

HB0356S01 compared with HB0356

~~deleted text~~ shows text that was in HB0356 but was deleted in HB0356S01.

inserted text shows text that was not in HB0356 but was inserted into HB0356S01.

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Representative LaVar Christensen proposes the following substitute bill:

PARENT AND CHILD AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions that relate to child welfare.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "harm" in the Juvenile Court Act;
- ▶ amends provisions related to the medical treatment of a child; and
- ▶ amends provisions related to the custody of a child with the Division of Child and Family Services.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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Utah Code Sections Affected:

AMENDS:

62A-4a-201, as last amended by Laws of Utah 2012, Chapter 281

78A-6-105, as last amended by Laws of Utah 2014, Chapter 35

78A-6-117, as last amended by Laws of Utah 2011, Chapter 366

78A-6-302, as last amended by Laws of Utah 2014, Chapter 35

78A-6-306, as last amended by Laws of Utah 2014, Chapter 35

78A-6-312, as last amended by Laws of Utah 2014, Chapter 35

ENACTS:

78A-6-301.5, Utah Code Annotated 1953

~~{ **78A-6-312.5**, Utah Code Annotated 1953~~

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

Section 1. Section **62A-4a-201** is amended to read:

62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.

(1) (a) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests and, concomitantly, the right of the child to be reared by the child's natural parent.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental

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unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution and is a fundamental public policy of this state.

(d) The state recognizes that:

(i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide and care for, and reasonably discipline the parent's children; and

(ii) the state's role is secondary and supportive to the primary role of a parent.

(e) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A, Chapter 6, Juvenile Court Act of 1996. Therefore, the state, as *parens patriae*, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child,

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it shall take into account the child's need for protection from immediate harm and the extent to which the child's extended family may provide needed protection. Throughout its involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned, temporary period and place the child in a safe environment, subject to the requirements of this section and in accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and:

- (a) when safe and appropriate, return the child to the child's parent; or
- (b) as a last resort, pursue another permanency plan.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section 62A-4a-203, both the division's and the court's paramount concern shall be the child's health, safety, and welfare. The desires of a parent for the parent's child, and the constitutionally protected rights of a parent, as described in this section, shall be given full and serious consideration by the division and the court.

(6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

(7) (a) [~~The~~] In accordance with Subsection (1), the division shall strive to achieve appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, where appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. [~~H~~] The division may pursue a foster placement only if in-home services fail or are otherwise insufficient or inappropriate[~~, the~~]. The division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child. If in-home services and kinship placement are not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected[~~, the division may pursue a foster placement~~].

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(b) If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(c) Subject to the parental rights recognized and protected under this section, if, because of a parent's conduct or condition, the parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of paramount importance, and shall be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental health care for a child is subject to ~~[Subsection]~~ Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5.

Section 2. Section **78A-6-105** is amended to read:

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

(i) nonaccidental harm of a child;

(ii) threatened harm of a child;

(iii) sexual exploitation; or

(iv) sexual abuse.

(v) that a child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

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(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in

Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means a person under 18 years of age.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" [~~is as~~] means the same as that term is defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(13) "Detention" means home detention and secure detention as defined in Section

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62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(14) "Division" means the Division of Child and Family Services.

(15) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(16) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(17) "Guardianship of the person" includes the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another person, agency, or institution.

(18) "Habitual truant" [~~is as~~] means the same as that term is defined in Section 53A-11-101.

(19) "Harm" means:

(a) physical~~[, emotional]~~ or developmental injury or damage;

(b) substantial emotional damage that results in an observable and material impairment in the child's growth, development, or psychological functioning;

~~(c)~~ (c) sexual abuse; or

~~(d)~~ (d) sexual exploitation.

(20) (a) "Incest" means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (20)(a) include:

(i) blood relationships of the whole or half blood, without regard to legitimacy;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

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(21) "Intellectual disability" means:

(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

(22) "Legal custody" means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(23) "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

(24) "Minor" means:

(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

(25) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

(26) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

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(27) (a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; or

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion and from pursuing care and treatment pursuant to the second health care opinion, as described in Section 78A-6-301.5.

(28) "Neglected child" means a child who has been subjected to neglect.

(29) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

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(30) "Not competent to proceed" means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

(31) "Physical abuse" means abuse that results in physical injury or damage to a child.

(32) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(33) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(34) "Related condition" means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

(35) (a) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child's religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.

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(36) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(39) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed towards a child; or

(b) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7.

(40) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, regardless of whether the person who engages in the conduct is

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actually charged with, or convicted of, the offense.

(41) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(42) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(44) "Substantiated" [~~is as~~] means the same as that term is defined in Section 62A-4a-101.

(45) "Supported" [~~is as~~] means the same as that term is defined in Section 62A-4a-101.

(46) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(47) "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(48) "Unsubstantiated" [~~is as~~] means the same as that term is defined in Section 62A-4a-101.

(49) "Without merit" [~~is as~~] means the same as that term is defined in Section 62A-4a-101.

Section 3. Section **78A-6-117** is amended to read:

78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court -- Obtaining DNA sample.

(1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within the provisions of Subsection 78A-6-103(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of

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Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

(A) resides in the same school district as the minor; or

(B) attends the same school as the minor.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) The court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service as provided in Subsection (2)(m)(iii).

(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:

(A) the minor's parent or guardian;

(B) the Division of Juvenile Justice Services; or

(C) the Division of Child and Family Services.

(iii) If the court orders probation or state supervision, the court shall direct that notice of its order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iv) Any employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63G-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court may:

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(A) vest legal custody of the minor in the Division of Child and Family Services, Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health; and

(B) order the Department of Human Services to provide dispositional recommendations and services.

(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.

(iii) (A) A minor who is committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect is subject to the provisions of Title 78A, Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2a, Minors in Custody on Grounds other than Abuse or Neglect.

(B) Before the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.

(C) Before committing a child to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the child's removal from the child's home.

(d) (i) The court may commit a minor to the Division of Juvenile Justice Services for secure confinement.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of Juvenile Justice Services.

(e) The court may commit a minor, subject to the court retaining continuing jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice Services for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Juvenile Justice Services.

(f) (i) The court may commit a minor to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction over the minor. This commitment may be stayed or suspended upon conditions

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ordered by the court.

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78A-6-1101.

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(h) The court may place a minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.

(i) (i) The court may order a minor to repair, replace, or otherwise make restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in Section 78A-6-321 and impose fines in limited amounts.

(ii) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(j) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions.

(k) (i) The court may through its probation department encourage the development of employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit a minor

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found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.

(iii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service required under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal

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costs as determined under Section 76-6-107, unless waived by the court for good cause. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection 77-18-1(8).

(A) For a first adjudication, the court may require the minor to clean up graffiti for not less than eight hours.

(B) For a second adjudication, the court may require the minor to clean up graffiti for not less than 16 hours.

(C) For a third adjudication, the court may require the minor to clean up graffiti for not less than 24 hours.

(n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

(A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(n)(i), the court shall consider:

(A) the desires of the minor;

(B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and

(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.

(iv) (A) The court may not order a minor who is in the legal custody of the Division of Child and Family Services to receive, and an individual may not administer, any non-emergency treatment or care without the written consent of the parent or guardian.

(B) A parent or guardian shall be given an opportunity to consult with an attorney of the parent or guardian before consenting under Subsection (2)(n)(iv)(A).

(C) Any consent given by a parent or guardian for treatment or care under Subsection (2)(n)(iv)(A) may be revoked by the parent or guardian through a written statement delivered to the division and **is** effective upon the division's receipt of the written statement.

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(v) The person who administered treatment or care to the minor shall notify the parent or guardian within five business days after treatment or care has been administered.

(o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency in which legal custody of the minor is vested.

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of a child's parents.

(p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:

- (A) parent-time by the parents or one parent;
- (B) restrictions on the minor's associates;
- (C) restrictions on the minor's occupation and other activities; and
- (D) requirements to be observed by the parents or custodian.

(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.

(q) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(r) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(r)(i).

(s) The court may terminate all parental rights upon a finding of compliance with the provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

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(t) The court may make any other reasonable orders for the best interest of the minor or as required for the protection of the public, except that a child may not be committed to jail or prison.

(u) The court may combine the dispositions listed in this section if they are compatible.

(v) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(w) Except as provided in Subsection (2)(y)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review of the case by the court. A new date shall be set upon each review.

(x) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.

(y) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)(y)(i):

(A) shall remain in effect until the child reaches majority;

(B) are not subject to review under Section 78A-6-118; and

(C) may be modified by petition or motion as provided in Section 78A-6-1103.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

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- (i) would be a felony if committed by an adult;
- (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or
- (iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.

Section 4. Section **78A-6-301.5** is enacted to read:

78A-6-301.5. Second medical opinion.

(1) In cases where the division seeks protective custody, temporary custody, or custody of the child based on the report or testimony of a physician, a parent or guardian shall have a reasonable amount of time to obtain a second opinion from another physician of the parent's or guardian's choosing who has expertise in the applicable field.

(2) The child ~~may~~ shall remain in the custody of the parent or guardian while the appropriate medical treatment is being determined.

(3) If the second opinion results in a diagnosis different from the report of the physician the division used, or if the second opinion results in a course of action less restrictive than the recommendation of the physician the division used, the parent or guardian shall have the option of pursuing care and treatment pursuant to the second opinion, unless the division shows, by clear and convincing evidence, that the health care decision is not reasonable and informed, ~~as described in Subsection 78A-6-105(27)(d).~~

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Section 5. Section 78A-6-302 is amended to read:

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

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

- (a) (i) there is an imminent danger to the physical health or safety of the child; and
- (ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;
- (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer ~~emotional damage~~ harm; and
- (ii) there are ~~no reasonable~~ no less restrictive means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
- (c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;
- (d) the parent or guardian is unwilling to have physical custody of the child;
- (e) the child is abandoned or left without any provision for the child's support;
- (f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;
- (g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
- (ii) the whereabouts of the parent or guardian are unknown; and
- (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- (h) subject to the provisions of Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5, the child is in immediate need of medical ~~for mental health~~ care;
- (i) (i) a parent's or guardian's actions, omissions, or habitual action create an

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environment that poses a ~~[threat]~~ serious risk to the child's health or safety for which immediate remedial or preventive action is necessary; or

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

(j) the child or another child residing in the same household has been neglected;

(k) the child's natural parent:

(i) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;

(l) an infant has been abandoned, as defined in Section 78A-6-316;

(m) (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(n) the child's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing

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the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

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

78A-6-306. Shelter hearing.

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

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

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

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

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

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

(2) [~~Upon the occurrence of any~~] If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:

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

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

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

(d) a concise statement regarding:

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

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

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

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

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

(a) the appropriate guardian ad litem; and

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

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

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

(b) the child's parents or guardian, unless the parents or guardian cannot be located, or

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fail to appear in response to the notice;

- (c) counsel for the parents, if one is requested;
- (d) the child's guardian ad litem;
- (e) the caseworker from the division who is assigned to the case; and
- (f) the attorney from the attorney general's office who is representing the division.

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

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

- (A) the child's parent or guardian, if present; and
- (B) any other person having relevant knowledge; and

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

(b) The court:

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

Procedure;

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

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

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

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

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

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

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

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

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

(8) (a) If necessary to protect the child, preserve the rights of a party, or for other good

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cause shown, the court may grant no more than one continuance, not to exceed five judicial days.

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

(c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice described in Subsection (2) within the time described in Subsection (3), the court may grant the request of a parent or guardian for a continuance, not to exceed five judicial days.

(9) (a) If the child is in the protective custody of the division, the court shall order that the child be ~~[released from the protective custody of the division]~~ returned to the custody of the parent or guardian unless it finds, by ~~{}~~ a preponderance of the ~~{}~~ clear and convincing evidence, evidence, consistent with the protections and requirements provided in Subsection 62A-4a-201(1), that any one of the following ~~[exist]~~ exists:

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

(ii) (A) the child is suffering ~~{substantial}~~ emotional damage ~~{}~~; and substantial harm that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) the parent or guardian is unwilling or unable to make reasonable changes that would sufficiently prevent future damage; and

~~[(B)]~~ (C) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's ~~[parents]~~ parent or guardian;

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent or guardian;

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

(C) person known to the parent or guardian;

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

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

(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent or guardian are unknown; and

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

(ix) subject to Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5, the child is in [~~urgent~~] immediate need of medical ~~{or mental health}~~ care;

(x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;

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

(B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;

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

(xiii) (A) the child's welfare is substantially endangered; [~~or~~] and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the danger; or

(xiv) the child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

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

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established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

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

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

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

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

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

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

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

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78A-6-105[(25)](27)(b), truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the

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court shall state the facts on which that decision is based.

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

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child [~~because harm may result to the child if the child were returned home~~] pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 7. Section **78A-6-312** is amended to read:

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

- (1) The court may:
 - (a) make any of the dispositions described in Section 78A-6-117;
 - (b) place the minor in the custody or guardianship of any:
 - (i) individual; or
 - (ii) public or private entity or agency; or
 - (c) order:
 - (i) protective supervision;
 - (ii) family preservation;
 - (iii) subject to Subsections (12)(b) [~~and~~], 78A-6-105(27)(d), and 78A-6-117(2)(n)[~~(iii)~~]
and Section 78A-6-301.5, medical or mental health treatment; or
 - (iv) other services.

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

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

(3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed,

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unless parent-time is not in the best interest of the minor.

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

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

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

- (a) protect the physical safety of the minor;
- (b) protect the life of the minor; or
- (c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

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

- (a) prove that the parent has not used legal or illegal substances; or
- (b) comply with an aspect of the child and family plan that is ordered by the court.

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

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

(ii) an explanation of the effect of abandoning or modifying the primary permanency goal.

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

- (i) the preference for kinship placement over nonkinship placement;
- (ii) the potential for a guardianship placement if the parent-child relationship is legally terminated and no appropriate adoption placement is available; and
- (iii) the use of an individualized permanency goal, only as a last resort.

(9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if

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something other than reunification is initially established as a minor's primary permanency goal.

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

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

(c) If, at any time, the court determines that reunification is no longer a minor's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

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

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

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

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

(12) (a) The court shall:

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

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

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

(b) If the parent is in a substance abuse treatment program, other than a certified drug court program:

(i) the court may order the parent to submit to supplementary drug or alcohol testing in addition to the testing recommended by the parent's substance abuse program based on a

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finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

(ii) the court may order the parent to provide the results of drug or alcohol testing recommended by the substance abuse program to the court or division.

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

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

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

(b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

(i) place the minor in accordance with the permanency plan; and

(ii) complete whatever steps are necessary to finalize the permanent placement of the minor.

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

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

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

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

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

(a) the court shall terminate reunification services; and

(b) the division shall petition the court for termination of parental rights.

(18) When a court conducts a permanency hearing for a minor under Section

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78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

- (a) practicable; and
- (b) in accordance with the best interest of the minor.

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

(b) The court may determine that:

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

(ii) reunification services should not be provided.

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

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

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

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

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

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

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

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

(d) the parent:

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

(ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

(A) murder or manslaughter of a child; or

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(B) child abuse homicide;

(iii) committed sexual abuse against the child;

(iv) is a registered sex offender or required to register as a sex offender; or

(v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;

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

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

(g) the parent's rights are terminated with regard to any other minor;

(h) the minor was removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;

(i) the parent has abandoned the minor for a period of six months or longer;

(j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located;

(k) except as provided in Subsection (21)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or

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

(21) (a) The finding under Subsection (20)(b) shall be based on competent evidence

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from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

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

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

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

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

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

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

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

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

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

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

(b) The time limits described in Subsections (2) through (18) are not tolled by the parent's absence.

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

(b) In making the determination described in Subsection (24)(a), the court shall consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

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- (iii) the length of the sentence;
 - (iv) the nature of the treatment;
 - (v) the nature of the crime or illness;
 - (vi) the degree of detriment to the minor if services are not offered;
 - (vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and
 - (viii) any other appropriate factors.
- (c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (18).
- (d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (18), unless the court determines that continued reunification services would be in the minor's best interest.
- (25) If, pursuant to Subsections (20)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

~~{ Section 8. Section 78A-6-312.5 is enacted to read:~~

~~78A-6-312.5. Child and family plan hearing.~~

~~(1) (a) A parent or guardian may petition the court to schedule a hearing at any time after the child and family plan is finalized under Section 62A-4a-205.~~

~~(b) The petition for a hearing shall include relevant statements, documents, and other information demonstrating the compliance of the parent or guardian with the child and family plan.~~

~~(c) Upon receiving the petition, the court shall schedule a hearing within five business days.~~

~~(2) If the court finds that the parent or guardian has completed the requirements of the child and family plan, the court shall order the division to relinquish custody of the child to the parent or guardian.~~

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Legislative Review Note

~~as of 2-18-15 1:32 PM~~

~~Office of Legislative Research and General Counsel}~~