

## Part 2

### Child Welfare Services

#### **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 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, 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) 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. The division may pursue a foster placement only if in-home services fail or are otherwise insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected. The division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child.
  - (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 Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n) and Section 78A-6-301.5.

Amended by Chapter 274, 2015 General Session

**62A-4a-202 In-home services for the preservation of families.**

- (1)
  - (a) Within appropriations from the Legislature and money obtained under Subsection (5), the division shall provide in-home services for the purpose of family preservation to any family with a child whose health and safety is not immediately endangered, when:
    - (i)
      - (A) the child is at risk of being removed from the home; or
      - (B) the family is in crisis; and
    - (ii) the division determines that it is reasonable and appropriate.
  - (b) In determining whether in-home services are reasonable and appropriate, in keeping with the provisions of Subsection 62A-4a-201(1) the child's health, safety, and welfare shall be the paramount concern.
  - (c) The division shall consider whether the services described in Subsection (1)(b):
    - (i) will be effective within a six-month period; and
    - (ii) are likely to prevent continued abuse or neglect of the child.
- (2)
  - (a) The division shall maintain a statewide inventory of in-home services available through public and private agencies or individuals for use by caseworkers.
  - (b) The inventory described in Subsection (2)(a) shall include:
    - (i) the method of accessing each service;
    - (ii) eligibility requirements for each service;
    - (iii) the geographic areas and the number of families that can be served by each service; and
    - (iv) information regarding waiting lists for each service.
- (3)
  - (a) As part of its in-home services for the preservation of families, the division shall provide in-home services in varying degrees of intensity and contact that are specific to the needs of each individual family.
  - (b) As part of its in-home services, the division shall:
    - (i) provide customized assistance;
    - (ii) provide support or interventions that are tailored to the needs of the family;
    - (iii) discuss the family's needs with the parent;
    - (iv) discuss an assistance plan for the family with the parent; and
    - (v) address:
      - (A) the safety of children;
      - (B) the needs of the family; and
      - (C) services necessary to aid in the preservation of the family and a child's ability to remain in the home.
  - (c) In-home services shall be, as practicable, provided within the region that the family resides, using existing division staff.
- (4)
  - (a) The division may use specially trained caseworkers, private providers, or other persons to provide the in-home services described in Subsection (3).
  - (b) The division shall allow a caseworker to be flexible in responding to the needs of each individual family, including:
    - (i) limiting the number of families assigned; and
    - (ii) being available to respond to assigned families within 24 hours.

- (5) To provide, expand, and improve the delivery of in-home services to prevent the removal of children from their homes and promote the preservation of families, the division shall make substantial effort to obtain funding, including:
- (a) federal grants;
  - (b) federal waivers; and
  - (c) private money.

Amended by Chapter 265, 2014 General Session

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

- (1) A peace officer or child welfare worker may not:
- (a) enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless authorized under Subsection 78A-6-106(2); or
  - (b) remove a child from the child's home or take a child into custody under this section solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school.
- (2) A child welfare worker within the division may take action under Subsection (1) accompanied by a peace officer, or without a peace officer when a peace officer is not reasonably available.
- (3)
- (a) If possible, consistent with the child's safety and welfare, before taking a child into protective custody, the child welfare worker shall also determine whether there are services available that, if provided to a parent or guardian of the child, would eliminate the need to remove the child from the custody of the child's parent or guardian.
  - (b) If the services described in Subsection (3)(a) are reasonably available, they shall be utilized.
  - (c) In determining whether the services described in Subsection (3)(a) are reasonably available, and in making reasonable efforts to provide those services, the child's health, safety, and welfare shall be the child welfare worker's paramount concern.
- (4)
- (a) A child removed or taken into custody under this section may not be placed or kept in a secure detention facility pending court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.
  - (b) A child removed from the custody of the child's parent or guardian but who does not require physical restriction shall be given temporary care in:
    - (i) a shelter facility; or
    - (ii) an emergency placement in accordance with Section 62A-4a-209.
  - (c) When making a placement under Subsection (4)(b), the Division of Child and Family Services shall give priority to a placement with a noncustodial parent, relative, or friend, in accordance with Section 62A-4a-209.
  - (d) If the child is not placed with a noncustodial parent, a relative, or a designated friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor explaining why a different placement was in the child's best interest.
- (5) When a child is removed from the child's home or school or taken into protective custody, the caseworker shall give a parent of the child a pamphlet or flier explaining:
- (a) the parent's rights under this part, including the right to be present and participate in any court proceeding relating to the child's case;

- (b) that it may be in the parent's best interest to contact an attorney and that, if the parent cannot afford an attorney, the court will appoint one;
  - (c) the name and contact information of a division employee the parent may contact with questions;
  - (d) resources that are available to the parent, including:
    - (i) mental health resources;
    - (ii) substance abuse resources; and
    - (iii) parenting classes; and
  - (e) any other information considered relevant by the division.
- (6) The pamphlet or flier described in Subsection (5) shall be:
- (a) evaluated periodically for its effectiveness at conveying necessary information and revised accordingly;
  - (b) written in simple, easy-to-understand language; and
  - (c) available in English and other languages as the division determines to be appropriate and necessary.

Amended by Chapter 221, 2012 General Session  
Amended by Chapter 293, 2012 General Session

**62A-4a-202.2 Notice upon removal of child -- Locating noncustodial parent -- Written statement of procedural rights and preliminary proceedings.**

- (1)
- (a) Any peace officer or caseworker who takes a child into protective custody pursuant to Section 62A-4a-202.1 shall immediately use reasonable efforts to locate and inform, through the most efficient means available, the parents, including a noncustodial parent, the guardian, or responsible relative:
    - (i) that the child has been taken into protective custody;
    - (ii) the reasons for removal and placement of the child in protective custody;
    - (iii) that a written statement is available that explains:
      - (A) the parent's or guardian's procedural rights; and
      - (B) the preliminary stages of the investigation and shelter hearing;
    - (iv) of a telephone number where the parent or guardian may access further information;
    - (v) that the child and the child's parent or guardian are entitled to have an attorney present at the shelter hearing;
    - (vi) that if the child's parent or guardian is impecunious and desires to have an attorney, one will be provided; and
    - (vii) that resources are available to assist the child's parent or guardian, including:
      - (A) a parent advocate;
      - (B) a qualified attorney; or
      - (C) potential expert witnesses to testify on behalf of the:
        - (I) child;
        - (II) child's parent;
        - (III) child's guardian; or
        - (IV) child's family.
  - (b) For purposes of locating and informing the noncustodial parent as required in Subsection (1)
    - (a), the division shall search for the noncustodial parent through the national parent locator database if the division is unable to locate the noncustodial parent through other reasonable efforts.

- (2)
  - (a) The Office of the Attorney General shall adopt, print, and distribute a form for the written statement described in Subsection (1)(a)(iii).
  - (b) The statement described in Subsections (1)(a)(iii) and (2)(a) shall:
    - (i) be made available to the division and for distribution in:
      - (A) schools;
      - (B) health care facilities;
      - (C) local police and sheriff's offices;
      - (D) the division; and
      - (E) any other appropriate office within the Department of Human Services;
    - (ii) be in simple language; and
    - (iii) include at least the following information:
      - (A) the conditions under which a child may be released;
      - (B) hearings that may be required;
      - (C) the means by which the parent or guardian may access further specific information about a child's case and conditions of protective and temporary custody; and
      - (D) the rights of a child and of the parent or guardian to legal counsel and to appeal.
- (3) If reasonable efforts are made by the peace officer or caseworker to notify the parent or guardian or a responsible relative in accordance with the requirements of Subsection (1), failure to notify:
  - (a) shall be considered to be due to circumstances beyond the control of the peace officer or caseworker; and
  - (b) may not be construed to:
    - (i) permit a new defense to any juvenile or judicial proceeding; or
    - (ii) interfere with any rights, procedures, or investigations provided for by this chapter or Title 78A, Chapter 6, Juvenile Court Act of 1996.

Amended by Chapter 3, 2008 General Session

**62A-4a-202.3 Investigation -- Supported or unsupported reports -- Child in protective custody.**

- (1) When a child is taken into protective custody in accordance with Section 62A-4a-202.1, 78A-6-106, or 78A-6-302, or when the division takes any other action which would require a shelter hearing under Subsection 78A-6-306(1), the division shall immediately initiate an investigation of the:
  - (a) circumstances of the child; and
  - (b) grounds upon which the decision to place the child into protective custody was made.
- (2) The division's investigation shall conform to reasonable professional standards, and shall include:
  - (a) a search for and review of any records of past reports of abuse or neglect involving:
    - (i) the same child;
    - (ii) any sibling or other child residing in the same household as the child; and
    - (iii) the alleged perpetrator;
  - (b) with regard to a child who is five years of age or older, a personal interview with the child:
    - (i) outside of the presence of the alleged perpetrator; and
    - (ii) conducted in accordance with the requirements of Subsection (7);
  - (c) if a parent or guardian can be located, an interview with at least one of the child's parents or guardian;

- (d) an interview with the person who reported the abuse, unless the report was made anonymously;
  - (e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including:
    - (i) school personnel; and
    - (ii) the child's health care provider;
  - (f) an unscheduled visit to the child's home, unless:
    - (i) there is a reasonable basis to believe that the reported abuse was committed by a person who:
      - (A) is not the child's parent; and
      - (B) does not:
        - (I) live in the child's home; or
        - (II) otherwise have access to the child in the child's home; or
    - (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
  - (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination, obtained no later than 24 hours after the child is placed in protective custody.
- (3) The division may rely on a written report of a prior interview rather than conducting an additional interview, if:
- (a) law enforcement:
    - (i) previously conducted a timely and thorough investigation regarding the alleged abuse, neglect, or dependency; and
    - (ii) produced a written report;
  - (b) the investigation described in Subsection (3)(a)(i) included one or more of the interviews required by Subsection (2); and
  - (c) the division finds that an additional interview is not in the best interest of the child.
- (4)
- (a) The division's determination of whether a report is supported or unsupported may be based on the child's statements alone.
  - (b) Inability to identify or locate the perpetrator may not be used by the division as a basis for:
    - (i) determining that a report is unsupported; or
    - (ii) closing the case.
  - (c) The division may not determine a case to be unsupported or identify a case as unsupported solely because the perpetrator was an out-of-home perpetrator.
  - (d) Decisions regarding whether a report is supported, unsupported, or without merit shall be based on the facts of the case at the time the report was made.
- (5) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:
- (a) the child does not have a natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the child;
  - (b)
    - (i) shelter of the child is a matter of necessity for the protection of the child; and
    - (ii) there are no reasonable means by which the child can be protected in:
      - (A) the child's home; or
      - (B) the home of a responsible relative;
  - (c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or
  - (d) the child has left a previously court ordered placement.

- (6)
- (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the division shall:
    - (i) convene a child protection team to review the circumstances regarding removal of the child from the child's home or school; and
    - (ii) prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78A-6-306.
  - (b) The child protection team described in Subsection (6)(a)(i) shall include:
    - (i) the caseworker assigned to the case;
    - (ii) the caseworker who made the decision to remove the child;
    - (iii) a representative of the school or school district where the child attends school;
    - (iv) the peace officer who removed the child from the home;
    - (v) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;
    - (vi) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and
    - (vii) any other individuals determined appropriate and necessary by the team coordinator and chair.
  - (c) At the 24-hour meeting, the division shall have available for review and consideration the complete child protective services and foster care history of the child and the child's parents and siblings.
- (7)
- (a) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be:
    - (i) except as provided in Subsection (7)(b), audio or video taped; and
    - (ii) except as provided in Subsection (7)(c), conducted with a support person of the child's choice present.
  - (b)
    - (i) Subject to Subsection (7)(b)(ii), an interview described in Subsection (7)(a) may be conducted without being taped if the child:
      - (A) is at least nine years old;
      - (B) refuses to have the interview audio taped; and
      - (C) refuses to have the interview video taped.
    - (ii) If, pursuant to Subsection (7)(b)(i), an interview is conducted without being taped, the child's refusal shall be documented, as follows:
      - (A) the interviewer shall attempt to get the child's refusal on tape, including the reasons for the refusal; or
      - (B) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the interviewer shall:
        - (I) state on the tape that the child is present, but has refused to have the interview, refusal, or the reasons for the refusal taped; or
        - (II) if complying with Subsection (7)(b)(ii)(B)(I) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.
    - (iii) The division shall track the number of interviews under this Subsection (7) that are not taped, and the number of refusals that are not taped, for each interviewer, in order to

determine whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other interviewers.

- (c)
  - (i) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an interview of a child may not be an alleged perpetrator.
  - (ii) Subsection (7)(a)(ii) does not apply if the child refuses to have a support person present during the interview.
  - (iii) If a child described in Subsection (7)(c)(ii) refuses to have a support person present in the interview, the interviewer shall document, in writing, the refusal and the reasons for the refusal.
  - (iv) The division shall track the number of interviews under this Subsection (7) where a child refuses to have a support person present for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals than other interviewers.
- (8) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.
- (9) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child until all reasonable efforts have been made to locate the child and family members including:
  - (a) visiting the home at times other than normal work hours;
  - (b) contacting local schools;
  - (c) contacting local, county, and state law enforcement agencies; and
  - (d) checking public assistance records.

Amended by Chapter 3, 2008 General Session

**62A-4a-202.4 Access to criminal background information.**

- (1) For purposes of background screening and investigation of abuse or neglect under this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.
- (2) The division and the Office of Guardian Ad Litem are authorized to request the Department of Public Safety to conduct a complete Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC).

Amended by Chapter 32, 2009 General Session

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

- (1)
  - (a) The division shall contract with an independent child protective service investigator from the private sector to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.
  - (b) The executive director shall designate an entity within the department, other than the division, to monitor the contract for the investigators described in Subsection (1)(a).
  - (c) Subject to Subsection (4), when a report is made that a child is abused or neglected while in the custody of the division:
    - (i) the attorney general may, in accordance with Section 67-5-16, and with the consent of the division, employ a child protective services investigator to conduct a conflict investigation of the report; or

- (ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent of the division, conduct a conflict investigation of the report.
- (d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the consent of the division, conducting a criminal investigation of abuse or neglect under Title 53, Public Safety Code.
- (2) The investigators described in Subsections (1)(c) and (d) may also investigate allegations of abuse or neglect of a child by a department employee or a licensed substitute care provider.
- (3) The investigators described in Subsection (1), if not peace officers, shall have the same rights, duties, and authority of a child protective services investigator employed by the division to:
  - (a) make a thorough investigation upon receiving either an oral or written report of alleged abuse or neglect of a child, with the primary purpose of that investigation being the protection of the child;
  - (b) make an inquiry into the child's home environment, emotional, or mental health, the nature and extent of the child's injuries, and the child's physical safety;
  - (c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division; and
  - (d) immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or includes an allegation of educational neglect.
- (4) If there is a lapse in the contract with a private child protective service investigator and no other investigator is available under Subsection (1)(a) or (c), the department may conduct an independent investigation.

Amended by Chapter 293, 2012 General Session

**62A-4a-202.8 Child protection team meeting -- Timing.**

- (1) Subject to Subsection (2), if the division files a petition under Section 78A-6-304, the division shall convene a child protection team meeting to:
  - (a) review the circumstances of the filing of the petition; and
  - (b) develop or review implementation of a safety plan to protect the child from further abuse, neglect, or dependency.
- (2) The child protection team meeting required under Subsection (1) shall be held within the shorter of:
  - (a) 14 days of the day on which the petition is filed under Section 78A-6-304 if the conditions of Subsection (2)(b) or (c) are not met;
  - (b) 24 hours of the filing of the petition under Section 78A-6-304, excluding weekends and holidays, if the child who is the subject of the petition will likely be taken into protective custody unless there is an expedited hearing and services ordered under the protective supervision of the court; or
  - (c) 24 hours after receipt of a child into protective custody, excluding weekends and holidays, if the child is taken into protective custody as provided in Section 62A-4a-202.3.
- (3) The child protection team shall include as many persons under Subsection 62A-4a-202.3(6)(b) as appropriate.
- (4) At its meeting the child protection team shall review the complete child protective services and foster care history of the child and the child's parents and siblings.

Amended by Chapter 3, 2008 General Session

**62A-4a-203 Removal of a child from home -- Reasonable efforts to maintain child in home -- Exception -- Reasonable efforts for reunification.**

- (1) Because removal of a child from the child's home affects protected, constitutional rights of the parent and has a dramatic, long-term impact on a child, the division shall:
  - (a) when possible and appropriate, without danger to the child's welfare, make reasonable efforts to prevent or eliminate the need for removal of a child from the child's home prior to placement in substitute care;
  - (b) determine whether there is substantial cause to believe that a child has been or is in danger of abuse or neglect, in accordance with the guidelines described in Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from the child's home; and
  - (c) when it is possible and appropriate, and in accordance with the limitations and requirements of Sections 78A-6-312 and 78A-6-314, make reasonable efforts to make it possible for a child in substitute care to return to the child's home.
- (2)
  - (a) In determining the reasonableness of efforts needed to maintain a child in the child's home or to return a child to the child's home, in accordance with Subsection (1)(a) or (c), the child's health, safety, and welfare shall be the paramount concern.
  - (b) The division shall consider whether the efforts described in Subsections (1) and (2) are likely to prevent abuse or continued neglect of the child.
- (3) When removal and placement in substitute care is necessary to protect a child, the efforts described in Subsections (1) and (2):
  - (a) are not reasonable or appropriate; and
  - (b) should not be utilized.
- (4) Subject to Subsection (5), in cases where sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, the state has no duty to make reasonable efforts to, in any way, attempt to:
  - (a) maintain a child in the child's home;
  - (b) provide reunification services; or
  - (c) rehabilitate the offending parent or parents.
- (5) Nothing in Subsection (4) exempts the division from providing court ordered services.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 299, 2008 General Session

**62A-4a-203.1 Safety and risk assessments.**

- (1) Child welfare caseworkers within the division shall use evidence-informed or evidence-based safety and risk assessments to guide decisions concerning a child throughout a child protection investigation or proceeding.
- (2) As part of the evidence-informed or evidence-based safety and risk assessments, the division shall assess at least the following:
  - (a) threat to a child's safety;
  - (b) protective capabilities of a parent or guardian, including the parent or guardian's readiness, willingness, and ability to plan for the child's safety;
  - (c) a child's particular vulnerabilities;
  - (d) interventions required to protect a child; and

- (e) likelihood of future harm to a child.

Enacted by Chapter 231, 2016 General Session

**62A-4a-203.5 Mandatory petition for termination of parental rights.**

- (1) For purposes of this section, "abandoned infant" means a child who is 12 months of age or younger whose parent or parents:
  - (a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;
  - (b) have failed to maintain physical custody, and have failed to exhibit the normal interest of a natural parent without just cause; or
  - (c) are unwilling to have physical custody of the child.
- (2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter or of Title 78A, Chapter 6, Juvenile Court Act of 1996, the division shall file a petition for termination of parental rights with regard to:
  - (a) an abandoned infant; or
  - (b) a parent, whenever a court has determined that the parent has:
    - (i) committed murder or child abuse homicide of another child of that parent;
    - (ii) committed manslaughter of another child of that parent;
    - (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or
    - (iv) committed a felony assault or abuse that has resulted in serious physical injury to another child of that parent, or to the other parent of that child.
- (3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:
  - (a) the child is being cared for by a relative;
  - (b) the division has:
    - (i) documented in the child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the child's best interest; and
    - (ii) made that child and family plan available to the court for its review; or
  - (c)
    - (i) the court has previously determined, in accordance with the provisions and limitations of Sections 62A-4a-201, 62A-4a-203, 78A-6-306, and 78A-6-312, that reasonable efforts to reunify the child with the child's parent or parents were required; and
    - (ii) the division has not provided, within the time period specified in the child and family plan, services that had been determined to be necessary for the safe return of the child.

Amended by Chapter 3, 2008 General Session

**62A-4a-205 Child and family plan -- Parent-time.**

- (1) No more than 45 days after a child enters the temporary custody of the division, the child's child and family plan shall be finalized.
- (2)
  - (a) The division may use an interdisciplinary team approach in developing each child and family plan.
  - (b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:
    - (i) mental health;

- (ii) education; and
  - (iii) if appropriate, law enforcement.
- (3)
- (a) The division shall involve all of the following in the development of a child's child and family plan:
    - (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
    - (ii) the child;
    - (iii) the child's foster parents;
    - (iv) if appropriate, the child's stepparent; and
    - (v) the child's guardian ad litem, if one has been appointed by the court.
  - (b) In relation to all information considered by the division in developing a child and family plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).
  - (c)
    - (i) The division shall make a substantial effort to develop a child and family plan with which the child's parents agree.
    - (ii) If a parent does not agree with a child and family plan:
      - (A) the division shall strive to resolve the disagreement between the division and the parent; and
      - (B) if the disagreement is not resolved, the division shall inform the court of the disagreement.
- (4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to the:
- (a) guardian ad litem;
  - (b) child's natural parents; and
  - (c) child's foster parents.
- (5) Each child and family plan shall:
- (a) specifically provide for the safety of the child, in accordance with federal law; and
  - (b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.
- (6) The child and family plan shall set forth, with specificity, at least the following:
- (a) the reason the child entered into the custody of the division;
  - (b) documentation of the:
    - (i) reasonable efforts made to prevent placement of the child in the custody of the division; or
    - (ii) emergency situation that existed and that prevented the reasonable efforts described in Subsection (6)(b)(i), from being made;
  - (c) the primary permanency plan for the child and the reason for selection of that plan;
  - (d) the concurrent permanency plan for the child and the reason for the selection of that plan;
  - (e) if the plan is for the child to return to the child's family:
    - (i) specifically what the parents must do in order to enable the child to be returned home;
    - (ii) specifically how the requirements described in Subsection (6)(e)(i) may be accomplished; and
    - (iii) how the requirements described in Subsection (6)(e)(i) will be measured;
  - (f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;
  - (g) the name of the person who will provide for and be responsible for case management;
  - (h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;
  - (i) subject to Subsection (7), the health and mental health care to be provided to address any known or diagnosed mental health needs of the child;

- (j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders; and
  - (k) social summaries that include case history information pertinent to case planning.
- (7)
- (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:
    - (i) is placed in residential treatment; and
    - (ii) has medical or mental health issues that need to be addressed.
  - (b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the parent's choice.
- (8)
- (a) Each child and family plan shall be specific to each child and the child's family, rather than general.
  - (b) The division shall train its workers to develop child and family plans that comply with:
    - (i) federal mandates; and
    - (ii) the specific needs of the particular child and the child's family.
  - (c) All child and family plans and expectations shall be individualized and contain specific time frames.
  - (d) Subject to Subsection (8)(h), child and family plans shall address problems that:
    - (i) keep a child in placement; and
    - (ii) keep a child from achieving permanence in the child's life.
  - (e) Each child and family plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school.
  - (f) In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court in the child and family plan shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.
  - (g) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.
  - (h) For purposes of Subsection (8)(d), a child and family plan may only include requirements that:
    - (i) address findings made by the court; or
    - (ii)
      - (A) are requested or consented to by a parent or guardian of the child; and
      - (B) are agreed to by the division and the guardian ad litem.
- (9)
- (a) Except as provided in Subsection (9)(b), with regard to a child who is three years of age or younger, if the plan is not to return the child home, the primary permanency plan for that child shall be adoption.
  - (b) Notwithstanding Subsection (9)(a), if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.
- (10)
- (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued pursuant to Subsections 78A-6-312(3), (6), and (7).

- (b) Notwithstanding Subsection (10)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time in order to:
    - (i) protect the physical safety of the child;
    - (ii) protect the life of the child; or
    - (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.
  - (c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:
    - (i) the child's fear of the parent; and
    - (ii) the nature of the alleged abuse or neglect.
- (11) The division shall consider visitation with their grandparents for children in state custody if the division determines visitation to be in the best interest of the child and:
- (a) there are no safety concerns regarding the behavior or criminal background of the grandparents;
  - (b) allowing visitation would not compete with or undermine the reunification plan;
  - (c) there is a substantial relationship between the grandparents and children; and
  - (d) the visitation will not unduly burden the foster parents.

Amended by Chapter 322, 2015 General Session

**62A-4a-205.5 Prohibition of discrimination based on race, color, or ethnicity.**

- (1) As used in this section, "adoptable children" means children:
- (a) who are in the custody of the division; and
  - (b)
    - (i) who have permanency goals of adoption; or
    - (ii) for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section 78A-6-314.
- (2) Except as required under the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, the division may not base its decision for placement of adoptable children on the race, color, ethnicity, or national origin of either the child or the prospective adoptive parents.
- (3) The basis of a decision for placement of an adoptable child shall be the best interest of the child.

Amended by Chapter 237, 2010 General Session

**62A-4a-205.6 Adoptive placement time frame -- Contracting with agencies.**

- (1) With regard to a child who has a primary permanency plan of adoption or for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section 78A-6-314, the division shall make intensive efforts to place the child in an adoptive home within 30 days of the earlier of:
- (a) approval of the final plan; or
  - (b) establishment of the primary permanency plan.
- (2) If within the time periods described in Subsection (1) the division is unable to locate a suitable adoptive home, it shall contract with licensed child placing agencies to search for an appropriate adoptive home for the child, and to place the child for adoption. The division

shall comply with the requirements of Section 62A-4a-607 and contract with a variety of child placing agencies licensed under Title 62A, Chapter 4a, Part 6, Child Placing. In accordance with federal law, the division shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

- (3) The division shall ensure that children who are adopted and were previously in its custody, continue to receive the medical and mental health coverage that they are entitled to under state and federal law.
- (4) The division may not consider a prospective adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with the prospective adoptive parent.

Amended by Chapter 322, 2015 General Session

**62A-4a-206 Process for removal of a child from foster family -- Procedural due process.**

- (1)
  - (a) The Legislature finds that, except with regard to a child's natural parent or legal guardian, a foster family has a very limited but recognized interest in its familial relationship with a foster child who has been in the care and custody of that family. In making determinations regarding removal of a child from a foster home, the division may not dismiss the foster family as a mere collection of unrelated individuals.
  - (b) The Legislature finds that children in the temporary custody and custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.
  - (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide procedural due process for a foster family prior to removal of a foster child from their home, regardless of the length of time the child has been in that home, unless removal is for the purpose of:
    - (i) returning the child to the child's natural parent or legal guardian;
    - (ii) immediately placing the child in an approved adoptive home;
    - (iii) placing the child with a relative, as defined in Subsection 78A-6-307(1)(c), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78A-6-307(18)(a); or
    - (iv) placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.
- (2)
  - (a) The division shall maintain and utilize due process procedures for removal of a foster child from a foster home, in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
  - (b) Those procedures shall include requirements for:
    - (i) personal communication with, and a written explanation of the reasons for the removal to, the foster parents prior to removal of the child; and
    - (ii) an opportunity for foster parents to present their information and concerns to the division and to:
      - (A) request a review, to be held before removal of the child, by a third party neutral fact finder; or
      - (B) if the child has been placed with the foster parents for a period of at least two years, request a review, to be held before removal of the child, by:
        - (I) the juvenile court judge currently assigned to the child's case; or

- (II) if the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.
- (c) If the division determines that there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, it shall place the child in emergency foster care during the pendency of the procedures described in this subsection, instead of making another foster care placement.
- (3) If the division removes a child from a foster home based upon the child's statement alone, the division shall initiate and expedite the processes described in Subsection (2). The division may take no formal action with regard to that foster parent's license until after those processes, in addition to any other procedure or hearing required by law, have been completed.
- (4) When a complaint is made to the division by a foster child against a foster parent, the division shall, within 30 business days, provide the foster parent with information regarding the specific nature of the complaint, the time and place of the alleged incident, and who was alleged to have been involved.
- (5) Whenever the division places a child in a foster home, it shall provide the foster parents with:
  - (a) notification of the requirements of this section;
  - (b) a written description of the procedures enacted by the division pursuant to Subsection (2) and how to access those processes; and
  - (c) written notification of the foster parents' ability to petition the juvenile court directly for review of a decision to remove a foster child who has been in their custody for 12 months or longer, in accordance with the limitations and requirements of Section 78A-6-318.
- (6) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that removal.
- (7) It is unlawful for a person, with the intent to avoid compliance with the requirements of this section, to:
  - (a) take action, or encourage another to take action, against the license of a foster parent; or
  - (b) remove a child from a foster home before the child has been placed with the foster parents for two years.
- (8) The division may not remove a foster child from a foster parent who is a relative, as defined in Subsection 78A-6-307(1)(c), of the child on the basis of the age or health of the foster parent without determining by:
  - (a) clear and convincing evidence that the foster parent is incapable of caring for the foster child, if the alternative foster parent would not be another relative of the child; or
  - (b) a preponderance of the evidence that the foster parent is incapable of caring for the foster child, if the alternative foster parent would be another relative of the child.

Amended by Chapter 214, 2012 General Session

**62A-4a-206.1 Foster parent's preference upon child's reentry into foster care.**

When a child reenters the temporary custody or the custody of the division, and is to be placed in foster care, the child's former foster parents shall be notified. Upon a determination of their willingness and ability to safely and appropriately care for the child, those foster parents shall be given a preference for placement of the child.

Amended by Chapter 169, 2007 General Session

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

(1)

- (a) There is created the Child Welfare Legislative Oversight Panel composed of the following members:
  - (i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and
  - (ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.
- (b) Members of the panel shall serve for two-year terms, or until their successors are appointed.
- (c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.
- (2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.
- (3) The panel shall follow the interim committee rules established by the Legislature.
- (4) The panel shall:
  - (a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;
  - (b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system, including the division, other offices and agencies within the department, the attorney general's office, the Office of Guardian Ad Litem, and school districts;
  - (c) before October 1 of each year, receive a report from the judicial branch identifying the cases not in compliance with the time limits established in the following sections, and the reasons for noncompliance:
    - (i) Subsection 78A-6-306(1)(a), regarding shelter hearings;
    - (ii) Section 78A-6-309, regarding pretrial and adjudication hearings;
    - (iii) Section 78A-6-312, regarding dispositional hearings and reunification services; and
    - (iv) Section 78A-6-314, regarding permanency hearings and petitions for termination;
  - (d) receive recommendations from, and make recommendations to the governor, the Legislature, the attorney general, the division, the Office of Guardian Ad Litem, the juvenile court, and the public;
  - (e)
    - (i) receive reports from the executive branch and the judicial branch on budgetary issues impacting the child welfare system; and
    - (ii) recommend, as the panel considers advisable, budgetary proposals to the Social Services Appropriations Subcommittee and the Executive Offices and Criminal Justice Appropriations Subcommittee, which recommendation should be made before December 1 of each year;
  - (f) study and recommend proposed changes to laws governing the child welfare system;
  - (g) study actions the state can take to preserve, unify, and strengthen the child's family ties whenever possible in the child's best interest, including recognizing the constitutional rights and claims of parents whenever those family ties are severed or infringed;
  - (h) perform such other duties related to the oversight of the child welfare system as the panel considers appropriate; and
  - (i) annually report the panel's findings and recommendations to the president of the Senate, the speaker of the House of Representatives, the Health and Human Services Interim Committee, and the Judiciary Interim Committee.
- (5)

- (a) The panel has authority to review and discuss individual cases.
  - (b) When an individual case is discussed, the panel's meeting may be closed pursuant to Title 52, Chapter 4, Open and Public Meetings Act.
  - (c) When discussing an individual case, the panel shall make reasonable efforts to identify and consider the concerns of all parties to the case.
- (6)
- (a) The panel has authority to make recommendations to the Legislature, the governor, the Board of Juvenile Court Judges, the division, and any other statutorily created entity related to the policies and procedures of the child welfare system. The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.
  - (b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to appear and present their views regarding the child welfare system in this state.
- (7)
- (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.
  - (b) The panel shall have access to all of the division's records, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.
- (8) In order to accomplish its oversight functions, the panel has:
- (a) all powers granted to legislative interim committees in Section 36-12-11; and
  - (b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.
- (9) Compensation and expenses of a member of the panel who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (10)
- (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.
  - (b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Amended by Chapter 387, 2014 General Session

**62A-4a-208 Child protection ombudsman -- Responsibility -- Authority.**

- (1) As used in this section:
- (a) "Complainant" means a person who initiates a complaint with the ombudsman.
  - (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this section.
- (2)
- (a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.
  - (b) The ombudsman shall be:
    - (i) an individual of recognized executive and administrative capacity;
    - (ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and
    - (iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.

(c) The ombudsman shall devote full time to the duties of office.

(3)

(a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:

- (i) is contrary to statute, rule, or policy;
- (ii) places a child's health or safety at risk;
- (iii) is made without an adequate statement of reason; or
- (iv) is based on irrelevant, immaterial, or erroneous grounds.

(b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.

(c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

(4) The ombudsman shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:

- (i) receiving and processing complaints;
- (ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;
- (iii) prioritizing workload;
- (iv) maximum time within which investigations shall be completed;
- (v) conducting investigations;
- (vi) notifying complainants and the division regarding the results of investigations; and
- (vii) making recommendations based on the findings and results of recommendations;

(b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;

(c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;

(d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;

(e) annually report to the:

- (i) Child Welfare Legislative Oversight Panel;
- (ii) governor;
- (iii) Division of Child and Family Services;
- (iv) executive director of the department; and
- (v) director of the division; and

(f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.

(5)

(a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

- (c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.
  - (d) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody, as that term is defined in Section 78A-6-105.
  - (e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.
- (6)
- (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.
  - (b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.
- (7)
- (a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.
  - (b) The ombudsman shall make recommendations to the division if the ombudsman finds that:
    - (i) a matter should be further considered by the division;
    - (ii) an administrative act should be addressed, modified, or canceled;
    - (iii) action should be taken by the division with regard to one of its employees; or
    - (iv) any other action should be taken by the division.

Amended by Chapter 75, 2009 General Session

**62A-4a-209 Emergency placement.**

- (1) As used in this section:
- (a) "Friend" means the same as that term is defined in Subsection 78A-6-307(1)(a).
  - (b) "Nonrelative" means an individual, other than a noncustodial parent or a relative.
  - (c) "Relative" means the same as that term is defined in Subsection 78A-6-307(1)(c).
- (2) The division may use an emergency placement under Subsection 62A-4a-202.1(4)(b)(ii) when:
- (a) the case worker has made the determination that:
    - (i) the child's home is unsafe;
    - (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and
    - (iii) the child's custodial parent or guardian will agree to not remove the child from the home of the person that serves as the placement and not have any contact with the child until after the shelter hearing required by Section 78A-6-306;
  - (b) a person, with preference being given in accordance with Subsection (4), can be identified who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:
    - (i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and
    - (ii) making the child available to division services and the guardian ad litem; and

- (c) the person described in Subsection (2)(b) agrees to care for the child on an emergency basis under the following conditions:
  - (i) the person meets the criteria for an emergency placement under Subsection (3);
  - (ii) the person agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;
  - (iii) the person agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;
  - (iv) the person agrees to allow the division and the child's guardian ad litem to have access to the child;
  - (v) the person has been informed and understands that the division may continue to search for other possible placements for long-term care, if needed;
  - (vi) the person is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and
  - (vii) the child is comfortable with the person.
- (3) Except as otherwise provided in Subsection (5), before the division places a child in an emergency placement, the division:
  - (a) may request the name of a reference and may contact the reference to determine the answer to the following questions:
    - (i) would the person identified as a reference place a child in the home of the emergency placement; and
    - (ii) are there any other relatives or friends to consider as a possible emergency or long-term placement for the child;
  - (b) shall have the custodial parent or guardian sign an emergency placement agreement form during the investigation;
  - (c)
    - (i) if the emergency placement will be with a relative of the child, shall comply with the background check provisions described in Subsection (7); or
    - (ii) if the emergency placement will be with a person other than a noncustodial parent or a relative, shall comply with the background check provisions described in Subsection (8) for adults living in the household where the child will be placed;
  - (d) shall complete a limited home inspection of the home where the emergency placement is made; and
  - (e) shall have the emergency placement approved by a family service specialist.
- (4)
  - (a) The following order of preference shall be applied when determining the person with whom a child will be placed in an emergency placement described in this section, provided that the person is willing, and has the ability, to care for the child:
    - (i) a noncustodial parent of the child in accordance with Section 78A-6-307;
    - (ii) a relative of the child;
    - (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or guardian of the child; and
    - (iv) a shelter facility, former foster placement, or other foster placement designated by the division.
  - (b) Unless the division agrees otherwise, the custodial parent or guardian described in Subsection (4)(a)(iii) may designate up to two friends as a potential emergency placement.
- (5)

- (a) The division may, pending the outcome of the investigation described in Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial parent if, based on a limited investigation, prior to making the emergency placement, the division:
  - (i) determines that the noncustodial parent has regular, unsupervised visitation with the child that is not prohibited by law or court order;
  - (ii) determines that there is not reason to believe that the child's health or safety will be endangered during the emergency placement; and
  - (iii) has the custodial parent or guardian sign an emergency placement agreement.
- (b) Either before or after making an emergency placement with the noncustodial parent of the child, the division may conduct the investigation described in Subsection (3)(a) in relation to the noncustodial parent.
- (c) Before, or within one day, excluding weekends and holidays, after a child is placed in an emergency placement with the noncustodial parent of the child, the division shall conduct a limited:
  - (i) background check of the noncustodial parent, pursuant to Subsection (7); and
  - (ii) inspection of the home where the emergency placement is made.
- (6) After an emergency placement, the division caseworker must:
  - (a) respond to the emergency placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;
  - (b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78A-6-306;
  - (c) contact the attorney general to schedule a shelter hearing;
  - (d) complete the placement procedures required in Section 78A-6-307; and
  - (e) continue to search for other relatives as a possible long-term placement, if needed.
- (7)
  - (a) The background check described in Subsection (3)(c)(i) shall include completion of:
    - (i) a name-based, Utah Bureau of Criminal Identification background check; and
    - (ii) a search of the Management Information System described in Section 62A-4a-1003.
  - (b) The division shall determine whether a person passes the background check described in this Subsection (7) pursuant to the provisions of Subsection 62A-2-120(13).
  - (c) Notwithstanding Subsection (7)(b), the division may not place a child with an individual who is prohibited by court order from having access to that child.
- (8)
  - (a) The background check described in Subsection (3)(c)(ii) shall include completion of:
    - (i) a name-based, Utah Bureau of Criminal Identification background check;
    - (ii) a federal name-based criminal background check; and
    - (iii) a search of the Management Information System described in Section 62A-4a-1003.
  - (b) The division shall determine whether a person passes the background checks described in this Subsection (8) pursuant to the provisions of Subsection 62A-2-120.
  - (c) If the division denies placement of a child as a result of a name-based criminal background check described in Subsection (8)(a), and the person contests that denial, the person shall submit a complete set of fingerprints with written permission to the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.
  - (d)
    - (i) Within 15 calendar days of the name-based background checks, the division shall require a person to provide a complete set of fingerprints with written permission to the Utah

Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

- (ii) If a person fails to provide the fingerprints and written permission described in Subsection (8)(d)(i), the child shall immediately be removed from the home.

Amended by Chapter 231, 2016 General Session

**62A-4a-210 Definitions.**

As used in this part:

- (1) "Activity" means an extracurricular, enrichment, or social activity.
- (2) "Age-appropriate" means a type of activity that is generally accepted as suitable for a child of the same age or level of maturity, based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for the child's age or age group.
- (3) "Caregiver" means a person with whom a child is placed in an out-of-home placement.
- (4) "Division" means the Division of Child and Family Services.
- (5) "Out-of-home placement" means the placement of a child in the division's custody outside of the child's home, including placement in a foster home, a residential treatment program, proctor care, or with kin.
- (6) "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions to maintain a child's health, safety, and best interest while at the same time encouraging the child's emotional and developmental growth.

Enacted by Chapter 67, 2014 General Session

**62A-4a-211 Division responsibilities -- Normalizing lives of children.**

- (1) A child who comes into care under this chapter is entitled to participate in age-appropriate activities for the child's emotional well-being and development of valuable life-coping skills.
- (2) The division shall make efforts to normalize the lives of children in the division's custody and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of the division.
- (3) The division shall allow a caregiver to make important decisions, similar to the decisions that a parent is entitled to make, regarding the child's participation in activities.

Enacted by Chapter 67, 2014 General Session

**62A-4a-212 Requirements for decision making -- Rulemaking authority.**

- (1)
  - (a) A caregiver shall use a reasonable and prudent parent standard in determining whether to permit a child to participate in an activity.
  - (b) A caregiver shall consider:
    - (i) the child's age, maturity, and developmental level to maintain the overall health and safety of the child;
    - (ii) potential risk factors and the appropriateness of the activity;
    - (iii) the best interest of the child based on the caregiver's knowledge of the child;
    - (iv) the importance of encouraging the child's emotional and developmental growth;
    - (v) the importance of providing the child with the most family-like living experience possible; and

- (vi) the behavioral history of the child and the child's ability to safely participate in the proposed activity.
- (c) The division shall verify that private agencies providing out-of-home placement under contract with the division:
  - (i) promote and protect the ability of a child to participate in age-appropriate activities; and
  - (ii) implement policies consistent with this section.
- (d)
  - (i) A caregiver is not liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by the caregiver, when the caregiver has acted in accordance with a reasonable and prudent parent standard.
  - (ii) This section does not remove or limit any existing liability protection afforded by statute.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall adopt rules establishing the procedures for verifying that private agencies providing out-of-home placement under contract with the division comply with and promote this part.

Enacted by Chapter 67, 2014 General Session

**62A-4a-213 Psychotropic medication oversight pilot program.**

- (1) As used in this section, "psychotropic medication" means medication prescribed to affect or alter thought processes, mood, or behavior, including antipsychotic, antidepressant, anxiolytic, or behavior medication.
- (2) The division shall, through contract with the Department of Health, establish and operate a psychotropic medication oversight pilot program for children in foster care to ensure that foster children are being prescribed psychotropic medication consistent with their needs.
- (3) The division shall establish an oversight team to manage the psychotropic medication oversight program, composed of at least the following individuals:
  - (a) an "advanced practice registered nurse," as defined in Subsection 58-31b-102(14), employed by the Department of Health; and
  - (b) a child psychiatrist.
- (4) The oversight team shall monitor foster children:
  - (a) six years old or younger who are being prescribed one or more psychotropic medications; and
  - (b) seven years old or older who are being prescribed two or more psychotropic medications.
- (5) The oversight team shall, upon request, be given information or records related to the foster child's health care history, including psychotropic medication history and mental and behavioral health history, from:
  - (a) the foster child's current or past caseworker;
  - (b) the foster child; or
  - (c) the foster child's:
    - (i) current or past health care provider;
    - (ii) natural parents; or
    - (iii) foster parents.
- (6) The oversight team may review and monitor the following information about a foster child:
  - (a) the foster child's history;
  - (b) the foster child's health care, including psychotropic medication history and mental or behavioral health history;
  - (c) whether there are less invasive treatment options available to meet the foster child's needs;
  - (d) the dosage or dosage range and appropriateness of the foster child's psychotropic medication;

- (e) the short-term or long-term risks associated with the use of the foster child's psychotropic medication; or
  - (f) the reported benefits of the foster child's psychotropic medication.
- (7)
- (a) The oversight team may make recommendations to the foster child's health care providers concerning the foster child's psychotropic medication or the foster child's mental or behavioral health.
  - (b) The oversight team shall provide the recommendations made in Subsection (7)(a) to the foster child's parent or guardian after discussing the recommendations with the foster child's current health care providers.
- (8) The division may adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this section.

Enacted by Chapter 231, 2016 General Session