

CHILD PROTECTION REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions of the Utah Human Services Code and the Juvenile Court Act of 1996 relating to the performance monitoring system of the Division of Child and Family Services (DCFS), the interviewing of children in DCFS custody, and the provision of reunification services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to the performance monitoring system of DCFS;
- ▶ prohibits DCFS from consenting to the interview of a child in DCFS' custody by a law enforcement officer, unless consent for the interview is obtained from the child's guardian ad litem;
- ▶ provides for the extension of time, under certain circumstances, during which reunification services may be provided; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 78A-6-312, as last amended by Laws of Utah 2009, Chapter 161

30 78A-6-314, as last amended by Laws of Utah 2009, Chapter 161

31 ENACTS:

32 62A-4a-415, Utah Code Annotated 1953

33 REPEALS AND REENACTS:

34 62A-4a-117, as last amended by Laws of Utah 2009, Chapter 75



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

37 Section 1. Section 62A-4a-117 is repealed and reenacted to read:

38 **62A-4a-117. Performance monitoring system -- Annual report.**

39 (1) As used in this section:

40 (a) "Committee" means the state qualitative improvement committee, established by
41 the division to provide community and professional input on the performance of the division.

42 (b) "Performance indicators" means actual performance in a program, activity, or other
43 function for which there is a performance standard.

44 (c) (i) "Performance standards" means the targeted or expected level of performance of
45 each area in the child welfare system, including:

46 (A) child protection services;

47 (B) adoption;

48 (C) foster care; and

49 (D) other substitute care.

50 (ii) "Performance standards" includes the performance goals and measures in effect in
51 2008 that the division was subject to under federal court oversight, as amended pursuant to

52 Subsection (2), including:

53 (A) the qualitative case review; and

54 (B) the case process review.

55 (2) (a) The division may not amend the performance standards unless the amendment
56 is:

57 (i) necessary and proper for the effective administration of the division; or

58 (ii) necessary to comply with, or implement changes in, the law.

59 (b) Before amending the performance standards, the division shall provide written
60 notice of the proposed amendment to the committee.

61 (c) The notice described in Subsection (2)(b) shall include:

62 (i) the proposed amendment;

63 (ii) a summary of the reason for the proposed amendment; and

64 (iii) the proposed effective date of the amendment.

65 (d) Within 45 days after the day on which the division provides the notice described in
66 Subsection (2)(b) to the committee, the committee shall provide to the division written
67 comments on the proposed amendment.

68 (e) The division may not implement a proposed amendment to the performance
69 standards until the earlier of:

70 (i) seven days after the day on which the division receives the written comments
71 regarding the proposed change described in Subsection (2)(d); or

72 (ii) 52 days after the day on which the division provides the notice described in
73 Subsection (2)(b) to the committee.

74 (f) The division shall:

75 (i) give full, fair, and good faith consideration to all comments and objections received
76 from the committee;

77 (ii) notify the committee in writing of:

78 (A) the division's decision regarding the proposed amendment; and

79 (B) the reasons that support the decision;

80 (iii) include complete information on all amendments to the performance standards in
81 the report described in Subsection (4); and

82 (iv) post the changes on the division's website.

83 (3) The division shall maintain a performance monitoring system to regularly:

84 (a) collect information on performance indicators; and

85 (b) compare performance indicators to performance standards.

86 (4) Before January 1 each year the director shall submit a written report to the Child
87 Welfare Legislative Oversight Panel and the Joint Health and Human Services Appropriations
88 Subcommittee that includes:

89 (a) a comparison between the performance indicators for the prior fiscal year and the

90 performance standards;

91 (b) for each performance indicator that does not meet the performance standard:

92 (i) the reason the standard was not met;

93 (ii) the measures that need to be taken to meet the standard; and

94 (iii) the division's plan to comply with the standard for the current fiscal year;

95 (c) data on the extent to which new and experienced division employees have received
96 training pursuant to statute and division policy; and

97 (d) an analysis of the use and efficacy of in-home services, both before and after
98 removal of a child from the child's home.

99 Section 2. Section **62A-4a-415** is enacted to read:

100 **62A-4a-415. Law enforcement interviews of children in state custody.**

101 (1) Except as provided in Subsection (2), the division may not consent to the interview
102 of a child in the division's custody by a law enforcement officer, unless consent for the
103 interview is obtained from the child's guardian ad litem.

104 (2) Subsection (1) does not apply if a guardian ad litem is not appointed for the child.

105 Section 3. Section **78A-6-312** is amended to read:

106 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

107 (1) The court may:

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

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

110 (i) individual; or

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

112 (c) order:

113 (i) protective supervision;

114 (ii) family preservation;

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

116 (iv) other services.

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

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

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

120 (B) determine whether, in view of the primary permanency goal, reunification services

121 are appropriate for the minor and the minor's family, pursuant to Subsection (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

148 (ii) A permanency hearing shall be conducted in accordance with Subsection
149 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
150 something other than reunification is initially established as a minor's primary permanency
151 goal.

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

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

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

159 (I) 30 days ~~[from]~~ after the day on which the court makes the determination described
160 in this Subsection (2)(c)(iii)(C); or

161 ~~[(H) 12 months from the day on which the minor was first removed from the minor's~~
162 ~~home.]~~

163 (II) the day on which the provision of reunification services, described in Section
164 78A-6-314, ends.

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

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

170 (ii) The court shall:

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

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

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

178 (iii) (A) The time period for reunification services may not exceed 12 months from the
179 date that the minor was initially removed from the minor's home, unless the time period is
180 extended under Subsection 78A-6-314(8).

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

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

185 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined
186 to be inconsistent with the final permanency plan for the minor established pursuant to Section
187 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

196 (ii) ~~H~~→ [f] The [h] [Unless the time for the provision of reunification services is extended
196a under

197 Subsection 78A-6-314(8), a ←~~H~~ permanency hearing shall be held no later than 12 months after the
198 original removal of the minor.

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

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

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

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

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

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

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

213 (i) When a court conducts a permanency hearing for a minor under Section 78A-6-314,

214 the court shall attempt to keep the minor's sibling group together if keeping the sibling group
215 together is:

216 (i) practicable; and

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

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

221 (b) The court may determine that:

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

224 (ii) reunification services should not be provided.

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

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

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

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

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

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

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

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

241 (D) the parent:

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

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

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

245 (Bb) child abuse homicide;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

276 successful; and

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

278 (5) (a) If reunification services are not ordered pursuant to Subsection (3)[~~(a)~~], and the
279 whereabouts of a parent become known within six months [~~of~~] after the day on which the
280 out-of-home placement of the minor is made, the court may order the division to provide
281 reunification services.

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

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

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

287 (i) the age of the minor;

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

289 (iii) the length of the sentence;

290 (iv) the nature of the treatment;

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

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

293 (vii) for a minor 10 years of age or older, the minor's attitude toward the
294 implementation of family reunification services; and

295 (viii) any other appropriate factors.

296 (c) Reunification services for an incarcerated parent are subject to the [~~12-month~~] time
297 limitation imposed in Subsection (2).

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

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

304 Section 4. Section **78A-6-314** is amended to read:

305 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**
306 **parental rights filed -- Hearing on termination of parental rights.**

307 (1) (a) When reunification services have been ordered in accordance with Section
308 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family
309 Services, a permanency hearing shall be held by the court no later than 12 months after the
310 ~~[original removal of]~~ day on which the minor was initially removed from the minor's home.

311 (b) If reunification services were not ordered at the dispositional hearing, a permanency
312 hearing shall be held within 30 days ~~[from the date of]~~ after the day on which the dispositional
313 hearing ends.

314 (2) (a) If reunification services were ordered by the court in accordance with Section
315 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection
316 (3), whether the minor may safely be returned to the custody of the minor's parent.

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

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

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

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

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

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

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

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

329 (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);

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

331 (e) the extent to which the parent cooperated and ~~[availed himself of]~~ utilized the
332 services provided.

333 (4) ~~[(a)]~~ With regard to a case where reunification services were ordered by the court, if
334 a minor is not returned to the minor's parent or guardian at the permanency hearing, the court
335 shall, unless the time for the provision of reunification services is extended under Subsection
336 (8):

337 ~~[(i)]~~ (a) order termination of reunification services to the parent;

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

342 [(iii)] (c) establish a concurrent plan that identifies the second most appropriate final
343 plan for the minor.

344 [(b)] (5) If the Division of Child and Family Services documents to the court that there
345 is a compelling reason that adoption, reunification, guardianship, and a placement described in
346 Subsection 78A-6-306(6)(e) are not in the minor's best interest, the court may order another
347 planned permanent living arrangement, in accordance with federal law.

348 [(e)] (6) If the minor clearly desires contact with the parent, the court shall take the
349 minor's desire into consideration in determining the final plan.

350 [(d)] (7) [~~Consistent with Subsection (4)(e)~~] Except as provided in Subsection (8), the
351 court may not extend reunification services beyond 12 months [from the date] after the day on
352 which the minor was initially removed from the minor's home, in accordance with the
353 provisions of Section 78A-6-312[~~, except that the~~].

354 (8) (a) Subject to Subsection (8)(b), the court may extend reunification services for no
355 more than 90 days if the court finds, beyond a preponderance of the evidence, that:

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

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

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

359 [(e)] (b) (i) [~~In no event may~~] Except as provided in Subsection (8)(c), the court may
360 not extend any reunification services [extend] beyond 15 months [from the date] after the day
361 on which the minor was initially removed from the minor's home.

362 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a
363 basis for the court to extend services for that parent beyond [~~that~~] the 12-month period
364 described in Subsection (7).

365 (c) In accordance with Subsection (8)(d), the court may extend reunification services
366 for one additional 90-day period, beyond the 90-day period described in Subsection (8)(a), if:

367 (i) the court finds, by clear and convincing evidence, that:

368 (A) the parent has substantially complied with the child and family plan;

369 (B) it is likely that reunification will occur within the additional 90-day period; and
370 (C) the extension is in the best interest of the child;
371 (ii) the court specifies the facts upon which the findings described in Subsection
372 (8)(c)(i) are based; and
373 (iii) the court specifies the time-period in which it is likely that reunification will occur.
374 (d) A court may not extend the time-period for reunification services without
375 complying with the requirements of this Subsection (8) before the extension.
376 (e) In determining whether to extend reunification services for a minor, a court shall
377 take into consideration the status of the minor siblings of the minor.
378 [~~(f)~~] (9) The court may, in its discretion:
379 [~~(i)~~] (a) enter any additional order that it determines to be in the best interest of the
380 minor, so long as that order does not conflict with the requirements and provisions of
381 Subsections (4)[~~(a)~~] through [~~(e)~~] (8); or
382 [~~(ii)~~] (b) order the division to provide protective supervision or other services to a
383 minor and the minor's family after the division's custody of a minor has been terminated.
384 [~~(5)~~] (10) If the final plan for the minor is to proceed toward termination of parental
385 rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45
386 calendar days after the permanency hearing.
387 [~~(6)~~] (11) (a) Any party to an action may, at any time, petition the court for an
388 expedited permanency hearing on the basis that continuation of reunification efforts are
389 inconsistent with the permanency needs of the minor.
390 (b) If the court so determines, it shall order, in accordance with federal law, that:
391 (i) the minor be placed in accordance with the permanency plan; and
392 (ii) whatever steps are necessary to finalize the permanent placement of the minor be
393 completed as quickly as possible.
394 [~~(7)~~] (12) Nothing in this section may be construed to:
395 (a) entitle any parent to reunification services for any specified period of time;
396 (b) limit a court's ability to terminate reunification services at any time prior to a
397 permanency hearing; or
398 (c) limit or prohibit the filing of a petition for termination of parental rights by any
399 party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

400 [~~(8)~~] (13) (a) Subject to Subsection [~~(8)~~] (13)(b), if a petition for termination of
401 parental rights is filed prior to the date scheduled for a permanency hearing, the court may
402 consolidate the hearing on termination of parental rights with the permanency hearing.

403 (b) For purposes of Subsection [~~(8)~~] (13)(a), if the court consolidates the hearing on
404 termination of parental rights with the permanency hearing:

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

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

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

412 [~~(9)~~] (14) If a court determines that a child will not be returned to a parent of the child,
413 the court shall consider appropriate placement options inside and outside of the state.

Legislative Review Note
as of 1-5-10 1:10 PM

Office of Legislative Research and General Counsel

H.B. 239 - Child Protection Revisions

Fiscal Note

2010 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.
