

1 **CHILD WELFARE AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 Senate Sponsor: Margaret Dayton

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends Title 62A, Utah Human Services Code, Title 78A, Judiciary and  
10 Judicial Administration, and Title 78B, Judicial Code, relating to child welfare.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines the term "relative";
- 14 ▶ amends Division of Child and Family Services caseworker training requirements;
- 15 ▶ requires a caseworker to file a report explaining why a particular placement is in the  
16 child's best interest when a child is removed from the child's immediate family but  
17 not placed with kin;
- 18 ▶ requires a licensee under the Medical Practice or Nurse Practice Act to report a  
19 determination of fetal alcohol spectrum disorder to the Division of Child and  
20 Family Services;
- 21 ▶ prohibits taking a child into protective custody solely on the basis of educational  
22 neglect, truancy, or failure to comply with a court order to attend school;
- 23 ▶ requires a fingerprint-based background check on any adult residing in the home of  
24 a foster parent or potential foster parent;
- 25 ▶ creates a presumption that reunification services not be provided to:
  - 26 • a parent who commits sexual abuse of a child;
  - 27 • a parent who is a registered sex offender; or
  - 28 • a birth mother whose child is born with fetal alcohol spectrum disorder, unless  
29 she enrolls in a substance abuse program;

- 30           ▶ requires a court to consider costs already borne by a parent or legal guardian before
- 31 assessing guardian ad litem attorney fees, court costs, or expenses against a parent
- 32 or legal guardian;
- 33           ▶ permits a parent or legal guardian to appeal a court's determination of guardian ad
- 34 litem attorney fees, costs, and expenses;
- 35           ▶ requires a guardian ad litem to:
- 36               • disclose, in certain cases, the minor's wishes to the court;
- 37               • conduct an independent investigation regarding a minor client, the minor's
- 38 family, and what constitutes the best interest of the minor;
- 39               • keep records regarding how many times the guardian ad litem has had contact
- 40 with each minor client and make those records available when making a
- 41 recommendation regarding the client's welfare; and
- 42               • disclose to the court the basis for any recommendation regarding the best
- 43 interest of the child;
- 44           ▶ creates a preference for the adoption of a child by a relative following a termination
- 45 of parental rights; and
- 46           ▶ makes technical changes.

47 **Money Appropriated in this Bill:**

48           None

49 **Other Special Clauses:**

50           None

51 **Utah Code Sections Affected:**

52 AMENDS:

53           **62A-2-120**, as last amended by Laws of Utah 2011, Chapters 320 and 366

54           **62A-4a-102**, as last amended by Laws of Utah 2009, Chapter 75

55           **62A-4a-107**, as last amended by Laws of Utah 2007, Chapter 306

56           **62A-4a-202.1**, as last amended by Laws of Utah 2008, Chapters 3 and 17

57           **62A-4a-202.6**, as last amended by Laws of Utah 2010, Chapter 239

58           **62A-4a-404**, as renumbered and amended by Laws of Utah 1994, Chapter 260  
59           **78A-6-302**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
60           **78A-6-306**, as last amended by Laws of Utah 2010, Chapter 368  
61           **78A-6-308**, as last amended by Laws of Utah 2009, Chapter 32  
62           **78A-6-312**, as last amended by Laws of Utah 2011, Chapters 98 and 167  
63           **78A-6-511**, as renumbered and amended by Laws of Utah 2008, Chapter 3  
64           **78A-6-902**, as last amended by Laws of Utah 2011, Chapter 158  
65           **78B-6-131**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of  
66 Utah 2008, Chapter 17



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

69           Section 1. Section **62A-2-120** is amended to read:

70           **62A-2-120. Criminal background checks -- Direct access to children or**  
71 **vulnerable adults.**

72           (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a  
73 license renewal under this chapter shall submit to the office the names and other identifying  
74 information, which may include fingerprints, of all persons associated with the licensee, as  
75 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

76           (b) The Criminal Investigations and Technical Services Division of the Department of  
77 Public Safety, or the office as authorized under Section 53-10-108, shall process the  
78 information described in Subsection (1)(a) to determine whether the [~~individual~~] applicant has  
79 been convicted of any crime.

80           (c) Except as provided in Subsection (1)(d), if an [~~individual~~] applicant has not  
81 continuously lived in Utah for the five years immediately preceding the day on which the  
82 information referred to in Subsection (1)(a) is submitted to the office, the [~~individual~~] applicant  
83 shall submit fingerprints for a FBI national criminal history record check. The fingerprints  
84 shall be submitted to the FBI through the Criminal Investigations and Technical Services  
85 Division.

86 (d) An ~~[individual]~~ applicant is not required to comply with Subsection (1)(c) if:

87 (i) the ~~[individual]~~ applicant continuously lived in Utah for the five years immediately  
88 preceding the day on which the information described in Subsection (1)(a) is submitted to the  
89 office, except for time spent outside of the United States and its territories; and

90 (ii) the background check of the ~~[individual]~~ applicant is being conducted for a purpose  
91 other than a purpose described in Subsection (1)(f).

92 (e) If an applicant described in Subsection (1)(a) spent time outside of the United  
93 States and its territories during the five years immediately preceding the day on which the  
94 information described in Subsection (1)(a) is submitted to the office, the office shall require the  
95 applicant to submit documentation establishing whether the applicant was convicted of a crime  
96 during the time that the applicant spent outside of the United States and its territories.

97 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in  
98 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an  
99 FBI national criminal history records check, through the Criminal Investigations and Technical  
100 Services Division, if the background check of the applicant is being conducted for the purpose  
101 of:

102 (i) licensing a prospective foster home; or

103 (ii) approving a prospective adoptive placement of a child in state custody.

104 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of  
105 this section, if the background check of an applicant described in Subsection (1)(a) is being  
106 conducted for the purpose of licensing a prospective foster home or approving a prospective  
107 adoptive placement of a child in state custody, the office shall:

108 (i) check the child abuse and neglect registry in each state where each ~~[prospective~~  
109 ~~foster parent or prospective adoptive parent]~~ applicant resided in the five years immediately  
110 preceding the day on which the ~~[prospective foster parent or prospective adoptive parent]~~  
111 applicant applied to be a foster parent or adoptive parent, to determine whether the prospective  
112 foster parent or prospective adoptive parent is listed in the registry as having a substantiated or  
113 supported finding of child abuse or neglect; and

114 (ii) check the child abuse and neglect registry in each state where each adult living in  
115 the home of the [~~prospective foster parent or prospective adoptive parent~~] applicant described  
116 in Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the  
117 [~~prospective foster parent or prospective adoptive parent~~] applicant applied to be a foster parent  
118 or adoptive parent, to determine whether the adult is listed in the registry as having a  
119 substantiated or supported finding of child abuse or neglect.

120 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

121 (i) federal law or rule permits otherwise; or

122 (ii) the requirements would prohibit the Division of Child and Family Services or a  
123 court from placing a child with:

124 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

125 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,  
126 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)  
127 and (g).

128 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah  
129 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to  
130 background checks.

131 (2) The office shall approve [~~a person~~] an applicant for whom identifying information  
132 is submitted under Subsection (1) to have direct access to children or vulnerable adults in the  
133 licensee program if:

134 (a) (i) the [~~person~~] applicant is found to have no criminal history record; or

135 (ii) (A) the only convictions in the [~~person's~~] applicant's criminal history record are  
136 misdemeanors or infractions not involving any of the offenses described in Subsection (3); and

137 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years  
138 before the date of the search;

139 (b) the [~~person~~] applicant is not listed in the statewide database of the Division of  
140 Aging and Adult Services created by Section 62A-3-311.1;

141 (c) juvenile court records do not show that a court made a substantiated finding, under

142 Section 78A-6-323, that the ~~[person]~~ applicant committed a severe type of child abuse or  
143 neglect;

144 (d) the ~~[person]~~ applicant is not listed in the Licensing Information System of the  
145 Division of Child and Family Services created by Section 62A-4a-1006;

146 (e) the ~~[person]~~ applicant has not pled guilty or no contest to a pending charge for any:

147 (i) felony;

148 (ii) misdemeanor listed in Subsection (3); or

149 (iii) infraction listed in Subsection (3); and

150 (f) for ~~[a person]~~ an applicant described in Subsection (1)(g), the registry check  
151 described in Subsection (1)(g) does not indicate that the ~~[person]~~ applicant is listed in a child  
152 abuse and neglect registry of another state as having a substantiated or supported finding of a  
153 severe type of child abuse or neglect as defined in Section 62A-4a-1002.

154 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the  
155 date of conviction, the office may not approve ~~[a person]~~ an applicant to have direct access to  
156 children or vulnerable adults in the licensee's human services program if ~~[that person]~~ the  
157 applicant has been convicted of an offense, whether a felony, misdemeanor, or infraction, that  
158 is:

159 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

160 (b) a violation of any pornography law, including sexual exploitation of a minor;

161 (c) prostitution;

162 (d) included in:

163 (i) Title 76, Chapter 5, Offenses Against the Person;

164 (ii) Section 76-5b-201, Sexual Exploitation of a Minor; or

165 (iii) Title 76, Chapter 7, Offenses Against the Family;

166 (e) a violation of Section 76-6-103, aggravated arson;

167 (f) a violation of Section 76-6-203, aggravated burglary;

168 (g) a violation of Section 76-6-302, aggravated robbery; or

169 (h) a conviction for an offense committed outside of the state that, if committed in the

170 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

171 (4) (a) Except as provided in Subsection (8), if [~~a person~~] an applicant for whom  
172 identifying information is submitted under Subsection (1) is not approved by the office under  
173 Subsection (2) or (3) to have direct access to children or vulnerable adults in the licensee  
174 program, the office shall conduct a comprehensive review of criminal and court records and  
175 related circumstances if the reason the approval is not granted is due solely to one or more of  
176 the following:

177 (i) a conviction for:

178 (A) any felony not listed in Subsection (3);

179 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the  
180 date of the search;

181 (C) a protective order or ex parte protective order violation under Section 76-5-108 or  
182 a similar statute in another state; or

183 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years  
184 have passed since the date of conviction;

185 (ii) a plea of guilty or no contest to a pending:

186 (A) felony;

187 (B) misdemeanor listed in Subsection (3); or

188 (C) infraction listed in Subsection (3);

189 (iii) the [~~person~~] applicant is listed in the statewide database of the Division of Aging  
190 and Adult Services created by Section 62A-3-311.1;

191 (iv) juvenile court records show that a court made a substantiated finding, under  
192 Section 78A-6-323, that the [~~person~~] applicant committed a severe type of child abuse or  
193 neglect;

194 (v) the [~~person~~] applicant is listed in the Licensing Information System of the Division  
195 of Child and Family Services created by Section 62A-4a-1006; or

196 (vi) the [~~person~~] applicant is listed in a child abuse or neglect registry of another state  
197 as having a substantiated or supported finding of a severe type of child abuse or neglect as

198 defined in Section 62A-4a-1002.

199 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:

200 (i) the date of the offense or incident;

201 (ii) the nature and seriousness of the offense or incident;

202 (iii) the circumstances under which the offense or incident occurred;

203 (iv) the age of the perpetrator when the offense or incident occurred;

204 (v) whether the offense or incident was an isolated or repeated incident;

205 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable

206 adult, including:

207 (A) actual or threatened, nonaccidental physical or mental harm;

208 (B) sexual abuse;

209 (C) sexual exploitation; and

210 (D) negligent treatment;

211 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric

212 treatment received, or additional academic or vocational schooling completed, by the person;

213 and

214 (viii) any other pertinent information.

215 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office

216 shall approve the ~~[person]~~ applicant who is the subject of the review to have direct access to

217 children or vulnerable adults, unless it finds that approval will likely create a risk of harm to a

218 child or vulnerable adult.

219 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

220 office may make rules, consistent with this chapter, defining procedures for the comprehensive

221 review described in this Subsection (4).

222 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person

223 being supervised is under the uninterrupted visual and auditory surveillance of the person doing

224 the supervising.

225 (b) A licensee may not permit any person to have direct access to a child or a



226 vulnerable adult unless, subject to Subsection (5)(c), that person is:

227 (i) associated with the licensee and:

228 (A) approved by the office to have direct access to children or vulnerable adults under  
229 this section; or

230 (B) (I) the office has not determined whether to approve that person to have direct  
231 access to children or vulnerable adults;

232 (II) the information described in Subsection (1)(a), relating to that person, is submitted  
233 to the department; and

234 (III) that person is directly supervised by a person associated with the licensee who is  
235 approved by the office to have direct access to children or vulnerable adults under this section;

236 (ii) (A) not associated with the licensee; and

237 (B) directly supervised by a person associated with the licensee who is approved by the  
238 office to have direct access to children or vulnerable adults under this section;

239 (iii) the parent or guardian of the child or vulnerable adult; or

240 (iv) a person approved by the parent or guardian of the child or vulnerable adult to  
241 have direct access to the child or vulnerable adult.

242 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child  
243 or a vulnerable adult if that person is prohibited by court order from having that access.

244 (6) (a) Within 30 days after receiving the identifying information for a person under  
245 Subsection (1), the office shall give written notice to the person and to the licensee or applicant  
246 with whom the person is associated of:

247 (i) the office's decision regarding its background screening clearance and findings; and

248 (ii) a list of any convictions found in the search.

249 (b) With the notice described in Subsection (6)(a), the office shall also give [~~to~~] the  
250 [~~person~~] applicant the details of any comprehensive review conducted under Subsection (4).

251 (c) If the notice under Subsection (6)(a) states that the [~~person~~] applicant is not  
252 approved to have direct access to children or vulnerable adults, the notice shall further advise  
253 the persons to whom the notice is given that either the person or the licensee or applicant with

254 whom the person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing  
255 in the department's Office of Administrative Hearings, to challenge the office's decision.

256 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
257 office shall make rules, consistent with this chapter:

258 (i) defining procedures for the challenge of its background screening decision  
259 described in this Subsection (6); and

260 (ii) expediting the process for renewal of a license under the requirements of this  
261 section and other applicable sections.

262 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for  
263 an initial license, or license renewal, to operate a substance abuse program that provides  
264 services to adults only.

265 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or  
266 license a person as a prospective foster parent or a prospective adoptive parent if the person has  
267 been convicted of:

268 (i) a felony involving conduct that constitutes any of the following:

269 (A) child abuse, as described in Section 76-5-109;

270 (B) commission of domestic violence in the presence of a child, as described in Section  
271 76-5-109.1;

272 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

273 (D) endangerment of a child, as described in Section 76-5-112.5;

274 (E) aggravated murder, as described in Section 76-5-202;

275 (F) murder, as described in Section 76-5-203;

276 (G) manslaughter, as described in Section 76-5-205;

277 (H) child abuse homicide, as described in Section 76-5-208;

278 (I) homicide by assault, as described in Section 76-5-209;

279 (J) kidnapping, as described in Section 76-5-301;

280 (K) child kidnapping, as described in Section 76-5-301.1;

281 (L) aggravated kidnapping, as described in Section 76-5-302;

- 282 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 283 (N) an offense described in Section 76-5b-201, Sexual Exploitation of a Minor;
- 284 (O) aggravated arson, as described in Section 76-6-103;
- 285 (P) aggravated burglary, as described in Section 76-6-203;
- 286 (Q) aggravated robbery, as described in Section 76-6-302; or
- 287 (R) domestic violence, as described in Section 77-36-1; or
- 288 (ii) an offense committed outside the state that, if committed in the state, would
- 289 constitute a violation of an offense described in Subsection (8)(a)(i).

290 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license  
291 a person as a prospective foster parent or a prospective adoptive parent if, within the five years  
292 immediately preceding the day on which the person would otherwise be approved or licensed,  
293 the person has been convicted of a felony involving conduct that constitutes any of the  
294 following:

- 295 (i) aggravated assault, as described in Section 76-5-103;
- 296 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 297 (iii) mayhem, as described in Section 76-5-105;
- 298 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 299 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 300 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances  
301 Act;
- 302 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance  
303 Precursor Act; or
- 304 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

305 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,  
306 the conflicting provision of Section 62A-2-120.5 shall govern.

307 Section 2. Section **62A-4a-102** is amended to read:

308 **62A-4a-102. Policy responsibilities of division.**

309 (1) The Division of Child and Family Services, created in Section 62A-4a-103, is

310 responsible for establishing policies for the division, by rule, under Title 63G, Chapter 3, Utah  
311 Administrative Rulemaking Act, in accordance with the requirements of this chapter and Title  
312 78A, Chapter 6, Juvenile Court Act of 1996, regarding abuse, neglect, and dependency  
313 proceedings, and domestic violence services. The division is responsible to see that the  
314 legislative purposes for the division are carried out.

315 (2) The division shall:

316 (a) approve fee schedules for programs within the division;

317 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
318 establish, by rule, policies to ensure that private citizens, consumers, foster parents, private  
319 contract providers, allied state and local agencies, and others are provided with an opportunity  
320 to comment and provide input regarding any new policy or proposed revision of an existing  
321 policy; and

322 (c) provide a mechanism for:

323 (i) systematic and regular review of existing [policy] policies, including an annual  
324 review of all division policies to ensure that policies comply with the Utah Code; and

325 (ii) consideration of policy changes proposed by the persons and agencies described in  
326 Subsection (2)(b).

327 (3) (a) The division shall establish rules for the determination of eligibility for services  
328 offered by the division in accordance with this chapter.

329 (b) The division may, by rule, establish eligibility standards for consumers.

330 (4) The division shall adopt and maintain rules regarding placement for adoption or  
331 foster care that are consistent with, and no more restrictive than, applicable statutory  
332 provisions.

333 Section 3. Section **62A-4a-107** is amended to read:

334 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**  
335 **curriculum.**

336 (1) There is created within the division a full-time position of Child Welfare Training  
337 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee

338 in that position is not responsible for direct casework services or the supervision of those  
339 services, but is required to:

340 (a) develop child welfare curriculum that:

341 (i) is current and effective, consistent with the division's mission and purpose for child  
342 welfare; and

343 (ii) utilizes curriculum and resources from a variety of sources including those from:

344 (A) the public sector;

345 (B) the private sector; and

346 (C) inside and outside of the state;

347 (b) recruit, select, and supervise child welfare trainers;

348 (c) develop a statewide training program, including a budget and identification of  
349 sources of funding to support that training;

350 (d) evaluate the efficacy of training in improving job performance;

351 (e) assist child protective services and foster care workers in developing and fulfilling  
352 their individual training plans;

353 (f) monitor staff compliance with division training requirements and individual training  
354 plans; and

355 (g) expand the collaboration between the division and schools of social work within  
356 institutions of higher education in developing child welfare services curriculum, and in  
357 providing and evaluating training.

358 (2) (a) The director shall, with the assistance of the child welfare training coordinator,  
359 establish a core curriculum for child welfare services that is substantially equivalent to the  
360 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

361 (b) Any child welfare caseworker who is employed by the division for the first time  
362 after July 1, 1999, shall, before assuming significant independent casework responsibilities,  
363 successfully complete:

364 (i) the core curriculum; and

365 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of

366 observing and accompanying at least two capable and experienced child welfare caseworkers  
367 as they perform work-related functions:

368 (A) for three months if the caseworker has less than six months of on-the-job  
369 experience as a child welfare caseworker; or

370 (B) for two months if the caseworker has six months or more but less than 24 months  
371 of on-the-job experience as a child welfare caseworker.

372 (c) A child welfare caseworker with at least 24 months of on-the-job experience is not  
373 required to receive on-the-job training under Subsection (2)(b)(ii).

374 (3) Child welfare caseworkers shall complete training in:

375 (a) the legal duties of a child welfare caseworker;

376 (b) the responsibility of a child welfare caseworker to protect the safety and legal rights  
377 of children, parents, and families at all stages of a case, including:

378 (i) initial contact;

379 (ii) investigation; and

380 (iii) treatment;

381 (c) recognizing situations involving:

382 (i) substance abuse;

383 (ii) domestic violence;

384 (iii) abuse; and

385 (iv) neglect; and

386 (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of  
387 the United States to the child welfare caseworker's job, including:

388 (i) search and seizure of evidence;

389 (ii) the warrant requirement;

390 (iii) exceptions to the warrant requirement; and

391 (iv) removing a child from the custody of the child's parent or guardian.

392 (4) The division shall train its child welfare caseworkers to apply the risk assessment  
393 tools and rules described in Subsection 62A-4a-1002(2).

394 (5) The division shall use the training of child welfare caseworkers to emphasize:  
395 (a) the importance of maintaining the parent-child relationship whenever possible;  
396 (b) the preference for providing in-home services over taking a child into protective  
397 custody, both for the emotional well-being of the child and the efficient allocation of resources;  
398 and  
399 (c) the importance and priority of kinship placement in the event a child must be taken  
400 into protective custody.

401 [~~5~~] (6) When a child welfare caseworker is hired, before assuming significant  
402 independent casework responsibilities, the child welfare caseworker shall complete the training  
403 described in Subsections (3) [~~and (4)~~] through (5).

404 Section 4. Section **62A-4a-202.1** is amended to read:

405 **62A-4a-202.1. Entering home of a child -- Taking a child into protective custody**  
406 **-- Caseworker accompanied by peace officer -- Preventive services -- Shelter facility or**  
407 **emergency placement.**

408 (1) A peace officer or child welfare worker may not:

409 (a) enter the home of a child who is not under the jurisdiction of the court, remove a  
410 child from the child's home or school, or take a child into protective custody unless authorized  
411 under Subsection 78A-6-106(2)[~~;~~]; or

412 (b) remove a child from the child's home or take a child into custody under this section  
413 solely on the basis of educational neglect, truancy, or failure to comply with a court order to  
414 attend school.

415 (2) A child welfare worker within the division may take action under Subsection (1)  
416 accompanied by a peace officer, or without a peace officer when a peace officer is not  
417 reasonably available.

418 (3) (a) If possible, consistent with the child's safety and welfare, before taking a child  
419 into protective custody, the child welfare worker shall also determine whether there are  
420 services available that, if provided to a parent or guardian of the child, would eliminate the  
421 need to remove the child from the custody of the child's parent or guardian.

422 (b) If the services described in Subsection (3)(a) are reasonably available, they shall be  
423 utilized.

424 (c) In determining whether the services described in Subsection (3)(a) are reasonably  
425 available, and in making reasonable efforts to provide those services, the child's health, safety,  
426 and welfare shall be the child welfare worker's paramount concern.

427 (4) (a) A child removed or taken into custody under this section may not be placed or  
428 kept in a secure detention facility pending court proceedings unless the child is detainable  
429 based on guidelines promulgated by the Division of Juvenile Justice Services.

430 (b) A child removed from the custody of the child's parent or guardian but who does  
431 not require physical restriction shall be given temporary care in:

432 (i) a shelter facility; or

433 (ii) an emergency placement in accordance with Section 62A-4a-209.

434 (c) When making a placement under Subsection (4)(b), the Division of Child and  
435 Family Services shall give priority to a placement with a noncustodial parent, relative, or  
436 friend, in accordance with Section 62A-4a-209.

437 (d) If the child is not placed with a noncustodial parent, a relative, or a designated  
438 friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor  
439 explaining why a different placement was in the child's best interest.

440 Section 5. Section **62A-4a-202.6** is amended to read:

441 **62A-4a-202.6. Conflict child protective services investigations -- Authority of**  
442 **investigators.**

443 (1) (a) The division shall contract with an independent child protective service  
444 investigator from the private sector to investigate reports of abuse or neglect of a child that  
445 occur while the child is in the custody of the division.

446 (b) The executive director shall designate an entity within the department, other than  
447 the division, to monitor the contract for the investigators described in Subsection (1)(a).

448 (c) ~~When~~ Subject to Subsection (4), when a report is made that a child is abused or  
449 neglected while in the custody of the division:



450 (i) the attorney general may, in accordance with Section 67-5-16, and with the consent  
451 of the division, employ a child protective services investigator to conduct a conflict  
452 investigation of the report; or

453 (ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent  
454 of the division, conduct a conflict investigation of the report.

455 (d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the  
456 consent of the division, conducting a criminal investigation of abuse or neglect under Title 53,  
457 Public Safety Code.

458 (2) The investigators described in Subsections (1)(c) and (d) may also investigate  
459 allegations of abuse or neglect of a child by a department employee or a licensed substitute care  
460 provider.

461 (3) The investigators described in Subsection (1), if not peace officers, shall have the  
462 same rights, duties, and authority of a child protective services investigator employed by the  
463 division to:

464 (a) make a thorough investigation upon receiving either an oral or written report of  
465 alleged abuse or neglect of a child, with the primary purpose of that investigation being the  
466 protection of the child;

467 (b) make an inquiry into the child's home environment, emotional, or mental health, the  
468 nature and extent of the child's injuries, and the child's physical safety;

469 (c) make a written report of their investigation, including determination regarding  
470 whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and  
471 forward a copy of that report to the division within the time mandates for investigations  
472 established by the division; and

473 (d) immediately consult with school authorities to verify the child's status in  
474 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or  
475 includes an allegation of educational neglect.

476 (4) If there is a lapse in the contract with a private child protective service investigator  
477 and no other investigator is available under Subsection (1)(a) or (c), the department may

478 conduct an independent investigation.

479 Section 6. Section **62A-4a-404** is amended to read:

480 **62A-4a-404. Fetal alcohol syndrome and drug dependency -- Reporting**  
481 **requirements.**

482 When [~~any person~~] an individual, including a licensee under the Medical Practice Act  
483 or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that  
484 the child, at the time of birth, has fetal alcohol syndrome [~~or~~], fetal alcohol spectrum disorder,  
485 or fetal drug dependency, [~~he~~] the individual shall report that determination to the division as  
486 soon as possible.

487 Section 7. Section **78A-6-302** is amended to read:

488 **78A-6-302. Court-ordered protective custody of a child following petition filing --**  
489 **Grounds.**

490 (1) After a petition has been filed under Section 78A-6-304, if the child who is the  
491 subject of the petition is not in the protective custody of the division, a court may order that the  
492 child be removed from the child's home or otherwise taken into protective custody if the court  
493 finds, by a preponderance of the evidence, that any one or more of the following circumstances  
494 exist:

495 (a) (i) there is an imminent danger to the physical health or safety of the child; and

496 (ii) the child's physical health or safety may not be protected without removing the  
497 child from the custody of the child's parent or guardian;

498 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct  
499 that causes the child to suffer emotional damage; and

500 (ii) there are no reasonable means available by which the child's emotional health may  
501 be protected without removing the child from the custody of the child's parent or guardian;

502 (c) the child or another child residing in the same household has been, or is considered  
503 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a  
504 parent or guardian, a member of the parent's or guardian's household, or other person known to  
505 the parent or guardian;

- 506 (d) the parent or guardian is unwilling to have physical custody of the child;
- 507 (e) the child is abandoned or left without any provision for the child's support;
- 508 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
- 509 or cannot arrange for safe and appropriate care for the child;
- 510 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
- 511 guardian is unwilling or unable to provide care or support for the child;
- 512 (ii) the whereabouts of the parent or guardian are unknown; and
- 513 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- 514 (h) the child is in immediate need of medical care;
- 515 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
- 516 environment that poses a threat to the child's health or safety; or
- 517 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
- 518 a threat to the child's health or safety;
- 519 (j) the child or another child residing in the same household has been neglected;
- 520 (k) an infant has been abandoned, as defined in Section 78A-6-316;
- 521 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or
- 522 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;
- 523 and
- 524 (ii) any clandestine laboratory operation was located in the residence or on the property
- 525 where the child resided; or
- 526 (m) the child's welfare is otherwise endangered.
- 527 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as
- 528 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
- 529 occurs involving the same substantiated abuser or under similar circumstance as the previous
- 530 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the
- 531 custody of the child's parent.
- 532 (b) For purposes of Subsection (1)(c):
- 533 (i) another child residing in the same household may not be removed from the home

534 unless that child is considered to be at substantial risk of being physically abused, sexually  
535 abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

536 (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse,  
537 or sexual exploitation by a person known to the parent has occurred, and there is evidence that  
538 the parent or guardian failed to protect the child, after having received the notice, by allowing  
539 the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie  
540 evidence that the child is at substantial risk of being physically abused, sexually abused, or  
541 sexually exploited.

542 (3) In the absence of one of the factors described in Subsection (1), a court may not  
543 remove a child from the parent's or guardian's custody on the basis of:

544 (a) educational neglect, truancy, or failure to comply with a court order to attend  
545 school;

546 (b) mental illness or poverty of the parent or guardian; or

547 (c) disability of the parent or guardian, as defined in Section 57-21-2.

548 (4) A child removed from the custody of the child's parent or guardian under this  
549 section may not be placed or kept in a secure detention facility pending further court  
550 proceedings unless the child is detainable based on guidelines promulgated by the Division of  
551 Juvenile Justice Services.

552 (5) This section does not preclude removal of a child from the child's home without a  
553 warrant or court order under Section 62A-4a-202.1.

554 (6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and  
555 Family Services may not remove a child from the custody of the child's parent or guardian on  
556 the sole or primary basis that the parent or guardian refuses to consent to:

557 (i) the administration of a psychotropic medication to a child;

558 (ii) a psychiatric, psychological, or behavioral treatment for a child; or

559 (iii) a psychiatric or behavioral health evaluation of a child.

560 (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family  
561 Services may remove a child under conditions that would otherwise be prohibited under

562 Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a  
563 serious, imminent risk to the child's physical safety or the physical safety of others.

564 Section 8. Section **78A-6-306** is amended to read:

565 **78A-6-306. Shelter hearing.**

566 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays  
567 after any one or all of the following occur:

568 (a) removal of the child from the child's home by the division;

569 (b) placement of the child in the protective custody of the division;

570 (c) emergency placement under Subsection 62A-4a-202.1(4);

571 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter  
572 at the request of the division; or

573 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under  
574 Subsection 78A-6-106(4).

575 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)  
576 through (e), the division shall issue a notice that contains all of the following:

577 (a) the name and address of the person to whom the notice is directed;

578 (b) the date, time, and place of the shelter hearing;

579 (c) the name of the child on whose behalf a petition is being brought;

580 (d) a concise statement regarding:

581 (i) the reasons for removal or other action of the division under Subsection (1); and

582 (ii) the allegations and code sections under which the proceeding has been instituted;

583 (e) a statement that the parent or guardian to whom notice is given, and the child, are  
584 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is  
585 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be  
586 provided in accordance with the provisions of Section 78A-6-1111; and

587 (f) a statement that the parent or guardian is liable for the cost of support of the child in  
588 the protective custody, temporary custody, and custody of the division, and the cost for legal  
589 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial

590 ability of the parent or guardian.

591 (3) The notice described in Subsection (2) shall be personally served as soon as  
592 possible, but no later than one business day after removal of the child from the child's home, or  
593 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection  
594 78A-6-106(4), on:

595 (a) the appropriate guardian ad litem; and

596 (b) both parents and any guardian of the child, unless the parents or guardians cannot  
597 be located.

598 (4) The following persons shall be present at the shelter hearing:

599 (a) the child, unless it would be detrimental for the child;

600 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or  
601 fail to appear in response to the notice;

602 (c) counsel for the parents, if one is requested;

603 (d) the child's guardian ad litem;

604 (e) the caseworker from the division who is assigned to the case; and

605 (f) the attorney from the attorney general's office who is representing the division.

606 (5) (a) At the shelter hearing, the court shall:

607 (i) provide an opportunity to provide relevant testimony to:

608 (A) the child's parent or guardian, if present; and

609 (B) any other person having relevant knowledge; and

610 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

611 (b) The court:

612 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile  
613 Procedure;

614 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,  
615 the requesting party, or their counsel; and

616 (iii) may in its discretion limit testimony and evidence to only that which goes to the  
617 issues of removal and the child's need for continued protection.

618 (6) If the child is in the protective custody of the division, the division shall report to  
619 the court:

620 (a) the reason why the child was removed from the parent's or guardian's custody;

621 (b) any services provided to the child and the child's family in an effort to prevent  
622 removal;

623 (c) the need, if any, for continued shelter;

624 (d) the available services that could facilitate the return of the child to the custody of  
625 the child's parent or guardian; and

626 (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the  
627 child or friends of the child's parents may be able and willing to accept temporary placement of  
628 the child.

629 (7) The court shall consider all relevant evidence provided by persons or entities  
630 authorized to present relevant evidence pursuant to this section.

631 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good  
632 cause shown, the court may grant no more than one continuance, not to exceed five judicial  
633 days.

634 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for  
635 a continuance under Subsection (8)(a).

636 (9) (a) If the child is in the protective custody of the division, the court shall order that  
637 the child be released from the protective custody of the division unless it finds, by a  
638 preponderance of the evidence, that any one of the following exist:

639 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or  
640 safety of the child and the child's physical health or safety may not be protected without  
641 removing the child from the custody of the child's parent;

642 (ii) (A) the child is suffering emotional damage; and

643 (B) there are no reasonable means available by which the child's emotional health may  
644 be protected without removing the child from the custody of the child's parent;

645 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is

646 not removed from the custody of the child's parents;

647 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same

648 household has been, or is considered to be at substantial risk of being, physically abused,

649 sexually abused, or sexually exploited by a:

650 (A) parent;

651 (B) member of the parent's household; or

652 (C) person known to the parent;

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

654 (vi) the child is without any provision for the child's support;

655 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe

656 and appropriate care for the child;

657 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is

658 unwilling or unable to provide care or support for the child;

659 (B) the whereabouts of the parent are unknown; and

660 (C) reasonable efforts to locate the parent are unsuccessful;

661 (ix) the child is in urgent need of medical care;

662 (x) the physical environment or the fact that the child is left unattended beyond a

663 reasonable period of time poses a threat to the child's health or safety;

664 (xi) the child or a minor residing in the same household has been neglected;

665 (xii) the parent, or an adult residing in the same household as the parent, is charged or

666 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine

667 laboratory operation was located in the residence or on the property where the child resided; or

668 (xiii) the child's welfare is substantially endangered.

669 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is

670 established if:

671 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency

672 involving the parent; and

673 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.



674 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly  
675 allowed the child to be in the physical care of a person after the parent received actual notice  
676 that the person physically abused, sexually abused, or sexually exploited the child, that fact  
677 constitutes prima facie evidence that there is a substantial risk that the child will be physically  
678 abused, sexually abused, or sexually exploited.

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

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

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

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

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

697 (13) The court may not order continued removal of a child solely on the basis of  
698 educational neglect as described in Subsection 78A-6-105(25)(b) truancy, or failure to comply  
699 with a court order to attend school.

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

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

704 (15) If the court finds that continued removal and temporary custody are necessary for  
705 the protection of a child because harm may result to the child if the child were returned home,  
706 the court shall order continued removal regardless of:

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

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

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

711 Section 9. Section **78A-6-308** is amended to read:

712 **78A-6-308. Criminal background checks necessary prior to out-of-home**  
713 **placement.**

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

719 (2) (a) Except as provided in Subsection (4), the division and the Office of Guardian ad  
720 Litem may request, or the court upon the court's own motion may order, the Department of  
721 Public Safety to conduct a complete Federal Bureau of Investigation criminal background  
722 check through the national criminal history system (NCIC).

723 (b) Except as provided in Subsection (4), upon request by the division or the Office of  
724 Guardian ad Litem, or upon the court's order, persons subject to the requirements of Subsection  
725 (1) shall submit fingerprints and shall be subject to an FBI fingerprint background check. The  
726 child may be temporarily placed, pending the outcome of that background check.

727 (c) The cost of those investigations shall be borne by whoever is to receive placement  
728 of the child, except that the Division of Child and Family Services may pay all or part of the  
729 cost of those investigations.

730 (3) Except as provided in Subsection (5), a child who is in the legal custody of the state  
731 may not be placed with a prospective foster parent or a prospective adoptive parent, unless,  
732 before the child is placed with the prospective foster parent or the prospective adoptive parent:

733 (a) a fingerprint based FBI national criminal history records check is conducted on the  
734 prospective foster parent or prospective adoptive parent and any other adult residing in the  
735 household;

736 (b) the Department of Human Services conducts a check of the abuse and neglect  
737 registry in each state where the prospective foster parent or prospective adoptive parent resided  
738 in the five years immediately preceding the day on which the prospective foster parent or  
739 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine  
740 whether the prospective foster parent or prospective adoptive parent is listed in the registry as  
741 having a substantiated or supported finding of a severe type of abuse or neglect as defined in  
742 Section 62A-4a-1002;

743 (c) the Department of Human Services conducts a check of the abuse and neglect  
744 registry of each state where each adult living in the home of the prospective foster parent or  
745 prospective adoptive parent described in Subsection (3)(b) resided in the five years  
746 immediately preceding the day on which the prospective foster parent or prospective adoptive  
747 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed  
748 in the registry as having a substantiated or supported finding of a severe type of abuse or  
749 neglect as defined in Section 62A-4a-1002; and

750 (d) each person required to undergo a background check described in this Subsection  
751 (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

752 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial  
753 parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless the court  
754 finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the  
755 child.

756 (5) The requirements under Subsection (3) do not apply to the extent that:

757 (a) federal law or rule permits otherwise; or

758 (b) the requirements would prohibit the division or a court from placing a child with:  
759 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or  
760 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending  
761 completion of the background check described in Subsection (3).

762 Section 10. Section **78A-6-312** is amended to read:

763 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

764 (1) The court may:

765 (a) make any of the dispositions described in Section 78A-6-117;

766 (b) place the minor in the custody or guardianship of any:

767 (i) individual; or

768 (ii) public or private entity or agency; or

769 (c) order:

770 (i) protective supervision;

771 (ii) family preservation;

772 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

773 (iv) other services.

774 (2) Whenever the court orders continued removal at the dispositional hearing, and that  
775 the minor remain in the custody of the division, the court shall first:

776 (a) establish a primary permanency goal for the minor; and

777 (b) determine whether, in view of the primary permanency goal, reunification services  
778 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

779 (3) Subject to Subsections (6) and (7), if the court determines that reunification  
780 services are appropriate for the minor and the minor's family, the court shall provide for  
781 reasonable parent-time with the parent or parents from whose custody the minor was removed,  
782 unless parent-time is not in the best interest of the minor.

783 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe  
784 abuse, or severe neglect are involved, neither the division nor the court has any duty to make  
785 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to

786 attempt to rehabilitate the offending parent or parents.

787 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount  
788 concern in determining whether reasonable efforts to reunify should be made.

789 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless  
790 the court makes a finding that it is necessary to deny parent-time in order to:

791 (a) protect the physical safety of the minor;

792 (b) protect the life of the minor; or

793 (c) prevent the minor from being traumatized by contact with the parent due to the  
794 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

795 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a  
796 parent's failure to:

797 (a) prove that the parent has not used legal or illegal substances; or

798 (b) comply with an aspect of the child and family plan that is ordered by the court.

799 (8) In addition to the primary permanency goal, the court shall establish a concurrent  
800 permanency goal that shall include:

801 (a) a representative list of the conditions under which the primary permanency goal  
802 will be abandoned in favor of the concurrent permanency goal; and

803 (b) an explanation of the effect of abandoning or modifying the primary permanency  
804 goal.

805 (9) A permanency hearing shall be conducted in accordance with Subsection  
806 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if  
807 something other than reunification is initially established as a minor's primary permanency  
808 goal.

809 (10) (a) The court may amend a minor's primary permanency goal before the  
810 establishment of a final permanency plan under Section 78A-6-314.

811 (b) The court is not limited to the terms of the concurrent permanency goal in the event  
812 that the primary permanency goal is abandoned.

813 (c) If, at any time, the court determines that reunification is no longer a minor's primary

814 permanency goal, the court shall conduct a permanency hearing in accordance with Section  
815 78A-6-314 on or before the earlier of:

816 (i) 30 days after the day on which the court makes the determination described in this  
817 Subsection (10)(c); or

818 (ii) the day on which the provision of reunification services, described in Section  
819 78A-6-314, ends.

820 (11) (a) If the court determines that reunification services are appropriate, it shall order  
821 that the division make reasonable efforts to provide services to the minor and the minor's  
822 parent for the purpose of facilitating reunification of the family, for a specified period of time.

823 (b) In providing the services described in Subsection (11)(a), the minor's health, safety,  
824 and welfare shall be the division's paramount concern, and the court shall so order.

825 (12) The court shall:

826 (a) determine whether the services offered or provided by the division under the child  
827 and family plan constitute "reasonable efforts" on the part of the division;

828 (b) determine and define the responsibilities of the parent under the child and family  
829 plan in accordance with Subsection 62A-4a-205(6)(e); and

830 (c) identify verbally on the record, or in a written document provided to the parties, the  
831 responsibilities described in Subsection (12)(b), for the purpose of assisting in any future  
832 determination regarding the provision of reasonable efforts, in accordance with state and  
833 federal law.

834 (13) (a) The time period for reunification services may not exceed 12 months from the  
835 date that the minor was initially removed from the minor's home, unless the time period is  
836 extended under Subsection 78A-6-314(8).

837 (b) Nothing in this section may be construed to entitle any parent to an entire 12  
838 months of reunification services.

839 (14) (a) If reunification services are ordered, the court may terminate those services at  
840 any time.

841 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined

842 to be inconsistent with the final permanency plan for the minor established pursuant to Section  
843 78A-6-314, then measures shall be taken, in a timely manner, to:

- 844 (i) place the minor in accordance with the permanency plan; and
- 845 (ii) complete whatever steps are necessary to finalize the permanent placement of the  
846 minor.

847 (15) Any physical custody of the minor by the parent or a relative during the period  
848 described in Subsections (11) through (14) does not interrupt the running of the period.

849 (16) (a) If reunification services are ordered, a permanency hearing shall be conducted  
850 by the court in accordance with Section 78A-6-314 at the expiration of the time period for  
851 reunification services.

852 (b) The permanency hearing shall be held no later than 12 months after the original  
853 removal of the minor.

854 (c) If reunification services are not ordered, a permanency hearing shall be conducted  
855 within 30 days, in accordance with Section 78A-6-314.

856 (17) With regard to a minor who is 36 months of age or younger at the time the minor  
857 is initially removed from the home, the court shall:

858 (a) hold a permanency hearing eight months after the date of the initial removal,  
859 pursuant to Section 78A-6-314; and

860 (b) order the discontinuance of those services after eight months from the initial  
861 removal of the minor from the home if the parent or parents have not made substantial efforts  
862 to comply with the child and family plan.

863 (18) With regard to a minor in the custody of the division whose parent or parents are  
864 ordered to receive reunification services but who have abandoned that minor for a period of six  
865 months from the date that reunification services were ordered:

- 866 (a) the court shall terminate reunification services; and
- 867 (b) the division shall petition the court for termination of parental rights.

868 (19) When a court conducts a permanency hearing for a minor under Section  
869 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the

870 sibling group together is:

871 (a) practicable; and

872 (b) in accordance with the best interest of the minor.

873 (20) (a) Because of the state's interest in and responsibility to protect and provide  
874 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a  
875 parent's interest in receiving reunification services is limited.

876 (b) The court may determine that:

877 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,  
878 based on the individual circumstances; and

879 (ii) reunification services should not be provided.

880 (c) In determining "reasonable efforts" to be made with respect to a minor, and in  
881 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount  
882 concern.

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

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

888 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such  
889 magnitude that it renders the parent incapable of utilizing reunification services;

890 (c) the minor was previously adjudicated as an abused child due to physical abuse,  
891 sexual abuse, or sexual exploitation, and following the adjudication the minor:

892 (i) was removed from the custody of the minor's parent;

893 (ii) was subsequently returned to the custody of the parent; and

894 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual  
895 exploitation;

896 (d) the parent:

897 (i) caused the death of another minor through abuse or neglect; [or]



- 898 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 899 (A) murder or manslaughter of a child; or
- 900 (B) child abuse homicide;
- 901 (iii) committed sexual abuse against the child; or
- 902 (iv) is a registered sex offender or required to register as a sex offender;
- 903 (e) the minor suffered severe abuse by the parent or by any person known by the
- 904 parent, if the parent knew or reasonably should have known that the person was abusing the
- 905 minor;
- 906 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
- 907 and the court finds that it would not benefit the minor to pursue reunification services with the
- 908 offending parent;
- 909 (g) the parent's rights are terminated with regard to any other minor;
- 910 (h) the minor is removed from the minor's home on at least two previous occasions and
- 911 reunification services were offered or provided to the family at those times;
- 912 (i) the parent has abandoned the minor for a period of six months or longer;
- 913 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
- 914 location where the parent knew or should have known that a clandestine laboratory operation
- 915 was located;
- 916 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
- 917 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
- 918 exposed to an illegal or prescription drug that was abused by the child's mother while the child
- 919 was in utero, if the child was taken into division custody for that reason, unless the mother
- 920 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
- 921 substance abuse treatment program approved by the department; or
- 922 (l) any other circumstance that the court determines should preclude reunification
- 923 efforts or services.
- 924 (22) (a) The finding under Subsection (21)(b) shall be based on competent evidence
- 925 from at least two medical or mental health professionals, who are not associates, establishing

926 that, even with the provision of services, the parent is not likely to be capable of adequately  
927 caring for the minor within 12 months after the day on which the court finding is made.

928 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under  
929 the circumstances of the case, that the substance abuse treatment described in Subsection  
930 (21)(k) is not warranted.

931 (23) In determining whether reunification services are appropriate, the court shall take  
932 into consideration:

933 (a) failure of the parent to respond to previous services or comply with a previous child  
934 and family plan;

935 (b) the fact that the minor was abused while the parent was under the influence of  
936 drugs or alcohol;

937 (c) any history of violent behavior directed at the child or an immediate family  
938 member;

939 (d) whether a parent continues to live with an individual who abused the minor;

940 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

941 (f) testimony by a competent professional that the parent's behavior is unlikely to be  
942 successful; and

943 (g) whether the parent has expressed an interest in reunification with the minor.

944 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through  
945 (22), and the whereabouts of a parent become known within six months after the day on which  
946 the out-of-home placement of the minor is made, the court may order the division to provide  
947 reunification services.

948 (b) The time limits described in Subsections (2) through (19) are not tolled by the  
949 parent's absence.

950 (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable  
951 services unless it determines that those services would be detrimental to the minor.

952 (b) In making the determination described in Subsection (25)(a), the court shall  
953 consider:

- 954 (i) the age of the minor;
- 955 (ii) the degree of parent-child bonding;
- 956 (iii) the length of the sentence;
- 957 (iv) the nature of the treatment;
- 958 (v) the nature of the crime or illness;
- 959 (vi) the degree of detriment to the minor if services are not offered;
- 960 (vii) for a minor 10 years of age or older, the minor's attitude toward the
- 961 implementation of family reunification services; and
- 962 (viii) any other appropriate factors.
- 963 (c) Reunification services for an incarcerated parent are subject to the time limitations
- 964 imposed in Subsections (2) through (19).
- 965 (d) Reunification services for an institutionalized parent are subject to the time
- 966 limitations imposed in Subsections (2) through (19), unless the court determines that continued
- 967 reunification services would be in the minor's best interest.
- 968 (26) If, pursuant to Subsections (21)(b) through (l), the court does not order
- 969 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
- 970 with Section 78A-6-314.
- 971 Section 11. Section **78A-6-511** is amended to read:
- 972 **78A-6-511. Court disposition of child upon termination.**
- 973 (1) As used in this section, "relative" means:
- 974 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
- 975 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;
- 976 and
- 977 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25
- 978 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that
- 979 statute.
- 980 [(+)] (2) Upon entry of an order under this part the court may:
- 981 (a) place the child in the legal custody and guardianship of a licensed child placement

982 agency or the division for adoption; or

983 (b) make any other disposition of the child authorized under Section 78A-6-117.

984 ~~[(2) AH]~~ (3) Subject to the requirements of Subsections (4) and (5), all adoptable  
985 children placed in the custody of the division shall be placed for adoption.

986 (4) If the parental rights of all parents of an adoptable child placed in the custody of the  
987 division have been terminated and a suitable adoptive placement is not already available, the  
988 court:

989 (a) shall determine whether there is a relative who desires to adopt the child;

990 (b) may order the division to conduct a reasonable search to determine whether there  
991 are relatives who are willing to adopt the child; and

992 (c) shall, if a relative desires to adopt the child:

993 (i) make a specific finding regarding the fitness of the relative to adopt the child; and

994 (ii) place the child for adoption with that relative unless it finds that adoption by the  
995 relative is not in the best interest of the child.

996 (5) This section does not guarantee that a relative will be permitted to adopt the child.

997 Section 12. Section 78A-6-902 is amended to read:

998 **78A-6-902. Appointment of attorney guardian ad litem -- Duties and**  
999 **responsibilities -- Training -- Trained staff and court-appointed special advocate**  
1000 **volunteers -- Costs -- Immunity -- Annual report.**

1001 (1) (a) The court:

1002 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor  
1003 involved in any case before the court; and

1004 (ii) shall consider the best interest of a minor, consistent with the provisions of Section  
1005 62A-4a-201, in determining whether to appoint a guardian ad litem.

1006 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a  
1007 finding that establishes the necessity of the appointment.

1008 (2) An attorney guardian ad litem shall represent the best interest of each child who  
1009 may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of

1010 the day that:

1011 (a) the child is removed from the child's home by the division; or

1012 (b) the petition is filed.

1013 (3) The director shall ensure that each attorney guardian ad litem employed by the

1014 office:

1015 (a) represents the best interest of each client of the office in all venues, including:

1016 (i) court proceedings; and

1017 (ii) meetings to develop, review, or modify the child and family plan with the Division

1018 of Child and Family Services in accordance with Section 62A-4a-205;

1019 (b) prior to representing any minor before the court, be trained in:

1020 (i) applicable statutory, regulatory, and case law; and

1021 (ii) nationally recognized standards for an attorney guardian ad litem;

1022 (c) conducts or supervises an ongoing, independent investigation in order to obtain,

1023 first-hand, a clear understanding of the situation and needs of the minor;

1024 (d) (i) personally meets with the minor, unless:

1025 (A) the minor is outside of the state; or

1026 (B) meeting with the minor would be detrimental to the minor;

1027 (ii) personally interviews the minor, unless:

1028 (A) the minor is not old enough to communicate;

1029 (B) the minor lacks the capacity to participate in a meaningful interview; or

1030 (C) the interview would be detrimental to the minor; and

1031 (iii) if the minor is placed in an out-of-home placement, or is being considered for

1032 placement in an out-of-home placement, unless it would be detrimental to the minor:

1033 (A) to the extent possible, determines the minor's goals and concerns regarding

1034 placement; and

1035 (B) personally assesses or supervises an assessment of the appropriateness and safety

1036 of the minor's environment in each placement;

1037 (e) personally attends all review hearings pertaining to the minor's case;

1038 (f) participates in all appeals, unless excused by order of the court;

1039 (g) is familiar with local experts who can provide consultation and testimony regarding

1040 the reasonableness and appropriateness of efforts made by the Division of Child and Family

1041 Services to:

1042 (i) maintain a minor in the minor's home; or

1043 (ii) reunify a child with the child's parent;

1044 (h) to the extent possible, and unless it would be detrimental to the minor, personally

1045 or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

1046 (i) the status of the minor's case;

1047 (ii) all court and administrative proceedings;

1048 (iii) discussions with, and proposals made by, other parties;

1049 (iv) court action; and

1050 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be

1051 provided to the minor; and

1052 (i) in cases where a child and family plan is required, personally or through a trained

1053 volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and

1054 family plan and any dispositional orders to:

1055 (i) determine whether services ordered by the court:

1056 (A) are actually provided; and

1057 (B) are provided in a timely manner; and

1058 (ii) attempt to assess whether services ordered by the court are accomplishing the

1059 intended goal of the services.

1060 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use

1061 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers

1062 Act, trained paralegals, and other trained staff to assist in investigation and preparation of

1063 information regarding the cases of individual minors before the court.

1064 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained

1065 in and follow, at a minimum, the guidelines established by the United States Department of

1066 Justice Court Appointed Special Advocate Association.

1067 (5) The attorney guardian ad litem shall continue to represent the best interest of the  
1068 minor until released from that duty by the court.

1069 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

1070 (i) all costs resulting from the appointment of an attorney guardian ad litem; and

1071 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

1072 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem  
1073 program to cover the costs described in Subsection (6)(a).

1074 (c) (i) When the court appoints an attorney guardian ad litem under this section, the  
1075 court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer  
1076 expenses against the child's parents, parent, or legal guardian in a proportion that the court  
1077 determines to be just and appropriate[-], taking into consideration costs already borne by the  
1078 parents, parent, or legal guardian, including:

1079 (A) private attorney fees;

1080 (B) counseling for the child;

1081 (C) counseling for the parent, if mandated by the court or recommended by the  
1082 Division of Child and Family Services; and

1083 (D) any other cost the court determines to be relevant.

1084 (ii) The court may not assess those fees or costs against:

1085 (A) a legal guardian, when that guardian is the state; or

1086 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

1087 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the  
1088 court shall:

1089 (i) require that person to submit an affidavit of impecuniosity as provided in Section  
1090 78A-2-302; and

1091 (ii) follow the procedures and make the determinations as provided in Section  
1092 78A-2-304.

1093 (e) The child's parents, parent, or legal guardian may appeal the court's determination.

1094 under Subsection (6)(c), of fees, costs, and expenses.

1095 (7) An attorney guardian ad litem appointed under this section, when serving in the  
1096 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee  
1097 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental  
1098 Immunity Act of Utah.

1099 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

1100 (b) If the minor's wishes differ from the attorney's determination of the minor's best  
1101 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in  
1102 addition to presenting the attorney's determination of the minor's best interest.

1103 (c) A difference between the minor's wishes and the attorney's determination of best  
1104 interest may not be considered a conflict of interest for the attorney.

1105 (d) The guardian ad litem shall disclose the wishes of the child unless the child:

1106 (i) instructs the guardian ad litem to not disclose the child's wishes; or

1107 (ii) has not expressed any wishes.

1108 [~~(d)~~] (e) The court may appoint one attorney guardian ad litem to represent the best  
1109 interests of more than one child of a marriage.

1110 (9) An attorney guardian ad litem shall be provided access to all Division of Child and  
1111 Family Services records regarding the minor at issue and the minor's family.

1112 (10) (a) An attorney guardian ad litem shall conduct an independent investigation  
1113 regarding the minor at issue, the minor's family, and what constitutes the best interest of the  
1114 minor.

1115 (b) An attorney guardian ad litem may interview the minor's Division of Child and  
1116 Family Services caseworker, but may not:

1117 (i) rely exclusively on the conclusions and findings of the Division of Child and Family  
1118 Services; or

1119 (ii) except as provided in Subsection (10)(c), conduct a visit with the client in  
1120 conjunction with the visit of a Division of Child and Family Services caseworker.

1121 (c) A guardian ad litem may meet with a client during a team meeting, court hearing, or



1122 similar venue when a Division of Child and Family Services caseworker is present for a  
1123 purpose other than the guardian ad litem's visit with the client.

1124       ~~[(10)]~~ (11)(a) An attorney guardian ad litem shall maintain current and accurate  
1125 records regarding:

1126       ~~[(a)]~~ (i) the number of times the attorney has had contact with each minor; and

1127       ~~[(b)]~~ (ii) the actions the attorney has taken in representation of the minor's best interest.

1128       (b) In every hearing where the guardian ad litem makes a recommendation regarding  
1129 the best interest of the child, the court shall require the guardian ad litem to disclose the factors  
1130 that form the basis of the recommendation.

1131       ~~[(11)]~~ (12) (a) Except as provided in ~~[Subsection (11)(b)]~~ Subsection (12)(b), all  
1132 records of an attorney guardian ad litem are confidential and may not be released or made  
1133 public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection  
1134 supersedes Title 63G, Chapter 2, Government Records Access and Management Act.

1135       (b) Consistent with Subsection ~~[(11)]~~ (12)(d), all records of an attorney guardian ad  
1136 litem:

1137       (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative  
1138 Subpoena Powers; and

1139       (ii) shall be released to the Legislature.

1140       (c) (i) Except as provided in Subsection ~~[(11)]~~ (12)(c)(ii), records released in  
1141 accordance with Subsection ~~[(11)]~~ (12)(b) shall be maintained as confidential by the  
1142 Legislature.

1143       (ii) Notwithstanding Subsection ~~[(11)]~~ (12)(c)(i), the Office of the Legislative Auditor  
1144 General may include summary data and nonidentifying information in its audits and reports to  
1145 the Legislature.

1146       (d) (i) Subsection ~~[(11)]~~ (12)(b) constitutes an exception to Rules of Professional  
1147 Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

1148       (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

1149       (B) the state's role and responsibility:

- 1150 (I) to provide a guardian ad litem program; and
- 1151 (II) as parens patriae, to protect minors.
- 1152 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
- 1153 guardian ad litem by the Legislature, through legislative subpoena.

1154 Section 13. Section **78B-6-131** is amended to read:

1155 **78B-6-131. Child in custody of state -- Placement.**

1156 (1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in

1157 Subsection (2), a child who is in the legal custody of the state may not be placed with a

1158 prospective foster parent or a prospective adoptive parent, unless, before the child is placed

1159 with the prospective foster parent or the prospective adoptive parent:

1160 (a) a fingerprint based FBI national criminal history records check is conducted on the

1161 prospective foster parent ~~[or]~~, prospective adoptive parent, and any other adult residing in the

1162 household;

1163 (b) the Department of Human Services conducts a check of the child abuse and neglect

1164 registry in each state where the prospective foster parent or prospective adoptive parent resided

1165 in the five years immediately preceding the day on which the prospective foster parent or

1166 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine

1167 whether the prospective foster parent or prospective adoptive parent is listed in the registry as

1168 having a substantiated or supported finding of child abuse or neglect;

1169 (c) the Department of Human Services conducts a check of the child abuse and neglect

1170 registry of each state where each adult living in the home of the prospective foster parent or

1171 prospective adoptive parent described in Subsection (1)(b) resided in the five years

1172 immediately preceding the day on which the prospective foster parent or prospective adoptive

1173 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed

1174 in the registry as having a substantiated or supported finding of child abuse or neglect; and

1175 (d) each person required to undergo a background check described in this section

1176 passes the background check, pursuant to the provisions of Section 62A-2-120.

1177 (2) The requirements under Subsection (1) do not apply to the extent that:

- 1178           (a) federal law or rule permits otherwise; or
- 1179           (b) the requirements would prohibit the division or a court from placing a child with:
- 1180           (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or
- 1181           (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending
- 1182 completion of the background check described in Subsection (1).