent has the opportunity to file a written statement specifying that the birth parent's information remain confidential, an explanation of the rights and responsibilities of birth parents who disagree about consent as set forth in section 19-5-305, and notice that a birth parent has the opportunity to sign and submit a contact preference form and updated medical history statements to the state registrar as set forth in section 19-5-305 (1.5).

(2.5) In those cases in which a parent proposes to relinquish his or her parent-child legal relationship with respect to a child who is under one year of age pursuant to the expedited procedures set forth in section 19-5-103.5, the licensed child placement agency or the county department of human or social services assisting the relinquishing parent shall proceed with filing the petition and providing notice as set forth in section 19-5-103.5.

(3) Upon receipt of the petition for relinquishment, the court shall set the same for hearing on the condition that the requirements of subsection (1) of this section have been complied with by the petitioner.

(4) (a) Except as otherwise provided in section 19-5-103.5 (2)(d), the parent-child legal relationship of a parent shall not be terminated by relinquishment proceedings unless the parent joins in the petition.

(b) The relinquishing parent, child placement agency, and county department of human or social services shall provide the court any and all information described in section 19-1-103 (103) that is available to the relinquishing parent, agency, or county department.

(c) When a motion has been filed to terminate parental rights, a respondent parent with a pending dependency and neglect case brought pursuant to article 3 of this title 19 may pursue relinquishment pursuant to this article 5. Any relinquishment that occurs pursuant to this article 5 must be certified into the dependency and neglect case. In any case where a respondent parent has relinquished the parent's rights pursuant to this article 5, the juvenile court shall follow the procedures set forth in part 6 of article 3 of this title 19 to terminate any remaining respondent parent rights. When a motion has been filed to terminate parental rights pursuant to section 19-3-604, the caseworker shall, upon request by a parent and if services are available, refer the requesting parent to relinquishment counseling. The county shall make reasonable attempts to refer relinquishment services that are accessible to the parent.

(5) The court shall not issue an order of relinquishment until it is satisfied that the relinquishing parent and the child, if determined appropriate by the court, have been counseled pursuant to subsection (1) of this section and this subsection (5) and fully advised of the consequences of the parent's act. The court may order counseling for any age child to be relinquished if the court deems such counseling would be in the child's best interests. The court may order that a child younger than twelve years of age be prepared for relinquishment, termination of parental rights, or adoption.

(6) If the court finds after the hearing that it is in the best interests of the child that no relinquishment be granted, the court shall enter an order dismissing the action.

(7) (a) The court shall enter an order of relinquishment if the court finds after the hearing that:

(I) The relinquishing parent or parents and any child that the court directed into counseling have been counseled as provided in subsections (1) and (5) of this section; and

(II) The parent's decision to relinquish is knowing and voluntary and not the result of any threats, coercion, or undue influence or inducements; and

(III) The relinquishment would best serve the interests of the child to be relinquished.

(b) There shall be a rebuttable presumption that a relinquishment would not be in the child's best interests if the child is twelve years of age or older and objects to the relinquishment.

(8) If the court is not satisfied that the relinquishing parents and the child, if twelve years of age or older, have been offered proper and sufficient counsel and advice, it shall continue the matter for such time as the court deems necessary.

(9) (a) The court may appoint a guardian ad litem to protect the interests of the child if:

(I) The court finds that there is a conflict of interest between the child and the child's parents, guardian, or legal custodian;

(II) The court finds that such appointment would be in the best interests of the child; or

(III) The court determines that the child is twelve years of age or older and that the welfare of the child mandates such appointment. If counsel for youth is appointed pursuant to article 3 of this title 19, the counsel for youth is appointed pursuant to this section.

(b) Reasonable fees for guardians ad litem or counsel for youth appointed pursuant to this subsection (9) must be paid by the relinquishing parent or parents; except that, in the case of an indigent parent or parents, such fees must be paid as an expense of the state from annual appropriations to the office of the child's representative.

(10) The court may interview the child in chambers to ascertain the child's wishes as to the relinquishment proceedings. The court may permit counsel to be present at such an

interview. The court shall cause a record of the interview to be made, and it shall be made a part of the record in the case.

(11) The court may seek the advice of professional personnel whether or not said personnel are employed on a regular basis by the court. Any advice given by professional persons shall be in writing and shall be made available by the court to attorneys of record, to the parties, and to any other expert witnesses upon request, but it shall be considered confidential for any other purposes, shall be sealed, and shall not be open to inspection except by consent of the court. Attorneys of record may call for the cross-examination of any professional persons consulted by the court.

(12) The provisions of this section, including but not limited to relinquishment counseling, notification, and the relinquishment hearing, shall apply in any case involving a child in San Andreas or for whom San Andreas is the home state as described in section 14-13-102 (7), S.A.R.S., including any case in which it is proposed that the child to be relinquished will be relinquished or adopted outside the state of San Andreas.

Source: L. 87: Entire title R&RE, p. 801, § 1, effective October 1. **L. 92:** (1)(b)(II) amended, p. 179, § 1, effective March 20. **L. 97:** Entire section amended, p. 1155, § 1, effective July 1. **L. 2000:** (2)(g) amended, p. 1373, § 6, effective July 1; (12) amended, p. 1538, § 6, effective July 1. **L. 2002:** (1.5) added, p. 787, § 8, effective May 30. **L. 2003:** (2.5) added, p. 872, § 2, effective July 1. **L. 2005:** (2)(g) amended, p. 992, § 4, effective July 1. **L. 2007:** (4)(a) amended, p. 115, § 5, effective July 1. **L. 2012:** (1.5)(b) amended, (SB 12-175), ch. 208, p. 875, § 135, effective July 1. **L. 2014:** (2)(g) amended, (SB 14-051), ch. 260, p. 1048, § 3, effective July 1. **L. 2018:** (1)(a), (2.5), and (4)(b) amended, (SB 18-092), ch. 38, p. 424, § 65, effective August 8. **L. 2020:** (4)(c) added, (HB 20-1104), ch. 50, p. 175, § 2, effective September 14. **L. 2021:** IP(2), (2)(g), and (4)(b) amended, (SB 21-059), ch. 136, p. 734, § 83, effective October 1. **L. 2022:** (9)(a)(I), (9)(a)(III), and (9)(b) amended, (HB 22-1038), ch. 92, p. 438, § 15, effective January 9, 2023.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (1.5), see section 1 of chapter 217, Session Laws of San Andreas 2002. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-5-103.5. Expedited relinquishment procedure - children under one year of age - other birth parents - notice - termination. (1) (a) Notwithstanding the provisions of section 19-5-103 to the contrary, a parent desiring to relinquish his or her child may seek an expedited order terminating his or her parent-child legal relationship without the necessity of a court hearing if:

(I) The child is under one year of age, at the time of filing the petition;

(II) The relinquishing parent is being assisted by a licensed child placement agency or the county department of human or social services in the county where such parent resides;

(III) The requirements of section 19-5-103 (1) have been met; and

(IV) The parent signs an affidavit stating his or her desire to voluntarily relinquish his or her parent-child legal relationship with the child and consenting to a waiver of his or her right to contest a termination of parentage.

(b) (I) The affidavit required to be signed by the parent seeking to relinquish his or her parental rights pursuant to this section must advise the relinquishing parent of the consequences of the relinquishment decision and must further advise the relinquishing parent that he or she is still required to obtain the relinquishment counseling described in section 19-5-103 (1)(a) and (2). The relinquishing parent must be advised of the opportunity to seek independent counseling. The affidavit must also advise the relinquishing parent that he or she may withdraw the affidavit anytime after signing it but before the affidavit and petition are filed with the court. The relinquishing parent may sign the affidavit before the birth of the child. The relinquishing birth parent may withdraw the affidavit from the child placement agency or county department of human or social services in the county where the parent resides any time after signing it but before the affidavit and petition are filed with the court.

(II) The affidavit shall include the following:

(A) A statement that the petitioner has completed the relinquishment counseling required in section 19-5-103 (1) and (2) or understands he or she must complete the counseling prior to entry of the order of termination;

(B) A statement that the child to be relinquished is under one year of age at the time of filing the petition;

(C) A statement that the relinquishing parent's decision is knowing and voluntary and not the result of threats, coercion, or undue influence or inducements; and

(D) A statement that the relinquishing parent believes the relinquishment is in the best interests of the child.

(III) The relinquishing parent's signature on the affidavit must be witnessed by two witnesses, one of whom is either a representative of the licensed child placement agency with which the relinquishing parent has contracted or a representative of the county department of human or social services in the county where the parent resides, whichever is assisting the parent. The other witness must not be associated with either the licensed child placement agency or the county department of human or social services in the county where the parent resides, whichever is assisting the parent, and must not be the potential adoptive parent of the child to be relinquished.

(IV) The affidavit shall be notarized and shall be attached to the petition for relinquishment and filed with the court after the birth of the child. The petition for relinquishment may not be filed until at least four days after the birth of the child.

(c) If the birth parent has signed the affidavit described in this subsection (1) and if it is properly witnessed and notarized and attached to the petition, the court may vacate the hearing required pursuant to section 19-5-103 (3) and, upon making the findings set forth in section 19-5-103 (7)(a), shall enter an order of relinquishment, without a hearing, no more than seven business days after the date of the filing of the petition for relinquishment and the accompanying affidavit.

(2) (a) Notwithstanding the provisions of section 19-5-105 to the contrary, in those cases in which a parent seeks to relinquish his or her parent-child legal relationship with a child pursuant to this section, the licensed child placement agency or the county department of human or social services assisting the relinquishing parent shall proceed with filing the petition for termination of the other birth parent's or possible birth parents' parent-child legal relationship and notify pursuant to this section the other birth parent or possible birth parents identified pursuant to section 19-5-105 (2).

(b) Notice of the proceeding pursuant to this section shall be given to every person identified as the other birth parent or a possible birth parent in the manner appropriate under the San Andreas rules of juvenile procedure for the service of process or in any manner the court directs; except that notice shall not be required to be given to a person who has received notice pursuant to section 19-5-103.7 if the person waives the right to contest a termination of parental rights and waives the right to further notice concerning the expedited relinquishment or if the person fails to reply as required pursuant to section 19-5-103.7. The notice shall inform the parent or alleged parent whose rights are to be determined that failure to file an answer or to appear within twenty-one days after service and, in the case of an alleged father, failure to file a claim of paternity under article 4 of this title within twenty-one days after service, if a claim has not previously been filed, may likely result in termination of the parent's or the alleged parent's parental rights to the child. The notice shall also inform the parent or alleged parent whose rights are to be determined that the person has the right to waive his or her right to appear and contest and that failure to appear and contest may likely result in termination of the parent's or the alleged parent's parental rights to the child. Proof of giving the notice shall be filed with the court before the petition is heard or otherwise acted upon. If no person has been identified as the birth parent, the court shall order that notice be provided to all possible birth parents by publication or public posting of the notice at times and in the places and manner the court deems appropriate.

(c) The other birth parent or possible birth parents may sign the affidavit of voluntary relinquishment described in subsection (1) of this section. Such birth parent may sign the affidavit prior to the birth of the child. If the other birth parent or possible birth parent signs an affidavit of voluntary relinquishment, he or she may withdraw the affidavit from the child placement agency or the county department of human or social services assisting the relinquishing parent any time after signing it but before the affidavit and petition are filed with the court.

(d) (I) The court shall vacate the proceeding and, at the time of the review of the case pursuant to paragraph (c) of subsection (1) of this section, enter an order terminating the parent-child legal relationship of the other birth parent or possible birth parent if the other birth parent or possible birth parent:

(A) Has waived his or her right to contest the termination of parental rights; or

(B) Has failed to appear and contest or to file an answer to the petition for termination or to file a paternity action within the prescribed twenty-one days following the date of the service, publication, or posting of the notice as provided in the notice pursuant to paragraph (b) of this subsection (2); or

(C) Has signed the affidavit of voluntary relinquishment described in subsection (1) of this section; or

(D) Has waived his or her right to notice and right to contest the termination of parental rights pursuant to section 19-5-103.7.

(II) If the provisions of subparagraph (I) of this paragraph (d) do not apply and the other birth parent or possible birth parent expresses his or her desire to appear and contest the termination of the parent-child legal relationship, the court shall proceed with a hearing on the petition for termination of the other birth parent's parent-child legal relationship.

(3) The licensed child placement agency or the county department of human or social services assisting the relinquishing parent shall not submit the documents referenced in subsections (1) and (2) of this section for judicial review unless a permanent placement for the child has been identified.

(4) The court shall not be bound to enter an order terminating a parent-child legal relationship upon the affidavit of the relinquishing parent pursuant to subsection (1) of this section and the court shall not be bound to enter an order terminating a parent-child legal relationship of the other birth parent or possible birth parents pursuant to subsection (2) of this section, but the court may, upon its own motion, require that a formal hearing be held to determine any or all issues presented by the pleadings.

Source: L. 2003: Entire section added, p. 869, § 1, effective July 1. **L. 2004:** (2)(a) amended, p. 263, § 1, effective April 5. **L. 2005:** (2)(b) and (2)(d) amended, p. 101, § 2, effective July 1. **L. 2007:** (2)(a) and (2)(d)(II) amended, p. 114, § 4, effective July 1. **L. 2012:** (2)(b) and (2)(d)(I)(B) amended, (SB 12-175), ch. 208, p. 875, § 136, effective July 1. **L. 2018:** (1)(a)(II), (1)(b)(I), (1)(b)(III), (2)(a), (2)(c), and (3) amended, (SB 18-092), ch. 38, p. 425, § 66, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-103.7. Anticipated expedited relinquishment - children under one year of age - notice to other or possible parent - administrative procedures. (1) Notwithstanding any provision of section 19-5-103 to the contrary, a licensed child placement agency assisting a parent who plans to relinquish a child through an expedited relinquishment pursuant to section 19-5-103.5, may provide notice of the anticipated expedited relinquishment on behalf of the relinquishing parent to any other birth parent or possible birth parent identified pursuant to section 19-5-105 (2) who is not a presumed parent pursuant to section 19-4-105 (1).

(2) The licensed child placement agency may give notice of the anticipated expedited relinquishment prior to or after the filing of the affidavit and petition with the court, but not more than sixty-three days prior to the anticipated birth of the child to be relinquished.

(3) (a) Notice to the other birth parent or possible birth parent given pursuant to this section shall be provided:

(I) By publication appearing in a newspaper of general circulation in the county of the person's last-known address, if the person's identity is known, or the county in which the relinquishing parent reports the conception to have occurred. Notice by publication is only proper if a person has not been identified as the other birth parent or possible birth parent or the location of the other birth parent or possible birth parent has not been determined after diligent efforts.

(II) In person, delivered:

(A) In a manner appropriate under the San Andreas rules of juvenile procedure for the service of process; or

(B) By an employee or a representative of the licensed child placement agency assisting the relinquishing parent, with a requirement that the other birth parent or possible birth parent sign a statement acknowledging receipt of the notice; or

(III) By certified mail to only the other birth parent or possible birth parent, return receipt requested, with return receipt providing prima facie evidence of service.

(b) The date of notice shall be considered either the date on which the notice is delivered pursuant to subparagraph (II) of paragraph (a) of this subsection (3) or the date on the return receipt for notice given by certified mail pursuant to subparagraph (III) of paragraph (a) of this subsection (3), whichever is applicable. If notice is provided by publication, the date of notice shall be the date of the first day of publication.

(4) (a) Notice of the anticipated expedited relinquishment given pursuant to this section shall include the name, mailing address, and physical address of the licensed child placement agency providing the notice and shall inform the other birth parent or possible birth parent of the following:

(I) The name of the parent of the child who anticipates seeking to relinquish his or her parental rights for purposes of the child's adoption and the anticipated date of birth or the actual date of birth of the child;

(II) That the other birth parent or possible birth parent has been identified by the parent who anticipates seeking to relinquish his or her parental rights as potentially being the other birth parent of the child, or, if no other birth parent or possible birth parent has been identified, that the parent who anticipates seeking to relinquish his or her parental rights is unable to identify the other birth parent or possible birth parent;

(III) That placing a child for adoption requires termination of the child's parent-child legal relationships;

(IV) That the other birth parent or possible birth parent has a right to contest the termination of parental rights; and

(V) That failure to declare an intent to contest the termination of parental rights may likely result in a termination of the person's parental rights to the child, and that, to declare an intent to contest the termination of the parent-child legal relationship, the other birth parent or possible birth parent shall:

(A) No later than twenty-one days after the date of notice pursuant to paragraph (b) of subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later, either return a reply form to the licensed child placement agency by certified mail, return receipt requested, or personally appear at the licensed child placement agency to declare an intent to contest the termination of parental rights; and

(B) No later than twenty-one days after the date of notice pursuant to paragraph (b) of subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later, file a claim of paternity pursuant to article 4 of this title and notify the licensed child placement agency pursuant to section 19-4-105.5 (4);

(VI) That the other birth parent or possible birth parent may waive the right to contest the termination of parental rights and that waiver may likely result in a termination of the person's parental rights to the child; and

(VII) That further notice related to the anticipated expedited relinquishment proceedings shall not be provided to the other birth parent or possible birth parent without receipt of a response required by subparagraph (V) of this paragraph (a).

(b) (I) Except when notice is provided by publication, the licensed child placement agency assisting the relinquishing parent with an expedited relinquishment shall send or deliver a reply form described in sub-subparagraph (A) of subparagraph (V) of paragraph (a) of this subsection (4) to the other birth parent or possible birth parent at the same time and by the same method as the delivery of notice given pursuant to subsection (3) of this section. The reply form sent pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall be signed by the other birth parent or possible birth parent, witnessed, and dated, and shall require the other birth parent or possible birth parent to disclose the following information to the licensed child placement agency:

(A) The full name of the other birth parent or possible birth parent;

(B) The name of the relinquishing parent and the anticipated date of birth or the actual date of birth of the child to be relinquished, as listed on the notice;

(C) The other birth parent's or possible birth parent's address;

(D) The case number of the pending action filed, if any, by the other birth parent or the possible birth parent for determination of the parent-child legal relationship pertaining to the child to be relinquished; and

(E) If a case concerning the determination of the parent-child legal relationship pertaining to the child to be relinquished has been filed, a copy of any court orders issued regarding the other birth parent's or possible birth parent's parent-child legal relationship.

(II) In addition to the requirements of subparagraph (I) of this paragraph (b), the reply form sent or delivered pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall provide response options for selection by the other birth parent or the possible birth parent replying to the notice, which response options shall be substantially similar to the following:

(A) That the person replying to the notice acknowledges that there may be a parent-child legal relationship, declares an intent to contest the termination of parental rights, and declares an intent to seek to have the court make this determination;

(B) That the person replying to the notice acknowledges that there may be a parent-child legal relationship, waives the right to contest a termination of parental rights, and waives the right to further notice concerning the expedited relinquishment and the termination of parental rights with respect to the child; and

(C) That the person replying to the notice does not acknowledge that there may be a parent-child legal relationship, waives the right to contest a termination of parental rights, and waives the right to further notice concerning the expedited relinquishment and the termination of parental rights with respect to the child.

(III) In addition to the requirements of subparagraphs (I) and (II) of this paragraph (b), the reply form sent or delivered pursuant to this paragraph (b), or otherwise available at the licensed child placement agency pursuant to paragraph (b) of subsection (7) of this section, shall include a statement of acknowledgment by the other birth parent or possible birth parent that there is a requirement to file a claim of paternity and to notify the licensed child placement

agency pursuant to section 19-4-105.5 (4) no later than twenty days after the date of notice or before a relinquishment petition is filed with the court, whichever occurs later.

(5) To properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to this section, the other birth parent or possible birth parent shall, no later than twenty days after receiving notice pursuant to subsection (3) of this section or before a relinquishment petition is filed with the court, whichever occurs later:

(a) Return a reply form to the licensed child placement agency by certified mail, return receipt requested, or, for other birth parents or possible birth parents who receive notice by publication or who otherwise decide not to return the reply form by certified mail, personally appear at the licensed child placement agency to declare an intent to contest the termination of parental rights in the anticipated proceedings; and

(b) File a claim of paternity pursuant to article 4 of this title and notify the licensed child placement agency pursuant to section 19-4-105.5 (4).

(6) The other birth parent or possible birth parent who is served with notice pursuant to subsection (3) of this section and fails to reply as required in subsection (5) of this section irrevocably waives the right to further notice of proceedings related to the anticipated expedited relinquishment and irrevocably waives the right to appear and contest the termination of his or her parental rights, unless the other birth parent or possible birth parent proves, by clear and convincing evidence, the following:

(a) That it was not possible for the other birth parent or possible birth parent to properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to the requirements of subsection (5) of this section; and

(b) That the other birth parent or possible birth parent did properly reply and declare an intent to contest the termination of the parent-child legal relationship pursuant to the requirements of subsection (5) of this section within twenty days after it became possible for the other birth parent or possible birth parent to do so.

(7) (a) If the other birth parent or possible birth parent replies to the notice provided pursuant to subsection (3) of this section by returning the reply form via certified mail to the licensed child placement agency that sent the notice, the licensed child placement agency shall accept and file the original reply form with the court upon filing the petition for relinquishment or upon receipt of the reply form, whichever occurs later. The date of the reply shall be then noted on the return receipt.

(b) If the other birth parent or possible birth parent replies to the notice provided pursuant to subsection (3) of this section by appearing in person at the licensed child placement agency to declare his or her response, the licensed child placement agency shall provide a reply form for the other birth parent or the possible birth parent to complete and sign. An agency or social services employee shall sign the form as a witness. The licensed child placement agency shall accept the completed, signed reply form, provide a copy of the form to the other birth parent or the possible birth parent, and file the original with the court upon filing the petition for relinquishment or upon receipt of the completed reply form, whichever occurs later. The date of the reply shall be the date on which the other birth parent or the possible birth parent signs the reply.

(c) (I) Notwithstanding any provision of this section to the contrary, if the other birth parent or possible birth parent replies to notice provided by publication pursuant to subsection (3) of this section by contacting the licensed child placement agency in a manner other than is

specified in paragraph (b) of this subsection (7), and the other birth parent or possible birth parent provides his or her full name and address, the licensed child placement agency shall:

(A) Within seven days after the contact, and by certified mail, return receipt requested, send a reply form to the other birth parent or possible birth parent with a written statement informing the person that the date he or she contacted the licensed child placement agency in response to the notice received shall be considered his or her date of reply if he or she returns the form no later than fourteen days after the date noted on the return receipt, and that, if he or she returns the form more than fourteen days after the date noted on the return receipt, the date the licensed child placement agency actually receives the reply form shall be considered his or her reply date; and

(B) Maintain a dated record to submit to the court of all communications made related to this paragraph (c).

(II) The date of reply provided in the manner described in this paragraph (c) shall be the date the other birth parent or possible birth parent contacts the licensed child placement agency in response to the notice received if he or she returns the form no later than fourteen days after the date noted on the return receipt of the form. If the other birth parent or possible birth parent returns the form more than fourteen days after the date noted on the return receipt, the date the reply is received by the licensed child placement agency shall be considered the reply date.

(d) Notwithstanding any provision of this section to the contrary, if the other birth parent or possible birth parent files a claim of paternity pursuant to article 4 of this title and provides notice to the licensed child placement agency pursuant to section 19-4-105.5, then such claim and notice shall be deemed to satisfy the requirements of subsection (5) of this section, so long as the claim of paternity is filed and notice is provided to the licensed child placement agency no later than twenty-one days after receiving notice pursuant to subsection (3) of this section or before a relinquishment petition is filed with the court.

(e) The other birth parent or possible birth parent who replies to a licensed child placement agency pursuant to this subsection (7) shall notify the agency of any change in his or her address.

(f) (I) Notwithstanding any provision of this section to the contrary, the licensed child placement agency shall respond as specified in subparagraph (II) of this paragraph (f) and shall not have the duty to respond as required in paragraph (a), (b), or (c) of this subsection (7) or to file any further documentation of a respondent's reply if, before the respondent replies to the notice as described in paragraph (a), (b), or (c) of this subsection (7), all of the following have occurred:

(A) The relinquishment petition has been filed with the court;

(B) At least twenty-one days have passed since the notice was provided; and

(C) The licensed child placement agency has filed the affidavit of administrative notice described in subsection (8) of this section with the court.

(II) If the requirements specified in subparagraph (I) of this paragraph (f) have been met before the respondent replies to the notice as described in paragraph (a), (b), or (c) of this subsection (7), the licensed child placement agency shall provide the respondent, to the extent of the agency's knowledge, with the following information:

(A) Verification that the petitions and affidavit have been filed;

(B) The court in which the case was filed;

(C) The case number; and

(D) Whether the court has ordered the termination of the respondent's parental rights.

(8) A licensed child placement agency that provides notice of the anticipated expedited relinquishment on behalf of the relinquishing parent to the other birth parent or possible birth parent pursuant to the provisions of this section shall have the duty to file with the court the following information at the time it files the petition for relinquishment:

(a) An affidavit of administrative notice with respect to the other birth parent or possible birth parent who has received notice pursuant to subsection (3) of this section, including the following information, if available:

(I) The method of providing notice;

(II) The date of notice;

(III) The deadline for reply;

(IV) The date of the reply;

(V) The intent declared in the reply;

(VI) A statement indicating whether an action relating to the parent and child legal relationship was filed;

(VII) A statement indicating whether the person's reply was timely; and

(VIII) A statement indicating that the expedited relinquishment was filed pursuant to section 19-5-103.5.

(b) In addition to the affidavit of administrative notice filed with the court pursuant to paragraph (a) of this subsection (8), the licensed child placement agency shall file all available evidence supporting the affidavit, including but not limited to signed return receipts, completed reply forms, affidavits of service of process, evidence of publication, evidence of the filing of an action relating to the parent and child legal relationship, and any other records of pertinent communication with the possible birth parent or other birth parent.

(9) Nothing in this section shall be construed to require a parent who plans to relinquish a child through an expedited relinquishment pursuant to section 19-5-103.5 to file the expedited relinquishment.

(10) Nothing in this section shall be construed to authorize the filing of a petition and affidavit of relinquishment prior to the birth of a child.

Source: L. 2005: Entire section added, p. 95, § 1, effective July 1. **L. 2007:** (3)(a)(II) amended and (7)(f) added, pp. 114, 113, §§ 3, 2, effective July 1. **L. 2012:** (2), (4)(a)(V), (7)(c)(I)(A), (7)(c)(II), (7)(d), and (7)(f)(I)(B) amended, (SB 12-175), ch. 208, p. 875, § 137, effective July 1.

19-5-104. Final order of relinquishment. (1) If the court terminates the parent-child legal relationship of both parents or of the only living parent, the court, after taking into account the religious background of the child, shall order guardianship of the person and legal custody transferred to:

(a) The county department of human or social services; or

(b) A licensed child placement agency; or

(c) A relative of the child; or

(d) An individual determined to be of good moral character through a process that includes the assessment made pursuant to section 19-5-206 (2)(g), if such individual shall have

had the child living in his or her home for six months or more, including a foster parent or a designated adoptive parent.

(2) (a) The court shall consider, but shall not be bound by, a request that custody of the child, with the option of applying for adoption, be placed in a grandparent, aunt, uncle, brother, or sister of the child or a foster parent. When ordering legal custody of the child, the court shall give preference to a grandparent, aunt, uncle, brother, or sister of the child when such relative has made a timely request therefor and the court determines that such placement is in the best interests of the child. Such request must be submitted to the court prior to commencement of the hearing on the petition for relinquishment. If such legal custody is granted, guardianship of the child shall remain with the parent, if the legal parent-child relationship has not been terminated, or the guardianship shall be transferred pursuant to subsection (1) of this section. Nothing in this section shall be construed to require the birth parents or the child placement agency with custody of the child to notify said relatives described in this subsection (2) of the pending relinquishment of parental rights. This subsection (2) shall not apply in cases where the birth parents have designated an adoptive family for the child or the birth parents have designated that legal custody of the child shall not be in a person described in this subsection (2) and where the child has not been in legal custody of a relative requesting guardianship or custody as described in this section or the child has not been in the physical custody of such relative for more than six months.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), in cases in which a parent is seeking to relinquish his or her parent-child legal relationship with more than one child of a sibling group at one time, if the county department or child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) No person shall be precluded from adopting a child solely because that person has been a child's foster parent.

(4) The order of relinquishment shall set forth all pertinent facts brought at the hearing, and, in addition, it shall state that the court is satisfied that the counsel and guidance provided for in section 19-5-103 (1) and (5) has been offered the relinquishing parent or parents and any child for whom the court has ordered counseling.

(5) A final order of relinquishment shall divest the relinquishing parent or parents of all legal rights and obligations they may have with respect to the child relinquished, but it shall not modify the child's status as an heir at law which shall cease only upon a subsequent final decree of adoption; except that the relinquishing parent's or parents' obligation to pay for services received by the child through the department, or other support received, shall be terminated upon a subsequent final decree of adoption or by order of the court at the time of relinquishment. The order of relinquishment shall release the relinquished child from all legal obligations with respect to the relinquishing parent or parents.

(6) If one parent files a petition for the relinquishment of a child and the agency or person having custody of the child files a petition to terminate the rights of the other parent pursuant to section 19-5-105, the court shall set a hearing, as expeditiously as possible, on the relinquishment petition. A court may enter an order of relinquishment for the purpose of

adoption prior to the relinquishment or termination of the other parent's parental rights. Except as otherwise provided in subsection (7) of this section, an order of relinquishment is final and irrevocable.

(7) (a) A relinquishment may be revoked only if, within ninety-one days after the entry of the relinquishment order, the relinquishing parent establishes by clear and convincing evidence that such relinquishment was obtained by fraud or duress.

(b) Notwithstanding paragraph (a) of this subsection (7), a relinquishment may not be revoked on the basis that the relinquishment or termination of the other parent's parental rights was not obtained because the relinquishing parent knew, but did not disclose, the name or whereabouts of such other parent.

(8) If the relinquishment by an individual is revoked pursuant to subsection (7) of this section and no grounds exist under section 19-5-105 or under part 6 of article 3 of this title for terminating the parental rights of that individual, the court shall dismiss any proceeding for adoption and shall provide for the care and custody of the child according to the child's best interests.

(9) The fact that the relinquishing parent or parents are minors shall in no way affect the validity of the final order of relinquishment.

Source: L. 87: Entire title R&RE, p. 802, § 1, effective October 1. **L. 88:** (1)(d) and (2) amended and (2.5) added, p. 757, § 3, effective May 31. **L. 94:** (4.3), (4.5), and (4.7) added, p. 747, § 2, effective April 20; (4) amended, p. 2688, § 210, effective July 1. **L. 97:** Entire section amended, p. 1158, § 2, effective July 1. **L. 2003:** (2) amended, p. 2627, § 8, effective June 5. **L. 2010:** IP(1) and (1)(d) amended, (HB 10-1106), ch. 278, p. 1273, § 3, effective May 26. **L. 2012:** (7)(a) amended, (SB 12-175), ch. 208, p. 877, § 138, effective July 1. **L. 2018:** (1)(a) amended, (SB 18-092), ch. 38, p. 426, § 67, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-105. Proceeding to terminate parent-child legal relationship. (1) If one parent relinquishes or proposes to relinquish or consents to the adoption of a child, the agency or person having custody of the child shall file a petition in the juvenile court to terminate the parent-child legal relationship of the other parent, unless the other parent's relationship to the child has been previously terminated or determined by a court not to exist. This section applies whether or not the other parent is a presumed parent pursuant to section 19-4-105 (1).

(2) In an effort to identify the other birth parent, the court shall cause inquiry to be made of the known parent and any other appropriate person. The inquiry shall include the following: Whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the

child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(3) If, after the inquiry, the other birth parent is identified to the satisfaction of the court or if more than one person is identified as a possible parent, each shall be given notice of the proceeding in accordance with subsection (5) of this section, including notice of the person's right to waive his or her right to appear and contest. If any of them waives his or her right to appear and contest or fails to appear or, if appearing, cannot personally assume legal and physical custody, taking into account the child's age, needs, and individual circumstances, such person's parent-child legal relationship with reference to the child shall be terminated. If the other birth parent or a person representing himself or herself to be the other birth parent appears and demonstrates the desire and ability to personally assume legal and physical custody of the child, taking into account the child's age, needs, and individual circumstances, the court shall proceed to determine parentage under article 4 of this title. If the court determines that the person is the other birth parent, the court shall set a hearing, as expeditiously as possible, to determine whether the interests of the child or of the community require that the other parent's rights be terminated or, if they are not terminated, to determine whether:

(a) To award custody to the other birth parent or to the physical custodian of the child; or

(b) To direct that a dependency and neglect action be filed pursuant to part 5 of article 3 of this title with appropriate orders for the protection of the child during the pendency of the action.

(3.1) The court may order the termination of the other birth parent's parental rights upon a finding that termination is in the best interests of the child and that there is clear and convincing evidence of one or more of the following:

(a) That the parent is unfit. In considering the fitness of the child's parent, the court shall consider the following:

(I) An emotional illness, a behavioral or mental health disorder, or an intellectual and developmental disability of the parent of such duration or nature as to render the parent unlikely, within a reasonable period of time, to care for the ongoing physical, mental, and emotional needs of the child;

(II) A single incident of life-threatening or serious bodily injury or disfigurement of the child or other children;

(III) Conduct toward the child or other children of a physically or sexually abusive nature;

(IV) A history of violent behavior that demonstrates that the individual is unfit to maintain a parent-child relationship with the minor, which may include an incidence of sexual assault, as defined in section 19-1-103, that resulted in the conception of the child;

(V) Excessive use of intoxicating liquors or use of controlled substances, as defined in section 18-18-102 (5), S.A.R.S., that affects the ability of the individual to care and provide for the child;

(VI) Neglect of the child or other children;

(VII) Injury or death of a sibling or other children due to proven abuse or neglect by such parent;

(VIII) Whether, on two or more occasions, a child in the physical custody of the parent has been adjudicated dependent or neglected in a proceeding under article 3 of this title or comparable proceedings under the laws of another state or the federal government;

(IX) Whether, on one or more prior occasions, a parent has had his or her parent-child legal relationship terminated pursuant to this section or article 3 of this title or comparable proceedings under the laws of another state or the federal government.

(b) That the parent has not established a substantial, positive relationship with the child. The court shall consider, but shall not be limited to, the following in determining whether the parent has established a substantial, positive relationship with the child:

(I) Whether the parent has maintained regular and meaningful contact with the child;

(II) Whether the parent has openly lived with the child for at least one hundred eighty days within the year preceding the filing of the relinquishment petition or, if the child is less than one year old at the time of the filing of the relinquishment petition, for at least one-half of the child's life; and

(III) Whether the parent has openly held out the child as his or her own child.

(c) That the parent has not promptly taken substantial parental responsibility for the child. In making this determination the court shall consider, but shall not be limited to, the following:

(I) Whether the parent who is the subject of the petition is served with notice and fails to file an answer within thirty-five days after service of the notice and petition to terminate the parent-child legal relationship, or within twenty-one days if the petition for termination was filed pursuant to section 19-5-103.5, or fails to file a paternity action, pursuant to article 4 of this title, within thirty-five days after the birth of the child or within thirty-five days after receiving notice that he is the father or likely father of the child, or, for those petitions filed pursuant to section 19-5-103.5, within twenty-one days after the birth of the child or after receiving notice that he is the father or likely father of the child;

(II) Whether the parent has failed to pay regular and reasonable support for the care of the child, according to that parent's means; and

(III) Whether the birth father has failed to substantially assist the mother in the payment of the medical, hospital, and nursing expenses, according to that parent's means, incurred in connection with the pregnancy and birth of the child.

(3.2) In considering the termination of a parent's parental rights, the court shall give paramount consideration to the physical, mental, and emotional conditions and needs of the child. Such consideration shall specifically include whether the child has formed a strong, positive bond with the child's physical custodian, the time period that the bond has existed, and whether removal of the child from the physical custodian would likely cause significant psychological harm to the child.

(3.3) If the child is under one year of age at the time that the relinquishment petition is filed, there is an affirmative defense to any allegations under subparagraph (VI) of paragraph (a), paragraph (b), and paragraph (c) of subsection (3.1) of this section that the parent's neglect, failure to establish a substantial relationship, or failure to take substantial responsibility for the child was due to impediments created by the other parent or person having custody. A parent shall demonstrate such impediments created by the other parent or person having custody by a preponderance of the evidence.

(3.4) (a) If the court determines not to terminate the nonrelinquishing parent's parental rights nor to direct that a dependency and neglect action be filed, the court shall proceed to determine custody of the child, parenting time with the child, duty of support, and recovery of child support debt.

(b) The court shall determine custody based upon the best interests of the child giving paramount consideration to the physical, mental, and emotional conditions and needs of the child.

(c) If the child or youth has been out of the birth parents' care for more than one year, irrespective of incidental communications from the relinquishing or nonrelinquishing parent, there is a rebuttable presumption that the best interests of the child or youth will be served by granting custody to the person in whose care the child or youth has been for that period. Such presumption may be overcome by a preponderance of the evidence.

(3.5) Notwithstanding subsection (3.4) of this section, the court shall grant custody of the child to the nonrelinquishing birth parent if the court finds that the birth parent has the ability and the desire to assume personally legal and physical custody of the child promptly and that all of the following exists:

(a) The nonrelinquishing parent has established a substantial, positive relationship with the child;

(b) The nonrelinquishing parent has promptly taken substantial parental responsibility for the child; and

(c) The award of custody to the nonrelinquishing parent is in the best interests of the child.

(3.6) Except for a parent whose parental rights have been relinquished pursuant to section 19-5-104, a person who has or did have the child in his or her care has the right to intervene as an interested party and to present evidence to the court regarding the nonrelinquishing parent's contact, communication, and relationship with the child. If custody is at issue pursuant to subsection (3.4) of this section, such person also has the right to present evidence regarding the best interests of the child and his or her own suitability as a placement for the child.

(4) If, after the inquiry, the court is unable to identify the other birth parent or any other possible birth parent and no person has appeared claiming to be the other birth parent and claiming custodial rights, the court shall enter an order terminating the unknown birth parent's parent-child legal relationship with reference to the child. Subject to the disposition of an appeal upon the expiration of thirty-five days after an order terminating a parent-child legal relationship is issued under subsection (3) of this section or this subsection (4), the order cannot be questioned by any person, in any manner, or upon any ground, except fraud upon the court or fraud upon a party. Upon an allegation of fraud, the termination order cannot be questioned by any person, in any manner or upon any ground, after the expiration of ninety-one days from the date that the order was entered.

(5) Notice of the proceeding shall be given to every person identified as the other birth parent or a possible birth parent in the manner appropriate under the San Andreas rules of juvenile procedure for the service of process or in any manner the court directs. The notice shall inform the parent or alleged parent whose rights are to be determined that failure to file an answer or to appear within thirty-five days after service and, in the case of an alleged father, failure to file a claim of paternity under article 4 of this title within thirty-five days after service, if a claim has not previously been filed, may likely result in termination of the parent's or the alleged parent's parental rights to the minor. The notice also shall inform the parent or alleged parent whose rights are to be determined that such person has the right to waive his or her right to appear and contest and that failure to appear and contest may likely result in termination of the parent's or

the alleged parent's parental rights to the minor. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the birth parent, the court shall order that notice be provided to all possible parents by publication or public posting of the notice at times and in places and manner the court deems appropriate.

(6) In those cases in which a parent proposes to relinquish his or her parent-child legal relationship with a child who is under one year of age, pursuant to the expedited procedures set forth in section 19-5-103.5, the licensed child placement agency or the county department of human or social services assisting the relinquishing parent shall proceed with filing the petition for termination of the other birth parent's or possible birth parents' parent-child legal relationship and notify the other birth parent or possible birth parents as provided in section 19-5-103.5 (2).

Source: L. 87: Entire title R&RE, p. 803, § 1, effective October 1. **L. 94:** Entire section amended, p. 747, § 3, effective April 20. **L. 97:** IP(3), (3.1)(c)(I), and (5) amended, p. 1160, § 3, effective July 1. **L. 98:** (3.1)(a)(II) amended, p. 1421, § 8, effective July 1. **L. 2001:** (3.1)(a)(VI) amended and (3.1)(a)(VIII) and (3.1)(a)(IX) added, p. 499, § 2, effective May 4. **L. 2003:** (3.1)(c)(I) amended and (6) added, p. 872, § 3, effective July 1. **L. 2012:** (3.1)(a)(V) amended, (HB 12-1311), ch. 281, p. 1625, § 62, effective July 1; (3.1)(c)(I), (4), and (5) amended, (SB 12-175), ch. 208, p. 877, § 139, effective July 1. **L. 2014:** (3.1)(a)(IV) amended, (HB 14-1162), ch. 167, p. 591, § 6, effective July 1. **L. 2017:** IP(3.1)(a) and (3.1)(a)(I) amended, (HB 17-1046), ch. 50, p. 158, § 11, effective March 16; (3.1)(a)(I) amended, (SB 17-242), ch. 263, p. 1318, § 168, effective May 25. **L. 2018:** (6) amended, (SB 18-092), ch. 38, p. 426, § 68, effective August 8. **L. 2021:** (3.1)(a)(IV) amended, (SB 21-059), ch. 136, p. 734, § 84, effective October 1. **L. 2023:** (3.4)(c) amended, (HB 23-1027), ch. 284, p. 1685, § 22, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-6-126 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of San Andreas 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-5-105.5. Termination of parent-child legal relationship upon a finding that the child was conceived as a result of sexual assault - legislative declaration - definitions. (1) The general assembly hereby declares that the purpose of this statute is to protect the victim of a sexual assault and to protect the child conceived as a result of that sexual assault by creating a process to seek termination of the parental rights of the perpetrator of the sexual assault and by issuing protective orders preventing future contact between the parties. The general assembly further declares that this section creates civil remedies and is not created to punish the perpetrator but rather to protect the interests of the child and the victim of a sexual assault.

(2) As used in this section, unless the context otherwise requires:

(a) "Convicted" or "conviction" has the same meaning as defined in section 19-1-103.

(a.5) "Disability" means:

(I) A physical or mental impairment that substantially limits one or more major life activities; or

(II) A record of a physical or mental impairment that substantially limited a major life activity.

(a.7) "Petitioner" means a victim of sexual assault who files a petition for termination of the parent-child legal relationship of the other parent as provided in this section.

(a.8) "Respondent" means a person against whom a petition for termination of the parent-child legal relationship is filed as provided in this section.

(b) "Sexual assault" has the same meaning as defined in section 19-1-103.

(c) "Victim" has the same meaning as defined in section 19-1-103.

(3) If a child was conceived as a result of an act that led to the parent's conviction for sexual assault or for a conviction in which the underlying factual basis was sexual assault, the victim of the sexual assault or crime may file a petition in the juvenile court to prevent future contact with the parent who committed the sexual assault and to terminate the parent-child legal relationship of the parent who committed the sexual assault or crime.

(4) The verified petition filed under this section must allege that:

(a) The respondent was convicted on or after July 1, 2013, of an act of sexual assault against the petitioner or convicted of a crime in which the underlying factual basis was sexual assault against the petitioner;

(b) A child was conceived as a result of the act of sexual assault or crime described under paragraph (a) of this subsection (4); and

(c) Termination of the parent-child legal relationship of the respondent with the child is in the best interests of the child.

(4.5) After a petition has been filed pursuant to this section, the court shall issue a summons that recites briefly the substance of the petition and contains a statement that the purpose of the proceeding is whether to terminate the parent-child legal relationship of the respondent. The petitioner shall have the respondent personally served with a copy of the summons or notified through notice by publication consistent with the statutory provisions for notice in section 19-3-503 and pursuant to the San Andreas rules of civil procedure, unless the respondent appears voluntarily or waives service. Upon request, the court shall protect the whereabouts of the petitioner and must identify the petitioner and the child in the summons by initials.

(5) (a) After a petition has been filed pursuant to this section, the court shall appoint a guardian ad litem, who must be an attorney, to represent the child's best interests in the proceeding; except that, if at any time the court determines that a guardian ad litem for the child is no longer necessary, the court may discharge the guardian ad litem. The petitioner and the respondent have the right to be represented by legal counsel in proceedings under this section. The petitioner and the respondent each have the right to seek the appointment of legal counsel if he or she is unable financially to secure legal counsel on his or her own. The court shall waive filing fees for an indigent petitioner.

(b) The court will work to ensure that a petitioner or a respondent who has a disability has equal access to participate in the proceeding. If the petitioner or respondent has a disability, he or she has the right to request reasonable accommodations in order to participate in the proceeding; except that the disability of the petitioner, the respondent, or the child must not be the cause for the unnecessary delay of the process. The court shall presume that a petitioner or a

respondent with a disability is legally competent and able to understand and participate in the proceeding unless the petitioner or respondent is determined to be an incapacitated person, as defined in section 15-14-102 (5), S.A.R.S.

(6) In any proceeding held under this section, the court may grant protective measures in the courtroom as requested by the petitioner, including but not limited to allowing the petitioner to not appear in the presence of the respondent, so long as these measures do not violate due process. The petitioner's and the child's whereabouts must be kept confidential.

(6.5) A respondent may admit parentage or may request genetic testing or other tests of inherited characteristics to confirm paternity. The test results must be admitted into evidence as provided in section 13-25-126, S.A.R.S. The final costs for genetic tests or other tests of inherited characteristics must be assessed against the nonprevailing party on the parentage issue.

(6.6) If the parties consent, the court has continuing jurisdiction and authority in the same proceeding to enter an order of relinquishment pursuant to part 1 of article 5 of this title without a finding or admission of the elements required by subsection (7) of this section. As part of the agreement, the respondent must agree in writing to waive the right to access the original birth certificate or other relinquishment documents as permitted by law under article 5 of this title or pursuant to the rules of the state department of human services. The waiver must be filed with the court that issues the order of relinquishment and with the state registrar of vital statistics.

(6.7) The court shall hear a petition to terminate the parent-child legal relationship no more than one hundred twenty days after service of the petition or from the first appearance date, whichever is later, unless both parties consent to an extension or the court finds good cause to extend the hearing beyond one hundred twenty days.

(7) The court shall terminate the parent-child legal relationship of the respondent if the court finds by clear and convincing evidence, and states the reasons for its decision, that:

(a) The respondent was convicted on or after July 1, 2013, of an act of sexual assault against the petitioner or was convicted of a crime in which the underlying factual basis was sexual assault against the petitioner;

(b) A child was conceived as a result of that act of sexual assault or crime as evidenced by the respondent admitting parentage or genetic testing establishing the paternity; and

(c) Termination of the parent-child legal relationship is in the best interests of the child. There is a rebuttable presumption that terminating the parental rights of the parent who committed the act of sexual assault or crime is in the best interests of the child. The court shall not presume that having only one remaining parent is contrary to the child's best interests.

(7.3) If the child is an Indian child, the court shall ensure compliance with the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and the provisions of section 19-1-126.

(7.5) If the court denies the petition to terminate the parent-child legal relationship, then the court shall articulate its reasons for the denial of the petition. If the court denies the petition, the court has continuing jurisdiction and authority to enter an order in the same proceeding allocating parental responsibilities between the parties, including but not limited to an order to not allocate parental responsibilities to the respondent. In issuing any order allocating parental responsibilities, including the duty of support, guardianship, and parenting time privileges with the child or any other matter, the court shall determine whether the order is in the best interests of the child based on a preponderance of the evidence.

(8) (a) A respondent whose parental rights are terminated in accordance with this section has:

(I) No right to allocation of parental responsibilities, including parenting time and decision-making responsibilities for the child;

(II) No right of inheritance from the child; and

(III) No right to notification of, or standing to object to, the adoption of the child.

(b) Notwithstanding the provisions of section 19-3-608, termination of parental rights under subsection (7) of this section does not relieve the respondent of any obligation to pay child support or birth-related costs unless waived by the petitioner. In cases in which child support obligations are not waived, the court, as informed by the wishes of the petitioner, shall determine if entering an order to pay child support is in the best interests of the child. If the court orders the respondent to pay child support, the court shall order the payments to be made through the child support registry to avoid the need for any contact between the parties and order that the payments be treated as a nondisclosure of information case. If the petitioner's parent-child legal relationship to the child is terminated after the entry of a child support order against the respondent, the court shall modify the child support order accordingly.

(9) A respondent whose parent-child legal relationship has been terminated in accordance with this section has no right to make medical treatment decisions or any other decisions on behalf of the child.

(9.5) The court may order a respondent whose parent-child legal relationship has been terminated to provide medical and family information to be shared with the child, as appropriate, and with the petitioner. For terminations entered under this section and section 19-5-105.7, the state court administrator shall establish a uniform process to determine how the information is collected, who can access it, when it can be accessed, and how it is stored. The court may order that a respondent's failure to comply with the request for information in a timely manner constitutes contempt of court.

(10) The juvenile court has original concurrent jurisdiction to issue a temporary or permanent civil protection order pursuant to section 13-14-104.5 or 13-14-106, S.A.R.S.

(11) Termination of the parent-child legal relationship pursuant to subsection (7) of this section is an independent basis for termination of parental rights, and the court need not make any of the considerations or findings described in section 19-3-604, 19-5-103.5, or 19-5-105.

(12) Nothing in this section prohibits the termination of parental rights by the court using the criteria described in section 19-3-604, 19-5-103.5, or 19-5-105.

Source: L. 2013: Entire section added, (SB 13-227), ch. 353, p. 2057, § 3, effective July 1. **L. 2014:** Entire section amended, (HB 14-1162), ch. 167, p. 582, § 1, effective July 1. **L. 2021:** (2)(a), (2)(b), and (2)(c) amended, (SB 21-059), ch. 136, p. 735, § 85, effective October 1.

19-5-105.7. Termination of parent-child legal relationship in a case of an allegation that a child was conceived as a result of sexual assault but in which no conviction occurred - legislative declaration - definitions. (1) The general assembly hereby declares that the purpose of this statute is to protect a person in a case where it is determined that he or she is a victim of sexual assault but in which no conviction occurred and to protect a child conceived as a result of that sexual assault by creating a process to seek termination of the parental rights of the perpetrator of the sexual assault and by issuing protective orders preventing future contact

between the parties. The general assembly further declares that this section creates civil remedies and is not created to punish the perpetrator but rather to protect the interests of the petitioner and the child. The general assembly creates this section to address the procedures in cases where there are allegations of sexual assault but in which a conviction did not occur.

(2) As used in this section, unless the context otherwise requires:

(a) "Conviction" has the same meaning as defined in section 19-1-103.

(b) "Petitioner" means a person who alleges that he or she is a victim of sexual assault and who files a petition for termination of the parent-child legal relationship of the other parent as provided in this section.

(c) "Respondent" means a person against whom a petition for termination of the parent-child legal relationship is filed as provided in this section.

(d) "Sexual assault" has the same meaning as defined in section 19-1-103.

(3) The person who alleges that he or she is a victim of sexual assault and who alleges that a child was conceived as a result of a sexual assault in which a conviction did not occur may file a petition in the juvenile court to prevent future contact with the parent who allegedly committed the sexual assault and to terminate the parent-child legal relationship of the parent who allegedly committed the sexual assault.

(4) The verified petition filed under this section must allege that:

(a) The respondent committed an act of sexual assault against the petitioner;

(b) The respondent has not been convicted for the act of sexual assault;

(c) A child was conceived as a result of the act of sexual assault as described under paragraph (a) of this subsection (4); and

(d) Termination of the parent-child legal relationship of the respondent with the child is in the best interests of the child.

(5) (a) After a petition has been filed pursuant to this section, the court shall issue a summons that recites briefly the substance of the petition and contains a statement that the purpose of the proceeding is to determine whether to terminate the parent-child legal relationship of the respondent. The petitioner shall have the respondent personally served with a copy of the summons or notified through notice by publication consistent with the statutory provisions for notice in section 19-3-503 and pursuant to the San Andreas rules of civil procedure, unless the respondent appears voluntarily or waives service. Upon request, the court shall protect the whereabouts of the petitioner and must identify the petitioner and the child in the summons by initials.

(b) The court will work to ensure that a petitioner or a respondent who has a disability has equal access to participate in the proceeding. If the petitioner or respondent has a disability, he or she has the right to request reasonable accommodations in order to participate in the proceeding; except that the disability of the petitioner, the respondent, or the child must not be the cause for the unnecessary delay of the process. The court shall presume that a petitioner or a respondent with a disability is legally competent and able to understand and participate in the proceeding unless the petitioner or respondent is determined to be an incapacitated person, as defined in section 15-14-102 (5), S.A.R.S.

(6) After a petition has been filed pursuant to this section, the court shall appoint a guardian ad litem, who must be an attorney, to represent the child's best interests in the proceeding; except that, if at any time the court determines that a guardian ad litem for the child is no longer necessary, the court may discharge the guardian ad litem. The petitioner and the

respondent have the right to be represented by legal counsel in proceedings under this section. The petitioner and the respondent each have the right to seek the appointment of legal counsel if he or she is unable financially to secure legal counsel on his or her own. The court shall waive filing fees for an indigent petitioner.

(7) In any proceeding held under this section, the court may grant protective measures in the courtroom as requested by the petitioner, including but not limited to allowing the petitioner to not appear in the presence of the respondent so long as these measures do not violate due process. The petitioner's and the child's whereabouts must be kept confidential.

(8) A respondent may admit parentage or may request genetic testing or other tests of inherited characteristics to confirm paternity. The test results must be admitted into evidence as provided in section 13-25-126, S.A.R.S. The final costs for genetic tests or other tests of inherited characteristics must be assessed against the nonprevailing party on the parentage issue.

(9) If the parties consent, the court has continuing jurisdiction and authority in the same proceeding to enter an order of relinquishment pursuant to part 1 of article 5 of this title without a finding or admission of the elements required by subsection (11) of this section. As part of the agreement, the respondent must agree in writing to waive the right to access the original birth certificate or other relinquishment documents as permitted by law under article 5 of this title or pursuant to the rules of the state department of human services. The waiver must be filed with the court that issues the order of relinquishment and with the state registrar of vital statistics.

(10) The court shall hear a petition to terminate the parent-child legal relationship no more than one hundred twenty days after service of the petition or from the first appearance date, whichever is later, unless both parties consent to an extension or the court finds good cause to extend the hearing beyond one hundred twenty days.

(11) (a) The court shall terminate the parent-child legal relationship of the respondent if the court finds by clear and convincing evidence that:

(I) A sexual assault against the petitioner occurred;

(II) The sexual assault was perpetrated by the respondent;

(III) A child was conceived as a result of that act of sexual assault as evidenced by the respondent admitting parentage or genetic testing establishing the paternity;

(IV) Termination of the parent-child legal relationship is in the best interests of the child. The court shall not presume that having only one remaining parent is contrary to the child's best interests.

(b) If the child is an Indian child, the court shall ensure compliance with the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and the provisions of section 19-1-126.

(12) If the court denies the petition to terminate the parent-child legal relationship, the court shall articulate its reasons for the denial of the petition. If the court denies the petition, the court has continuing jurisdiction and authority to enter an order in the same proceeding allocating parental responsibilities between the petitioner and the respondent, including but not limited to an order to not allocate parental responsibilities to the respondent. In issuing any order allocating parental responsibilities, including the duty of support, guardianship, and parenting time privileges with the child or any other matter, the court shall determine whether the order is in the best interests of the child based on a preponderance of the evidence.

(13) (a) A respondent whose parental rights are terminated in accordance with this section has:

(I) No right to allocation of parental responsibilities, including parenting time and decision-making responsibilities for the child;

(II) No right of inheritance from the child; and

(III) No right to notification of, or standing to object to, the adoption of the child.

(b) Notwithstanding the provisions of section 19-3-608, termination of parental rights under subsection (10) of this section does not relieve the respondent of any obligation to pay child support or birth-related costs unless waived by the petitioner. In cases in which child support obligations are not waived, the court, as informed by the wishes of the petitioner, shall determine if entering an order to pay child support is in the best interests of the child. If the court orders the respondent to pay child support, the court shall order the payments to be made through the child support registry to avoid the need for any contact between the parties and order that the payments be treated as a nondisclosure of information case. If the petitioner's parent-child legal relationship to the child is terminated after the entry of a child support order against the respondent, the court shall modify the child support order accordingly.

(14) A respondent whose parent-child legal relationship has been terminated in accordance with this section has no right to make medical treatment decisions or any other decisions on behalf of the child.

(15) The court may order a respondent whose parent-child legal relationship has been terminated to provide medical and family information to be shared with the child, as appropriate, and with the petitioner. The sharing of information must be consistent with the uniform process established by the state court administrator as provided in section 19-5-105.5 (9.5). The court may order that a respondent's failure to comply with the request for information in a timely manner constitutes contempt of court.

(16) The juvenile court has original concurrent jurisdiction to issue a temporary or permanent civil protection order pursuant to section 13-14-104.5 or 13-14-106, S.A.R.S.

(17) Termination of the parent-child legal relationship pursuant to subsection (10) of this section is an independent basis for termination of parental rights, and the court need not make any of the considerations or findings described in section 19-3-604, 19-5-103.5, or 19-5-105.

(18) Nothing in this section prohibits the termination of parental rights by the court using the criteria described in section 19-3-604, 19-5-103.5, or 19-5-105.

Source: L. 2014: Entire section added, (HB 14-1162), ch. 167, p. 587, § 4, effective July 1. **L. 2021:** (2)(a) and (2)(d) amended, (SB 21-059), ch. 136, p. 735, § 86, effective October 1.

19-5-106. Records. (Repealed)

Source: L. 87: Entire title R&RE, p. 804, § 1, effective October 1. **L. 89:** Entire section amended, p. 943, § 3, effective March 27. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-5-107. When notice of relinquishment proceedings required. (Repealed)

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1. **L. 91:** Entire section amended, p. 254, § 13, effective July 1. **L. 92:** Entire section amended, p. 2175, § 30, effective June 2. **L. 94:** Entire section repealed, p. 752, § 4, effective April 20.

19-5-108. When notice of relinquishment proceedings required. If the custodial parent has assigned rights to support for a child who is the subject of relinquishment proceedings to the department of human services, notice of the relinquishment proceedings shall be given, by the parent proposing to relinquish a child or by that parent's counsel, to the appropriate delegate child support enforcement unit in cases where there is no adoption proceeding pending.

Source: L. 96: Entire section added, p. 613, § 15, effective July 1.

19-5-109. Birth parent access to records related to relinquishment of parental rights. (1) (a) Except for relinquishments ordered pursuant to section 19-5-105.5 (6.6) or 19-5-105.7 (9) or when the subsequent termination of the parent-child legal relationship is the result of a dependency and neglect action, in those cases in which a parent consents to the relinquishment of his or her child, the custodian of records shall provide to the relinquishing birth parent to whom the document pertains a copy of the relinquishment records, in the possession of the custodian of records, that are signed by the relinquishing birth parent or by a parent, guardian, custodian, or legal representative on behalf of the relinquishing birth parent and any of the following records listed in this paragraph (a) in which the relinquishing birth parent is named, including:

(I) The original birth certificate of the child who is being relinquished;

(II) The petition to relinquish;

(III) The final order of relinquishment;

(IV) The affidavit of counseling, excluding any attachments and excluding any notes or prerelinquishment counseling documents;

(V) The temporary waiver of custody;

(VI) Expedited relinquishment documents, if applicable;

(VII) A relinquishment interrogatory from a birth parent;

(VIII) The order for publication of relinquishment;

(IX) The notice to terminate the parent-child legal relationship; and

(X) The medical records of a birth mother related to the pregnancy and birth, which records may only be released by the health-care provider, hospital, or maternity home that created the record.

(b) The custodian of records shall provide the records described in paragraph (a) of this subsection (1) to the relinquishing birth parent at the time of relinquishment of the child or at the time the document is created.

(2) If the records described in subsection (1) of this section were not provided to a birth parent at the time of the relinquishment of the child or at the time the document was created and if the subsequent termination of the parent-child legal relationship was not the result of a dependency or neglect action, then upon written request and proof of identification of the birth parent, the custodian of records shall provide access to and copies of the records described in subsection (1) of this section to the birth parent. Nothing in this section prevents the release of the records described in subsection (1) of this section to a birth parent who was a minor at the time of the relinquishment of a child in circumstances where the record was signed by a parent, guardian, legal custodian, or legal representative on behalf of the relinquishing birth parent.

(3) A licensed child placement agency is not liable to any person for the failure of a birth parent to request copies of the records described in subsection (1) of this section pursuant to the

provisions of subsection (1) or subsection (2) of this section. A licensed child placement agency or succeeding custodian of records is not liable to any person for failure to produce a copy of a record that did not exist pursuant to the provisions of the San Andreas Revised Statutes or rules at the time of the relinquishment of the child.

Source: L. 2014: Entire section added, (HB 14-1042), ch. 261, p. 1050, § 2, effective August 6; IP(1)(a) amended, (HB 14-1162), ch. 167, p. 595, § 10, effective August 6.

PART 2

ADOPTION

Law reviews. For article, "The Adoptee Trap, the Accidental Beneficiary, and the Rational Testator", see 42 S.A. Law. 29 (Feb. 2013); for comment, "Two Legal Mothers: Cementing Parental Rights for Lesbian Parents in San Andreas", see 91 U. S.A. L. Rev. 1247 (2020).

19-5-200.2. Legislative declaration. (1) Notwithstanding any other provisions of this title to the contrary, it is the intent of the general assembly that the court shall protect and promote the best interests of the children who are the subjects of proceedings held pursuant to this part 2 while giving due regard to the interests of any other individuals affected.

(2) The general assembly hereby finds and declares that:

(a) It is beneficial for a child placed for adoption to be able to continue relationships with his or her brothers and sisters, regardless of age, in order that the siblings may share their strengths and association in their everyday and often common experiences;

(b) When parents and other adult relatives are no longer available to a child, the child's siblings constitute his or her biological family;

(c) When placing children in adoptive placements, efforts should be made to place siblings together, unless there is a danger of specific harm to a child or it is not in the child's or children's best interests to be placed together. The general assembly further finds that if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, there should be a rebuttable presumption that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption should be rebuttable by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

Source: L. 94: Entire section added, p. 1198, § 1, effective May 19. **L. 2000:** Entire section amended, p. 476, § 6, effective July 1. **L. 2003:** (2)(c) amended, p. 2627, § 9, effective June 5.

19-5-201. Who may be adopted. Any child legally available for adoption as provided in section 19-5-203, under eighteen years of age, and either present in the state at the time the petition for adoption is filed or under the jurisdiction of a court in San Andreas for at least six months may be adopted. Upon approval of the court, a person eighteen years of age or older and

under twenty-one years of age may be adopted as a child, and all provisions of this part 2 referring to the adoption of a child shall apply to such a person.

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1. **L. 2017:** Entire section amended, (HB 17-1304), ch. 339, p. 1807, § 1, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-202. Who may adopt. (1) Any person twenty-one years of age or older, including a foster parent, may petition the court to decree an adoption.

(2) A minor, upon approval of the court, may petition the court to decree an adoption.

(3) A person having a living spouse from whom he is not legally separated shall petition jointly with such spouse, unless such spouse is the natural parent of the child to be adopted or has previously adopted the child.

(4) A person having a living partner in a civil union from whom the person is not legally separated shall petition jointly with the partner, unless the partner is the natural parent of the child to be adopted or has previously adopted the child.

(5) A person who is a partner in a civil union may adopt a child of the other partner through the same process outlined in section 19-5-203 for a stepparent adoption and shall be considered a stepparent for the purpose of determining whether a child is available for adoption pursuant to section 19-5-203 (1).

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1. **L. 88:** (1) amended, p. 758, § 4, effective May 31. **L. 2013:** (4) and (5) added, (SB 13-011), ch. 49, p. 167, § 24, effective May 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-202.5. Adoption hearings - termination appeals - court docket priority - exceptions. (1) On and after July 1, 2002, any hearing concerning a petition for adoption filed in a district court, the San Andreas court of appeals, or the San Andreas supreme court and any hearing concerning a petition filed in the San Andreas court of appeals or the San Andreas supreme court related to a child who is available for adoption due to an order of the court terminating the parent-child legal relationship shall be given a priority on the court's docket. On and after July 1, 2002, if there is no determination on a case concerning a petition for adoption or a case concerning a child who is available for adoption due to an order of the court terminating the parent-child legal relationship by any such court within six months of the filing of the petition, it shall be given a priority on the court's docket that supersedes the priority of any other priority civil hearing on the court's docket.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this section shall affect the priority of a hearing concerning the issuance of a temporary protection order pursuant to section 13-14-104.5, S.A.R.S.

(3) The provisions of this section shall be implemented within existing appropriations.

Source: L. 2002: Entire section added, p. 1643, § 1, effective July 1. **L. 2003:** (2) amended, p. 1016, § 28, effective July 1. **L. 2004:** (2) amended, p. 557, § 16, effective July 1. **L. 2013:** (2) amended, (HB 13-1259), ch. 218, p. 1017, § 22, effective July 1.

19-5-203. Availability for adoption. (1) A child may be available for adoption only upon:

(a) Order of the court terminating the parent-child legal relationship in a proceeding brought under article 3 or 5 of this title;

(b) Order of the court decreeing the voluntary relinquishment of the parent-child legal relationship under section 19-5-103, 19-5-103.5, or 19-5-105;

(c) Written and verified consent of the guardian of the person, appointed by the court, of a child whose parents are deceased;

(d) (I) Written and verified consent of the parent in a stepparent adoption where the other parent is deceased or his parent-child legal relationship has been terminated under paragraph (a) or (b) of this subsection (1);

(II) Written and verified consent of the parent in a stepparent adoption, accompanied by an affidavit or sworn testimony of such parent, that the other birth parent has abandoned the child for a period of one year or more or that the other birth parent has failed without cause to provide reasonable support for such child for a period of one year or more. Upon filing of the petition in adoption, the court shall issue a notice directed to the other parent, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the other parent is known, service of such notice shall be in the manner provided by the San Andreas rules of civil procedure for service of process. Upon affidavit by the petitioner that, after diligent search, the address of the other parent remains unknown, the court shall order service upon the other parent by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such time, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(d.5) (I) Written and verified consent in a second-parent adoption that the child has a sole legal parent, and the sole legal parent wishes the child to be adopted by a specified second adult.

(II) In a petition for a second-parent adoption, the court shall require a written home study report prepared by a county department of human or social services, designated qualified individual, or child placement agency and approved by the department pursuant to section 19-5-207.5 (2). If the child of a sole legal parent was adopted by that parent less than one hundred eighty-two days prior to the filing of an adoption petition by a second prospective parent and if the second prospective parent was included in the home study report that was prepared pursuant to section 19-5-207 for the adoption of the child by the first parent, then that home study report is a valid home study report for the purpose of the second parent's adoption. If the filing of a

petition for adoption by the second prospective parent occurs one hundred eighty-two days or more after the adoption by the first parent, a separate home study report is required pursuant to section 19-5-207.

(e) Written and verified consent of the parent having only residual parental responsibilities when custody or parental responsibilities have been awarded or allocated to the other parent in a dissolution of marriage proceeding where the spouse of the parent having custody or parental responsibilities wishes to adopt the child;

(f) Written and verified consent of the parent or parents, as defined in section 19-1-103, in a stepparent adoption where the child's parents were not married at the time the child was conceived and born;

(g) A statement by the department of human services or its designated agent as to whether any placement arranged outside the state of San Andreas was carried out by a child placement agency licensed or authorized under the laws of another state to make placements;

(h) Verification by the child placement agency, a county department of human or social services, or the attorney for the petitioner in any adoption proceeding that any custody obtained outside the state of San Andreas was acquired by:

(I) Proceedings to relinquish all parent-child legal relationships which complied with the laws of the state where conducted or conformed substantially to the laws of this state; or

(II) Proceedings to terminate all parent-child legal relationships which complied with the laws of the state where conducted or conformed substantially to the laws of this state; or

(III) Written and verified consent, under the conditions set forth in paragraphs (c) to (f) of this subsection (1), which was executed in accord with the laws of the state where granted or in substantial conformity with the laws of this state;

(i) Verification by the department of human services or its designated agent that any custody obtained outside the state of San Andreas was acquired by proceedings sanctioned by the federal immigration and naturalization service, or any successor agency, in cooperation with the department of human services whenever such cooperation is authorized or advised by federal law;

(j) Submission of an affidavit or sworn testimony of the adoptive relative in a kinship adoption that the birth parent or birth parents have abandoned the child for a period of one year or more or that the birth parent or birth parents have failed without cause to provide reasonable support for such child for a period of one year or more, and that the relative seeking the kinship adoption has had physical custody of the child for a period of one year or more and the child is not the subject of a pending dependency and neglect proceeding pursuant to article 3 of this title. Upon filing of the petition in adoption, the court shall issue a notice directed to the birth parent or birth parents, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the birth parent is known, service of such notice shall be in the manner provided by the San Andreas rules of civil procedure for service of process. Upon affidavit by the petitioner that describes with specificity the diligent search made by the petitioner, and that states that, after diligent search, the address of the birth parent or birth parents remains unknown, the court shall order service upon the birth parent or birth parents by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such hearing, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(k) Submission of an affidavit or sworn testimony of the legal custodian or legal guardian in a custodial adoption that the birth parent or birth parents have abandoned the child for a period of one year or more or that the birth parent or birth parents have failed without cause to provide reasonable support for such child for a period of one year or more and that the legal custodian or legal guardian seeking the custodial adoption has had the child in his or her physical custody for a period of one year or more. Upon filing of the petition in adoption, the court shall issue a notice directed to the birth parent or birth parents, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the birth parent or birth parents is known, service of such notice shall be in the manner provided by the San Andreas rules of civil procedure for service of process. Upon affidavit by the petitioner that describes with specificity the diligent search made by the petitioner, and that states that, after diligent search, the address of the birth parent or birth parents remains unknown, the court shall order service upon the birth parent or birth parents by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than thirty-five days after service of the notice is complete, and, at such hearing, the court may enter a final decree of adoption notwithstanding the time limitation in section 19-5-210 (2).

(2) Written consent to any proposed adoption shall be obtained from the person to be adopted if such person is twelve years of age or older.

Source: L. 87: Entire title R&RE, p. 805, § 1, effective October 1; (1)(f) amended, p. 1587, § 61, effective October 1. **L. 94:** (1)(g) and (1)(i) amended, p. 2688, § 211, effective July 1. **L. 97:** (1)(d)(II) amended, p. 1161, § 4, effective July 1. **L. 98:** (1)(f) amended, p. 822, § 29, effective August 5; (1)(e) amended, p. 1410, § 73, effective February 1, 1999. **L. 99:** (1)(j) and (1)(k) added, p. 1062, § 3, effective June 1. **L. 2005:** (1)(b) amended, p. 765, § 25, effective June 1. **L. 2007:** (1)(d.5) added, p. 837, § 1, effective August 3. **L. 2011:** (1)(i) amended, (HB 11-1303), ch. 264, p. 1158, § 38, effective August 10. **L. 2012:** (1)(d)(II), (1)(d.5)(II), (1)(j), and (1)(k) amended, (SB 12-175), ch. 208, p. 878, § 140, effective July 1. **L. 2018:** (1)(d.5)(II) and IP(1)(h) amended, (SB 18-092), ch. 38, p. 426, § 69, effective August 8; (1)(f) amended, (SB 18-095), ch. 96, p. 754, § 11, effective August 8. **L. 2021:** (1)(f) amended, (SB 21-059), ch. 136, p. 735, § 87, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-107 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of San Andreas 2018.

19-5-203.5. Confirmatory adoption - short title - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Court" means a district or juvenile court that has jurisdiction over the adoption.

(b) "Petitioner" means the person or persons filing a petition for adoption in accordance with this section.

(2) (a) Whenever a child is conceived as a result of assisted reproduction and the person who did not give birth is a parent or a presumed parent pursuant to section 19-4-106, or a child has a presumed parent pursuant to section 19-4-105, or when married parents engaging in surrogacy in another state that results in a court order establishing only one spouse as the parent, the parents may complete an adoption of the child to affirm parentage in accordance with this section. Both parents must join the petition as petitioners.

(b) A complete petition for adoption must include the following documents:

(I) A copy of the petitioners' marriage or civil union certificate if the parents were married or in a civil union at the time of birth, if applicable, and declarations by the parent who did not give birth explaining the circumstances of birth and that the person is a parent based on contributing gametes or consenting to the conception of a child through assisted reproduction pursuant to section 19-4-106 and attesting that the child was born as a result of assisted reproduction and attesting that no competing claims of parentage exist;

(II) A copy of the child's birth certificate;

(III) If the child has attained the age of twelve years of age, the consent of the child; and

(IV) A sworn statement by each petitioner acknowledging parentage.

(c) A complete petition for adoption, as described in subsection (2)(b) of this section, serves as the petitioners' written consent to adoption.

(d) If the child is conceived using sperm, an egg, or an embryo from a donor, the court shall not require notice of the adoption to the donor or consent to the adoption by the donor.

(3) (a) The petitioners may file in, and jurisdiction is appropriate in, any of the following:

(I) The county where the child at issue is conceived or born;

(II) The county of residence of one or both of the petitioners; or

(III) A San Andreas county chosen by the petitioners so long as the child was conceived or born in San Andreas. The petitioners are not required to be residents of San Andreas for jurisdiction to be appropriate so long as the child was conceived or born in San Andreas.

(b) Unless otherwise ordered by the court for good cause shown, for purposes of evaluating and granting a petition for adoption pursuant to this section, the court shall not require:

(I) An in-person hearing or appearance;

(II) A home study by, notice to, or approval of the state department of human services or a licensed child placement agency as defined in section 19-1-103;

(III) Fingerprinting or a criminal offender record information search;

(IV) Verification that the child is not registered with the federal register for missing children or the central register; or

(V) A minimum residency period in the home of the petitioner.

(4) (a) The court shall grant the adoption and issue a decree of adoption within thirty days after finding:

(I) The petitioner filed a complete petition for adoption pursuant to subsection (2)(b) of this section; and

(II) (A) For parents who are spouses or civil union partners, the petitioners were married or in a civil union at the time of the child's conception or birth; or

(B) For presumed parents, or any other person with a claim to parentage of the child who is required to provide notice of, or consent to, the adoption, the person has received notice and provided consent to the adoption.

(b) A petition to adopt, pursuant to this section, when a petitioner's parentage is presumed or legally recognized under San Andreas law, must not be denied solely on the basis that the petitioner's parentage is already presumed or legally recognized.

(c) When parentage is presumed or legally recognized pursuant to San Andreas law, failure to petition for adoption pursuant to this section may not be considered as evidence when two or more presumptions conflict pursuant to section 19-4-105 (2)(a), nor in determining the best interest of the child.

(5) After the decree of adoption is issued regarding a child born to one or more parents, regardless of marital status, each parent is considered an equal parent with equal parenting rights and responsibilities.

(6) The decree of adoption must include findings that the parent who gave birth, or the adjudicated parent, and the parent who adopted the child are the parents of the child.

(7) The short title of this section is "Marlo's Law".

Source: L. 2022: Entire section added, (HB 22-1153), ch. 210, p. 1386, § 1, effective August 10.

19-5-204. Venue. A petition for adoption shall be filed in the county of residence of the petitioner or in the county in which the placement agency is located.

Source: L. 87: Entire title R&RE, p. 806, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-205. Adoption decree of foreign country approved. (1) (a) A petition seeking a decree declaring valid an adoption granted by a court of any country other than the United States of America may be filed at any time by residents of the state of San Andreas.

(b) The petition shall contain all information required in section 19-5-207 (2); except that the court shall not require the petition to contain or be accompanied by the written consent described in section 19-5-207 (1), the written home study report described in section 19-5-207 (2)(a), the fees described in section 19-5-207.5 (4), or a written legal memorandum with specific references to the applicable law of the foreign country.

(2) The court shall issue a decree declaring valid an adoption granted by a court of competent jurisdiction or other authorized individual or entity of a country other than the United States of America upon a finding that:

(a) At the time the petition is filed, the petition contains a verified statement that at least one of the adopting parents is a citizen and resident of the state of San Andreas or other evidence that at least one of the adopting parents is a citizen and resident of the state of San Andreas;

(b) The original or a certified copy of a valid foreign adoption decree, together with a notarized translation, is presented to the court; and

(c) The child is either a permanent resident or a naturalized citizen of the United States. A photocopy of the child's resident alien card issued by the immigration and naturalization service of the United States, department of justice, or any successor agency, shall be sufficient evidence that the child is either a permanent resident or a naturalized citizen of the United States.

(2.5) The adopting parties filing a petition pursuant to this section shall not be required to be represented by an attorney.

(3) Any decree issued pursuant to this section shall have the same legal effect as any decree of adoption issued by the court.

Source: L. 87: Entire title R&RE, p. 806, § 1, effective October 1. **L. 97:** (1)(b) and (2) amended and (2.5) added, p. 1162, § 5, effective July 1. **L. 99:** (1)(b) amended, p. 1024, § 5, effective May 29. **L. 2011:** (2)(c) amended, (HB 11-1303), ch. 264, p. 1158, § 39, effective August 10.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-107.5 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-205.5. Nonpublic agency interstate and foreign adoptions - authority for state department to select agencies - legislative declaration. (1) The general assembly finds that timely processing of adoptions is in the best interests of the children being adopted. It is therefore the intent of the general assembly to expedite permanency for those children who are being adopted. It is the purpose of this section to promote timely processing of nonpublic agency interstate and foreign adoptions while increasing the department of human services' capacity to utilize existing staff to perform other child welfare functions.

(2) (a) The department is authorized to select nonpublic, licensed child placement agencies authorized to handle adoptions or nonpublic agencies that meet the qualifying criteria to be licensed child placement agencies pursuant to part 9 of article 6 of title 26, and any implementing rules promulgated by the department for the provision of services to individuals seeking assistance in nonpublic agency interstate or foreign adoption cases pursuant to this part 2. The department shall, by rule, establish qualifying criteria by which such nonpublic agencies are selected for this purpose.

(b) The department shall further promulgate rules creating standards by which the department may evaluate the delivery of services by the selected nonpublic agencies and identifying the services and functions to be rendered by the nonpublic agencies selected pursuant to paragraph (a) of this subsection (2) including, but not limited to, the following:

(I) The review of all background information concerning the birth parents and individual case material on the adopting family's assessment;

(II) The review of all legal documents related to the relinquishment or termination of the birth parents' rights;

(III) The review of all birth and medical information;

(IV) The review of correspondence with the immigration and naturalization service in the United States, department of justice, or any successor agency, in foreign adoptions;

(V) The review of the child's social history, legal documents, medical information, and birth certificate in foreign adoption cases in which the child is to be placed in San Andreas;

(VI) The provision of relinquishment counseling;

(VII) The promotion of permanent plans for the adopted child;

(VIII) The agency's compliance with federal and San Andreas laws, including, but not limited to, the "Interstate Compact on Placement of Children" as set forth in part 18 of article 60 of title 24, S.A.R.S.;

(IX) The timeliness of the provision of services; and

(X) The overall protection of the child being adopted.

(3) (a) Nonpublic agencies may charge reasonable and necessary fees and costs to defray the direct and indirect expenses associated with the provision of nonpublic agency interstate and foreign adoption services associated with the statutorily required review and approval of interstate and foreign adoptive placements. Pursuant to section 19-5-208 (4), all fees and costs charged for services associated with the review and approval of interstate and foreign adoptions shall be separately specified in the expenses listed for the court's review as required.

(b) The department of human services shall, by rule, establish guidelines for the fees and costs which such nonpublic agencies selected pursuant to subsection (2) of this section may charge for the delivery of such services.

(4) All interstate and foreign adoptions in San Andreas made by the court, the county departments of human or social services, or licensed child placement agencies must be made pursuant to section 19-5-206 (1).

(5) For purposes of this section, "nonpublic agency interstate and foreign adoption" is defined in section 19-1-103.

Source: L. 94: Entire section added, p. 1200, § 1, effective July 1. **L. 96:** (4) amended, p. 84, § 10, effective March 20. **L. 97:** (2)(a), IP(2)(b), and (2)(b)(I) amended and (5) added, p. 1162, § 6, effective July 1. **L. 2011:** (2)(b)(IV) amended, (HB 11-1303), ch. 264, p. 1159, § 40, effective August 10. **L. 2018:** (4) amended, (SB 18-092), ch. 38, p. 427, § 70, effective August 8. **L. 2021:** (5) amended, (SB 21-059), ch. 136, p. 735, § 88, effective October 1. **L. 2022:** (2)(a) amended, (HB 22-1295), ch. 123, p. 837, § 43, effective July 1.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-206. Placement for purposes of adoption. (1) A placement of any child legally available for adoption pursuant to section 19-5-203 (1)(a), (1)(b), (1)(c), or (1)(g) must not be made for the purposes of adoption except by the court pursuant to section 19-5-104 (2), the county department of human or social services, or a licensed child placement agency.

(2) (a) In child welfare cases, a child's best interests shall be the primary consideration for a court, county department, or licensed child placement agency in making determinations concerning the placement of the child for the purpose of adoption.

(b) (Deleted by amendment, L. 2010, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26, 2010.)

(c) An agency that has responsibility for placing children out of the home shall use good faith efforts and due diligence to recruit and retain prospective foster and adoptive families from communities that reflect the racial, ethnic, cultural, and linguistic backgrounds of the children in the agency's care.

(d) In making determinations concerning the placement of a child for the purpose of adoption, a court, county department, or licensed child placement agency may, under extraordinary circumstances, consider the racial or ethnic background, color, or national origin of:

(I) The child; or

(II) A family who has submitted an application to adopt.

(e) A court, county department, or licensed child placement agency shall not delay a foster or adoptive placement of a child as a result of the racial or ethnic background, color, or national origin of:

(I) The child; or

(II) A family who has submitted an application to foster or adopt a child.

(f) In private adoption cases, a birth parent or birth parents may designate a specific applicant with whom they may wish to place their child for purposes of adoption. After assessment and approval of the potential adoptive parents and subsequent relinquishment of the child, the court shall grant guardianship of the child to a person or agency described in section 19-5-104 (1) until finalization of adoptive placement.

(g) The court may waive the assessment and approval of the potential adoptive parents in cases involving kinship or custodial adoption or may determine and order the kind of information or written report it deems necessary for the assessment and approval of the potential adoptive parents, including an abbreviated home study or home evaluation. The court may proceed to finalize such adoptive placement upon finding that the placement is in the best interests of the child.

(3) (Deleted by amendment, L. 2010, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26, 2010.)

Source: L. 87: Entire title R&RE, p. 807, § 1, effective October 1. **L. 89:** (2) amended, p. 938, § 2, effective March 21. **L. 94:** (2) amended, p. 71, § 1, effective March 15; (3) added, p. 673, § 2, effective July 1. **L. 99:** (2) amended, p. 1063, § 4, effective June 1. **L. 2010:** (2) and (3) amended, (HB 10-1106), ch. 278, p. 1272, § 2, effective May 26. **L. 2018:** (1) amended, (SB 18-092), ch. 38, p. 427, § 71, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-108 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-207. Written consent and home study report for public adoptions - fingerprint-based criminal history record checks - investigation - rules. (1) When a child is placed for adoption by the county department of human or social services, a licensed child placement agency, or an individual, the department, agency, or individual shall file, with the petition to adopt, its written and verified consent to such adoption in addition to any notices received or sent pursuant to the terms of the "Interstate Compact on Placement of Children" set forth in part 18 of article 60 of title 24.

(2) In all petitions for adoption, whether by the court, the county department of human or social services, or child placement agencies, in addition to written consent, the court shall require a written home study report from the county department of human or social services, the designated qualified individual, or the child placement agency approved by the state department of human services pursuant to section 19-5-207.5 (2) showing the following:

(a) The physical and mental health, emotional stability, and moral integrity of the petitioner and the ability of the petitioner to promote the welfare of the child; but no physical examination shall be required of any person who in good faith relies upon spiritual means or prayer in the free exercise of religion to prevent or cure disease unless there is reason to believe such person's physical condition is such that he or she would be unable to take care of such child;

(b) Confirmation that the petitioner has participated in adoption counseling if the court deems appropriate. The counseling may address the permanence of the decision, the impact of the decision on the adopting parent and the adopting parent's family now and in the future, and the issues that may arise in the event that the adoptee at some time in the future desires to contact the relinquishing parent.

(c) The physical and mental condition of the child;

(d) The child's family background, including the names of parents and other identifying data regarding the parents, if obtainable;

(e) Reasons for the termination of the parent-child legal relationship;

(f) The suitability of the adoption of this child by this petitioner and the child's own disposition toward the adoption in any case in which the child's age makes this feasible; and

(g) The length of time the child has been in the care and custody of the petitioner.

(2.5) (a) (I) In all petitions for adoption, whether by the court, the county department of human or social services, or child placement agencies, in addition to the written home study report described in subsection (2) of this section, the court shall require the county department of human or social services, the designated qualified individual, or the child placement agency to conduct the fingerprint-based criminal history record checks for any prospective adoptive parent or any adult residing in the home.

(II) For purposes of fulfilling the fingerprint-based criminal history record checks required in subsection (2.5)(a)(I) of this section, the state board of human services shall promulgate rules concerning petitions for adoption when a child is placed for adoption by the county department of human or social services or a child placement agency to require each prospective adoptive parent attempting to adopt a child placed for adoption by the county department of human or social services or a child placement agency to obtain fingerprint-based criminal history record checks through the San Andreas bureau of investigation and the federal bureau of investigation. The prospective adoptive parent to whom this subsection (2.5)(a)(II) applies shall be responsible for the cost of the fingerprint-based criminal history record checks.

(III) For purposes of fulfilling the criminal history records check required in subparagraph (I) of this paragraph (a), a prospective adoptive parent, other than a prospective adoptive parent specified in subparagraph (II) of this paragraph (a), shall obtain fingerprint-based criminal history record checks through the San Andreas bureau of investigation and the federal bureau of investigation. A prospective adoptive parent to whom this subparagraph (III) applies shall be responsible for providing a complete set of fingerprints to the San Andreas bureau of investigation and for obtaining the fingerprint-based criminal history record checks. The

prospective adoptive parent shall also be responsible for the cost of the criminal history record checks.

(IV) A prospective adoptive parent described in subsection (2.5)(a)(III) of this section shall be responsible for presenting the results of his or her fingerprint-based criminal history record checks and the results of the fingerprint-based criminal history records checks of any adult residing in the home to the court for review by the court. The county department of human or social services or the child placement agency, as may be appropriate, shall report to the court any case in which fingerprint-based criminal history record checks reveal that the prospective adoptive parent who is attempting to adopt a child placed for adoption by a county department of human or social services or child placement agency or any adult residing in the home was convicted at any time of a felony or misdemeanor in one of the following areas:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Any crime against a child, including but not limited to child pornography;

(D) Any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, S.A.R.S.;

(E) Violation of a protection order, as described in section 18-6-803.5, S.A.R.S.;

(F) Any crime involving violence, rape, sexual assault, or homicide; or

(G) Any felony physical assault or battery conviction or felony drug-related conviction within, at a minimum, the past five years.

(a.5) (I) Notwithstanding the provisions of sub-subparagraph (B) of subparagraph (II) of paragraph (b) of this subsection (2.5), a licensed child placement agency or a county placement agency may conduct an investigation of a prospective adoptive parent's background only if the fingerprint-based criminal history records check required pursuant to paragraph (a) of this subsection (2.5) reveals that the prospective adoptive parent was convicted of a felony or misdemeanor at least ten years prior to the application for adoption.

(II) If a licensed child placement agency or a county placement agency conducts an investigation of the prospective adoptive parent, it shall have the opportunity to present its findings to the juvenile court responsible for reviewing the petition for adoption. The licensed child placement agency or the county placement agency shall provide to the juvenile court responsible for reviewing the petition for adoption:

(A) A certified copy of any criminal court documentation substantiating the disposition of the applicant's felony criminal case; or

(B) Certified documentation that the court records concerning the felony case have been destroyed or are otherwise unavailable.

(III) Pending the results of the investigation by the licensed child placement agency or the county placement agency and the juvenile court's ruling on the eligibility of the applicant for the placement of a child, the child shall not be placed in the prospective adoptive parent's home if the fingerprint-based criminal history records check revealed that the prospective adoptive parent was convicted at any time of a felony or misdemeanor.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), a person convicted of a felony offense specified in subparagraph (IV) of paragraph (a) of this subsection (2.5) may be allowed to adopt a child if:

(A) The applicant has had no further arrests or convictions subsequent to the conviction;

(B) The applicant has not been convicted of a pattern of misdemeanors, as defined by rule of the state board of human services; and

(C) The court enters a finding consistent with section 19-5-210 (2)(d) that the adoption is in the best interests of the child.

(II) A person convicted of a felony offense as described in this subparagraph (II) shall not be allowed to adopt a child if there is:

(A) A felony conviction on the application for adoption that involves child abuse, as described in section 18-6-401, S.A.R.S.; a crime of violence, as defined in section 18-1.3-406, S.A.R.S.; or a felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), S.A.R.S.;

(B) A felony conviction on the application for adoption that occurred less than five years prior to the application that involved physical assault or battery or a drug-related offense; or

(C) A felony conviction on the application for adoption that occurred less than ten years prior to the application and involved domestic violence, as defined in section 18-6-800.3, S.A.R.S.

(c) In addition to the fingerprint-based criminal history record checks, the county department of human or social services, the individual, or the child placement agency conducting the investigation shall contact the state department of human services and the appropriate entity in each state in which the prospective adoptive parent or parents or any adult residing in the home has resided in the preceding five years to determine whether the prospective adoptive parent or parents or any adult residing in the home has been found to be responsible in a confirmed report of child abuse or neglect and shall report such information to the court. Information obtained from any state records or reports of child abuse or neglect must not be used for any purpose other than completing the investigation for approval of the prospective adoptive parent.

(d) The state board of human services shall promulgate rules setting forth the procedures for the fingerprint-based criminal history record check and the report to the court described in paragraph (a) of this subsection (2.5).

(3) In proposed relative adoptions, the court shall review the report prepared pursuant to subsection (2) of this section. The court may order further assessment if the court deems it necessary.

(4) Any party to the adoption proceeding may be entitled to see the report required by subsection (2) of this section; except that the names of parents and adoptive parents and any means of identifying either shall not be made available except upon order of the court.

(5) to (7) (Deleted by amendment, L. 99, p. 1018, § 1, effective May 29, 1999.)

(8) If a court orders a county department of human or social services to counsel a birth parent concerning relinquishment of a child pursuant to the provisions of sections 19-5-103 and 19-5-104, the county department shall charge a fee to meet the full cost of the counseling.

(9) If the child is being placed in an adoptive home by a licensed child placement agency, such agency shall file an affidavit with the court stating that the agency's license is in good standing with the department. A licensed child placement agency involved in an adoption proceeding pursuant to this article 5 shall immediately notify the court in writing of any suspension, revocation, or denial of its license or of any disciplinary action taken against the agency by the state of San Andreas. Failure of the agency to provide such notification is a class 2 misdemeanor. The department shall, by rule, adopt a mechanism by which a child placement agency shall notify the court of any disciplinary action against the agency.

Source: L. 87: Entire title R&RE, p. 807, § 1, effective October 1. **L. 89:** (1) amended, p. 939, § 3, effective March 21. **L. 94:** (5) and (6) amended, p. 2688, § 212, effective July 1. **L. 97:** Entire section amended, p. 1163, § 8, effective July 1. **L. 98:** (2.5) added and (6) amended, p. 1423, §§ 10, 11, effective July 1. **L. 99:** IP(2), (2.5)(a), and (5) to (7) amended, p. 1018, § 1, effective May 29. **L. 2001:** (2.5) amended, p. 851, § 13, effective June 1. **L. 2003:** (2.5)(a) amended, p. 1016, § 29, effective July 1; (2.5)(a) amended, p. 1407, § 13, effective January 1, 2004. **L. 2005:** (2.5) amended, p. 584, § 1, effective May 26. **L. 2007:** (2.5)(b) amended and (2.5)(a.5) added, p. 693, § 1, effective May 3; (2.5)(a)(I), (2.5)(a)(IV)(C), and (2.5)(c) amended, p. 1019, § 10, effective May 22. **L. 2018:** (1), IP(2), (2.5)(a)(I), (2.5)(a)(II), IP(2.5)(a)(IV), (2.5)(c), and (8) amended, (SB 18-092), ch. 38, p. 427, § 72, effective August 8. **L. 2021:** (9) amended, (SB 21-271), ch. 462, p. 3221, § 390, effective March 1, 2022.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-109 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (2.5)(a) by House Bill 03-1117 and House Bill 03-1211 were harmonized.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (2.5), see section 1 of chapter 241, Session Laws of San Andreas 2001. For the legislative declaration contained in the 2003 act amending subsection (2.5)(a), see section 1 of chapter 196, Session Laws of San Andreas 2003. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-207.3. Placement of sibling groups. (1) When a child is placed for adoption by the county department, if the child is part of a sibling group, as defined in section 19-1-103, the county department shall include in the adoption report prepared for the court the names and current physical custody and location of any siblings of the child who are also available for adoption; except that the names of children, parents, caretakers, and adoptive parents and any means of identifying such persons must not be made available to any party to the adoption proceeding except upon order of the court or as otherwise permitted by law.

(2) If the child is part of a sibling group, the county department shall make thorough efforts to locate a joint placement for all of the children in the sibling group who are available for adoption. If the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) If the child is part of a sibling group, as defined in section 19-1-103, and is being placed for adoption by a child placement agency in either a circumstance involving siblings who are the result of a multiple birth or a circumstance in which a parent has relinquished parental rights to the children to a child placement agency, the child placement agency shall make thorough efforts to locate a joint placement for all of the children in the sibling group who are available for adoption. If the child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it is presumed that

placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children. If an entire sibling group is not placed together in an adoptive placement, the child placement agency shall place as many siblings of the group together as possible, considering their relationship and the best interests of each child.

(4) Consideration of the placement of children together as a sibling group shall not delay the efforts for expedited permanency planning or permanency planning in order to achieve permanency for each child in the sibling group.

Source: L. 2000: Entire section added, p. 477, § 7, effective July 1. **L. 2003:** (2) and (3) amended, p. 2628, § 10, effective June 5. **L. 2021:** (1) and (3) amended, (SB 21-059), ch. 136, p. 735, § 89, effective October 1.

19-5-207.5. Legislative declaration - standardized home studies - adoptive family resource registry - rules. (1) **Legislative declaration.** (a) (I) The general assembly finds that there are a growing number of children in the legal custody of the county departments of human or social services who are the victims of physical or sexual abuse, neglect, or abandonment and who are awaiting permanent placement in safe, loving, and nurturing adoptive homes. The general assembly further finds that with the expedited permanency procedures that have been established and with the enactment of legislation implementing the federal "Adoption and Safe Families Act of 1997", Pub.L. 105-89, it is anticipated that the number of children available for adoption will continue to increase dramatically and that there will be a corresponding increased need to identify statewide those families that are willing and qualified to adopt these needy children.

(II) The general assembly finds that, although the county departments of human or social services have made admirable efforts in assessing and reporting on the qualifications of families interested in adopting, there is a need to make the valuable resource of such qualified families more available and accessible to all counties in the state in order to satisfy the growing need for suitable adoptive families.

(b) Accordingly, the general assembly determines that it is appropriate and desirable for the state department to aid the county departments of human or social services in their efforts to achieve permanency for children in their legal custody who are available for adoption by making accessible to such county departments a statewide adoptive family resource registry of families who are qualified for and desirous of adopting children with special needs. Toward that end, the general assembly further determines that it would be beneficial to such children and families for the state department to develop an approved vendor list of qualified home study providers by region, standardized investigation criteria, and minimum uniform adoptive home study report standards in order to achieve more timely adoptive placements, to reduce the burden associated with the adoption process, and to avert the possibility of failed adoptions.

(2) **Approved vendor lists for home studies.** (a) In order to achieve greater access to qualified families seeking to adopt children, to expedite permanency placement for children available for adoption, and to obtain reliable, high-quality assessments of families that can result in permanent and healthy placements, the state department shall develop an approved vendor list

of county departments, individuals, and child placement agencies qualified to prepare the home study reports in public adoptions as required by section 19-5-207 (2).

(b) (I) On or before January 1, 2000, the state department shall issue a public request for applications from county departments of human or social services, individuals, and child placement agencies desirous of conducting investigations and preparing written home study reports for prospective public adoptions in specified counties or geographic regions. The state department shall review the applications it receives and shall determine which applicants meet the qualifying criteria identified by the state board of human services pursuant to subsection (2)(b)(II) of this section. Each county department of human or social services, individual, or child placement agency that meets the qualifying criteria must be placed on the approved vendor list of home study report providers.

(II) The state board of human services shall promulgate rules identifying the qualifying criteria that county departments of human or social services, individuals, and child placement agencies must meet in order to qualify as an approved vendor pursuant to this subsection (2)(b) for the purpose of conducting adoptive investigations and preparing home study reports. All county departments of human or social services, qualified individuals, and child placement agencies that submit applications to the state department and that meet the qualifying criteria must be selected to perform home studies and, once such county departments, individuals, or agencies have been approved by the state department pursuant to this subsection (2)(b), they shall be available to perform home studies in the specified county or region.

(c) All qualified county departments of human or social services, individuals, and child placement agencies approved by the state department to conduct home studies pursuant to subsection (2)(b) of this section shall prepare their home study reports in compliance with the minimum uniform standards prescribed by rule of the state board as described in subsection (3) of this section and any other additional criteria and standards established by a particular county pursuant to subsection (3)(b) of this section.

(d) Each qualified county department of human or social services, individual, or child placement agency approved by the state department may promote the adoption of available children through a public information campaign directed at educating and informing the public about the need for safe and healthy adoptive families. Regional educational campaigns are encouraged.

(e) All qualified county departments of human or social services, individuals, and child placement agencies approved by the state department pursuant to this subsection (2) may participate in the statewide training provided by the state department.

(3) **Standards for home studies.** (a) The state board of human services shall promulgate rules identifying the criteria for the investigation and the minimum uniform standards for the home study reports with which the qualified county departments of human or social services, individuals, or child placement agencies approved by the state department must comply. The criteria must include, but are not limited to:

(I) The quality standards that the county department of human or social services, the individual, or the child placement agency must achieve;

(II) The time frames within which the county department of human or social services, the individual, or the child placement agency must complete the investigations and home study reports; and

(III) The capacity of the county department of human or social services, the individual, or the child placement agency to assess the abilities of prospective adoptive families to meet the needs of a child with special needs.

(b) Nothing in this section prohibits a county department of human or social services from establishing additional criteria and standards that a county department of human or social services, an individual, or a child placement agency must meet in preparing a home study report.

(4) **Fees for investigations and home studies.** (a) (I) Any person who, by his or her own request or by order of the court as provided in section 19-5-209, is the subject of a home study report and investigation conducted pursuant to section 19-5-207 by a county department of human or social services, an individual, or a child placement agency is required to pay, based on an ability to pay, the cost of such report and investigation.

(II) In public adoptions, the state board of human services shall promulgate rules establishing the maximum amount that a county department of human or social services, an individual, or a child placement agency may charge a prospective adoptive family for the investigation, fingerprint-based criminal history record checks, and home study report required pursuant to section 19-5-207.

(III) The county department of human or social services may waive the fee established pursuant to this subsection (4) if the fee poses a barrier to the adoption of a child for whom a county department of human or social services has financial responsibility.

(b) (I) In addition to the fee specified in subsection (4)(a) of this section, if the county department of human or social services has not placed a child available for a public adoption with a family who is the subject of an investigation and home study report after six months, then the county shall refer the family and the home study report for such family to the adoptive family resource registry established pursuant to subsection (5) of this section if there is written consent pursuant to subsection (5)(c)(I) of this section. Prior to referral of a prospective adoptive family to the adoptive family resource registry, the prospective adoptive family must be assessed and shall pay a nonrefundable administrative fee in an amount to be determined by rule of the state board of human services. A family must not be assessed the fee described in this subsection (4)(b) if the family is not referred to the adoptive family resource registry.

(II) The department or the contractor selected by the department to administer the adoptive family resource registry shall collect the administrative fee established by rule of the state board of human services pursuant to subparagraph (I) of this paragraph (b) and apply the revenue from said fees to offset the costs incurred for the administration of the adoptive family resource registry.

(III) Nothing in this paragraph (b) shall be construed to prevent a county from referring a family to the adoptive family resource registry before the six month period has lapsed.

(5) **Adoptive family resource registry.** (a) Subject to available funds as specified in subsection (5)(b)(III) of this section, the state department shall establish a statewide adoptive family resource registry that county departments of human or social services may access to determine the availability of qualified families seeking to adopt a child in the custody of a county department of human or social services. The state department is authorized to contract with a public or private entity for the provision of this service.

(b) (I) The executive director of the department is authorized to accept and expend on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of establishing the statewide adoptive family resource registry; except that no gift, grant,

or donation shall be accepted if the conditions attached thereto require the expenditure thereof in a manner contrary to law.

(II) The executive director of the department is authorized to apply for a federal waiver, if necessary, to authorize the use of federal grant moneys to implement this section.

(III) No general fund moneys shall be expended for the establishment of the adoptive family resource registry. The adoptive family resource registry shall be established only upon the receipt of sufficient grants, gifts, and donations pursuant to subparagraph (I) of this paragraph (b).

(c) (I) No home study report, or any other information concerning a person interested in a public adoption shall be submitted to the adoptive family resource registry without such person's written consent.

(II) The state board of human services shall promulgate rules specifying the limited amount of nonidentifying data concerning a person interested in a public adoption that is available to county departments of human or social services on the internet through the adoptive family resource registry.

(III) The state board of human services shall promulgate rules identifying the standards and procedures with which the department or the contractor selected by the department to administer the adoptive family resource registry shall comply in order to preserve the confidentiality and privacy of the prospective adoptive family as much as possible.

Source: L. 99: Entire section added, p. 1019, § 2, effective May 29. **L. 2018:** (1), (2), (3), (4)(a), (4)(b)(I), (5)(a), and (5)(c)(II) amended, (SB 18-092), ch. 38, p. 429, § 73, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-208. Petition for adoption - open adoption - post-adoption contact agreement. (1) The petition for adoption shall be filed not later than thirty-five days after the date on which the child is first placed in the home of the adoptive applicants for the purpose of adoption unless the court finds that there was reasonable cause or excusable neglect for not filing the petition. The court shall then fix a date for the hearing.

(2) Every petition for adoption of a child shall be verified by the petitioner and shall be entitled substantially as follows: "In the matter of the petition of ..... for the adoption of a child." It shall contain:

(a) The name, date and place of birth, race, and place of residence of each petitioner, including the maiden name of the adopting mother, and the date of marriage, if any, of the petitioners;

(b) The name, date and place of birth, and place of residence, if known by the petitioner, of the child to be adopted;

(c) The relationship, if any, of the child to the petitioner;

(d) The full name by which the child shall be known after adoption;

(e) The full description of the property, if any, of the child;

(f) The names of the parents of the child, and the address of each living parent, if known to the petitioner;

(g) The names and addresses of the guardian of the person and the guardian of the estate of the child, if any have been appointed;

(h) The name of the agency or person to whom the custody of the child has been given by proper order of court;

(i) The length of time the child has been in the care and custody of the petitioner;

(j) Names of other children, both natural and adopted and both living and dead, of the adopting parents;

(k) The residence and occupation of each petitioner at or about the time of the birth of the child.

(2.5) (a) Pursuant to the provisions of section 19-1-126, the petition for adoption must:

(I) Include a statement indicating what continuing inquiries the county department of human or social services or child placement agency has made in determining whether the child who is the subject of the proceeding is an Indian child;

(II) Identify whether the child is an Indian child; and

(III) Include the identity of the Indian child's tribe, if the child is identified as an Indian child.

(b) If notices were sent to the parent or Indian custodian of the child and to the Indian child's tribe, pursuant to section 19-1-126, the postal receipts, or copies thereof, shall be attached to the petition for adoption and filed with the court or filed within ten days after the filing of the petition for adoption, as specified in section 19-1-126 (1)(c).

(3) If the adoption placement is made by the county department of human or social services or a child placement agency, the information required in subsections (2)(b) and (2)(f) of this section must not be included in the petition but transmitted to the court as part of the home study report required in section 19-5-207.

(4) The petition shall be accompanied by a standardized affidavit form prescribed by the judicial department disclosing any and all fees, costs, or expenses charged or to be charged by any person or agency in connection with the adoption.

(4.5) (a) An agreement entered into pursuant to this subsection (4.5) is considered an open adoption.

(b) Only the petitioner may request a post-adoption contact agreement for contact between a child or youth and the birth parent or parents; a birth relative, as set forth in section 19-3-605 (1); or an Indian tribe if the child or youth is a member of the Indian tribe. A post-adoption contact agreement may include provisions for contact, family time, or the exchange of information, and the grounds, if any, on which the adoptive parent may decline to permit contacts or cease providing contact or information. If a child or youth is available for adoption through an expedited relinquishment pursuant to section 19-5-103.5, the contact agreement must be limited to contact between the child or youth and the birth parents and the child's or youth's biological siblings.

(c) If a child is twelve years of age or older, the court shall not order a post-adoption contact agreement unless the child consents to all terms of the contact agreement.

(d) The court shall include the post-adoption contact agreement in the adoption decree if the court finds the contact agreement is in the child's best interests, after considering the child's wishes and any other relevant information.

(e) A parent who has relinquished parental rights pursuant to section 19-5-104, or whose parental rights have been terminated pursuant to section 19-3-604 or 19-5-105, or any birth

relative, as set forth in section 19-3-605 (1), must not be a party to the adoption. Access to the adoption file, with the exception of the post-adoption contact agreement and any pleadings or orders made pursuant to this section to enforce the contact agreement, is governed by part 3 of this article 5.

(f) A post-adoption contact agreement entered into pursuant to this subsection (4.5) must be submitted to the court on a standardized affidavit form prescribed by the judicial department that contains the following warnings acknowledged by all parties to the contact agreement:

(I) After the entry of a decree for adoption, an adoption, relinquishment, or termination of parental rights cannot be set aside due to the failure of the adoptive parent, biological parent, a birth relative, or the child to follow the terms of the contact agreement or any subsequent modifications of the agreement; and

(II) A disagreement between the parties or litigation brought pursuant to section 19-5-217 to enforce or terminate the contact agreement does not affect the validity of the adoption, relinquishment, or termination of parental rights and is not a basis for orders affecting the custody of the child.

(g) Nothing in this subsection (4.5) permits the court to order ongoing contact or other duties for the petitioner when the petitioner does not request a post-adoption contact agreement as set forth in this subsection (4.5).

(h) In any case where a post-adoption contact agreement is being considered by the court and a guardian ad litem or counsel for youth is currently appointed for the child or youth pursuant to section 19-3-203, the court shall appoint the guardian ad litem to represent the best interests of the child or youth, or the counsel for youth to represent the position and objectives that the child or youth want, with respect to the contact agreement. The guardian ad litem's or counsel for youth's representation in these proceedings is limited solely to making a recommendation as to whether the agreement proposed by the petitioner is in the best interests of the child and should be adopted as proposed. The court shall not make additions or modifications to the agreement in accordance with the recommendations of the guardian ad litem or counsel for youth unless the petitioner consents to the additions or modifications. The duties of the guardian ad litem or counsel for youth terminate upon the entry of the decree of adoption.

(5) In all stepparent, second parent, custodial, and kinship adoptions, the petition shall contain a statement informing the court whether the prospective adoptive parent was convicted at any time by a court of competent jurisdiction of a felony or misdemeanor in one of the following areas: Child abuse or neglect; spousal abuse; any crime against a child; any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, S.A.R.S.; violation of a protection order, as described in section 18-6-803.5, S.A.R.S.; any crime involving violence, rape, sexual assault, or homicide; or any felony physical assault or battery. In addition, the petitioner shall attach to the petition a current criminal history records check paid for by the petitioner.

(6) In all custodial and kinship adoptions, the petition must contain a statement that the petitioner has consulted with the appropriate local county department of human or social services concerning the possible eligibility of the petitioner and the child for temporary assistance for needy families (TANF), medicaid, subsidized adoption, and other services or public assistance administered by the county department of human or social services.

Source: L. 87: Entire title R&RE, p. 808, § 1, effective October 1. **L. 97:** (4) amended, p. 1165, § 9, effective July 1. **L. 99:** (3) amended, p. 1025, § 8, effective May 29; (5) and (6) added, p. 1063, § 5, effective June 1. **L. 2002:** (2.5) added, p. 788, § 9, effective May 30. **L. 2004:** (5) amended, p. 328, § 1, effective July 1. **L. 2007:** (5) amended, p. 838, § 2, effective August 3. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 880, § 141, effective July 1. **L. 2018:** IP(2.5)(a), (2.5)(a)(I), (3), and (6) amended, (SB 18-092), ch. 38, p. 432, § 74, effective August 8. **L. 2021:** (4.5) added, (HB 21-1101), ch. 481, p. 3427, § 3, effective September 1. **L. 2022:** (4.5)(h) amended, (HB 22-1038), ch. 92, p. 443, § 28, effective January 9, 2023. **L. 2023:** (4.5)(b) amended, (HB 23-1027), ch. 284, p. 1685, § 23, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-110 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 2002 act enacting subsection (2.5), see section 1 of chapter 217, Session Laws of San Andreas 2002. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-5-209. Petition - written home study reports. (1) Except for stepparent adoptions, kinship adoptions, custodial adoptions, and those cases in which placement for adoption has been made by the court, if a petition for the adoption of a child is not accompanied by the written consent and home study report of the qualified county department of human or social services, individual, or a licensed child placement agency approved by the state department of human services pursuant to section 19-5-207.5 (2), the court shall order the county department of human or social services, individual, or licensed child placement agency to make an investigation and file a written home study report substantially in the form outlined in section 19-5-207 (2), including a recommendation as to whether the adoption should be decreed.

(2) In adoptions where a child placement agency or county department has legal guardianship during the interval between initial placement and the final order of adoption, the child placement agency or county department shall supervise the placement with prospective adoptive parents and the child. The court, after notice to all parties in interest and hearing thereon, may, for good cause, terminate said placement if, at any time prior to the final decree of adoption, it appears to the court that said adoption is not in the best interest of the child.

Source: L. 87: Entire title R&RE, p. 809, § 1, effective October 1. **L. 99:** (1) amended, p. 1023, § 3, effective May 29; (1) amended, p. 1064, § 6, effective June 1. **L. 2018:** (1) amended, (SB 18-092), ch. 38, p. 432, § 75, effective August 8.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-111 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to subsection (1) by House Bill 99-1218 and House Bill 99-1299 were harmonized.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-210. Hearing on petition. (1) A hearing on the petition for adoption shall be held on the date set or the date to which the matter has been regularly continued.

(1.5) Except in stepparent, second parent, custodial, or kinship adoptions, the court shall issue a certificate of approval of placement, placing the child's custodial care with prospective adoptive parents pending final hearing on the petition for adoption, if it appears to the court that the placement for adoption is in the best interest of the child.

(2) In stepparent, custodial, or kinship adoptions, the court shall hold a hearing on the petition as soon as possible. In all other adoptions, the court shall hold a hearing on the petition no sooner than one hundred eighty-two days after the date the child begins to live in the prospective adoptive parent's home, unless for good cause shown that time is extended or shortened by the court. At the hearing held on the petition, the court shall enter a decree setting forth its findings and grant to the petitioner a final decree of adoption if it is satisfied as to:

(a) The availability of the child for adoption;

(b) The good moral character, the ability to support and educate the child, and the suitableness of the home of the person adopting such child;

(b.5) The fingerprint-based criminal history record checks of the prospective adoptive parent as reported to the court by the county department of human or social services or the child placement agency pursuant to section 19-5-207 (2.5) or the information provided to the court pursuant to section 19-5-208 (5) does not reveal a criminal history described in section 19-5-207 (2.5)(a);

(c) The mental and physical condition of the child as a proper subject for adoption in said home;

(d) The fact that the best interests of the child will be served by the adoption; and

(e) If the child is part of a sibling group, whether it is in the best interests of the child to remain in an intact sibling group. If the county department or child placement agency locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, it shall be presumed that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children. The judge shall review the family services plan document regarding placement of siblings.

(3) The former name of the child shall not be stated in the final decree of adoption.

(4) If, after the hearing, the court is not satisfied as to the matters listed in subsection (2) of this section, the petition for adoption may be either continued or dismissed in the discretion of the court. The court shall not grant the decree of final adoption if it determines that the prospective adoptive parent was convicted at any time by a court of competent jurisdiction of a felony in one of the following areas: Child abuse or neglect; spousal abuse; any crime against a child; or any crime involving violence, rape, sexual assault, or homicide, excluding other physical assault or battery. For stepparent, kinship, or custodial adoptions, in addition to not

granting a decree of final adoption in circumstances involving the felony convictions listed in this subsection (4), the court shall not grant the decree of final adoption if it determines that the prospective adoptive parent was convicted of a felony for physical assault or battery that was committed within the past five years.

(5) (a) Except as otherwise provided in paragraph (b) of this subsection (5), all hearings with reference to adoption shall be closed to the public and, in the discretion of the court, to any child who is the subject of adoption and who is under twelve years of age, but the court may interview the child whenever it deems it proper.

(b) Upon motion by any party to an adoption or upon the court's own motion, the court may order that an adoption hearing be opened to the public or to the child who is, or the children who are, the subject of the adoption if the court finds that opening the hearing is in the best interests of the child who is, or the children who are, the subject of the adoption hearing and the court finds that the potential adoptive parents have consented to an open hearing.

(6) In a stepparent adoption, in addition to issuing a final decree of adoption, the court shall enter an order terminating the other parent's parental rights. In a custodial or kinship adoption, in addition to issuing a final decree of adoption, the court shall enter an order terminating the parental rights of the child's parents.

(7) In cases involving the adoption of a child or youth who is part of a sibling group but who is not being adopted with the child's siblings, in addition to issuing a final decree of adoption, if the adoptive parents are willing, the court may encourage reasonable family time among the siblings when family time is in the best interests of the child, youth, or children. The court shall review the record and inquire as to whether the adoptive parents have received counseling regarding children or youth in sibling groups maintaining or developing ties with each other.

Source: L. 87: Entire title R&RE, p. 809, § 1, effective October 1. **L. 97:** IP(2) amended, p. 1165, § 10, effective July 1. **L. 98:** (2) and (4) amended, p. 1423, § 12, effective July 1. **L. 99:** Entire section amended, p. 1064, § 7, effective June 1. **L. 2000:** (2) amended and (7) added, p. 478, § 8, effective July 1. **L. 2003:** (2)(e) amended, p. 2628, § 11, effective June 5. **L. 2005:** IP(2) and (5) amended, p. 94, § 4, effective March 31. **L. 2007:** (1.5) amended, p. 838, § 3, effective August 3. **L. 2012:** IP(2) amended, (SB 12-175), ch. 208, p. 880, § 142, effective July 1. **L. 2018:** (2)(b.5) amended, (SB 18-092), ch. 38, p. 432, § 76, effective August 8. **L. 2023:** (7) amended, (HB 23-1027), ch. 284, p. 1686, § 24, effective June 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-112 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-5-211. Legal effects of final decree. (1) After the entry of a final decree of adoption, the person adopted is, for all intents and purposes, the child of the petitioner. He or she is entitled

to all the rights and privileges and is subject to all the obligations of a child born to the petitioner.

(1.5) An employer who permits paternity or maternity time off for biological parents following the birth of a child shall, upon request, make such time off available for individuals adopting a child. If the employer has established a policy providing time off for biological parents, that period of time shall be the minimum period of leave available for adoptive parents. Requests for additional leave due to the adoption of an ill child or a child with a disability shall be considered on the same basis as comparable cases of such complications accompanying the birth of such a child to an employee or employee's spouse. Any other benefits provided by the employer, such as job guarantee or pay, shall be available to both adoptive and biological parents on an equal basis. An employer shall not penalize an employee for exercising the rights provided by this subsection (1.5). The provisions of this subsection (1.5) shall not apply to an adoption by the spouse of a custodial parent or to a second-parent adoption.

(2) The parents shall be divested of all legal rights and obligations with respect to the child, and the adopted child shall be free from all legal obligations of obedience and maintenance with respect to the parents.

(2.5) The child shall be eligible for enrollment and coverage by any medical or dental insurance held by the prospective adoptive parents if, and on such a basis as, such coverage would be available to a child naturally born to the prospective adoptive parents.

(3) Nothing in this part 2 shall be construed to divest any natural parent or child of any legal right or obligation where the adopting parent is a stepparent and is married to said natural parent.

Source: L. 87: Entire title R&RE, p. 810, § 1, effective October 1. **L. 88:** (1.5) added, p. 759, § 1, effective April 13. **L. 93:** (1.5) amended, p. 1638, § 26, effective July 1. **L. 97:** (2.5) added, p. 1165, § 11, effective July 1. **L. 99:** (2) amended, p. 1065, § 8, effective June 1. **L. 2007:** (1.5) amended, p. 838, § 4, effective August 3. **L. 2018:** (1) amended, (SB 18-095), ch. 96, p. 754, § 12, effective August 8.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-4-113 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of San Andreas 2018.

19-5-212. Copies of order of adoption - to whom given. (1) If the court enters an order of adoption, certified copies shall be given to the adopting parents, the person or agency consenting to the adoption, and the state registrar.

(2) The court or the adopting parents or their legal representative shall send to the state registrar an application for a birth certificate, signed by the adoptive parents. The state registrar shall thereupon issue a new birth certificate to the child, as provided in section 25-2-113, S.A.R.S.

(3) If the child was born outside of San Andreas, copies of the order of adoption and application for birth certificate shall be sent to the state registrar of the state of birth and to the registrar of vital statistics in this state. If the application for a birth certificate is denied by the

state registrar in the state of birth, the adopting parents may return to the registrar in this state and apply to him to issue a new certificate of birth. The state registrar shall issue a birth certificate upon satisfactory evidence that the adopting parents, after good-faith effort, were unable to obtain a new certificate of birth from the state of birth.

Source: L. 87: Entire title R&RE, p. 810, § 1, effective October 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-114 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-213. Compensation for placing child prohibited. (1) (a) No person shall offer, give, charge, or receive any money or other consideration or thing of value in connection with the relinquishment and adoption, except attorney fees and such other charges and fees as may be approved by the court.

(b) No person, other than an adoption exchange whose membership includes county departments and child placement agencies, a licensed child placement agency, or a county department, shall offer, give, charge, or receive any money or other consideration or thing of value in connection with locating or identifying for purposes of adoption any child, natural parent, expectant natural parent, or prospective adoptive parent; except that physicians and attorneys may charge reasonable fees for professional services customarily performed by such persons.

(c) A child who is placed by a county department in a foster care home operated by a child placement agency shall be deemed, for purposes of payment to the child placement agency, to remain in foster care status for purposes of payment of consideration to the child placement agency until the date that the final decree of adoption is entered or until the date that the child is returned to his or her biological parent's home, unless otherwise negotiated in the contract between the child placement agency and the county department.

(2) Any person who violates the provisions of this section commits a class 2 misdemeanor.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 2005:** (1) amended, p. 970, § 4, effective June 2. **L. 2021:** (2) amended, (SB 21-271), ch. 462, p. 3221, § 391, effective March 1, 2022.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-115 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-5-213.5. Unauthorized advertising for adoption purposes - exceptions - penalty - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Advertise through a public medium" means to communicate by any public medium, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, or television or by computerized communication system, which includes an internet site, an internet profile, or any similar medium of communication provided via the internet. "Advertising through

a public medium" does not include communicating through personal or work electronic mail, text, or telephone.

(b) "Another jurisdiction" means the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a state of the United States other than San Andreas.

(c) "Child" means a person less than eighteen years of age.

(2) Except as described in subsection (3) of this section, it is unlawful to advertise through a public medium for one of the following purposes:

(a) To find a child to adopt or to otherwise take permanent physical custody of a child;

(b) To find an adoptive home or any other permanent physical placement for a child or to arrange for or assist in the adoption, adoptive placement, or any other permanent physical placement of a child; or

(c) To offer to place a child for adoption or in any other permanent physical placement with another person.

(3) Subsection (2) of this section does not apply to:

(a) An employee of the state department of human services, a county department of human or social services, or a child placement agency that is licensed pursuant to part 9 of article 6 of title 26 who is acting within the scope of the employee's employment to place a child for adoption or in foster care;

(b) An individual or agency that provides adoption information through the statewide adoption resource registry as provided in section 26-1-111 (4), S.A.R.S.;

(c) An adoption exchange whose membership includes county departments and licensed child placement agencies that provide information and referral services to find adoptive homes and to promote adoption;

(d) An individual who contacts and has entered into an agreement with or is actively working with any of the agencies or entities described in paragraph (a), (b), or (c) of this subsection (3) to place his or her child for adoption;

(e) A person who advertises fertility-related services;

(f) An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the state department of human services, a county department of human or social services, or a child placement agency licensed in this state or in another jurisdiction from an entity authorized by that jurisdiction to conduct studies of potential adoptive homes; or

(g) An attorney who is licensed to practice in San Andreas who advertises his or her availability to practice or provide services relating to the adoption of children.

(4) Unauthorized advertising of a child, as described in subsection (2) of this section, is a class 2 misdemeanor.

Source: L. 2014: Entire section added, (HB 14-1372), ch. 262, p. 1053, § 1, effective July 1. **L. 2018:** (3)(a) and (3)(f) amended, (SB 18-092), ch. 38, p. 433, § 77, effective August 8. **L. 2022:** (3)(a) amended, (HB 22-1295), ch. 123, p. 837, § 44, effective July 1. **L. 2023:** (4) amended, (HB 23-1293), ch. 298, p. 1796, § 60, effective October 1.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-214. Limitation on annulment of adoption - best interests standard. (1) No final decree of adoption shall be attacked by reason of any jurisdictional or procedural defect after the expiration of ninety-one days following the entry of the final decree; except that, in cases of stepparent adoption, no final decree of adoption shall be attacked by reason of fraud upon the court or fraud upon a party, whether or not there is a jurisdictional or procedural defect, after the expiration of one year following the entry of the final decree of adoption.

(2) When a final decree of adoption is attacked on any basis at any time, the court shall consider the best interests of the child, taking into account the factors set forth in section 14-10-124, S.A.R.S. The court shall sustain the decree unless there is clear and convincing evidence that the decree is not in the best interests of the child.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 94:** Entire section amended, p. 752, § 5, effective April 20; entire section amended, p. 1198, § 2, effective May 19. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 880, § 143, effective July 1.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-4-116 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Amendments to this section in House Bill 94-1042 and Senate Bill 94-5 were harmonized.

19-5-215. Records. (Repealed)

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** Entire section amended, p. 943, § 4, effective March 27. **L. 90:** Entire section repealed, p. 1012, § 8, effective July 1.

19-5-216. Increased access for adoption - study. (1) (a) The state department shall examine and evaluate the process of adoptive placements of children in the legal custody of the county departments of human or social services and identify those aspects of the process that may be improved to achieve the ultimate goal of permanency for the greatest number of children in safe and healthy adoptive homes. In conducting this analysis, the state department should consider, but need not be limited to, the following:

(I) The best means by which to increase county accessibility to qualified families seeking to adopt and the best means by which to achieve placement of children available for adoption with such families;

(II) Whether further automation would be conducive to the achievement of permanency of children;

(III) The need for centralization of information;

(IV) The benefits of additional standardization;

(V) The resources of other interested entities or foundations that may be available to support public adoptions;

(VI) The programs and systems developed by other states to achieve maximum access and expedited permanency for children in safe and healthy adoptive homes; and

(VII) The methods used to reduce the number of disruptions in adoptive homes.

(b) (I) The executive director of the department is authorized to accept and expend on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of implementing this section; except that no gift, grant, or donation shall be accepted if the conditions attached thereto require the expenditure thereof in a manner contrary to law.

(II) The executive director of the department is authorized to apply for a federal waiver, if necessary, to authorize the use of federal grant moneys to implement this section.

(2) Repealed.

Source: L. 99: Entire section added, p. 1024, § 4, effective May 29. **L. 2002:** (2) repealed, p. 882, § 20, effective August 7. **L. 2018:** IP(1)(a) amended, (SB 18-092), ch. 38, p. 433, § 78, effective August 8.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-5-217. Enforcement or termination of post-adoption contact agreement. (1) If the decree of adoption contains a post-adoption contact agreement pursuant to section 19-5-208 (4.5), the court retains jurisdiction after the decree of adoption is entered to hear motions to enforce or terminate the contact agreement, or to enter stipulated agreements of the parties to modify the contact agreement.

(2) The court may appoint a guardian ad litem for the adopted child, or a counsel for youth for an adopted child twelve years of age or older, at the time of any action for the enforcement or termination of the post-adoption contact agreement if the court determines that consideration of the factors set forth in section 19-5-103 (9)(a) require the appointment of a guardian ad litem or a counsel for youth. In all adoptions other than those in which the child is placed by the county department, a party or parties shall pay reasonable fees for the services of the guardian ad litem or counsel for youth unless a party is indigent, in which case the office of the child's representative shall pay the fees.

(3) If there is a post-adoption agreement for contact established pursuant to section 19-5-208 (4.5), only a party to the contact agreement, even if he or she is not a party to the adoption, may file a motion to enforce or terminate the contact agreement as set forth in this section.

(4) Prior to filing a motion seeking the enforcement or termination of a post-adoption contact agreement established pursuant to section 19-5-208 (4.5), the party seeking enforcement or termination shall show that the party attempted in good faith to resolve the disputed matters through mediation or other method of dispute resolution. This requirement is waived if the party's whereabouts are unknown and the party cannot be located despite diligent efforts to do so.

(5) The court shall not terminate a post-adoption contact agreement established pursuant to section 19-5-208 (4.5) unless the moving party establishes that there has been a change in circumstances and that the contact agreement is no longer in the adopted child's best interests. Following the adoption, the court shall presume that the adoptive parent's judgement is in the best interests of the child in any action seeking to enforce or terminate the contact agreement, and such presumption may only be overcome by clear and convincing evidence. A post-adoption contact agreement may not limit the adoptive parent's ability to move out of state.

(6) At any time after the entry of a post-adoption contact agreement pursuant to section 19-5-208 (4.5), the parties to the agreement may file with the court a signed, modified post-adoption contact agreement. The court shall not modify the terms of the initial post-adoption contact agreement absent the consent of all parties to the agreement, but the court may enforce or terminate the agreement over the objection of a party to the agreement. An adopted child twelve years of age or older at the time of the adoption must consent to any modification or termination of the contact agreement.

(7) The court may consider documentary evidence and offers of proof in determining motions to enforce or terminate a post-adoption contact agreement established pursuant to section 19-5-208 (4.5), or may, in its discretion, hold a hearing on the motion.

(8) The court shall not order further investigation or evaluation by any public or private agency or individual relating to a post-adoption contact agreement established pursuant to section 19-5-208 (4.5).

Source: L. 2021: Entire section added, (HB 21-1101), ch. 481, p. 3428, § 4, effective September 1. **L. 2022:** (2) amended, (HB 22-1038), ch. 92, p. 443, § 29, effective January 9, 2023.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

PART 3

ACCESS TO ADOPTION INFORMATION

19-5-301. Legislative declaration. (1) The general assembly hereby finds and declares that adult adoptees, adoptive parents, biological parents, and biological siblings should have a right of access to certain records regarding their or their child's adoption or the adoption of their offspring or siblings as outlined in section 19-5-305 and that such a right must coexist with the right of such parties to privacy and confidentiality. The general assembly also finds that an adult adoptee, his biological or adoptive parent, or his biological sibling may desire to obtain information about each other at different points in time. Furthermore, the general assembly finds that confidentiality from the general public is essential to the adoption process and that any procedure to access information which relates to an adoption to search for unknown relatives through a confidential intermediary or a licensed child placement agency must be designed to maintain confidentiality and to respect the wishes of all involved parties.

(2) (a) It is the purpose of this part 3 to establish a confidential process whereby adult adoptees and adoptive parents who desire information concerning their or their child's adoption and biological parents and siblings who desire information concerning an adult adoptee may pursue access to such information.

(b) The general assembly further finds and declares that the purpose of establishing the confidential process set forth in this part 3 is to create a pool of individuals who the courts and interested parties may call upon to initiate a search for a biological relative. It is not the intent of the general assembly that such process shall be construed as the regulation of an occupation or profession.

Source: L. 89: Entire part added, p. 940, § 1, effective March 27. **L. 2014:** (1) amended, (SB 14-051), ch. 260, p. 1048, § 4, effective July 1.

19-5-302. Definitions. (Repealed)

Source: L. 89: Entire part added, p. 941, § 1, effective March 27. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-5-303. Commission created - duties. (1) There is created in the department the adoption intermediary commission, referred to in this section as the "commission", which consists of thirteen members. The commission is a **type 1** entity, as defined in section 24-1-105, and exercises its powers and performs the duties and functions specified by this part 3 under the department. Representation and appointment of such members shall be as follows:

(a) Three members shall represent the judicial department and shall be appointed by the chief justice or his or her designee;

(b) Two members shall represent the department and shall be appointed by the executive director of such department or his or her designee;

(c) Three members shall represent licensed adoption agencies and shall be appointed by a representative of a private adoption agency. Such representative shall be selected by the executive director of the department.

(d) Three members shall represent either adoptees, adoptive parents, biological parents of adoptees, or biological siblings of adoptees and shall be selected by the executive director of the department;

(e) Two members shall represent confidential intermediaries and shall have completed training as confidential intermediaries. Such members shall be appointed by the executive director of the department.

(2) The commission shall have responsibility for:

(a) Drafting a manual of standards for training confidential intermediaries and licensed child placement agencies that perform searches and contact persons pursuant to section 19-5-305 (3)(b)(III);

(b) Monitoring confidential intermediary training programs and child placement agencies with search and consent programs to ensure compliance with the standards set forth in the manual, with authority to approve or deny such programs based upon compliance with such standards;

(c) Maintaining an up-to-date list of persons who have completed training as confidential intermediaries or as persons who conduct searches for child placement agencies and communicating such list to the judicial department.

(3) The commission shall adopt its own rules of procedure, shall select a chairman, a vice-chairman, and such other officers as it deems necessary, and shall keep a record of its proceedings. The commission shall meet as often as necessary to carry out its duties, but in no instance shall it meet less than annually. The commission may seek input from confidential intermediary organizations in carrying out its duties.

(4) The commission shall be voluntary and shall not receive per diem payments.

Source: L. 89: Entire part added, p. 941, § 1, effective March 27. **L. 91:** IP(1) amended, p. 890, § 14, effective June 5. **L. 93:** (4) amended, p. 657, § 3, effective July 1. **L. 94:** IP(1) and (1)(b) to (1)(d) amended, p. 2689, § 213, effective July 1. **L. 97:** (1) amended, p. 1166, § 12, effective July 1. **L. 2000:** (1) and (2) amended, p. 1373, § 5, effective July 1. **L. 2005:** (2)(c) amended, p. 767, § 31, effective June 1; (2)(c) amended, p. 993, § 5, effective July 1. **L. 2022:** IP(1) amended, (SB 22-162), ch. 469, p. 3376, § 67, effective August 10. **L. 2023:** IP(1) amended, (HB 23-1301), ch. 303, p. 1822, § 25, effective August 7.

Editor's note: The introductory portion to subsection (1) was amended by SB 22-162, but the introductory phrase, "Representation and appointment of such members shall be as follows:", at the end of the provision was inadvertently deleted during the drafting of the bill. The introductory portion to subsection (1) is shown to reflect how the provision appeared in SB 22-162 when acted on by the Governor.

Cross references: For the short title (the "Debbie Haskins 'Administrative Organization Act of 1968' Modernization Act") in SB 22-162, see section 1 of chapter 469, Session Laws of San Andreas 2022.

19-5-304. Confidential intermediaries - confidential intermediary services. (1) (a) Any person who has completed a confidential intermediary training program that meets the standards set forth by the commission shall be responsible for notifying the commission that his or her name should be included on the list of confidential intermediaries to be maintained by the commission and made available to the judicial department. The commission shall adopt rules to determine when and under what conditions the name of a confidential intermediary shall be removed from the list available to the judicial department.

(b) Once a person is included on the list of confidential intermediaries, he or she shall be:

(I) Authorized to inspect confidential relinquishment and adoption records, post-adoption records, and dependency and neglect records, including but not limited to court files, within forty-five days after a motion to the court is filed by the following persons:

(A) An adult adoptee;

(B) An adoptive parent, custodial grandparent, or legal guardian of a minor adoptee;

(C) A biological parent or an adult biological sibling or half-sibling of an adult adoptee;

(D) An adult descendant of the adoptee or the adoptive parent, spouse of an adoptee, adult stepchild, or adopted adult sibling of an adoptee with the notarized written consent of the adult adoptee;

(E) A biological grandparent of an adoptee with the notarized written consent of the biological parent. No written consent is required if the biological parent is deceased.

(F) The legal representative of any of the individuals listed in sub-subparagraphs (A) to (E) of this subparagraph (I);

(G) A former foster child who may or may not have been adopted, who is eighteen years of age or older, and who is searching for a birth sibling who is also eighteen years of age or older, who may or may not have been adopted, and who may or may not have been in the foster care system;

(II) Available, subject to time constraints, for appointment by the court to act as a confidential intermediary for any of the parties listed in subparagraph (I) of this paragraph (b).

(2) (a) Any of the parties listed in subparagraph (I) of paragraph (b) of subsection (1) of this section, any of whom are eighteen years of age or older, may file a motion, with supporting affidavit, in the court where the adoption took place, to appoint one or more confidential intermediaries for the purpose of determining the whereabouts of such individual's unknown relative or relatives; except that no one shall seek to determine the whereabouts of a relative who is younger than eighteen years of age. The court may rule on said motion and affidavit without hearing and may appoint a trained confidential intermediary.

(b) The court-appointed confidential intermediary shall make a diligent search of the adoption records and post-adoption records in an effort to find the sought-after relative. If the confidential intermediary successfully locates the relative sought, the confidential intermediary shall provide that relative with the opportunity to:

(I) Consent to or to refuse to allow contact by the person seeking contact;

(II) Fill out a contact preference form and updated medical history statement as prescribed in section 19-5-305 (1.5);

(III) Repealed.

(2.5) For purposes of paragraph (b) of subsection (1) of this section, "legal guardian" shall not include a governmental entity of any foreign country from which a child has been adopted or any representative of such governmental entity.

(3) Any information obtained by the confidential intermediary during the course of his or her investigation shall be kept strictly confidential and shall be utilized only for the purpose of arranging a contact between the individual who initiated the search and the sought-after biological relative or for the purpose of obtaining consent for the release of adoption records.

(4) (a) When a sought-after biological relative is located by a confidential intermediary on behalf of the individual who initiated the search, the confidential intermediary shall obtain consent from both parties that they wish to personally communicate with one another.

(b) Contact shall be made between the parties involved in the investigation only when consent for such contact has been received by the court.

(c) If consent for personal communication is not obtained from both parties, all relinquishment and adoption records and any information obtained by any confidential intermediary during the course of his or her investigation shall be returned to the court and shall remain confidential.

(5) All confidential intermediaries shall inform both the requesting biological relative and the sought-after biological relative of the existence of the voluntary adoption registry set forth in section 25-2-113.5, S.A.R.S.

(6) Any person acting as a confidential intermediary who knowingly fails to comply with the provisions of subsections (3) and (4) of this section commits a civil infraction.

Source: L. 89: Entire part added, p. 942, § 1, effective March 27. **L. 97:** (1) and (2) amended, p. 1166, § 13, effective July 1. **L. 99:** (1)(b), (2), (3), and (4)(c) amended and (2.5) added, p. 1131, § 3, effective July 1. **L. 2000:** (1) and (2) amended, p. 1368, § 2, effective July 1. **L. 2005:** (2) amended, p. 984, § 1, effective July 1. **L. 2009:** IP(1)(b) and IP(1)(b)(I) amended and (1)(b)(I)(G) added, (SB 09-079), ch. 59, p. 214, § 1, effective March 25. **L. 2014:** (2)(b)(III) repealed, (SB 14-051), ch. 260, p. 1049, § 5, effective July 1. **L. 2021:** (6) amended, (SB 21-

271), ch. 462, p. 3221, § 392, effective March 1, 2022. **L. 2022:** (2.5) amended, (SB 22-212), ch. 421, p. 2973, § 43, effective August 10.

19-5-305. Access to adoption records - contact with parties to adoption - contact preference form and updated medical history statement - definitions. (1) **Confidentiality.** All adoption records are confidential from the general public and must remain confidential except as described in subsections (1.5) and (2) of this section or upon demonstration of good cause pursuant to section 19-1-309 or as otherwise provided by law.

(1.5) **Contact preference forms and updated medical history statements from birth parents.** (a) The state registrar shall prescribe and make available to a birth parent named on an original birth certificate in the records of the state registrar a contact preference form on which the birth parent may indicate a preference regarding contact by the adult adoptee, an adult descendant of the adoptee, or a legal representative of the adoptee or descendant. The purpose of the contact preference form is to allow the birth parent the opportunity to indicate a preference to be contacted directly, to be contacted through a third party, or not to be contacted by other parties.

(b) The form must also include space for a written statement by the birth parent, which may include updated medical history about the birth parent or other biological relatives, an explanation for the stated contact preference, or other information for the party seeking records. The medical history statement form must indicate that the birth parent is waiving confidentiality of any medical information supplied in the statement with respect to the adoptee, an adult descendant of the adoptee, or a legal representative of such individual, and to the state registrar or his or her designees.

(c) The state registrar shall maintain the contact preference form and the medical history statements, if any, and make them accessible to an individual who is an eligible party allowed to receive adoption records as described in subparagraph (I) of paragraph (b) of subsection (2) of this section and who submits a written application form, proof of identity, and an explanation of the individual's relationship to the adoptee, if applicable. The state registrar is authorized to verify the submission of a contact preference form or an updated medical history statement and to provide a copy of a contact preference form to a confidential intermediary appointed pursuant to section 19-5-304 or to a designated employee of a child placement agency who is searching pursuant to subparagraph (III) of paragraph (b) of subsection (3) of this section. The state registrar shall maintain and make available to the public accurate statistics about the number of contact preference forms on file with the state registrar and how many of the forms state a preference for contact, no contact, or contact through a third party.

(d) (I) As used in this section, "eligible party" means a person who is eligible under subparagraph (I) of paragraph (b) of subsection (2) of this section to have access to adoption records.

(II) The option on the contact preference form that allows a birth parent to authorize or not authorize the release of the original birth certificate to eligible parties expires on January 1, 2016. The state registrar shall revise the contact preference form to eliminate this option, effective January 1, 2016, and shall neither distribute nor accept contact preference forms on or after January 1, 2016, that contain an option regarding such release. On and after January 1, 2016, contact preference forms shall only address a birth parent's preferences regarding contact and the ability to submit an explanation for the stated contact preference and to submit or update

medical history. A child placement agency is not liable to any person for the failure of a birth parent to submit a contact preference form to the state registrar. On and after July 1, 2014, the state registrar shall post a notice on the website of the office of the state registrar of vital statistics stating that the contact preference form will be revised to eliminate the option to authorize or object to the release of the original birth certificate and that birth parents may exercise this option prior to January 1, 2016.

(III) Prior to allowing access to and providing a copy of an original birth certificate to an eligible party, the state registrar must perform a diligent search for a contact preference form executed prior to January 1, 2016, to ascertain if either birth parent had stated a preference authorizing or not authorizing the release of the original birth certificate to eligible parties. If both birth parents have filed a contact preference form executed prior to January 1, 2016, stating a preference to authorize the release of the original birth certificate, then the state registrar must release the original birth certificate to the eligible party. If there is no contact preference form on file prior to January 1, 2016, from a birth parent named on the original birth certificate, or if a contact preference form executed prior to January 1, 2016, is on file that states a preference that the original birth certificate not be released, then the state registrar may not release the original birth certificate to the eligible party prior to January 1, 2016, unless the birth parent rescinds the contact preference form, upon mutual consent of two or more reunited parties, the birth parent is deceased, or the eligible party obtains a court order pursuant to section 19-1-309. When one birth parent has authorized the release of the birth certificate and the other birth parent has filed a contact preference form prior to January 1, 2016, not authorizing release, the state registrar shall issue the original birth certificate to the eligible party with the name of the nonconsenting parent redacted.

(2) **Legislative declaration - access to adoption records.** (a) The general assembly takes note that the law in San Andreas regarding access to adoption records has treated persons differently depending upon the law in effect upon the date of the adoption of the adoptee and that the statutory scheme has been confusing, complicated, and ambiguous. By repealing and reenacting provisions of this section to remove those varying time periods and varying levels of access or nonaccess to adoption records by an adult adoptee or by a birth parent, it is the intent of the general assembly that access to adoption records no longer be dependent upon the law in effect on the date of the finalization of adoption. The general assembly declares that the purpose of the revision of this subsection (2) is to make the access to adoption records by members of the adoption triad more uniform as outlined in this subsection (2). The general assembly further declares that it is the intent of the general assembly to not abrogate, limit, or change the holding in or affect any rights created under *In re J.N.H.*, 209 P.3d 1221 (S.A. App. 2009) with respect to access by an adult adoptee to the names of his or her birth parents and to all court records and papers regarding the adoption of the adult adoptee. The general assembly further declares that in construing this section, the courts should liberally construe this section in favor of releasing the records.

(b) Subject to subsection (4) of this section and in addition to information exchanged in a designated adoption or inspection authorized by a court upon good cause shown pursuant to section 19-1-309, access to adoption records by certain parties is governed by the following provisions:

(I) (A) **Adult adoptees, their descendants, and adoptive family members.** Upon request, the custodian of records shall provide direct access, without redaction, to all adoption

records, as defined in section 19-1-103, for inspection and copying by an adult adoptee, an adoptive parent of a minor adoptee, a custodial grandparent of a minor adoptee, or the legal representative of any such individual. In addition, the custodian of records shall provide direct access to adoption records for inspection and copying by a spouse of an adult adoptee, an adult descendant of an adoptee, an adult sibling or half-sibling of an adult adoptee, an adoptive parent or grandparent of an adult adoptee, or the legal representative of any such individual, if the individual requesting access has the notarized written consent of the adult adoptee or if the adult adoptee is deceased.

(B) **Access by an adult adoptee or descendant to the original birth certificate and amended birth certificate of a sibling with a common birth parent.** Upon proof of evidence of at least one common birth parent between an adult adoptee and a sibling or half-sibling, the custodian of records shall provide, without redaction, to an adult adoptee, a descendant of the adult adoptee, or a legal representative of the adult adoptee or descendant direct access to a noncertified copy of the unaltered original birth certificate and the amended birth certificate of an adult sibling or half-sibling who was born, relinquished, or adopted in the state of San Andreas, subject to the provisions of subsection (4) of this section.

(II) **Access by a birth parent to the original birth certificate.** A birth parent who relinquished a child for adoption, whose termination of the parent-child legal relationship was not the result of a dependency and neglect action, and who signed or is named on the original birth certificate may apply to the state registrar for and obtain a noncertified copy of the unaltered original birth certificate of the child he or she relinquished if the child was born in this state, or if the child's adoption was finalized in this state, or both.

(III) (A) **Access to death certificates of deceased parties.** Upon request of an eligible party or a birth parent as described in subparagraph (II) of this paragraph (b), the state registrar shall conduct a search of death certificates to determine whether an adoptee or a birth parent is deceased. If the state registrar finds a death certificate for the adult adoptee or the birth parent, then the state registrar shall provide a copy to the eligible party. The state registrar may collect a fee for conducting a search and for making a copy of the death certificate.

(B) **Access to records pertaining to a deceased party.** If an eligible party or a birth parent as described in subparagraph (II) of this paragraph (b) applies to a custodian of records for access to records about an adult adoptee or a birth parent and the custodian of records determines that the person whose records are being sought is deceased or can reasonably be presumed to be deceased based on the known or estimated date of birth of the sought party, the custodian of records shall provide direct access to the records for inspection and copying by the eligible party.

(IV) **Proof of identification and fees.** Prior to releasing any records to any eligible party allowed to receive records pursuant to this subsection (2), the custodian of records must require the eligible party requesting access to provide proof of identification. The custodian of records may charge reasonable fees for providing copies of records. The state registrar shall transmit all moneys collected pursuant to subparagraph (III) of this paragraph (b) and this subparagraph (IV) to the state treasurer, who shall credit the same to the vital statistics records cash fund created in section 25-2-121, S.A.R.S.

(V) **Release of records by child placement agencies and prior written statements of birth parents.** Notwithstanding subsection (2)(b)(I) of this section, the adoption records, as defined in section 19-1-103, in the possession of a child placement agency are not open for

inspection or available for copying with respect to any identifying information concerning a birth parent if the birth parent has previously provided the court and the child placement agency, if applicable, with a signed and notarized written statement, within three years after the final order of relinquishment or termination of the parent-child legal relationship, specifying that such parent wishes the identifying information concerning that parent to remain confidential; except that the adoption records in the possession of a child placement agency may be open for inspection and made available for copying with respect to identifying information concerning a birth parent if a birth parent provides a consent form, as defined in section 19-1-103, to the child placement agency consenting to the release of identifying information and the release of identifying information is consistent with the provisions of subsection (3) of this section. A written statement specifying that a birth parent wishes the identifying information concerning that parent on file with a child placement agency to remain confidential must remain in the court's and the child placement agency's relinquishment or termination file unless later withdrawn by the parent or superceded by a consent form. A child placement agency is not liable to any individual for the failure of a birth parent to submit such a written statement to the court. In addition to such a statement, the birth parent may also submit to the court and to the child placement agency a letter of explanation that the court and the child placement agency must release to the adoptee at the time that the adoptee makes a request for inspection of the adoption records. This subsection (2)(b)(V) applies only to adoption records in the possession of child placement agencies and does not apply to adoption records in the possession of the court or any other agency, entity, or person.

(3) **Access to identifying information through child placement agencies.** (a) Upon proof of identity of the person submitting the consent form, a licensed child placement agency shall accept and may seek a consent form, as that term is defined in section 19-1-103, from an adult adoptee or from either adult adoptee's birth parent or from an adoptive parent of a minor adoptee or from the legal representative of a minor adoptee authorizing the release of identifying information, as that term is defined in section 19-1-103, concerning the person submitting the consent form, to the extent such information is available to the child placement agency. If only one birth parent has filed a consent form with the child placement agency, the child placement agency or any succeeding custodian of the records shall provide a copy of the identifying information without the name of and without identifying information about the nonconsenting birth parent.

(b) (I) Upon inquiry by an adult adoptee or an adult adoptee's birth parent or an adoptive parent of a minor adoptee seeking information about another party from a licensed child placement agency, the child placement agency shall be authorized to release identifying information to the inquiring person, upon proof of identity by the inquiring person, if the licensed child placement agency is in possession of a consent form from the party about whom information is sought authorizing such release.

(II) In those circumstances in which a child placement agency has released identifying information pursuant to paragraph (a) of this subsection (3), the child placement agency may attempt to locate at the last-known address the person who had originally submitted the consent form and, upon locating such person, advise him or her of the release and provide him or her with the opportunity to fill out a contact preference form and updated medical history statement as prescribed in subsection (1.5) of this section. If the inquiring person also submitted a consent

form authorizing the release of identifying information about him or her, the child placement agency may provide such identifying information to the person located.

(III) A child placement agency that accepts a consent form may perform a search for the sought party, subject to the requirement that an employee designated by the child placement agency to perform a search and to contact the sought party shall have completed training that meets the standards set forth by the adoption intermediary commission.

(c) A licensed child placement agency that accepts a consent form may charge a reasonable fee to cover the direct and indirect costs associated with the services provided pursuant to this subsection (3), if a written fee agreement has been signed by the agency and the party submitting the consent form prior to the provision of any service. If a child placement agency charges a fee, then the child placement agency shall make reasonable efforts to locate the person being sought and to release the information the child placement agency obtained to the person located. The licensed child placement agency shall be required to provide a list of names, addresses, and telephone numbers of organizations performing similar services prior to signing any fee agreement with any party submitting a consent form. Information in the post-adoption record is confidential and shall not be disclosed by a licensed child placement agency or any succeeding custodian of the records, or a court except as specifically permitted in this part 3, or as otherwise permitted by law.

(d) The release of any information by a licensed child placement agency pursuant to this subsection (3) shall be subject to the provisions of subsection (4) of this section.

(4) **Access to information and contact concerning sibling groups.** Notwithstanding the provisions set forth in subsections (1.5), (2), and (3) of this section authorizing access to adoption records and contact with an adoptee, in those circumstances in which one family has adopted two or more siblings, access to the adoption records concerning an adoptee and contact with an adoptee shall not occur until all of the siblings adopted by the family have attained eighteen years of age.

(5) **Adult adoptee's restriction on access to records.** Notwithstanding the provisions of subsection (2) of this section, an adult adoptee may, at any time, provide the court that finalized the adoption and the child placement agency with a signed and notarized written statement specifying that such adult adoptee wishes to maintain identifying information concerning that adoptee, other than the original birth certificate, confidential. The written statement shall remain in the court's adoption file unless later withdrawn by the adoptee. Nothing in this subsection (5) shall be construed to affect access to records through the confidential intermediary process.

(6) **Contact between the parties.** Subject to the provisions of subsection (2) of this section, any party may seek to make direct contact with another party or to use the services of a confidential intermediary as provided in section 19-5-304, a licensed child placement agency as provided in subsection (3) of this section, or the voluntary adoption registry maintained by the state registrar as provided in section 25-2-113.5, S.A.R.S.

Source: L. 99: Entire section added, p. 1132, § 4, effective July 1. **L. 2000:** (2)(a)(I)(A), (2)(a)(I)(B), (2)(b)(I)(A), (2)(b)(I)(B), (2)(b)(I)(C), (2)(b)(II), (2)(c), (3), and (5) amended, p. 1369, § 3, effective July 1. **L. 2005:** Entire section amended, p. 985, § 2, effective July 1. **L. 2014:** (1), (1.5), and (2) R&RE and (6) added, (SB 14-051), ch. 260, p. 1043, § 1, effective July 1. **L. 2015:** (2)(b)(I) amended, (HB 15-1106), ch. 59, p. 142, § 2, effective March 30; (2)(b)(I)

amended, (HB 15-1355), ch. 311, p. 1273, § 2, effective June 5. **L. 2021:** IP(2)(b), (2)(b)(I)(A), (2)(b)(V), and (3)(a) amended, (SB 21-059), ch. 136, p. 736, § 90, effective October 1.

Cross references: (1) For the provisions referring to confidential intermediaries formerly found in subsection (2)(a)(II), see § 19-5-304 (2)(b). (See L. 2005, p. 984.)

(2) For the short title ("Heritage Act") and the legislative declaration in HB 15-1355, see section 1 of chapter 311, Session Laws of San Andreas 2015.

19-5-305.5. Access to personal records relating to a former ward of the state home for dependent and neglected children - other eligible parties - definitions. (1) As used in this section:

(a) "Eligible party" means:

(I) A former ward, regardless of adoption status;

(II) A spouse of a former ward;

(III) An adult descendant of a former ward;

(IV) An adult sibling or half-sibling of a former ward; or

(V) The legal representative of any individual described in subparagraphs (I) to (IV) of this paragraph (a), if the individual requesting access has the notarized written consent of the former ward or if the former ward is deceased.

(b) "Former ward" means a person who as a minor child was in the custody of the state home for dependent and neglected children, regardless of the person's adoption status.

(c) (I) "Personal records" means the following documents and information pertaining to the custody, relinquishment, or adoption of a former ward, without redaction:

(A) The original birth certificate;

(B) The amended birth certificate;

(C) The temporary waiver of custody;

(D) The final order of relinquishment;

(E) The order of termination of parental rights;

(F) The final decree of adoption;

(G) The name of the former ward before placement in adoption; the name and address of each birth parent as they appear in the birth records or other documents, including other information that might personally identify a birth parent; and the name and address of each adoptive parent; and

(H) The physical description of the birth parents; the educational background of the birth parents; the occupation of the birth parents; genetic information about the birth family; medical information about the former ward's birth; social information about the birth parents; whether the former ward has siblings or half-siblings, and, if so, the names and addresses of the siblings and half-siblings; and the placement history of the former ward.

(I) "Personal records" does not include prerelinquishment counseling records, which records shall remain confidential.

(2) Upon proof of identification and upon request, the custodian of records, as defined in section 19-1-103, shall provide direct access, without redaction, to all personal records for inspection and copying by an eligible party relating to a former ward who, regardless of adoption status, as a minor was in the custody of the state home for dependent and neglected children.

(3) Prior to releasing any personal records to an eligible party allowed to receive personal records pursuant to this section, the custodian of records must require the eligible party requesting access to provide proof of identification. The custodian of records may charge reasonable fees for providing copies of records.

Source: L. 2015: Entire section added, (HB 15-1355), ch. 311, p. 1273, § 3, effective June 5. **L. 2021:** (2) amended, (SB 21-059), ch. 136, p. 737, § 91, effective October 1.

Cross references: For the short title ("Heritage Act") and the legislative declaration in HB 15-1355, see section 1 of chapter 311, Session Laws of San Andreas 2015.

19-5-306. Public information campaign. The executive directors of the department of human services and the department of public health and environment, or such executive directors' designees, shall work together to design and implement efforts within existing appropriations to assist in informing the public about the existence and availability of the confidential intermediary process established in this part 3 and the voluntary adoption registry established pursuant to section 25-2-113.5, S.A.R.S., to inform the public about the change in the availability of adoption records, including birth certificates, and other records related to the adoption process as set forth in section 19-5-305, and to inform birth parents about the opportunity to complete contact preference forms and submit updated medical history statements as set forth in section 19-5-305. Such efforts shall be implemented within existing appropriations on and after July 1, 2005, by disseminating information to the public through child placement agencies and through the use of public service announcements and such other additional means of communication as the executive directors or their designees determine appropriate. The public information campaign shall also provide referral information on community resources that may be available to the adoption triad to assist them in dealing with issues that arise in searches and reunifications with relatives or in deciding not to seek contact or information about relatives. Such resources shall include a variety of sources, including child placement agencies, social workers, therapists and faith-based counselors, and organizations designed to provide support to members of the adoption triad.

Source: L. 99: Entire section added, p. 1132, § 4, effective July 1. **L. 2005:** Entire section amended, p. 993, § 6, effective July 1.

19-5-307. Child placement agency - transfer of records. If a child placement agency terminates its child placement activities, prior to termination of services, the child placement agency shall microfilm or preserve with state-of-the-art record storage methods as prescribed by the department of human services any relevant files on adoptions and transfer them to the division in the department of human services responsible for child care licensing. The state board of human services shall promulgate rules to require child placement agencies to scan adoption records for purposes of transferring them upon termination of child placement activities to the division in the department of human services responsible for child care licensing.

Source: L. 2000: Entire section added, p. 1372, § 4, effective July 1. **L. 2005:** Entire section amended, p. 970, § 5, effective June 2.

PART 4

ACCESS TO NONIDENTIFYING ADOPTION INFORMATION

19-5-401. Definitions. (Repealed)

Source: L. 93: Entire part added, p. 655, § 1, effective July 1. **L. 94:** (4) amended, p. 2689, § 214, effective July 1. **L. 96:** Entire section repealed, p. 85, § 11, effective March 20.

Cross references: For current applicable definitions, see § 19-1-103.

19-5-402. Access to nonidentifying information. Any adult adoptee or any adoptive parent may request nonidentifying information about the adoptee or the birth parents of the adoptee from the department. The department shall provide directly to the inquiring adult adoptee or adoptive parent or to the qualified agency selected pursuant to section 19-5-403 the nonidentifying information which is available to the department. The department shall adopt rules governing the disclosure of nonidentifying information.

Source: L. 93: Entire part added, p. 656, § 1, effective July 1.

19-5-403. Authority for department to select agencies. The department is authorized to select private, licensed child placement agencies authorized to handle adoptions for the disclosure of nonidentifying information pursuant to this part 4. The department shall, by rule, establish qualifying criteria by which the licensed child placement agencies authorized to handle adoptions shall be selected, which criteria shall include, but shall not be limited to, a requirement that the agencies maintain all information which identifies members of the birth family strictly confidential.

Source: L. 93: Entire part added, p. 656, § 1, effective July 1.

ARTICLE 5.5

Uniform Unregulated Child Custody Transfer Act

PART 1

GENERAL PROVISIONS

19-5.5-101. Short title. This article 5.5 may be cited as the "Uniform Unregulated Child Custody Transfer Act".

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 299, § 1, effective April 17.

19-5.5-102. Definitions. In this article 5.5:

(1) "Child" means an unemancipated individual under eighteen years of age.

(2) "Child placement agency" has the meaning set forth in section 26-6-903.

(3) "County department" has the meaning set forth in section 19-1-103.

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

(5) "Intercountry adoption" means an adoption or placement for adoption of a child who resides in a foreign country at the time of adoption or placement. The term includes an adoption finalized in the child's country of residence or in a state.

(6) "Parent" has the meaning set forth in section 19-1-103.

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

(8) "Record" means information that is:

(a) Inscribed on a tangible medium; or

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

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(10) "State department" means the state department of human services created in section 24-1-120.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 299, § 1, effective April 17.

19-5.5-103. Limitations on applicability. This article 5.5 does not apply to custody of an Indian child, as defined in section 1903(4) of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1903(4), as amended, to the extent custody is governed by the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 to 1963, as amended.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 300, § 1, effective April 17.

PART 2

PROHIBITION OF UNREGULATED CUSTODY TRANSFER

19-5.5-201. Definitions. In this part 2:

(1) "Custodian" has the meaning set forth in section 19-1-103.

(2) "Division" means the division of child welfare.

(3) "Facilitator" means a person, partnership, corporation, association, firm, agency, or institution, other than an adoption exchange, county department, or child placement agency, that offers, gives, charges, or receives money or other consideration or thing of value in connection with locating or identifying, for purposes of adoption, any child, birth parent, expectant natural parent, or prospective adoptive parent.

(4) "Guardian" means a person other than a parent who has the legal authority and duty to care for a child.

(5) "Intermediary" means a person who assists or facilitates a transfer of custody of a child, whether or not for compensation.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 300, § 1, effective April 17.

19-5.5-202. Applicability. (1) This part 2 does not apply to a transfer of custody of a child by a parent, guardian, or custodian of the child to:

(a) A parent of the child;

(b) A stepparent of the child;

(c) An adult who is related to the child by blood, marriage, adoption, or other relationship recognized by other law of this state;

(d) An adult who, at the time of the transfer, had a meaningful and safe relationship with the child for a period of at least six months prior to the transfer, and whom the parent, guardian, or custodian reasonably believes, at the time of the transfer, to be a fit custodian of the child; or

(e) An Indian custodian, as defined in the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1903 (6), as amended, of the child.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 301, § 1, effective April 17.

19-5.5-203. Prohibited custody transfer. (1) Except as provided in subsection (2) of this section, a parent, guardian, or custodian of a child or an individual with whom a child has been placed for adoption may not transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child.

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

(a) A legal adoption or guardianship proceeding;

(b) Judicial award of custody;

(c) Other judicial or tribal action; or

(d) San Andreas's safe haven law as described in section 19-3-304.5.

(3) A person may not receive permanent custody of a child, or act as an intermediary if permitted under other law of this state, in a transfer of custody of a child if the person knows or reasonably should know the transfer violates subsection (1) of this section. This prohibition does not apply if the person, as soon as practicable after the transfer, notifies the state department of the transfer or takes appropriate action to establish custody under subsection (2) of this section.

(4) Violation of this section is a class 2 misdemeanor.

(5) Violation of subsection (1) of this section is not established solely because a parent, guardian, or custodian who transfers custody of a child does not regain custody.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 301, § 1, effective April 17.

19-5.5-204. Authority and responsibility of a county department of human or social services. (1) If a county department receives a report that a person has transferred or intends to transfer custody of a child in violation of section 19-5.5-203 (1), the county department may conduct an assessment, and, as provided by other laws of this state, take appropriate action to protect the welfare of the child.

(2) If a county conducts an assessment for a child adopted or placed through an intercountry adoption, and determines that a person has transferred or intends to transfer custody of a child in violation of section 19-5.5-203, the county department shall forward the assessment to the state department. Upon receiving the assessment, the state department shall:

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

(b) Provide a copy of the report to the United States department of state, bureau of consular affairs, office of children's issues.

(3) This article 5.5 does not prevent a county department from taking appropriate action under other law of this state.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 302, § 1, effective April 17.

19-5.5-205. Prohibited soliciting or advertising. (1) Except as provided in section 19-5-213.5, a person may not solicit or advertise to:

(a) Identify a person to whom to make a transfer of custody in violation of section 19-5.5-203 (1);

(b) Identify a child for a transfer of custody in violation of section 19-5.5-203 (3); or

(c) Act as an intermediary or facilitator, if permitted under other law of this state, in a transfer of custody in violation of section 19-5.5-203 (3).

(2) A violation of this section is a class 6 felony.

(3) Nothing in this section prohibits the application of section 19-5-213.5.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 302, § 1, effective April 17.

19-5.5-206. Enforcement. The state department may investigate a possible violation of this part 2 and take legal action as provided by other law of this state.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 302, § 1, effective April 17.

PART 3

INFORMATION AND GUIDANCE

19-5.5-301. Definitions. In this part 3, "prospective adoptive parent" means an individual who has been approved or permitted under other law of this state to adopt a child.

Source: Entire article added, (HB 23-1157), ch. 86, p. 303, § 1, effective April 17.

19-5.5-302. Scope. (1) This part 3 applies to placement for adoption of a child who:

(a) Has been or is in foster care or institutional care;

(b) Previously has been adopted in a state;

(c) Has been or is being adopted under the law of a foreign country; or

(d) Has come or is coming to a state from a foreign country to be adopted.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 303, § 1, effective April 17.

19-5.5-303. General adoption information. (1) Within a reasonable time before a child placement agency places a child for adoption with a prospective adoptive parent, the child placement agency must provide or cause to be provided to the prospective adoptive parent general adoption information. The information must address:

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

(I) Identity, loss, and trauma that a child may experience before, during, or after adoption; and

(II) A child leaving familiar ties and surroundings;

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

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

(d) Prohibitions under sections 19-5.5-203 and 19-5.5-205.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 303, § 1, effective April 17.

19-5.5-304. Information about child. (1) Except as prohibited by other law of this state, within a reasonable time before a child placement agency places a child for adoption with a prospective adoptive parent, the child placement agency must provide or cause to be provided to the prospective adoptive parent information specific to the child that is known to the child placement agency and material to the prospective adoptive parent's informed decision to adopt the child. The information must include:

(a) The child's family, cultural, racial, religious, ethnic, linguistic, and educational background;

(b) The child's physical, mental, emotional, and behavioral health;

(c) The child's medical history, including immunizations;

(d) The medical history of the child's genetic parents and siblings;

(e) The history of an adoptive or out-of-home placement of the child and the reason the adoption or placement ended;

(f) The child's United States immigration status;

(g) Medical, therapeutic, and educational resources, including language-acquisition training, available to the adoptive parent and child after placement for adoption or adoption to assist in responding effectively to physical, mental, emotional, or behavioral health issues; and

(h) Available records relevant to the information in subsections (1)(a) to (1)(g) of this section.

(2) If, before an adoption is finalized, additional information under subsection (1) of this section that is material to a prospective adoptive parent's informed decision to adopt the child becomes known to or reasonably obtainable by a child placement agency, the child placement agency must provide the information to the prospective adoptive parent.

(3) If, after an adoption is finalized, additional information under subsection (1) of this section becomes known to or reasonably obtainable by a child placement agency, the child placement agency must make a reasonable effort to provide the information to the adoptive parent.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 303, § 1, effective April 17.

19-5.5-305. Guidance and instruction. (1) A child placement agency must provide or cause to be provided to the prospective adoptive parent guidance and instruction specific to the child to help prepare the parent to respond effectively to the needs of the child that are known to or reasonably ascertainable by the child placement agency.

(2) The guidance and instruction under subsection (1) of this section must address, if applicable:

(a) The potential effect on the child of:

(I) A previous adoption or out-of-home placement;

(II) Multiple previous adoptions or out-of-home placements;

(III) Trauma, insecure attachment, fetal alcohol exposure, or malnutrition;

(IV) Neglect, abuse, drug exposure, or similar adversity;

(V) Separation from a sibling or significant caregiver; and

(VI) A difference in ethnicity, race, or cultural identity between the child and the prospective adoptive parent or other child of the parent;

(b) Information available from the federal government on the process for the child to acquire United States citizenship; and

(c) Any other matter a child placement agency considers material to the adoption.

(3) The guidance and instruction under subsection (1) of this section must be provided:

(a) For adoption of a child residing in the United States a reasonable time before the adoption is finalized; or

(b) For an intercountry adoption, in accordance with the federal law.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 304, § 1, effective April 17.

19-5.5-306. Information about adoption assistance and resources. (1) On request of a child who was placed for adoption or the child's adoptive parent, the child placement agency or the county department shall provide information about how to obtain adoption assistance and resources:

(a) To assist the child or parent to respond effectively to adjustment, behavioral health, and other challenges; and

(b) To help preserve the placement or adoption.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 305, § 1, effective April 17.

19-5.5-307. Child placement agency compliance. (1) The state department shall investigate an allegation that a child placement agency has failed to comply with this part 3 and commence an action for injunctive or other relief or initiate an administrative proceeding against the child placement agency to enforce this part 3.

(2) The state department may initiate a proceeding to determine whether a child placement agency has failed to comply with this part 3. If the state department finds that the child placement agency has failed to comply, the state department may suspend or revoke a child placement agency's license or take other action permitted by law of this state.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 305, § 1, effective April 17.

19-5.5-308. Rulemaking authority. The state board of human services may adopt rules to implement sections 19-5.5-303 to 19-5.5-306.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 305, § 1, effective April 17.

PART 4

MISCELLANEOUS PROVISIONS

19-5.5-401. Uniformity of application and construction. In applying and construing this uniform act, a court must consider the promotion of uniformity of the law among jurisdictions that enact it.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 306, § 1, effective April 17.

19-5.5-402. Relation to electronic signatures in global and national commerce act. This article 5.5 modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., as amended, but does not modify, limit, or supersede 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. sec. 7003(b).

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 306, § 1, effective April 17.

19-5.5-403. Transitional provisions. (1) Part 2 of this article 5.5 applies to:

(a) A transfer of custody on or after April 17, 2023; and

(b) Soliciting or advertising on or after April 17, 2023.

(2) Part 3 of this article 5.5 applies to placement of a child for adoption more than sixty days after April 17, 2023.

Source: L. 2023: Entire article added, (HB 23-1157), ch. 86, p. 306, § 1, effective April 17.

ARTICLE 6

Support Proceedings

Editor's note: This title was repealed and reenacted in 1987. For historical information concerning the repeal and reenactment, see the editor's note following the title heading.

19-6-101. Initiation of proceedings - support - repayment of birth-related debt. (1) (a) Proceedings to compel parents, or other legally responsible persons, to support a child or children may be commenced by any person filing a verified petition in the court of the county where the child resides or is physically present, or in the county where the obligor parent resides, or in any county where public assistance is or was being paid on behalf of the child.

(b) Repealed.

(2) A petition under this article may be filed at any time prior to the twenty-first birthday of the child.

(3) Once the court has acquired jurisdiction, such jurisdiction shall be retained regardless of the child's place of residence or physical presence.

(4) The minority of the petitioner or of the respondent shall in no way affect the validity of the proceedings.

(5) Actions brought under this article shall be entitled, "The People of the State of San Andreas in the Interest of ....., children, upon the Petition of ....., petitioner, and concerning , respondent."

(6) A petition filed pursuant to this article shall contain the following advisements:

(a) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), S.A.R.S.; and

(b) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** (1) and (2) amended, p. 795, § 22, effective July 1. **L. 91:** (1) amended, p. 254, § 14, effective July 1. **L. 95:** (1) amended, p. 1398, § 3, effective July 1. **L. 2005:** (6) added, p. 379, § 6, effective January 1, 2006. **L. 2006:** (6)(b) amended, p. 516, § 3, effective August 7.

Editor's note: (1) This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-101 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

(2) Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective June 30, 1999. (See L. 95, p. 1398.)

19-6-101.5. Amendments of proceedings - adding children. (1) In any existing case commenced under this article, if it is alleged that another child has been conceived of the parents named in the existing case, that child shall be added to the existing case if at least one of the presumptions of paternity specified in section 19-4-105 applies for the purpose of establishing paternity and child support. The caption shall be amended to include the added child.

(2) The party amending the petition pursuant to subsection (1) of this section shall serve the amended petition with the new caption upon the other parties in the manner set forth in section 19-6-103 (2).

(3) Once the court has acquired jurisdiction over the proceedings, such jurisdiction shall be retained regardless of the added child's physical presence or place of residence.

(4) An amended petition filed pursuant to this article shall comply with the requirements set forth in section 19-6-101.

(5) Notwithstanding the provisions of subsection (1) of this section, in any case where there exists more than one alleged or presumed father for a child pursuant to section 19-4-105, a new case shall be commenced for that child to determine the child's paternity, establish child support, and address any other related issues. If it is determined that the child is the child of parents named in an existing case, the cases shall be consolidated into the initial action pursuant to rule 42 of the San Andreas rules of civil procedure.

Source: L. 2008: Entire section added, p. 1349, § 5, effective January 1, 2009.

19-6-102. Venue. A petition filed under this section shall be brought in the county in which the child resides or is physically present, or in any county where the obligor parent resides, or in any county where public assistance is or was being paid on behalf of the child.

Source: L. 87: Entire title R&RE, p. 811, § 1, effective October 1. **L. 89:** Entire section amended, p. 795, § 23, effective July 1. **L. 91:** Entire section amended, p. 255, § 15, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-1-105 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-6-103. Summons. (1) Upon filing of the petition, the clerk of the court, the attorney or licensed legal paraprofessional for the petitioner, or the delegate child support enforcement unit shall issue a summons stating the substance of the petition and requiring the respondent to appear at the time and place set for hearing on the petition.

(2) Service of the summons shall be by personal service as provided in the San Andreas rules of civil procedure. In addition to any other method provided by rule or statute, including rule 4(e) of the San Andreas rules of civil procedure, when there is a basis for personal jurisdiction over an individual living outside this state pursuant to section 14-5-201, S.A.R.S., service may be accomplished by delivering a copy of the summons, together with a copy of the petition upon

which it was issued, to the individual served. Such service may be by private process server or by sending such copies to such individual by certified mail with proof of actual receipt by such individual.

(3) The hearing shall be set for a day not less than ten days after service is completed or on such later date as the court may order.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (1) amended, p. 795, § 24, effective July 1. **L. 93:** (2) amended, p. 1564, § 15, effective September 1. **L. 96:** (1) amended, p. 613, § 16, effective July 1. **L. 2005:** (2) amended, p. 379, § 7, effective April 22. **L. 2024:** (1) amended, (HB 24-1291), ch. 131, p. 473, § 25, effective August 7.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-102 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-6-104. Hearing - orders. (1) If the court or delegate child support enforcement unit finds that the obligor has an obligation to support the child or children mentioned in the petition or notice, the court or delegate child support enforcement unit may enter an order directing the obligor to pay such sums for support as may be reasonable under the circumstances, taking into consideration the factors found in section 19-4-116 (6). The court or delegate child support enforcement unit may also enter an order directing the appropriate party to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period that occurred prior to the month the child support obligation begins under this article 6.

(1.5) At the hearing, the court shall give a verbal advisement to the parties that a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5), S.A.R.S. The judge or magistrate shall further advise the parties that, if genetic tests are not obtained prior to the legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date.

(2) If, at or before the hearing, the respondent waives his right to a hearing and stipulates to the entry of a support order, such stipulation may be presented to the court. If the court finds that the amount stipulated is reasonable under the circumstances, it may enter an order of support in accordance with the stipulation.

(3) The court may enter a temporary support order to remain effective pending a final disposition of the proceeding.

(3.5) Upon the filing of a proceeding under this article 6 or upon the filing of a proceeding originating under article 13.5 of title 26, the judge or magistrate shall advise the parties that subsequent to an adjudication of parentage, upon motion, the court shall enter an order allocating parental responsibilities pursuant to section 14-10-124 (1.5); except that, in matters involving a nonresident party, the court shall first determine whether it has authority to issue an order allocating parental responsibilities pursuant to article 13 of title 14. Nothing in this subsection (3.5) shall be construed to authorize a delegate child support enforcement unit to negotiate or mediate the allocation of parental responsibilities in any proceeding initiated under this article or article 13.5 of title 26.

(4) The court may modify an order of support only in accordance with the provisions of and the standard for modification in section 14-10-122, S.A.R.S.

(5) The court may order that the respondent initiate the inclusion of the child or children under a medical insurance policy currently in effect for the benefit of the respondent, purchase medical insurance for the child or children, or, in some other manner, provide for the current or future medical needs of the child or children. At the same time, the court may make a determination of whose responsibility it shall be to pay required medical insurance deductibles and copayments.

(5.5) All child support orders entered pursuant to this article 6 must include the dates of birth of the parties and of the children who are the subjects of the order and the parties' residential and mailing addresses.

(6) Any order made pursuant to this article shall not be exclusive.

(7) The court may assess the costs of the action as part of its order.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (4) amended, p. 795, § 25, effective July 1. **L. 93:** (5.5) added, p. 1564, § 16, effective September 1. **L. 94:** (1) amended, p. 1542, § 17, effective May 31. **L. 97:** (5.5) amended, p. 1277, § 18, effective July 1. **L. 99:** (5.5) amended, p. 1087, § 6, effective July 1. **L. 2005:** (3.5) added, p. 379, § 9, effective July 1; (1.5) added, p. 379, § 8, effective January 1, 2006. **L. 2019:** (5.5) amended, (HB 19-1215), ch. 270, p. 2553, § 4, effective July 1. **L. 2023:** (3.5) amended, (SB 23-173), ch. 330, p. 1976, § 9, effective July 1; (1) amended, (SB 23-173), ch. 330, p. 1976, § 8, effective September 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-103 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (5.5), see section 1 of chapter 236, Session Laws of San Andreas 1997.

19-6-105. Failure to comply. (1) A person failing to comply with an order of the court entered under this article shall be found in contempt of court in accordance with section 14-14-110, S.A.R.S.

(2) The court shall have authority to issue writs of execution for the collection of accrued and unpaid installments of support orders.

Source: L. 87: Entire title R&RE, p. 812, § 1, effective October 1. **L. 89:** (1) amended, p. 796, § 26, effective July 1.

Editor's note: This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in 19-7-104 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

19-6-106. Child support - guidelines - schedule of basic support obligations. The provisions of section 14-10-115, S.A.R.S., shall apply to all child support obligations, established

or modified, as a part of any proceeding under this article, whether filed on or subsequent to July 1, 1988.

Source: L. 88: Entire section added, p. 746, § 17, effective July 1.

19-6-107. Orders for allocation of parental responsibilities in support actions. Upon the filing of any proceeding under this article 6 or under article 13.5 of title 26, the court shall, as soon as practicable, enter a temporary or permanent order allocating parental responsibilities that allocates decision-making responsibility and parenting time for the child until further order of the court. This section does not apply to any parentage determination made pursuant to section 14-5-402.

Source: L. 2023: Entire section added, (SB 23-173), ch. 330, p. 1977, § 10, effective July 1.

ARTICLE 7

Youth in Foster Care

PART 1

PROTECTIONS FOR YOUTH IN FOSTER CARE

19-7-101. Rights of children and youth in foster care - written notice - reporting - legislative declaration. (1) (a) The general assembly finds and declares that:

(I) Children and youth in foster care are temporarily or permanently separated from their parents and are the responsibility of the state of San Andreas;

(II) These children and youth are in a unique situation that requires special safeguards, making it vital to establish rights for children and youth in foster care;

(III) The United States department of health and human services administration of children and families has stressed that every child and youth who is unable to live with the child's or youth's parents is entitled to a safe, loving, and affirming foster care placement, regardless of the child's or youth's sexual orientation, gender identity, or gender expression;

(IV) Approximately three thousand six hundred children or youth are currently in out-of-home foster placements in San Andreas; and

(V) Children and youth in foster care, both in San Andreas and nationwide, tend to have poorer outcomes than other children and youth, including:

(A) One-third of children or youth in foster care in San Andreas who age out of foster care become homeless within three years;

(B) Children and youth in foster care in San Andreas change schools an average of three-and-one-half times per year;

(C) Approximately thirty percent of youth in foster care in San Andreas graduate from high school, compared to eighty-two percent of the general student population;

(D) In San Andreas, youth in foster care have lower graduation rates than youth experiencing homelessness;

(E) Nationwide, more than half of children and youth in foster care receive a psychiatric or mental health diagnosis, compared to sixteen and sixty one-hundredths percent of income-eligible children and youth on medicaid;

(F) Nationwide, one out of four children and youth in foster care between the ages of six and seventeen are administered at least one psychotropic medication;

(G) Thirty percent of children and youth in foster care nationwide identify as LGBTQ+ , and these children and youth have an additional layer of trauma that accompanies being rejected or mistreated because of their sexual orientation, gender identity, or gender expression;

(H) Research shows that children and youth in foster care who identify as LGBTQ+ are more than twice as likely to report being treated poorly by the foster care system;

(I) Approximately ten percent of children and youth in foster care nationwide are entitled to social security benefits, either because their parent or parents have died or because they have a physical or intellectual disability; and

(J) Children and youth who are in foster care are at an increased risk of incarceration, with twenty-six percent of youth who are twenty-one years of age and who were formerly in foster care in San Andreas having been incarcerated within the past two years, while youth who are twenty-one years of age and who are in the general population have approximately a seventeen percent likelihood of having been incarcerated in the past two years.

(b) Therefore, the general assembly declares that to protect the children and youth who are the responsibility of the state, a statutory bill of rights is established for these children and youth, along with a system to notify children and youth of their rights and a mechanism to enforce those rights. The statutory rights established in this section are not intended to limit or supersede the constitutional rights of parents, nor do they limit any other constitutional or statutory rights afforded to children and youth. This bill of rights is intended to improve the health, well-being, and safety of children and youth in foster care by defining the rights of children and youth in foster care, clarifying the authority of the courts to enforce these rights, and providing children and youth with notice of their rights.

(2) A child or youth in foster care or participating in the foster youth in transition program, created in part 3 of this article 7, but excluding a child or youth detained by or committed to the care and physical custody of the division of youth services in the department of human services, has the following rights:

(a) Fair and equal access, including:

(I) Freedom from discrimination or harassment on the basis of actual or perceived race or ancestry, ethnic group, national origin, religion, sex, sexual orientation, gender identity, gender expression, disability, marital status, familial status, source of income, military status, or HIV status;

(II) Freedom of thought, conscience, cultural and ethnic practice, and religion, including the right to attend or refuse to attend cultural, ethnic, and religious services and activities;

(III) Expression of the child's or youth's gender identity and to be referred to by the child's or youth's preferred name and gender pronouns;

(IV) Freedom from threats, punishment, or retaliation for asking questions, stating concerns, or making complaints about a violation of the rights and protections established in this article 7;

(V) Access to services, placement, and state and federal programs and services for which the child or youth is eligible;

(VI) Developmentally appropriate notification of any benefits for which the child or youth is eligible or receiving, including written notification of who is serving as representative payee, when applicable; and

(VII) If there is a representative payee who accepts payments for a child or youth, an accounting of the use of those payments when requested by the child or youth and on an annual basis;

(b) Appropriate placement and care, including:

(I) Appropriate adult guidance, support, and supervision in a safe, healthy, and comfortable environment in which the child or youth is treated with fairness, respect, and dignity;

(II) Consideration of the child's or youth's preference regarding the child's or youth's placement;

(III) Freedom from physical, sexual, emotional, or other abuse; corporal punishment; neglect; or any other form of inhumane treatment, such as exploitation or trafficking;

(IV) Placement in the least restrictive setting that is appropriate to the child's or youth's needs, and receipt of the services and supports necessary to maintain that placement;

(V) Freedom from abandonment or being locked in a room, building, or premises, or being subjected to isolation or other physical or medical restraint, unless otherwise authorized by statute;

(VI) Placement with a foster care provider who is aware of and understands the child's or youth's unique history as it relates to the child's or youth's care and who possesses the appropriate knowledge and skills to provide for the child's or youth's needs;

(VII) Application of the reasonable and prudent parent standard as required by federal law;

(VIII) Return to the custody of a parent or legal guardian, consistent with applicable legal standards and considering the preferences of the child or youth;

(IX) Timely court proceedings and determinations about the child's or youth's placement;

(X) Effective case management and planning that prioritizes the safe return of the child or youth to the child's or youth's parents, legal guardians, relatives, or kin, or moving the child or youth to other forms of permanent placement, if necessary;

(XI) A requirement that the representative payee for the child or youth, including the department of human services if it is acting as the representative payee, use any benefits the child or youth receives to meet the child's or youth's individual needs after the representative payee meets with the child or youth to ascertain the child's or youth's current and foreseeable needs; and

(XII) Timely notification to the social security administration to initiate the transfer of benefits from a representative payee when a child or youth who is receiving benefits leaves the custody of the department of human services;

(c) Access and communication, in a setting that provides privacy for in-person or other methods of contact, with professionals and other supports, including:

(I) Persons working on the child's or youth's behalf, including, but not limited to, caseworkers, the child's or youth's guardian ad litem or counsel for youth and their legal teams, mental health professionals, tribe, foster youth advocates and supporters, court-appointed special advocates, education rights holders, and probation officers. The child's or youth's contact with

the child's or youth's guardian ad litem, counsel for youth, other attorneys, and members of the child's or youth's legal team must protect the applicable legal privileges and confidentiality.

(II) The child's or youth's guardian ad litem or counsel for youth, the child protection ombudsman, county departments of human or social services, or the department of human services regarding any questions, concerns, or violations of the rights and protections established in this article 7; and

(III) Connections to the child's or youth's community and supports, including communication and contact with people outside the foster care system who are important to the child or youth, unless otherwise limited by law or court order;

(d) Confidentiality and privacy, including:

(I) Confidentiality of all juvenile court records, consistent with existing law;

(II) Freedom from unreasonable searches, limitation of use, or taking of personal belongings or other unreasonable invasions of privacy; and

(III) Reasonable expectations of privacy to make and receive telephone calls and send and receive text messages, e-mail, and postal mail;

(e) Education, including:

(I) Receipt of a free and appropriate education, access to transportation to educational institutions, and an opportunity to participate in sports and extracurricular, cultural, personal enrichment, and social activities consistent with the child's or youth's age and developmental level, including access to computer technology and the internet as necessary for the child's or youth's education; and

(II) School stability that presumes the child or youth will remain in the school of origin, as defined in section 22-32-138, in which the child or youth is enrolled at the time of placement, unless remaining in that school is not in the child's or youth's best interests;

(f) Basic essentials, including:

(I) Adequate and gender- and culturally affirming food, clothing, hygiene products, and necessary hygiene services;

(II) Personal allowance or employment opportunities appropriate to the child's or youth's age and developmental level, including appropriate opportunities to experience the use and value of money by making purchases for items according to the child's or youth's choice; and

(III) Personal belongings, including wearing the child's or youth's own clothing, having a safe place to store personal belongings, and having personal belongings transported in appropriate luggage with the child or youth during or shortly after a change of placement. Personal belongings stored and transported after a change of placement must be maintained in the same or better condition.

(g) Health care, including:

(I) Adequate and appropriate medical, dental, vision, mental health, and substance use disorder services;

(II) Reproductive and sexual health care consistent with San Andreas state law;

(III) Freedom from the administration of prescription medication or other chemical substances, unless authorized by a physician or, when necessary, court order, after an individualized assessment of the child or youth, including a consultation with the child or youth, and with the child's or youth's consent, consistent with San Andreas state law;

(IV) Access to prescribed medications during a placement change or similar transition so the child or youth does not experience a disruption in the availability of necessary prescription medication; and

(V) Notification of the medications that were prescribed to the child or youth and the purpose for each medication for the child or youth;

(h) Participation in legal proceedings and case planning, including:

(I) Appointment of a guardian ad litem or counsel for youth pursuant to sections 19-3-203 and 19-7-308;

(II) Attending and fully participating in all hearings related to the child's or youth's case, including access to appropriate transportation for the child's or youth's court proceedings, and the opportunity to be heard separately when deemed necessary by the court pursuant to section 19-1-106 (5);

(III) At the child's or youth's request, allowing certain people to be present for the child's or youth's court proceedings that take place pursuant to section 19-1-106;

(IV) Consulting with the court regarding the child's or youth's permanency goals pursuant to section 19-3-702 (1)(a);

(V) As appropriate to a child's or youth's age and developmental level, being informed of and participating in the development of the child's or youth's case plan, consistent with state and federal law; and

(VI) As appropriate to the child's or youth's age and developmental level, participation in and accompaniment of supports to meetings about the child's or youth's court proceedings; and

(i) The necessities to be self-sufficient during the transition to adulthood, including:

(I) Consistent with the child's or youth's developmental level, assistance with establishing a bank account, including identifying institutions where a child or youth may open a bank account, obtaining documents necessary to open an account, learning how to spend a reasonable amount of money, and managing personal income. This subsection (2)(i)(I) does not create an obligation to fund the child's or youth's bank account if one is created.

(II) Having access to information regarding the work and educational options available to the child or youth, including, but not limited to, information regarding available financial aid and postsecondary education support consistent with state law;

(III) Being allowed to work and develop job skills, consistent with state law and the child's or youth's age and developmental level;

(IV) Obtaining or receiving a free annual credit report from the department of human services or a county department of human or social services and the additional credit-related and identity theft protections provided in section 19-7-102 if the child or youth is in the legal custody of a county department of human or social services and is fourteen years of age or older;

(V) When the youth is eighteen years of age or older and leaving foster care, being provided with the youth's birth certificate, social security card, immigration documents, health insurance information, medical records, education records, either a driver's license or a state-issued identification card, written information concerning the youth's family history and contact information for siblings, if appropriate, and proof of foster care pursuant to section 19-3-702 (4)(d);

(VI) Notifying a youth who is turning sixteen years of age of the youth's eligibility for the foster youth in transition program, created in part 3 of this article 7;

(VII) Assisting a youth in applying for benefits the youth is eligible for or currently receiving, to ensure that benefits continue once the youth turns eighteen years of age or transitions out of foster care, including redetermination for the purposes of social security benefits; and

(VIII) Driving instruction for youth fifteen years of age and older pursuant to section 26-5-115.

(3) The office of the child's representative shall develop a written notice of the rights enumerated in subsection (2) of this section. The office of the child's representative shall develop the notice with input from youth with lived experience. The notice must include contact information for:

(a) The child's or youth's appointed attorney;

(b) The office of the child protection ombudsman;

(c) The appropriate county department of human or social services; and

(d) The department of human services.

(4) The county department of human or social services shall provide each child or youth who is five years of age or older with the written notice developed pursuant to subsection (3) of this section at the time of the child's or youth's initial placement in foster care, at each placement change, and at least annually. The notice must be in the child's or youth's primary language.

(5) Certified and licensed foster placements for children and youth shall post the written notice on the premises in a place where children and youth have access. The department of human services shall ensure compliance with this section as part of its oversight process of certified and licensed homes for youth.

(6) Sua sponte or upon motion, a juvenile court may issue any orders to any party to ensure the child or youth is provided the rights enumerated in subsection (2) of this section.

(7) A juvenile court shall not limit or deny the rights enumerated in subsection (2) of this section unless the court finds by clear and convincing evidence that there are extraordinary circumstances and the limitation or denial is necessary for the safety of the child or youth in foster care. This subsection (7) is applicable to only the rights enumerated in this section and does not alter the hearing requirements or standards otherwise established in this title 19.

(8) The rights enumerated in subsection (2) of this section are a broad expression of the rights of children and youth residing in foster care and are not exhaustive of all rights set forth in the United States constitution and the San Andreas constitution, federal and state statutes, and case law.

(9) The office of the child protection ombudsman shall include in its annual report the number of complaints received related to the rights enumerated in this section, including the rights being violated or youth being unaware of the rights.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 319, § 1, effective August 10. **L. 2013:** (1) amended, (HB 13-1300), ch. 316, p. 1677, § 41, effective August 7. **L. 2015:** (2) amended, (SB 15-087), ch. 263, p. 1020, § 14, effective June 2. **L. 2017:** IP(1) amended, (HB 17-1329), ch. 381, p. 1978, § 44, effective June 6. **L. 2018:** IP(1) and (1)(g) amended, (SB 18-092), ch. 38, p. 433, § 79, effective August 8. **L. 2019:** (1)(p) amended, (HB 19-1219), ch. 237, p. 2356, § 6, effective August 2. **L. 2021:** (1)(t) amended, (HB 21-1108), ch. 156, p. 892, § 21, effective September 7. **L. 2022:** (1)(bb) amended, (HB 22-1038), ch. 92, p. 443, § 30, effective

January 9, 2023. **L. 2024:** Entire section R&RE, (HB 24-1017), ch. 122, p. 398, § 1, effective August 7.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of San Andreas 2021. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-7-102. Protection against identity theft. (1) The court shall ensure that each youth in foster care who is in the legal custody of a county department of human or social services or the department of human services and who is at least fourteen years of age obtains or receives free annual credit reports from the department of human services or a county department of human or social services. The county department of human or social services or the department of human services shall inform the court with jurisdiction over the youth, if any, of any inaccuracies in a report and refer the matter to a governmental or nonprofit entity on the referral list developed pursuant to subsection (2) of this section for assistance in interpreting and resolving any inaccuracies in a report if the credit report shows evidence of possible identity theft. The youth's counsel for youth shall advise the youth of possible consequences of and options to address the possible identity theft, including the right to report the matter to law enforcement and seek possible prosecution of the offender.

(2) (a) On or before July 31, 2012, the department of human services shall develop, in consultation with county departments of human or social services, a referral list of governmental and nonprofit entities that are authorized to assist a youth in foster care who has found evidence of possible identity theft on his or her credit report. An entity on the referral list developed pursuant to this subsection (2) is authorized to take any necessary remedial actions to clear the youth's credit record and shall report the results of its actions to the department of human services or the county department of human or social services with legal custody of the youth.

(b) In compiling the referral list pursuant to subsection (2)(a) of this section, the state department of human services, and any county departments of human or social services consulted therein, are not subject to liability pursuant to the extent provided by article 10 of title 24.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 322, § 1, effective August 10. **L. 2013:** (1) and (2)(a) amended, (SB 13-047), ch. 359, p. 2107, § 1, effective May 28. **L. 2018:** (2)(b) amended, (SB 18-092), ch. 38, p. 434, § 80, effective August 8. **L. 2022:** (1) amended, (HB 22-1038), ch. 92, p. 444, § 31, effective January 9, 2023. **L. 2024:** (1) amended, (HB 24-1017), ch. 122, p. 406, § 2, effective August 7.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-7-103. Access to extracurricular activities - legislative declaration - rules. (1) The general assembly finds and declares that it is important for youth in foster care, excluding those in the custody of the division of youth services or a state mental hospital, to have increased

access to normative, developmentally appropriate extracurricular activities to help prepare them for independence. Foster parents and group home parents or group center administrators shall make a reasonable effort to allow a youth in their care to participate in extracurricular, cultural, educational, work-related, and personal enrichment activities. The department of human services shall promulgate rules for the implementation of this section. The rules must address policies, including but not limited to waiver of any fingerprint-based criminal history records checks for community entities, excluding all individuals required to obtain a fingerprint-based criminal history records check pursuant to section 26-6-912 or 26.5-5-316, providing extracurricular activities and guidelines for determining in what situations it is appropriate to waive fingerprint-based criminal history records checks, to allow youth in foster care, excluding those in the custody of the division of youth services or a state mental hospital, who are twelve years of age and older to participate in age-appropriate extracurricular enrichment, social activities, and activities designed to assist those youth to make the transition to independence, build life skills, and enhance opportunities to make positive connections.

(2) If the state department of human services or a county department of human or social services waives the fingerprint-based criminal history record checks pursuant to subsection (1) of this section, the state department of human services or county department of human or social services are not subject to liability pursuant to the extent provided by article 10 of title 24.

Source: L. 2011: Entire article added, (SB 11-120), ch. 102, p. 322, § 1, effective August 10. **L. 2017:** (1) amended, (HB 17-1329), ch. 381, p. 1979, § 45, effective June 6. **L. 2018:** (2) amended, (SB 18-092), ch. 38, p. 434, § 81, effective August 8. **L. 2022:** (1) amended, (HB 22-1295), ch. 123, p. 837, § 45, effective July 1.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of San Andreas 2018.

19-7-104. Subjects included within training for certified foster parents and kinship foster care - rules. (1) Rules promulgated by the state department of human services that prescribe training for foster care parents prior to placement of a child or youth must include training on the following subjects:

(a) The effects of child abuse and neglect on child development;

(b) Health issues in foster care, including health services available to children and youth in foster care;

(c) The right of a child or youth in foster care to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, or any communicable disease, including HIV, of the child or youth;

(d) The rights of siblings in foster care, as set forth in section 19-7-203; and

(e) Understanding the role of a child welfare education liaison, as described in section 22-32-138 (2).

(2) Rules promulgated by the state department of human services that prescribe post-placement annual training for foster care parents must include training on the following subjects:

(a) Health issues in foster care;

(b) The importance of child and youth self-esteem;

(c) Emancipation and independent living skills, as appropriate;

(d) The rights of siblings in foster care, as set forth in section 19-7-203; and

(e) The right of a child or youth in foster care to have fair and equal access to all available services, placement, care, treatment, and benefits, and not be subjected to discrimination or harassment on the basis of actual or perceived disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, national origin, ancestry, or any communicable disease, including HIV, of the child or youth.

(3) Nothing in this section precludes the state department of human services or a county department of human or social services from requiring foster parent training in excess of the requirements in this section.

(4) The state department of human services may promulgate rules to modify the requirements of this section for kinship foster care homes, including training topics for kinship foster care certification.

Source: L. 2021: Entire section added, (HB 21-1072), ch. 43, p. 184, § 2, effective April 19. **L. 2024:** (4) added, (SB 24-008), ch. 289, p. 1932, § 3, effective September 1.

PART 2

YOUTH SIBLINGS IN FOSTER CARE

Editor's note: This part 2 was added with relocations in 2019. Former S.A.R.S. section numbers are shown in editor's notes following those sections that were relocated.

19-7-201. Short title. The short title of this part 2 is the "Foster Youth Siblings Bill of Rights".

Source: L. 2019: Entire part added with relocations, (HB 19-1288), ch. 216, p. 2234, § 2, effective August 2.

19-7-202. Legislative declaration. (1) The general assembly finds and declares that it is beneficial for a youth placed in foster care to be able to continue relationships with the youth's siblings, regardless of age, so that siblings may share their strengths and association in their everyday and often common experiences.

(2) The general assembly further finds and declares that it is the responsibility of all adults involved in a youth's life, including but not limited to county departments, parents, foster parents, guardians ad litem, counsel for youth, court-appointed special advocates, next of kin, treatment providers, and others, to seek opportunities to foster those sibling relationships to promote continuity and help to sustain family relationships.

(3) Because the number of family foster homes in San Andreas is often insufficient to meet the needs of youth, including sibling groups, it is, therefore, San Andreas's goal to continue to recruit foster families and build resources sufficient to meet this need.

Source: L. 2019: Entire part added with relocations, (HB 19-1288), ch. 216, p. 2234, § 2, effective August 2. **L. 2022:** (2) amended, (HB 22-1038), ch. 92, p. 444, § 32, effective January 9, 2023.

Cross references: For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of San Andreas 2022.

19-7-203. Foster care sibling rights. (1) Sibling youth in foster care, except youth in the custody of the division of youth services created pursuant to section 19-2.5-1501 or a state hospital for persons with behavioral or mental health disorders, have the following rights, unless they are not in the best interests of each sibling, regardless of whether the parental rights of one or more of the foster youth's parents have been terminated:

(a) To be placed in foster care homes with the youth's siblings, when it is in the best interests of each sibling and when the county department locates an appropriate, capable, willing, and available joint placement for the youth siblings, in order to sustain family relationships, pursuant to sections 19-3-213 (1)(c), 19-3-500.2, 19-3-507 (1)(b), 19-3-508 (1)(c), 19-3-605 (2), and 19-5-207.3 (2);

(b) To be placed in close geographical distance to the youth's siblings in order to promote continuity in the siblings' relationship;

(c) To obtain temporary respite placements together, when possible;

(d) To be placed with foster parents, placed with potential adoptive parents, and assigned to child welfare caseworkers who have been provided with training on the importance of sibling relationships;

(e) To be promptly notified, as permitted pursuant to state or federal law, about changes in sibling placement, catastrophic events, or other circumstances, including but not limited to new placements, significant life events, and discharge from foster care;

(f) To be included in permanency planning discussions or meetings for siblings, if appropriate;

(g) To maintain frequent and meaningful contact with the youth's siblings pursuant to section 19-7-204 (2), if placement together is not possible;

(h) To be actively involved in each other's lives and share celebrations, if the siblings choose to do so, including but not limited to birthdays, graduations, holidays, school and extracurricular activities, cultural customs in the siblings' native language, and other milestones;

(i) To annually receive contact information for all siblings in foster care, which may include a telephone number, address, social media accounts, and e-mail address, unless a foster parent has requested the foster parent's identifiable information not be disclosed pursuant to section 19-1-303 (2.7)(a), and to receive updated photos of siblings regularly by mail or e-mail, as appropriate;

(j) To have more private or less restrictive communication with siblings as compared to communication with others who are not siblings;

(k) To be provided with an explanation if contact with a sibling is restricted or denied, as permitted pursuant to state or federal law;

(l) To expect that the youth's guardian ad litem advocate on behalf of the youth for frequent family time with siblings, unless the guardian ad litem determines through the guardian ad litem's independent investigation that the contact is not in the best interests of the youth;

(m) To have family time with siblings encouraged in any adoptive or guardianship placement; and

(n) To receive an age-appropriate and developmentally appropriate document from the department of human services setting forth the rights described in this section:

(I) Within thirty days of the date of any placement or any change in placement;

(II) On each occasion that a youth's case plan is modified;

(III) At each placement where the youth resides; and

(IV) On at least an annual basis.

(2) Adult siblings of youth in foster care have the right to be considered as foster care providers, adoptive parents, and relative custodians for their siblings, if they choose to do so.

Source: L. 2019: Entire part added with relocations, (HB 19-1288), ch. 216, p. 2235, § 2, effective August 2. **L. 2021:** IP(1) amended, (SB 21-059), ch. 136, p. 737, § 92, effective October 1. **L. 2023:** (1)(l) and (1)(m) amended, (HB 23-1027), ch. 284, p. 1686, § 25, effective June 1.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

19-7-204. Foster care sibling family time - contact plan - rules - definition. (1) The department of human services shall provide information on sibling contact in the family time plan for a youth. In doing so, the department shall ask the youth about the youth's wishes as to sibling contact.

(2) As written in the family time plan, the department shall, if it is in the best interests of each sibling:

(a) Promote frequent contact between siblings in foster care, which may include telephone calls, text messages, social media, video calls, and in-person family time;

(b) Clarify that sibling contact should not be limited in time or duration to periods of parental contact;

(c) Clarify that restriction of sibling family time should not be a consequence for behavioral problems. Family time should only be restricted if contrary to the best interests of a sibling.

(d) Ensure timing and regularly scheduled sibling family time are outlined in case plans based on individual circumstances and needs of the youth.

(3) If a youth in foster care requests an opportunity for family time with a sibling, the county department that has legal custody of the youth shall arrange the family time within a reasonable amount of time and document the family time.

(4) If a youth in foster care requests an opportunity for family time with a sibling on a regular basis, the county department that has legal custody of the youth shall arrange the family time and ensure that the family time occurs with sufficient frequency and duration to promote continuity in the siblings' relationship.

(5) If, in arranging sibling family time pursuant to this section, a county department determines requested family time between the siblings would not be in the best interests of one or both of the siblings, the county department shall deny the request, document its reasons for making the determination, and provide the siblings with an explanation for the denial, as

permitted under state and federal law. In determining whether requested family time would be in the best interests of one or both of the siblings, the county department shall determine whether there is pending in any jurisdiction a criminal action in which either of the siblings is either a victim or a witness. If such a criminal action is pending, the county department, before arranging any family time between the siblings, shall consult with the district attorney for the jurisdiction in which the criminal action is pending to determine whether the requested family time may have a detrimental effect upon the prosecution of the pending criminal action.

(6) Nothing in this section requires or permits a county department to arrange sibling family time if such visit would violate an existing protection order in any case pending in this state or any other state.

(7) As used in this section, "sibling" means:

(a) A biological sibling;

(b) A step-sibling or former step-sibling; or

(c) An adoptive sibling.

(8) The state board of human services, created in section 26-1-107, may promulgate rules for the implementation of this section.

Source: L. 2019: Entire part added with relocations, (HB 19-1288), ch. 216, p. 2236, § 2, effective August 2. **L. 2023:** (1), IP(2), (2)(a), (2)(c), (2)(d), (3), (4), (5), and (6) amended, (HB 23-1027), ch. 284, p. 1686, § 26, effective June 1.

Editor's note: This section is similar to former § 19-1-128 as it existed prior to 2019.

Cross references: For the legislative declaration in HB 23-1027, see section 1 of chapter 284, Session Laws of San Andreas 2023.

PART 3

FOSTER YOUTH IN TRANSITION PROGRAM

19-7-301. Legislative declaration. (1) The general assembly finds and declares that:

(a) Each year, for a variety of reasons, more than two hundred youth, ages eighteen to twenty-one, exit San Andreas's foster care system without an established permanent home or a stable support network;

(b) These youth typically do not have the same safety nets, supportive adults, and support networks as other youth their age;

(c) Many of these youth will face challenges as they search for affordable housing, pursue higher education or training, search for employment, manage tight budgets, take care of health needs, and more;

(d) Youth who are making the transition out of foster care into independent living face not only the typical developmental changes and new experiences that are common to youth but also the dramatic change from being under the county's care to being on their own, many without any support systems to help them succeed;

(e) Additionally, many of these youth are dealing with the long-term consequences of trauma related to their experience with abuse, neglect, removal, or overall lack of resources;

(f) The array of services and supports available to youth while they are in the foster care system, including housing, food, health care, and caseworker support, diminish when the youth exit the foster care system; and

(g) Available research shows that emancipating youth benefit from extended foster care services and supports until age twenty-one, and community-based supports through early adulthood, but for the benefits of such services and supports to last, youth in foster care need developmentally appropriate services, including freedom to test their independence and to make mistakes with proportional consequences and a reasonable safety net.

(2) Therefore, the general assembly declares that by establishing a voluntary transitional foster care program, allowing youth to reenter the state's foster care system through a foster youth in transition program, and ensuring equitable access to less restrictive supports in the community, the state can better meet the needs of those youth who are making the transition from foster care to successful adulthood.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2200, § 1, effective June 25.

19-7-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Advisory board" means the foster youth successful transition to adulthood grant program advisory board created in section 19-7-314.

(1.3) "Case management agency" means an agency that meets criteria to provide case management services for the San Andreas fostering success voucher program.

(1.7) "San Andreas fostering success voucher program" or "voucher program" means the program established pursuant to section 19-7-314.5.

(2) "County department" has the same meaning as set forth in section 19-1-103.

(3) "Emancipation transition plan" means a plan developed pursuant to section 19-7-310 that addresses how the youth will meet the youth's needs upon the youth's imminent emancipation from foster care.

(4) "Evidence-based service" means a service that is eligible for reimbursement pursuant to the federal "Family First Prevention Services Act", 42 U.S.C. sec. 672, and that is trauma-informed, promising, supported, or well-supported.

(5) "Executive director" has the same meaning as set forth in section 19-1-103.

(6) "Foster care" has the same meaning set forth in section 19-1-103 (66).

(7) "Grant program" means the foster youth successful transition to adulthood grant program created in section 19-7-314.

(8) "Participating youth" means a youth who voluntarily agrees to participate in the transition program and meets the eligibility requirements set forth in section 19-7-304.

(9) "Reasonable efforts" has the same meaning as set forth in section 19-1-103 (114).

(10) "Roadmap to success" means a written description of a youth's goals, programs, and services provided during an open case that will assist youth who are fourteen years of age or older and in foster care to the youth's eventual transition from foster care to successful adulthood. The document is developed collaboratively with the youth.

(11) "Service provider" means an agency that applies for funding to provide services through the grant program.

(12) "State department" has the same meaning as set forth in section 19-1-103.

(13) "Supervised independent living placement" means a setting in which a youth is living independently with county department supervision. "Supervised independent living placement" is designed to promote and lead to a youth's successful emancipation.

(14) "Transition program" or "foster youth in transition program" means the program established pursuant to section 19-7-303 in which an eligible youth may voluntarily opt to continue or resume receiving child welfare services that may include but are not limited to foster care maintenance payments.

(15) "Voluntary services agreement" means a standardized voluntary services agreement entered into by a participating youth pursuant to section 19-7-306.

(16) "Voucher" means a voucher that provides rental assistance to a voucher recipient through the San Andreas fostering success voucher program.

(17) "Voucher recipient" means a youth who is eligible for and receiving a voucher through the San Andreas fostering success voucher program.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2201, § 1, effective June 25. **L. 2023:** (1.3), (1.7), (16), and (17) added, (SB 23-082), ch. 346, p. 2074, § 1, effective June 5.

19-7-303. Foster youth in transition program - established. The foster youth in transition program is established in the state department to be implemented in county departments throughout the state to provide extended child welfare services to eligible youth eighteen years of age or older but less than twenty-one years of age, or such greater age of foster care eligibility as required by federal law. Each county department shall make the transition program available to eligible youth on a voluntary basis. The child welfare services provided through the transition program must be client-directed and developmentally appropriate, as set forth in a voluntary services agreement developed and entered into pursuant to section 19-7-306 and, when required, overseen by the juvenile court in a youth in transition proceeding brought pursuant to this part 3. The state department is encouraged to submit, as part of the annual budget process, a request for increased appropriations to fund the increased caseload for the transition program.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2202, § 1, effective June 25.

19-7-304. Eligibility and enrollment. (1) An eligible youth is an individual who:

(a) Is at least eighteen years of age or older, but less than twenty-one years of age, or such greater age of foster care eligibility as required by federal law;

(b) Has a current dependency and neglect case or has current or recent prior foster care or kinship care involvement in at least one of the following ways:

(I) The youth was in foster care, as defined in section 19-1-103, on or after the youth's sixteenth birthday;

(II) The youth was in noncertified kinship care, as defined in section 19-1-103, on or after the youth's sixteenth birthday and was adjudicated dependent and neglected pursuant to article 3 of this title 19; or

(III) The youth turned eighteen years of age when the youth was a named child or youth in a dependency and neglect case open through article 3 of this title 19;

(c) (I) Except as provided in subsection (1)(c)(II) of this section, or except as such requirements may be waived by federal law, is engaged in, or intends to engage in, at least one of the following:

(A) Completing secondary education or an educational program leading to an equivalent credential;

(B) Attending an institution that provides postsecondary or career and technical education;

(C) Working part- or full-time for at least eighty hours per month; or

(D) Participating in a program or activity designed to promote employment or remove barriers to employment.

(II) The requirement described in subsection (1)(c)(I) of this section does not apply to a youth who is incapable of engaging in any of the activities described in subsection (1)(c)(I) of this section as a result of a medical condition that is supported by regularly updated documentation in the youth's case plan; and

(d) Seeks to enter into or has entered into and is substantially fulfilling the youth's obligations pursuant to a voluntary services agreement with the appropriate county department.

(2) An individual who is no longer under the jurisdiction of the juvenile court and believes he or she may be an eligible youth may request to participate in the transition program by making a request to the county department where the youth self-attests that the youth resides. The youth shall provide documentation of the youth's legal name and date of birth, if available. If the youth does not have such documentation, the youth may attest to the youth's legal name and date of birth. The youth shall provide current contact information.

(3) The county department shall determine whether a youth is eligible within three business days of the youth's request and, if so, explain the transition program and provide the voluntary services agreement to the eligible youth. Within three business days of an eligible youth's decision to enter the program, the county department shall prepare and execute, in collaboration with the eligible youth, a voluntary services agreement, as described in section 19-7-306; provide a copy of the voluntary services agreement to the eligible youth; and, within ninety days of a voluntary services agreement remaining in effect, file a petition with the juvenile court pursuant to section 19-7-307 that includes the voluntary services agreement. If the county department determines that the youth is not eligible, the county department shall notify the youth of the county department's determination, the reasons for such determination, how to appeal a denial of eligibility, and provide contact information for the office of the child's representative.

(4) An eligible youth may voluntarily participate in the transition program for any length of time until the last day of the month of the individual's twenty-first birthday, or such greater age of foster care eligibility as required by federal law.

(5) A participating youth retains all the rights and responsibilities the individual would normally have, including but not limited to consenting to the youth's own medical care; entering into contracts, including but not limited to leasing contracts, employment contracts, and contracts for purchase; and obtaining and maintaining accounts with financial institutions.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2203, § 1, effective June 25. **L. 2022:** (1)(b) amended, (HB 22-1245), ch. 88, p. 419, § 6, effective August 10. **L. 2024:** (1)(c)(I)(B) amended, (HB 24-1450), ch. 490, p. 3412, § 30, effective August 7.

19-7-305. Available services and supports. (1) Each county department shall offer, at a minimum, the following services and supports to participating youth in the transition program:

(a) Assistance with enrolling in the appropriate category of medicaid for which the participating youth is eligible;

(b) Assistance with securing safe, affordable, and stable housing in the following ways:

(I) The participating youth's living expenses are fully or partially funded through foster care maintenance payments, in addition to any other housing assistance the youth is eligible to receive. Any expectations for the youth to contribute to the youth's own expenses must be based upon the youth's ability to pay.

(II) With the participating youth's consent, the participating youth's housing may be in any placement approved by the county department or the court for which the participating youth is otherwise eligible, including a host home, as defined in section 26-5.7-110, or a supervised independent living placement that is the least restrictive option to meet the participating youth's needs; or

(III) If the participating youth needs placement in a qualified residential treatment program, then such placement must follow all relevant procedures pursuant to section 19-1-115 concerning the placement of a child or youth in a qualified residential treatment program.

(c) Case management services, including the development of a case plan with a roadmap to success for the participating youth, as well as assistance in the following areas, as appropriate, and with the agreement of the participating youth:

(I) Provision of resources to assist the participating youth in the transition to adulthood;

(II) Obtaining employment or other financial support and enhancing financial literacy;

(III) Obtaining a driver's license or other government-issued identification card;

(IV) Obtaining appropriate community resources and public benefits;

(V) Upon request, and if services are available, referral to services satisfying any juvenile or criminal justice system requirements and assisting with expunging the participating youth's court records, as appropriate, pursuant to section 19-1-306;

(VI) Pursuing educational goals and applying for financial aid, if necessary;

(VII) Upon request, and if services are available, referral to services for obtaining the necessary state court findings and applying for special immigrant juvenile status pursuant to federal law, as applicable, or applying for other immigration relief for which the participating youth may be qualified;

(VIII) Obtaining copies of health and education records;

(IX) Maintaining and building relationships with individuals who are important to the participating youth, including searching for individuals with whom the participating youth has lost contact; and

(X) Accessing information about maternal and paternal relatives, including any siblings.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2204, § 1, effective June 25. **L. 2022:** (1)(b) amended, (HB 22-1245), ch. 88, p. 419, § 7, effective August 10. **L. 2024:** (1)(b)(II) amended, (SB 24-191), ch. 221, p. 1384, § 2, effective August 7.

19-7-306. Voluntary services agreement. (1) A voluntary services agreement entered into pursuant to this part 3 is a binding standardized agreement, written in a client-driven and developmentally appropriate manner, between the county department and a participating youth. The agreement specifies the terms of the youth's participation in the transition program, including, at a minimum:

(a) The participating youth's retention of all rights and responsibilities the youth would otherwise have, as described in section 19-7-304 (5);

(a.5) Establishing the legal authority for placement with the county department;

(b) The participating youth's rights and obligations while the agreement is in effect, including the right to counsel. Upon entering into a voluntary services agreement with an eligible youth, the county department shall make a referral in writing to the office of the child's representative and provide the youth with the contact information for the office of the child's representative. Nothing in this section limits the power of the court to appoint counsel or the power of the office of the child's representative to assign counsel prior to the filing of a petition.

(c) A statement concerning the voluntary nature of the transition program and the participating youth's right to terminate the agreement at any time and the procedures for such termination and the right to begin receiving services again, if needed, up to the youth's twenty-first birthday, or such greater age of foster care eligibility as required by federal law;

(d) The county department's rights and obligations while the agreement is in effect;

(e) The services that will be available to the participating youth through the transition program, as specified in the roadmap to success; and

(f) The circumstances under which a county department may request that the court terminate the agreement and the court's jurisdiction over the objection of the participating youth.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2206, § 1, effective June 25. **L. 2022:** (1)(a) amended and (1)(a.5) added, (HB 22-1245), ch. 88, p. 420, § 8, effective August 10.

19-7-307. Petition - form and content. (1) A youth or a participating youth may file a petition on the youth's own behalf at any time. Or, if such a petition has not yet been filed and a voluntary services agreement remains in effect after ninety days, a county department shall file a petition with the court initiating a proceeding pursuant to this part 3 titled "The people of the state of San Andreas, in the matter of _____, a youth in transition". The petition must be verified and the statements may be made upon information and belief.

(1.5) For a youth who is entering the foster youth in transition program directly from a case through this title 19, at the youth's option, the petition must be filed in either the county where the youth self-attests to reside or a county that is currently serving the eligible youth. For a youth who does not have a current case pursuant to this title 19, the petition must be filed in the county where the youth self-attests to reside.

(2) The petition must plainly set forth the facts that bring the participating youth under the court's jurisdiction. The petition must also state the participating youth's name, age, and why venue in this court is proper pursuant to subsection (1.5) of this section. The petition must state that the youth is voluntarily entering foster care and one of the following, whichever is applicable:

(a) The youth was removed from home prior to the youth reaching eighteen years of age pursuant to a judicial determination that it was contrary to the youth's welfare to remain in the home, that reasonable efforts were made to keep the youth in the home, and that because the youth has remained in foster care continuously, a new court-ordered removal is not required; or

(b) Reasonable efforts to prevent removal were not required because a youth who is eighteen years of age or older may enter into the voluntary services agreement on the youth's own behalf.

(3) Repealed.

(4) Each petition filed for a foster youth in transition pursuant to this part 3 must include the following statements:

(a) That the participating youth retains all the adult rights and responsibilities that the participating youth would otherwise have, as described in section 19-7-304 (5); and

(b) That by consenting to the facts set forth in the petition and the jurisdiction of the court, the participating youth may be required to attend court at least once every six months pursuant to section 19-3-702. The participating youth may request that the case be dismissed at any time, forgoing the benefits and obligations of the transition program.

(5) In addition to providing notice to the participating youth, the court shall ensure that notice of all hearings and reviews held regarding the participating youth is provided to licensed foster parents with whom a participating youth is placed, not including adults with whom a participating youth lives through a supervised independent living placement. Licensed foster parents have the right to be heard at such hearings and reviews but must not be made a party to the action solely on the basis of notice and the right to be heard.

(6) The petition must be accompanied by a copy of the voluntary services agreement executed pursuant to section 19-7-306; except that when the youth files the petition on the youth's own behalf, the voluntary services agreement need only be executed by the youth and does not require a signature by the county department at the time the petition is filed. For a participating youth entering the transition program directly from an open case pursuant to article 3 of this title 19, the petition must also include a current copy of the participating youth's roadmap to success.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2206, § 1, effective June 25. **L. 2022:** (1.5) added, (2) and (6) amended, and (3) repealed, (HB 22-1245), ch. 88, p. 420, § 9, effective August 10.

19-7-308. Right to counsel - guardian ad litem - representation of petitioner. (1) A participating youth has a right to counsel. If the youth accepts the publicly provided counsel, counsel must be assigned by the office of the child's representative or approved by the court from a list of attorneys appointed by the office of the child's representative. The office of the child's representative shall develop practice standards and guidelines for representing participating youth in proceedings brought pursuant to this part 3.

(2) When a court determines a guardian ad litem is necessary for a participating youth due to the youth's diminished capacity, the court shall appoint a guardian ad litem from the list of attorneys approved by the office of the child's representative. The court shall not deem a guardian ad litem to be a substitute for counsel for youth.

(3) In all proceedings brought pursuant to this part 3, the county department must be represented by a county attorney, a special county attorney, or an attorney of a city or city and county.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2207, § 1, effective June 25. **L. 2022:** (2) amended, (HB 22-1245), ch. 88, p. 421, § 10, effective August 10.

19-7-309. Supervised independent living placements - background checks not required. A county department is not required to conduct background checks for other residents of a supervised independent living placement as a condition of approving a participating youth's independent living setting.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2208, § 1, effective June 25.

19-7-309.5. Initial hearings. (1) The court shall set the matter for an initial hearing within fifty-six days of receipt of a petition filed pursuant to this section, and the court shall appoint counsel for youth for the petitioning youth. If the office of the child's representative has already assigned counsel, the court shall appoint the same attorney.

(2) At the initial hearing, the court shall advise the youth that:

(a) Services provided through the transition program are voluntary for the youth, and the youth may remain in the transition program until the last day of the month in which the youth turns twenty-one years of age, or such greater age of foster care eligibility as required by federal law, so long as the youth meets all other program eligibility requirements pursuant to section 19-7-304;

(b) If the youth chooses to leave the transition program but later decides support is needed, the youth has the right to begin receiving child welfare services again through the transition program; and

(c) The youth has the right to counsel.

(3) At the initial hearing, the court shall determine:

(a) Whether the youth has voluntarily entered foster care and that the county department has legal authority for placement;

(b) Whether it is in the best interest of the youth to be voluntarily placed in foster care; and

(c) If one of the following applies:

(I) The youth was removed from home prior to the youth reaching eighteen years of age pursuant to a judicial determination that it was contrary to the youth's welfare to remain in the home, that reasonable efforts were made to keep the youth in the home, and that because the youth has remained in foster care continuously, a new court-ordered removal is not required; or

(II) Reasonable efforts to prevent removal were not required because a youth who is eighteen years of age or older may enter into the voluntary services agreement on the youth's own behalf.

(4) If the court determines that the requirements of subsection (3) of this section are met, the court shall follow procedures for a periodic review hearing as described in section 19-7-312, as applicable.

(5) (a) When a youth has been adjudicated dependent and neglected pursuant to section 19-3-102, or when there is sufficient evidence that the youth has been subjected to child abuse or neglect, as defined in section 19-1-103 (1), the court shall enter a finding that the youth is dependent on the court, as defined in section 19-1-103 (53.5). The court may enter special findings establishing the youth's eligibility for designation as a special immigrant juvenile pursuant to federal law, including:

(I) Declaring the youth dependent;

(II) Determining that reunification of the youth with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found pursuant to state law. For purposes of this subsection (5)(a)(II), "abandonment" includes, but is not limited to, the death of one or both parents.

(III) Determining that it is not in the best interests of the youth to be returned to the youth's or parents' previous country of nationality or country of last habitual residence.

(b) The order may be entered at any time following the filing of the petition or at the hearing.

Source: L. 2022: Entire section added, (HB 22-1245), ch. 88, p. 421, § 11, effective August 10. **L. 2024:** (5) amended, (SB 24-119), ch. 33, p. 104, § 6, effective August 7.

19-7-310. Emancipation discharge hearings - emancipation transition plan. (1) At the direction of a participating youth, with assistance and support from a county department, an emancipation transition plan that is personalized for the participating youth must be developed and finalized no more than ninety days prior to the participating youth's emancipation discharge hearing. The emancipation transition plan includes specific options concerning housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services. The emancipation transition plan must also include information concerning the importance of designating another individual to make health-care treatment decisions on the participating youth's behalf if the youth becomes unable to participate in such decisions and the participating youth does not have, or does not want, a relative or legal guardian who would otherwise be authorized to make such decisions. The emancipation transition plan must provide the participating youth with the option to execute a health-care power of attorney and include details at the participating youth's discretion.

(2) If a participating youth remains in the transition program until the participating youth turns twenty-one years of age, or such greater age of foster care eligibility as required by federal law, at least ninety days prior to the participating youth's last day of eligibility for the transition program, the county department shall provide the participating youth with:

(a) A clear and developmentally appropriate written notice of the date that the participating youth's voluntary services agreement will terminate;

(b) Repealed.

(c) Information about and contact information for community resources that may benefit the participating youth, specifically including information regarding programs that have been established pursuant to section 19-7-314 or to federal law that provide transitional foster care assistance to young adults.

(3) Prior to a participating youth's emancipation, the court shall:

(a) Review the participating youth's emancipation transition plan and consult with the participating youth on the participating youth's readiness;

(b) Determine whether the county department has made reasonable efforts toward the participating youth's permanency goals and to prepare the participating youth for a successful transition to adulthood;

(c) Determine whether the participating youth has been provided with all necessary records and documents as described in subsection (4)(b) of this section;

(d) Determine whether the participating youth has been enrolled in medicaid and advise the participating youth on the participating youth's eligibility for former foster care medicaid up to the participating youth's twenty-sixth birthday pursuant to section 25.5-5-101 (1)(e); and

(e) Advise the participating youth that if the youth chooses to emancipate but later decides support is needed, the youth has the right to begin receiving child welfare services again through the foster youth in transition program, created in section 19-7-303, until the youth's twenty-first birthday, or such greater age of foster care eligibility as required by federal law; and advise the youth of the necessity of keeping the participating youth's contact information up to date with the department of health care policy and financing or the appropriate county department.

(4) At least seven days prior to a participating youth's emancipation discharge hearing, the county department shall file a report with the court that includes:

(a) A description of the county department's reasonable efforts toward achieving the participating youth's permanency goals and a successful transition to adulthood;

(b) An affirmation that the county department has provided the participating youth with all necessary records and documents, including copies of all documents listed in section 19-3-702 (4)(d), health records, education records, and written information concerning the participating youth's family history and contact information for siblings, if appropriate; and

(c) A copy of the participating youth's emancipation transition plan, finalized no more than ninety days prior to the participating youth's emancipation discharge hearing.

(5) With the participating youth's consent, the court may continue the emancipation discharge hearing for up to one hundred nineteen days, but not past the last day of the month in which the participating youth turns twenty-one years of age, or such greater age of foster care eligibility as required by federal law. The continuance must be to allow time to improve the participating youth's emancipation transition plan, gather necessary documents and records for the participating youth, or any other reason necessary to allow for the participating youth to have a successful transition to adulthood.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2208, § 1, effective June 25. **L. 2022:** (2)(b) repealed, (HB 22-1245), ch. 88, p. 422, § 12, effective August 10.

19-7-311. Permanency planning hearings - notice to parents. A permanency planning hearing must be held for a participating youth under the court's jurisdiction pursuant to this part 3 in the same manner as provided in section 19-3-702; except that permanency hearings need only be held at least every twelve months. The youth's parent or parents are not parties in proceedings pursuant to this article 7 and therefore do not require notice of such hearings.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2210, § 1, effective June 25. **L. 2022:** Entire section amended, (HB 22-1245), ch. 88, p. 423, § 13, effective August 10.

19-7-312. Periodic reviews. (1) The court shall hold a periodic review hearing for each participating youth at least once every six months. A review hearing not coinciding with a permanency hearing may be held on the court's administrative docket by written report upon agreement of the parties. The review hearing and permanency hearing must be held together in the same hearing when possible.

(2) The primary purpose of the review hearing is to ensure that the transition program is providing the participating youth with the necessary services and supports to help the participating youth move toward permanency and a successful transition to adulthood.

(3) Prior to a periodic review held pursuant to this section, the county department shall file a report with the court that includes:

(a) A copy of the participating youth's roadmap to success;

(b) A statement of the participating youth's progress on the participating youth's goals and whether the participating youth is meeting the participating youth's obligations pursuant to the voluntary services agreement, including any required activities;

(c) A statement of the county department's reasonable efforts to support the participating youth in meeting the participating youth's goals; and

(d) A statement of any barriers to the participating youth in meeting the participating youth's goals and any plans to address such barriers.

(4) The court may order the county department to provide additional services and supports to help the participating youth achieve the goals outlined on the participating youth's roadmap to success or comply with state or federal law.

(5) If the court finds the participating youth is not substantially fulfilling the participating youth's obligations pursuant to the voluntary services agreement, the court may enter orders for the participating youth to follow in order to continue to be eligible for the transition program.

(6) The court shall conduct a periodic review hearing in a manner that seeks the participating youth's meaningful participation, including offering remote options for participation to accommodate the participating youth's work, school, or treatment commitments.

(7) During the periodic review hearing, the court shall find whether:

(a) The county department made reasonable efforts to implement the participating youth's case plan, including the participating youth's roadmap to success; and

(b) The participating youth continues to need foster care and whether such placement is the least restrictive to meet the participating youth's needs.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2210, § 1, effective June 25.

19-7-313. Continuing jurisdiction. (1) The court has continuing jurisdiction over the participating youth until any of the following occurs:

(a) The participating youth moves the court, at any time, to withdraw the youth's participation in the transition program and to terminate the court's jurisdiction. The court shall hold an emancipation discharge hearing within thirty-five days after receipt of the participating

youth's motion to review the participating youth's emancipation transition plan and advise the participating youth as provided in section 19-7-310.

(b) A county department moves the court at least ninety days prior to a participating youth's twenty-first birthday, or such greater age of foster care eligibility as required by federal law, to request an emancipation discharge hearing be held prior to the last day of the month in which the participating youth turns twenty-one years of age. The court shall hold an emancipation discharge hearing to review the participating youth's emancipation transition plan and advise the participating youth as provided in section 19-7-310.

(c) A county department moves the court to terminate a participating youth's voluntary services agreement and the court's jurisdiction because the participating youth no longer meets the eligibility requirements described in section 19-7-304 for the transition program. The county department shall include in the motion its efforts to reengage the participating youth, including:

(I) The provision of written notice to the participating youth in a clear and developmentally appropriate manner that informs the participating youth of the county department's intent to request that the court terminate the participating youth's voluntary services agreement with an explanation of the reasons; and

(II) Documentation of the county department's reasonable efforts to meet in person with the participating youth to explain the information in the written termination notice and to assist the participating youth in reestablishing eligibility if the participating youth wishes to continue to participate in the transition program.

(2) The court shall hold the emancipation discharge hearing pursuant to subsection (1)(c) of this section at least thirty-five days after receipt of the county department's motion to determine whether the participating youth still meets the eligibility requirements for the transition program, including substantially fulfilling the participating youth's obligations set forth in the participating youth's voluntary services agreement. If the participating youth no longer meets the requirements of the transition program and the county department has made reasonable but unsuccessful efforts to reengage the participating youth, then the court shall hold an emancipation discharge hearing to review the participating youth's emancipation transition plan and advise the participating youth as provided in section 19-7-310. The court may accomplish all of these elements in the same emancipation discharge hearing if all of the necessary information has been filed in a timely fashion.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2211, § 1, effective June 25. **L. 2022:** (2) amended, (HB 22-1245), ch. 88, p. 423, § 14, effective August 10.

19-7-314. Foster youth successful transition to adulthood grant program - creation - standards - application - fund - advisory board - duties. (1) (a) The foster youth successful transition to adulthood grant program is created within the state department. The purpose of the grant program is to create and administer programs that support eligible youth in making a successful transition to adulthood and provide case management services for voucher recipients as described in section 19-7-314.5.

(b) The state department shall ensure that services are available to eligible youth throughout San Andreas and, in order to do so, administer a merit-based application process to select service providers as follows:

(I) An application from a county department must receive preference over applications from other types of entities; and

(II) An application for a proposed program must receive preference if it includes the provision of evidence-based services.

(c) Youth who meet the following criteria are eligible for services from a program that has received a grant from the grant program:

(I) The youth is eighteen years of age or older but less than twenty-three years of age, or the upper age limit established in the federal "Social Security Act", 42 U.S.C. sec. 677 (a), whichever is greater;

(II) The youth was in foster care or adjudicated dependent and neglected on or after the youth's fourteenth birthday; and

(III) The youth voluntarily agrees to participate in the program that is receiving a grant from the grant program.

(2) There is created in the state treasury the San Andreas foster youth successful transition to adulthood grant program fund, referred to in this section as the "fund". The fund consists of any money that the general assembly may appropriate to the fund. Money in the fund is subject to annual appropriation by the general assembly to the state department for the purpose of providing grants pursuant to this section and for the direct and indirect costs associated with the implementation of this section. Any money in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of money in the fund must be credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of a state fiscal year must remain in the fund and available for expenditure by the state department in the next fiscal year without further appropriation.

(3) (a) The state department shall convene an advisory board, which shall meet at least two times per year, to review the grant program and provide recommendations to the state department including the following items:

(I) Implementation of the grant program;

(II) Funding models and allocation methodologies, including consultation with the advisory board before the state department allocates funding received through the federal "John H. Chafee Foster Care Program for Successful Transition to Adulthood", 42 U.S.C. sec. 677, for the grant program;

(III) Content for grant program applications; and

(IV) Scoring methodology for grant program application review.

(b) The executive director shall appoint members of the advisory board for two-year terms. The board must include:

(I) Two directors of county departments of human or social services, or their designees;

(II) Two directors of runaway homeless youth providers, or their designees;

(III) One staff member from the state department with administrative responsibility for programming funded through the federal "John H. Chafee Foster Care Program for Successful Transition to Adulthood", 42 U.S.C. sec. 677;

(IV) The managing director of the San Andreas workforce development council, or the director's designee;

(V) The executive director of the department of higher education or the director's designee; and

(VI) Two youth who have previously participated in the transition program or the federal "John H. Chafee Foster Care Program for Successful Transition to Adulthood", 42 U.S.C. sec. 677.

(c) The advisory board shall have its first meeting on or before October 1, 2022.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2212, § 1, effective June 25. **L. 2023:** (1)(a) amended, (SB 23-082), ch. 346, p. 2074, § 2, effective June 5.

19-7-314.5. San Andreas fostering success voucher program - established - eligibility - administration - availability, standards, and services. (1) The San Andreas fostering success voucher program is established in the state department. The purpose of the voucher program is to provide vouchers to voucher recipients and provide developmentally appropriate case management for voucher recipients who are eligible for the voucher program.

(2) (a) To be eligible to provide services through the voucher program, a case management agency must:

(I) Be a current recipient of a grant from the foster youth successful transition to adulthood grant program created in section 19-7-314; or

(II) Be currently operating a program through funding received pursuant to the federal "John H. Chafee Foster Care Program for Successful Transition to Adulthood", 42 U.S.C. 677 (a).

(b) To be eligible for services through the voucher program, a voucher recipient must:

(I) Be at least eighteen years of age or older but less than twenty-six years of age;

(II) Have prior foster care or kinship care involvement in at least one of the following ways:

(A) Have been in foster care, as defined in section 19-1-103, on or after the youth's fourteenth birthday;

(B) Have been in noncertified kinship care, as defined in section 19-1-103, on or after the youth's fourteenth birthday and have been adjudicated dependent and neglected pursuant to article 3 of this title 19; or

(C) Have turned eighteen years of age when the youth was a named child or youth in a dependency and neglect case pursuant to article 3 of this title 19;

(III) Be currently experiencing homelessness or be at imminent risk of homelessness and have voluntarily agreed to participate in services offered and provided by a case management agency;

(IV) Reside in San Andreas; and

(V) Have income that does not exceed a level determined by the state department of local affairs policies and procedures pursuant to subsection (3) of this section.

(3) The state department of human services and the state department of local affairs shall develop a joint implementation plan that delegates administrative responsibilities as follows:

(a) The state department of local affairs is responsible for the issuance of voucher payments to landlords, the maintenance of annual income verification, and the review of policies developed by the state department of human services to ensure compliance with all applicable fair housing laws;

(b) The state department of human services is responsible for establishing case management standards, the allocation of vouchers to eligible recipients, and the oversight of voucher selection plans; and

(c) Case management agencies are responsible for case management activities and services for voucher recipients.

(4) Availability, standards, and services for the San Andreas fostering success voucher program include, but are not limited to, the following requirements:

(a) A voucher may be used at a dwelling that meets housing quality standards policies and procedures established by the state department of local affairs;

(b) The amount of financial assistance for each voucher must align with standards established by the state department of local affairs but may be increased on an individual basis if housing is not available in the county served by the case management agency that meets the cost standards. The state department of human services shall approve any variance from the standards set annually by the state department of local affairs.

(c) A youth who receives a voucher is required to contribute to the cost of housing, but that amount must not be more than thirty percent of the youth's income;

(d) A youth who receives a voucher is required to participate in case management services provided by the case management agency;

(e) A case management agency shall make case management available, as funding permits, to youth receiving federal housing choice vouchers and who are otherwise eligible for a voucher;

(f) A case management agency shall meet the minimum case management standards established by the state department of human services;

(g) A youth with prior adjudications in the juvenile court is eligible for a voucher; and

(h) A case management agency shall make reasonable efforts to engage a youth in case management activities and to support the youth into coming into compliance with voucher requirements prior to terminating the voucher or case management services.

Source: L. 2023: Entire section added, (SB 23-082), ch. 346, p. 2075, § 3, effective June 5.

19-7-315. Rules. The state department shall promulgate rules for the implementation of this part 3, including, but not limited to, rules concerning eligibility determinations, administrative appeals of eligibility determinations, enrollment into the transition program, emancipation transition plans and roadmaps to success, expedited procedures for securing temporary shelter for youth who are currently homeless or at imminent risk of homelessness, and the San Andreas fostering success voucher program.

Source: L. 2021: Entire part added, (HB 21-1094), ch. 340, p. 2214, § 1, effective June 25. **L. 2023:** Entire section amended, (SB 23-082), ch. 346, p. 2077, § 4, effective June 5.

JUVENILE RECORDS
ARTICLE 10
Juvenile Records

19-10-215. Sealing or expungement of juvenile criminal records – short title – legislative declaration – definitions – eligibility for record sealing – expungement of certain juvenile records – effect of sealing or expungement – automatic sealing for certain offenses – rulemaking authority – program review and reporting – severability – effective date.

(1) Short title. This section shall be known and may be cited as the "Juvenile Records Act."

(2) Legislative declaration. The general assembly finds and declares that:

(a) The juvenile justice system is intended to promote rehabilitation, accountability, and successful reintegration into society.

(b) Juvenile records may create long-term barriers to education, employment, housing, and military service, even after a young person has successfully completed all court-ordered obligations.

(c) Individuals who have complied with court sentences and demonstrated rehabilitation should have a meaningful opportunity to move forward without the lasting stigma of a juvenile record.

(d) Providing a clear and consistent process for sealing or expungement of eligible juvenile records promotes public safety by encouraging rehabilitation and reducing recidivism.

(e) It is the intent of the general assembly to establish uniform standards for the sealing and expungement of juvenile records upon successful completion of court requirements, while preserving access for limited law enforcement and judicial purposes where necessary.

(f) The general assembly further finds that the interests of victims and public safety must be balanced with the goal of rehabilitation.

(3) Definitions. For purposes of this section, unless the context otherwise requires:

(a) "Juvenile record" means any law enforcement, court, detention, probation, or diversion record relating to an offense committed while the individual was under eighteen years of age.

(b) "Sealing" means restricting access to a record so that it is not publicly accessible but may be viewed by courts or law enforcement for limited purposes as provided by law.

(c) "Expungement" means the destruction or permanent removal of a record such that it is treated as though it never occurred.

(d) "Completed sentence" means full compliance with all court-ordered requirements, including probation, restitution, treatment programs, fines, and community service.

(e) "Nonviolent offense" means any offense that does not involve the use or threatened use of physical force against another person.

(4) Eligibility for record sealing.

(a) A person shall be eligible to petition the court for sealing of a juvenile record if:

(I) The individual has completed all terms of the court-imposed sentence;

(II) No new criminal or delinquent offenses have occurred for a period of twelve months for misdemeanor offenses and twenty-four months for felony offenses; and

(III) The offense is not excluded under paragraph (c) of this subsection.

(b) Upon a finding that the individual has complied with all requirements and that sealing is consistent with public safety, the court shall order the record sealed.

(c) The following offenses are not eligible for automatic sealing under this section:

(I) Offenses involving homicide;

(II) Felony sexual offenses;

(III) Offenses requiring registration as a sex offender under state law.

(d) Notwithstanding paragraph (a) of this subsection, sealing of an eligible juvenile record shall occur automatically upon verification by the court that the individual has completed all terms

of the sentence and has remained free of new criminal or delinquent offenses for the period specified in paragraph (a)(II) of this subsection, and such determination shall be made within sixty days of eligibility where practicable. A petition shall not be required unless eligibility cannot be determined through existing court or law enforcement records.

(e) In determining whether sealing is consistent with public safety, the court shall apply a rebuttable presumption that successful completion of all court-ordered requirements demonstrates rehabilitation.

(f) For offenses involving an identifiable victim, the court shall provide notice of sealing to the victim upon request, provided such notice does not delay the sealing process.

(5) Expungement of certain juvenile records.

(a) A person whose juvenile record has been sealed may petition for expungement after an additional period of three years without a new criminal or delinquent offense. Nothing in this subsection shall be construed to conflict with federal law or federal background check requirements.

(b) The court shall grant expungement upon finding that:

(I) The individual has remained law-abiding;

(II) All restitution obligations have been satisfied, or the court finds that nonpayment results primarily from financial hardship despite documented good-faith effort toward compliance; and

(III) Expungement serves the interests of justice and rehabilitation.

(c) Upon expungement, all agencies shall destroy or permanently delete records subject to the order, except statistical data that does not identify the individual.

(d) Upon receipt of a petition for expungement, the court shall issue a ruling within forty-five days unless good cause is shown. The court shall prioritize expungement petitions and provide written justification for any delay beyond forty-five days.

(e) Eligible sealed juvenile records shall be automatically eligible for expungement upon expiration of the waiting period where eligibility can be verified through court records without petition, except for felony offenses, which shall require a petition and judicial review.

(6) Effect of sealing or expungement.

(a) A person whose record has been sealed or expunged shall be restored, in the eyes of the law, to the status occupied before the arrest or adjudication and may lawfully state for all purposes that the underlying offense, arrest, or adjudication did not occur, except where disclosure is expressly required by state or federal law. Exceptions to disclosure are as follows:

(I) Employment with a law enforcement agency;

(II) Judicial or prosecutorial positions; or

(III) Situations otherwise required by state or federal law.

(b) Sealed records may be accessed by courts and law enforcement only for sentencing, investigation, or background checks authorized by law.

(c) No state agency, political subdivision, or contractor shall disclose, sell, transfer, or otherwise disseminate sealed or expunged juvenile record information to any private data broker, background check company, or commercial entity. Any record disclosed in violation of this paragraph shall be deemed unlawfully released and subject to immediate removal.

(d) Upon sealing or expungement of a juvenile record, any corresponding public school disciplinary record arising solely from the underlying offense shall also be sealed unless retention is required by federal law.

(e) Any private entity knowingly retaining or disseminating sealed or expunged juvenile record information shall be subject to civil penalties not exceeding five thousand dollars per violation.

(f) No public institution of higher education, housing authority, or state licensing agency shall deny opportunity solely on the basis of a sealed juvenile record.

(7) Automatic sealing for certain offenses.

(a) The department of law, in coordination with the judicial branch, shall develop procedures for automatic sealing of all eligible juvenile records, including misdemeanor and nonviolent felony offenses, within ninety days after completion of the sentence when eligibility requirements are met.

(b) Individuals shall not be required to pay a filing fee for automatic sealing under this paragraph.

(c) No filing fee shall be required; however, the court may assess a nominal administrative fee not to exceed fifteen dollars, which may be waived for indigent applicants.

(d) Upon sealing or expungement of a juvenile record, the court shall provide written notice to all agencies known to possess the record and shall require confirmation of compliance within fifteen days, unless the agency demonstrates technical impossibility.

(e) Within thirty days of determining that an individual has satisfied eligibility requirements for sealing or expungement, the court shall provide written or electronic notice to the individual informing them of eligibility and explaining available rights under this section.

(f) The judicial branch shall establish a secure electronic notification system to automatically transmit sealing or expungement orders to all law enforcement agencies, detention facilities, prosecutors, and authorized record holders.

(g) The judicial branch may implement automatic sealing in phases based on available technology and funding, prioritizing misdemeanor offenses.

(8) Rulemaking authority. The judicial branch and the department of law may promulgate rules necessary to implement this section. Rules shall include standards for data security and interagency information sharing.

(9) Program review and reporting.

(a) Beginning two years after enactment, the judicial branch shall submit an annual public report including:

(I) Number of records sealed;

(II) Number expunged;

(III) Average processing time;

(IV) Demographic and geographic trends;

(V) Implementation challenges; and

(VI) Recidivism rates of individuals whose records have been sealed or expunged, to the extent data is available.

(b) Personally identifying information shall not be disclosed.

(10) Severability. If any provision of this section or its application is held invalid, such invalidity shall not affect other provisions which may be given effect without the invalid provision.

(11) Effective date. Act subject to petition – effective date. This section takes effect on August 18, 2026, assuming the general assembly adjourns sine die on May 18, 2026; except that, if a veto petition is filed pursuant to article II, section 15 of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Source: L. 2026: Entire section added, HB 26-007, ch. 3, p. 15, § 1, effective August 18, 2026. See Chapter 3, Session Laws of San Andreas 2026.