

AMENDMENTS TO CHILD WELFARE

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Margaret Dayton

LONG TITLE

Committee Note:

The Child Welfare Legislative Oversight Panel recommended this bill.

General Description:

This bill: amends education requirements in order to comply with the requirements of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008; amends the Child Welfare Services part of the Utah Human Services Code; and amends the Juvenile Court Act of 1996. This bill also repeals provisions relating to Foster Care Citizen Review Boards.

Highlighted Provisions:

This bill:

- ▶ amends education requirements related to enrollment and attendance in order to comply with the requirements of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008;
- ▶ makes the disciplinary team approach to developing a child and family plan optional;
- ▶ deletes obsolete provisions relating to records of juvenile court proceedings;
- ▶ deletes all provisions and references relating to Foster Care Citizen Review Boards;
- ▶ reassigns certain statutory provisions and responsibilities of Foster Care Citizen Review Boards to the Division of Child and Family Services;
- ▶ requires a court to attempt to keep sibling groups of minors in state custody



28 together, if keeping the sibling group together is practicable and in accordance with the best
29 interest of the minors;

30 ▶ amends provisions relating to the conduct of periodic review hearings for a minor in
31 state custody; ~~H~~→ [and]

31a ▶ provides that the intentional, knowing, or reckless killing by a child's parent of the
31b child's other parent, without legal justification, constitutes prima facie evidence of parental
31c unfitness; and ←~~H~~

32 ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **53A-2-207**, as last amended by Laws of Utah 2008, Chapter 346

40 **53A-11-101.5**, as enacted by Laws of Utah 2007, Chapter 81

41 **62A-4a-205**, as last amended by Laws of Utah 2008, Chapter 3

42 **63I-1-278**, as last amended by Laws of Utah 2008, Chapters 3, 148 and renumbered and
43 amended by Laws of Utah 2008, Chapter 382

44 **78A-6-115**, as renumbered and amended by Laws of Utah 2008, Chapter 3

45 **78A-6-312**, as renumbered and amended by Laws of Utah 2008, Chapter 3

46 **78A-6-314**, as renumbered and amended by Laws of Utah 2008, Chapter 3

47 **78A-6-315**, as renumbered and amended by Laws of Utah 2008, Chapter 3

48 **78A-6-317**, as last amended by Laws of Utah 2008, Chapter 87 and renumbered and
49 amended by Laws of Utah 2008, Chapter 3

49a ~~H~~→ **78A-6-508**, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and
49b amended by Laws of Utah 2008, Chapter 3 ←~~H~~

50 **78A-6-902**, as renumbered and amended by Laws of Utah 2008, Chapter 3

51 REPEALS:

52 **78B-8-101**, as enacted by Laws of Utah 2008, Chapter 3

53 **78B-8-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3

54 **78B-8-103**, as renumbered and amended by Laws of Utah 2008, Chapter 3

55 **78B-8-104**, as enacted by Laws of Utah 2008, Chapter 3

56 **78B-8-105**, as enacted by Laws of Utah 2008, Chapter 3

57 **78B-8-106**, as enacted by Laws of Utah 2008, Chapter 3

58 **78B-8-107**, as enacted by Laws of Utah 2008, Chapter 3

59 78B-8-108, as enacted by Laws of Utah 2008, Chapter 3

60 78B-8-109, as enacted by Laws of Utah 2008, Chapter 3

61 78B-8-110, as enacted by Laws of Utah 2008, Chapter 3



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

64 Section 1. Section 53A-2-207 is amended to read:

65 **53A-2-207. Open enrollment options -- Procedures -- Processing fee -- Continuing**
66 **enrollment.**

67 (1) Each local school board is responsible for providing educational services consistent
68 with Utah state law and rules of the State Board of Education for each student who resides in
69 the district and, as provided in this section through Section 53A-2-213 and to the extent
70 reasonably feasible, for any student who resides in another district in the state and desires to
71 attend a school in the district.

72 (2) (a) A school is open for enrollment of nonresident students if the enrollment level
73 is at or below the open enrollment threshold.

74 (b) If a school's enrollment falls below the open enrollment threshold, the local school
75 board shall allow a nonresident student to enroll in the school.

76 (3) A local school board may allow enrollment of nonresident students in a school that
77 is operating above the open enrollment threshold.

78 (4) (a) A local school board shall adopt policies describing procedures for nonresident
79 students to follow in applying for entry into the district's schools.

80 (b) Those procedures shall provide, as a minimum, for:

81 (i) distribution to interested parties of information about the school or school district
82 and how to apply for admission;

83 (ii) use of standard application forms prescribed by the State Board of Education;

84 (iii) submission of applications from December 1 through the third Friday in February
85 by those seeking admission during the early enrollment period for the following year;

86 (iv) submission of applications by those seeking admission during the late enrollment
87 period;

88 (v) written notification to the student's parent or legal guardian of acceptance or
89 rejection of an application:

90 (A) within six weeks after receipt of the application by the district or by March 31,
91 whichever is later, for applications submitted during the early enrollment period;

92 (B) within two weeks after receipt of the application by the district or by the Friday
93 before the new school year begins, whichever is later, for applications submitted during the late
94 enrollment period for admission in the next school year; and

95 (C) within two weeks after receipt of the application by the district, for applications
96 submitted during the late enrollment period for admission in the current year; and

97 (vi) written notification to the resident school for intradistrict transfers or the resident
98 district for interdistrict transfers upon acceptance of a nonresident student for enrollment.

99 (c) (i) Notwithstanding the dates established in Subsection (4)(b) for submitting
100 applications and notifying parents of acceptance or rejection of an application, a local school
101 board may delay the dates if a local school board is not able to make a reasonably accurate
102 projection of the early enrollment school capacity or late enrollment school capacity of a school
103 due to:

104 (A) school construction or remodeling;

105 (B) drawing or revision of school boundaries; or

106 (C) other circumstances beyond the control of the local school board.

107 (ii) The delay may extend no later than four weeks beyond the date the local school
108 board is able to make a reasonably accurate projection of the early enrollment school capacity
109 or late enrollment school capacity of a school.

110 (5) A school district may charge a one-time \$5 processing fee, to be paid at the time of
111 application.

112 (6) An enrolled nonresident student shall be permitted to remain enrolled in a school,
113 subject to the same rules and standards as resident students, without renewed applications in
114 subsequent years unless one of the following occurs:

115 (a) the student graduates;

116 (b) the student is no longer a Utah resident;

117 (c) the student is suspended or expelled from school; or

118 (d) the district determines that enrollment within the school will exceed the school's
119 open enrollment threshold.

120 (7) (a) Determination of which nonresident students will be excluded from continued

121 enrollment in a school during a subsequent year under Subsection (6)(d) is based upon time in
122 the school, with those most recently enrolled being excluded first and the use of a lottery
123 system when multiple nonresident students have the same number of school days in the school.

124 (b) Nonresident students who will not be permitted to continue their enrollment shall
125 be notified no later than March 15 of the current school year.

126 (8) The parent or guardian of a student enrolled in a school that is not the student's
127 school of residence may withdraw the student from that school for enrollment in another public
128 school by submitting notice of intent to enroll the student in:

129 (a) the district of residence; or

130 (b) another nonresident district.

131 (9) Unless provisions have previously been made for enrollment in another school, a
132 nonresident district releasing a student from enrollment shall immediately notify the district of
133 residence, which shall enroll the student in the resident district and take such additional steps
134 as may be necessary to ensure compliance with laws governing school attendance.

135 (10) (a) Except as provided in Subsection (10)(c), a student who transfers between
136 schools, whether effective on the first day of the school year or after the school year has begun,
137 by exercising an open enrollment option under this section may not transfer to a different
138 school during the same school year by exercising an open enrollment option under this section.

139 (b) The restriction on transfers specified in Subsection (10)(a) does not apply to a
140 student transfer made for health or safety reasons.

141 (c) A local school board may adopt a policy allowing a student to exercise an open
142 enrollment option more than once in a school year.

143 (11) Notwithstanding Subsections (2) and (6)(d), a student who is enrolled in a school
144 that is not the student's school of residence, because school bus service is not provided between
145 the student's neighborhood and school of residence for safety reasons:

146 (a) shall be allowed to continue to attend the school until the student finishes the
147 highest grade level offered; and

148 (b) shall be allowed to attend the middle school, junior high school, or high school into
149 which the school's students feed until the student graduates from high school.

150 (12) Notwithstanding any other provision of this part, a student shall be allowed to
151 enroll in any charter school or other public school in any district, including a district where the

152 student does not reside, if the enrollment is necessary, as determined by the Division of Child
153 and Family Services, to comply with the provisions of 42 U.S.C. Section 675.

154 Section 2. Section **53A-11-101.5** is amended to read:

155 **53A-11-101.5. Compulsory education.**

156 (1) For purposes of this section:

157 (a) "Intentionally" is as defined in Section 76-2-103[;].

158 (b) "Recklessly" is as defined in Section 76-2-103[;].

159 (c) "Remainder of the school year" means the portion of the school year beginning on
160 the day after the day on which the notice of compulsory education violation described in
161 Subsection (3) is served and ending on the last day of the school year[; and].

162 (d) "School-age child" means a school-age minor under the age of 14.

163 (2) Except as provided in Section 53A-11-102 or 53A-11-102.5, the parent of a
164 school-age minor shall enroll and send the school-age minor to a public or regularly established
165 private school [~~during the school year of the district in which the school-age minor resides~~].

166 (3) A school administrator, a designee of a school administrator, or a truancy specialist
167 may issue a notice of compulsory education violation to a parent of a school-age child if the
168 school-age child is absent without a valid excuse at least five times during the school year.

169 (4) The notice of compulsory education violation, described in Subsection (3):

170 (a) shall direct the parent of the school-age child to:

171 (i) meet with school authorities to discuss the school-age child's school attendance
172 problems; and

173 (ii) cooperate with the school board, local charter board, or school district in securing
174 regular attendance by the school-age child;

175 (b) shall designate the school authorities with whom the parent is required to meet;

176 (c) shall state that it is a class B misdemeanor for the parent of the school-age child to
177 intentionally or recklessly:

178 (i) fail to meet with the designated school authorities to discuss the school-age child's
179 school attendance problems; or

180 (ii) fail to prevent the school-age child from being absent without a valid excuse five or
181 more times during the remainder of the school year;

182 (d) shall be served on the school-age child's parent by personal service or certified

183 mail; and

184 (e) may not be issued unless the school-age child has been truant at least five times
185 during the school year.

186 (5) It is a class B misdemeanor for a parent of a school-age minor to intentionally or
187 recklessly fail to enroll the school-age minor in school, unless the school-age minor is exempt
188 from enrollment under Section 53A-11-102 or 53A-11-102.5.

189 (6) It is a class B misdemeanor for a parent of a school-age child to, after being served
190 with a notice of compulsory education violation in accordance with Subsections (3) and (4),
191 intentionally or recklessly:

192 (a) fail to meet with the school authorities designated in the notice of compulsory
193 education violation to discuss the school-age child's school attendance problems; or

194 (b) fail to prevent the school-age child from being absent without a valid excuse five or
195 more times during the remainder of the school year.

196 (7) A local school board, local charter board, or school district shall report violations of
197 this section to the appropriate county or district attorney.

198 (8) The juvenile court has jurisdiction over an action filed under this section.

199 Section 3. Section **62A-4a-205** is amended to read:

200 **62A-4a-205. Child and family plan -- Parent-time.**

201 (1) No more than 45 days after a child enters the temporary custody of the division, the
202 child's child and family plan shall be finalized.

203 (2) (a) The division [~~shall~~] may use an interdisciplinary team approach in developing
204 each child and family plan.

205 (b) The interdisciplinary team described in Subsection (2)(a) [~~shall include, but is not~~
206 ~~limited to,~~] may include representatives from the following fields:

207 (i) mental health;

208 (ii) education; and

209 (iii) if appropriate, law enforcement.

210 (3) (a) The division shall involve all of the following in the development of a child's
211 child and family plan:

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

213 (ii) the child;

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

215 (iv) if appropriate, the child's stepparent.

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

219 (c) (i) The division shall make a substantial effort to develop a child and family plan
220 with which the child's parents agree.

221 (ii) If a parent does not agree with a child and family plan:

222 (A) the division shall strive to resolve the disagreement between the division and the
223 parent; and

224 (B) if the disagreement is not resolved, the division shall inform the court of the
225 disagreement.

226 (4) A copy of the child and family plan shall, immediately upon completion, or as soon
227 as reasonably possible thereafter, be provided to the:

228 (a) guardian ad litem;

229 (b) child's natural parents; and

230 (c) child's foster parents.

231 (5) Each child and family plan shall:

232 (a) specifically provide for the safety of the child, in accordance with federal law; and

233 (b) clearly define what actions or precautions will, or may be, necessary to provide for
234 the health, safety, protection, and welfare of the child.

235 (6) The child and family plan shall set forth, with specificity, at least the following:

236 (a) the reason the child entered into the custody of the division;

237 (b) documentation of the:

238 (i) reasonable efforts made to prevent placement of the child in the custody of the
239 division; or

240 (ii) emergency situation that existed and that prevented the reasonable efforts described
241 in Subsection (6)(b)(i), from being made;

242 (c) the primary permanency goal for the child and the reason for selection of that goal;

243 (d) the concurrent permanency goal for the child and the reason for the selection of that
244 goal;

- 245 (e) if the plan is for the child to return to the child's family:
246 (i) specifically what the parents must do in order to enable the child to be returned
247 home;
248 (ii) specifically how the requirements described in Subsection (6)(e)(i) may be
249 accomplished; and
250 (iii) how the requirements described in Subsection (6)(e)(i) will be measured;
251 (f) the specific services needed to reduce the problems that necessitated placing the
252 child in the division's custody;
253 (g) the name of the person who will provide for and be responsible for case
254 management;
255 (h) subject to Subsection (10), a parent-time schedule between the natural parent and
256 the child;
257 (i) subject to Subsection (7), the health and mental health care to be provided to
258 address any known or diagnosed mental health needs of the child;
259 (j) if residential treatment rather than a foster home is the proposed placement, a
260 requirement for a specialized assessment of the child's health needs including an assessment of
261 mental illness and behavior and conduct disorders; and
262 (k) social summaries that include case history information pertinent to case planning.
263 (7) (a) Subject to Subsection (7)(b), in addition to the information required under
264 Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental
265 health needs of a child, if the child:
266 (i) is placed in residential treatment; and
267 (ii) has medical or mental health issues that need to be addressed.
268 (b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate
269 medical or mental health diagnosis of the parent's child from a licensed practitioner of the
270 parent's choice.
271 (8) (a) Each child and family plan shall be specific to each child and the child's family,
272 rather than general.
273 (b) The division shall train its workers to develop child and family plans that comply
274 with:
275 (i) federal mandates; and

- 276 (ii) the specific needs of the particular child and the child's family.
- 277 (c) All child and family plans and expectations shall be individualized and contain
- 278 specific time frames.
- 279 (d) Subject to Subsection (8)(h), child and family plans shall address problems that:
- 280 (i) keep a child in placement; and
- 281 (ii) keep a child from achieving permanence in the child's life.
- 282 (e) Each child and family plan shall be designed to minimize disruption to the normal
- 283 activities of the child's family, including employment and school.
- 284 (f) In particular, the time, place, and amount of services, hearings, and other
- 285 requirements ordered by the court in the child and family plan shall be designed, as much as
- 286 practicable, to help the child's parents maintain or obtain employment.
- 287 (g) The child's natural parents, foster parents, and where appropriate, stepparents, shall
- 288 be kept informed of and supported to participate in important meetings and procedures related
- 289 to the child's placement.
- 290 (h) For purposes of Subsection (8)(d), a child and family plan may only include
- 291 requirements that:
- 292 (i) address findings made by the court; or
- 293 (ii) (A) are requested or consented to by a parent or guardian of the child; and
- 294 (B) are agreed to by the division and the guardian ad litem.
- 295 (9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three
- 296 years of age or younger, if the goal is not to return the child home, the permanency plan for that
- 297 child shall be adoption.
- 298 (b) Notwithstanding Subsection (9)(a), if the division documents to the court that there
- 299 is a compelling reason that adoption, reunification, guardianship, and a placement described in
- 300 Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another
- 301 planned permanent living arrangement in accordance with federal law.
- 302 (10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a
- 303 court order issued pursuant to Subsections 78A-6-312(2)(a)(ii) and (b).
- 304 (b) Notwithstanding Subsection (10)(a), the person designated by the division or a
- 305 court to supervise a parent-time session may deny parent-time for that session if the supervising
- 306 person determines that, based on the parent's condition, it is necessary to deny parent-time in

307 order to:

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

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

310 (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by

311 contact with the parent.

312 (c) In determining whether the condition of the parent described in Subsection (10)(b)

313 will traumatize a child, the person supervising the parent-time session shall consider the impact

314 that the parent's condition will have on the child in light of:

315 (i) the child's fear of the parent; and

316 (ii) the nature of the alleged abuse or neglect.

317 Section 4. Section **63I-1-278** is amended to read:

318 **63I-1-278. Repeal dates, Title 78A and Title 78B.**

319 (1) The Office of the Court Administrator, created in Section 78A-2-105, is repealed

320 July 1, 2018.

321 [~~2~~] Foster care citizen review boards and steering committee, created in Title 78B,

322 Chapter 8, Part 1, is repealed July 1, 2012.]

323 [~~3~~] (2) Alternative Dispute Resolution Act, created in Title 78B, Chapter 6, Part 2, is

324 repealed July 1, 2016.

325 [~~4~~] (3) Section 78B-3-421, regarding medical malpractice arbitration agreements, is

326 repealed July 1, 2009.

327 [~~5~~] (4) The case management program coordinator in Subsection 78A-2-108(4) is

328 repealed July 1, 2009.

329 Section 5. Section **78A-6-115** is amended to read:

330 **78A-6-115. Hearings -- Record -- County attorney or district attorney**

331 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**

332 **evidence.**

333 (1) (a) A verbatim record of the proceedings shall be taken by an official court reporter

334 or by means of a mechanical recording device in all cases that might result in deprivation of

335 custody as defined in this chapter. In all other cases a verbatim record shall also be made

336 unless dispensed with by the court.

337 (b) (i) Notwithstanding any other provision, including Title 63G, Chapter 2,

338 Government Records Access and Management Act, a record of a proceeding made under
339 Subsection (1)(a) shall be released by the court to any person upon a finding on the record for
340 good cause.

341 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the
342 court shall:

343 (A) provide notice to all subjects of the record that a request for release of the record
344 has been made; and

345 (B) allow sufficient time for the subjects of the record to respond before making a
346 finding on the petition.

347 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the
348 court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the
349 request.

350 (iv) For purposes of this Subsection (1)(b):

351 (A) "record of a proceeding" does not include documentary materials of any type
352 submitted to the court as part of the proceeding, including items submitted under Subsection
353 (4)(a); and

354 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal
355 guardian, the Division of Child and Family Services, and any other party to the proceeding.

356 ~~[(v) This Subsection (1)(b) applies:]~~

357 ~~[(A) to records of proceedings made on or after November 1, 2003 in districts selected~~
358 ~~by the Judicial Council as pilot districts under Subsection 78A-2-104(15); and]~~

359 ~~[(B) to records of proceedings made on or after July 1, 2004 in all other districts.]~~

360 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
361 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
362 case.

363 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child
364 and Family Services, and this chapter, relating to:

365 (i) protection or custody of an abused, neglected, or dependent child; and

366 (ii) petitions for termination of parental rights.

367 (c) The attorney general shall represent the Division of Child and Family Services in
368 actions involving a minor who is not adjudicated as abused or neglected, but who is otherwise

369 committed to the custody of that division by the juvenile court, and who is classified in the
370 division's management information system as having been placed in custody primarily on the
371 basis of delinquent behavior or a status offense. Nothing in this Subsection (2)(c) may be
372 construed to affect the responsibility of the county attorney or district attorney to represent the
373 state in those matters, in accordance with the provisions of Subsection (2)(a).

374 (3) The board may adopt special rules of procedure to govern proceedings involving
375 violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings
376 involving offenses under Section 78A-6-606 are governed by that section regarding suspension
377 of driving privileges.

378 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
379 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and
380 in hearings upon petitions for termination of parental rights, written reports and other material
381 relating to the minor's mental, physical, and social history and condition may be received in
382 evidence and may be considered by the court along with other evidence. The court may require
383 that the person who wrote the report or prepared the material appear as a witness if the person
384 is reasonably available.

385 (b) For the purpose of determining proper disposition of a minor alleged to be or
386 adjudicated as abused, neglected, or dependent, dispositional reports prepared by [~~Foster Care~~
387 ~~Citizen Review Boards pursuant to Section 78B-8-103~~] the division under Section 78A-6-315
388 may be received in evidence and may be considered by the court along with other evidence.
389 The court may require any person who participated in preparing the dispositional report to
390 appear as a witness, if the person is reasonably available.

391 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the
392 commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under
393 Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or
394 their counsel any information which the party:

395 (i) plans to report to the court at the proceeding; or
396 (ii) could reasonably expect would be requested of the party by the court at the
397 proceeding.

398 (b) The disclosure required under Subsection (5)(a) shall be made:

399 (i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than

400 five days before the proceeding;

401 (ii) for proceedings under Title 78A, Chapter 6, Part 5, Termination of Parental Rights
402 Act, in accordance with Utah Rules of Civil Procedure; and

403 (iii) for all other proceedings, no less than five days before the proceeding.

404 (c) If a party to a proceeding obtains information after the deadline in Subsection
405 (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the
406 party certifies to the court that the information was obtained after the deadline.

407 (d) Subsection (5)(a) does not apply to:

408 (i) pretrial hearings; and

409 (ii) the frequent, periodic review hearings held in a dependency drug court case to
410 assess and promote the parent's progress in substance abuse treatment.

411 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
412 may, in its discretion, consider evidence of statements made by a child under eight years of age
413 to a person in a trust relationship.

414 Section 6. Section **78A-6-312** is amended to read:

415 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

416 (1) The court may:

417 (a) make any of the dispositions described in Section 78A-6-117;

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

419 (i) individual; or

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

421 (c) order:

422 (i) protective supervision;

423 (ii) family preservation;

424 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

425 (iv) other services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

457 (ii) A permanency hearing shall be conducted in accordance with Subsection
458 78A-6-314(1)(b) within 30 days if something other than reunification is initially established as
459 a minor's primary permanency goal.

460 (iii) (A) The court may amend a minor's primary permanency goal before the
461 establishment of a final permanency plan under Section 78A-6-314.

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

464 (C) If, at any time, the court determines that reunification is no longer a minor's
465 primary permanency goal, the court shall conduct a permanency hearing in accordance with
466 Section 78A-6-314 on or before the earlier of:

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

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

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

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

476 (ii) The court shall:

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

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

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

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

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

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

490 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined
491 to be inconsistent with the final permanency plan for the minor established pursuant to Section
492 78A-6-314, then measures shall be taken, in a timely manner, to:

493 (A) place the minor in accordance with the permanency plan; and
494 (B) complete whatever steps are necessary to finalize the permanent placement of the
495 minor.

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

498 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by
499 the court in accordance with Section 78A-6-314 at the expiration of the time period for
500 reunification services.

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

503 (iii) If reunification services are not ordered, a permanency hearing shall be conducted
504 within 30 days, in accordance with Section 78A-6-314.

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

507 (i) hold a permanency hearing eight months after the date of the initial removal,
508 pursuant to Section 78A-6-314; and

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

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

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

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

517 (i) When a court conducts a permanency hearing for a minor under Section 78A-6-314,
518 the court shall attempt to keep the minor's sibling group together if keeping the sibling group
519 together is:

520 (i) practicable; and

521 (ii) in accordance with the best interest of the minor.

522 (3) (a) Because of the state's interest in and responsibility to protect and provide
523 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a

524 parent's interest in receiving reunification services is limited.

525 (b) The court may determine that:

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

528 (ii) reunification services should not be provided.

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

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

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

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

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

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

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

543 (III) is being removed due to additional physical abuse, sexual abuse, or sexual
544 exploitation;

545 (D) the parent:

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

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

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

549 (Bb) child abuse homicide;

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

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

555 offending parent;

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

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

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

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

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

565 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
566 from at least two medical or mental health professionals, who are not associates, establishing
567 that, even with the provision of services, the parent is not likely to be capable of adequately
568 caring for the minor within 12 months from the day on which the court finding is made.

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

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

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

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

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

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

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

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

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

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

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

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

- 590 (i) the age of the minor;
- 591 (ii) the degree of parent-child bonding;
- 592 (iii) the length of the sentence;
- 593 (iv) the nature of the treatment;
- 594 (v) the nature of the crime or illness;
- 595 (vi) the degree of detriment to the minor if services are not offered;
- 596 (vii) for a minor ten years of age or older, the minor's attitude toward the
597 implementation of family reunification services; and
- 598 (viii) any other appropriate factors.

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

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

604 (7) If, pursuant to Subsections (3)(d)(i)(B) through (K), the court does not order
605 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
606 with Section 78A-6-314.

607 Section 7. Section **78A-6-314** is amended to read:

608 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**
609 **parental rights filed -- Hearing on termination of parental rights.**

610 (1) (a) When reunification services have been ordered in accordance with Section
611 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family
612 Services, a permanency hearing shall be held by the court no later than 12 months after the
613 original removal of the minor.

614 (b) If reunification services were not ordered at the dispositional hearing, a permanency
615 hearing shall be held within 30 days from the date of the dispositional hearing.

616 (2) (a) If reunification services were ordered by the court in accordance with Section

617 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection
618 (3), whether the minor may safely be returned to the custody of the minor's parent.

619 (b) If the court finds, by a preponderance of the evidence, that return of the minor
620 would create a substantial risk of detriment to the minor's physical or emotional well-being, the
621 minor may not be returned to the custody of the minor's parent.

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

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

625 (ii) comply with a court approved child and family plan in whole or in part; or

626 (iii) meet the goals of a court approved child and family plan.

627 (3) In making a determination under Subsection (2)(a), the court shall review and
628 consider:

629 (a) the report prepared by the Division of Child and Family Services;

630 (b) any admissible evidence offered by the minor's guardian ad litem;

631 (c) any report [~~prepared by a foster care citizen review board pursuant to Section~~
632 ~~78B-8-103~~] submitted by the division under Subsection 78A-6-315(3)(a)(i);

633 (d) any evidence regarding the efforts or progress demonstrated by the parent; and

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

636 (4) (a) With regard to a case where reunification services were ordered by the court, if
637 a minor is not returned to the minor's parent or guardian at the permanency hearing, the court
638 shall:

639 (i) order termination of reunification services to the parent;

640 (ii) make a final determination regarding whether termination of parental rights,
641 adoption, or permanent custody and guardianship is the most appropriate final plan for the
642 minor, taking into account the minor's primary permanency goal established by the court
643 pursuant to Section 78A-6-312; and

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

646 (b) If the Division of Child and Family Services documents to the court that there is a
647 compelling reason that adoption, reunification, guardianship, and a placement described in

648 Subsection 78A-6-306(6)(e) are not in the minor's best interest, the court may order another
649 planned permanent living arrangement, in accordance with federal law.

650 (c) If the minor clearly desires contact with the parent, the court shall take the minor's
651 desire into consideration in determining the final plan.

652 (d) Consistent with Subsection (4)(e), the court may not extend reunification services
653 beyond 12 months from the date the minor was initially removed from the minor's home, in
654 accordance with the provisions of Section 78A-6-312, except that the court may extend
655 reunification services for no more than 90 days if the court finds that:

656 (i) there has been substantial compliance with the child and family plan;

657 (ii) reunification is probable within that 90-day period; and

658 (iii) the extension is in the best interest of the minor.

659 (e) (i) In no event may any reunification services extend beyond 15 months from the
660 date the minor was initially removed from the minor's home.

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

663 (f) The court may, in its discretion:

664 (i) enter any additional order that it determines to be in the best interest of the minor,
665 so long as that order does not conflict with the requirements and provisions of Subsections
666 (4)(a) through (e); or

667 (ii) order the division to provide protective supervision or other services to a minor and
668 the minor's family after the division's custody of a minor has been terminated.

669 (5) If the final plan for the minor is to proceed toward termination of parental rights,
670 the petition for termination of parental rights shall be filed, and a pretrial held, within 45
671 calendar days after the permanency hearing.

672 (6) (a) Any party to an action may, at any time, petition the court for an expedited
673 permanency hearing on the basis that continuation of reunification efforts are inconsistent with
674 the permanency needs of the minor.

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

676 (i) the minor be placed in accordance with the permanency plan; and

677 (ii) whatever steps are necessary to finalize the permanent placement of the minor be
678 completed as quickly as possible.

679 (7) Nothing in this section may be construed to:

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

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

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

685 (8) (a) Subject to Subsection (8)(b), if a petition for termination of parental rights is
686 filed prior to the date scheduled for a permanency hearing, the court may consolidate the
687 hearing on termination of parental rights with the permanency hearing.

688 (b) For purposes of Subsection (8)(a), if the court consolidates the hearing on
689 termination of parental rights with the permanency hearing:

690 (i) the court shall first make a finding regarding whether reasonable efforts have been
691 made by the Division of Child and Family Services to finalize the permanency goal for the
692 minor; and

693 (ii) any reunification services shall be terminated in accordance with the time lines
694 described in Section 78A-6-312.

695 (c) A decision on a petition for termination of parental rights shall be made within 18
696 months from the day on which the minor is removed from the minor's home.

697 (9) If a court determines that a child will not be returned to a parent of the child, the
698 court shall consider appropriate placement options inside and outside of the state.

699 Section 8. Section **78A-6-315** is amended to read:

700 **78A-6-315. Periodic review hearings.**

701 ~~[(1) Pursuant to federal law, periodic review hearings shall be held no less frequently~~
702 ~~than once every six months, either by the court or by a foster care citizen review board, in~~
703 ~~accordance with the provisions of Title 78B, Chapter 8, Part 1, Foster Care Citizen Review~~
704 ~~Board. In districts or areas where foster care citizen review boards have not been established,~~
705 ~~either the court or the Division of Child and Family Services shall conduct the review. In~~
706 ~~districts where they are established, foster care citizen review boards shall be considered to be~~
707 ~~the panels described in 42 U.S.C. Sections 675(5) and (6), which are required to conduct~~
708 ~~periodic reviews unless court reviews are conducted.]~~

709 (1) At least every six months, the division or the court shall conduct a periodic review

710 of the status of each child in the custody of the division, until the court terminates the division's
711 custody of the child.

712 (2) (a) The review described in Subsection (1) shall be conducted in accordance with
713 the requirements of the case review system described in 42 U.S.C. Section 675.

714 (b) If a review described in Subsection (1) is conducted by the division, the division
715 shall:

716 (i) conduct the review in accordance with the administrative review requirements of 42
717 U.S.C. Section 675; and

718 (ii) to the extent practicable, involve volunteer citizens in the administrative review
719 process.

720 ~~[(2)]~~ (3) (a) Within 30 days after completion of a review~~[, a foster care citizen review~~
721 ~~board shall submit]~~ conducted by the division, the division shall:

722 (i) submit a copy of its dispositional report to the court to be made a part of the court's
723 legal file~~;~~ and

724 (ii) provide ~~[copies to all parties to an action. In districts or areas where the Division~~
725 ~~of Child and Family Services conducts a review, it shall provide copies of its report to the court~~
726 ~~and to all parties within 30 days after completion of its review]~~ a copy of the dispositional
727 report to each party in the case to which the review relates.

728 ~~(b) [In accordance with Section 78B-8-103, dispositional reports of foster care citizen~~
729 ~~review boards shall be received and reviewed by the court]~~ The court shall receive and review
730 each dispositional report submitted under Subsection (3)(a)(i) in the same manner as the court
731 receives and reviews ~~[the reports]~~ a report described in Section 78A-6-605. ~~[The report by a~~
732 ~~board, if]~~

733 (c) If a report submitted under Subsection (3)(a)(i) is determined to be an ex parte
734 communication with a judge, the report shall be considered a communication authorized by
735 law. ~~[Foster care citizen review board dispositional reports]~~

736 (d) A report described in Subsection (3)(a)(i) may be received as evidence, and may be
737 considered by the court along with other evidence. The court may require any person who
738 participated in the dispositional report to appear as a witness if the person is reasonably
739 available.

740 Section 9. Section **78A-6-317** is amended to read:

741 **78A-6-317. All proceedings -- Persons entitled to be present.**

742 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
743 pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any
744 relative providing care for the child, are:

745 (a) entitled to notice of, and to be present at, each hearing and proceeding held under
746 this part, including administrative [~~and citizen~~] reviews; and

747 (b) have a right to be heard at each hearing and proceeding described in Subsection
748 (1)(a).

749 (2) A child shall be represented at each hearing by the guardian ad litem appointed to
750 the child's case by the court. The child has a right to be present at each hearing, subject to the
751 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

752 (3) (a) The parent or guardian of a child who is the subject of a petition under this part
753 has the right to be represented by counsel, and to present evidence, at each hearing.

754 (b) When it appears to the court that a parent or guardian of the child desires counsel
755 but is financially unable to afford and cannot for that reason employ counsel, and the child has
756 been placed in out-of-home care, or the petitioner is recommending that the child be placed in
757 out-of-home care, the court shall appoint counsel.

758 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court
759 shall order that the child be represented by a guardian ad litem, in accordance with Section
760 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance
761 with the requirements of that section, at the shelter hearing and at all subsequent court and
762 administrative proceedings, including any proceeding for termination of parental rights in
763 accordance with Part 5, Termination of Parental Rights Act.

764 (5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other
765 provision of law:

766 (i) counsel for all parties to the action shall be given access to all records, maintained
767 by the division or any other state or local public agency, that are relevant to the abuse, neglect,
768 or dependency proceeding under this chapter; and

769 (ii) if the natural parent of a child is not represented by counsel, the natural parent shall
770 have access to the records described in Subsection (5)(a)(i).

771 (b) The disclosures described in Subsection (5)(a) are not required in the following

772 circumstances:

773 (i) subject to Subsection (5)(c), the division or other state or local public agency did not
774 originally create the record being requested;

775 (ii) disclosure of the record would jeopardize the life or physical safety of a child who
776 has been a victim of abuse or neglect, or any person who provided substitute care for the child;

777 (iii) disclosure of the record would jeopardize the anonymity of the person or persons
778 making the initial report of abuse or neglect or any others involved in the subsequent
779 investigation;

780 (iv) disclosure of the record would jeopardize the life or physical safety of a person
781 who has been a victim of domestic violence; or

782 (v) the record is a report maintained in the Management Information System, for which
783 a finding of unsubstantiated, unsupported, or without merit has been made, unless the person
784 requesting the information is the alleged perpetrator in the report or counsel for the alleged
785 perpetrator in the report.

786 (c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the
787 person making the request of the following:

788 (i) the existence of all records in the possession of the division or any other state or
789 local public agency;

790 (ii) the name and address of the person or agency that originally created the record; and

791 (iii) that the person must seek access to the record from the person or agency that
792 originally created the record.

793 ~~[(6) (a) The appropriate foster care citizen review board shall be given access to all
794 records, maintained by the division or any other state or local public agency, that are relevant to
795 an abuse, neglect, or dependency proceeding under this chapter.]~~

796 ~~[(b) Representatives of the appropriate foster care citizen review board are entitled to
797 be present at each hearing held under this part, but notice is not required to be provided.]~~

797a **H→ Section 10. Section 78A-6-508 is amended to read:**

797b **78A-6-508. Evidence of grounds for termination.**

797c **(1) In determining whether a parent or parents have abandoned a child, it is prima facie
797d evidence of abandonment that the parent or parents:**

797e **(a) although having legal custody of the child, have surrendered physical custody of the child,
797f and for a period of six months following the surrender have not manifested to the child or to the
797g person having the physical custody of the child a firm intention to resume physical custody or to make
797h arrangements for the care of the child;**

797i **(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;**

797j **Ĥ→** (c) failed to have shown the normal interest of a natural parent, without just cause; or
 797k (d) have abandoned an infant, as described in Subsection 78A-6-316(1).

797l (2) In determining whether a parent or parents are unfit or have neglected a child the court
 797m shall consider, but is not limited to, the following circumstances, conduct, or conditions:

797n (a) emotional illness, mental illness, or mental deficiency of the parent that renders the parent
 797o unable to care for the immediate and continuing physical or emotional needs of the child for extended
 797p periods of time;

797q (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

797r (c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous drugs
 797s that render the parent unable to care for the child;

797t (d) repeated or continuous failure to provide the child with adequate food, clothing, shelter,
 797u education, or other care necessary for the child's physical, mental, and emotional health and
 797v development by a parent or parents who are capable of providing that care;

797w (e) whether the parent is incarcerated as a result of conviction of a felony, and the sentence is
 797x of such length that the child will be deprived of a normal home for more than one year; or

797y (f) a history of violent behavior.

797z (3) A parent who, legitimately practicing the parent's religious beliefs, does not provide
 797aa specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

797ab (4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit
 797ac because of a health care decision made for a child by the child's parent unless the state or other party
 797ad to the proceeding shows, by clear and convincing evidence, that the health care decision is not
 797ae reasonable and informed.

797af (b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to obtain a
 797ag second health care opinion.

797ah (5) If a child has been placed in the custody of the division and the parent or parents fail to
 797ai comply substantially with the terms and conditions of a plan within six months after the date on which
 797aj the child was placed or the plan was commenced, whichever occurs later, that failure to comply is
 797ak evidence of failure of parental adjustment.

797al (6) The following circumstances constitute prima facie evidence of unfitness:

797am (a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child,
 797an due to known or substantiated abuse or neglect by the parent or parents;

797ao (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate
 797ap the unfitness of the parent to provide adequate care to the extent necessary for the child's physical,
 797aq mental, or emotional health and development;

797ar (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the
 797as child; [~~or~~]

797at (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to **←Ĥ**

797au commit murder or manslaughter of a child or child abuse homicide [;] ; or
797av (e) the parent intentionally, knowingly, or recklessly causes the death of another parent of the
797aw child, without legal justification. ←Ĥ

798 Section ~~Ĥ~~→ [10] 11 ←Ĥ . Section 78A-6-902 is amended to read:

799 **78A-6-902. Appointment of attorney guardian ad litem -- Right of refusal --**
800 **Duties and responsibilities -- Training -- Trained staff and court-appointed special**
801 **advocate volunteers -- Costs -- Immunity -- Annual report.**

802 (1) (a) The court:

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

805 (ii) shall consider the best interest of a minor, consistent with the provisions of Section
806 62A-4a-201, in determining whether to appoint a guardian ad litem.

807 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a
808 finding that establishes the necessity of the appointment.

809 (2) An attorney guardian ad litem shall represent the best interest of each child who
810 may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of
811 the day that:

812 (a) the child is removed from the child's home by the division; or

813 (b) the petition is filed.

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

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

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

818 (i) applicable statutory, regulatory, and case law; and

819 (ii) accordance with the United States Department of Justice National Court Appointed
820 Special Advocate Association guidelines;

821 (c) conduct or supervise an independent investigation in order to obtain first-hand, a
822 clear understanding of the situation and needs of the minor;

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

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

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

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

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

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

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

833 (h) be familiar with local experts who can provide consultation and testimony

834 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
835 Family Services to:

836 (i) maintain a minor in the minor's home; or

837 (ii) reunify a child with the child's parent;

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

840 (i) the status of the minor's case;

841 (ii) all court and administrative proceedings;

842 (iii) discussions with, and proposals made by, other parties;

843 (iv) court action; and

844 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be
845 provided to the minor;

846 (j) review proposed orders for, and as requested by the court;

847 (k) prepare proposed orders with clear and specific directions regarding services,
848 treatment, evaluation, assessment, and protection of the minor and the minor's family; and

849 (l) personally or through a trained volunteer, paralegal, or other trained staff, monitor
850 implementation of a minor's child and family plan and any dispositional orders to:

851 (i) determine whether services ordered by the court:

852 (A) are actually provided; and

853 (B) are provided in a timely manner; and

854 (ii) attempt to assess whether services ordered by the court are accomplishing the
855 intended goal of the services.

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

860 (b) The attorney guardian ad litem described in Subsection (4)(a) may not delegate the
861 attorney's responsibilities described in Subsection (3).

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

865 (d) The court may use volunteers trained in accordance with the requirements of
866 Subsection (4)(c) to assist in investigation and preparation of information regarding the cases
867 of individual minors within the jurisdiction.

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

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

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

- 875 (i) all costs resulting from the appointment of an attorney guardian ad litem; and
876 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

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

879 (c) (i) When the court appoints an attorney guardian ad litem under this section, the
880 court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer
881 expenses against the child's parents, parent, or legal guardian in a proportion that the court
882 determines to be just and appropriate.

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

884 (A) a legal guardian, when that guardian is the state; or

885 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

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

888 (i) require that person to submit an affidavit of impecuniosity as provided in Section
889 78A-2-302; and

890 (ii) follow the procedures and make the determinations as provided in Section
891 78A-2-304.

892 (7) An attorney guardian ad litem appointed under this section, when serving in the
893 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee
894 of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental
895 Immunity Act of Utah.

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

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

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

902 (d) The court may appoint one attorney guardian ad litem to represent the best interests
903 of more than one child of a marriage.

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

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

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

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

910 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian
911 ad litem are confidential and may not be released or made public upon subpoena, search
912 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter
913 2, Government Records Access and Management Act.

914 (b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:

915 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative
916 Subpoena Powers; and

917 (ii) shall be released to the Legislature.

918 (c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with
919 Subsection (11)(b) shall be maintained as confidential by the Legislature.

920 (ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor
921 General may include summary data and nonidentifying information in its audits and reports to
922 the Legislature.

923 (d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct,
924 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

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

926 (B) the state's role and responsibility:

- 927 (I) to provide a guardian ad litem program; and
- 928 (II) as parens patriae, to protect minors.
- 929 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
- 930 guardian ad litem by the Legislature, through legislative subpoena.
- 931 (e) The Office of the Guardian Ad Litem shall present an annual report to the Child
- 932 Welfare Legislative Oversight Panel detailing:
 - 933 (i) the development, policy, and management of the statewide guardian ad litem
 - 934 program;
 - 935 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and
 - 936 (iii) the number of minors served by the Office of the Guardian Ad Litem.
- 937 Section ~~H~~→ [H] 12 ←~~H~~ . Repealer.
- 938 This bill repeals:
 - 939 Section **78B-8-101, Title.**
 - 940 Section **78B-8-102, Definitions.**
 - 941 Section **78B-8-103, Foster Care Citizen Review Board Steering Committee --**
 - 942 **Membership -- Chair -- Duties.**
 - 943 Section **78B-8-104, Compensation -- Expenses -- Per Diem.**
 - 944 Section **78B-8-105, Rulemaking.**
 - 945 Section **78B-8-106, Reports.**
 - 946 Section **78B-8-107, Gifts -- Grants -- Donations.**
 - 947 Section **78B-8-108, Foster care citizen review boards -- Membership -- Procedures**
 - 948 **-- Division responsibilities.**
 - 949 Section **78B-8-109, Periodic reviews -- Notice -- Participants.**
 - 950 Section **78B-8-110, Dispositional report.**

Legislative Review Note
 as of 12-17-08 10:45 AM

Office of Legislative Research and General Counsel

H.B. 63 - Amendments to Child Welfare

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
