

CHILD WELFARE REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Alvin B. Jackson

House Sponsor: _____

LONG TITLE

General Description:

This bill amends language related to child welfare services.

Highlighted Provisions:

This bill:

▶ amends language related to:

- the state's interest in protecting a child; and
- standards for the Division of Child and Family Services to seek custody of a child.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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.



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

36 (b) The fundamental liberty interest of a parent concerning the care, custody, and
37 management of the parent's children is recognized, protected, and does not cease to exist
38 simply because a parent may fail to be a model parent or because the parent's child is placed in
39 the temporary custody of the state. At all times, a parent retains a vital interest in preventing
40 the irretrievable destruction of family life. Prior to an adjudication of unfitness, government
41 action in relation to parents and their children may not exceed the least restrictive means or
42 alternatives available to accomplish a compelling state interest. Until the state proves parental
43 unfitness, the child and the child's parents share a vital interest in preventing erroneous
44 termination of their natural relationship and the state cannot presume that a child and the child's
45 parents are adversaries.

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

54 (d) The state recognizes that:

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

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

58 (e) It is the public policy of this state that parents retain the fundamental right and duty

59 to exercise primary control over the care, supervision, upbringing, and education of their
60 children.

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

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

72 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
73 it shall take into account the child's need for protection from immediate harm and the extent to
74 which the child's extended family may provide needed protection. Throughout its involvement,
75 the division shall utilize the least intrusive and least restrictive means available to protect a
76 child, in an effort to ensure that children are brought up in stable, permanent families, rather
77 than in temporary foster placements under the supervision of the state.

78 (4) When circumstances within the family pose a threat to the child's immediate safety
79 or welfare due to specific intent on the part of a parent to harm the child, the division may seek
80 custody of the child for a planned period and place the child in a safe environment, subject to
81 the requirements of this section and in accordance with the requirements of Title 78A, Chapter
82 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and:

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

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

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

95 (7) (a) The division shall strive to achieve appropriate permanency for children who are
96 abused, neglected, or dependent. The division shall provide in-home services, where
97 appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse,
98 neglect, or dependency of the parent's child. If in-home services fail or are otherwise
99 insufficient or inappropriate, the division shall also seek qualified extended family support or a
100 kinship placement to maintain a sense of security and stability for the child. If in-home
101 services and kinship placement are not safe or appropriate, or in-home services and kinship
102 placement fail and cannot be corrected, the division may pursue a foster placement.

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

107 (c) Subject to the parental rights recognized and protected under this section, if,
108 because of a parent's conduct or condition, the parent is determined to be unfit or incompetent
109 based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part
110 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of
111 paramount importance, and shall be protected in determining whether that parent's rights
112 should be terminated.

113 (8) The state's right to direct or intervene in the provision of medical or mental health
114 care for a child is subject to Subsection [78A-6-117\(2\)\(n\)](#).

Legislative Review Note
as of **2-24-15 10:15 AM**

Office of Legislative Research and General Counsel