

CHILD WELFARE AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Dan R. Eastman

LONG TITLE

General Description:

This bill amends provisions of the Human Services Code, the Judicial Code, and provisions relating to child welfare.

Highlighted Provisions:

This bill:

- ▶ replaces the term "treatment plan" with the term "child and family plan";
- ▶ clarifies access to certain protected and confidential records;
- ▶ provides that the inability to identify or locate an alleged perpetrator of child abuse

may not be used by the division as a basis for determining that a report is unsupported;

- ▶ provides that a child and family plan may only include requirements that:

- address findings made by the court; or
- are requested or approved by a parent or guardian of the child ~~§~~ , **and are agreed**

to by the division and the guardian ad litem ~~←~~§ ;

- ▶ addresses the circumstances under which parent-time may be denied; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **53B-8d-102**, as enacted by Chapter 279, Laws of Utah 2001
- 29 **62A-4a-116**, as last amended by Chapters 86 and 201, Laws of Utah 2004
- 30 **62A-4a-202.3**, as last amended by Chapter 124, Laws of Utah 2004
- 31 **62A-4a-203.5**, as enacted by Chapter 274, Laws of Utah 1998
- 32 **62A-4a-205**, as last amended by Chapter 356, Laws of Utah 2004
- 33 **78-3a-311**, as last amended by Chapter 356, Laws of Utah 2004
- 34 **78-3a-311.5**, as enacted by Chapter 246, Laws of Utah 2002
- 35 **78-3a-312**, as last amended by Chapters 168 and 306, Laws of Utah 2002
- 36 **78-3a-313.5**, as enacted by Chapter 274, Laws of Utah 1998
- 37 **78-3a-407**, as last amended by Chapter 246, Laws of Utah 2002
- 38 **78-3a-912**, as last amended by Chapter 356, Laws of Utah 2004

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

41 Section 1. Section **53B-8d-102** is amended to read:

42 **53B-8d-102. Definitions.**

43 As used in this chapter:

44 (1) "Division" means the Division of Child and Family Services.

45 (2) "Long-term foster care" means an individual who remains in the custody of the
 46 division, whether or not the individual resides;

47 (a) with licensed foster parents; or

48 (b) in independent living arrangements under the supervision of the division.

49 (3) "State institution of higher education" means;

50 (a) those institutions designated in Section 53B-1-102; and

51 (b) any public institution that offers postsecondary education in consideration of the
 52 payment of tuition or fees for the attainment of educational or vocational objectives leading to
 53 a degree or certificate, including;

54 (i) business schools[;];

55 (ii) technical schools[;];

56 (iii) applied technology centers[;];

57 (iv) trade schools[;]; and

58 (v) institutions offering related apprenticeship programs.

59 (4) "Tuition" means tuition at the rate for residents of the state.

60 (5) "Ward of the state" means an individual:

61 (a) who is:

62 (i) at least 17 years of age; and

63 (ii) not older than 26 years of age;

64 (b) who had a permanency goal in the individual's ~~[treatment]~~ child and family plan, as
65 ~~[defined]~~ described in Sections 62A-4a-205 and 78-3a-312, of long-term foster care while in
66 the custody of the division; and

67 (c) for whom the custody of the division was not terminated as a result of adoption.

68 Section 2. Section **62A-4a-116** is amended to read:

69 **62A-4a-116. Management Information System -- Requirements -- Contents --**

70 **Purpose -- Access.**

71 (1) (a) The division shall develop and implement a Management Information System
72 that meets the requirements of this section and the requirements of federal law and regulation.

73 (b) The information and records contained in the Management Information System:

74 (i) are protected records under Title 63, Chapter 2, Government Records Access and
75 Management Act~~;~~; and

76 (ii) ~~except [for the limited, specific, and narrow provisions relating to licensing,~~
77 ~~contained in Section 62A-4a-116.2, and those provisions relating to contract providers,~~
78 ~~described in Subsection (6), they]~~ as provided in Subsection (1)(c), are available only to ~~[those]~~
79 a person with statutory authorization under Title 63, Chapter 2, Government Records Access
80 and Management Act to review ~~[under that law. They are also available to those who have a]~~
81 the information and records described in this Subsection (1)(b).

82 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in
83 Subsection (1)(b)(ii) are available to a person:

84 (i) as provided under Subsection (6) or Section 62A-4a-116.2; or

85 (ii) who has specific statutory authorization to access the ~~[record]~~ information or
86 records for the purpose of assisting the state with state and federal requirements to maintain
87 information solely for the purpose of protecting minors and providing services to families in
88 need.

89 (2) With regard to all child welfare cases, the Management Information System shall

90 provide each caseworker and the department's office of licensing, exclusively for the purposes
91 of foster parent licensure and monitoring, with a complete history of each child in that worker's
92 caseload, including ~~[the following information]~~:

93 (a) a record of all past action taken by the division with regard to that child and the
94 child's siblings;

95 (b) the complete case history and all reports and information in the control or keeping
96 of the division regarding that child and the child's siblings;

97 (c) the number of times the child has been in the custody of the division;

98 (d) the cumulative period of time the child has been in the custody of the division;

99 (e) a record of all reports of abuse or neglect received by the division with regard to
100 that child's parent, parents, or guardian including:

101 (i) for each report, documentation of the:

102 (A) latest status; or ~~[the]~~

103 (B) final outcome or determination ~~[regarding each report, including]; and~~

104 (ii) information that indicates whether each report was found to be:

105 (A) supported[;];

106 (B) unsupported[;];

107 (C) substantiated by a juvenile court[;];

108 (D) unsubstantiated by a juvenile court[;]; or

109 (E) without merit;

110 (f) the number of times the child's parent or parents ~~[have]~~ failed any ~~[treatment]~~ child
111 and family plan; and

112 (g) the number of different caseworkers who have been assigned to that child in the
113 past.

114 (3) The division's Management Information System shall ~~[also]~~:

115 (a) contain all key elements of each family's current ~~[treatment]~~ child and family plan,
116 including:

117 (i) the dates and number of times the plan has been administratively or judicially
118 reviewed[;];

119 (ii) the number of times the parent or parents have failed that ~~[treatment]~~ child and
120 family plan[;]; and

121 (iii) the exact length of time [~~that treatment~~] the child and family plan has been in
122 effect; and

123 (b) alert caseworkers regarding deadlines for completion of and compliance with
124 policy, including [~~treatment~~] child and family plans.

125 (4) With regard to all child protective services cases, the Management Information
126 System shall [~~also~~]:

127 (a) monitor the compliance of each case with:

128 (i) division rule and policy[~~;~~];

129 (ii) state law[~~;~~]; and

130 (iii) federal law and regulation; and

131 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or
132 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of
133 the alleged perpetrator.

134 (5) Except as provided in Subsection (6) regarding contract providers and Section
135 62A-4a-116.2 regarding limited access to the Licensing Information System, all information
136 contained in the division's Management Information System is available to the department,
137 upon the approval of the executive director, on a need-to-know basis.

138 (6) (a) [~~The~~] Subject to this Subsection (6), the division may allow its contract
139 providers, court clerks designated by the Administrative Office of the Courts, and the Office of
140 the Guardian Ad Litem to have limited access to the Management Information System.

141 (b) A division contract provider has access only to information about [~~persons who are~~]
142 a person who is currently receiving services from that specific contract provider.

143 (c) (i) Designated court clerks [~~shall~~] may only have access to information necessary to
144 comply with Subsection 78-3h-102(2).

145 (ii) The Office of the Guardian Ad Litem [~~has~~] may access only [~~to~~] the information
146 [~~about~~] that:

147 (A) relates to children and families where the Office of the Guardian Ad Litem [~~has~~
148 ~~been~~] is appointed by a court to represent the interests of the children[~~. The access granted to~~
149 ~~the Office of the Guardian Ad Litem is limited to information~~]; and

150 (B) except as provided in Subsection (6)(d), is entered into the [~~system~~] Management
151 Information System on or after July 1, 2004[~~, except the office may~~].

152 (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of the Guardian Ad Litem
153 shall have access to all child abuse and neglect referrals about children and families where the
154 office has been appointed by a court to represent the interests of the children, regardless of the
155 date that the information is entered into the Management Information System.

156 ~~[(b)]~~ (e) Each contract provider and designated representative of the Office of the
157 Guardian Ad Litem who requests access to information contained in the Management
158 Information System shall:

159 (i) take all necessary precautions to safeguard the security of the information contained
160 in the Management Information System;

161 (ii) train its employees regarding:

162 (A) requirements for protecting the information contained in the Management
163 Information System as required by this chapter and under Title 63, Chapter 2, Government
164 Records Access and Management Act~~[7]~~; and

165 (B) the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper
166 release of information; and

167 (iii) monitor its employees to ensure that they protect the information contained in the
168 Management Information System as required by law.

169 ~~[(e)]~~ (f) The division shall take reasonable precautions to ensure that its contract
170 providers comply with the requirements of this Subsection (6).

171 (7) The division shall take all necessary precautions, including password protection and
172 other appropriate and available technological techniques, to prevent unauthorized access to or
173 release of information contained in the Management Information System.

174 Section 3. Section **62A-4a-202.3** is amended to read:

175 **62A-4a-202.3. Investigation -- Supported or unsupported reports -- Child in**
176 **protective custody.**

177 (1) When a child is taken into protective custody in accordance with Section
178 62A-4a-202.1, 78-3a-106, or 78-3a-301, or when the division takes any other action which
179 would require a shelter hearing under Subsection 78-3a-306(1), the division shall immediately
180 initiate an investigation of the;

181 (a) circumstances of the minor; and ~~[the facts surrounding the minor's being taken]~~

182 (b) grounds upon which the decision to place the minor into protective custody was

183 made.

184 (2) The division's investigation shall [~~include, among other actions necessary to meet~~]
185 conform to reasonable professional standards, and shall include:

186 (a) a search for and review of any records of past reports of abuse or neglect involving:

187 (i) the same child[;];

188 (ii) any sibling or other child residing in [~~that household;~~] the same household as the
189 child; and

190 (iii) the alleged perpetrator;

191 (b) with regard to a child who is five years of age or older, a personal interview with
192 the child:

193 (i) outside of the presence of the alleged perpetrator[;]; and

194 (ii) conducted in accordance with the requirements of Subsection (7);

195 (c) if [~~their whereabouts are known~~] a parent or guardian can be located, an interview
196 with at least one of the child's parents or guardian;

197 (d) an interview with the person who reported the abuse, unless [~~anonymous~~] the report
198 was made anonymously;

199 (e) where possible and appropriate, interviews with other third parties who have had
200 direct contact with the child, including:

201 (i) school personnel; and

202 (ii) the child's health care provider;

203 (f) an unscheduled visit to the child's home, unless:

204 (i) the division has reasonable cause to believe that the reported abuse was committed
205 by a person who:

206 (A) is not the child's parent; and

207 (B) does not:

208 [~~(A)~~] (I) live in the child's home; or

209 [~~(B)~~] (II) otherwise have access to the child in the child's home; or

210 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and

211 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
212 failure to meet the child's medical needs, a medical examination[~~. That examination shall be~~],
213 obtained no later than 24 hours after the child [~~was~~] is placed in protective custody.

- 214 (3) The division may rely on a written report of a prior interview rather than
215 conducting an additional interview, if:
- 216 (a) law enforcement [~~has~~]:
- 217 (i) previously conducted a timely and thorough investigation regarding the alleged
218 abuse, neglect, or dependency; and [~~has~~]
- 219 (ii) produced a written report;
- 220 (b) [~~that~~] the investigation described in Subsection (3)(a)(i) included one or more of the
221 interviews required by Subsection (2); and
- 222 (c) the division finds that an additional interview is not in the best interest of the child.
- 223 (4) (a) The division's determination of whether a report is supported or unsupported
224 may be based on the child's statements alone.
- 225 (b) Inability to identify or locate the perpetrator may not be used by the division as a
226 basis for:
- 227 (i) determining that a report is [~~unsubstantiated,~~] unsupported; or [~~for~~]
- 228 (ii) closing the case.
- 229 (c) The division may not determine a case to be unsupported or identify a case as
230 unsupported solely because the perpetrator was an out-of-home perpetrator.
- 231 (d) Decisions regarding whether a report is supported, unsupported, or without merit
232 shall be based on the facts of the case at the time the report was made.
- 233 (5) The division should maintain protective custody of the child if it finds that one or
234 more of the following conditions exist:
- 235 (a) the minor [~~has no~~] does not have a natural parent, guardian, or responsible relative
236 who is able and willing to provide safe and appropriate care for the minor;
- 237 (b) (i) shelter of the minor is a matter of necessity for the protection of the minor; and
238 (ii) there are no reasonable means by which the minor can be protected in:
- 239 (A) the minor's home; or
- 240 (B) the home of a responsible relative;
- 241 (c) there is substantial evidence that the parent or guardian is likely to flee the
242 jurisdiction of the court; or
- 243 (d) the minor has left a previously court ordered placement.
- 244 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding

245 weekends and holidays, the division shall:

246 (i) convene a child protection team to review the circumstances regarding removal of
247 the child from the child's home or school; and

248 (ii) prepare the testimony and evidence that will be required of the division at the
249 shelter hearing, in accordance with Section 78-3a-306.

250 (b) ~~[Members of the team]~~ The child protection team described in Subsection (6)(a)(i)
251 shall include:

252 (i) the caseworker assigned to the case ~~[and]~~;

253 (ii) the caseworker who made the decision to remove the child;

254 ~~[(ii)]~~ (iii) a representative of the school or school district ~~[in which]~~ where the child
255 attends school;

256 ~~[(iii)]~~ (iv) the peace officer who removed the child from the home;

257 ~~[(iv)]~~ (v) a representative of the appropriate Children's Justice Center, if one is
258 established within the county where the child resides;

259 ~~[(v)]~~ (vi) if appropriate, and known to the division, a therapist or counselor who is
260 familiar with the child's circumstances; and

261 ~~[(vi)]~~ (vii) any other individuals determined appropriate and necessary by the team
262 coordinator and chair.

263 (c) At the 24-hour meeting, the division shall have available for review and
264 consideration the complete child protective services and foster care history of the child and the
265 child's parents and siblings.

266 (7) (a) After receipt of a child into protective custody and prior to the adjudication
267 hearing, all investigative interviews with the child that are initiated by the division shall be:

268 (i) audio or video taped~~[-];~~ and ~~[the child shall be allowed to have]~~

269 (ii) except as provided in Subsection (7)(b), conducted with a support person of the
270 child's choice present. ~~[That]~~

271 (b) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an
272 interview of a child may not be an alleged perpetrator.

273 (8) The division shall cooperate with law enforcement investigations regarding the
274 alleged perpetrator.

275 (9) The division may not close an investigation solely on the grounds that the division

276 investigator is unable to locate the child until all reasonable efforts have been made to locate
277 the child and family members[~~Those efforts include~~] including:

- 278 (a) visiting the home at times other than normal work hours;
279 (b) contacting local schools;
280 (c) contacting local, county, and state law enforcement agencies; and
281 (d) checking public assistance records.

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

283 **62A-4a-203.5. Mandatory petition for termination of parental rights.**

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

- 286 (a) although having legal custody of the child, fail to maintain physical custody of the
287 child without making arrangements for the care of the child;
288 (b) have failed to maintain physical custody, and have failed to exhibit the normal
289 interest of a natural parent without just cause; or
290 (c) are unwilling to have physical custody of the child.

291 (2) Except as provided in Subsection (3), notwithstanding any other provision of this
292 chapter or of Title 78, Chapter 3a, Juvenile Court Act of 1996, the division shall file a petition
293 for termination of parental rights with regard to:

- 294 (a) an abandoned infant; or
295 (b) a parent, whenever a court has determined that the parent has:
296 (i) committed murder or child abuse homicide of another child of that parent;
297 (ii) committed manslaughter of another child of that parent;
298 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
299 homicide, or manslaughter against another child of that parent; or
300 (iv) committed a felony assault or abuse that has resulted in serious physical injury to
301 another child of that parent, or to the other parent of that child.

302 (3) The division is not required to file a petition for termination of parental rights under
303 Subsection (2) if:

- 304 (a) the child is being cared for by a relative;
305 (b) the division has:
306 (i) documented in the child's ~~[treatment]~~ child and family plan a compelling reason for

307 determining that filing a petition for termination of parental rights is not in the child's best
308 interest; and

309 (ii) made that ~~[treatment]~~ child and family plan available to the court for its review; or

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

313 (ii) the division has not provided, within the time period specified in the ~~[treatment]~~
314 child and family plan, services that had been determined to be necessary for the safe return of
315 the child.

316 Section 5. Section **62A-4a-205** is amended to read:

317 **62A-4a-205. Child and family plan -- Parent-time.**

318 (1) No more than 45 days after a child enters the temporary custody of the division, the
319 child's ~~[treatment]~~ child and family plan shall be finalized.

320 (2) (a) The division shall use an interdisciplinary team approach in developing each
321 ~~[treatment]~~ child and family plan. ~~[An]~~

322 (b) The interdisciplinary team described in Subsection (2)(a) shall include ~~§~~ **→ [F]** , **but is not**
323 **limited to, [H] ←§** representatives from the following fields:

324 (i) mental health~~[-];~~;

325 (ii) education~~[-];~~ and~~[-where]~~

326 (iii) if appropriate, [a representative of] law enforcement.

327 (3) (a) The division shall involve all of the following in the development of a child's
328 ~~[treatment]~~ child and family plan:

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

330 (ii) the child;

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

332 (iv) ~~[where]~~ if appropriate, the child's stepparent.

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

336 (4) A copy of the ~~[treatment]~~ child and family plan shall, immediately upon
337 completion, or as soon as reasonably possible thereafter, be provided to the:

- 338 (a) guardian ad litem~~[, and to the]~~;
- 339 (b) child's natural parents; and
- 340 (c) child's foster parents [~~immediately upon completion, or as soon as is reasonably~~
- 341 ~~possible thereafter~~].
- 342 (5) Each ~~[treatment]~~ child and family plan shall:
- 343 (a) specifically provide for the safety of the child, in accordance with federal law~~[;]~~;
- 344 and
- 345 (b) clearly define what actions or precautions will, or may be, necessary to provide for
- 346 the health, safety, protection, and welfare of the child.
- 347 (6) The child and family plan shall set forth, with specificity, at least the following:
- 348 (a) the reason the child entered [~~Division of Child and Family Services custody, and]~~
- 349 into the custody of the division;
- 350 (b) documentation of the:
- 351 (i) reasonable efforts made to prevent placement~~[, or documentation of the]~~ of the child
- 352 in the custody of the division; or
- 353 (ii) emergency situation that existed and that prevented the reasonable efforts
- 354 described in Subsection (6)(b)(i), from being made;
- 355 ~~[(b)]~~ (c) the primary permanency goal for the child and the reason for selection of that
- 356 goal;
- 357 ~~[(c)]~~ (d) the concurrent permanency goal for the child and the reason for the selection
- 358 of that goal;
- 359 ~~[(d)]~~ (e) if the plan is for the child to return to the child's family~~[;]~~;
- 360 (i) specifically what the parents must do in order to enable the child to be returned
- 361 home~~[;]~~;
- 362 (ii) specifically how ~~[those]~~ the requirements described in Subsection (6)(e)(i) may be
- 363 accomplished~~[;]~~; and
- 364 (iii) how ~~[those]~~ the requirements described in Subsection (6)(e)(i) will be measured;
- 365 ~~[(e)]~~ (f) the specific services needed to reduce the problems that necessitated
- 366 [~~placement]~~ placing the child in the division's custody~~[, and]~~;
- 367 (g) the name of the person who will provide for and be responsible for case
- 368 management;

369 ~~[(f)]~~ (h) subject to Subsection (9), a parent-time schedule between the natural parent
370 and the child;

371 ~~[(g)]~~ (i) the health and mental health care to be provided to address any known or
372 diagnosed mental health needs of the child ~~[and];~~;

373 (j) if residential treatment rather than a foster home is the proposed placement, a
374 requirement for a specialized assessment of the child's health needs including an assessment of
375 mental illness and behavior and conduct disorders; and

376 ~~[(h)]~~ (k) social summaries that include case history information pertinent to case
377 planning.

378 (7) (a) Each ~~[treatment]~~ child and family plan shall be specific to each child and the
379 child's family, rather than general.

380 (b) The division shall train its workers to develop ~~[treatment]~~ child and family plans
381 that comply with:

382 (i) federal mandates; and

383 (ii) the specific needs of the particular child and the child's family.

384 ~~[(b)]~~ (c) All ~~[treatment]~~ child and family plans and expectations shall be individualized
385 and contain specific time frames.

386 ~~[(c) Treatment]~~ (d) Subject to Subsection (7)(h), child and family plans shall address
387 problems that:

388 (i) keep ~~[children]~~ a child in placement; and

389 (ii) keep ~~[them]~~ a child from achieving permanence in ~~[their lives]~~ the child's life.

390 ~~[(d)]~~ (e) Each ~~[treatment]~~ child and family plan shall be designed to minimize
391 disruption to the normal activities of the child's family, including employment and school.

392 (f) In particular, the time, place, and amount of services, hearings, and other
393 requirements ordered by the court in the child and family plan shall be designed, as much as
394 practicable, to help the child's parents maintain or obtain employment.

395 ~~[(e)]~~ (g) The child's natural parents, foster parents, and where appropriate, stepparents,
396 shall be kept informed of and supported to participate in important meetings and procedures
397 related to the child's placement.

398 (h) For purposes of Subsection (7)(d), a child and family plan may only include
399 requirements that:

400 (i) address findings made by the court; or

401 (ii) ~~§~~ (A) ~~←§~~ are requested or consented to by a parent or guardian of the child ~~§~~ [] ;

and

401a **(B) are agreed to by the division and the guardian ad litem. ←§**

402 (8) ~~[With]~~ (a) Except as provided in Subsection (8)(b), with regard to a child who is
 403 three years of age or younger, if the goal is not to return the child home, the permanency plan
 404 for that child shall be adoption. [However]

405 (b) Notwithstanding Subsection (8)(a), if the division documents to the court that there
 406 is a compelling reason that adoption, reunification, guardianship, and kinship placement are not
 407 in the child's best interest, the court may order another planned permanent living arrangement
 408 in accordance with federal law.

409 (9) (a) Except as provided in Subsection (9)(b), parent-time may only be denied by a
 410 court order issued pursuant to Subsections 78-3a-311(2)(a)(ii) and (b).

411 (b) Notwithstanding Subsection (9)(a), the person designated by the division or a court
 412 to supervise a parent-time session may deny parent-time for that session if the supervising
 413 person determines that, based on the parent's condition, it is necessary to deny parent-time in
 414 order to:

415 (i) protect the physical safety of the child;

416 (ii) protect the life of the child; or

417 (iii) ~~§~~ consistent with Subsection (9)(c), ←§ prevent the child from ~~§~~ [suffering
 417a emotional anguish.] being traumatized by contact with the parent.

417b **(c) In determining whether the condition of the parent described in Subsection**
 417c **(9)(b) will traumatize a child, the person supervising the parent-time session shall consider the**
 417d **impact that the parent's condition will have on the child in light of:**

417e **(i) the child's fear of the parent; and**

417f **(ii) the nature of the alleged abuse or neglect. ←§**

418 Section 6. Section **78-3a-311** is amended to read:

419 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

420 (1) The court may:

421 (a) make any of the dispositions described in Section 78-3a-118[];

422 (b) place the [child] minor in the custody or guardianship of any:

423 (i) individual; or

424 (ii) public or private entity or agency[]; or

425 (c) order;

- 426 (i) protective supervision[;];
- 427 (ii) family preservation[;];
- 428 (iii) medical or mental health treatment[;]; or
- 429 (iv) other services.
- 430 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,

431 and that the minor remain in the custody of the ~~[Division of Child and Family Services, it]~~
 432 division, the court shall first:

433 (A) establish a primary permanency goal for the minor; and

434 (B) determine whether, in view of the primary permanency goal, reunification services
 435 are appropriate for the ~~[child]~~ minor and the ~~[child's]~~ minor's family, pursuant to Subsection
 436 (3).

437 (ii) ~~[When]~~ Subject to Subsection (2)(b), if the court determines that reunification
 438 services are appropriate for the ~~[child]~~ minor and the ~~[child's]~~ minor's family, the court shall
 439 provide for reasonable parent-time with the parent or parents from whose custody the ~~[child]~~
 440 minor was removed, unless parent-time is not in the best interest of the ~~[child]~~ minor.

441 (iii) (A) In cases where obvious sexual abuse, abandonment, or serious physical abuse
 442 or neglect are involved, neither the division nor the court has any duty to make "reasonable
 443 efforts" or to, in any other way, attempt to provide reunification services, or to attempt to
 444 rehabilitate the offending parent or parents.

445 (B) In all cases, the ~~[child's]~~ minor's health, safety, and welfare shall be the court's
 446 paramount concern in determining whether reasonable efforts to reunify should be made.

447 (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a
 448 minor unless the court makes a finding that it is necessary to deny parent-time in order to:

449 (A) protect the physical safety of the minor;

450 (B) protect the life of the minor; or

451 (C) prevent the minor from ~~§~~→ **[suffering emotional anguish] being traumatized by**
 451a contact with the parent due to the minor's fear of the parent in light of the nature of the
 451b alleged abuse or neglect ←~~§~~ .

452 (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based
 453 solely on a parent's failure to:

454 (A) prove that the parent has not used legal or illegal substances; or

455 (B) comply with an aspect of the child and family plan that is ordered by the court.

456 ~~[(b)]~~ (c) (i) In addition to the primary permanency goal, the court shall establish a
 457 concurrent permanency goal~~[- The concurrent permanency goal]~~ that shall include:

458 (A) a representative list of the conditions under which the primary permanency goal
 459 will be abandoned in favor of the concurrent permanency goal; and

460 (B) an explanation of the effect of abandoning or modifying the primary permanency
 461 goal.

462 (ii) A permanency hearing shall be conducted in accordance with Subsection
463 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
464 ~~[child's]~~ minor's primary permanency goal.

465 (iii) (A) The court may amend a ~~[child's]~~ minor's primary permanency goal before the
466 establishment of a final permanency plan under Section 78-3a-312.

467 (B) The court is not limited to the terms of the concurrent permanency goal in the event
468 that the primary permanency goal is abandoned.

469 (C) If, at anytime, the court determines that reunification is no longer a ~~[child's]~~ minor's
470 primary permanency goal, the court shall conduct a permanency hearing in accordance with
471 Section 78-3a-312 ~~[within]~~ on or before the earlier of ~~[30 days of the court's determination or];~~

472 (I) 30 days from the day on which the court makes the determination described in this
473 Subsection (2)(c)(iii)(C); or

474 (II) 12 months from the ~~[original removal of the child]~~ day on which the minor was
475 first removed from the minor's home.

476 ~~[(e)]~~ (d) (i) (A) If the court determines that reunification services are appropriate, it
477 shall order that the division make reasonable efforts to provide services to the ~~[child]~~ minor
478 and the ~~[child's]~~ minor's parent for the purpose of facilitating reunification of the family, for a
479 specified period of time.

480 (B) In providing ~~[those]~~ the services described in Subsection (2)(d)(i)(A), the ~~[child's]~~
481 minor's health, safety, and welfare shall be the division's paramount concern, and the court
482 shall so order.

483 (ii) The court shall:

484 (A) determine whether the services offered or provided by the division under the
485 ~~[treatment]~~ child and family plan constitute "reasonable efforts" on the part of the division~~[-~~
486 ~~The court shall also];~~

487 (B) determine and define the responsibilities of the parent under the ~~[treatment]~~ child
488 and family plan in accordance with ~~[Section 62A-4a-205. Those duties and responsibilities~~
489 ~~shall be identified]~~ Subsection 62A-4a-205(6)(e); and

490 (C) identify on the record the responsibilities described in Subsection (2)(d)(ii)(B), for
491 the purpose of assisting in any future determination regarding the provision of reasonable
492 efforts, in accordance with state and federal law.

493 (iii) (A) The time period for reunification services may not exceed 12 months from the
494 date that the [child] minor was initially removed from the [child's] minor's home.

495 (B) Nothing in this section may be construed to entitle any parent to an entire 12
496 months of reunification services.

497 (iv) If reunification services ~~[have been]~~ are ordered, the court may terminate those
498 services at any time.

499 (v) If, at any time, continuation of reasonable efforts to reunify a [child] minor is
500 determined to be inconsistent with the final permanency plan for the [child] minor established
501 pursuant to Subsection 78-3a-312, then measures shall be taken, in a timely manner, to:

502 (A) place the [child] minor in accordance with the permanency plan~~[-];~~ and ~~[to]~~

503 (B) complete whatever steps are necessary to finalize the permanent placement of the
504 [child] minor.

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

507 ~~[(e)]~~ (f) (i) If reunification services ~~[have been]~~ are ordered, a permanency hearing
508 shall be conducted by the court in accordance with Section 78-3a-312 at the expiration of the
509 time period for reunification services.

510 (ii) The permanency hearing shall be held no later than 12 months after the original
511 removal of the [child] minor.

512 ~~[(ii)]~~ (iii) If reunification services ~~[have not been]~~ are not ordered, a permanency
513 hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

514 ~~[(f)]~~ (g) With regard to a [child] minor who is 36 months of age or younger at the time
515 the [child] minor is initially removed from the home, the court shall:

516 (i) hold a permanency hearing eight months after the date of the initial removal,
517 pursuant to Section 78-3a-312; and

518 (ii) order the discontinuance of those services after eight months from the initial
519 removal of the [child] minor from the home if the parent or parents have not made substantial
520 efforts to comply with the ~~[treatment]~~ child and family plan.

521 ~~[(g)]~~ (h) With regard to a [child] minor in the custody of the division whose parent or
522 parents ~~[have been]~~ are ordered to receive reunification services but who have abandoned that
523 [child] minor for a period of six months ~~[since]~~ from the date that reunification services were

524 ordered[;];

525 (i) the court shall terminate reunification services[;]; and

526 (ii) the division shall petition the court for termination of parental rights.

527 (3) (a) Because of the state's interest in and responsibility to protect and provide
528 permanency for [~~children~~] minors who are abused, neglected, or dependent, the Legislature
529 finds that a parent's interest in receiving reunification services is limited.

530 (b) The court may determine that:

531 (i) efforts to reunify a [~~child~~] minor with the [~~child's~~] minor's family are not reasonable
532 or appropriate, based on the individual circumstances[;]; and [~~that~~]

533 (ii) reunification services should not be provided.

534 (c) In determining "reasonable efforts" to be made with respect to a [~~child~~] minor, and
535 in making "reasonable efforts," the [~~child's~~] minor's health, safety, and welfare shall be the
536 paramount concern.

537 [~~(b)~~] (d) (i) There is a presumption that reunification services should not be provided to
538 a parent if the court finds, by clear and convincing evidence, that any of the following
539 circumstances exist:

540 [~~(i)~~] (A) the whereabouts of the parents are unknown, based upon a verified affidavit
541 indicating that a reasonably diligent search has failed to locate the parent;

542 [~~(ii)~~] (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of
543 such magnitude that it renders [~~him~~] the parent incapable of utilizing reunification services;
544 [~~that finding shall be based on competent evidence from mental health professionals~~
545 ~~establishing that, even with the provision of services, the parent is unlikely to be capable of~~
546 ~~adequately caring for the child within 12 months;~~]

547 [~~(iii)~~] (C) the minor [~~has been~~] was previously adjudicated as an abused child due to
548 physical or sexual abuse, [~~that~~] and following the adjudication the [~~child~~] minor:

549 (I) was removed from the custody of [~~his~~] the minor's parent[~~, was~~];

550 (II) was subsequently returned to the custody of [~~that~~] the parent[~~, and the minor~~]; and

551 (III) is being removed due to additional physical or sexual abuse;

552 [~~(iv)~~] (D) the parent [~~has~~];

553 (I) caused the death of another [~~child~~] minor through abuse or neglect; or [~~has~~]

554 (II) committed, aided, abetted, attempted, conspired, or solicited to commit;

555 (Aa) murder or manslaughter of a child; or
556 (Bb) child abuse homicide;
557 ~~(v)~~ (E) the minor ~~[has]~~ suffered severe abuse by the parent or by any person known
558 by the parent, if the parent knew or reasonably should have known that the person was abusing
559 the minor;
560 ~~(vi)~~ (F) the minor ~~[has been]~~ is adjudicated an abused child as a result of severe abuse
561 by the parent, and the court finds that it would not benefit the ~~[child]~~ minor to pursue
562 reunification services with the offending parent;
563 ~~(vii)~~ (G) the parent's rights ~~[have been]~~ are terminated with regard to any other ~~[child]~~
564 minor;
565 ~~(viii)~~ (H) the ~~[child has been]~~ minor is removed from ~~[his]~~ the minor's home on at
566 least two previous occasions and reunification services were offered or provided to the family
567 at those times;
568 ~~(ix)~~ (I) the parent has abandoned the ~~[child]~~ minor for a period of six months or
569 longer; or
570 ~~(x)~~ (J) any other circumstance that the court determines should preclude reunification
571 efforts or services.
572 ~~(4)(a) Failure~~
573 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
574 from mental health professionals establishing that, even with the provision of services, the
575 parent is not likely to be capable of adequately caring for the minor within 12 months from the
576 day on which the court finding is made.
577 (4) In determining whether reunification services are appropriate, the court shall take
578 into consideration:
579 (a) failure of the parent to respond to previous services or comply with ~~[any]~~ a previous
580 [treatment] child and family plan[;];
581 (b) the fact that the ~~[child]~~ minor was abused while the parent was under the influence
582 of drugs or alcohol~~[, a past];~~
583 (c) any history of violent behavior~~[;];~~
584 (d) whether a parent continues to live with an individual who abused the ~~[child,]~~
585 minor;

586 (e) any patterns of the parent's behavior that have exposed the [~~child~~] minor to repeated
587 abuse[~~;~~];

588 (f) testimony by a competent professional that the parent's behavior is unlikely to be
589 successful[~~;~~ shall be considered in determining whether reunification services are appropriate.

590 ~~(b) The court shall also consider]; and~~

591 (g) whether the parent has expressed an interest in reunification with the [~~child, in~~
592 ~~determining whether reunification services are appropriate~~] minor.

593 (5) (a) If reunification services are not ordered pursuant to Subsection (3)(a), and the
594 whereabouts of a parent become known within six months of the out-of-home placement of the
595 minor, the court may order the division to provide reunification services.

596 (b) The time limits described in Subsection (2)[~~;~~ however,] are not tolled by the
597 parent's absence.

598 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
599 services unless it determines that those services would be detrimental to the minor. [~~In~~
600 ~~determining detriment,~~]

601 (b) In making the determination described in Subsection (6)(a), the court shall
602 consider:

603 (i) the age of the [~~child,~~] minor;

604 (ii) the degree of parent-child bonding[~~;~~];

605 (iii) the length of the sentence[~~;~~];

606 (iv) the nature of the treatment[~~;~~];

607 (v) the nature of the crime or illness[~~;~~];

608 (vi) the degree of detriment to the [~~child~~] minor if services are not offered [~~and,~~];

609 (vii) for [~~minors~~] a minor ten years of age or older, the minor's attitude toward the
610 implementation of family reunification services[~~;~~]; and

611 (viii) any other appropriate factors.

612 (c) Reunification services for an incarcerated parent are subject to the 12-month
613 limitation imposed in Subsection (2).

614 (d) Reunification services for an institutionalized parent are subject to the 12-month
615 limitation imposed in Subsection (2), unless the court determines that continued reunification
616 services would be in the [~~child's~~] minor's best interest.

617 (7) If, pursuant to [~~Subsection (3)(b)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x)]~~
 618 Subsections (3)(d)(i)(B) through (J), the court does not order reunification services, a
 619 permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

620 Section 7. Section **78-3a-311.5** is amended to read:

621 **78-3a-311.5. Six-month review hearing -- Court determination regarding**
 622 **reasonable efforts by the Division of Child and Family Services and parental compliance**
 623 **with child and family plan requirements**

624 If reunification efforts have been ordered by the court, a hearing shall be held no more
 625 than six months after initial removal of a [~~child~~] minor from the [~~child's~~] minor's home, in
 626 order for the court to determine whether:

627 (1) the division has provided and is providing "reasonable efforts" to reunify a family,
 628 in accordance with the [~~treatment~~] child and family plan established under Section
 629 62A-4a-205; and

630 (2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order
 631 to comply with the requirements of the [~~treatment~~] child and family plan.

632 Section 8. Section **78-3a-312** is amended to read:

633 **78-3a-312. Permanency hearing -- Final plan -- Petition for termination of**
 634 **parental rights filed -- Hearing on termination of parental rights.**

635 (1) (a) When reunification services have been ordered in accordance with Section
 636 78-3a-311, with regard to a [~~child~~] minor who is in the custody of the Division of Child and
 637 Family Services, a permanency hearing shall be held by the court no later than 12 months after
 638 the original removal of the [~~child~~] minor.

639 (b) [~~When no reunification services were ordered~~] If reunification services were not
 640 ordered at the dispositional hearing, a permanency hearing shall be held within 30 days from
 641 the date of the dispositional hearing.

642 (2) (a) If reunification services were ordered by the court in accordance with Section
 643 78-3a-311, the court shall, at the permanency hearing, determine, consistent with Subsection
 644 (3.) whether the [~~child~~] minor may safely be returned to the custody of the [~~child's~~] minor's
 645 parent.

646 (b) If the court finds, by a preponderance of the evidence, that return of the [~~child~~]
 647 minor would create a substantial risk of detriment to the [~~child's~~] minor's physical or emotional

648 well-being, the [child] minor may not be returned to the custody of the [child's] minor's parent.
 649 [~~The failure of a parent or guardian to participate in, comply with,~~

650 (c) Prima facie evidence that return of the minor to a parent or guardian would create a
 651 substantial risk of detriment to the minor is established if the parent or guardian fails to:

652 (i) participate in a court approved child and family plan;

653 (ii) comply with a court approved child and family plan in whole or in part[-]; or [to]

654 (iii) meet the goals of a court approved [treatment] child and family plan [constitutes
 655 prima facie evidence that return of the child to that parent would create a substantial risk of
 656 detriment].

657 [~~(b)~~] (3) In making a determination under [~~this~~] Subsection (2)(a), the court shall
 658 review and consider:

659 (a) the report prepared by the Division of Child and Family Services[-];

660 (b) any admissible evidence offered by the [child's] minor's guardian ad litem[-];

661 (c) any report prepared by a foster care citizen review board pursuant to Section
 662 78-3g-103[-];

663 (d) any evidence regarding the efforts or progress demonstrated by the parent[-]; and

664 (e) the extent to which the parent cooperated and availed himself of the services
 665 provided.

666 [~~(3)~~] (4) (a) With regard to a case where reunification services were ordered by the
 667 court, if a [child] minor is not returned to the [child's] minor's parent or guardian at the
 668 permanency hearing, the court shall:

669 (i) order termination of reunification services to the parent[-, and];

670 (ii) make a final determination regarding whether termination of parental rights,
 671 adoption, or permanent custody and guardianship is the most appropriate final plan for the
 672 [child] minor, taking into account the [child's] minor's primary permanency goal established by
 673 the court pursuant to Section 78-3a-311[-]; and

674 (iii) establish a concurrent plan that identifies the second most appropriate final plan
 675 for the minor.

676 (b) If the Division of Child and Family Services documents to the court that there is a
 677 compelling reason that adoption, reunification, guardianship, and kinship placement are not in
 678 the [child's] minor's best interest, the court may order another planned permanent living

679 arrangement, in accordance with federal law.

680 (c) If the ~~[child]~~ minor clearly desires contact with the parent, the court shall take the
681 ~~[child's]~~ minor's desire into consideration in determining the final plan. ~~[In addition, the court~~
682 ~~shall establish a concurrent plan that identifies the second most appropriate final plan for the~~
683 ~~child.]~~

684 ~~[(b) The]~~ (d) Consistent with Subsection (4)(e), the court may not extend reunification
685 services beyond 12 months from the date the ~~[child]~~ minor was initially removed from the
686 ~~[child's]~~ minor's home, in accordance with the provisions of Section 78-3a-311, except that the
687 court may extend reunification services for no more than 90 days if ~~[it]~~ the court finds that:

688 (i) there has been substantial compliance with the ~~[treatment]~~ child and family plan;
689 ~~that~~;

690 (ii) reunification is probable within that 90-day period~~[-];~~ and ~~[that]~~

691 (iii) the extension is in the best interest of the ~~[child]~~ minor.

692 (e) (i) In no event may any reunification services extend beyond 15 months from the
693 date the ~~[child]~~ minor was initially removed from the ~~[child's]~~ minor's home.

694 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a
695 basis for the court to extend services for that parent beyond that 12-month period.

696 ~~[(e)]~~ (f) The court may, in its discretion~~[-];~~

697 (i) enter any additional order that it determines to be in the best interest of the ~~[child]~~
698 minor, so long as that order does not conflict with the requirements and provisions of
699 Subsections ~~[(3)(a) and (b). The court may]~~ (4)(a) through (e); or

700 (ii) order the division to provide protective supervision or other services to a ~~[child]~~
701 minor and the ~~[child's]~~ minor's family after the division's custody of a ~~[child]~~ minor has been
702 terminated.

703 ~~[(4)]~~ (5) If the final plan for the ~~[child]~~ minor is to proceed toward termination of
704 parental rights, the petition for termination of parental rights shall be filed, and a pretrial held,
705 within 45 calendar days after the permanency hearing.

706 ~~[(5)]~~ (6) (a) Any party to an action may, at any time, petition the court for an expedited
707 permanency hearing on the basis that continuation of reunification efforts are inconsistent with
708 the permanency needs of the ~~[child]~~ minor.

709 (b) If the court so determines, it shall order, in accordance with federal law, that:

710 (i) the ~~[child]~~ minor be placed in accordance with the permanency plan~~;~~; and ~~[that]~~

711 (ii) whatever steps are necessary to finalize the permanent placement of the ~~[child]~~

712 minor be completed as quickly as possible.

713 ~~[(6)]~~ (7) Nothing in this section may be construed to:

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

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

717 (c) limit or prohibit the filing of a petition for termination of parental rights by any
718 party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

719 [H]

720 (8) (a) Subject to Subsection (8)(b), if a petition for termination of parental rights is
721 filed prior to the date scheduled for a permanency hearing, the court may consolidate the
722 hearing on termination of parental rights with the permanency hearing. [H]

723 (b) For purposes of Subsection (8)(a), if the court consolidates the hearing on
724 termination of parental rights with the permanency hearing~~,-it~~:

725 (i) the court shall first make a finding regarding whether reasonable efforts have been
726 made by the Division of Child and Family Services to finalize the permanency goal for the
727 ~~[child,]~~ minor; and

728 (ii) any reunification services shall be terminated in accordance with the time lines
729 described in Section 78-3a-311.

730 (c) A decision on ~~[the]~~ a petition for termination of parental rights shall be made within
731 18 months from ~~[the date of the child's removal]~~ the day on which the minor is removed from
732 the minor's home.

733 Section 9. Section **78-3a-313.5** is amended to read:

734 **78-3a-313.5. Mandatory petition for termination of parental rights.**

735 (1) For purposes of this section, "abandoned infant" means a ~~[child]~~ minor who is 12
736 months of age or younger whose parent or parents:

737 (a) although having legal custody of the ~~[child]~~ minor, fail to maintain physical custody
738 of the ~~[child]~~ minor without making arrangements for the care of the ~~[child]~~ minor;

739 (b) have failed to:

740 (i) maintain physical custody~~;~~; and ~~[have failed to]~~

- 741 (ii) exhibit the normal interest of a natural parent without just cause; or
742 (c) are unwilling to have physical custody of the ~~[child]~~ minor.
- 743 (2) Except as provided in Subsection (3), notwithstanding any other provision of this
744 chapter or of Title 62A, Chapter 4a, Child and Family Services, the division shall file a petition
745 for termination of parental rights with regard to:
- 746 (a) an abandoned infant; or
747 (b) the minor of a parent, whenever a court has determined that the parent has:
748 (i) committed murder or child abuse homicide of another ~~[child]~~ minor of that parent;
749 (ii) committed manslaughter of another ~~[child]~~ minor of that parent;
750 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
751 homicide, or manslaughter against another ~~[child]~~ minor of that parent; or
752 (iv) committed a felony assault or abuse that ~~[has resulted]~~ results in serious physical
753 injury to:
- 754 (A) another ~~[child]~~ minor of that parent~~;~~; or ~~[to]~~
755 (B) the other parent of ~~[that child]~~ the minor.
- 756 (3) The division is not required to file a petition for termination of parental rights under
757 Subsection (2) if:
- 758 (a) the ~~[child]~~ minor is being cared for by a relative;
759 (b) the division has:
760 (i) documented in the ~~[child's treatment]~~ minor's child and family plan a compelling
761 reason for determining that filing a petition for termination of parental rights is not in the
762 ~~[child's]~~ minor's best interest; and
763 (ii) made that ~~[treatment]~~ child and family plan available to the court for its review; or
764 (c) (i) the court has previously determined, in accordance with the provisions and
765 limitations of Sections 62A-4a-201, 62A-4a-203, 78-3a-306, and 78-3a-311, that reasonable
766 efforts to reunify the ~~[child]~~ minor with ~~[his]~~ the minor's parent or parents were required; and
767 (ii) the division has not provided, within the time period specified in the ~~[treatment]~~
768 child and family plan, services that had been determined to be necessary for the safe return of
769 the ~~[child]~~ minor.
- 770 Section 10. Section **78-3a-407** is amended to read:
771 **78-3a-407. Grounds for termination of parental rights -- Findings regarding**

772 **reasonable efforts.**

773 (1) The court may terminate all parental rights with respect to a parent if [it] the court
774 finds any one of the following:

775 (a) that the parent has abandoned the [~~child~~] minor;

776 (b) that the parent has neglected or abused the [~~child~~] minor;

777 (c) that the parent is unfit or incompetent;

778 (d) (i) that the [~~child~~] minor is being cared for in an out-of-home placement under the
779 supervision of the court or the division [~~and~~];

780 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or
781 unwilling to remedy the circumstances that cause the [~~child~~] minor to be in an out-of-home
782 placement[;]; and

783 (iii) that there is a substantial likelihood that the parent will not be capable of
784 exercising proper and effective parental care in the near future;

785 (e) failure of parental adjustment, as defined in this chapter;

786 (f) that only token efforts have been made by the parent:

787 (i) to support or communicate with the [~~child~~] minor;

788 (ii) to prevent neglect of the [~~child~~] minor;

789 (iii) to eliminate the risk of serious physical, mental, or emotional abuse of the [~~child~~]
790 minor; or

791 (iv) to avoid being an unfit parent;

792 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the
793 [~~child~~;] minor; and [~~the court finds~~]

794 (ii) that termination is in the [~~child's~~] minor's best interest;

795 (h) [~~the parent~~] that, after a period of trial during which the [~~child~~] minor was returned
796 to live in the [~~child's~~] minor's own home, the parent substantially and continuously or
797 repeatedly refused or failed to give the [~~child~~] minor proper parental care and protection; or

798 (i) the terms and conditions of safe relinquishment of a newborn child have been
799 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
800 Child.

801 (2) The court may not terminate the parental rights of a parent because the parent has
802 failed to complete the requirements of a [~~treatment~~] child and family plan.

803 (3) (a) ~~[In]~~ Except as provided in Subsection (3)(b), in any case in which the court has
 804 directed the division to provide reunification services to a parent, the court must find that the
 805 division made reasonable efforts to provide those services before the court may terminate the
 806 parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

807 (b) ~~[The]~~ Notwithstanding Subsection (3)(a), the court is not required to make the
 808 finding under Subsection (3)(a) before terminating a parent's rights:

809 (i) under Subsection (1)(b) ~~[based upon]~~, if the court finds that the abuse or neglect
 810 ~~[found by the court to have]~~ occurred subsequent to adjudication; or

811 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not
 812 required under federal law.

813 Section 11. Section **78-3a-912** is amended to read:

814 **78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal --**
 815 **Duties and responsibilities -- Training -- Trained staff and court-appointed special**
 816 **advocate volunteers -- Costs -- Immunity -- Annual report.**

817 (1) The court;

818 (a) may appoint an attorney guardian ad litem to represent the best interest of a minor
 819 involved in any case before the court; and

820 (b) shall consider only the best interest of a minor in determining whether to appoint a
 821 guardian ad litem.

822 (2) An attorney guardian ad litem shall represent the best interest of each minor who
 823 may become the subject of a petition alleging abuse, neglect, or dependency, from the ~~[date]~~
 824 earlier of the day that:

825 (a) the minor is removed from the minor's home by the division~~;~~ or ~~[the date]~~

826 (b) the petition is filed~~;~~ ~~[, whichever occurs earlier]~~.

827 (3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad
 828 litem, shall:

829 (a) represent the best interest of the minor in all proceedings;

830 (b) prior to representing any minor before the court, be trained in:

831 (i) applicable statutory, regulatory, and case law~~;~~; and ~~[in]~~

832 (ii) accordance with the United States Department of Justice National Court Appointed
 833 Special Advocate Association guidelines~~;~~ ~~[, prior to representing any minor before the court];~~

834 (c) conduct or supervise an independent investigation in order to obtain first-hand, a
835 clear understanding of the situation and needs of the ~~[child]~~ minor;

836 (d) (i) personally meet with the minor;

837 (ii) personally interview the minor if the minor is old enough to communicate;

838 (iii) determine the minor's goals and concerns regarding placement; and

839 (iv) personally assess or supervise an assessment of the appropriateness and safety of
840 the minor's environment in each placement;

841 (e) file written motions, responses, or objections at all stages of a proceeding when
842 necessary to protect the best interest of a minor;

843 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all
844 administrative and foster care citizen review board hearings pertaining to the minor's case;

845 (g) participate in all appeals unless excused by order of the court;

846 (h) be familiar with local experts who can provide consultation and testimony
847 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
848 Family Services to:

849 (i) maintain a minor in the minor's home; or ~~[to]~~

850 (ii) reunify a minor with the minor's parent;

851 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
852 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of:

853 (i) the status of the minor's case~~[-]~~;

854 (ii) all court and administrative proceedings~~[-]~~;

855 (iii) discussions with, and proposals made by other parties~~[-]~~;

856 (iv) court action~~[-]~~; and

857 (v) ~~the~~ psychiatric, medical, or other treatment or diagnostic services that are to be
858 provided to the minor;

859 (j) review proposed orders for, and as requested by the court~~[-]~~;

860 (k) prepare proposed orders with clear and specific directions regarding services,
861 treatment, ~~[and]~~ evaluation, assessment, and protection of the minor and the minor's family;
862 and

863 ~~[(k)]~~ (l) personally or through a trained volunteer, paralegal, or other trained staff,
864 monitor implementation of a minor's ~~[treatment]~~ child and family plan and any dispositional

865 orders to:

866 (i) determine whether services ordered by the court;

867 (A) are actually provided[;]; and

868 (B) are provided in a timely manner[;]; and

869 (ii) attempt to assess whether ~~they~~ services ordered by the court are accomplishing

870 ~~their~~ the intended goal of the services.

871 (4) (a) ~~An~~ Consistent with this Subsection (4), an attorney guardian ad litem may use
872 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers
873 Act, trained paralegals, and other trained staff to assist in investigation and preparation of
874 information regarding the cases of individual minors before the court. ~~An~~

875 (b) The attorney guardian ad litem described in Subsection (4)(a) may not~~[-however,]~~
876 delegate the attorney's responsibilities described in Subsection (3).

877 ~~(b)~~ (c) All volunteers, paralegals, and staff utilized pursuant to this section shall be
878 trained in and follow, at a minimum, the guidelines established by the United States
879 Department of Justice Court Appointed Special Advocate Association.

880 ~~(c)~~ (d) The court may use volunteers trained in accordance with the requirements of
881 Subsection (4)~~(b)~~(c) to assist in investigation and preparation of information regarding the
882 cases of individual minors within the jurisdiction.

883 ~~(d)~~ (e) When possible and appropriate, the court may use a volunteer who is a peer of
884 the minor appearing before the court, in order to provide assistance to that minor, under the
885 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or
886 other trained staff.

887 (5) The attorney guardian ad litem shall continue to represent the best interest of the
888 minor until released from ~~duties~~ that duty by the court.

889 (6) (a) ~~The~~ Consistent with Subsection (6)(b), the juvenile court is responsible for:

890 (i) all costs resulting from the appointment of an attorney guardian ad litem; and

891 (ii) the costs of volunteer, paralegal, and other staff appointment and training~~[-and]~~.

892 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem
893 program to cover ~~those~~ the costs described in Subsection (6)(a).

894 ~~(b)~~ (c) (i) When the court appoints an attorney guardian ad litem under this section,
895 the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and

896 volunteer expenses against the minor's parents, parent, or legal guardian in a proportion that the
897 court determines to be just and appropriate.

898 (ii) The court may not assess those fees or costs against:

899 (A) a legal guardian, when that guardian is the state~~[-];~~ or ~~[against]~~

900 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious. ~~[H]~~

901 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the
902 court shall:

903 (i) require ~~[of]~~ that person to submit an affidavit of impecuniosity as provided in
904 Section 78-7-36; and ~~[the court shall]~~

905 (ii) follow the procedures and make the determinations as provided in Section 78-7-36.

906 (7) An attorney guardian ad litem appointed under this section, when serving in the
907 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee
908 of the state for purposes of indemnification under Title 63, Chapter ~~[30, Utah]~~ 30d,
909 Governmental Immunity Act of Utah.

910 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

911 (b) If the minor's wishes differ from the attorney's determination of the minor's best
912 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
913 addition to presenting the attorney's determination of the minor's best interest.

914 (c) A difference between the minor's wishes and the attorney's determination of best
915 interest may not be considered a conflict of interest for the attorney.

916 ~~[(b)]~~ (d) The court may appoint one attorney guardian ad litem to represent the best
917 interests of more than one minor child of a marriage.

918 (9) An attorney guardian ad litem shall be provided access to all Division of Child and
919 Family Services records regarding the minor at issue and the minor's family.

920 (10) An attorney guardian ad litem shall maintain current and accurate records
921 regarding:

922 (a) the number of times the attorney has had contact with each minor; and

923 (b) the actions the attorney has taken in representation of the minor's best interest.

924 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian
925 ad litem are confidential and may not be released or made public upon subpoena, search
926 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2,

927 Government Records Access and Management Act.

928 (b) ~~[A#]~~ Consistent with Subsection (11)(d), all records of an attorney guardian ad
929 litem;

930 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative
931 Subpoena Powers[;]; and

932 (ii) shall be released to the Legislature.

933 (c) (i) ~~[Records]~~ Except as provided in Subsection (11)(c)(ii), records released in
934 accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature.

935 ~~[The]~~

936 (ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor
937 General may~~[-, however,]~~ include summary data and nonidentifying information in its audits
938 and reports to the Legislature.

939 (d) (i) ~~[Because of]~~ Subsection (11)(b) constitutes an exception to Rules of
940 Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

941 (A) the unique role of an attorney guardian ad litem described in Subsection (8)[;]; and

942 (B) the state's role and responsibility;

943 (I) to provide a guardian ad litem program; and[;]

944 (II) as parens patriae, to protect minors~~[-, Subsection (11)(b) constitutes an exception to~~
945 ~~Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4)].~~

946 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
947 guardian ad litem by the Legislature, through legislative subpoena.

948 (e) The Office of the Guardian Ad Litem shall present an annual report to the Child
949 Welfare Legislative Oversight Panel detailing:

950 (i) the development, policy, and management of the statewide guardian ad litem
951 program;

952 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

953 (iii) the number of children served by the Office of the Guardian Ad Litem.

Legislative Review Note

as of 1-25-05 10:49 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

It is estimated that this legislation will require an appropriation of \$63,800 (all General Fund) in FY 2006, which includes \$600 one-time funds. \$44,300 would go to the Courts and \$19,500 would go to the Attorney General's Office.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$63,800	\$63,200	\$0	\$0
TOTAL	\$63,800	\$63,200	\$0	\$0

Individual and Business Impact

No fiscal impact.
