

CHILD PROTECTION - GANG ASSOCIATION

2007 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 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:
 - permits the parent's child to associate with a gang, or any member of a gang, while the gang, or member of the gang, is engaged in criminal conduct in the presence of the child, or associates with a gang, or member of a gang, in the presence of the parent's child while the gang, or member of the gang, is engaged in criminal conduct in the presence of the child; and
 - knew or should have known that the conduct described in the preceding paragraph was occurring; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

AMENDS:

78-3a-103, as last amended by Chapters 75, 97 and 281, Laws of Utah 2006

78-3a-306, as last amended by Chapter 8, Laws of Utah 2006, Third Special Session

78-3a-311, as last amended by Chapters 75 and 97, Laws of Utah 2006

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

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

78-3a-103. Definitions.

(1) As used in this chapter:

(a) "Abused child" includes a child who:

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

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

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

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

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

(e) "Child" means a person under 18 years of age.

(f) "Child placement agency" means:

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

(ii) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

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

(h) "Commit" means, unless specified otherwise:

(i) with respect to a child, to transfer legal custody; and

(ii) with respect to a minor who is at least 18 years of age, to transfer custody.

(i) "Court" means the juvenile court.

(j) "Criminal conduct" means conduct that would constitute a misdemeanor or a felony if committed by an adult.

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

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

~~[(l)]~~ (m) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

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

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

~~[(m)]~~ (n) "Division" means the Division of Child and Family Services.

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

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

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

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

(A) engaging in criminal conduct; or

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

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

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

(i) marriage;

(ii) enlistment in the armed forces;

(iii) major medical, surgical, or psychiatric treatment; or

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

~~[(q)]~~ (s) "Habitual truant" is as defined in Section 53A-11-101.

90 ~~[(t)]~~ (t) "Legal custody" means a relationship embodying the following rights and
91 duties:

92 (i) the right to physical custody of the minor;
93 (ii) the right and duty to protect, train, and discipline the minor;
94 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
95 medical care;

96 (iv) the right to determine where and with whom the minor shall live; and
97 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

98 ~~[(s)]~~ (u) "Minor" means:

99 (i) a child; or

100 (ii) a person who is:

101 (A) at least 18 years of age and younger than 21 years of age; and

102 (B) under the jurisdiction of the juvenile court.

103 ~~[(t)]~~ (v) "Natural parent" means a minor's biological or adoptive parent, and includes
104 the minor's noncustodial parent.

105 ~~[(w)]~~ (w) (i) "Neglected child" means a child:

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

108 (B) whose parent, guardian, or custodian has subjected the child to mistreatment or
109 abuse;

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

112 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary
113 subsistence, education, or medical care, including surgery or psychiatric services when
114 required, or any other care necessary for health, safety, morals, or well-being;

115 (E) who is at risk of being a neglected or abused child as defined in this chapter
116 because another child in the same home is a neglected or abused child as defined in this
117 chapter; or

118 (F) whose parent permits the minor to reside, on a permanent or temporary basis, at the
119 location of a clandestine laboratory operation.

120 (ii) The aspect of neglect related to education, described in Subsection (1)~~[(t)]~~

(w)(i)(D), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

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

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

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

(~~v~~) (x) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(i) the assigned probation officer; and

(ii) (A) the minor; or

(B) the minor and the minor's parent, legal guardian, or custodian.

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

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

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

(A) the responsibility for support;

(B) the right to consent to adoption;

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

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

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

(A) marriage;

(B) enlistment; and

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

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

~~[(aa)]~~ (cc) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

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

~~[(cc)]~~ (ee) "Substantiated" is as defined in Section 62A-4a-101.

~~[(dd)]~~ (ff) "Supported" is as defined in Section 62A-4a-101.

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

~~[(ff)]~~ (hh) "Therapist" means:

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

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

~~[(gg)]~~ (ii) "Unsubstantiated" is as defined in Section 62A-4a-101.

~~[(hh)]~~ (jj) "Without merit" is as defined in Section 62A-4a-101.

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

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

(b) "Protective custody" means the shelter of a child by the Division of Child and

Family Services from the time the child is removed from home until the earlier of:

(i) the shelter hearing; or

(ii) the child's return home.

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

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

78-3a-306. Shelter hearing.

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

(a) removal of the child from the child's home by the division;

(b) placement of the child in the protective custody of the division;

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

(d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78-3a-106(4).

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

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

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

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

(d) a concise statement regarding:

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

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

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

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial

ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78-3a-106(4), on:

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the child, unless the parents or guardians cannot be located.

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

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

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

(c) counsel for the parents, if one is requested;

(d) the child's guardian ad litem;

(e) the caseworker from the division who is assigned to the case; and

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

(5) (a) At the shelter hearing, the court:

(i) shall provide an opportunity to provide relevant testimony to:

(A) the child's parent or guardian, if present; and

(B) any other person having relevant knowledge; and

(ii) may also provide an opportunity for the child to testify.

(b) The court:

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

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

(a) the reason why the child was removed from the parent's or guardian's custody;

245 (b) any services provided to the child and the child's family in an effort to prevent
246 removal;

247 (c) the need, if any, for continued shelter;

248 (d) the available services that could facilitate the return of the child to the custody of
249 the child's parent or guardian; and

250 (e) whether the child has any relatives who may be able and willing to take temporary
251 custody.

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

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

257 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
258 a continuance under Subsection (8)(a).

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

262 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or
263 safety of the child and the child's physical health or safety may not be protected without
264 removing the child from the custody of the child's parent;

265 (ii) (A) the child is suffering emotional damage; and

266 (B) there are no reasonable means available by which the child's emotional health may
267 be protected without removing the child from the custody of the child's parent;

268 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
269 not removed from the custody of the child's parents;

270 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same
271 household has been physically or sexually abused, or is considered to be at substantial risk of
272 being physically or sexually abused, by a:

273 (A) parent;

274 (B) member of the parent's household; or

275 (C) person known to the parent;

(v) the parent is unwilling to have physical custody of the child;
(vi) the child is without any provision for the child's support;
(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent are unknown; and

(C) reasonable efforts to locate the parent are unsuccessful;

(ix) the child is in urgent need of medical care;

(x) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety;

(xi) the child or a minor residing in the same household has been neglected;

(xii) the parent, or an adult residing in the same household as the parent, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(xiii) the child's welfare is substantially endangered.

(b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically or sexually abused the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically or sexually abused.

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

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with

the child's parent or guardian and order that those services be provided by the division.

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

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

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

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78-3a-103(1)(~~tr~~) (w)(ii).

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

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

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

(a) any error in the initial removal of the child;

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

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

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

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

(1) The court may:

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

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

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsection 78-3a-118(2)(n)(iii), medical or mental health treatment; or

(iv) other services.

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

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

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

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

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

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

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

(A) protect the physical safety of the minor;

(B) protect the life of the minor; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The court shall:

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

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

(C) identify on the record the responsibilities described in Subsection (2)(d)(ii)(B), for

the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) With regard to a minor in the custody of the division whose parent or parents are

ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

(i) the court shall terminate reunification services; and

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

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

(b) The court may determine that:

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

(ii) reunification services should not be provided.

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

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

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

(B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

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

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

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

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

(D) the parent:

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

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

(Aa) murder or manslaughter of a child; or

(Bb) child abuse homicide;

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

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

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

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

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

(J) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located; ~~[or]~~

~~[(K) any other circumstance that the court determines should preclude reunification efforts or services.]~~

(K) the parent:

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

(Bb) knew or should have known that the parent's child associated with the gang, or member of a gang, while the gang, or member of the gang, engaged in criminal conduct in the presence of the child; or

(II) (Aa) associates with a gang, or any member of a gang, in the presence of the child while the gang, or member of the gang, is engaged in criminal conduct in the presence of the child; and

(Bb) knew or should have known that the parent associated with a gang, or member of a gang, in the presence of the parent's child while the gang, or member of the gang, engaged in criminal conduct in the presence of the child; or

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

(ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence

from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months from the day on which the court finding is made.

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

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

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

(c) any history of violent behavior directed at the child or an immediate family member;

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

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

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

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

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

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

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

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

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

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

(vii) for a minor ten years of age or older, the minor's attitude toward the

524 implementation of family reunification services; and

525 (viii) any other appropriate factors.

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

528 (d) Reunification services for an institutionalized parent are subject to the 12-month
529 limitation imposed in Subsection (2), unless the court determines that continued reunification
530 services would be in the minor's best interest.

531 (7) If, pursuant to Subsections (3)(d)(i)(B) through [~~(K)~~] (L), the court does not order
532 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
533 with Section 78-3a-312.

Legislative Review Note
as of 11-15-06 2:31 PM

Office of Legislative Research and General Counsel

H.B. 208 - Child Protection - Gang Association

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will require additional appropriations of \$1,250,200 in FY 2008 and \$1,242,200 in FY 2009 for the Division of Child and Family Services. These funds will be needed for additional caseworkers and for treatment and child care due to an expected increase in caseload.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$506,100	\$506,100	\$0	\$0	\$0
General Fund, One-Time	\$0	\$8,000	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$736,100	\$736,100	\$0	\$736,100	\$736,100
Total	\$0	\$1,250,200	\$1,242,200	\$0	\$736,100	\$736,100

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.