

HUMAN SERVICES AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill modifies Title 62A, Chapter 4a, Child and Family Services, Title 67, Chapter 5, Attorney General, Title 78A, Chapter 2, Judicial Administration, and Title 78A, Chapter 6, Juvenile Court Act.

Highlighted Provisions:

This bill:

- ▶ amends training requirements for Division of Child and Family Services caseworkers;
- ▶ requires the Division of Child and Family Services to make a report to the 2013 Health and Human Services Interim Committee on:
 - shifting resources and staff to in-home services;
 - proposals aimed at keeping sibling groups together, as much as possible, and providing necessary services to structured foster families to avoid sending foster children to proctor homes;
 - the disparity between foster care payments and adoption subsidies, and whether an adjustment to those rates could result in savings to the state; and
 - the utilization of a guardianship placement after a termination of parental rights, if no appropriate adoption placement is available;
- ▶ requires the 2013 Health and Human Services Interim Committee to study whether statewide practice standards should be implemented to assist the Child Welfare Parental Defense Program;
- ▶ requires training for attorneys general who represent the Division of Child and

30 Family Services, child protective service investigators, and guardians ad litem;
31 ▶ requires a court, in determining primary permanency and concurrent permanency
32 plans, to prioritize a kinship placement, consider guardianship placement, and
33 utilize an individualized placement goal as a last resort only;
34 ▶ eliminate the 8-month time frame for a child younger than 36 months in the custody
35 of the division; and
36 ▶ makes technical changes.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **62A-4a-107**, as last amended by Laws of Utah 2012, Chapter 293

44 **62A-4a-401**, as last amended by Laws of Utah 2008, Chapter 299

45 **67-5-16**, as enacted by Laws of Utah 1998, Chapter 274

46 **78A-2-227.5**, as enacted by Laws of Utah 2012, Chapter 223

47 **78A-6-312**, as last amended by Laws of Utah 2012, Chapter 293



48
49 *Be it enacted by the Legislature of the state of Utah:*

50 Section 1. Section **62A-4a-107** is amended to read:

51 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
52 **curriculum.**

53 (1) There is created within the division a full-time position of Child Welfare Training
54 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee
55 in that position is not responsible for direct casework services or the supervision of those
56 services, but is required to:

57 (a) develop child welfare curriculum that:

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

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

61 (A) the public sector;

62 (B) the private sector; and

63 (C) inside and outside of the state;

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

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

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

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

70 (f) monitor staff compliance with division training requirements and individual training
71 plans; and

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

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

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

81 (i) the core curriculum; and

82 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of
83 observing and accompanying at least two capable and experienced child welfare caseworkers
84 as they perform work-related functions:

85 (A) for three months if the caseworker has less than six months of on-the-job

86 experience as a child welfare caseworker; or

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

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

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

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

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

95 (i) initial contact;

96 (ii) investigation; and

97 (iii) treatment;

98 (c) recognizing situations involving:

99 (i) substance abuse;

100 (ii) domestic violence;

101 (iii) abuse; and

102 (iv) neglect; and

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

105 (i) search and seizure of evidence;

106 (ii) the warrant requirement;

107 (iii) exceptions to the warrant requirement; and

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

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

111 (5) The division shall use the training of child welfare caseworkers to emphasize:

112 (a) the importance of maintaining the parent-child relationship whenever possible;

113 (b) the preference for providing in-home services over taking a child into protective

114 custody, both for the emotional well-being of the child and the efficient allocation of resources;
115 and

116 (c) the importance and priority of:
117 (i) kinship placement in the event a child must be taken into protective custody[-]; and
118 (ii) guardianship placement, in the event the parent-child relationship is legally
119 terminated and no appropriate adoptive placement is available.

120 (6) When a child welfare caseworker is hired, before assuming significant independent
121 casework responsibilities, the child welfare caseworker shall complete the training described in
122 Subsections (3) through (5).

123 Section 2. Section **62A-4a-401** is amended to read:

124 **62A-4a-401. Legislative purpose -- Report and study items.**

125 (1) It is the purpose of this part to protect the best interests of children, offer protective
126 services to prevent harm to children, stabilize the home environment, preserve family life
127 whenever possible, and encourage cooperation among the states in dealing with the problem of
128 abuse or neglect.

129 (2) The division shall, during the 2013 interim, report to the Health and Human
130 Services Interim Committee on:

131 (a) the division's efforts to use existing staff and funds while shifting resources away
132 from foster care and to in-home services;

133 (b) a proposal to:

134 (i) keep sibling groups together, as much as possible; and

135 (ii) provide necessary services to available structured foster families to avoid sending
136 foster children to proctor homes;

137 (c) the disparity between foster care payments and adoption subsidies, and whether an
138 adjustment to those rates could result in savings to the state; and

139 (d) the utilization of guardianship, in the event an appropriate adoptive placement is
140 not available after a termination of parental rights.

141 (3) The Health and Human Services Interim Committee shall, during the 2013 interim,

142 study whether statewide practice standards should be implemented to assist the Child Welfare
143 Parental Defense Program with its mission to provide legal services to indigent parents whose
144 children are in the custody of the division.

145 Section 3. Section **67-5-16** is amended to read:

146 **67-5-16. Child protective services investigators within attorney general's office --**
147 **Authority -- Training.**

148 (1) The attorney general may employ, with the consent of the Division of Child and
149 Family Services within the Department of Human Services, and in accordance with Section
150 62A-4a-202.6, child protective services investigators to investigate alleged instances of abuse
151 or neglect of a child that occur while a child is in the custody of the Division of Child and
152 Family Services. Those investigators may also investigate reports of abuse or neglect of a child
153 by an employee of the Department of Human Services, or involving a person or entity licensed
154 to provide substitute care for children in the custody of the Division of Child and Family
155 Services.

156 (2) Attorneys who represent the Division of Child and Family Services under Section
157 67-5-17, and child protective services investigators employed by the attorney general under
158 Subsection (1), shall be trained on and implement into practice the following items, in order of
159 preference and priority:

160 (a) the priority of maintaining a child safely in the child's home, whenever possible;

161 (b) the importance of:

162 (i) kinship placement, in the event the child is removed from the home; and

163 (ii) keeping sibling groups together, whenever practicable and in the best interests of
164 the children;

165 (c) the preference for kinship adoption over nonkinship adoption, if the parent-child
166 relationship is legally terminated;

167 (d) the potential for a guardianship placement if the parent-child relationship is legally
168 terminated and no appropriate adoption placement is available; and

169 (e) the use of an individualized permanency goal, only as a last resort.

170 Section 4. Section **78A-2-227.5** is amended to read:

171 **78A-2-227.5. Public policy regarding guardian ad litem -- Training.**

172 (1) A guardian ad litem may not presume that a child and the child's parent are
173 adversaries.

174 (2) A guardian ad litem shall be trained ~~[in]~~ on and implement into practice:

175 (a) the parental rights and child and family protection principles provided in Section
176 62A-4a-201;

177 (b) the fundamental liberties of parents and the public policy of the state to support
178 family unification to the fullest extent possible;

179 (c) the constitutionally protected rights of parents, in cases where the state is a party;
180 ~~[and]~~

181 (d) the use of a least restrictive means analysis regarding state claims of a compelling
182 child welfare interest[-];

183 (e) the priority of maintaining a child safely in the child's home, whenever possible;

184 (f) the importance of:

185 (i) kinship placement, in the event the child is removed from the home; and

186 (ii) keeping sibling groups together, whenever practicable and in the best interests of
187 the children;

188 (g) the preference for kinship adoption over nonkinship adoption, if the parent-child
189 relationship is legally terminated;

190 (h) the potential for a guardianship placement if the parent-child relationship is legally
191 terminated and no appropriate adoption placement is available; and

192 (i) the use of an individualized permanency plan, only as a last resort.

193 (3) The Office of the Guardian ad Litem shall implement policies and practice
194 guidelines that reflect the priorities described in Subsections (2)(e) through (i) for the
195 placement of children.

196 Section 5. Section **78A-6-312** is amended to read:

197 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

- 198 (1) The court may:
- 199 (a) make any of the dispositions described in Section 78A-6-117;
- 200 (b) place the minor in the custody or guardianship of any:
- 201 (i) individual; or
- 202 (ii) public or private entity or agency; or
- 203 (c) order:
- 204 (i) protective supervision;
- 205 (ii) family preservation;
- 206 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or
- 207 (iv) other services.
- 208 (2) Whenever the court orders continued removal at the dispositional hearing, and that
- 209 the minor remain in the custody of the division, the court shall first:
- 210 (a) establish a primary permanency goal for the minor; and
- 211 (b) determine whether, in view of the primary permanency goal, reunification services
- 212 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).
- 213 (3) Subject to Subsections (6) and (7), if the court determines that reunification
- 214 services are appropriate for the minor and the minor's family, the court shall provide for
- 215 reasonable parent-time with the parent or parents from whose custody the minor was removed,
- 216 unless parent-time is not in the best interest of the minor.
- 217 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
- 218 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
- 219 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
- 220 attempt to rehabilitate the offending parent or parents.
- 221 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
- 222 concern in determining whether reasonable efforts to reunify should be made.
- 223 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless
- 224 the court makes a finding that it is necessary to deny parent-time in order to:
- 225 (a) protect the physical safety of the minor;

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

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

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

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

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

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

235 [~~(a)~~] (i) a representative list of the conditions under which the primary permanency
236 goal will be abandoned in favor of the concurrent permanency goal; and

237 [~~(b)~~] (ii) an explanation of the effect of abandoning or modifying the primary
238 permanency goal.

239 (b) In determining the primary permanency goal and concurrent permanency goal, the
240 court shall consider:

241 (i) the preference for kinship placement over nonkinship placement;

242 (ii) the potential for a guardianship placement if the parent-child relationship is legally
243 terminated and no appropriate adoption placement is available; and

244 (iii) the use of an individualized permanency goal, only as a last resort.

245 (9) A permanency hearing shall be conducted in accordance with Subsection
246 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
247 something other than reunification is initially established as a minor's primary permanency
248 goal.

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

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

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

254 permanency goal, the court shall conduct a permanency hearing in accordance with Section
255 78A-6-314 on or before the earlier of:

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

258 (ii) the day on which the provision of reunification services, described in Section
259 78A-6-314, ends.

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

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

265 (12) The court shall:

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

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

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

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

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

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

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

282 to be inconsistent with the final permanency plan for the minor established pursuant to Section
283 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

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

296 [~~(17) With regard to a minor who is 36 months of age or younger at the time the minor
297 is initially removed from the home, the court shall:]~~

298 [~~(a) hold a permanency hearing eight months after the date of the initial removal,
299 pursuant to Section 78A-6-314; and]~~

300 [~~(b) order the discontinuance of those services after eight months from the initial
301 removal of the minor from the home if the parent or parents have not made substantial efforts
302 to comply with the child and family plan.]~~

303 [(18)] (17) With regard to a minor in the custody of the division whose parent or
304 parents are ordered to receive reunification services but who have abandoned that minor for a
305 period of six months from the date that reunification services were ordered:

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

308 [(19)] (18) When a court conducts a permanency hearing for a minor under Section
309 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the

310 sibling group together is:

311 (a) practicable; and

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

313 ~~[(20)]~~ (19) (a) Because of the state's interest in and responsibility to protect and provide
314 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
315 parent's interest in receiving reunification services is limited.

316 (b) The court may determine that:

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

319 (ii) reunification services should not be provided.

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

323 ~~[(21)]~~ (20) There is a presumption that reunification services should not be provided to
324 a parent if the court finds, by clear and convincing evidence, that any of the following
325 circumstances exist:

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

328 (b) subject to Subsection ~~[(22)]~~ (21)(a), the parent is suffering from a mental illness of
329 such magnitude that it renders the parent incapable of utilizing reunification services;

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

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

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

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

336 (d) the parent:

337 (i) caused the death of another minor through abuse or neglect;

- 338 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 339 (A) murder or manslaughter of a child; or
- 340 (B) child abuse homicide;
- 341 (iii) committed sexual abuse against the child; or
- 342 (iv) is a registered sex offender or required to register as a sex offender;
- 343 (e) the minor suffered severe abuse by the parent or by any person known by the
- 344 parent, if the parent knew or reasonably should have known that the person was abusing the
- 345 minor;
- 346 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
- 347 and the court finds that it would not benefit the minor to pursue reunification services with the
- 348 offending parent;
- 349 (g) the parent's rights are terminated with regard to any other minor;
- 350 (h) the minor is removed from the minor's home on at least two previous occasions and
- 351 reunification services were offered or provided to the family at those times;
- 352 (i) the parent has abandoned the minor for a period of six months or longer;
- 353 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
- 354 location where the parent knew or should have known that a clandestine laboratory operation
- 355 was located;
- 356 (k) except as provided in Subsection [~~(22)~~] (21)(b), with respect to a parent who is the
- 357 child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or
- 358 was exposed to an illegal or prescription drug that was abused by the child's mother while the
- 359 child was in utero, if the child was taken into division custody for that reason, unless the
- 360 mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
- 361 substance abuse treatment program approved by the department; or
- 362 (l) any other circumstance that the court determines should preclude reunification
- 363 efforts or services.
- 364 [~~(22)~~] (21) (a) The finding under Subsection [~~(21)~~] (20)(b) shall be based on competent
- 365 evidence from at least two medical or mental health professionals, who are not associates,

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

369 (b) A judge may disregard the provisions of Subsection [~~(21)~~] (20)(k) if the court finds,
370 under the circumstances of the case, that the substance abuse treatment described in Subsection
371 [~~(21)~~] (20)(k) is not warranted.

372 [~~(23)~~] (22) In determining whether reunification services are appropriate, the court
373 shall take into consideration:

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

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

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

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

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

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

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

385 [~~(24)~~] (23) (a) If reunification services are not ordered pursuant to Subsections [~~(20)~~]
386 (19) through [~~(22)~~] (21), and the whereabouts of a parent become known within six months
387 after the day on which the out-of-home placement of the minor is made, the court may order
388 the division to provide reunification services.

389 (b) The time limits described in Subsections (2) through [~~(19)~~] (18) are not tolled by
390 the parent's absence.

391 [~~(25)~~] (24) (a) If a parent is incarcerated or institutionalized, the court shall order
392 reasonable services unless it determines that those services would be detrimental to the minor.

393 (b) In making the determination described in Subsection [~~(25)~~] (24)(a), the court shall

394 consider:

395 (i) the age of the minor;

396 (ii) the degree of parent-child bonding;

397 (iii) the length of the sentence;

398 (iv) the nature of the treatment;

399 (v) the nature of the crime or illness;

400 (vi) the degree of detriment to the minor if services are not offered;

401 (vii) for a minor 10 years of age or older, the minor's attitude toward the

402 implementation of family reunification services; and

403 (viii) any other appropriate factors.

404 (c) Reunification services for an incarcerated parent are subject to the time limitations
405 imposed in Subsections (2) through [~~(19)~~] (18).

406 (d) Reunification services for an institutionalized parent are subject to the time
407 limitations imposed in Subsections (2) through [~~(19)~~] (18), unless the court determines that
408 continued reunification services would be in the minor's best interest.

409 [~~(26)~~] (25) If, pursuant to Subsections [~~(21)~~] (20)(b) through (l), the court does not
410 order reunification services, a permanency hearing shall be conducted within 30 days, in
411 accordance with Section 78A-6-314.