

Part 3

Abuse, Neglect, and Dependency Proceedings

78A-6-301 Definitions.

As used in this part:

- (1) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.
- (2) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from home until the earlier of:
 - (a) the shelter hearing; or
 - (b) the child's return home.
- (3) "Temporary custody" means the custody of a child in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Enacted by Chapter 3, 2008 General Session

78A-6-301.5 Second medical opinion.

- (1) In cases of alleged medical neglect where the division seeks protective custody, temporary custody, or custody of the child based on the report or testimony of a physician, a parent or guardian shall have a reasonable amount of time, as determined by the court, to obtain a second medical opinion from another physician of the parent's or guardian's choosing who has expertise in the applicable field.
- (2) Unless there is an imminent risk of death or a deteriorating condition of the child's health, the child shall remain in the custody of the parent or guardian while the parent or guardian obtains a second medical opinion.
- (3) If the second medical opinion results in a different diagnosis or treatment recommendation from that of the opinion of the physician the division used, the court shall give deference to the second medical opinion as long as that opinion is reasonable and informed and is consistent with treatment that is regularly prescribed by medical experts in the applicable field.
- (4) Subsections (1) through (3) do not apply to emergency treatment or care when the child faces an immediate threat of death or serious and irreparable harm and when there is insufficient time to safely allow the parent or guardian to provide alternative necessary care and treatment of the parent's or guardian's choosing.

Enacted by Chapter 274, 2015 General Session

78A-6-302 Court-ordered protective custody of a child following petition filing -- Grounds.

- (1) After a petition has been filed under Section 78A-6-304, if the child who is the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:
 - (a)
 - (i) there is an imminent danger to the physical health or safety of the child; and
 - (ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;
 - (b)

- (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer harm; and
 - (ii) there are no less restrictive means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
 - (c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;
 - (d) the parent or guardian is unwilling to have physical custody of the child;
 - (e) the child is abandoned or left without any provision for the child's support;
 - (f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;
 - (g)
 - (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
 - (ii) the whereabouts of the parent or guardian are unknown; and
 - (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
 - (h) subject to the provisions of Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5, the child is in immediate need of medical care;
 - (i)
 - (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a serious risk to the child's health or safety for which immediate remedial or preventive action is necessary; or
 - (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;
 - (j) the child or another child residing in the same household has been neglected;
 - (k) the child's natural parent:
 - (i) intentionally, knowingly, or recklessly causes the death of another parent of the child;
 - (ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;
 - (l) an infant has been abandoned, as defined in Section 78A-6-316;
 - (m)
 - (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and
 - (ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or
 - (n) the child's welfare is otherwise endangered.
- (2)
- (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.
 - (b) For purposes of Subsection (1)(c):

- (i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and
 - (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.
- (3)
- (a) For purposes of Subsection (1), if the division files a petition under Section 78A-6-304, the court shall consider the division's safety and risk assessments described in Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the child's parent or guardian or should otherwise be taken into protective custody.
 - (b) The division shall make a diligent effort to provide the safety and risk assessments described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.
- (4) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:
- (a) educational neglect, truancy, or failure to comply with a court order to attend school;
 - (b) mental illness or poverty of the parent or guardian; or
 - (c) disability of the parent or guardian, as defined in Section 57-21-2.
- (5) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.
- (6) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.
- (7)
- (a) Except as provided in Subsection (7)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:
 - (i) the administration of a psychotropic medication to a child;
 - (ii) a psychiatric, psychological, or behavioral treatment for a child; or
 - (iii) a psychiatric or behavioral health evaluation of a child.
 - (b) Notwithstanding Subsection (7)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (7)(a) if failure to take an action described under Subsection (7)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Amended by Chapter 231, 2016 General Session

78A-6-303 Rules of procedure -- Ex parte communications.

- (1) The Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure apply to abuse, neglect, and dependency proceedings unless the provisions of this part specify otherwise.
- (2) Any unauthorized ex parte communication concerning a pending case between a judge and a party to an abuse, neglect, or dependency proceeding shall be recorded for subsequent review, if necessary, by the Judicial Conduct Commission.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-304 Petition filed.

- (1) For purposes of this section, "petition" means a petition to commence proceedings in a juvenile court alleging that a child is:
 - (a) abused;
 - (b) neglected; or
 - (c) dependent.
- (2)
 - (a) Subject to Subsection (2)(b), any interested person may file a petition.
 - (b) A person described in Subsection (2)(a) shall make a referral with the division before the person files a petition.
- (3) If the child who is the subject of a petition is removed from the child's home by the division, the petition shall be filed on or before the date of the initial shelter hearing described in Section 78A-6-306.
- (4) The petition shall be verified, and contain all of the following:
 - (a) the name, age, and address, if any, of the child upon whose behalf the petition is brought;
 - (b) the names and addresses, if known to the petitioner, of both parents and any guardian of the child;
 - (c) a concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is abused, neglected, or dependent; and
 - (d) a statement regarding whether the child is in protective custody, and if so, the date and precise time the child was taken into protective custody.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-305 Opportunity for a child to testify or address the court.

- (1) For purposes of this section, "postadjudication hearing" means:
 - (a) a disposition hearing;
 - (b) a permanency hearing; or
 - (c) a review hearing, except a drug court review hearing.
- (2) A child shall be present at any postadjudication hearing in a case relating to the abuse, neglect, or dependency of the child, unless the court determines that:
 - (a) requiring the child to be present at the postadjudication hearing would be detrimental to the child, or impractical; or
 - (b) the child is not sufficiently mature to articulate the child's wishes in relation to the hearing.
- (3) A court may, in the court's discretion, order that a child described in Subsection (2) be present at a hearing that is not a postadjudication hearing.
- (4)
 - (a) Except as provided in Subsection (4)(b), at any hearing in a case relating to the abuse, neglect, or dependency of a child, when the child is present at the hearing, the court shall:
 - (i) ask the child whether the child desires the opportunity to address the court or testify; and
 - (ii) if the child desires an opportunity to address the court or testify, allow the child to address the court or testify.
 - (b) Subsection (4)(a) does not apply if the court determines that:
 - (i) it would be detrimental to the child to comply with Subsection (4)(a); or
 - (ii) the child is not sufficiently mature to articulate the child's wishes in relation to the hearing.

- (c) Subject to applicable court rules, the court may allow the child to address the court in camera.
- (5) Nothing in this section prohibits a child from being present at a hearing that the child is not required to be at by this section or by court order, unless the court orders otherwise.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-306 Shelter hearing.

- (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:
 - (a) removal of the child from the child's home by the division;
 - (b) placement of the child in the protective custody of the division;
 - (c) emergency placement under Subsection 62A-4a-202.1(4);
 - (d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or
 - (e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).
- (2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:
 - (a) the name and address of the person to whom the notice is directed;
 - (b) the date, time, and place of the shelter hearing;
 - (c) the name of the child on whose behalf a petition is being brought;
 - (d) a concise statement regarding:
 - (i) the reasons for removal or other action of the division under Subsection (1); and
 - (ii) the allegations and code sections under which the proceeding has been instituted;
 - (e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with the provisions of Section 78A-6-1111; and
 - (f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.
- (3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:
 - (a) the appropriate guardian ad litem; and
 - (b) both parents and any guardian of the child, unless the parents or guardians cannot be located.
- (4) The following persons shall be present at the shelter hearing:
 - (a) the child, unless it would be detrimental for the child;
 - (b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;
 - (c) counsel for the parents, if one is requested;
 - (d) the child's guardian ad litem;
 - (e) the caseworker from the division who is assigned to the case; and
 - (f) the attorney from the attorney general's office who is representing the division.
- (5)
 - (a) At the shelter hearing, the court shall:

- (i) provide an opportunity to provide relevant testimony to:
 - (A) the child's parent or guardian, if present; and
 - (B) any other person having relevant knowledge; and
 - (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.
- (b) The court:
 - (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;
 - (ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and
 - (iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.
- (6) If the child is in the protective custody of the division, the division shall report to the court:
 - (a) the reason why the child was removed from the parent's or guardian's custody;
 - (b) any services provided to the child and the child's family in an effort to prevent removal;
 - (c) the need, if any, for continued shelter;
 - (d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and
 - (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.
- (7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.
- (8)
 - (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.
 - (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).
 - (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice described in Subsection (2) within the time described in Subsection (3), the court may grant the request of a parent or guardian for a continuance, not to exceed five judicial days.
- (9)
 - (a) If the child is in the protective custody of the division, the court shall order that the child be returned to the custody of the parent or guardian unless it finds, by a preponderance of the evidence, consistent with the protections and requirements provided in Subsection 62A-4a-201(1), that any one of the following exists:
 - (i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;
 - (ii)
 - (A) the child is suffering emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;
 - (B) the parent or guardian is unwilling or unable to make reasonable changes that would sufficiently prevent future damage; and
 - (C) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
 - (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parent or guardian;

- (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:
 - (A) parent or guardian;
 - (B) member of the parent's household or the guardian's household; or
 - (C) person known to the parent or guardian;
- (v) the parent or guardian is unwilling to have physical custody of the child;
- (vi) the child is without any provision for the child's support;
- (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;
- (viii)
 - (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
 - (B) the whereabouts of the parent or guardian are unknown; and
 - (C) reasonable efforts to locate the parent or guardian are unsuccessful;
- (ix) subject to Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5, the child is in immediate need of medical care;
- (x)
 - (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and
 - (B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;
- (xi)
 - (A) the child or a minor residing in the same household has been neglected; and
 - (B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;
- (xii) the parent, guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;
- (xiii)
 - (A) the child's welfare is substantially endangered; and
 - (B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the danger; or
- (xiv) the child's natural parent:
 - (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;
 - (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.
- (b)
 - (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:
 - (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and
 - (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.
 - (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that

fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

(10)

(a)

(i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78A-6-105(27)(b), truancy, or failure to comply with a court order to attend school.

(14)

(a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

(a) any error in the initial removal of the child;

(b) the failure of a party to comply with notice provisions; or

(c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Amended by Chapter 274, 2015 General Session

78A-6-307 Shelter hearing -- Placement -- DCFS custody.

(1) As used in this section:

(a) "Friend" means an adult the child knows and is comfortable with.

(b)

(i) "Natural parent," notwithstanding the provisions of Section 78A-6-105, means:

(A) a biological or adoptive mother;

(B) an adoptive father; or

(C) a biological father who:

- (I) was married to the child's biological mother at the time the child was conceived or born;
or
- (II) has strictly complied with the provisions of Sections 78B-6-120 through 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial parent.
- (ii) The definition of "natural parent" described in Subsection (1)(b)(i) applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long-term goal for the child.
- (c) "Relative" means:
 - (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or a first cousin of the child's parent;
 - (ii) an adult who is an adoptive parent of the child's sibling; or
 - (iii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that statute.
- (2)
 - (a) At the shelter hearing, when the court orders that a child be removed from the custody of the child's parent in accordance with the requirements of Section 78A-6-306, the court shall first determine whether there is another natural parent with whom the child was not residing at the time the events or conditions that brought the child within the court's jurisdiction occurred, who desires to assume custody of the child.
 - (b) If another natural parent requests custody under Subsection (2)(a), the court shall place the child with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child.
 - (c) The provisions of this Subsection (2) are limited by the provisions of Subsection (18)(b).
 - (d)
 - (i) The court shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement.
 - (ii) The court shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 78A-6-308, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.
 - (iii) The court may order the division to conduct any further investigation regarding the safety and appropriateness of the placement.
 - (iv) The division shall report its findings in writing to the court.
 - (v) The court may place the child in the temporary custody of the division, pending its determination regarding that placement.
- (3) If the court orders placement with a parent under Subsection (2):
 - (a) the child and the parent are under the continuing jurisdiction of the court;
 - (b) the court may order:
 - (i) that the parent assume custody subject to the supervision of the court; and
 - (ii) that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both; and
 - (c) the court shall order reasonable parent-time with the parent from whose custody the child was removed, unless parent-time is not in the best interest of the child.
- (4) The court shall periodically review an order described in Subsection (3) to determine whether:
 - (a) placement with the parent continues to be in the child's best interest;
 - (b) the child should be returned to the original custodial parent;

- (c) the child should be placed in the custody of a relative, pursuant to Subsections (7) through (12); or
 - (d) the child should be placed in the custody of the division.
- (5) The time limitations described in Section 78A-6-312 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (2).
- (6) Legal custody of the child is not affected by an order entered under Subsection (2) or (3). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.
- (7) If, at the time of the shelter hearing, a child is removed from the custody of the child's parent and is not placed in the custody of the child's other parent, the court:
- (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e), there is a relative of the child or a friend of a parent of the child who is able and willing to care for the child;
 - (b) may order the division to conduct a reasonable search to determine whether, subject to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;
 - (c) shall order the parents to cooperate with the division, within five working days, to, subject to Subsections (18)(c) through (e), provide information regarding relatives of the child or friends who may be able and willing to care for the child; and
 - (d) may order that the child be placed in the custody of the division pending the determination under Subsection (7)(a).
- (8) This section may not be construed as a guarantee that an identified relative or friend will receive custody of the child.
- (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given to a relative's or a friend's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.
- (10)
- (a) If a willing relative or friend is identified under Subsection (7)(a), the court shall make a specific finding regarding:
 - (i) the fitness of that relative or friend as a placement for the child; and
 - (ii) the safety and appropriateness of placement with that relative or friend.
 - (b) In order to be considered a "willing relative or friend" under this section, the relative or friend shall be willing to cooperate with the child's permanency goal.
- (11)
- (a) In making the finding described in Subsection (10)(a), the court shall, at a minimum, order the division to:
 - (i) if the child may be placed with a relative of the child, conduct a background check that includes:
 - (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification background check of the relative;
 - (B) a completed search, relating to the relative, of the Management Information System described in Section 62A-4a-1003; and
 - (C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;

- (ii) if the child will be placed with a noncustodial parent of the child, complete a background check that includes:
 - (A) the background check requirements applicable to an emergency placement with a noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);
 - (B) a completed search, relating to the noncustodial parent of the child, of the Management Information System described in Section 62A-4a-1003; and
 - (C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;
 - (iii) if the child may be placed with an individual other than a noncustodial parent or a relative of the child, conduct a criminal background check of the individual, and each adult that resides in the household where the child may be placed, that complies with the criminal background check provisions described in Section 78A-6-308;
 - (iv) visit the relative's or friend's home;
 - (v) check the division's management information system for any previous reports of abuse or neglect regarding the relative or friend at issue;
 - (vi) report the division's findings in writing to the court; and
 - (vii) provide sufficient information so that the court may determine whether:
 - (A) the relative or friend has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;
 - (B) the child is comfortable with the relative or friend;
 - (C) the relative or friend recognizes the parent's history of abuse and is committed to protect the child;
 - (D) the relative or friend is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;
 - (E) the relative or friend is committed to caring for the child as long as necessary; and
 - (F) the relative or friend can provide a secure and stable environment for the child.
 - (b) The division may determine to conduct, or the court may order the division to conduct, any further investigation regarding the safety and appropriateness of the placement.
 - (c) The division shall complete and file its assessment regarding placement with a relative or friend as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.
- (12)
- (a) The court may place a child described in Subsection (2)(a) in the temporary custody of the division, pending the division's investigation pursuant to Subsections (10) and (11), and the court's determination regarding the appropriateness of that placement.
 - (b) The court shall ultimately base its determination regarding the appropriateness of a placement with a relative or friend on the best interest of the child.
- (13) When the court awards custody and guardianship of a child with a relative or friend:
- (a) the court shall order that:
 - (i) the relative or friend assume custody, subject to the continuing supervision of the court; and
 - (ii) any necessary services be provided to the child and the relative or friend;
 - (b) the child and any relative or friend with whom the child is placed are under the continuing jurisdiction of the court;
 - (c) the court may enter any order that it considers necessary for the protection and best interest of the child;

- (d) the court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed, unless parent-time is not in the best interest of the child; and
- (e) the court shall conduct a periodic review no less often than every six months, to determine whether:
 - (i) placement with the relative or friend continues to be in the child's best interest;
 - (ii) the child should be returned home; or
 - (iii) the child should be placed in the custody of the division.
- (14) No later than 12 months after placement with a relative or friend, the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.
- (15) The time limitations described in Section 78A-6-312, with regard to reunification efforts, apply to children placed with a relative or friend pursuant to Subsection (7).
- (16)
 - (a) If the court awards custody of a child to the division, and the division places the child with a relative, the division shall:
 - (i) conduct a criminal background check of the relative that complies with the criminal background check provisions described in Section 78A-6-308; and
 - (ii) if the results of the criminal background check described in Subsection (16)(a)(i) would prohibit the relative from having direct access to the child under Section 62A-2-120, the division shall:
 - (A) take the child into physical custody; and
 - (B) within three days, excluding weekends and holidays, after taking the child into physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all parties to the proceedings, of the division's action.
 - (b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a relative, pending the results of the background check described in Subsection (16)(a) on the relative.
- (17) When the court orders that a child be removed from the custody of the child's parent and does not award custody and guardianship to another parent, relative, or friend under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.
- (18)
 - (a) Any preferential consideration that a relative or friend is initially granted pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.
 - (b) When the time period described in Subsection (18)(a) has expired, the preferential consideration, which is initially granted to a natural parent in accordance with Subsection (2), is limited. After that time the court shall base its custody decision on the best interest of the child.
 - (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the following order of preference shall be applied when determining the person with whom a child will be placed, provided that the person is willing, and has the ability, to care for the child:
 - (i) a noncustodial parent of the child;
 - (ii) a relative of the child;
 - (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a licensed foster parent; and
 - (iv) other placements that are consistent with the requirements of law.

- (d) In determining whether a friend is a willing and appropriate placement for a child, neither the court, nor the division, is required to consider more than one friend designated by each parent of the child.
- (e) If a parent of the child is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent:
 - (i) the department shall fully cooperate to expedite the licensing process for the friend; and
 - (ii) if the friend becomes licensed as a foster parent within the time frame described in Subsection (18)(a), the court shall determine whether it is in the best interests of the child to place the child with the friend.
- (19) If, following the shelter hearing, the child is placed with a person who is not a parent of the child, a relative of the child, a friend of a parent of the child, or a former foster parent of the child, priority shall be given to a foster placement with a man and a woman who are married to each other, unless it is in the best interests of the child to place the child with a single foster parent.
- (20) In determining the placement of a child, neither the court, nor the division, may take into account, or discriminate against, the religion of a person with whom the child may be placed, unless the purpose of taking religion into account is to place the child with a person or family of the same religion as the child.

Amended by Chapter 142, 2015 General Session

78A-6-307.5 Post-shelter hearing placement of a child who is in division custody.

- (1) If the court awards custody of a child to the division under Section 78A-6-307, or as otherwise permitted by law, the division shall determine ongoing placement of the child.
- (2) In placing a child under Subsection (1), the division:
 - (a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable background check provisions described in Section 78A-6-307;
 - (b) is not required to receive approval from the court prior to making the placement;
 - (c) shall, within three days, excluding weekends and holidays, after making the placement, give written notice to the court, and all parties to the proceedings, that the placement has been made; and
 - (d) may place the child with a noncustodial parent or relative of the child, using the same criteria established for an emergency placement under Section 62A-4a-209, pending the results of:
 - (i) the background check described in Subsection 78A-6-307(16)(a); and
 - (ii) evaluation with the noncustodial parent or relative to determine the noncustodial parent's or relative's capacity to provide ongoing care to the child.

Enacted by Chapter 17, 2008 General Session

78A-6-308 Criminal background checks necessary prior to out-of-home placement.

- (1) Subject to Subsection (3), upon ordering removal of a child from the custody of the child's parent and placing that child in the custody of the Division of Child and Family Services, prior to the division's placement of that child in out-of-home care, the court shall require the completion of a nonfingerprint-based background check by the Utah Bureau of Criminal Identification regarding the proposed placement.
- (2)

- (a) Except as provided in Subsection (4), the division and the Office of Guardian ad Litem may request, or the court upon the court's own motion may order, the Department of Public Safety to conduct a complete Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC).
 - (b) Except as provided in Subsection (4), upon request by the division or the Office of Guardian ad Litem, or upon the court's order, persons subject to the requirements of Subsection (1) shall submit fingerprints and shall be subject to an FBI fingerprint background check. The child may be temporarily placed, pending the outcome of that background check.
 - (c) The cost of those investigations shall be borne by whoever is to receive placement of the child, except that the Division of Child and Family Services may pay all or part of the cost of those investigations.
- (3) Except as provided in Subsection (5), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:
- (a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent or prospective adoptive parent and any other adult residing in the household;
 - (b) the Department of Human Services conducts a check of the abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of a severe type of abuse or neglect as defined in Section 62A-4a-1002;
 - (c) the Department of Human Services conducts a check of the abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (3)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of a severe type of abuse or neglect as defined in Section 62A-4a-1002; and
 - (d) each person required to undergo a background check described in this Subsection (3) passes the background check, pursuant to the provisions of Section 62A-2-120.
- (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless the court finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the child.
- (5) The requirements under Subsection (3) do not apply to the extent that:
- (a) federal law or rule permits otherwise; or
 - (b) the requirements would prohibit the division or a court from placing a child with:
 - (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or
 - (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (3).

Amended by Chapter 293, 2012 General Session

78A-6-309 Pretrial and adjudication hearing -- Time deadlines.

- (1) Upon the filing of a petition, the clerk of the court shall set the pretrial hearing on the petition within 15 calendar days from the later of:

- (a) the date of the shelter hearing; or
 - (b) the filing of the petition.
- (2) The pretrial may be continued upon motion of any party, for good cause shown, but the final adjudication hearing shall be held no later than 60 calendar days from the later of:
- (a) the date of the shelter hearing; or
 - (b) the filing of the petition.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-310 Notice of adjudication hearing.

- (1) Upon the filing of a petition pursuant to Section 78A-6-304, the petitioner shall cause the petition and notice to be served on:
- (a) the guardian ad litem;
 - (b) both parents and any guardian of the child; and
 - (c) the child's foster parents.
- (2) The notice shall contain all of the following:
- (a) the name and address of the person to whom the notice is directed;
 - (b) the date, time, and place of the hearing on the petition;
 - (c) the name of the child on whose behalf the petition has been brought;
 - (d) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the hearing on the petition, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and
 - (e) a statement that the parent or legal guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and for legal counsel appointed for the parent or guardian under Subsection (2)(d), according to the parent's or guardian's financial ability.
- (3) Notice and a copy of the petition shall be served on all persons required to receive notice under Subsection (1) as soon as possible after the petition is filed and at least five days prior to the time set for the hearing.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-311 Adjudication -- Dispositional hearing -- Time deadlines.

- (1) If, at the adjudication hearing, the court finds, by clear and convincing evidence, that the allegations contained in the petition are true, it shall conduct a dispositional hearing.
- (2) The dispositional hearing may be held on the same date as the adjudication hearing, but shall be held no later than 30 calendar days after the date of the adjudication hearing.
- (3) At the adjudication hearing or the dispositional hearing the court shall schedule dates and times for:
- (a) the six-month periodic review; and
 - (b) the permanency hearing.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-312 Dispositional hearing -- Reunification services -- Exceptions.

- (1) The court may:
- (a) make any of the dispositions described in Section 78A-6-117;

- (b) place the minor in the custody or guardianship of any:
 - (i) individual; or
 - (ii) public or private entity or agency; or
- (c) order:
 - (i) protective supervision;
 - (ii) family preservation;
 - (iii) subject to Subsections (12)(b), 78A-6-105(27)(d), and 78A-6-117(2)(n) and Section 78A-6-301.5, medical or mental health treatment; or
 - (iv) other services.
- (2) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:
 - (a) establish a primary permanency plan for the minor; and
 - (b) determine whether, in view of the primary permanency plan, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).
- (3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.
- (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.
- (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.
- (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:
 - (a) protect the physical safety of the minor;
 - (b) protect the life of the minor; or
 - (c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.
- (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:
 - (a) prove that the parent has not used legal or illegal substances; or
 - (b) comply with an aspect of the child and family plan that is ordered by the court.
- (8)
 - (a) In addition to the primary permanency plan, the court shall establish a concurrent permanency plan that shall include:
 - (i) a representative list of the conditions under which the primary permanency plan will be abandoned in favor of the concurrent permanency plan; and
 - (ii) an explanation of the effect of abandoning or modifying the primary permanency plan.
 - (b) In determining the primary permanency plan and concurrent permanency plan, the court shall consider:
 - (i) the preference for kinship placement over nonkinship placement;
 - (ii) the potential for a guardianship placement if the parent-child relationship is legally terminated and no appropriate adoption placement is available; and
 - (iii) the use of an individualized permanency plan, only as a last resort.

- (9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency plan.
- (10)
- (a) The court may amend a minor's primary permanency plan before the establishment of a final permanency plan under Section 78A-6-314.
 - (b) The court is not limited to the terms of the concurrent permanency plan in the event that the primary permanency plan is abandoned.
 - (c) If, at any time, the court determines that reunification is no longer a minor's primary permanency plan, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:
 - (i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or
 - (ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends.
- (11)
- (a) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.
 - (b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.
- (12)
- (a) The court shall:
 - (i) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;
 - (ii) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and
 - (iii) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.
 - (b) If the parent is in a substance abuse treatment program, other than a certified drug court program:
 - (i) the court may order the parent to submit to supplementary drug or alcohol testing in addition to the testing recommended by the parent's substance abuse program based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and
 - (ii) the court may order the parent to provide the results of drug or alcohol testing recommended by the substance abuse program to the court or division.
- (13)
- (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(7).
 - (b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.
- (14)
- (a) If reunification services are ordered, the court may terminate those services at any time.

- (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:
 - (i) place the minor in accordance with the permanency plan; and
 - (ii) complete whatever steps are necessary to finalize the permanent placement of the minor.
- (15) Any physical custody of the minor by the parent or a relative during the period described in Subsections (11) through (14) does not interrupt the running of the period.
- (16)
 - (a) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.
 - (b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.
 - (c) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.
- (17) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:
 - (a) the court shall terminate reunification services; and
 - (b) the division shall petition the court for termination of parental rights.
- (18) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:
 - (a) practicable; and
 - (b) in accordance with the best interest of the minor.
- (19)
 - (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.
 - (b) The court may determine that:
 - (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and
 - (ii) reunification services should not be provided.
 - (c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.
- (20) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:
 - (a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;
 - (b) subject to Subsection (21)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;
 - (c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:
 - (i) was removed from the custody of the minor's parent;
 - (ii) was subsequently returned to the custody of the parent; and
 - (iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;
 - (d) the parent:
 - (i) caused the death of another minor through abuse or neglect;
 - (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

- (A) murder or manslaughter of a child; or
 - (B) child abuse homicide;
 - (iii) committed sexual abuse against the child;
 - (iv) is a registered sex offender or required to register as a sex offender; or
 - (v)
 - (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;
 - (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;
 - (e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;
 - (f) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;
 - (g) the parent's rights are terminated with regard to any other minor;
 - (h) the minor was removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;
 - (i) the parent has abandoned the minor for a period of six months or longer;
 - (j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located;
 - (k) except as provided in Subsection (21)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or
 - (l) any other circumstance that the court determines should preclude reunification efforts or services.
- (21)
- (a) The finding under Subsection (20)(b) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.
 - (b) A judge may disregard the provisions of Subsection (20)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection (20)(k) is not warranted.
- (22) In determining whether reunification services are appropriate, the court shall take into consideration:
- (a) failure of the parent to respond to previous services or comply with a previous child and family plan;
 - (b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;
 - (c) any history of violent behavior directed at the child or an immediate family member;
 - (d) whether a parent continues to live with an individual who abused the minor;
 - (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

- (f) testimony by a competent professional that the parent's behavior is unlikely to be successful;
and
- (g) whether the parent has expressed an interest in reunification with the minor.

(23)

- (a) If reunification services are not ordered pursuant to Subsections (19) through (21), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.
- (b) The time limits described in Subsections (2) through (18) are not tolled by the parent's absence.

(24)

- (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.
 - (b) In making the determination described in Subsection (24)(a), the court shall consider:
 - (i) the age of the minor;
 - (ii) the degree of parent-child bonding;
 - (iii) the length of the sentence;
 - (iv) the nature of the treatment;
 - (v) the nature of the crime or illness;
 - (vi) the degree of detriment to the minor if services are not offered;
 - (vii) for a minor 10 years old or older, the minor's attitude toward the implementation of family reunification services; and
 - (viii) any other appropriate factors.
 - (c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (18).
 - (d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (18), unless the court determines that continued reunification services would be in the minor's best interest.
- (25) If, pursuant to Subsections (20)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

Amended by Chapter 231, 2016 General Session

78A-6-313 Six-month review hearing -- Court determination regarding reasonable efforts by the Division of Child and Family Services and parental compliance with child and family plan requirements.

If reunification efforts have been ordered by the court, a hearing shall be held no more than six months after initial removal of a minor from the minor's home, in order for the court to determine whether:

- (1) the division has provided and is providing "reasonable efforts" to reunify a family, in accordance with the child and family plan established under Section 62A-4a-205; and
- (2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order to comply with the requirements of the child and family plan.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-314 Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.

- (1)
 - (a) When reunification services have been ordered in accordance with Section 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the day on which the minor was initially removed from the minor's home.
 - (b) If reunification services were not ordered at the dispositional hearing, a permanency hearing shall be held within 30 days after the day on which the dispositional hearing ends.
- (2)
 - (a) If reunification services were ordered by the court in accordance with Section 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection (3), whether the minor may safely be returned to the custody of the minor's parent.
 - (b) If the court finds, by a preponderance of the evidence, that return of the minor to the minor's parent would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent.
 - (c) Prima facie evidence that return of the minor to a parent or guardian would create a substantial risk of detriment to the minor is established if:
 - (i) the parent or guardian fails to:
 - (A) participate in a court approved child and family plan;
 - (B) comply with a court approved child and family plan in whole or in part; or
 - (C) meet the goals of a court approved child and family plan; or
 - (ii) the child's natural parent:
 - (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;
 - (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.
- (3) In making a determination under Subsection (2)(a), the court shall review and consider:
 - (a) the report prepared by the Division of Child and Family Services;
 - (b) any admissible evidence offered by the minor's guardian ad litem;
 - (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);
 - (d) any evidence regarding the efforts or progress demonstrated by the parent; and
 - (e) the extent to which the parent cooperated and utilized the services provided.
- (4) With regard to a case where reunification services were ordered by the court, if a minor is not returned to the minor's parent or guardian at the permanency hearing, the court shall, unless the time for the provision of reunification services is extended under Subsection (8):
 - (a) order termination of reunification services to the parent;
 - (b) make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship is the most appropriate final plan for the minor, taking into account the minor's primary permanency plan established by the court pursuant to Section 78A-6-312; and
 - (c) establish a concurrent permanency plan that identifies the second most appropriate final plan for the minor, if appropriate.
- (5) The court may order another planned permanent living arrangement for a minor 16 years old or older upon entering the following findings:
 - (a) the Division of Child and Family Services has documented intensive, ongoing, and unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a

- placement for the minor with a guardian, an adoptive parent, or an individual described in Subsection 78A-6-306(6)(e);
- (b) the Division of Child and Family Services has demonstrated that the division has made efforts to normalize the life of the minor while in the division's custody, in accordance with Sections 62A-4a-210 through 62A-4a-212;
- (c) the minor prefers another planned permanent living arrangement; and
- (d) there is a compelling reason why reunification or a placement described in Subsection (5)(a) is not in the minor's best interest.
- (6) Except as provided in Subsection (7), the court may not extend reunification services beyond 12 months after the day on which the minor was initially removed from the minor's home, in accordance with the provisions of Section 78A-6-312.
- (7)
- (a) Subject to Subsection (7)(b), the court may extend reunification services for no more than 90 days if the court finds, beyond a preponderance of the evidence, that:
- (i) there has been substantial compliance with the child and family plan;
- (ii) reunification is probable within that 90-day period; and
- (iii) the extension is in the best interest of the minor.
- (b)
- (i) Except as provided in Subsection (7)(c), the court may not extend any reunification services beyond 15 months after the day on which the minor was initially removed from the minor's home.
- (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond the 12-month period described in Subsection (6).
- (c) In accordance with Subsection (7)(d), the court may extend reunification services for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:
- (i) the court finds, by clear and convincing evidence, that:
- (A) the parent has substantially complied with the child and family plan;
- (B) it is likely that reunification will occur within the additional 90-day period; and
- (C) the extension is in the best interest of the child;
- (ii) the court specifies the facts upon which the findings described in Subsection (7)(c)(i) are based; and
- (iii) the court specifies the time period in which it is likely that reunification will occur.
- (d) A court may not extend the time period for reunification services without complying with the requirements of this Subsection (7) before the extension.
- (e) In determining whether to extend reunification services for a minor, a court shall take into consideration the status of the minor siblings of the minor.
- (8) The court may, in its discretion:
- (a) enter any additional order that it determines to be in the best interest of the minor, so long as that order does not conflict with the requirements and provisions of Subsections (4) through (7); or
- (b) order the division to provide protective supervision or other services to a minor and the minor's family after the division's custody of a minor has been terminated.
- (9) If the final plan for the minor is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing.
- (10)

- (a) Any party to an action may, at any time, petition the court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the minor.
- (b) If the court so determines, it shall order, in accordance with federal law, that:
 - (i) the minor be placed in accordance with the permanency plan; and
 - (ii) whatever steps are necessary to finalize the permanent placement of the minor be completed as quickly as possible.
- (11) Nothing in this section may be construed to:
 - (a) entitle any parent to reunification services for any specified period of time;
 - (b) limit a court's ability to terminate reunification services at any time prior to a permanency hearing; or
 - (c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.
- (12)
 - (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is filed prior to the date scheduled for a permanency hearing, the court may consolidate the hearing on termination of parental rights with the permanency hearing.
 - (b) For purposes of Subsection (12)(a), if the court consolidates the hearing on termination of parental rights with the permanency hearing:
 - (i) the court shall first make a finding regarding whether reasonable efforts have been made by the Division of Child and Family Services to finalize the permanency plan for the minor; and
 - (ii) any reunification services shall be terminated in accordance with the time lines described in Section 78A-6-312.
 - (c) A decision on a petition for termination of parental rights shall be made within 18 months from the day on which the minor is removed from the minor's home.
- (13) If a court determines that a child will not be returned to a parent of the child, the court shall consider appropriate placement options inside and outside of the state.

Amended by Chapter 231, 2016 General Session

78A-6-315 Periodic review hearings.

- (1) At least every six months, the division or the court shall conduct a periodic review of the status of each child in the custody of the division, until the court terminates the division's custody of the child.
- (2)
 - (a) The review described in Subsection (1) shall be conducted in accordance with the requirements of the case review system described in 42 U.S.C. Section 675.
 - (b) If a review described in Subsection (1) is conducted by the division, the division shall:
 - (i) conduct the review in accordance with the administrative review requirements of 42 U.S.C. Section 675; and
 - (ii) to the extent practicable, involve volunteer citizens in the administrative review process.
- (3)
 - (a) Within 30 days after completion of a review conducted by the division, the division shall:
 - (i) submit a copy of its dispositional report to the court to be made a part of the court's legal file; and
 - (ii) provide a copy of the dispositional report to each party in the case to which the review relates.

- (b) The court shall receive and review each dispositional report submitted under Subsection (3)(a)(i) in the same manner as the court receives and reviews a report described in Section 78A-6-605.
- (c) If a report submitted under Subsection (3)(a)(i) is determined to be an ex parte communication with a judge, the report shall be considered a communication authorized by law.
- (d) A report described in Subsection (3)(a)(i) may be received as evidence, and may be considered by the court along with other evidence. The court may require any person who participated in the dispositional report to appear as a witness if the person is reasonably available.

Amended by Chapter 161, 2009 General Session

78A-6-316 Mandatory petition for termination of parental rights.

- (1) For purposes of this section, "abandoned infant" means a child who is 12 months of age or younger whose parent or parents:
 - (a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;
 - (b) have failed to:
 - (i) maintain physical custody; and
 - (ii) exhibit the normal interest of a natural parent without just cause; or
 - (c) are unwilling to have physical custody of the child.
- (2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition for termination of parental rights with regard to:
 - (a) an abandoned infant; or
 - (b) the child of a parent, whenever a court has determined that the parent has:
 - (i) committed murder or child abuse homicide of another child of that parent;
 - (ii) committed manslaughter of another child of that parent;
 - (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or
 - (iv) committed a felony assault or abuse that results in serious physical injury to:
 - (A) another child of that parent; or
 - (B) the other parent of the child.
- (3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:
 - (a) the child is being cared for by a relative;
 - (b) the division has:
 - (i) documented in the child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the child's best interest; and
 - (ii) made that child and family plan available to the court for its review; or
 - (c)
 - (i) the court has previously determined, in accordance with the provisions and limitations of Sections 62A-4a-201, 62A-4a-203, 78A-6-306, and 78A-6-312, that reasonable efforts to reunify the child with the child's parent or parents were required; and
 - (ii) the division has not provided, within the time period specified in the child and family plan, services that had been determined to be necessary for the safe return of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-317 All proceedings -- Persons entitled to be present.

- (1) A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any relative providing care for the child, are:
 - (a) entitled to notice of, and to be present at, each hearing and proceeding held under this part, including administrative reviews; and
 - (b) have a right to be heard at each hearing and proceeding described in Subsection (1)(a).
- (2) A child shall be represented at each hearing by the guardian ad litem appointed to the child's case by the court. The child has a right to be present at each hearing, subject to the discretion of the guardian ad litem or the court regarding any possible detriment to the child.
- (3)
 - (a) The parent or guardian of a child who is the subject of a petition under this part has the right to be represented by counsel, and to present evidence, at each hearing.
 - (b) When it appears to the court that a parent or guardian of the child desires counsel but is financially unable to afford and cannot for that reason employ counsel, the court shall appoint counsel as provided in Section 78A-6-1111.
- (4) In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 5, Termination of Parental Rights Act.
- (5)
 - (a) Except as provided in Subsection (5)(b), and notwithstanding any other provision of law:
 - (i) counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter; and
 - (ii) if the natural parent of a child is not represented by counsel, the natural parent shall have access to the records described in Subsection (5)(a)(i).
 - (b) The disclosures described in Subsection (5)(a) are not required in the following circumstances:
 - (i) subject to Subsection (5)(c), the division or other state or local public agency did not originally create the record being requested;
 - (ii) disclosure of the record would jeopardize the life or physical safety of a child who has been a victim of abuse or neglect, or any person who provided substitute care for the child;
 - (iii) disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation;
 - (iv) disclosure of the record would jeopardize the life or physical safety of a person who has been a victim of domestic violence;
 - (v) the record is a report maintained in the Management Information System, for which a finding of unsubstantiated, unsupported, or without merit has been made, unless the person requesting the information is the alleged perpetrator in the report or counsel for the alleged perpetrator in the report; or
 - (vi) the record is a Children's Justice Center interview, including a video or audio recording, and a transcript of the recording, the release of which is governed by Section 77-37-4.

- (c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the person making the request of the following:
 - (i) the existence of all records in the possession of the division or any other state or local public agency;
 - (ii) the name and address of the person or agency that originally created the record; and
 - (iii) that the person must seek access to the record from the person or agency that originally created the record.

Amended by Chapter 90, 2014 General Session
Amended by Chapter 275, 2014 General Session

78A-6-318 Review of foster care removal -- Foster parent's standing.

- (1) With regard to a child in the custody of the Division of Child and Family Services who is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed in foster care with a foster family, the Legislature finds that:
 - (a) except with regard to the child's natural parents, a foster family has a very limited but recognized interest in its familial relationship with the child; and
 - (b) children in the custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.
- (2) For the reasons described in Subsection (1), the Legislature finds that, except with regard to the child's natural parents, procedural due process protections must be provided to a foster family prior to removal of a foster child from the foster home.
- (3)
 - (a) A foster parent who has had a foster child in the foster parent's home for 12 months or longer may petition the juvenile court for a review and determination of the appropriateness of a decision by the Division of Child and Family Services to remove the child from the foster home, unless the removal was for the purpose of:
 - (i) returning the child to the child's natural parent or legal guardian;
 - (ii) immediately placing the child in an approved adoptive home;
 - (iii) placing the child with a relative, as defined in Subsection 78A-6-307(1)(c), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78A-6-307(18)(a); or
 - (iv) placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.
 - (b) The foster parent may petition the court under this section without exhausting administrative remedies within the division.
 - (c) The court may order the division to place the child in a specified home, and shall base its determination on the best interest of the child.
- (4) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that removal.

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 17, 2008 General Session

78A-6-319 Educational neglect of a child -- Procedures -- Defenses.

- (1) With regard to a child who is the subject of a petition under this chapter based on educational neglect:

- (a) if allegations include failure of a child to make adequate educational progress, the court shall permit demonstration of the child's educational skills and abilities based upon any of the criteria used in granting school credit, in accordance with Section 53A-11-102.5;
 - (b) parental refusal to comply with actions taken by school authorities in violation of Sections 53A-13-101.1, 53A-13-101.2, or 53A-13-101.3, does not constitute educational neglect;
 - (c) parental refusal to support efforts by a school to encourage a child to act in accordance with any educational objective that focuses on the adoption or expression of a personal philosophy, attitude, or belief that is not reasonably necessary to maintain order and discipline in the school, prevent unreasonable endangerment of persons or property, or to maintain concepts of civility and propriety appropriate to a school setting, does not constitute educational neglect; and
 - (d) an allegation of educational neglect may not be sustained, based solely on a child's absence from school, unless the child has been absent from school or from any given class, without good cause, for more than 10 consecutive school days or more than 1/16 of the applicable school term.
- (2) A child may not be considered to be educationally neglected, for purposes of this chapter:
- (a) unless there is clear and convincing evidence that:
 - (i) the child has failed to make adequate educational progress, and school officials have complied with the requirements of Section 53A-11-103; and
 - (ii) the child is two or more years behind the local public school's age group expectations in one or more basic skills, and is not receiving special educational services or systematic remediation efforts designed to correct the problem;
 - (b) if the child's parent or guardian establishes by a preponderance of the evidence that:
 - (i) school authorities have failed to comply with the requirements of Title 53A, Chapter 11, Students in Public Schools, or Chapter 13, Curriculum in the Public Schools;
 - (ii) the child is being instructed at home in compliance with Section 53A-11-102;
 - (iii) there is documentation that the child has demonstrated educational progress at a level commensurate with the child's ability;
 - (iv) the parent, guardian, or other person in control of the child has made a good faith effort to secure the child's regular attendance in school;
 - (v) good cause or a valid excuse exists for the child's absence from school;
 - (vi) the child is not required to attend school pursuant to court order or is exempt under other applicable state or federal law;
 - (vii) the student has performed above the twenty-fifth percentile of the local public school's age group expectations in all basic skills, as measured by a standardized academic achievement test administered by the school district where the student resides; or
 - (viii) the parent or guardian has proffered a reasonable alternative to required school curriculum, in accordance with Section 53A-13-101.2, that alternative was rejected by the school district, but the parents have implemented the alternative curriculum; or
 - (c) if the child is attending school on a regular basis.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-320 Proceedings arising from failure to attend public school.

- (1) When a proceeding arises from a child's failure to attend public school based upon the assertion of a constitutional or statutory right or duty, raised either by the child or by the child's custodial parent, guardian, or custodian, the court shall hear the petition and resolve the issues

associated with the asserted constitutional or statutory claims within 15 days after the petition is filed. The parties may waive the time limitation described in this subsection.

- (2) Absent an emergency situation or other exigent circumstances, the court may not enter any order changing the educational status of the child that existed at the time the petition was filed, until the hearing described in Subsection (1) is concluded.
- (3) Parties proceeding under this section shall, insofar as it is possible, provide the court with factual stipulations and make all other efforts that are reasonably available to minimize the time required to hear the claims described in Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-321 Treatment for offender and victim -- Costs.

- (1) Upon adjudication in the juvenile court of a person or persons charged with child abuse, child sexual abuse, or sexual exploitation of a child the court may order treatment for the adjudicated offender and the victim or the child victim.
- (2) The adjudicated offender shall be required by the court to pay, to the extent that he is able, the costs of that treatment together with the administrative costs incurred by the division in monitoring completion of the ordered therapy or treatment.
- (3) If the adjudicated offender is unable to pay the full cost of treatment, the court may order the Division of Child and Family Services to pay those costs, to the extent that funding is provided by the Legislature for that purpose, and the offender shall be required by the court to perform public service work as compensation for the cost of treatment.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-322 Abuse, neglect, or dependency of child -- Coordination of proceedings.

- (1) In each case where an information or indictment has been filed against a defendant concerning abuse, neglect, or dependency of a child, and a petition has been filed in juvenile court concerning the victim, the appropriate county attorney's or district attorney's office shall coordinate with the attorney general's office.
- (2) Law enforcement personnel, Division of Child and Family Services personnel, the appointed guardian ad litem, pretrial services personnel, and corrections personnel shall make reasonable efforts to facilitate the coordination required by this section.
- (3) Members of interdisciplinary child protection teams, established under Section 62A-4a-409, may participate in the coordination required by this section.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-323 Additional finding at adjudication hearing -- Petition -- Court records.

- (1) Upon the filing with the court of a petition under Section 78A-6-304 by the Division of Child and Family Services or any interested person informing the court, among other things, that the division has made a supported finding that a person committed a severe type of child abuse or neglect as defined in Section 62A-4a-1002, the court shall:
 - (a) make a finding of substantiated, unsubstantiated, or without merit;
 - (b) include the finding described in Subsection (1)(a) in a written order; and
 - (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.
- (2) The judicial finding under Subsection (1) shall be made:
 - (a) as part of the adjudication hearing;

- (b) at the conclusion of the adjudication hearing; or
 - (c) as part of a court order entered pursuant to a written stipulation of the parties.
- (3)
- (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with the court a petition for removal of the person's name from the Licensing Information System.
 - (b) At the conclusion of the hearing on the petition, the court shall:
 - (i) make a finding of substantiated, unsubstantiated, or without merit;
 - (ii) include the finding described in Subsection (1)(a) in a written order; and
 - (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.
- (4) A proceeding for adjudication of a supported finding under this section of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudication of a severe type of child abuse or neglect.
- (5) If a person whose name appears on the Licensing Information system prior to May 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter and enter a final decision no later than 60 days after the filing of the petition.
- (6) For the purposes of licensing under Sections 26-39-402, 62A-1-118, and 62A-2-120, and for the purposes described in Sections 26-8a-310 and 62A-2-121 and Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access:
- (a) the court shall make available records of its findings under Subsections (1) and (2):
 - (i) for those purposes; and
 - (ii) only to those with statutory authority to access also the Licensing Information System created under Section 62A-4a-1006; and
 - (b) any appellate court shall make available court records of appeals from juvenile court decisions under Subsections (1), (2), (3), and (4):
 - (i) for those purposes; and
 - (ii) only to those with statutory authority to access also the Licensing Information System.

Amended by Chapter 255, 2015 General Session

Amended by Chapter 307, 2015 General Session

78A-6-324 Mental health therapists.

- (1) When a mental health practitioner is appointed in any juvenile court proceeding to evaluate the mental health of a parent or a minor, or to provide mental health services to a parent or minor, the court:
- (a) may appoint any mental health therapist, as defined in Section 58-60-102, which the court finds to be qualified; and
 - (b) may not refuse to appoint a mental health therapist for the reason that the therapist's recommendations in another case have not followed the recommendations of the Division of Child and Family Services.
- (2) This section applies to all juvenile court proceedings involving:
- (a) parents and minors; or
 - (b) the Division of Child and Family Services.

Renumbered and Amended by Chapter 3, 2008 General Session