

1 **CONCURRENT PLANNING FOR CHILDREN IN**
2 **DIVISION OF CHILDREN AND FAMILY**
3 **SERVICES**

4 1999 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Nora B. Stephens**

7 AN ACT RELATING TO THE JUDICIAL CODE; REQUIRING THE ESTABLISHMENT OF
8 A PRIMARY PERMANENCY GOAL AND A CONCURRENT PERMANENCY GOAL AT
9 THE DISPOSITIONAL HEARING OF A CHILD WHO IS IN STATE CUSTODY BECAUSE
10 OF ABUSE OR NEGLECT; REQUIRING THE ESTABLISHMENT OF A CONCURRENT
11 PLAN AT THE PERMANENCY HEARING; MAKING CONFORMING AMENDMENTS;
12 AND PROVIDING AN EFFECTIVE DATE.

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15 **62A-4a-205**, as last amended by Chapter 274, Laws of Utah 1998

16 **78-3a-311**, as last amended by Chapter 274, Laws of Utah 1998

17 **78-3a-312**, as last amended by Chapter 274, Laws of Utah 1998

18 **78-3g-103**, as last amended by Chapters 68, 171 and 274, Laws of Utah 1998

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

20 Section 1. Section **62A-4a-205** is amended to read:

21 **62A-4a-205. Treatment plans.**

22 (1) No more than 45 days after a child enters the temporary custody of the division, the
23 child's treatment plan shall be finalized.

24 (2) The division shall use an interdisciplinary team approach in developing each treatment
25 plan. An interdisciplinary team shall include, but is not limited to, representatives from mental
26 health, education, and, where appropriate, a representative of law enforcement.

27 (3) The division shall involve all of the following in the development of a child's treatment

28 plan:

- 29 (a) both of the child's natural parents, unless the whereabouts of a parent are unknown;
30 (b) the child;
31 (c) the child's foster parents; and
32 (d) where appropriate, the child's step-parent.

33 (4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the
34 child's natural parents and foster parents.

35 (5) Each treatment plan shall specifically provide for the safety of the child, in accordance
36 with federal law, and clearly define what actions or precautions will, or may be, necessary to
37 provide for the health, safety, protection, and welfare of the child.

38 (6) The plan shall set forth, with specificity, at least the following:

39 (a) the reason the child entered Division of Child and Family Services custody, and
40 documentation of the reasonable efforts made to prevent placement or documentation of the
41 emergency situation that existed and that prevented reasonable efforts;

42 (b) the primary permanency goal for the child and the reason for selection of that goal;

43 (c) the concurrent permanency goal for the child and the reason for the selection of that
44 goal;

45 [~~(c)~~] (d) if the plan is for the child to return to his family, specifically what the parents
46 must do in order to enable the child to be returned home, specifically how those requirements may
47 be accomplished, and how those requirements will be measured;

48 [~~(d)~~] (e) the specific services needed to reduce the problems that necessitated placement
49 in the division's custody, and who will provide for and be responsible for case management;

50 [~~(e)~~] (f) a visitation schedule between the natural parent and the child;

51 [~~(f)~~] (g) the health care to be provided to the child, and the mental health care to be
52 provided to address any known or diagnosed mental health needs of the child. If residential
53 treatment, rather than a foster home, is the proposed placement, a specialized assessment of the
54 child's health needs shall be conducted, including an assessment of mental illness and behavior and
55 conduct disorders; and

56 [~~(g)~~] (h) social summaries that include case history information pertinent to case planning.

57 (7) (a) The treatment plan shall be specific to each child and his family, rather than
58 general. The division shall train its workers to develop treatment plans that comply with federal

mandates and the specific needs of the particular child and his family;

(b) all treatment plans and expectations shall be individualized and contain specific time frames;

(c) treatment plans shall address problems that keep children in placement and keep them from achieving permanence in their lives; and

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

(8) With regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption unless there are extenuating circumstances that justify long-term foster care or guardianship.

Section 2. Section **78-3a-311** is amended to read:

78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may make any of the dispositions described in Section 78-3a-118, place the child in the custody or guardianship of any individual or public or private entity or agency, order protective supervision, family preservation, medical or mental health treatment, or other services.

(2) (a) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the Division of Child and Family Services, it shall first establish a primary permanency goal for the minor and determine whether, in view of the primary permanency goal, reunification services are appropriate for the child and the child's family, pursuant to Subsection (3). In cases where obvious sexual abuse, abandonment, or serious physical abuse or 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. In all cases, the child's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(b) (i) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal. The concurrent permanency goal shall include a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal and an explanation of the effect of abandoning or modifying the primary permanency goal.

(ii) A permanency hearing shall be conducted in accordance with Subsection 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a child's primary permanency goal.

(iii) The court may amend a child's primary permanency goal before the establishment of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at anytime, the court determines that reunification is no longer a child's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the original removal of the child.

[(b)] (c) 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 his parent for the purpose of facilitating reunification of the family, for a specified period of time. In providing those services, the child's health, safety, and welfare shall be the division's paramount concern, and the court shall so order. The time period for reunification services may not exceed 12 months from the date that the child was initially removed from his home. Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services. If reunification services have been ordered, the court may terminate those services at any time. If, at any time, continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

[(c)] (d) Any physical custody of the minor by the parent or a relative during the period described in Subsection [(b)] (2)(c) does not interrupt the running of the period.

[(d)] (e) (i) If reunification services have been ordered, a permanency hearing shall be conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period for reunification services. The permanency hearing shall be held no later than 12 months after the original removal of the child.

(ii) If reunification services have not been ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

[(e)] (f) With regard to a child who is two years of age or younger at the time the court orders reunification services, the court shall order the discontinuance of those services after six

months if the parent or parents have not made substantial efforts to comply with the treatment plan. The burden is upon the parents, and the division if it supports continued reunification services, to show that the parents have made substantial efforts to comply with the plan during the first six months of reunification services.

~~[(f)]~~ (g) With regard to a child in the custody of the division whose parent or parents have been ordered to receive reunification services but who have abandoned that child for a period of six months since the date that reunification services were ordered, the court shall terminate reunification services, and the division shall petition the court for termination of parental rights.

(3) (a) Because of the state's interest in and responsibility to protect and provide permanency for children who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited. The court may, under any circumstances, determine that efforts to reunify a child with his family are not reasonable or appropriate, based on the individual circumstances, and that reunification services should not be provided. In determining "reasonable efforts" to be made with respect to a child, and in making "reasonable efforts," the child's health, safety, and welfare shall be the paramount concern.

(b) 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:

(i) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(ii) the parent is suffering from a mental illness of such magnitude that it renders him incapable of utilizing reunification services; that finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;

(iii) the minor has been previously adjudicated as an abused child due to physical or sexual abuse, that following the adjudication the child was removed from the custody of his parent, was subsequently returned to the custody of that parent, and the minor is being removed due to additional physical or sexual abuse;

(iv) the parent has caused the death of another child through abuse or neglect or has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide;

(v) the minor has 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;
(vi) the minor has been adjudicated an abused child as a result of severe abuse by the
parent, and the court finds that it would not benefit the child to pursue reunification services with
the offending parent;

(vii) the parent's rights have been terminated with regard to any other child;

(viii) the child has been removed from his home on at least two previous occasions and
reunification services were offered or provided to the family at those times; or

(ix) the parent has abandoned the child for a period of six months or longer; or

(x) any other circumstance that the court determines should preclude reunification efforts
or services.

(4) (a) Failure of the parent to respond to previous services or comply with any previous
treatment plan, the fact that the child was abused while the parent was under the influence of drugs
or alcohol, a past history of violent behavior, whether a parent continues to live with an individual
who abused the child, any patterns of the parent's behavior that have exposed the child to repeated
abuse, or testimony by a competent professional that the parent's behavior is unlikely to be
successful, shall be considered in determining whether reunification services are appropriate.

(b) The court shall also consider whether the parent has expressed an interest in
reunification with the child, in determining whether reunification services are appropriate.

(5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
whereabouts of a parent become known within six months of the out-of-home placement of the
minor, the court may order the division to provide reunification services. The time limits
described in Subsection (2), however, are not tolled by the parent's absence.

(6) 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. In determining
detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of
detriment to the child if services are not offered and, for minors ten years of age or older, the
minor's attitude toward the implementation of family reunification services, and any other
appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month
limitation imposed in Subsection (2). Reunification services for an institutionalized parent are
subject to the 12-month limitation imposed in Subsection (2), unless the court determines that

continued reunification services would be in the child's best interest.

(7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv),(v), (vi), (vii), (viii), (ix), or (x), the court does not order reunification services, a permanency hearing shall be conducted within [90] 30 days, in accordance with Section 78-3a-312.

Section 3. Section **78-3a-312** is amended to read:

78-3a-312. 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 78-3a-311, with regard to a child 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 original removal of the child.

(b) When no reunification services were ordered at the dispositional hearing, a permanency hearing shall be held within 30 days from the date of the dispositional hearing.

(2) (a) If reunification services were ordered by the court in accordance with Section 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be returned to the custody of his parent. If the court finds, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being, the child may not be returned to the custody of his parent. The failure of a parent or guardian to participate in, comply with, in whole or in part, or to meet the goals of a court approved treatment plan constitutes prima facie evidence that return of the child to that parent would create a substantial risk of detriment.

(b) In making a determination under this Subsection (2), the court shall review the report prepared by the Division of Child and Family Services, a report prepared by the child's guardian ad litem, any report prepared by a foster care citizen review board pursuant to Section 78-3g-103, any evidence regarding the efforts or progress demonstrated by the parent, and the extent to which the parent cooperated and availed himself of services provided.

(3) (a) With regard to a case where reunification services were ordered by the court, if a child is not returned to his parent or guardian at the permanency hearing, the court shall order termination of reunification services to the parent, and make a final determination regarding whether termination of parental rights, adoption, guardianship, or long-term foster care is the most appropriate final plan for the child, taking into account the child's primary permanency goal

214 established by the court pursuant to Section 78-3a-311. If the child clearly desires contact with the
215 parent, the court shall take the child's desire into consideration in determining the final plan. In
216 addition, the court shall establish a concurrent plan that identifies the second most appropriate final
217 plan for the child. The court may not extend reunification services beyond 12 months from the
218 date the child was initially removed from his home, in accordance with the provisions of Section
219 78-3a-311, except that the court may extend reunification services for no more than 90 days if it
220 finds that there has been substantial compliance with the treatment plan, that reunification is
221 probable within that 90 day period, and that the extension is in the best interest of the child. In no
222 event may any reunification services extend beyond 15 months from the date the child was initially
223 removed from his home. Delay or failure of a parent to establish paternity or seek custody does
224 not provide a basis for the court to extend services for that parent beyond that 12 month period.

225 (b) The court may, in its discretion, enter any additional order that it determines to be in
226 the best interest of the child, so long as that order does not conflict with the requirements and
227 provisions of Subsection (3)(a). The court may order the division to provide protective supervision
228 or other services to a child and the child's family after the division's custody of a child has been
229 terminated.

230 (4) If the final plan for the child is to proceed toward termination of parental rights, the
231 petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days
232 after the permanency hearing.

233 (5) Any party to an action may, at any time, petition the court for an expedited permanency
234 hearing on the basis that continuation of reunification efforts are inconsistent with the permanency
235 needs of the child. If the court so determines, it shall order, in accordance with federal law, that
236 the child be placed in accordance with the permanency plan, and that whatever steps are necessary
237 to finalize the permanent placement of the child be completed as quickly as possible.

238 (6) Nothing in this section may be construed to:

239 (a) entitle any parent to reunification services for any specified period of time;

240 (b) limit a court's ability to terminate reunification services at any time prior to a
241 permanency hearing; or

242 (c) limit or prohibit the filing of a petition for termination of parental rights by any party,
243 or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a
244 petition for termination of parental rights is filed prior to the date scheduled for a permanency

hearing, the court may schedule the hearing on termination of parental rights in lieu of the permanency hearing; combine the permanency hearing and the hearing on termination of parental rights; or schedule the hearings separately. If the court schedules the hearing on termination of parental rights in lieu of the permanency hearing, any reunification services shall be terminated in accordance with the time lines described in Section 78-3a-311 and a decision on the petition for termination of parental rights shall be made within 18 months from the date of the child's removal.

Section 4. Section **78-3g-103** is amended to read:

78-3g-103. Foster care citizen review boards -- Membership -- Responsibilities -- Periodic reviews.

(1) Within appropriations from the Legislature, foster care citizen review boards shall be established in each Juvenile Court district in the state, to act as the panels described in 42 U.S.C. Sections 675(5) and (6), which are required to conduct periodic reviews unless court reviews are conducted.

(2) (a) The committee shall appoint seven members to each board. Five of those members shall be parents.

(b) Five members of a board constitute a quorum, and an action of a majority of the quorum constitutes the action of the board.

(c) A board member may not be an employee of the division or the juvenile court.

(d) Board members shall be representative of the ethnic, cultural, religious, socio-economic, and professional diversity found in the community.

(e) A board may elect its own chair, vice chair, and other officers as it considers appropriate.

(f) The division may designate a representative to provide technical advice to the board regarding division policy and procedure.

(3) With regard to each child in its custody, the division shall provide the appropriate boards with access to all records maintained by the division.

(4) (a) In districts or areas where foster care citizen review boards have been established, periodic reviews either by the court or by a foster care citizen review board, shall be conducted with regard to each child in the division's custody no less frequently than once every six months, in accordance with Section 78-3a-313 and 42 U.S.C. Sections 675(5) and (6). In cases where the court has conducted a six month review hearing, a foster care citizen review board shall also

conduct a review within 12 months from the date of the child's removal from his home.

(b) In accordance with federal law and with Subsection 78-3a-314(1), periodic reviews conducted by foster care citizen review boards shall be open to the participation of the child's natural parents, foster parents, preadoptive parents, and any relative providing care for the child. Notice shall be provided to those persons pursuant to Subsection 78-3a-314(1).

(c) Boards may review additional abuse, neglect, or dependency cases or plans at the request of the court.

(5) Each board shall prepare a dispositional report regarding the child's case and plan. The periodic review and the dispositional report shall be consistent with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and shall include at least the following considerations:

(a) the extent to which the plan's objectives have been implemented or accomplished by the parent, the child, and the division;

(b) whether revisions to the plan are needed, and if so, how the plan should be revised;

(c) the extent to which the division has provided the services and interventions described in the plan, and whether those services and interventions are assisting, or will assist, the parent and child to achieve the plan's objectives within the statutory time limitations;

(d) the extent to which the parent and child have willingly and actively participated in the interventions described in the plan;

(e) the continuing necessity for and appropriateness of the child's placement;

(f) the extent of progress that has been made toward alleviating or mitigating the causes necessitating the child's removal or continued placement;

(g) ~~[a recommended]~~ the primary permanency [plan] goal and the concurrent permanency goal for the child and, if ~~[one]~~ a final permanency plan has been established, an opinion regarding the appropriateness of that permanency plan; and

(h) a determination regarding whether the statutory time limitations described in Title 78, Chapter 3a, Part 3, have been met, specifically, whether the 12 month limitation on reunification services required by Section 78-3a-311 has been complied with. The board shall also render an opinion regarding when it estimates that the child will achieve permanency.

(6) (a) Each board shall submit its dispositional report to the court, the division, and to all parties to an action within 30 days after a case is reviewed by the board.

(b) The board's dispositional report shall be filed with the court, and shall be made a part of the court's legal file. The dispositional report shall be received and reviewed by the court in the same manner as the court receives and reviews the reports described in Section 78-3a-505. The report by a board, if determined to be an ex parte communication with a judge, shall be considered a communication authorized by law. Foster care citizen review board dispositional reports 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.

(7) Members of boards may not receive financial compensation or benefits for their services. Members may not receive per diem or expenses for their service, except that:

(a) members may be reimbursed for mileage on days that they are involved in training, at rates established by the Division of Finance; and

(b) members may be provided with a meal on days that they serve on a board.

(8) Boards are authorized to receive funds from public and private grants and donations in accordance with the requirements described in Subsection 78-3g-102(8).

(9) In districts or areas where foster care citizen review boards have not been established, either the court or the Division of Child and Family Services shall conduct the reviews in accordance with the provisions of Subsections (4)(a) and (b), and Section 78-3a-313.

Section 5. Effective date.

This act takes effect on July 1, 1999.

Legislative Review Note
as of 1-28-99 1:33 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel