

**CHILD PROTECTION - CLANDESTINE
LABORATORY OPERATION**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Juvenile Court Act of 1996 to provide for the protection of children whose parents permit them to be present at a clandestine laboratory operation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that the definition of a neglected child includes a minor whose parent permits the minor to be present at the location of a clandestine laboratory operation;
- ▶ provides that there is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that the parent knowingly permitted the parent's child to be present at a clandestine laboratory operation; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **78-3a-103**, as last amended by Chapter 95, Laws of Utah 2005
- 29 **78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004
- 30 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003
- 31 **78-3a-311**, as last amended by Chapter 286, Laws of Utah 2005

32

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

34 Section 1. Section **78-3a-103** is amended to read:

35 **78-3a-103. Definitions.**

36 (1) As used in this chapter:

37 (a) "Abused child" includes a minor less than 18 years of age who:

38 (i) has suffered or been threatened with nonaccidental physical or mental harm,
39 negligent treatment, or sexual exploitation; or

40 (ii) has been the victim of any sexual abuse.

41 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
42 alleged in the petition have been proved.

43 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or
44 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall
45 be referred to as minors.

46 (d) "Board" means the Board of Juvenile Court Judges.

47 (e) "Child placement agency" means:

48 (i) a private agency licensed to receive minors for placement or adoption under this
49 code; or

50 (ii) a private agency receiving minors for placement or adoption in another state, which
51 agency is licensed or approved where such license or approval is required by law.

52 (f) "Clandestine laboratory operation" is as defined in Section 58-37d-3.

53 ~~(f)~~ (g) "Commit" means to transfer legal custody.

54 ~~(g)~~ (h) "Court" means the juvenile court.

55 ~~(h)~~ (i) "Dependent child" includes a minor who is homeless or without proper care
56 through no fault of the minor's parent, guardian, or custodian.

57 ~~(i)~~ (j) "Deprivation of custody" means transfer of legal custody by the court from a
58 parent or the parents or a previous legal custodian to another person, agency, or institution.

59 ~~[(j)]~~ (k) "Detention" means home detention and secure detention as defined in Section
60 62A-7-101 for the temporary care of minors who require secure custody in physically
61 restricting facilities:

62 (i) pending court disposition or transfer to another jurisdiction; or

63 (ii) while under the continuing jurisdiction of the court.

64 ~~[(k)]~~ (l) "Division" means the Division of Child and Family Services.

65 ~~[(h)]~~ (m) "Formal referral" means a written report from a peace officer or other person
66 informing the court that a minor is or appears to be within the court's jurisdiction and that a
67 petition may be filed.

68 ~~[(m)]~~ (n) "Group rehabilitation therapy" means psychological and social counseling of
69 one or more persons in the group, depending upon the recommendation of the therapist.

70 ~~[(n)]~~ (o) "Guardianship of the person" includes the authority to consent to:

71 (i) marriage~~[-to]~~;

72 (ii) enlistment in the armed forces~~[-to]~~;

73 (iii) major medical, surgical, or psychiatric treatment~~[-and to]~~; or

74 (iv) legal custody, if legal custody is not vested in another person, agency, or
75 institution.

76 ~~[(o)]~~ (p) "Habitual truant" is a school-age minor who:

77 (i) has received:

78 (A) more than two truancy citations within one school year from the school in which
79 the minor is or should be enrolled; and

80 (B) eight absences without a legitimate or valid excuse; or

81 (ii) in defiance of efforts on the part of school authorities as required under Section
82 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

83 (q) "Knowingly" is as defined in Section 76-2-103.

84 ~~[(p)]~~ (r) "Legal custody" means a relationship embodying the following rights and
85 duties:

86 (i) the right to physical custody of the minor;

87 (ii) the right and duty to protect, train, and discipline the minor;

88 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
89 medical care;

90 (iv) the right to determine where and with whom the minor shall live; and
91 (v) the right, in an emergency, to authorize surgery or other extraordinary care.
92 [~~(q)~~] (s) (i) "Minor" means a person under the age of 18 years.
93 (ii) "Minor" includes the term "child" as used in other parts of this chapter.
94 [~~(r)~~] (t) "Natural parent" means a minor's biological or adoptive parent, and includes
95 the minor's noncustodial parent.
96 [~~(s)~~] (u) (i) "Neglected child" means a minor:
97 (A) whose parent, guardian, or custodian has abandoned the minor, except as provided
98 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;
99 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or
100 abuse;
101 (C) who lacks proper parental care by reason of the fault or habits of the parent,
102 guardian, or custodian;
103 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary
104 subsistence, education, or medical care, including surgery or psychiatric services when
105 required, or any other care necessary for health, safety, morals, or well-being; [~~or~~]
106 (E) who is at risk of being a neglected or abused child as defined in this chapter
107 because another minor in the same home is a neglected or abused child as defined in this
108 chapter[-]; or
109 (F) whose parent permits the minor to be present at the location of a clandestine
110 laboratory operation.
111 (ii) The aspect of neglect related to education, described in Subsection (1)[~~(s)~~](u)(i)(D),
112 means that, after receiving notice that a minor has been frequently absent from school without
113 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
114 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
115 an appropriate education.
116 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that
117 reason, does not provide specified medical treatment for a minor, is not guilty of neglect.
118 (iv) Notwithstanding Subsection (1)[~~(s)~~](u)(i), a health care decision made for a child
119 by the child's parent or guardian does not constitute neglect unless the state or other party to the
120 proceeding shows, by clear and convincing evidence, that the health care decision is not

121 reasonable and informed.

122 (v) Nothing in Subsection (1)~~(s)~~(u)(iv) may prohibit a parent or guardian from
123 exercising the right to obtain a second health care opinion.

124 ~~(t)~~ (v) "Nonjudicial adjustment" means closure of the case by the assigned probation
125 officer without judicial determination upon the consent in writing of the minor, the parent,
126 legal guardian or custodian, and the assigned probation officer.

127 ~~(u)~~ (w) "Probation" means a legal status created by court order following an
128 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
129 minor is permitted to remain in the minor's home under prescribed conditions and under
130 supervision by the probation department or other agency designated by the court, subject to
131 return to the court for violation of any of the conditions prescribed.

132 ~~(v)~~ (x) "Protective supervision" means a legal status created by court order following
133 an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted
134 to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
135 dependency is provided by the probation department or other agency designated by the court.

136 ~~(w)~~ (y) (i) "Residual parental rights and duties" means those rights and duties
137 remaining with the parent after legal custody or guardianship, or both, have been vested in
138 another person or agency, including:

139 (A) the responsibility for support;

140 (B) the right to consent to adoption;

141 (C) the right to determine the child's religious affiliation; and

142 (D) the right to reasonable parent-time unless restricted by the court.

143 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
144 the right to consent to:

145 (A) marriage;

146 (B) enlistment; and

147 (C) major medical, surgical, or psychiatric treatment.

148 ~~(x)~~ (z) "Secure facility" means any facility operated by or under contract with the
149 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
150 youth offenders committed to the division for custody and rehabilitation.

151 ~~(y)~~ (aa) "Shelter" means the temporary care of minors in physically unrestricted

152 facilities pending court disposition or transfer to another jurisdiction.

153 ~~[(z)]~~ (bb) "State supervision" means a disposition that provides a more intensive level
154 of intervention than standard probation but is less intensive or restrictive than a community
155 placement with the Division of Juvenile Justice Services.

156 ~~[(aa)]~~ (cc) "Substantiated" ~~[has the same meaning as defined in Subsection]~~ is as
157 defined in Section 62A-4a-101~~[(29)]~~.

158 ~~[(bb)]~~ (dd) "Supported" ~~[has the same meaning as defined in Subsection]~~ is as defined
159 in Section 62A-4a-101~~[(31)]~~.

160 ~~[(cc)]~~ (ee) "Termination of parental rights" means the permanent elimination of all
161 parental rights and duties, including residual parental rights and duties, by court order.

162 ~~[(dd)]~~ (ff) "Therapist" means:

163 (i) a person employed by a state division or agency for the purpose of conducting
164 psychological treatment and counseling of a minor in its custody~~;~~; or

165 (ii) any other person licensed or approved by the state for the purpose of conducting
166 psychological treatment and counseling.

167 ~~[(cc)]~~ (gg) "Unsubstantiated" ~~[has the same meaning as defined in Subsection]~~ is as
168 defined in Section 62A-4a-101~~[(34)]~~.

169 ~~[(ff)]~~ (hh) "Without merit" ~~[has the same meaning as defined in Subsection]~~ is as
170 defined in Section 62A-4a-101~~[(36)]~~.

171 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
172 Division of Child and Family Services:

173 (a) "Custody" means the custody of a minor in the Division of Child and Family
174 Services as of the date of disposition.

175 (b) "Protective custody" means the shelter of a minor by the Division of Child and
176 Family Services from the time the minor is removed from home until the earlier of:

177 (i) the shelter hearing; or

178 (ii) the minor's return home.

179 (c) "Temporary custody" means the custody of a minor in the Division of Child and
180 Family Services from the date of the shelter hearing until disposition.

181 Section 2. Section **78-3a-301** is amended to read:

182 **78-3a-301. Court-ordered protective custody of a minor following petition filing**

183 -- Grounds.

184 (1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is
185 the subject of the petition is not in the protective custody of the division, a court may order that
186 the minor be removed from the minor's home or otherwise taken into protective custody if the
187 court finds, by a preponderance of the evidence, that any one or more of the following
188 circumstances exist:

189 (a) (i) there is an imminent danger to the physical health or safety of the minor; and

190 (ii) the minor's physical health or safety may not be protected without removing the
191 minor from the custody of the minor's parent or guardian;

192 (b) (i) a parent or guardian engages in or threatens the minor with unreasonable
193 conduct that causes the minor to suffer emotional damage; and

194 (ii) there are no reasonable means available by which the minor's emotional health may
195 be protected without removing the minor from the custody of the minor's parent or guardian;

196 (c) the minor or another minor residing in the same household has been physically or
197 sexually abused, or is considered to be at substantial risk of being physically or sexually
198 abused, by a parent or guardian, a member of the parent's or guardian's household, or other
199 person known to the parent or guardian;

200 (d) the parent or guardian is unwilling to have physical custody of the minor;

201 (e) the minor has been abandoned or left without any provision for the minor's support;

202 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
203 or cannot arrange for safe and appropriate care for the minor;

204 (g) (i) a relative or other adult custodian with whom the minor has been left by the
205 parent or guardian is unwilling or unable to provide care or support for the minor[;];

206 (ii) the whereabouts of the parent or guardian are unknown[;]; and

207 (iii) reasonable efforts to locate the parent or guardian have been unsuccessful;

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

209 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
210 environment that poses a threat to the minor's health or safety; or

211 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
212 a threat to the minor's health or safety;

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

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

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

219 (m) the minor's welfare is otherwise endangered.

220 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as
221 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
222 has occurred involving the same substantiated abuser or under similar circumstance as the
223 previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in
224 the custody of the minor's parent.

225 (b) For purposes of Subsection (1)(c):

226 (i) another minor residing in the same household may not be removed from the home
227 unless that minor is considered to be at substantial risk of being physically or sexually abused
228 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

229 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
230 person known to the parent has occurred, and there is evidence that the parent or guardian
231 failed to protect the minor, after having received the notice, by allowing the minor to be in the
232 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the
233 minor is at substantial risk of being physically or sexually abused.

234 (3) In the absence of one of the factors described in Subsection (1), a court may not
235 remove a minor from the parent's or guardian's custody on the basis of:

236 (a) educational neglect;

237 (b) mental illness or poverty of the parent or guardian; or

238 (c) disability of the parent or guardian, as defined in [~~Subsection 57-21-3(9)~~] Section
239 57-21-2.

240 (4) A minor removed from the custody of the minor's parent or guardian under this
241 section may not be placed or kept in a secure detention facility pending further court
242 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
243 Juvenile Justice Services.

244 (5) This section does not preclude removal of a minor from the minor's home without a

245 warrant or court order under Section 62A-4a-202.1.

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

247 **78-3a-306. Shelter hearing.**

248 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
249 after any one or all of the following occur:

250 (a) removal of the child from his home by the Division of Child and Family Services;

251 (b) placement of the child in the protective custody of the Division of Child and Family
252 Services;

253 (c) emergency kinship placement under Subsection 62A-4a-202.1(4); or

254 (d) as an alternative to removal of the child, a parent has entered a domestic violence
255 shelter at the request of the Division of Child and Family Services.

256 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
257 through (1)(d), the division shall issue a notice that contains all of the following:

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

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

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

261 (d) a concise statement regarding:

262 (i) the reasons for removal or other action of the division under Subsection (1); and

263 (ii) the allegations and code sections under which the proceeding has been instituted;

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

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

272 (3) That notice shall be personally served as soon as possible, but no later than one
273 business day after removal of a child from his home, on:

274 (a) the appropriate guardian ad litem; and

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

- 276 (4) The following persons shall be present at the shelter hearing:
277 (a) the child, unless it would be detrimental for the child;
278 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
279 response to the notice;
280 (c) counsel for the parents, if one has been requested;
281 (d) the child's guardian ad litem;
282 (e) the caseworker from the Division of Child and Family Services who has been
283 assigned to the case; and
284 (f) the attorney from the attorney general's office who is representing the division.
285 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's
286 parent or guardian, if present, and any other person having relevant knowledge, to provide
287 relevant testimony. The court may also provide an opportunity for the minor to testify.
288 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
289 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent
290 or guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
291 evidence to only that which goes to the issues of removal and the child's need for continued
292 protection.
293 (6) If the child is in the protective custody of the division, the division shall report to
294 the court:
295 (a) the reasons why the minor was removed from the parent's or guardian's custody;
296 (b) any services provided to the child and his family in an effort to prevent removal;
297 (c) the need, if any, for continued shelter;
298 (d) the available services that could facilitate the return of the minor to the custody of
299 his parent or guardian; and
300 (e) whether the child has any relatives who may be able and willing to take temporary
301 custody.
302 (7) The court shall consider all relevant evidence provided by persons or entities
303 authorized to present relevant evidence pursuant to this section.
304 (8) If necessary to protect the child, preserve the rights of a party, or for other good
305 cause shown, the court may grant no more than one time-limited continuance, not to exceed
306 five judicial days.

307 (9) If the child is in the protective custody of the division, the court shall order that the
308 minor be released from the protective custody of the division unless it finds, by a
309 preponderance of the evidence, that any one of the following exist:

310 (a) there is a substantial danger to the physical health or safety of the minor and the
311 minor's physical health or safety may not be protected without removing him from his parent's
312 custody. If a minor has previously been adjudicated as abused, neglected, or dependent and a
313 subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie
314 evidence that the child cannot safely remain in the custody of his parent;

315 (b) (i) the minor is suffering emotional damage, as may be indicated by, but is not
316 limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward
317 self or others[;]; and

318 (ii) there are no reasonable means available by which the minor's emotional health may
319 be protected without removing the minor from the custody of his parent;

320 (c) the minor or another minor residing in the same household has been physically or
321 sexually abused, or is considered to be at substantial risk of being physically or sexually
322 abused, by a parent, a member of the parent's household, or other person known to the parent.
323 If a parent has received actual notice that physical or sexual abuse by a person known to the
324 parent has occurred, and there is evidence that the parent has allowed the child to be in the
325 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child
326 is at substantial risk of being physically or sexually abused;

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

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

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

331 (g) (i) a relative or other adult custodian with whom the minor has been left by the
332 parent is unwilling or unable to provide care or support for the minor[;];

333 (ii) the whereabouts of the parent are unknown[;]; and

334 (iii) reasonable efforts to locate ~~him~~ the parent have been unsuccessful;

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

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

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

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

343 (l) the child's welfare is otherwise endangered.

344 (10) (a) (i) The court shall also make a determination on the record as to whether
345 reasonable efforts were made to prevent or eliminate the need for removal of the minor from
346 his home and whether there are available services that would prevent the need for continued
347 removal.

348 (ii) If the court finds that the minor can be safely returned to the custody of his parent
349 or guardian through the provision of those services, [~~it~~] the court shall place the minor with his
350 parent or guardian and order that those services be provided by the division.

351 (b) In making [~~that~~] the determination described in Subsection (10)(a), and in ordering
352 and providing services, the child's health, safety, and welfare shall be the paramount concern,
353 in accordance with federal law.

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

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

361 (13) The court may not order continued removal of a minor solely on the basis of
362 educational neglect as described in Subsection 78-3a-103(1)[~~(s)~~] (u)(ii).

363 (14) (a) Whenever a court orders continued removal of a minor under this section, [~~it~~]
364 the court shall state the facts on which that decision is based.

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

367 (15) If the court finds that continued removal and temporary custody are necessary for
368 the protection of a child because harm may result to the child if [~~he~~] the child were returned

369 home, [it] the court shall order continued removal regardless of:

370 (a) any error in the initial removal of the child~~[, or]~~;

371 (b) the failure of a party to comply with notice provisions~~[,]~~; or

372 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
373 and Family Services.

374 Section 4. Section **78-3a-311** is amended to read:

375 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

376 (1) The court may:

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

378 (b) place the minor in the custody or guardianship of any:

379 (i) individual; or

380 (ii) public or private entity or agency; or

381 (c) order:

382 (i) protective supervision;

383 (ii) family preservation;

384 (iii) medical or mental health treatment; or

385 (iv) other services.

386 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
387 and that the minor remain in the custody of the division, the court shall first:

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

389 (B) determine whether, in view of the primary permanency goal, reunification services
390 are appropriate for the minor and the minor's family, pursuant to Subsection (3).

391 (ii) Subject to Subsection (2)(b), if the court determines that reunification services are
392 appropriate for the minor and the minor's family, the court shall provide for reasonable
393 parent-time with the parent or parents from whose custody the minor was removed, unless
394 parent-time is not in the best interest of the minor.

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

399 (B) In all cases, the minor's health, safety, and welfare shall be the court's paramount

400 concern in determining whether reasonable efforts to reunify should be made.

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

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

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

405 (C) prevent the minor from being traumatized by contact with the parent due to the
406 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

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

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

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

411 (c) (i) In addition to the primary permanency goal, the court shall establish a concurrent
412 permanency goal that shall include:

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

415 (B) an explanation of the effect of abandoning or modifying the primary permanency
416 goal.

417 (ii) A permanency hearing shall be conducted in accordance with Subsection
418 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
419 minor's primary permanency goal.

420 (iii) (A) The court may amend a minor's primary permanency goal before the
421 establishment of a final permanency plan under Section 78-3a-312.

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

424 (C) If, at any time, the court determines that reunification is no longer a minor's
425 primary permanency goal, the court shall conduct a permanency hearing in accordance with
426 Section 78-3a-312 on or before the earlier of:

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

429 (II) 12 months from the day on which the minor was first removed from the minor's
430 home.

431 (d) (i) (A) If the court determines that reunification services are appropriate, it shall
432 order that the division make reasonable efforts to provide services to the minor and the minor's
433 parent for the purpose of facilitating reunification of the family, for a specified period of time.

434 (B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health,
435 safety, and welfare shall be the division's paramount concern, and the court shall so order.

436 (ii) The court shall:

437 (A) determine whether the services offered or provided by the division under the child
438 and family plan constitute "reasonable efforts" on the part of the division;

439 (B) determine and define the responsibilities of the parent under the child and family
440 plan in accordance with Subsection 62A-4a-205(6)(e); and

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

444 (iii) (A) The time period for reunification services may not exceed 12 months from the
445 date that the minor was initially removed from the minor's home.

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

448 (iv) If reunification services are ordered, the court may terminate those services at any
449 time.

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

453 (A) place the minor in accordance with the permanency plan; and

454 (B) complete whatever steps are necessary to finalize the permanent placement of the
455 minor.

456 (e) Any physical custody of the minor by the parent or a relative during the period
457 described in Subsection (2)(d) does not interrupt the running of the period.

458 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by
459 the court in accordance with Section 78-3a-312 at the expiration of the time period for
460 reunification services.

461 (ii) The permanency hearing shall be held no later than 12 months after the original

462 removal of the minor.

463 (iii) If reunification services are not ordered, a permanency hearing shall be conducted
464 within 30 days, in accordance with Section 78-3a-312.

465 (g) With regard to a minor who is 36 months of age or younger at the time the minor is
466 initially removed from the home, the court shall:

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

469 (ii) order the discontinuance of those services after eight months from the initial
470 removal of the minor from the home if the parent or parents have not made substantial efforts
471 to comply with the child and family plan.

472 (h) With regard to a minor in the custody of the division whose parent or parents are
473 ordered to receive reunification services but who have abandoned that minor for a period of six
474 months from the date that reunification services were ordered:

475 (i) the court shall terminate reunification services; and

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

477 (3) (a) Because of the state's interest in and responsibility to protect and provide
478 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
479 parent's interest in receiving reunification services is limited.

480 (b) The court may determine that:

481 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
482 based on the individual circumstances; and

483 (ii) reunification services should not be provided.

484 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
485 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
486 concern.

487 (d) (i) There is a presumption that reunification services should not be provided to a
488 parent if the court finds, by clear and convincing evidence, that any of the following
489 circumstances exist:

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

492 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such

493 magnitude that it renders the parent incapable of utilizing reunification services;

494 (C) the minor was previously adjudicated as an abused child due to physical or sexual
495 abuse, and following the adjudication the minor:

496 (I) was removed from the custody of the minor's parent;

497 (II) was subsequently returned to the custody of the parent; and

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

499 (D) the parent:

500 (I) caused the death of another minor through abuse or neglect; or

501 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:

502 (Aa) murder or manslaughter of a child; or

503 (Bb) child abuse homicide;

504 (E) the minor suffered severe abuse by the parent or by any person known by the
505 parent, if the parent knew or reasonably should have known that the person was abusing the
506 minor;

507 (F) the minor is adjudicated an abused child as a result of severe abuse by the parent,
508 and the court finds that it would not benefit the minor to pursue reunification services with the
509 offending parent;

510 (G) the parent's rights are terminated with regard to any other minor;

511 (H) the minor is removed from the minor's home on at least two previous occasions
512 and reunification services were offered or provided to the family at those times;

513 (I) the parent has abandoned the minor for a period of six months or longer; [~~or~~]

514 (J) any other circumstance that the court determines should preclude reunification
515 efforts or services[~~;~~]; or

516 (K) the parent knowingly permitted the child to be present at a clandestine laboratory
517 operation.

518 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
519 from mental health professionals establishing that, even with the provision of services, the
520 parent is not likely to be capable of adequately caring for the minor within 12 months from the
521 day on which the court finding is made.

522 (4) In determining whether reunification services are appropriate, the court shall take
523 into consideration:

524 (a) failure of the parent to respond to previous services or comply with a previous child
525 and family plan;

526 (b) the fact that the minor was abused while the parent was under the influence of
527 drugs or alcohol;

528 (c) any history of violent behavior;

529 (d) whether a parent continues to live with an individual who abused the minor;

530 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

531 (f) testimony by a competent professional that the parent's behavior is unlikely to be
532 successful; and

533 (g) whether the parent has expressed an interest in reunification with the minor.

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

537 (b) The time limits described in Subsection (2) are not tolled by the parent's absence.

538 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
539 services unless it determines that those services would be detrimental to the minor.

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

542 (i) the age of the minor;

543 (ii) the degree of parent-child bonding;

544 (iii) the length of the sentence;

545 (iv) the nature of the treatment;

546 (v) the nature of the crime or illness;

547 (vi) the degree of detriment to the minor if services are not offered;

548 (vii) for a minor ten years of age or older, the minor's attitude toward the
549 implementation of family reunification services; and

550 (viii) any other appropriate factors.

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

553 (d) Reunification services for an institutionalized parent are subject to the 12-month
554 limitation imposed in Subsection (2), unless the court determines that continued reunification

555 services would be in the minor's best interest.

556 (7) If, pursuant to Subsections (3)(d)(i)(B) through (J), the court does not order
557 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
558 with Section 78-3a-312.

Legislative Review Note
as of 12-5-05 11:25 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

Fiscal Note

Child Protection - Clandestine Laboratory Operation

18-Jan-06

Bill Number: HB02193:41 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact to law-abiding citizens.

Office of the Legislative Fiscal Analyst