

1 **CHILD PROTECTION REVISIONS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Matt Throckmorton**

5 AN ACT RELATING TO THE CHILD WELFARE ACT; MODIFYING TREATMENT PLAN
6 REQUIREMENTS FOR CHILDREN IN CUSTODY OF THE DIVISION OF CHILD AND
7 FAMILY SERVICES; AMENDING PROVISIONS RELATED TO THE ESTABLISHMENT
8 AND MODIFICATION OF PERMANENCY GOALS; REQUIRING NOTICE AND HEARING
9 PRIOR TO MODIFICATION OF PERMANENCY GOALS; INCREASING PERMANENCY
10 HEARING STANDARDS AND REQUIRING CLEAR AND CONVINCING EVIDENCE AT
11 PERMANENCY HEARING; PROVIDING THAT INEFFECTIVE ASSISTANCE OF COUNSEL
12 NEGATES PARENTS' FAILURE TO COMPLY WITH COURT-ORDERED TREATMENT
13 PLAN; ALLOWING FOR "GOOD FAITH EFFORT" TO COMPLY WITH TREATMENT
14 PLAN; AMENDING FOSTER CARE CITIZEN REVIEW BOARD REQUIREMENTS; AND
15 PROVIDING AN EFFECTIVE DATE.

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

17 AMENDS:

18 **62A-4a-205 (Effective 07/01/00)**, as last amended by Chapter 121, Laws of Utah 1999

19 **78-3a-311 (Effective 07/01/00)**, as last amended by Chapter 121, Laws of Utah 1999

20 **78-3a-312 (Effective 07/01/00)**, as last amended by Chapter 121, Laws of Utah 1999

21 **78-3g-103 (Effective 07/01/00)**, as last amended by Chapter 121, Laws of Utah 1999

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

23 Section 1. Section **62A-4a-205 (Effective 07/01/00)** is amended to read:

24 **62A-4a-205 (Effective 07/01/00). Treatment plans.**

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

27 (2) The division shall use an interdisciplinary team approach in developing each treatment

28 plan. An interdisciplinary team shall include, but is not limited to, representatives from mental
29 health, education, and, where appropriate, a representative of law enforcement.

30 (3) The division shall involve all of the following in the development of a child's treatment
31 plan:

- 32 (a) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- 33 (b) the child;
- 34 (c) the child's foster parents; and
- 35 (d) where appropriate, the child's stepparent.

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

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

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

42 (a) the reason the child entered Division of Child and Family Services custody, and
43 documentation of the reasonable efforts made by the division to prevent placement, and of its
44 attempts to utilize the least intrusive means available to protect the child pursuant to Subsection
45 62A-4a-201(3), or documentation of the emergency situation that existed and that prevented
46 reasonable efforts and the use of a less intrusive method;

47 (b) the primary permanency goal for the child and the reason for selection of that goal;
48 (c) the concurrent permanency goal for the child and the reason for the selection of that
49 goal;

50 (d) if the plan is for the child to return to his family, [specifically] specify, in light of
51 division attempts to utilize the least intrusive means available to protect the child pursuant to
52 Subsection 62A-4a-201(3), what the parents must do in order to enable the child to be returned
53 home, specifically how those requirements may be accomplished, and how those requirements will
54 be measured;

55 (e) the specific services needed to reduce the problems that necessitated placement in the
56 division's custody, and who will provide for and be responsible for case management;

57 (f) a visitation schedule between the natural parent and the child;

58 (g) the health care to be provided to the child, and the mental health care to be provided

59 to address any known or diagnosed mental health needs of the child. If residential treatment, rather
60 than a foster home, is the proposed placement, a specialized assessment of the child's health needs
61 shall be conducted, including an assessment of mental illness and behavior and conduct disorders;
62 and

63 (h) social summaries that include case history information pertinent to case planning.

64 (7) (a) The treatment plan shall be specific to each child and his family, rather than
65 general. The division shall train its workers to develop treatment plans that comply with federal
66 mandates and the specific needs of the particular child and his family;

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

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

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

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

77 Section 2. Section **78-3a-311 (Effective 07/01/00)** is amended to read:

78 **78-3a-311 (Effective 07/01/00). Dispositional hearing -- Reunification services --**

79 **Exceptions.**

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

83 (2) (a) Whenever the court orders continued removal at the dispositional hearing, and that
84 the minor remain in the custody of the Division of Child and Family Services, it shall first establish
85 a primary permanency goal for the minor and determine whether, in view of the primary
86 permanency goal, reunification services are appropriate for the child and the child's family,
87 pursuant to Subsection (3). In cases where obvious sexual abuse, abandonment, or serious physical
88 abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable
89 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to

90 rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare shall
91 be the court's paramount concern in determining whether reasonable efforts to reunify should be
92 made.

93 (b) (i) In addition to the primary permanency goal, the court shall establish a concurrent
94 permanency goal. The concurrent permanency goal shall include a [~~representative~~] specific list,
95 directly tied to the primary permanency goal, of the conditions under which the primary
96 permanency goal will be abandoned in favor of the concurrent permanency goal [~~and an~~
97 ~~explanation of the~~]. The court shall explain in detail the legal and practical effect of abandoning
98 [or modifying] the primary permanency goal in favor of the concurrent goal.

99 (ii) A permanency hearing shall be conducted in accordance with Subsection
100 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
101 child's primary permanency goal.

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

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

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

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

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

129 (f) With regard to a child who is two years of age or younger at the time the court orders
130 reunification services, the court shall order the discontinuance of those services after six months
131 if the parent or parents have not made substantial efforts to comply with the treatment plan. The
132 burden is upon the parents, and the division if it supports continued reunification services, to show
133 that the parents have made substantial efforts to comply with the plan during the first six months
134 of reunification services.

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

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

146 (b) There is a presumption that reunification services should not be provided to a parent
147 if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

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

150 (ii) the parent is suffering from a mental illness of such magnitude that it renders him
151 incapable of utilizing reunification services; that finding shall be based on competent evidence

152 from mental health professionals establishing that, even with the provision of services, the parent
153 is unlikely to be capable of adequately caring for the child within 12 months;

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

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

161 (v) the minor has suffered severe abuse by the parent or by any person known by the
162 parent, if the parent knew or reasonably should have known that the person was abusing the minor;

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

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

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

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

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

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

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

180 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
181 whereabouts of a parent become known within six months of the out-of-home placement of the
182 minor, the court may order the division to provide reunification services. The time limits

183 described in Subsection (2), however, are not tolled by the parent's absence.

184 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable services
185 unless it determines that those services would be detrimental to the minor. In determining
186 detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
187 length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of
188 detriment to the child if services are not offered and, for minors ten years of age or older, the
189 minor's attitude toward the implementation of family reunification services, and any other
190 appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month
191 limitation imposed in Subsection (2). Reunification services for an institutionalized parent are
192 subject to the 12-month limitation imposed in Subsection (2), unless the court determines that
193 continued reunification services would be in the child's best interest.

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

197 Section 3. Section **78-3a-312 (Effective 07/01/00)** is amended to read:

198 **78-3a-312 (Effective 07/01/00). Permanency hearing -- Final plan -- Petition for**
199 **termination of parental rights filed -- Hearing on termination of parental rights.**

200 (1) (a) When reunification services have been ordered in accordance with Section
201 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family
202 Services, a permanency hearing shall be held by the court no later than 12 months after the original
203 removal of the child.

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

206 (2) (a) If reunification services were ordered by the court in accordance with Section
207 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be
208 returned to the custody of his parent. If the court finds, by [~~a preponderance of the~~] clear and
209 convincing evidence, that return of the child would create a [~~substantial~~] significant risk of
210 [~~detriment to the child's physical~~] abuse or [~~emotional well-being~~] neglect, the child may not be
211 returned to the custody of his parent. The failure of a parent or guardian to participate in, comply
212 with, in whole or in part, or to meet the goals of a court approved treatment plan constitutes prima
213 facie evidence that return of the child to that parent would create a [~~substantial~~] significant risk of

214 [detriment] abuse or neglect.

215 (b) In making a determination under this Subsection (2), the court shall review the report
216 prepared by the Division of Child and Family Services, a report prepared by the child's guardian
217 ad litem, any report prepared by a foster care citizen review board pursuant to Section 78-3g-103,
218 any evidence regarding the efforts or progress demonstrated by the parent, and the extent to which
219 the parent cooperated and availed himself of services provided. If the court determines that the
220 formulation of, or a parent's failure to comply with a provision of a treatment plan is due to
221 ineffective assistance of counsel, the failure to comply with that provision of the treatment plan
222 shall be disregarded in reports submitted to the court and in the court's decision.

223 (3) (a) With regard to a case where reunification services were ordered by the court, if a
224 child is not returned to his parent or guardian at the permanency hearing, the court shall order
225 termination of reunification services to the parent, and make a final determination regarding
226 whether termination of parental rights, adoption, guardianship, or long-term foster care is the most
227 appropriate final plan for the child, taking into account the child's primary permanency goal
228 established by the court pursuant to Section 78-3a-311. If the child clearly desires contact with the
229 parent, the court shall take the child's desire into consideration in determining the final plan. In
230 addition, the court shall establish a concurrent plan that identifies the second most appropriate final
231 plan for the child. The court may not extend reunification services beyond 12 months from the
232 date the child was initially removed from his home, in accordance with the provisions of Section
233 78-3a-311, except that the court may extend reunification services for no more than 90 days if it
234 finds that there has been substantial compliance or a good faith effort to comply with the treatment
235 plan, that reunification is probable within that 90-day period, and that the extension is in the best
236 interest of the child. In no event may any reunification services extend beyond 15 months from
237 the date the child was initially removed from his home. Delay or failure of a parent to establish
238 paternity or seek custody does not provide a basis for the court to extend services for that parent
239 beyond that 12-month period.

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

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

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

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

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

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

257 (c) limit or prohibit the filing of a petition for termination of parental rights by any party,
258 or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a
259 petition for termination of parental rights is filed prior to the date scheduled for a permanency
260 hearing, the court may schedule the hearing on termination of parental rights in lieu of the
261 permanency hearing; combine the permanency hearing and the hearing on termination of parental
262 rights; or schedule the hearings separately. If the court schedules the hearing on termination of
263 parental rights in lieu of the permanency hearing, any reunification services shall be terminated in
264 accordance with the time lines described in Section 78-3a-311 and a decision on the petition for
265 termination of parental rights shall be made within 18 months from the date of the child's removal.
266 If termination of parental rights was not a primary or concurrent goal, a parent is entitled to
267 sufficient time to establish, by discovery, the factual basis for seeking to terminate parental rights
268 and, if possible, what could be done to cure the existing basis upon which termination of parental
269 rights is sought.

270 Section 4. Section **78-3g-103 (Effective 07/01/00)** is amended to read:

271 **78-3g-103 (Effective 07/01/00). Foster care citizen review boards -- Membership --**
272 **Responsibilities -- Periodic reviews.**

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

276 conducted.

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

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

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

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

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

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

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

290 (4) (a) In districts or areas where foster care citizen review boards have been established,
291 periodic reviews either by the court or by a foster care citizen review board, shall be conducted
292 with regard to each child in the division's custody no less frequently than once every six months,
293 in accordance with Section 78-3a-313 and 42 U.S.C. Sections 675(5) and (6). In cases where the
294 court has conducted a six month review hearing, a foster care citizen review board shall also
295 conduct a review within 12 months from the date of the child's removal from his home.

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

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

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

306 (a) the extent to which the plan's objectives have been implemented or accomplished by

307 the parent, the child, and the division;

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

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

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

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

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

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

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

324 (i) a review of efforts made by the board to provide notice of its review meetings to the
325 appropriate parents and their legal counsel;

326 (j) identification of each concern raised to the board by the child's parents or their legal
327 counsel; and

328 (k) a description of the course of conduct recommended by the board to address the
329 concerns raised by the child's parents or their legal counsel.

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

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

338 may require any person who participated in the dispositional report to appear as a witness if the
339 person is reasonably available.

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

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

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

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

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

350 Section 5. **Effective date.**

351 This act takes effect on July 1, 2000.

Legislative Review Note
as of 2-11-00 10:00 AM

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

Office of Legislative Research and General Counsel