

Senator David H. Steele proposes to substitute the following bill:

CHILD PROTECTION AND FOSTER CARE

AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: David H. Steele

AN ACT RELATING TO CHILD ABUSE AND NEGLECT AND THE DIVISION OF CHILD AND FAMILY SERVICES; REQUIRING THAT DIVISION POLICY AND TRAINING REGARDING CHILD PROTECTION AND RELATIVE PREFERENCE REFLECT CURRENT AND ESTABLISHED STATE AND FEDERAL LAW; PROVIDING FOR STREAMLINING, FACILITATION, AND EXPEDITION OF FOSTER AND ADOPTIVE PARENT APPLICATION AND TRAINING; AMENDING MANDATORY PETITION FOR TERMINATION PROVISIONS BASED ON NEW FEDERAL REQUIREMENTS; REQUIRING THE OFFICE OF CHILD PROTECTION OMBUDSMAN TO REPORT TO ADDITIONAL AUTHORITIES; PROVIDING THAT CONVICTION OF SPECIFIED DRUG OFFENSES IS GROUNDS FOR REMOVAL AND CONTINUED REMOVAL OF CHILDREN; AND CLARIFYING THE RESPONSIBILITY OF THE DIVISION AND THE ATTORNEY GENERAL'S OFFICE TO FILE PETITIONS IN A TIMELY MANNER SO THAT HEARINGS WILL BE HELD WITHIN STATUTORILY PRESCRIBED TIMELINES.

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

AMENDS:

62A-4a-103, as last amended by Chapter 318, Laws of Utah 1996

62A-4a-104, as renumbered and amended by Chapter 260, Laws of Utah 1994

62A-4a-105.5, as enacted by Chapter 260, Laws of Utah 1994

62A-4a-107, as enacted by Chapter 260, Laws of Utah 1994

62A-4a-113, as last amended by Chapter 274, Laws of Utah 1998

- 26 **62A-4a-203.5**, as enacted by Chapter 274, Laws of Utah 1998
- 27 **62A-4a-208**, as enacted by Chapter 274, Laws of Utah 1998
- 28 **78-3a-301**, as last amended by Chapter 274, Laws of Utah 1998
- 29 **78-3a-306**, as last amended by Chapters 13 and 274, Laws of Utah 1998
- 30 **78-3a-307**, as last amended by Chapter 274, Laws of Utah 1998
- 31 **78-3a-311**, as last amended by Chapter 274, Laws of Utah 1998
- 32 **78-3a-312**, as last amended by Chapter 274, Laws of Utah 1998
- 33 **78-3a-313.5**, as enacted by Chapter 274, Laws of Utah 1998

34 ENACTS:

- 35 **62A-2-109.1**, Utah Code Annotated 1953
- 36 **62A-4a-107.1**, Utah Code Annotated 1953

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

38 Section 1. Section **62A-2-109.1** is enacted to read:

39 **62A-2-109.1. Cooperation with the Division of Child and Family Services -- Foster**
40 **and adoptive parent application and licensing.**

41 (1) In keeping with the goals and purposes of the Division of Child and Family Services
42 § [to protect children, provide safe and stable care for abused and neglected children, and to provide
43 real and effective permanency for children who the court determines may not quickly return to the]
44 [parents from whom they were removed] AS DESCRIBED IN CHAPTER 4a, CHILD AND FAMILY
44a SERVICES § , the office shall cooperate with that division, and shall
45 streamline and facilitate the office's application process for potential foster and adoptive parents.

46 (2) The office, in cooperation with the Division of Child and Family Services, shall
47 comply with the provisions of Section 62A-4a-107.1.

48 Section 2. Section **62A-4a-103** is amended to read:

49 **62A-4a-103. Division -- Creation -- Purpose.**

50 (1) There is created the Division of Child and Family Services within the department,
51 under the administration and general supervision of the executive director, and under the policy
52 direction of the board. The division is the child, youth, and family services authority of the state
53 and has all functions, powers, duties, rights, and responsibilities created in accordance with this
54 chapter, except those assumed by the board and the department.

55 (2) (a) The primary purpose of the division is to ^h ~~h~~ **[provide child welfare services [h]**
55a **[protect] , FAMILY SERVICES, AND THE PROTECTION OF h**
56 children from abuse and neglect.

57 (b) [~~The division shall, when~~] When possible and appropriate, the division shall provide
 58 initial preventive [~~services~~] and family preservation services in an effort to protect the child from
 59 the trauma of separation from his ~~h~~ [f] family [f] ~~h~~ [parents] ~~h~~ , protect the integrity of [~~the~~] that
 59a specific family
 60 unit, and the constitutional rights of parents. In keeping with its ultimate goal and purpose of
 61 protecting children, however, when a child's welfare is endangered or reasonable efforts to
 62 maintain or reunify a child with his [~~family~~] parents, from whom he has been removed, have failed,
 63 the division shall act in a timely fashion to provide protection, permanency, and stability, in
 64 accordance with the requirements of this chapter and Title 78, Chapter 3a, Part 3[~~, to provide the~~
 65 ~~child with a stable, permanent environment~~], Abuse, Neglect, and Dependency Proceedings.

66 (3) Further purposes of the division are:

67 (a) to provide additional child welfare services;

68 [~~(a)~~] (b) to provide domestic violence services in accordance with federal law; and

69 [~~(b)~~] (c) to provide youth services for minors who are dependent, ungovernable, or
 70 runaway, in accordance with Sections 62A-4a-105 and 62A-4a-106.

71 (4) The board and the division shall establish and enforce policies that are consistent with:

72 (a) the primary purpose of h [~~protecting children from abuse and neglect~~] THE DIVISION ~~h~~ ;

72a and

73 (b) the requirements of providing permanency and stability for children, pursuant to the
 74 provisions of this title, Title 78, Chapter 3a, and federal law.

75 Section 3. Section **62A-4a-104** is amended to read:

76 **62A-4a-104. Director of division -- Qualifications.**

77 (1) The director of the division shall be appointed by the executive director with the
 78 concurrence of the board.

79 (2) The director shall have a bachelor's degree from an accredited university or college,
 80 be experienced in administration, and be knowledgeable in the areas of child and family services,
 81 including child protective services, family preservation, and foster care.

82 (3) The director is the administrative head of the division, and shall ensure that division
 83 policy § , ADMINISTRATIVE RULES. § and practice models are consistent with:

84 (a) the primary purpose of h [~~protecting children from abuse and neglect~~] THE DIVISION ~~h~~ ;

84a and

85 (b) legislative policy and the requirements of providing permanency and stability for
 86 children, pursuant to the provisions of this title, Title 78, Chapter 3a, and federal law.

87 Section 4. Section **62A-4a-105.5** is amended to read:

88 **62A-4a-105.5. Employees -- Failure to comply with policy -- Termination.**

89 (1) (a) The director shall ensure that all employees are fully trained to comply with state
90 and federal law, administrative rules, and division policy in order to effectively carry out their
91 assigned duties and functions.

92 (b) The director shall specifically ensure that all employees are trained ~~h [that their~~
92a **primary] IN THE h**
93 purpose h [is the protection of children from abuse and neglect] h , and that the goal of the division
93a is
94 to provide permanency and stability for children who have been abused or neglected.

95 (2) If, after training and supervision, the employee consistently fails to comply with those
96 laws, rules, and policies, his employment with the division shall be terminated.

97 Section 5. Section **62A-4a-107** is amended to read:

98 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
99 **curriculum.**

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

104 (a) develop child welfare curriculum that is current and effective, consistent with the
105 division's mission and purpose for child welfare, specifically h [and primarily] h the protection of
106 children from abuse and neglect, and the provision of permanency and stability for children who
107 have been abused or neglected;

108 (b) recruit, select, and supervise child welfare trainers in accordance with the purpose
109 described in Subsection (1)(a);

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

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

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

115 (f) monitor staff compliance with:

116 (i) division training requirements, specifically focusing on the h [primary] h requirement of
117 providing protection and permanency for children who are abused or neglected; and

118 (ii) individual training plans;

119 (g) expand the collaboration between the division and schools of social work within
120 institutions of higher education in developing child welfare services curriculum, and in providing
121 and evaluating training; and

122 (h) report annually to the board and the Legislature on training activities, compliance with
123 the requirements of this section, the training plan, and achievement of individual training goals.

124 (2) (a) The director shall, with the assistance of the child welfare training coordinator,
125 establish a core curriculum for child welfare services that is [~~substantially equivalent to the Child~~
126 ~~Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum]~~
127 consistent with the provisions of this title, Title 78, Chapter 3a, legislative and division policy, and
128 federal law.

129 (b) Any child welfare worker who is employed by the division for the first time after April
130 1, 1995, shall, before assuming significant independent casework responsibilities, and in no case
131 later than six months after initial employment, successfully complete the core curriculum.

132 Section 6. Section **62A-4a-107.1** is enacted to read:

133 **62A-4a-107.1. Foster and adoptive parent application and training process -- Division**
134 **responsibilities.**

135 (1) Based on the division's goal of protecting children, providing safe and stable care for
136 abused and neglected children, and providing real and effective permanency for children who the
137 court determines may not quickly return to the parents from whom they were removed, the division
138 shall streamline and facilitate the application and training process of potential foster and adoptive
139 parents, in cooperation with the Office of Licensing.

140 (2) Each region of the division shall establish a process whereby any potential foster or
141 adoptive parent who resides within that region may obtain all necessary forms, information
142 regarding required training, and training schedules, both electronically, and in person at one
143 geographical location. Each regional office shall ensure that an applicant may comply with all
144 requirements either electronically or at the same physical location. The regional offices of the
145 division shall cooperate with local law enforcement to facilitate any fingerprinting requirements,
146 in order to comply with the provisions of this section.

147 (3) The division and its employees shall expedite and facilitate the processes for
148 application and training of potential foster and adoptive parents. As of May 3, 1999, the effective
149 date of this act, the division is charged with modifying and streamlining existing duplicative and

150 overly burdensome procedures for application, training, and qualification of foster and adoptive
151 parents. On or before December 1, 1999, the division shall provide written evidence of changes
152 consistent with the requirements of this section to the Child Welfare Legislative Oversight Panel
153 and to the Office of Legislative Research and General Counsel.

154 (4) The division may not discriminate against a potential or actual foster or adoptive parent
155 because that parent expresses an interest in a particular child who is in the custody of the division.
156 The division shall facilitate the placement of children who are freed for adoption, or who have a
157 permanency goal of adoption, with qualified adoptive parents who express an interest in that
158 particular child.

159 Section 7. Section **62A-4a-113** is amended to read:

160 **62A-4a-113. Division's enforcement authority -- Responsibility of attorney general**
161 **to represent division.**

162 (1) The division shall take timely legal action that is necessary to enforce the provisions
163 of this chapter.

164 (2) (a) The attorney general shall enforce all provisions of this chapter, in addition to the
165 requirements of Title 78, Chapter 3a, relating to protection and custody of abused, neglected, or
166 dependent children. The attorney general may contract with the local county attorney to enforce
167 the provisions of this chapter and Title 78, Chapter 3a.

168 (b) It is the responsibility of the attorney general's office to:

169 (i) advise the division regarding decisions to remove a child from his home;

170 (ii) represent the division and enforce the provisions of this chapter and of Title 78,
171 Chapter 3a, Parts 3 and 4, in all court and administrative proceedings related to child abuse,
172 neglect, and dependency including, but not limited to, shelter hearings, dispositional hearings,
173 dispositional review hearings, periodic review hearings, and petitions for termination of parental
174 rights; [and]

175 (iii) timely file all necessary motions and petitions in all court hearings described in
176 Subsection (2)(b)(ii), in order to ensure that matters are available to come before the court and to
177 allow statutorily required hearings to be held within statutorily prescribed time frames; and

178 [(iii)] (iv) be available to and advise caseworkers on an ongoing basis.

179 (c) The attorney general shall designate no less than 16 full-time attorneys to advise and
180 represent the division in abuse, neglect, and dependency proceedings, including petitions for

181 termination of parental rights. Those attorneys shall devote their full time and attention to that
 182 representation and, insofar as it is practicable, shall be housed in or near various offices of the
 183 division statewide.

184 (3) As of July 1, 1998, the attorney general's office shall represent the division with regard
 185 to actions involving minors who have not been adjudicated as abused or neglected, but who are
 186 otherwise committed to the custody of the division by the juvenile court, and who are classified
 187 in the division's management information system as having been placed in custody primarily on
 188 the basis of delinquent behavior or a status offense. Nothing in this section may be construed to
 189 affect the responsibility of the county attorney or district attorney to represent the state in those
 190 matters, in accordance with Section 78-3a-116.

191 Section 8. Section **62A-4a-203.5** is amended to read:

192 **62A-4a-203.5. Mandatory petition for termination of parental rights.**

193 (1) For purposes of this section, "abandoned infant" means a child who is 12 months of
 194 age or younger whose parent or parents:

195 (a) although having legal custody of the child, fail to maintain physical custody of the child
 196 without making arrangements for the care of the child;

197 (b) have failed to maintain physical custody, and have failed to exhibit the normal interest
 198 of a natural parent without just cause; or

199 (c) are unwilling to have physical custody of the child.

200 (2) Except as provided in Subsection (3), notwithstanding any other provision of this
 201 chapter or of Title 78, Chapter 3a, the division shall file a petition for termination of parental rights
 202 with regard to:

203 (a) an abandoned infant; ~~[or]~~

204 (b) a child who has been in the custody of the division for 15 of the most recent 22 months;

205 or

206 ~~[(b)]~~ (c) a parent, whenever a court has determined that the parent has:

207 (i) committed murder or child abuse homicide of another child of that parent;

208 (ii) committed manslaughter of another child of that parent;

209 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
 210 homicide, or manslaughter against another child of that parent; or

211 (iv) committed a felony assault or abuse that has resulted in serious physical injury to

212 another child of that parent, or to the other parent of that child.

213 (3) If any party other than the division files a petition for termination of parental rights
214 based on any of the grounds described in Subsection (2), the division shall seek to be joined as a
215 party to that petition.

216 ~~[(3)]~~ (4) The division is not required to file a petition for termination of parental rights
217 under Subsection (2), or seek to be joined in a petition filed by another party pursuant to
218 Subsection (3), if:

219 (a) the child is being cared for by a relative;

220 (b) the division has:

221 (i) documented in the child's treatment plan a compelling reason for determining that filing
222 a petition for termination of parental rights is not in the child's best interest; and

223 (ii) made that treatment plan available to the court for its review; or

224 (c) (i) the court has previously determined, in accordance with the provisions and
225 limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable efforts
226 to reunify the child with his parent or parents were required; and

227 (ii) the division has not provided, within the time period specified in the treatment plan,
228 services that had been determined to be necessary for the safe return of the child.

229 Section 9. Section **62A-4a-208** is amended to read:

230 **62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**

231 (1) As used in this section:

232 (a) "Complainant" means a person who initiates a complaint with the ombudsman.

233 (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this
234 section.

235 (2) (a) There is created within the department the position of child protection ombudsman.

236 The ombudsman shall be appointed by \hat{h} ~~[-and serve at the pleasure of]~~ \hat{h} the executive director.

237 (b) The ombudsman shall be:

238 (i) an individual of recognized executive and administrative capacity;

239 (ii) selected solely with regard to qualifications and fitness to discharge the duties of
240 ombudsman; and

241 (iii) have experience in child welfare, and in state laws and policies governing abused,
242 neglected, and dependent children.

- 243 (c) The ombudsman shall devote full time to the duties of office.
- 244 (3) (a) Except as provided in Subsection (b), the ombudsman shall, upon receipt of a
245 complaint from any person, investigate whether an act or omission of the division with respect to
246 a particular child:
- 247 (i) is contrary to statute, rule, or policy;
 - 248 (ii) places a child's health or safety at risk;
 - 249 (iii) is made without an adequate statement of reason; or
 - 250 (iv) is based on irrelevant, immaterial, or erroneous grounds.
- 251 (b) The ombudsman may decline to investigate any complaint. If the ombudsman declines
252 to investigate a complaint or continue an investigation, the ombudsman shall notify the
253 complainant and the division of the decision and of the reasons for that decision.
- 254 (c) The ombudsman may conduct an investigation on his own initiative.
- 255 (4) The ombudsman shall:
- 256 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make
257 rules that govern the following:
 - 258 (i) receiving and processing complaints;
 - 259 (ii) notifying complainants and the division regarding a decision to investigate or to
260 decline to investigate a complaint;
 - 261 (iii) prioritizing workload;
 - 262 (iv) maximum time within which investigations shall be completed;
 - 263 (v) conducting investigations;
 - 264 (vi) notifying complainants [~~and~~], the division, and other appropriate persons or entities
265 regarding the results of investigations and any recommendations, in accordance with the provisions
266 of this section; and
 - 267 (vii) making recommendations based on the findings and results of investigations and
268 recommendations;
 - 269 (b) report findings and recommendations in writing to the complainant [~~and~~], the division,
270 and other appropriate persons or entities, in accordance with the provisions of this section;
 - 271 (c) within appropriations from the Legislature, employ staff as may be necessary to carry
272 out the ombudsman's duties under this part;
 - 273 (d) provide information regarding the role, duties, and functions of the ombudsman to

274 public agencies, private entities, and individuals;

275 (e) annually report to the:

276 (i) Child Welfare Legislative Oversight Panel;

277 (ii) governor;

278 (iii) Board of Child and Family Services;

279 (iv) executive director of the department; and

280 (v) director of the division; and

281 (f) as appropriate, make recommendations to the division, the executive director, the office
 282 of the guardian ad litem, and the office of the attorney general regarding individual cases, and the
 283 rules, policies, and operations of the division.

284 (5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify
 285 the complainant and the division of that decision. As it determines to be appropriate, the
 286 ombudsman may also notify the office of the guardian ad litem and the office of the attorney
 287 general.

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

294 (c) If the ombudsman finds that an individual's act or omission violates state or federal
 295 criminal law, the ombudsman shall immediately report that finding to the appropriate county or
 296 district attorney ~~h [or]~~ **AND** ~~h [to]~~ the attorney general, the division, the executive director,
 296a ~~h [and]~~ ~~h the~~
 296a office of
 297 the guardian ad litem h , AND AN APPROPRIATE HEALTH AND HUMAN SERVICES COMMITTEE OF
 297a THE UTAH LEGISLATURE h .

298 (d) The ombudsman shall immediately notify the division, the executive director, and the
 299 office of the guardian ad litem if the ombudsman finds that:

300 (i) a child needs protective custody, as that term is defined in Section 78-3a-103[-];

301 (ii) a child is otherwise subject to or at risk of abuse or neglect;

302 (iii) division policy or rule, or state or federal law is not being followed with regard to any
 303 particular child.

304 (e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect

305 Reporting Requirements.

306 (6) (a) All records of the ombudsman regarding individual cases shall be classified in
307 accordance with federal law and the provisions of Title 63, Chapter 2, Government Records
308 Access and Management Act. The ombudsman may make public a report prepared pursuant to this
309 section in accordance with the provisions of Title 63, Chapter 2, Government Records Access and
310 Management Act.

311 (b) The ombudsman shall have access to all of the department's written and electronic
312 records and databases, including those regarding individual cases. In accordance with Title 63,
313 Chapter 2, Government Records Access and Management Act, all documents and information
314 received by the ombudsman shall maintain the same classification that was designated by the
315 department.

316 (7) (a) The ombudsman shall prepare a written report of the findings and
317 recommendations, if any, of each investigation.

318 (b) The ombudsman shall make recommendations to the division, the executive director,
319 the office of the guardian ad litem, and, when it determines it to be appropriate, the office of the
320 governor, and the office of the attorney general if the ombudsman finds that:

321 (i) a matter should be further considered by the division or the office of the guardian ad
322 litem;

323 (ii) an administrative act, rule, policy, or practice should be addressed, modified, or
324 canceled;

325 (iii) action should be taken by the division with regard to one of its employees; or

326 (iv) any other action should be taken by the division, the department, or the office of the
327 guardian ad litem.

328 Section 10. Section **78-3a-301** is amended to read:

329 **78-3a-301. Removing a child from his home -- Grounds for removal.**

330 (1) The Division of Child and Family Services may not remove a child from the custody
331 of his natural parent unless there is substantial cause to believe that any one of the following exist:

332 (a) there is a substantial danger to the physical health or safety of the minor and the minor's
333 physical health or safety may not be protected without removing him from his parent's custody.

334 If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent
335 incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the

336 child cannot safely remain in the custody of his parent;

337 (b) the minor is suffering emotional damage, as may be indicated by, but not limited to,
338 extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,
339 and there are no reasonable means available by which the minor's emotional health may be
340 protected without removing the minor from the custody of his parent;

341 (c) the minor or another minor residing in the same household has been physically or
342 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
343 a parent, a member of the parent's household, or other person known to the parent. If a parent has
344 received actual notice that physical or sexual abuse by a person known to the parent has occurred,
345 and there is evidence that the parent has allowed the child to be in the physical presence of the
346 alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of
347 being physically or sexually abused;

348 (d) the parent is unwilling to have physical custody of the child;

349 (e) the minor has been left without any provision for his support;

350 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange for
351 safe and appropriate care for the minor;

352 (g) a relative or other adult custodian with whom the minor has been left by the parent is
353 unwilling or unable to provide care or support for the minor, the whereabouts of the parent are
354 unknown, and reasonable efforts to locate him have been unsuccessful;

355 (h) the minor is in immediate need of medical care;

356 (i) the physical environment or the fact that the child is left unattended poses a threat to
357 the child's health or safety;

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

359 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

360 (l) the parent, or an adult residing in the same household as the parent, has been charged
361 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
362 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the
363 property where the child resided; [or]

364 (m) the parent has been convicted § ,WITHIN THE PAST 12 MONTHS, § of violating
364a Subsection 58-37-8(1)(a)(ii) or (iii) § WITH RESPECT TO A SUBSTANCE CLASSIFIED IN
364b SCHEDULE I OR II OR A CONTROLLED SUBSTANCE ANALOG § ; or

365 [~~m~~] (n) the child's welfare is otherwise endangered, as documented by the caseworker.

366 (2) The Division of Child and Family Services may not remove a minor from the custody

367 of his natural parent solely on the basis of educational neglect.

368 (3) (a) A minor removed from the custody of his natural parent under this section may not
369 be placed or kept in a secure detention facility pending court proceedings unless the minor is
370 detainable based on guidelines promulgated by the Division of Youth Corrections.

371 (b) A minor removed from the custody of his natural parent but who does not require
372 physical restriction shall be given temporary care in a shelter facility.

373 Section 11. Section **78-3a-306** is amended to read:

374 **78-3a-306. Shelter hearing.**

375 (1) With regard to a child who has been removed by the Division of Child and Family
376 Services, or who is in the protective custody of the division, a shelter hearing shall be held within
377 72 hours after removal of the child from his home, excluding weekends and holidays.

378 (2) Upon removal of a child from his home and receipt of that child into protective
379 custody, the division shall issue a notice that contains all of the following:

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

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

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

383 (d) a concise statement regarding the allegations and code sections under which the
384 proceeding has been instituted;

385 (e) a statement that the parent or guardian to whom notice is given, and the minor, are
386 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
387 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
388 provided; and

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

393 (3) That notice shall be personally served as soon as possible, but at least 24 hours prior
394 to the time set for the shelter hearing, on:

395 (a) the appropriate guardian ad litem; and

396 (b) both parents and any guardian of the minor, unless they cannot be located.

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

- 398 (a) the child, unless it would be detrimental for the child;
- 399 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
400 response to the notice;
- 401 (c) counsel for the parents, if one has been requested;
- 402 (d) the child's guardian ad litem;
- 403 (e) the caseworker from the Division of Child and Family Services who has been assigned
404 to the case; and
- 405 (f) the attorney from the attorney general's office who is representing the division.
- 406 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent
407 or guardian, if present, and any other person having relevant knowledge, to provide relevant
408 testimony. The court may also provide an opportunity for the minor to testify.
- 409 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
410 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or
411 guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
412 evidence to only that which goes to the issues of removal and the child's need for continued
413 protection.
- 414 (6) If the child is in the protective custody of the division, the division shall report to the
415 court:
- 416 (a) the reasons why the minor was removed from the parent's or guardian's custody;
- 417 (b) any services provided to the child and his family in an effort to prevent removal;
- 418 (c) the need, if any, for continued shelter;
- 419 (d) the available services that could facilitate the return of the minor to the custody of his
420 parent or guardian; and
- 421 (e) whether the child has any relatives who may be able and willing to take temporary
422 custody.
- 423 (7) If necessary to protect the child, preserve the rights of a party, or for other good cause
424 shown, the court may grant no more than one time-limited continuance, not to exceed five judicial
425 days.
- 426 (8) The court shall order that the minor be released from the protective custody of the
427 division unless it finds, by a preponderance of the evidence, that any one of the following exist:
- 428 (a) there is a substantial danger to the physical health or safety of the minor and the minor's

429 physical health or safety may not be protected without removing him from his parent's custody.
 430 If a minor has previously been adjudicated as abused, neglected, or dependent and a subsequent
 431 incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the
 432 child cannot safely remain in the custody of his parent;

433 (b) the minor is suffering emotional damage, as may be indicated by, but is not limited to,
 434 extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,
 435 and there are no reasonable means available by which the minor's emotional health may be
 436 protected without removing the minor from the custody of his parent;

437 (c) the minor or another minor residing in the same household has been physically or
 438 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
 439 a parent, a member of the parent's household, or other person known to the parent. If a parent has
 440 received actual notice that physical or sexual abuse by a person known to the parent has occurred,
 441 and there is evidence that the parent has allowed the child to be in the physical presence of the
 442 alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of
 443 being physically or sexually abused;

444 (d) the parent is unwilling to have physical custody of the child;

445 (e) the minor has been left without any provision for his support;

446 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange for
 447 safe and appropriate care for the minor;

448 (g) a relative or other adult custodian with whom the minor has been left by the parent is
 449 unwilling or unable to provide care or support for the minor, the whereabouts of the parent are
 450 unknown, and reasonable efforts to locate him have been unsuccessful;

451 (h) the minor is in immediate need of medical care;

452 (i) the physical environment or the fact that the child is left unattended poses a threat to
 453 the child's health or safety;

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

455 (k) the parent, or an adult residing in the same household as the parent, has been charged
 456 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
 457 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the
 458 property where the child resided; [or]

459 (l) the parent has been convicted § WITHIN THE PAST 12 MONTHS § of violating
 459a Subsection 58-37-8(1)(a)(ii) or (iii) § WITH RESPECT TO A SUBSTANCE CLASSIFIED IN
 459b SCHEDULE I OR II OR A CONTROLLED SUBSTANCE ANALOG § ; or

460 ~~(f)~~ (m) the child's welfare is otherwise endangered.

461 (9) (a) The court shall also make a determination on the record as to whether reasonable
462 efforts were made to prevent or eliminate the need for removal of the minor from his home and
463 whether there are available services that would prevent the need for continued removal. If the
464 court finds that the minor can be safely returned to the custody of his parent or guardian through
465 the provision of those services, it shall place the minor with his parent or guardian and order that
466 those services be provided by the division.

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

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

472 (11) In cases where actual sexual abuse or abandonment, or serious physical abuse or
473 neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
474 or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide
475 reunification services, or attempt to rehabilitate the offending parent or parents.

476 (12) The court may not order continued removal of a minor solely on the basis of
477 educational neglect as described in Subsection 78-3a-103(1)(q)(ii).

478 (13) (a) Whenever a court orders continued removal of a minor under this section, it shall
479 state the facts on which that decision is based.

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

482 (14) If the court finds that continued removal and temporary custody is necessary for the
483 protection of a child because harm may result to the child if he were returned home, it shall order
484 continued removal regardless of any error in the initial removal of the child, or the failure of a
485 party to comply with notice provisions, or any other procedural requirement of this chapter or Title
486 62A, Chapter 4a, Child and Family Services.

487 Section 12. Section **78-3a-307** is amended to read:

488 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
489 **DCFS custody.**

490 (1) (a) At the shelter hearing, when the court orders that a child be removed from the

491 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
492 first determine whether there is another natural parent as defined in Subsection (b), with whom the
493 child was not residing at the time the events or conditions that brought him within the court's
494 jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody,
495 the court shall place the minor with that parent unless it finds that the placement would be unsafe
496 or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the
497 provisions of Subsection (8)(b).

498 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
499 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological
500 father who was married to the child's biological mother at the time the child was conceived or
501 born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of
502 the child or voluntary surrender of the child by the custodial parent. This definition applies
503 regardless of whether the child has been or will be placed with adoptive parents or whether
504 adoption has been or will be considered as a long term goal for the child.

505 (c) (i) The court shall make a specific finding regarding the fitness of that parent to assume
506 custody, and the safety and appropriateness of the placement.

507 (ii) The court shall, at a minimum, order the division to visit the parent's home, perform
508 criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and check the
509 division's management information system for any previous reports of abuse or neglect received
510 by the division regarding the parent at issue.

511 (iii) The court may order the Division of Child and Family Services to conduct any further
512 investigation regarding the safety and appropriateness of the placement.

513 (iv) The division shall report its findings in writing to the court.

514 (v) The court may place the child in the temporary custody of the division, pending its
515 determination regarding that placement.

516 (2) If the court orders placement with a parent under Subsection (1), the child and the
517 parent are under the continuing jurisdiction of the court. The court may order that the parent
518 assume custody subject to the supervision of the court, and order that services be provided to the
519 parent from whose custody the child was removed, the parent who has assumed custody, or both.
520 The court may also provide for reasonable visitation with the parent from whose custody the child
521 was removed, if that is in the best interest of the child. The court's order shall be periodically

522 reviewed to determine whether:

523 (a) placement with the parent continues to be in the child's best interest;

524 (b) the child should be returned to the original custodial parent;

525 (c) the child should be placed with a relative, pursuant to Subsection (5); or

526 (d) the child should be placed in the custody of the division.

527 (3) The time limitations described in Section 78-3a-311 with regard to reunification
528 efforts, apply to children placed with a previously noncustodial parent in accordance with
529 Subsection (1).

530 (4) Legal custody of the child is not affected by an order entered under Subsection (1) or
531 (2). In order to affect a previous court order regarding legal custody, the party must petition that
532 court for modification of the order.

533 (5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his
534 parent and is not placed in the custody of his other parent, the court shall, at that time, determine
535 whether there is a relative who is able and willing to care for the child. The court may order the
536 Division of Child and Family Services to conduct a reasonable search to determine whether there
537 are relatives of the child who are willing and appropriate, in accordance with the requirements of
538 this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The
539 child may be placed in the temporary custody of the division pending that determination. This
540 section may not be construed as a guarantee that an identified relative will receive custody of the
541 child. However, preferential consideration may be given to a relative's request for placement of
542 the child, if it is in the best interest of the child, and the provisions of this section are satisfied.

543 (b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make
544 a specific finding regarding the fitness of that relative to assume custody, and the safety and
545 appropriateness of placement with that relative. In order to be considered a "willing relative"
546 under this section, the relative shall be willing to cooperate if the child's permanency goal is
547 reunification with his parent or parents, and be willing to adopt or take permanent custody of the
548 child if that is determined to be in the best interest of the child.

549 (ii) The court shall, at a minimum, order the division to conduct criminal background
550 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the
551 division's management information system for any previous reports of abuse or neglect regarding
552 the relative at issue, report its findings in writing to the court, and provide sufficient information

553 so that the court may determine whether:

554 (A) the relative has any history of abusive or neglectful behavior toward other children that
555 may indicate or present a danger to this child;

556 (B) the child is comfortable with the relative;

557 (C) the relative recognizes the parent's history of abuse and is determined to protect the
558 child;

559 (D) the relative is strong enough to resist inappropriate requests by the parent for access
560 to the child, in accordance with court orders;

561 (E) the relative is committed to caring for the child as long as necessary; and

562 (F) the relative can provide a secure and stable environment for the child.

563 (iii) The court may order the Division of Child and Family Services to conduct any further
564 investigation regarding the safety and appropriateness of the placement.

565 (c) The court may place the child in the temporary custody of the division, pending the
566 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that
567 placement. The court shall ultimately base its determination regarding placement [~~with a relative~~]
568 on the best interest of the child.

569 (d) For purposes of this section, "relative" means an adult who is a grandparent, great
570 grandparent, aunt, great aunt, uncle, great uncle, or sibling of the child.

570a **§ (e) THE DIVISION SHALL COMPLETE AND FILE ITS INVESTIGATION REGARDING**
570b **RELATIVE PLACEMENT AS SOON AS POSSIBLE, IN AN EFFORT TO FACILITATE PLACEMENT OF**
570c **THE CHILD WITH A RELATIVE. §**

571 (6) (a) When the court vests physical custody of a child with a relative pursuant to
572 Subsection (5), it shall order that the relative assume custody subject to the continuing supervision
573 of the court, and shall order that any necessary services be provided to the minor and the relative.
574 That child is not within the temporary custody or custody of the Division of Child and Family
575 Services. The child and any relative with whom the child is placed are under the continuing
576 jurisdiction of the court. The court may enter any order that it considers necessary for the
577 protection and best interest of the child.

578 (b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed
579 by the court, no less often than every six months, to determine whether:

580 (A) placement with the relative continues to be in the child's best interest;

581 (B) the child should be returned home; or

582 (C) the child should be placed in the custody of the division.

583 (ii) No later than 12 months after placement with a relative the court shall schedule a

584 hearing for the purpose of entering a permanent order in accordance with the best interest of the
585 child.

586 (iii) The time limitations described in Section 78-3a-311, with regard to reunification
587 efforts, apply to children placed with a relative pursuant to Subsection (5).

588 (7) When the court orders that a child be removed from the custody of his parent and does
589 not vest custody in another parent or relative under this section, the court shall order that the child
590 be placed in the temporary custody of the Division of Child and Family Services, to proceed to
591 adjudication and disposition and to be provided with care and services in accordance with this
592 chapter and Title 62A, Chapter 4a, Child and Family Services.

593 (8) (a) (i) Any preferential consideration that a relative may be initially granted pursuant
594 to Subsection (5) expires ~~in [§ {##30##}] 180 [THE LATTER OF EITHER 90-§]~~ ~~h~~ days from the date of
594aa the shelter
594a hearing ~~h [§ OR 30 DAYS FROM THE DATE OF ADJUDICATION -§] h~~. After that time period has
595 expired, a relative who has not obtained custody or asserted an interest in a child, may not be
596 granted preferential consideration by the division or the court.

597 (ii) The division may not circumvent this required limitation on preferential consideration
598 for relatives by:

599 (A) asserting that a relative placement should be considered to be in the best interest of
600 the child based solely on a biological or marriage relationship to the child or the child's family; or

601 (B) granting special or unique consideration for the relative based solely on a relationship
602 to the child or the child's biological family by blood or marriage.

603 (b) When a period of 30 days from the date of the shelter hearing has expired, the
604 preferential consideration which may initially be granted to a natural parent in accordance with
605 Subsection (1), is limited. After that time the court shall base its custody decision on the best
606 interest of the child.

607 Section 13. Section **78-3a-311** is amended to read:

608 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

612 (2) (a) Whenever the court orders continued removal at the dispositional hearing, and that
613 the minor remain in the custody of the Division of Child and Family Services, it shall first
614 determine whether reunification services are appropriate for the child and the child's family,

615 pursuant to Subsection (3). In cases where obvious sexual abuse, abandonment, or serious physical
616 abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable
617 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to
618 rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare shall
619 be the court's paramount concern in determining whether reasonable efforts to reunify should be
620 made.

621 (b) If the court determines that reunification services are appropriate, it shall order that the
622 division make reasonable efforts to provide services to the minor and his parent for the purpose
623 of facilitating reunification of the family, for a specified period of time. In providing those
624 services, the child's health, safety, and welfare shall be the division's paramount concern, and the
625 court shall so order. The time period for reunification services may not exceed 12 months from
626 the date that the child was initially removed from his home. Nothing in this section may be
627 construed to entitle any parent to an entire 12 months of reunification services. If reunification
628 services have been ordered, the court may terminate those services at any time. If, at any time,
629 continuation of reasonable efforts to reunify a child is determined to be inconsistent with the
630 permanency plan for the child, then measures shall be taken, in a timely manner, to place the child
631 in accordance with the permanency plan, and to complete whatever steps are necessary to finalize
632 the permanent placement of the child.

633 (c) Any physical custody of the minor by the parent or a relative during the period
634 described in Subsection (b) does not interrupt the running of the period.

635 (d) (i) If reunification services have been ordered, the attorney general's office, on behalf
636 of the division, shall timely file a § [petition] MOTION § and a permanency hearing shall be
636a conducted by the
637 court in accordance with Section 78-3a-312 at the expiration of the time period for reunification
638 services. The permanency hearing shall be held no later than 12 months after the original removal
639 of the child.

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

642 (e) With regard to a child who is two years of age or younger at the time the court orders
643 reunification services, the court shall order the discontinuance of those services after six months
644 if the parent or parents have not made substantial efforts to comply with the treatment plan. The
645 burden is upon the parents, and the division if it supports continued reunification services, to show

646 that the parents have made substantial efforts to comply with the plan during the first six months
647 of reunification services.

648 (f) With regard to a child in the custody of the division whose parent or parents have been
649 ordered to receive reunification services but who have abandoned that child for a period of six
650 months since the date that reunification services were ordered, the court shall terminate
651 reunification services, and the division shall immediately petition the court for termination of
652 parental rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

698 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable services
699 unless it determines that those services would be detrimental to the minor. In determining
700 detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
701 length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of
702 detriment to the child if services are not offered and, for minors ten years of age or older, the
703 minor's attitude toward the implementation of family reunification services, and any other
704 appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month
705 limitation imposed in Subsection (2). Reunification services for an institutionalized parent are
706 subject to the 12-month limitation imposed in Subsection (2), unless the court determines that
707 continued reunification services would be in the child's best interest.

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

711 Section 14. Section **78-3a-312** is amended to read:

712 **78-3a-312. Permanency hearing -- Final plan -- Petition for termination of parental**
713 **rights filed -- Hearing on termination of parental rights.**

714 (1) (a) When reunification services have been ordered in accordance with Section
715 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family
716 Services, a permanency hearing shall be held by the court no later than 12 months after the original
717 removal of the child.

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

720 (2) (a) If reunification services were ordered by the court in accordance with Section
721 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be
722 returned to the custody of his parent. If the court finds, by a preponderance of the evidence, that
723 return of the child would create a substantial risk of detriment to the child's physical or emotional
724 well-being, the child may not be returned to the custody of his parent. The failure of a parent or
725 guardian to participate in, comply with, in whole or in part, or to meet the goals of a court
726 approved treatment plan constitutes prima facie evidence that return of the child to that parent
727 would create a substantial risk of detriment.

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

733 (3) (a) With regard to a case where reunification services were ordered by the court, if a
734 child is not returned to his parent or guardian at the permanency hearing, the court shall order
735 termination of reunification services to the parent, and make a final determination regarding
736 whether termination of parental rights, adoption, guardianship, or long-term foster care is the most
737 appropriate final plan for the child. If the child clearly desires contact with the parent, the court
738 shall take the child's desire into consideration in determining the final plan. The court may not

739 extend reunification services beyond 12 months from the date the child was initially removed from
740 his home, in accordance with the provisions of Section 78-3a-311, except that the court may
741 extend reunification services for no more than 90 days if it finds that there has been substantial
742 compliance with the treatment plan, that reunification is probable within that 90 day period, and
743 that the extension is in the best interest of the child. In no event may any reunification services
744 extend beyond 15 months from the date the child was initially removed from his home. Delay or
745 failure of a parent to establish paternity or seek custody does not provide a basis for the court to
746 extend services for that parent beyond that 12 month period.

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

752 (4) If the final plan for the child is to proceed toward termination of parental rights, the
753 petition for termination of parental rights shall be timely filed by the attorney general's office on
754 behalf of the division, and a pretrial held, within 45 calendar days after the permanency hearing.

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

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

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

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

764 (c) limit or prohibit the filing of a petition for termination of parental rights by any party,
765 or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a
766 petition for termination of parental rights is filed prior to the date scheduled for a permanency
767 hearing, the court may schedule the hearing on termination of parental rights in lieu of the
768 permanency hearing; combine the permanency hearing and the hearing on termination of parental
769 rights; or schedule the hearings separately. If the court schedules the hearing on termination of

770 parental rights in lieu of the permanency hearing, any reunification services shall be terminated in
771 accordance with the time lines described in Section 78-3a-311 and a decision on the petition for
772 termination of parental rights shall be made within 18 months from the date of the child's removal.

773 Section 15. Section **78-3a-313.5** is amended to read:

774 **78-3a-313.5. Mandatory petition for termination of parental rights.**

775 (1) For purposes of this section, "abandoned infant" means a child who is 12 months of
776 age or younger whose parent or parents:

777 (a) although having legal custody of the child, fail to maintain physical custody of the child
778 without making arrangements for the care of the child;

779 (b) have failed to maintain physical custody, and have failed to exhibit the normal interest
780 of a natural parent without just cause; or

781 (c) are unwilling to have physical custody of the child.

782 (2) Except as provided in Subsection (3), notwithstanding any other provision of this
783 chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition
784 for termination of parental rights with regard to:

785 (a) an abandoned infant; [~~or~~]

786 (b) a child who has been in the custody of the division for 15 of the most recent 22 months;

787 or

788 [~~(b)~~] (c) a parent, whenever a court has determined that the parent has:

789 (i) committed murder or child abuse homicide of another child of that parent;

790 (ii) committed manslaughter of another child of that parent;

791 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
792 homicide, or manslaughter against another child of that parent; or

793 (iv) committed a felony assault or abuse that has resulted in serious physical injury to
794 another child of that parent, or to the other parent of that child.

795 (3) If any party other than the division files a petition for termination of parental rights
796 based on any of the grounds described in Subsection (2), the division shall seek to be joined as a
797 party to that petition.

798 [~~(3)~~] (4) The division is not required to file a petition for termination of parental rights
799 under Subsection (2), or seek to be joined in a petition filed by another party pursuant to
800 Subsection (3), if:

- 801 (a) the child is being cared for by a relative;
- 802 (b) the division has:
- 803 (i) documented in the child's treatment plan a compelling reason for determining that filing
- 804 a petition for termination of parental rights is not in the child's best interest; and
- 805 (ii) made that treatment plan available to the court for its review; or
- 806 (c) (i) the court has previously determined, in accordance with the provisions and
- 807 limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable efforts
- 808 to reunify the child with his parent or parents were required; and
- 809 (ii) the division has not provided, within the time period specified in the treatment plan,
- 810 services that had been determined to be necessary for the safe return of the child.