

1 **CONCURRENT PLANNING FOR CHILDREN IN**
2 **DIVISION OF ~~CHILDREN~~ CHILD AND FAMILY**
3 **SERVICES**

4 1999 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Nora B. Stephens**

7 AN ACT RELATING TO THE JUDICIAL CODE; REQUIRING THE ESTABLISHMENT OF
8 A PRIMARY PERMANENCY GOAL AND A CONCURRENT PERMANENCY GOAL AT
9 THE DISPOSITIONAL HEARING OF A CHILD WHO IS IN STATE CUSTODY BECAUSE
10 OF ABUSE OR NEGLECT; REQUIRING THE ESTABLISHMENT OF A CONCURRENT
11 PLAN AT THE PERMANENCY HEARING; MAKING CONFORMING AMENDMENTS;
12 AND PROVIDING AN EFFECTIVE DATE.

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 AMENDS:

15 **62A-4a-205**, as last amended by Chapter 274, Laws of Utah 1998

16 **78-3a-311**, as last amended by Chapter 274, Laws of Utah 1998

17 **78-3a-312**, as last amended by Chapter 274, Laws of Utah 1998

18 **78-3g-103**, as last amended by Chapters 68, 171 and 274, Laws of Utah 1998

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

20 Section 1. Section **62A-4a-205** is amended to read:

21 **62A-4a-205. Treatment plans.**

22 (1) No more than 45 days after a child enters the temporary custody of the division, the
23 child's treatment plan shall be finalized.

24 (2) The division shall use an interdisciplinary team approach in developing each treatment
25 plan. An interdisciplinary team shall include, but is not limited to, representatives from mental
26 health, education, and, where appropriate, a representative of law enforcement.

27 (3) The division shall involve all of the following in the development of a child's treatment

28 plan:

29 (a) both of the child's natural parents, unless the whereabouts of a parent are unknown;

30 (b) the child;

31 (c) the child's foster parents; and

32 (d) where appropriate, the child's step-parent.

33 (4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the
34 child's natural parents and foster parents.

35 (5) Each treatment plan shall specifically provide for the safety of the child, in accordance
36 with federal law, and clearly define what actions or precautions will, or may be, necessary to
37 provide for the health, safety, protection, and welfare of the child.

38 (6) The plan shall set forth, with specificity, at least the following:

39 (a) the reason the child entered Division of Child and Family Services custody, and
40 documentation of the reasonable efforts made to prevent placement or documentation of the
41 emergency situation that existed and that prevented reasonable efforts;

42 (b) the primary permanency goal for the child and the reason for selection of that goal;

43 (c) the concurrent permanency goal for the child and the reason for the selection of that
44 goal;

45 [~~(e)~~] (d) if the plan is for the child to return to his family, specifically what the parents
46 must do in order to enable the child to be returned home, specifically how those requirements may
47 be accomplished, and how those requirements will be measured;

48 [~~(d)~~] (e) the specific services needed to reduce the problems that necessitated placement
49 in the division's custody, and who will provide for and be responsible for case management;

50 [~~(e)~~] (f) a visitation schedule between the natural parent and the child;

51 [~~(f)~~] (g) the health care to be provided to the child, and the mental health care to be
52 provided to address any known or diagnosed mental health needs of the child. If residential
53 treatment, rather than a foster home, is the proposed placement, a specialized assessment of the
54 child's health needs shall be conducted, including an assessment of mental illness and behavior and
55 conduct disorders; and

56 [~~(g)~~] (h) social summaries that include case history information pertinent to case planning.

57 (7) (a) The treatment plan shall be specific to each child and his family, rather than
58 general. The division shall train its workers to develop treatment plans that comply with federal

59 mandates and the specific needs of the particular child and his family;

60 (b) all treatment plans and expectations shall be individualized and contain specific time
61 frames;

62 (c) treatment plans shall address problems that keep children in placement and keep them
63 from achieving permanence in their lives; and

64 (d) the child's natural parents, foster parents, and where appropriate, step-parents, shall be
65 kept informed of and supported to participate in important meetings and procedures related to the
66 child's placement.

67 (8) With regard to a child who is three years of age or younger, if the goal is not to return
68 the child home, the permanency plan for that child shall be adoption unless there are extenuating
69 circumstances that justify long-term foster care or guardianship.

70 Section 2. Section **78-3a-311** is amended to read:

71 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

72 (1) The court may make any of the dispositions described in Section 78-3a-118, place the
73 child in the custody or guardianship of any individual or public or private entity or agency, order
74 protective supervision, family preservation, medical or mental health treatment, or other services.

75 (2) (a) Whenever the court orders continued removal at the dispositional hearing, and that
76 the minor remain in the custody of the Division of Child and Family Services, it shall first establish
77 a primary permanency goal for the minor and determine whether, in view of the primary
78 permanency goal, reunification services are appropriate for the child and the child's family,
79 pursuant to Subsection (3). In cases where obvious sexual abuse, abandonment, or serious physical
80 abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable
81 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to
82 rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare shall
83 be the court's paramount concern in determining whether reasonable efforts to reunify should be
84 made.

85 (b) (i) In addition to the primary permanency goal, the court shall establish a concurrent
86 permanency goal. The concurrent permanency goal shall include a representative list of the
87 conditions under which the primary permanency goal will be abandoned in favor of the concurrent
88 permanency goal and an explanation of the effect of abandoning or modifying the primary
89 permanency goal.

90 (ii) A permanency hearing shall be conducted in accordance with Subsection
91 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
92 child's primary permanency goal.

93 (iii) The court may amend a child's primary permanency goal before the establishment of
94 a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the
95 concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at
96 anytime, the court determines that reunification is no longer a child's primary permanency goal,
97 the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the
98 earlier of 30 days of the court's determination or 12 months from the original removal of the child.

99 ~~(b)~~ (c) If the court determines that reunification services are appropriate, it shall order
100 that the division make reasonable efforts to provide services to the minor and his parent for the
101 purpose of facilitating reunification of the family, for a specified period of time. In providing those
102 services, the child's health, safety, and welfare shall be the division's paramount concern, and the
103 court shall so order. The time period for reunification services may not exceed 12 months from
104 the date that the child was initially removed from his home. Nothing in this section may be
105 construed to entitle any parent to an entire 12 months of reunification services. If reunification
106 services have been ordered, the court may terminate those services at any time. If, at any time,
107 continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final
108 permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall
109 be taken, in a timely manner, to place the child in accordance with the permanency plan, and to
110 complete whatever steps are necessary to finalize the permanent placement of the child.

111 ~~(e)~~ (d) Any physical custody of the minor by the parent or a relative during the period
112 described in Subsection ~~(b)~~ (2)(c) does not interrupt the running of the period.

113 ~~(d)~~ (e) (i) If reunification services have been ordered, a permanency hearing shall be
114 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period
115 for reunification services. The permanency hearing shall be held no later than 12 months after the
116 original removal of the child.

117 (ii) If reunification services have not been ordered, a permanency hearing shall be
118 conducted within 30 days, in accordance with Section 78-3a-312.

119 ~~(e)~~ (f) With regard to a child who is two years of age or younger at the time the court
120 orders reunification services, the court shall order the discontinuance of those services after six

121 months if the parent or parents have not made substantial efforts to comply with the treatment plan.
122 The burden is upon the parents, and the division if it supports continued reunification services, to
123 show that the parents have made substantial efforts to comply with the plan during the first six
124 months of reunification services.

125 ~~(f)~~ (g) With regard to a child in the custody of the division whose parent or parents have
126 been ordered to receive reunification services but who have abandoned that child for a period of
127 six months since the date that reunification services were ordered, the court shall terminate
128 reunification services, and the division shall petition the court for termination of parental rights.

129 (3) (a) Because of the state's interest in and responsibility to protect and provide
130 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
131 parent's interest in receiving reunification services is limited. The court may, under any
132 circumstances, determine that efforts to reunify a child with his family are not reasonable or
133 appropriate, based on the individual circumstances, and that reunification services should not be
134 provided. In determining "reasonable efforts" to be made with respect to a child, and in making
135 "reasonable efforts," the child's health, safety, and welfare shall be the paramount concern.

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

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

140 (ii) the parent is suffering from a mental illness of such magnitude that it renders him
141 incapable of utilizing reunification services; that finding shall be based on competent evidence
142 from mental health professionals establishing that, even with the provision of services, the parent
143 is unlikely to be capable of adequately caring for the child within 12 months;

144 (iii) the minor has been previously adjudicated as an abused child due to physical or sexual
145 abuse, that following the adjudication the child was removed from the custody of his parent, was
146 subsequently returned to the custody of that parent, and the minor is being removed due to
147 additional physical or sexual abuse;

148 (iv) the parent has caused the death of another child through abuse or neglect or has
149 committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter
150 of a child or child abuse homicide;

151 (v) the minor has suffered severe abuse by the parent or by any person known by the

152 parent, if the parent knew or reasonably should have known that the person was abusing the minor;

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

156 (vii) the parent's rights have been terminated with regard to any other child;

157 (viii) the child has been removed from his home on at least two previous occasions and
158 reunification services were offered or provided to the family at those times; or

159 (ix) the parent has abandoned the child for a period of six months or longer; or

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

162 (4) (a) Failure of the parent to respond to previous services or comply with any previous
163 treatment plan, the fact that the child was abused while the parent was under the influence of drugs
164 or alcohol, a past history of violent behavior, whether a parent continues to live with an individual
165 who abused the child, any patterns of the parent's behavior that have exposed the child to repeated
166 abuse, or testimony by a competent professional that the parent's behavior is unlikely to be
167 successful, shall be considered in determining whether reunification services are appropriate.

168 (b) The court shall also consider whether the parent has expressed an interest in
169 reunification with the child, in determining whether reunification services are appropriate.

170 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
171 whereabouts of a parent become known within six months of the out-of-home placement of the
172 minor, the court may order the division to provide reunification services. The time limits
173 described in Subsection (2), however, are not tolled by the parent's absence.

174 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable services
175 unless it determines that those services would be detrimental to the minor. In determining
176 detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
177 length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of
178 detriment to the child if services are not offered and, for minors ten years of age or older, the
179 minor's attitude toward the implementation of family reunification services, and any other
180 appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month
181 limitation imposed in Subsection (2). Reunification services for an institutionalized parent are
182 subject to the 12-month limitation imposed in Subsection (2), unless the court determines that

183 continued reunification services would be in the child's best interest.

184 (7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv),(v), (vi), (vii), (viii), (ix), or (x), the court
185 does not order reunification services, a permanency hearing shall be conducted within [90] 30
186 days, in accordance with Section 78-3a-312.

187 Section 3. Section **78-3a-312** is amended to read:

188 **78-3a-312. Permanency hearing -- Final plan -- Petition for termination of parental**
189 **rights filed -- Hearing on termination of parental rights.**

190 (1) (a) When reunification services have been ordered in accordance with Section
191 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family
192 Services, a permanency hearing shall be held by the court no later than 12 months after the original
193 removal of the child.

194 (b) When no reunification services were ordered at the dispositional hearing, a permanency
195 hearing shall be held within 30 days from the date of the dispositional hearing.

196 (2) (a) If reunification services were ordered by the court in accordance with Section
197 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be
198 returned to the custody of his parent. If the court finds, by a preponderance of the evidence, that
199 return of the child would create a substantial risk of detriment to the child's physical or emotional
200 well-being, the child may not be returned to the custody of his parent. The failure of a parent or
201 guardian to participate in, comply with, in whole or in part, or to meet the goals of a court
202 approved treatment plan constitutes prima facie evidence that return of the child to that parent
203 would create a substantial risk of detriment.

204 (b) In making a determination under this Subsection (2), the court shall review the report
205 prepared by the Division of Child and Family Services, a report prepared by the child's guardian
206 ad litem, any report prepared by a foster care citizen review board pursuant to Section 78-3g-103,
207 any evidence regarding the efforts or progress demonstrated by the parent, and the extent to which
208 the parent cooperated and availed himself of services provided.

209 (3) (a) With regard to a case where reunification services were ordered by the court, if a
210 child is not returned to his parent or guardian at the permanency hearing, the court shall order
211 termination of reunification services to the parent, and make a final determination regarding
212 whether termination of parental rights, adoption, guardianship, or long-term foster care is the most
213 appropriate final plan for the child, taking into account the child's primary permanency goal

214 established by the court pursuant to Section 78-3a-311. If the child clearly desires contact with the
215 parent, the court shall take the child's desire into consideration in determining the final plan. In
216 addition, the court shall establish a concurrent plan that identifies the second most appropriate final
217 plan for the child. The court may not extend reunification services beyond 12 months from the
218 date the child was initially removed from his home, in accordance with the provisions of Section
219 78-3a-311, except that the court may extend reunification services for no more than 90 days if it
220 finds that there has been substantial compliance with the treatment plan, that reunification is
221 probable within that 90 day period, and that the extension is in the best interest of the child. In no
222 event may any reunification services extend beyond 15 months from the date the child was initially
223 removed from his home. Delay or failure of a parent to establish paternity or seek custody does
224 not provide a basis for the court to extend services for that parent beyond that 12 month period.

225 (b) The court may, in its discretion, enter any additional order that it determines to be in
226 the best interest of the child, so long as that order does not conflict with the requirements and
227 provisions of Subsection (3)(a). The court may order the division to provide protective supervision
228 or other services to a child and the child's family after the division's custody of a child has been
229 terminated.

230 (4) If the final plan for the child is to proceed toward termination of parental rights, the
231 petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days
232 after the permanency hearing.

233 (5) Any party to an action may, at any time, petition the court for an expedited permanency
234 hearing on the basis that continuation of reunification efforts are inconsistent with the permanency
235 needs of the child. If the court so determines, it shall order, in accordance with federal law, that
236 the child be placed in accordance with the permanency plan, and that whatever steps are necessary
237 to finalize the permanent placement of the child be completed as quickly as possible.

238 (6) Nothing in this section may be construed to:

239 (a) entitle any parent to reunification services for any specified period of time;

240 (b) limit a court's ability to terminate reunification services at any time prior to a
241 permanency hearing; or

242 (c) limit or prohibit the filing of a petition for termination of parental rights by any party,
243 or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a
244 petition for termination of parental rights is filed prior to the date scheduled for a permanency

245 hearing, the court may schedule the hearing on termination of parental rights in lieu of the
246 permanency hearing; combine the permanency hearing and the hearing on termination of parental
247 rights; or schedule the hearings separately. If the court schedules the hearing on termination of
248 parental rights in lieu of the permanency hearing, any reunification services shall be terminated in
249 accordance with the time lines described in Section 78-3a-311 and a decision on the petition for
250 termination of parental rights shall be made within 18 months from the date of the child's removal.

251 Section 4. Section **78-3g-103** is amended to read:

252 **78-3g-103. Foster care citizen review boards -- Membership -- Responsibilities --**
253 **Periodic reviews.**

254 (1) Within appropriations from the Legislature, foster care citizen review boards shall be
255 established in each Juvenile Court district in the state, to act as the panels described in 42 U.S.C.
256 Sections 675(5) and (6), which are required to conduct periodic reviews unless court reviews are
257 conducted.

258 (2) (a) The committee shall appoint seven members to each board. Five of those members
259 shall be parents.

260 (b) Five members of a board constitute a quorum, and an action of a majority of the
261 quorum constitutes the action of the board.

262 (c) A board member may not be an employee of the division or the juvenile court.

263 (d) Board members shall be representative of the ethnic, cultural, religious,
264 socio-economic, and professional diversity found in the community.

265 (e) A board may elect its own chair, vice chair, and other officers as it considers
266 appropriate.

267 (f) The division may designate a representative to provide technical advice to the board
268 regarding division policy and procedure.

269 (3) With regard to each child in its custody, the division shall provide the appropriate
270 boards with access to all records maintained by the division.

271 (4) (a) In districts or areas where foster care citizen review boards have been established,
272 periodic reviews either by the court or by a foster care citizen review board, shall be conducted
273 with regard to each child in the division's custody no less frequently than once every six months,
274 in accordance with Section 78-3a-313 and 42 U.S.C. Sections 675(5) and (6). In cases where the
275 court has conducted a six month review hearing, a foster care citizen review board shall also

276 conduct a review within 12 months from the date of the child's removal from his home.

277 (b) In accordance with federal law and with Subsection 78-3a-314(1), periodic reviews
278 conducted by foster care citizen review boards shall be open to the participation of the child's
279 natural parents, foster parents, preadoptive parents, and any relative providing care for the child.
280 Notice shall be provided to those persons pursuant to Subsection 78-3a-314(1).

281 (c) Boards may review additional abuse, neglect, or dependency cases or plans at the
282 request of the court.

283 (5) Each board shall prepare a dispositional report regarding the child's case and plan. The
284 periodic review and the dispositional report shall be consistent with the provisions of Title 62A,
285 Chapter 4a, Child and Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
286 Dependency Proceedings, and shall include at least the following considerations:

287 (a) the extent to which the plan's objectives have been implemented or accomplished by
288 the parent, the child, and the division;

289 (b) whether revisions to the plan are needed, and if so, how the plan should be revised;

290 (c) the extent to which the division has provided the services and interventions described
291 in the plan, and whether those services and interventions are assisting, or will assist, the parent and
292 child to achieve the plan's objectives within the statutory time limitations;

293 (d) the extent to which the parent and child have willingly and actively participated in the
294 interventions described in the plan;

295 (e) the continuing necessity for and appropriateness of the child's placement;

296 (f) the extent of progress that has been made toward alleviating or mitigating the causes
297 necessitating the child's removal or continued placement;

298 (g) ~~a recommended~~ the primary permanency [plan] goal and the concurrent permanency
299 goal for the child and, if ~~one~~ a final permanency plan has been established, an opinion regarding
300 the appropriateness of that permanency plan; and

301 (h) a determination regarding whether the statutory time limitations described in Title 78,
302 Chapter 3a, Part 3, have been met, specifically, whether the 12 month limitation on reunification
303 services required by Section 78-3a-311 has been complied with. The board shall also render an
304 opinion regarding when it estimates that the child will achieve permanency.

305 (6) (a) Each board shall submit its dispositional report to the court, the division, and to all
306 parties to an action within 30 days after a case is reviewed by the board.

307 (b) The board's dispositional report shall be filed with the court, and shall be made a part
 308 of the court's legal file. The dispositional report shall be received and reviewed by the court in the
 309 same manner as the court receives and reviews the reports described in Section 78-3a-505. The
 310 report by a board, if determined to be an ex parte communication with a judge, shall be considered
 311 a communication authorized by law. Foster care citizen review board dispositional reports may
 312 be received as evidence, and may be considered by the court along with other evidence. The court
 313 may require any person who participated in the dispositional report to appear as a witness if the
 314 person is reasonably available.

315 (7) Members of boards may not receive financial compensation or benefits for their
 316 services. Members may not receive per diem or expenses for their service, except that:

317 (a) members may be reimbursed for mileage on days that they are involved in training, at
 318 rates established by the Division of Finance; and

319 (b) members may be provided with a meal on days that they serve on a board.

320 (8) Boards are authorized to receive funds from public and private grants and donations
 321 in accordance with the requirements described in Subsection 78-3g-102(8).

322 (9) In districts or areas where foster care citizen review boards have not been established,
 323 either the court or the Division of Child and Family Services shall conduct the reviews in
 324 accordance with the provisions of Subsections (4)(a) and (b), and Section 78-3a-313.

325 Section 5. **Effective date.**

326 This act takes effect on July 1, ~~1999~~ 2000.

Legislative Review Note

as of 1-28-99 1:33 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel