

CHILD PROTECTION - GANG ASSOCIATION

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 exposed to illegal gang activity.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that the definition of a neglected child includes a minor whose parent:
 - permits the minor to associate with a gang while the gang, or any member of the gang, is engaged in criminal conduct in the presence of the minor; or
 - associates with a gang in the presence of a minor while the gang, or any member of the gang, is engaged in criminal conduct in the presence of the minor;
- ▶ 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:
 - wilfully permits the parent's child to associate with a gang while the gang, or any member of the gang, is engaged in criminal conduct in the presence of the minor; or
 - knowingly associates with a gang in the presence of the parent's child while the gang, or any member of the gang, is engaged in criminal conduct in the presence of the child; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **78-3a-103**, as last amended by Chapter 95, Laws of Utah 2005

36 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003

37 **78-3a-311**, as last amended by Chapter 286, Laws of Utah 2005



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

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

41 **78-3a-103. Definitions.**

42 (1) As used in this chapter:

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

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

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

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

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

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

53 (e) "Child placement agency" means:

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

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

58 (f) "Commit" means to transfer legal custody.

59 (g) "Court" means the juvenile court.

60 (h) "Criminal conduct" means activity that would constitute a misdemeanor or a felony
61 if committed by an adult.

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

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

66 [~~(j)~~] (k) "Detention" means home detention and secure detention as defined in Section
67 62A-7-101 for the temporary care of minors who require secure custody in physically
68 restricting facilities:

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

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

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

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

75 (n) "Gang" means an ongoing group or association, whether formal or informal in
76 organization, that:

77 (i) has a common identifying sign, symbol, or name; and

78 (ii) has, as one of the primary activities of the group or association:

79 (A) engaging in criminal conduct; or

80 (B) creating an atmosphere of fear and intimidation within the community.

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

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

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

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

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

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

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

90 (i) has received:
91 (A) more than two truancy citations within one school year from the school in which
92 the minor is or should be enrolled; and

93 (B) eight absences without a legitimate or valid excuse; or
94 (ii) in defiance of efforts on the part of school authorities as required under Section
95 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

96 (r) "Knowingly" is as defined in Section 76-2-103.

97 [~~(p)~~] (s) "Legal custody" means a relationship embodying the following rights and
98 duties:

- 99 (i) the right to physical custody of the minor;
- 100 (ii) the right and duty to protect, train, and discipline the minor;
- 101 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
102 medical care;
- 103 (iv) the right to determine where and with whom the minor shall live; and
- 104 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

105 [~~(q)~~] (t) (i) "Minor" means a person under the age of 18 years.

106 (ii) "Minor" includes the term "child" as used in other parts of this chapter.

107 [~~(r)~~] (u) "Natural parent" means a minor's biological or adoptive parent, and includes
108 the minor's noncustodial parent.

109 [~~(s)~~] (v) (i) "Neglected child" means a minor:

110 (A) whose parent, guardian, or custodian has abandoned the minor, except as provided
111 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

112 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or
113 abuse;

114 (C) who lacks proper parental care by reason of the fault or habits of the parent,
115 guardian, or custodian;

116 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary
117 subsistence, education, or medical care, including surgery or psychiatric services when
118 required, or any other care necessary for health, safety, morals, or well-being; [~~(t)~~]

119 (E) who is at risk of being a neglected or abused child as defined in this chapter
120 because another minor in the same home is a neglected or abused child as defined in this

121 chapter[-]; or

122 (F) whose parent:

123 (I) permits the minor to associate with a gang while the gang, or any member of the
124 gang, is engaged in criminal conduct in the presence of the minor; or

125 (II) associates with a gang in the presence of a minor while the gang, or any member of
126 the gang, is engaged in criminal conduct in the presence of the minor.

127 (ii) The aspect of neglect related to education, described in Subsection (1)~~(s)~~(v)(i)(D),
128 means that, after receiving notice that a minor has been frequently absent from school without
129 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
130 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
131 an appropriate education.

132 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that
133 reason, does not provide specified medical treatment for a minor, is not guilty of neglect.

134 (iv) Notwithstanding Subsection (1)~~(s)~~(v)(i), a health care decision made for a child
135 by the child's parent or guardian does not constitute neglect unless the state or other party to the
136 proceeding shows, by clear and convincing evidence, that the health care decision is not
137 reasonable and informed.

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

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

143 ~~(t)~~ (x) "Probation" means a legal status created by court order following an
144 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
145 minor is permitted to remain in the minor's home under prescribed conditions and under
146 supervision by the probation department or other agency designated by the court, subject to
147 return to the court for violation of any of the conditions prescribed.

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

152 ~~[(w)]~~ (z) (i) "Residual parental rights and duties" means those rights and duties
153 remaining with the parent after legal custody or guardianship, or both, have been vested in
154 another person or agency, including:

- 155 (A) the responsibility for support;
- 156 (B) the right to consent to adoption;
- 157 (C) the right to determine the child's religious affiliation; and
- 158 (D) the right to reasonable parent-time unless restricted by the court.

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

- 161 (A) marriage;
- 162 (B) enlistment; and
- 163 (C) major medical, surgical, or psychiatric treatment.

164 ~~[(x)]~~ (aa) "Secure facility" means any facility operated by or under contract with the
165 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
166 youth offenders committed to the division for custody and rehabilitation.

167 ~~[(y)]~~ (bb) "Shelter" means the temporary care of minors in physically unrestricted
168 facilities pending court disposition or transfer to another jurisdiction.

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

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

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

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

178 ~~[(dd)]~~ (gg) "Therapist" means a person employed by a state division or agency for the
179 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
180 other person licensed or approved by the state for the purpose of conducting psychological
181 treatment and counseling.

182 ~~[(ee)]~~ (hh) "Unsubstantiated" ~~[has the same meaning as defined in Subsection]~~ is as

183 defined in Section 62A-4a-101[(34)].

184 (ii) "Wilfully" is as defined in Section 76-2-103.

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

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

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

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

193 (i) the shelter hearing; or

194 (ii) the minor's return home.

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

197 Section 2. Section **78-3a-306** is amended to read:

198 **78-3a-306. Shelter hearing.**

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

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

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

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

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

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

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

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

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

212 (d) a concise statement regarding:

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

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

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

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

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

225 (a) the appropriate guardian ad litem; and

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

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

228 (a) the child, unless it would be detrimental for the child;

229 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
230 response to the notice;

231 (c) counsel for the parents, if one has been requested;

232 (d) the child's guardian ad litem;

233 (e) the caseworker from the Division of Child and Family Services who has been
234 assigned to the case; and

235 (f) the attorney from the attorney general's office who is representing the division.

236 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's
237 parent or guardian, if present, and any other person having relevant knowledge, to provide
238 relevant testimony. The court may also provide an opportunity for the minor to testify.

239 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
240 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent
241 or guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
242 evidence to only that which goes to the issues of removal and the child's need for continued
243 protection.

244 (6) If the child is in the protective custody of the division, the division shall report to

245 the court:

- 246 (a) the reasons why the minor was removed from the parent's or guardian's custody;
247 (b) any services provided to the child and his family in an effort to prevent removal;
248 (c) the need, if any, for continued shelter;
249 (d) the available services that could facilitate the return of the minor to the custody of
250 his parent or guardian; and
251 (e) whether the child has any relatives who may be able and willing to take temporary
252 custody.

253 (7) The court shall consider all relevant evidence provided by persons or entities
254 authorized to present relevant evidence pursuant to this section.

255 (8) If necessary to protect the child, preserve the rights of a party, or for other good
256 cause shown, the court may grant no more than one time-limited continuance, not to exceed
257 five judicial days.

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

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

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

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

271 (c) the minor or another minor residing in the same household has been physically or
272 sexually abused, or is considered to be at substantial risk of being physically or sexually
273 abused, by a parent, a member of the parent's household, or other person known to the parent.
274 If a parent has received actual notice that physical or sexual abuse by a person known to the
275 parent has occurred, and there is evidence that the parent has allowed the child to be in the

276 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child
277 is at substantial risk of being physically or sexually abused;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 (11) Where the division's first contact with the family occurred during an emergency
306 situation in which the child could not safely remain at home, the court shall make a finding that

307 any lack of preplacement preventive efforts was appropriate.

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

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

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

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

318 (15) If the court finds that continued removal and temporary custody are necessary for
319 the protection of a child because harm may result to the child if [~~he~~] the child were returned
320 home, [it] the court shall order continued removal regardless of:

321 (a) any error in the initial removal of the child[~~;~~];

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

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

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

326 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

327 (1) The court may:

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

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

330 (i) individual; or

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

332 (c) order:

333 (i) protective supervision;

334 (ii) family preservation;

335 (iii) medical or mental health treatment; or

336 (iv) other services.

337 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,

338 and that the minor remain in the custody of the division, the court shall first:

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

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

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

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

350 (B) In all cases, the minor's health, safety, and welfare shall be the court's paramount
351 concern in determining whether reasonable efforts to reunify should be made.

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

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

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

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

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

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

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

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

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

366 (B) an explanation of the effect of abandoning or modifying the primary permanency
367 goal.

368 (ii) A permanency hearing shall be conducted in accordance with Subsection

369 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
370 minor's primary permanency goal.

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

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

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

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

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

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

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

387 (ii) The court shall:

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

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

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

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

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

399 (iv) If reunification services are ordered, the court may terminate those services at any

400 time.

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

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

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

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

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

412 (ii) The permanency hearing shall be held no later than 12 months after the original
413 removal of the minor.

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

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

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

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

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

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

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

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

- 431 (b) The court may determine that:
- 432 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
433 based on the individual circumstances; and
- 434 (ii) reunification services should not be provided.
- 435 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
436 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
437 concern.
- 438 (d) (i) There is a presumption that reunification services should not be provided to a
439 parent if the court finds, by clear and convincing evidence, that any of the following
440 circumstances exist:
- 441 (A) the whereabouts of the parents are unknown, based upon a verified affidavit
442 indicating that a reasonably diligent search has failed to locate the parent;
- 443 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such
444 magnitude that it renders the parent incapable of utilizing reunification services;
- 445 (C) the minor was previously adjudicated as an abused child due to physical or sexual
446 abuse, and following the adjudication the minor:
- 447 (I) was removed from the custody of the minor's parent;
- 448 (II) was subsequently returned to the custody of the parent; and
- 449 (III) is being removed due to additional physical or sexual abuse;
- 450 (D) the parent:
- 451 (I) caused the death of another minor through abuse or neglect; or
- 452 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 453 (Aa) murder or manslaughter of a child; or
- 454 (Bb) child abuse homicide;
- 455 (E) the minor suffered severe abuse by the parent or by any person known by the
456 parent, if the parent knew or reasonably should have known that the person was abusing the
457 minor;
- 458 (F) the minor is adjudicated an abused child as a result of severe abuse by the parent,
459 and the court finds that it would not benefit the minor to pursue reunification services with the
460 offending parent;
- 461 (G) the parent's rights are terminated with regard to any other minor;

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

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

465 (J) any other circumstance that the court determines should preclude reunification
466 efforts or services[-]; or

467 (K) the parent:

468 (I) wilfully permits the parent's child to associate with a gang while the gang, or any
469 member of the gang, is engaged in criminal conduct in the presence of the child; or

470 (II) knowingly associates with a gang in the presence of the parent's child while the
471 gang, or any member of the gang, is engaged in criminal conduct in the presence of the child.

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

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

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

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

482 (c) any history of violent behavior;

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

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

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

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

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

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

492 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable

493 services unless it determines that those services would be detrimental to the minor.
494 (b) In making the determination described in Subsection (6)(a), the court shall
495 consider:
496 (i) the age of the minor;
497 (ii) the degree of parent-child bonding;
498 (iii) the length of the sentence;
499 (iv) the nature of the treatment;
500 (v) the nature of the crime or illness;
501 (vi) the degree of detriment to the minor if services are not offered;
502 (vii) for a minor ten years of age or older, the minor's attitude toward the
503 implementation of family reunification services; and
504 (viii) any other appropriate factors.
505 (c) Reunification services for an incarcerated parent are subject to the 12-month
506 limitation imposed in Subsection (2).
507 (d) Reunification services for an institutionalized parent are subject to the 12-month
508 limitation imposed in Subsection (2), unless the court determines that continued reunification
509 services would be in the minor's best interest.
510 (7) If, pursuant to Subsections (3)(d)(i)(B) through (J), the court does not order
511 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
512 with Section 78-3a-312.

Legislative Review Note
as of 12-5-05 11:24 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