

CHILD WELFARE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies provisions of the Judicial Code and the Human Services Code related to child welfare. This act requires the Division of Child and Family Services to maintain a separate database system for unsubstantiated reports of child abuse and reports of child abuse that are without merit. The act reduces the period of time unsubstantiated reports of child abuse are maintained on the database system from ten years to five years. The act establishes circumstances in which the division shall remove a name from the database. The act requires the Child Welfare Legislative Oversight Committee to study immunity of child protection service workers. The act clarifies the circumstances in which an officer may use force to remove a child from a home. This act clarifies the conditions that must be met before a child suspected of being abused or a sibling may be removed from the home. The act requires a court to order visitation with a parent at the shelter hearing and at the dispositional hearing unless visitation is not in the best interest of the child. This act includes a coordination clause.

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

AMENDS:

62A-4a-116, as last amended by Chapters 304 and 321, Laws of Utah 2000

62A-4a-116.5, as last amended by Chapter 304, Laws of Utah 2000

62A-4a-207, as last amended by Chapter 13, Laws of Utah 1998

78-3a-106, as last amended by Chapters 329 and 365, Laws of Utah 1997

78-3a-301, as last amended by Chapter 274, Laws of Utah 2000

78-3a-307, as last amended by Chapter 285, Laws of Utah 2000

78-3a-311, as last amended by Chapter 121, Laws of Utah 1999

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

Section 1. Section **62A-4a-116** is amended to read:

62A-4a-116. Management information system -- Requirements.

(1) The division shall develop and implement a management information system that meets the requirements of this section and the requirements of federal law and regulation.

(2) With regard to all child welfare cases, the management information system shall:

(a) provide each caseworker with a complete history of each child in his caseload, including:

(i) all past action taken by the division with regard to that child and his siblings, the complete case history and all reports and information in the control or keeping of the division regarding that child and his siblings;

(ii) the number of times the child has been in foster care;

(iii) the cumulative period of time the child has been in foster care;

(iv) all reports of abuse or neglect received by the division with regard to that child's parent or parents, including documentation regarding whether each report was substantiated, unsubstantiated, or without merit;

(v) the number of times the child's parent or parents have failed any treatment plan; and

(vi) the number of different caseworkers who have been assigned to that child in the past;

(b) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect;

(c) alert caseworkers regarding deadlines for completion of and compliance with treatment plans; [~~and~~]

(d) unless the executive director determines that there is good cause for keeping the report on the system based on standards established by rule, delete any reference to:

(i) a report that is without merit if no subsequent report involving the same alleged perpetrator has occurred within one year; or

(ii) a report that is unsubstantiated if no subsequent report involving the same alleged perpetrator has occurred within [~~ten~~] five years[-]; and

(e) maintain a separation of reports that are without merit in the system to identify the cases apart from substantiated cases and, where necessary, provide restricted access to the without merit

cases.

(3) With regard to all child protective services cases, the management information system shall, in addition to the information required in Subsection (2), monitor compliance with the policy of the division, the laws of this state, and federal law and regulation.

(4) With regard to all child welfare and protective services cases, the age and date of birth of the alleged perpetrator, at the time the abuse or neglect is alleged to have occurred, shall be included in the management information system.

(5) (a) The division shall develop and maintain a part of the information management system for licensing purposes, which shall be:

(i) limited to:

(A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and an opportunity to challenge has been provided under Section 62A-4a-116.5;

(B) the name of a person who was not sent a notice of agency action under Section 62A-4a-116.5 because his location was not available on the management information system or who was sent a notice of agency action that was returned to the division as undelivered for the sole purpose of alerting the division of the need to afford the person an opportunity to challenge the finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond delaying the person's licensing application to provide an opportunity for challenge, may be taken;

(C) an adjudication of child abuse or neglect by a court of competent jurisdiction if Subsection 62A-4a-116.5(5) has been met; and

(D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person; and

(ii) accessible by:

(A) the Office of Licensing for licensing purposes only;

(B) the division:

(I) to screen a person at the request of the Office of the Guardian Ad Litem Director, created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the Office of the Guardian Ad Litem and each year thereafter that the person remains with the office; and

(II) to respond to a request for information from the person who is identified as a perpetrator in the report, after advising the person of the screening prohibition in Subsection (4)(d)(iii);

(C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure within the Department of Health only for the purpose of licensing a child care program or provider, or for determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child has a substantiated finding of child abuse or neglect; and

(D) the department as provided in Subsection (6) and Section 62A-1-118.

(b) For the purpose of Subsection (5)(a), "substantiated":

(i) means a finding that there is a reasonable basis to conclude that:

(A) a person 18 years of age or older committed one or more of the following types of child abuse or neglect:

(I) physical abuse;

(II) sexual abuse;

(III) sexual exploitation;

(IV) abandonment;

(V) medical neglect resulting in death, disability, or serious illness; or

(VI) chronic or severe neglect; and

(B) a person under the age of 18:

(I) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or

(II) engaged in sexual behavior with or upon another child which indicates a significant risk to other children; and

(ii) does not include:

(A) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401; or

(B) a person's conduct that:

(I) is justified under Section 76-2-401; or

(II) constituted the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury.

(iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined in accordance with risk assessment tools and policies established by the division that focus on age, social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other related considerations.

(B) The division shall train its child protection workers to apply the risk assessment tools and policies established under Subsection (5)(b)(iii)(A).

(c) (i) The Department of Health shall:

(A) designate two persons within the Department of Health to access the licensing part of the management information system; and

(B) adopt measures to:

(I) protect the security of the licensing part of the management information system; and

(II) strictly limit access to the licensing part of the management information system to those designated under Subsection (5)(c)(i)(A).

(ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the department with respect to:

(A) accessing the licensing part of the management information system;

(B) maintaining strict security; and

(C) the criminal provisions in Section 62A-4a-412 for the improper release of information.

(iii) Those designated under Subsection (5)(c)(i)(A):

(A) are the only ones in the Department of Health with the authority to access the licensing part of the management information system; and

(B) may only access the licensing part of the management information system in accordance with the provisions of Subsection (5)(a)(ii).

(iv) The Department of Health may obtain information in the possession of the division that

relates to a substantiated finding of abuse or neglect of a person screened under this Subsection (5)(c).

(d) (i) Information in the licensing part of the management information system is confidential and may only be used or disclosed as specifically provided in this section, Section 62A-2-121, and Section 62A-4a-116.5.

(ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators of child abuse or neglect.

(iii) A person who requests information knowing that it is a violation of Subsection (5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.

(6) All information contained in the management information system shall be available to the department upon the approval of the executive director, on a need-to-know basis.

(7) (a) The division may allow its contract providers to have limited access to the management information system. The division shall limit that access to information about persons who are currently receiving services from the specific contract provider.

(b) Each contract provider shall:

(i) take all necessary precautions to safeguard the security of the information contained in the management information system;

(ii) train its employees regarding requirements for confidentiality and the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they comply with the confidentiality requirements related to the management information system.

(c) The division shall take reasonable precautions to ensure that its contract providers are complying with Subsection (7)(b).

(8) The division shall take all necessary precautions, including password protection and other appropriate technological techniques, to prevent unauthorized access to the information contained in the management information system.

(9) (a) The division shall send a certified letter to a person who submitted a report of child abuse or neglect that is put onto any part of the management information system if the division determines, at the conclusion of its investigation, that:

(i) the report is false;

(ii) it is more likely than not that the person knew that the report was false at the time the person submitted the report; and

(iii) the person's address is known or reasonably available.

(b) The letter shall inform the person of:

(i) the determination made under Subsection (9)(a);

(ii) the penalty for submitting false information under Section 76-8-506 and other applicable laws;

(iii) the obligation of the division to inform law enforcement and the alleged perpetrator:

(A) in the present instance if an immediate referral is justified by the facts; or

(B) if the person submits a subsequent false report involving the same alleged perpetrator or victim.

(c) (i) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified by the facts.

(ii) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the person involving the same alleged perpetrator or victim.

(iii) The division shall determine, in consultation with law enforcement:

(A) the information to be given to an alleged perpetrator about a false claim; and

(B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator about a false claim.

(d) Nothing in this Subsection (9) may be construed as requiring the division to conduct an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report is false.

Section 2. Section **62A-4a-116.5** is amended to read:

62A-4a-116.5. Opportunity to challenge a finding of child abuse or neglect.

(1) (a) The division shall send a notice of agency action to a person if the division finds, at the conclusion of an investigation, that, in the opinion of the division, there is a reasonable basis to conclude that the person committed abuse or neglect listed in Subsection 62A-4a-116(5)(b)(i). In the event that the person is under the age of 18, the division shall:

(i) make reasonable efforts to identify the person's parent or legal guardian; and

(ii) send a notice to each parent or legal guardian identified under Subsection (1)(a)(i) that lives at a different address unless there is good cause, as defined by rule, for not sending a notice to a parent or legal guardian.

(b) For purposes of this section only, which governs the right of a person to challenge the division's initial finding or opinion of abuse or neglect as it pertains to the licensing part of the management information system, the division shall refer to a finding under Subsection (1)(a) as a "finding" or an "initial finding" of abuse or neglect when notifying or explaining a notification to a person.

(c) Nothing in this section may be construed as affecting:

(i) the manner in which the division conducts an investigation; or

(ii) the use or effect, in any other setting, of:

(A) an initial division finding or substantiation of child abuse or neglect at the completion of an investigation for any purpose other than for notification under Subsection (1)(b); or

(B) the term "substantiated" as used in any other provision of the code.

(2) The notice shall state:

(a) that the division conducted an investigation;

(b) that the division found, at the conclusion of the investigation, that there was, in the opinion of the division, a reasonable basis to conclude that abuse or neglect occurred;

(c) the facts that support the finding;

(d) that the person may be disqualified from adopting a child or working for or being licensed by:

- (i) the department;
- (ii) a human services licensee;
- (iii) a child care provider or program; and
- (iv) a covered health care facility;
- (e) that the person has the right to request:

- (i) a copy of the report; and

- (ii) an opportunity to challenge the finding and its inclusion on the licensing part of the management information system described in Subsection 62A-4a-116(5), except as provided in Subsection (5)(b); and

(f) that failure to request an opportunity to challenge the finding within 30 days of the notice being received will result in an unappealable finding of substantiation of child abuse or neglect, unless the person can show good cause for why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

(3) (a) A person may make a request to challenge a finding within 30 days of:

- (i) a notice being received under Subsection (2);

- (ii) a finding by a court of competent jurisdiction based on the same underlying facts that:

- (A) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), did not occur; or

- (B) the person was not responsible for the child abuse or neglect that did occur; or

- (iii) the dismissal of criminal charges or a verdict of not guilty based on the same underlying facts.

(b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown that compliance was virtually impossible or unreasonably burdensome.

(c) The division may approve or deny a request made under Subsection (3)(a).

(d) If the division denies the request or fails to act within 30 days after receiving a request submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

(4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall prove by a preponderance of the evidence that there is a reasonable basis to conclude that:

- (i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred; and
- (ii) the person was substantially responsible for the abuse or neglect that occurred.

(b) The administrative hearing officer may make a determination of substantiation based solely on the out-of-court statement of the child that the officer finds to be reliable under the standards set forth in:

- (i) Section 76-5-411;
- (ii) Utah Rules of Criminal Procedure, Rule 15.5;
- (iii) Section 78-3a-116(5);
- (iv) the Utah Rules of Evidence; or
- (v) Utah case law.

(5) (a) [~~A~~] Except as provided in Subsection (5)(b), a person may not make a request to challenge a finding under Subsection (3)(a), if, at anytime, a court of competent jurisdiction has made a determination based on the same underlying facts that:

- (i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred;
- (ii) the person was substantially responsible for the abuse or neglect that occurred; and
- (iii) the person:
 - (A) was a party to the proceeding; or
 - (B) (I) had notice of the proceeding; and
 - (II) was provided a meaningful opportunity to challenge the facts underlying the court's determination.

(b) The division shall remove a person's name from the database unless the division provides new notice under Subsection (1)(a) and an opportunity to be heard under Subsection (3)(a) when the court of competent jurisdiction:

- (i) enters a finding of not guilty;
- (ii) dismisses the information or indictment after compliance with the requirements of a diversion agreement under Section 77-2-6; or
- (iii) dismisses the case or withdraws a plea under Section 77-2a-3 after the completion of a plea in abeyance agreement following a plea of no contest.

~~(b)~~ (c) An adjudicative proceeding held pursuant to Subsection (4) may be stayed during the time a judicial action is pending.

(6) Nothing in this section may affect the inclusion or exclusion of a report or finding of child abuse or neglect from or access by the division, its caseworkers, and child protective services workers to that part of the management information system used for purposes of child welfare cases and child protective services as described in Subsections 62A-4a-116(2) and (3).

(7) By December 31, 1998, the division shall provide notice to each person with a finding of abuse or neglect since January 1, 1994.

(8) A person who, after receiving notice, fails to challenge a finding of child abuse or neglect may request the opportunity to challenge the finding under this section:

(a) if since the time that the person received notice, state law has been amended to permit a broader use of or access to information on the licensing part of the management information system; and

(b) before the finding may be used against the person in connection with the broader use or access.

Section 3. Section **62A-4a-207** is amended to read:

62A-4a-207. Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

(3) The panel shall follow the interim committee rules established by the Legislature.

(4) The panel shall:

(a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;

(b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system including, but not limited to, the division, other offices and agencies within the department, the attorney general's office, the Office of the Guardian Ad Litem Director, and school districts;

(c) receive reports from the Consumer Hearing Panel, described in Subsection 62A-4a-102(3), and consider and review the actions, reports, and recommendations of that panel;

(d) receive recommendations from, and make recommendations to the governor, the Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the juvenile court, and the public;

(e) study and recommend proposed changes to laws governing the child welfare system;

(f) study and determine what measures may be appropriate in addressing the immunity or liability of government employees involved in child protective service investigations and removals, and report its findings to the Human Services Interim Committee on or before November 1, 2001;

~~(f)~~ (g) perform such other duties related to the oversight of the child welfare system as the panel considers appropriate; and

~~(g)~~ (h) annually report its findings and recommendations to the president of the Senate, the speaker of the House of Representatives, the Health and Human Services Interim Committee, and the Judiciary Interim Committee.

(5) The panel has authority to review and discuss individual cases. When an individual case is discussed, the panel's meeting may be held in private.

(6) (a) The panel has authority to make recommendations to the Legislature, the governor, the Board of Juvenile Court Judges, the division, and any other statutorily created entity related to the policies and procedures of the child welfare system. The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to appear and present their views regarding the child welfare system in this state.

(7) (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

(b) The panel shall have access to all of the division's records, including those regarding individual cases. In accordance with Title 63, Chapter 2, Government Records Access Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Members of the panel shall receive salary and expenses in accordance with Section 36-2-2.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Section 4. Section **78-3a-106** is amended to read:

78-3a-106. Search warrants and subpoenas -- Authority to issue.

(1) The court has authority to issue search warrants, subpoenas, or investigative subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same

purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.

(2) (a) If it appears to the court upon an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses, if required by the judge, that there is probable cause to believe that a child is being ill-treated by his parent, guardian, or custodian, or is being detained, ill-treated, or harbored against the desires of his parent, guardian, or custodian, in any place within the jurisdiction of the court, the court may issue a warrant authorizing a peace officer to search for the child.

(b) ~~[The]~~ Pursuant to Section 77-23-210, the officer making the search may enter a house or premises by force, if necessary, in order to remove the child.

(c) The officer shall then take the child to the place of shelter designated by the court.

Section 5. Section **78-3a-301** is amended to read:

78-3a-301. Removing a child from his home -- Grounds for removal -- Exigent circumstances.

(1) The Division of Child and Family Services may not remove a child from the custody of his natural parent unless the division complies with the provisions of Title 62A, Chapter 4a, Child and Family Services, including Subsections 62A-4a-103(2)(b) and 62A-4a-201(3), and unless there is substantial cause to believe that any one of the following exist:

(a) there is a substantial danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing him from his parent's custody. If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency ~~[occurs]~~ has occurred involving the same alleged 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 his parent;

(b) a parent engages in or threatens the child with unreasonable conduct that causes the minor [is suffering] to suffer emotional damage~~[, as may be indicated by, but not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,]~~ and there

are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of his parent;

(c) (i) the minor or another minor residing in the same household has been physically or sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent.

(ii) For purposes of this Subsection (1)(c), another minor residing in the same household may not be removed from the home unless that minor is deemed to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or (iii).

(iii) If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent ~~[has allowed]~~ failed to protect the child 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 or sexually abused;

(d) the parent is unwilling to have physical custody of the child;

(e) the minor has been left without any provision for his support;

(f) a parent who has been incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the minor;

(g) a relative or other adult custodian with whom the minor has been left by the parent is unwilling or unable to provide care or support for the minor, the whereabouts of the parent are unknown, and reasonable efforts to locate him have been unsuccessful;

(h) the minor is in immediate need of urgent medical care;

(i) ~~[the physical]~~ (i) a parent's actions, omissions, or habitual action create an environment [or the fact that the child is left unattended] that poses a threat to the child's health or safety; or

(ii) a parent's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;

(j) (i) the minor or another minor residing in the same household has been neglected; and

(ii) for purposes of Subsection (j)(i), another minor residing in the same household may not be removed unless that minor is deemed to be at substantial risk of being neglected;

(k) an infant has been abandoned, as defined in Section 78-3a-313.5;

(l) the parent, or an adult residing in the same household as the parent, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the property where the child resided; or

(m) the child's welfare is otherwise endangered, as documented by the caseworker. This Subsection (1)(m) is repealed on July 1, 2002 unless further authorized by the Legislature.

(2) The Division of Child and Family Services may not remove a minor from the custody of his [~~natural~~] parent solely on the basis of educational neglect.

(3) The Division of Child and Family Services may not remove a minor from the custody of his parent solely on the basis of mental illness of the parent in the absence of one of the factors described in Subsection (1).

[~~(3)~~] (4) The Division of Child and Family Services shall comply with the provisions of Section 62A-4a-202.1 in effecting removal of a child pursuant to this section.

[~~(4)~~] (5) (a) A minor removed from the custody of his natural parent under this section may not be placed or kept in a secure detention facility pending court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Youth Corrections.

(b) A minor removed from the custody of his natural parent but who does not require physical restriction shall be given temporary care in a shelter facility.

Section 6. Section **78-3a-307** is amended to read:

78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative -- DCFS custody.

(1) (a) At the shelter hearing, when the court orders that a child be removed from the custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall first determine whether there is another natural parent as defined in Subsection (1)(b), with whom the child was not residing at the time the events or conditions that brought him within the court's jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody, the court shall place the minor with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the

provisions of Subsection (8)(b).

(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the custodial parent. This definition 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) (i) The court shall make a specific finding regarding the fitness of that parent 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, perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, 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 of Child and Family Services 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.

(2) If the court orders placement with a parent under Subsection (1), the child and the parent are under the continuing jurisdiction of the court. The court may order that the parent assume custody subject to the supervision of the court, and order that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both. The court ~~may~~ shall also provide for reasonable visitation with the parent from whose custody the child was removed, ~~if that~~ unless visitation is not in the best interest of the child. The court's order shall be periodically reviewed 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 with a relative, pursuant to Subsection (5); or

(d) the child should be placed in the custody of the division.

(3) The time limitations described in Section 78-3a-311 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (1).

(4) Legal custody of the child is not affected by an order entered under Subsection (1) or (2). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.

(5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his parent and is not placed in the custody of his other parent, the court shall, at that time, determine whether there is a relative who is able and willing to care for the child. The court may order the Division of Child and Family Services to conduct a reasonable search to determine whether there are relatives 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. The court shall order the parents to cooperate with the division, within five working days, to provide information regarding relatives who may be able and willing to care for the child. The child may be placed in the temporary custody of the division pending that determination. This section may not be construed as a guarantee that an identified relative will receive custody of the child. However, preferential consideration may be given to a relative'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.

(b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make a specific finding regarding the fitness of that relative to assume custody, and the safety and appropriateness of placement with that relative. In order to be considered a "willing relative" under this section, the relative shall be willing to cooperate if the child's permanency goal is reunification with his parent or parents, and be willing to adopt or take permanent custody of the child if that is determined to be in the best interest of the child.

(ii) The court shall, at a minimum, order the division to conduct criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the division's management information system for any previous reports of abuse or neglect regarding the relative

at issue, report its findings in writing to the court, and provide sufficient information so that the court may determine whether:

(A) the relative 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;

(C) the relative recognizes the parent's history of abuse and is determined to protect the child;

(D) the relative is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(E) the relative is committed to caring for the child as long as necessary; and

(F) the relative can provide a secure and stable environment for the child.

(iii) The court may order the Division of Child and Family Services to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall complete and file its assessment regarding placement with a relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

(c) The court may place the child in the temporary custody of the division, pending the division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that placement. The court shall ultimately base its determination regarding placement with a relative on the best interest of the child.

(d) For purposes of this section, "relative" means an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended family member" as defined by that statute.

(6) (a) When the court vests physical custody of a child with a relative pursuant to Subsection (5), it shall order that the relative assume custody subject to the continuing supervision of the court, and shall order that any necessary services be provided to the minor and the relative. That child is not within the temporary custody or custody of the Division of Child and Family

Services. The child and any relative with whom the child is placed are under the continuing jurisdiction of the court. The court may enter any order that it considers necessary for the protection and best interest of the child. The court shall provide for reasonable visitation with the parent or parents from whose custody the child was removed unless visitation is not in the best interest of the child.

(b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed by the court, no less often than every six months, to determine whether:

- (A) placement with the relative continues to be in the child's best interest;
- (B) the child should be returned home; or
- (C) the child should be placed in the custody of the division.

(ii) No later than 12 months after placement with a relative the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(iii) The time limitations described in Section 78-3a-311, with regard to reunification efforts, apply to children placed with a relative pursuant to Subsection (5).

(7) When the court orders that a child be removed from the custody of his parent and does not vest custody in another parent or relative 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.

(8) (a) Any preferential consideration that a relative may be initially granted pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative 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 (8)(a) has expired, the preferential consideration which may initially be granted to a natural parent in accordance with Subsection (1), is limited. After that time the court shall base its custody decision on the best interest of the child.

Section 7. 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) (i) 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).

(ii) When the court determines that reunification services are appropriate for the child and the child's family, the court shall provide for reasonable visitation with the parent or parents from whose custody the child was removed, unless visitation is not in the best interest of the child.

(iii) 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.

(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.

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

(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.

(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.

(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 30 days, in accordance with Section 78-3a-312.

Section 8. Coordination clause.

If this bill and S.B. 165, Noncustodial Visitation, both pass, it is the intent of the Legislature that the amendments in S.B. 165 which change the term "visitation" to "parent time" supersede the amendments in Subsections 78-3a-307(2) and (6) and Subsection 78-3a-311(2) of this bill which use the current statutory term "visitation".