

1 **CHILD PLACEMENT DETERMINATIONS**

2 2002 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Dan R. Eastman**

5 **This act amends the Human Services Code and the Judicial Code. The act changes the**
6 **permanency plan regarding long-term foster care for a child who is three years of age or**
7 **younger. The act expands the grounds for removal of a foster child from the home of the**
8 **foster parents without first providing a hearing to the foster parents. The act modifies**
9 **fingerprinting requirements for household members in a foster home. The act clarifies when**
10 **a juvenile court may order a planned permanent living arrangement other than adoption,**
11 **reunification, guardianship, and kinship placement for a child in the custody of the Division**
12 **of Child and Family Services, in accordance with the requirements of federal law. The act**
13 **makes technical changes.**

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

15 AMENDS:

16 **62A-4a-205**, as last amended by Chapter 255, Laws of Utah 2001

17 **62A-4a-206**, as last amended by Chapter 274, Laws of Utah 1998

18 **62A-4a-209**, as enacted by Chapter 250, Laws of Utah 2001

19 **78-3a-312**, as last amended by Chapter 21, Laws of Utah 2001

20 **78-3a-315**, as last amended by Chapter 274, Laws of Utah 1998

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

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

23 **62A-4a-205. Treatment plans.**

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

26 (2) The division shall use an interdisciplinary team approach in developing each treatment
27 plan. An interdisciplinary team shall include, but is not limited to, representatives from mental



28 health, education, and, where appropriate, a representative of law enforcement.

29 (3) (a) The division shall involve all of the following in the development of a child's
30 treatment plan:

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

32 (ii) the child;

33 (iii) the child's foster parents; and

34 (iv) where appropriate, the child's stepparent.

35 (b) In relation to all information considered by the division in developing a treatment plan,
36 additional weight and attention shall be given to the input of the child's natural and foster parents
37 upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

38 (4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the
39 child's natural parents and foster parents immediately upon completion, or as soon as is reasonably
40 possible thereafter.

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

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

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

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

49 (c) the concurrent permanency goal for the child and the reason for the selection of that
50 goal;

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

54 (e) the specific services needed to reduce the problems that necessitated placement in the
55 division's custody, and who will provide for and be responsible for case management;

56 (f) a parent-time schedule between the natural parent and the child;

57 (g) the health care to be provided to the child, and the mental health care to be provided
58 to address any known or diagnosed mental health needs of the child. If residential treatment, rather

59 than a foster home, is the proposed placement, a specialized assessment of the child's health needs
60 shall be conducted, including an assessment of mental illness and behavior and conduct disorders;
61 and

62 (h) social summaries that include case history information pertinent to case planning.

63 (7) (a) Each treatment plan shall be specific to each child and ~~[his]~~ the child's family, rather
64 than general. The division shall train its workers to develop treatment plans that comply with
65 federal mandates and the specific needs of the particular child and ~~[his]~~ the child's family.

66 (b) All treatment plans and expectations shall be individualized and contain specific time
67 frames.

68 (c) Treatment plans shall address problems that keep children in placement and keep them
69 from achieving permanence in their lives.

70 (d) The child's natural parents, foster parents, and where appropriate, stepparents, shall be
71 kept informed of and supported to participate in important meetings and procedures related to the
72 child's placement.

73 (8) With regard to a child who is three years of age or younger, if the goal is not to return
74 the child home, the permanency plan for that child shall be adoption ~~[unless there are documented~~
75 ~~extenuating circumstances that justify long-term foster care or guardianship]~~. However, if the
76 division documents to the court that there is a compelling reason that adoption, reunification,
77 guardianship, and kinship placement are not in the child's best interest, the court may order another
78 planned permanent living arrangement in accordance with federal law.

79 Section 2. Section **62A-4a-206** is amended to read:

80 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**
81 **process.**

82 (1) (a) The Legislature finds that, except with regard to a child's natural parent or legal
83 guardian, a foster family has a very limited but recognized interest in its familial relationship with
84 a foster child who has been in the care and custody of that family. In making determinations
85 regarding removal of a child from a foster home, the division may not dismiss the foster family as
86 a mere collection of unrelated individuals.

87 (b) The Legislature finds that children in the temporary custody and custody of the division
88 are experiencing multiple changes in foster care placements with little or no documentation, and
89 that numerous studies of child growth and development emphasize the importance of stability in

90 foster care living arrangements.

91 (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide
92 procedural due process for a foster family prior to removal of a foster child from their home,
93 regardless of the length of time the child has been in that home, unless removal is for the purpose
94 of:

95 (i) returning the child to ~~[his]~~ the child's natural parent or legal guardian~~[-or for the~~
96 ~~immediate placement of]~~;

97 (ii) immediately placing the child in an approved adoptive home~~[-]~~;

98 (iii) placing the child with a relative, as defined in Subsection 78-3a-307(5)(d), who
99 obtained custody or asserted an interest in the child within the preference period described in
100 Subsection 78-3a-307(8); or

101 (iv) placing an Indian child in accordance with preplacement preferences and other
102 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

103 (2) (a) The division shall maintain and utilize due process procedures for removal of a
104 foster child from a foster home, in accordance with the procedures and requirements of Title 63,
105 Chapter 46b, Administrative Procedures Act.

106 (b) Those procedures shall include requirements for:

107 (i) personal communication with and explanation to foster parents prior to removal of the
108 child; and

109 (ii) an opportunity for foster parents to present their information and concerns to the
110 division and to request a review by a third party neutral fact finder prior to removal of the child.

111 (c) If the division determines that there is a reasonable basis to believe that the child is in
112 danger or that there is a substantial threat of danger to the health or welfare of the child, it shall
113 place the child in emergency foster care during the pendency of the procedures described in this
114 subsection, instead of making another foster care placement.

115 (3) If the division removes a child from a foster home based upon the child's statement
116 alone, the division shall initiate and expedite the processes described in Subsection (2). The
117 division may take no formal action with regard to that foster parent's license until after those
118 processes, in addition to any other procedure or hearing required by law, have been completed.

119 (4) When a complaint is made to the division by a foster child against a foster parent, the
120 division shall, within 30 business days, provide the foster parent with information regarding the

121 specific nature of the complaint, the time and place of the alleged incident, and who was alleged
122 to have been involved.

123 (5) Whenever the division places a child in a foster home, it shall provide the foster
124 parents with:

125 (a) notification of the requirements of this section;

126 (b) a written description of the procedures enacted by the division pursuant to Subsection
127 (2) and how to access those processes; and

128 (c) written notification of the foster parents' ability to petition the juvenile court directly
129 for review of a decision to remove a foster child who has been in their custody for 12 months or
130 longer, in accordance with the limitations and requirements of Section 78-3a-315.

131 (6) The requirements of this section do not apply to the removal of a child based on a
132 foster parent's request for that removal.

133 Section 3. Section **62A-4a-209** is amended to read:

134 **62A-4a-209. Emergency kinship placement.**

135 (1) The division may use an emergency kinship placement under Subsection 78-3a-301(4)
136 when:

137 (a) the case worker has made the determination that:

138 (i) the child's home is unsafe;

139 (ii) removal is necessary under the provisions of Section 78-3a-301; and

140 (iii) the child's custodial parent or guardian will agree to not remove the child from the
141 relative's home who serves as the kinship placement and not have any contact with the child until
142 after the shelter hearing required by Section 78-3a-306;

143 (b) a relative, with preference being given to a noncustodial parent in accordance with
144 Section 78-3a-307, can be identified who has the ability and is willing to provide care for the child
145 who would otherwise be placed in shelter care, including:

146 (i) taking the child to medical, mental health, dental, and educational appointments at the
147 request of the division; and

148 (ii) the relative has the ability to make the child available to division services and the
149 guardian ad litem; and

150 (c) the relative agrees to care for the child on an emergency basis under the following
151 conditions:

- 152 (i) the relative meets the criteria for an emergency kinship placement under Subsection (2);
153 (ii) the relative agrees to not allow the custodial parent or guardian to have any contact
154 with the child until after the shelter hearing unless authorized by the division in writing;
155 (iii) the relative agrees to contact law enforcement and the division if the custodial parent
156 or guardian attempts to make unauthorized contact with the child;
157 (iv) the relative agrees to allow the division and the child's guardian ad litem to have
158 access to the child;
159 (v) the relative has been informed and understands that the division may continue to search
160 for other possible kinship placements for long-term care, if needed;
161 (vi) the relative is willing to assist the custodial parent or guardian in reunification efforts
162 at the request of the division, and to follow all court orders; and
163 (vii) the child is comfortable with the relative.
- 164 (2) Before the division places a child in an emergency kinship placement, the division
165 must:
- 166 (a) request the name of a reference and when possible, contact the reference and determine
167 the answer to the following questions:
- 168 (i) would the person identified as a reference place a child in the home of the emergency
169 kinship placement; and
170 (ii) are there any other relatives to consider as a possible emergency or long-term
171 placement for the child;
- 172 (b) have the custodial parent or guardian sign an emergency kinship placement agreement
173 form during the investigation;
- 174 (c) complete a criminal background check described in Sections 62A-4a-202.4 and
175 78-3a-307.1 on all persons living in the relative's household;
- 176 (d) complete a home inspection of the relative's home; and
177 (e) have the emergency kinship placement approved by a family service specialist.
- 178 (3) As soon as possible after the emergency placement and prior to the shelter hearing
179 required by Section 78-3a-306, the division shall convene a family unity meeting.
- 180 (4) After an emergency kinship placement, the division caseworker must:
- 181 (a) respond to the emergency kinship placement's calls within one hour if the custodial
182 parents or guardians attempt to make unauthorized contact with the child or attempt to remove the

183 child;

184 (b) complete all removal paperwork, including the notice provided to the custodial parents
185 and guardians under Section 78-3a-306;

186 (c) contact the attorney general to schedule a shelter hearing;

187 (d) complete the kinship procedures required in Section 78-3a-307, including, within five
188 days after placement, the criminal history record check described in Subsection (5); and

189 (e) continue to search for other relatives as a possible long-term placement, if needed.

190 (5) (a) In order to determine the suitability of the kinship placement and to conduct a
191 background screening and investigation of individuals living in the household in which a child is
192 placed, each individual living in the household in which the child is placed who has not lived in
193 the state substantially year round for the most recent five consecutive years ending on the date the
194 investigation is commenced shall be fingerprinted. If no disqualifying record is identified at the
195 state level, the fingerprints shall be forwarded by the division to the Federal Bureau of
196 Investigation for a national criminal history record check.

197 (b) The cost of those investigations shall be borne by whomever received placement of
198 the child, except that the division may pay all or part of the cost of those investigations if the
199 person with whom the child is placed is unable to pay.

200 Section 4. Section **78-3a-312** is amended to read:

201 **78-3a-312. Permanency hearing -- Final plan -- Petition for termination of parental**
202 **rights filed -- Hearing on termination of parental rights.**

203 (1) (a) When reunification services have been ordered in accordance with Section
204 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family
205 Services, a permanency hearing shall be held by the court no later than 12 months after the original
206 removal of the child.

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

209 (2) (a) If reunification services were ordered by the court in accordance with Section
210 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be
211 returned to the custody of [~~his~~] the child's parent. If the court finds, by a preponderance of the
212 evidence, that return of the child would create a substantial risk of detriment to the child's physical
213 or emotional well-being, the child may not be returned to the custody of [~~his~~] the child's parent.

214 The failure of a parent or guardian to participate in, comply with, in whole or in part, or to meet
215 the goals of a court approved treatment plan constitutes prima facie evidence that return of the
216 child to that parent would create a substantial risk of detriment.

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

222 (3) (a) With regard to a case where reunification services were ordered by the court, if a
223 child is not returned to ~~[his]~~ the child's parent or guardian at the permanency hearing, the court
224 shall order termination of reunification services to the parent, and make a final determination
225 regarding whether termination of parental rights, adoption, or permanent custody and
226 guardianship~~[, or long-term foster care]~~ is the most appropriate final plan for the child, taking into
227 account the child's primary permanency goal established by the court pursuant to Section
228 78-3a-311. If the Division of Child and Family Services documents to the court that there is a
229 compelling reason that adoption, reunification, guardianship, and kinship placement are not in the
230 child's best interest, the court may order another planned permanent living arrangement, in
231 accordance with federal law. If the child clearly desires contact with the parent, the court shall take
232 the child's desire into consideration in determining the final plan. In addition, the court shall
233 establish a concurrent plan that identifies the second most appropriate final plan for the child.

234 (b) The court may not extend reunification services beyond 12 months from the date the
235 child was initially removed from ~~[his]~~ the child's home, in accordance with the provisions of
236 Section 78-3a-311, except that the court may extend reunification services for no more than 90
237 days if it finds that there has been substantial compliance with the treatment plan, that reunification
238 is probable within that 90 day period, and that the extension is in the best interest of the child. In
239 no event may any reunification services extend beyond 15 months from the date the child was
240 initially removed from ~~[his]~~ the child's home. Delay or failure of a parent to establish paternity or
241 seek custody does not provide a basis for the court to extend services for that parent beyond that
242 12-month period.

243 ~~[(b)]~~ (c) The court may, in its discretion, enter any additional order that it determines to
244 be in the best interest of the child, so long as that order does not conflict with the requirements and

245 provisions of ~~[Subsection]~~ Subsections (3)(a) and (b). The court may order the division to provide
246 protective supervision or other services to a child and the child's family after the division's custody
247 of a child has been terminated.

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

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

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

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

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

260 (c) limit or prohibit the filing of a petition for termination of parental rights by any party,
261 or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a
262 petition for termination of parental rights is filed prior to the date scheduled for a permanency
263 hearing, the court may consolidate the hearing on termination of parental rights with the
264 permanency hearing. If the court consolidates the hearing on termination of parental rights with
265 the permanency hearing, it shall first make a finding whether reasonable efforts have been made
266 by the Division of Child and Family Services to finalize the permanency goal for the child, and any
267 reunification services shall be terminated in accordance with the time lines described in Section
268 78-3a-311. A decision on the petition for termination of parental rights shall be made within 18
269 months from the date of the child's removal.

270 Section 5. Section **78-3a-315** is amended to read:

271 **78-3a-315. Review of foster care removal -- Foster parent's standing.**

272 (1) With regard to a child in the custody of the Division of Child and Family Services who
273 is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed in
274 foster care with a foster family, the Legislature finds that:

275 (a) except with regard to the child's natural parents, a foster family has a very limited but

276 recognized interest in its familial relationship with the child; and

277 (b) children in the custody of the division are experiencing multiple changes in foster care
278 placements with little or no documentation, and that numerous studies of child growth and
279 development emphasize the importance of stability in foster care living arrangements.

280 (2) For the reasons described in Subsection (1), the Legislature finds that, except with
281 regard to the child's natural parents, procedural due process protections must be provided to a
282 foster family prior to removal of a foster child from their home.

283 (3) (a) A foster parent who has had a foster child in his custody for 12 months or longer
284 may petition the juvenile court for a review and determination of the appropriateness of a decision
285 by the Division of Child and Family Services to remove the child from ~~[his]~~ the child's home,
286 unless the removal was for the purpose of:

287 (i) returning the child to [his] the child's natural parent~~[-or for the immediate placement~~
288 ~~of] or legal guardian;~~

289 (ii) immediately placing the child in an approved adoptive home[-];

290 (iii) placing the child with a relative, as defined in Subsection 78-3a-307(5)(d), who
291 obtained custody or asserted an interest in the child within the preference period described in
292 Subsection 78-3a-307(8); or

293 (iv) placing an Indian child in accordance with preplacement preferences and other
294 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

295 (b) The foster parent may petition the court under this section without exhausting
296 administrative remedies within the division.

297 (c) The court may order the division to place the child in a specified home, and shall base
298 its determination on the best interest of the child.

299 (4) The requirements of this section do not apply to the removal of a child based on a
300 foster parent's request for that removal.

Legislative Review Note
as of 1-3-02 12:05 PM

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

Office of Legislative Research and General Counsel