

1 REUNIFICATION SERVICES AMENDMENTS

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Merlynn T. Newbold

5 Senate Sponsor: Allen M. Christensen

7 LONG TITLE

8 General Description:

9 This bill amends provisions of the Juvenile Court Act of 1996 relating to the provision
10 of reunification services.

11 Highlighted Provisions:

12 This bill:

12a **H→** ► defines terms; ←H

13 ► creates a presumption that reunification services should not be provided to a birth
14 mother if the court finds, by clear and convincing evidence, that at the time of birth
15 the child has fetal alcohol syndrome or fetal drug dependency, unless the mother
16 agrees to immediately enroll in, is currently enrolled in, or **H→** , after using the substance that

16a resulted in fetal alcohol syndrome or fetal drug dependency, ←H has successfully
17 completed, a treatment program approved by the **H→** [~~Division of Child and Family~~] Department of
17a Human ←H

18 Services; and

19 ► makes technical changes.

20 Money Appropriated in this Bill:

21 None

22 Other Special Clauses:

23 None

24 Utah Code Sections Affected:

25 AMENDS:

26 **62A-4a-205**, as last amended by Laws of Utah 2009, Chapter 161

26a **H→** 78A-6-301, as enacted by Laws of Utah 2008, Chapter 3 **78A-6-301, as enacted by Laws**
26b of Utah 2008, Chapter 3 ←H

27 **78A-6-312**, as last amended by Laws of Utah 2010, Chapter 322



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

Section 1. Section **62A-4a-205** is amended to read:

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

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

(2) (a) The division may use an interdisciplinary team approach in developing each child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:

- (i) mental health;
- (ii) education; and
- (iii) if appropriate, law enforcement.

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

- (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- (ii) the child;
- (iii) the child's foster parents; and
- (iv) if appropriate, the child's stepparent.

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

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

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

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

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

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

- 59 (a) guardian ad litem;
- 60 (b) child's natural parents; and
- 61 (c) child's foster parents.
- 62 (5) Each child and family plan shall:
- 63 (a) specifically provide for the safety of the child, in accordance with federal law; and
- 64 (b) clearly define what actions or precautions will, or may be, necessary to provide for
- 65 the health, safety, protection, and welfare of the child.
- 66 (6) The child and family plan shall set forth, with specificity, at least the following:
- 67 (a) the reason the child entered into the custody of the division;
- 68 (b) documentation of the:
- 69 (i) reasonable efforts made to prevent placement of the child in the custody of the
- 70 division; or
- 71 (ii) emergency situation that existed and that prevented the reasonable efforts described
- 72 in Subsection (6)(b)(i), from being made;
- 73 (c) the primary permanency goal for the child and the reason for selection of that goal;
- 74 (d) the concurrent permanency goal for the child and the reason for the selection of that
- 75 goal;
- 76 (e) if the plan is for the child to return to the child's family:
- 77 (i) specifically what the parents must do in order to enable the child to be returned
- 78 home;
- 79 (ii) specifically how the requirements described in Subsection (6)(e)(i) may be
- 80 accomplished; and
- 81 (iii) how the requirements described in Subsection (6)(e)(i) will be measured;
- 82 (f) the specific services needed to reduce the problems that necessitated placing the
- 83 child in the division's custody;
- 84 (g) the name of the person who will provide for and be responsible for case
- 85 management;
- 86 (h) subject to Subsection (10), a parent-time schedule between the natural parent and
- 87 the child;
- 88 (i) subject to Subsection (7), the health and mental health care to be provided to
- 89 address any known or diagnosed mental health needs of the child;

90 (j) if residential treatment rather than a foster home is the proposed placement, a
91 requirement for a specialized assessment of the child's health needs including an assessment of
92 mental illness and behavior and conduct disorders; and

93 (k) social summaries that include case history information pertinent to case planning.

94 (7) (a) Subject to Subsection (7)(b), in addition to the information required under
95 Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental
96 health needs of a child, if the child:

97 (i) is placed in residential treatment; and

98 (ii) has medical or mental health issues that need to be addressed.

99 (b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate
100 medical or mental health diagnosis of the parent's child from a licensed practitioner of the
101 parent's choice.

102 (8) (a) Each child and family plan shall be specific to each child and the child's family,
103 rather than general.

104 (b) The division shall train its workers to develop child and family plans that comply
105 with:

106 (i) federal mandates; and

107 (ii) the specific needs of the particular child and the child's family.

108 (c) All child and family plans and expectations shall be individualized and contain
109 specific time frames.

110 (d) Subject to Subsection (8)(h), child and family plans shall address problems that:

111 (i) keep a child in placement; and

112 (ii) keep a child from achieving permanence in the child's life.

113 (e) Each child and family plan shall be designed to minimize disruption to the normal
114 activities of the child's family, including employment and school.

115 (f) In particular, the time, place, and amount of services, hearings, and other
116 requirements ordered by the court in the child and family plan shall be designed, as much as
117 practicable, to help the child's parents maintain or obtain employment.

118 (g) The child's natural parents, foster parents, and where appropriate, stepparents, shall
119 be kept informed of and supported to participate in important meetings and procedures related
120 to the child's placement.

121 (h) For purposes of Subsection (8)(d), a child and family plan may only include
122 requirements that:

123 (i) address findings made by the court; or

124 (ii) (A) are requested or consented to by a parent or guardian of the child; and

125 (B) are agreed to by the division and the guardian ad litem.

126 (9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three
127 years of age or younger, if the goal is not to return the child home, the permanency plan for that
128 child shall be adoption.

129 (b) Notwithstanding Subsection (9)(a), if the division documents to the court that there
130 is a compelling reason that adoption, reunification, guardianship, and a placement described in
131 Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another
132 planned permanent living arrangement in accordance with federal law.

133 (10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a
134 court order issued pursuant to Subsections 78A-6-312[~~(2)(a)(ii) and (b)~~](3), (6), and (7).

135 (b) Notwithstanding Subsection (10)(a), the person designated by the division or a
136 court to supervise a parent-time session may deny parent-time for that session if the supervising
137 person determines that, based on the parent's condition, it is necessary to deny parent-time in
138 order to:

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

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

141 (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by
142 contact with the parent.

143 (c) In determining whether the condition of the parent described in Subsection (10)(b)
144 will traumatize a child, the person supervising the parent-time session shall consider the impact
145 that the parent's condition will have on the child in light of:

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

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

147a **H→ Section 2. Section 78A-6-301 is amended to read:**

147b **78A-6-301. Definitions.**

147c **As used in this part:**

147d **(1) "Custody" means the custody of a minor in the Division of Child and Family Services as of**
147e **the date of disposition.**

147f **(2) "Fetal drug dependency" means that a child is born dependent on a controlled substance,**
147g **as defined in Section 58-37-2, that was unlawfully used by the child's mother during pregnancy.**

147h **[~~2~~] (3) "Protective custody" means the shelter of a child by the Division of Child and**
147i **Family Services from the time the child is removed from home until the earlier of:**

147j **(a) the shelter hearing; or**

147k **(b) the child's return home.**
147l ~~[(3)]~~ **(4) "Temporary custody" means the custody of a child in the Division of Child and**
147m **Family Services from the date of the shelter hearing until disposition. ←H**
148 Section ~~H~~→ ~~[2]~~ **3 ←H** . Section **78A-6-312** is amended to read:
149 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**
150 (1) The court may:
151 (a) make any of the dispositions described in Section 78A-6-117;

- 152 (b) place the minor in the custody or guardianship of any:
- 153 (i) individual; or
- 154 (ii) public or private entity or agency; or
- 155 (c) order:
- 156 (i) protective supervision;
- 157 (ii) family preservation;
- 158 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or
- 159 (iv) other services.

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

162 ~~[(A)]~~ (a) establish a primary permanency goal for the minor; and

163 ~~[(B)]~~ (b) determine whether, in view of the primary permanency goal, reunification
 164 services are appropriate for the minor and the minor's family, pursuant to ~~[Subsection (3)]~~

165 Subsections ~~H~~→ ~~(21) and~~ (20) through ←~~H~~ (22).

166 ~~[(ii)]~~ (3) Subject to ~~[Subsection (2)(b)]~~ Subsections (6) and (7), if the court determines
 167 that reunification services are appropriate for the minor and the minor's family, the court shall
 168 provide for reasonable parent-time with the parent or parents from whose custody the minor
 169 was removed, unless parent-time is not in the best interest of the minor.

170 ~~[(iii)-(A)]~~ (4) In cases where obvious sexual abuse, sexual exploitation, abandonment,
 171 severe abuse, or severe neglect are involved, neither the division nor the court has any duty to
 172 make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or
 173 to attempt to rehabilitate the offending parent or parents.

174 ~~[(B)]~~ (5) In all cases, the minor's health, safety, and welfare shall be the court's
 175 paramount concern in determining whether reasonable efforts to reunify should be made.

176 ~~[(b)-(i)]~~ (6) For purposes of Subsection ~~[(2)(a)(ii)]~~ (3), parent-time is in the best
 177 interests of a minor unless the court makes a finding that it is necessary to deny parent-time in
 178 order to:

179 ~~[(A)]~~ (a) protect the physical safety of the minor;

180 ~~[(B)]~~ (b) protect the life of the minor; or

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

183 ~~[(ii)]~~ (7) Notwithstanding Subsection ~~[(2)(a)(ii)]~~ (3), a court may not deny parent-time
184 based solely on a parent's failure to:

185 ~~[(A)]~~ (a) prove that the parent has not used legal or illegal substances; or
186 ~~[(B)]~~ (b) comply with an aspect of the child and family plan that is ordered by the
187 court.

188 ~~[(c)(i)]~~ (8) In addition to the primary permanency goal, the court shall establish a
189 concurrent permanency goal that shall include:

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

192 ~~[(B)]~~ (b) an explanation of the effect of abandoning or modifying the primary
193 permanency goal.

194 ~~[(i)]~~ (9) A permanency hearing shall be conducted in accordance with Subsection
195 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
196 something other than reunification is initially established as a minor's primary permanency
197 goal.

198 ~~[(iii)(A)]~~ (10) (a) The court may amend a minor's primary permanency goal before the
199 establishment of a final permanency plan under Section 78A-6-314.

200 ~~[(B)]~~ (b) The court is not limited to the terms of the concurrent permanency goal in the
201 event that the primary permanency goal is abandoned.

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

205 ~~[(i)]~~ (i) 30 days after the day on which the court makes the determination described in
206 this Subsection ~~[(2)(c)(iii)(C)]~~ (10)(c); or

207 ~~[(ii)]~~ (ii) the day on which the provision of reunification services, described in Section
208 78A-6-314, ends.

209 ~~[(d)(i)(A)]~~ (11) (a) If the court determines that reunification services are appropriate,
210 it shall order that the division make reasonable efforts to provide services to the minor and the
211 minor's parent for the purpose of facilitating reunification of the family, for a specified period
212 of time.

213 ~~[(B)]~~ (b) In providing the services described in Subsection ~~[(2)(d)(i)(A)]~~ (11)(a), the

214 minor's health, safety, and welfare shall be the division's paramount concern, and the court
215 shall so order.

216 [~~ii~~] (12) The court shall:

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

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

221 [~~C~~] (c) identify on the record the responsibilities described in Subsection
222 [~~2~~]~~(d)~~~~(ii)~~~~(B)~~ (12)(b), for the purpose of assisting in any future determination regarding the
223 provision of reasonable efforts, in accordance with state and federal law.

224 [~~iii~~]~~(A)~~ (13)(a) The time period for reunification services may not exceed 12 months
225 from the date that the minor was initially removed from the minor's home, unless the time
226 period is extended under Subsection 78A-6-314(8).

227 [~~B~~] (b) Nothing in this section may be construed to entitle any parent to an entire 12
228 months of reunification services.

229 [~~iv~~] (14)(a) If reunification services are ordered, the court may terminate those
230 services at any time.

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

234 [~~A~~] (i) place the minor in accordance with the permanency plan; and

235 [~~B~~] (ii) complete whatever steps are necessary to finalize the permanent placement of
236 the minor.

237 [~~e~~] (15) Any physical custody of the minor by the parent or a relative during the
238 period described in ~~H~~→ **[Subsection]** ←~~H~~ [~~2~~]~~(d)~~

238a ~~H~~→ **[13]** **Subsections (11) through (14)** ←~~H~~ does not interrupt the running of the period.

239 [~~f~~]~~(i)~~ (16)(a) If reunification services are ordered, a permanency hearing shall be
240 conducted by the court in accordance with Section 78A-6-314 at the expiration of the time
241 period for reunification services.

242 [~~ii~~] (b) The permanency hearing shall be held no later than 12 months after the
243 original removal of the minor.

244 [~~iii~~] (c) If reunification services are not ordered, a permanency hearing shall be

245 conducted within 30 days, in accordance with Section 78A-6-314.

246 ~~[(g)]~~ (17) With regard to a minor who is 36 months of age or younger at the time the
247 minor is initially removed from the home, the court shall:

248 ~~[(i)]~~ (a) hold a permanency hearing eight months after the date of the initial removal,
249 pursuant to Section 78A-6-314; and

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

253 ~~[(h)]~~ (18) With regard to a minor in the custody of the division whose parent or parents
254 are ordered to receive reunification services but who have abandoned that minor for a period of
255 six months from the date that reunification services were ordered:

256 ~~[(i)]~~ (a) the court shall terminate reunification services; and

257 ~~[(ii)]~~ (b) the division shall petition the court for termination of parental rights.

258 ~~[(i)]~~ (19) When a court conducts a permanency hearing for a minor under Section
259 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
260 sibling group together is:

261 ~~[(i)]~~ (a) practicable; and

262 ~~[(ii)]~~ (b) in accordance with the best interest of the minor.

263 ~~[(3)]~~ (20) (a) Because of the state's interest in and responsibility to protect and provide
264 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
265 parent's interest in receiving reunification services is limited.

266 (b) The court may determine that:

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

269 (ii) reunification services should not be provided.

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

273 ~~[(d)]~~ ~~[(i)]~~ (21) There is a presumption that reunification services should not be provided
274 to a parent if the court finds, by clear and convincing evidence, that any of the following
275 circumstances exist:

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

278 ~~[(B)]~~ (b) subject to Subsection ~~[(3)(d)(ii)]~~ (22), the parent is suffering from a mental
 279 illness of such magnitude that it renders the parent incapable of utilizing reunification services;

280 ~~[(C)]~~ (c) the minor was previously adjudicated as an abused child due to physical
 281 abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

282 ~~[(F)]~~ (i) was removed from the custody of the minor's parent;

283 ~~[(H)]~~ (ii) was subsequently returned to the custody of the parent; and

284 ~~[(HH)]~~ (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
 285 exploitation;

286 ~~[(D)]~~ (d) the parent:

287 ~~[(F)]~~ (i) caused the death of another minor through abuse or neglect; or

288 ~~[(H)]~~ (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

289 ~~[(Aa)]~~ (A) murder or manslaughter of a child; or

290 ~~[(Bb)]~~ (B) child abuse homicide;

291 ~~[(E)]~~ (e) the minor suffered severe abuse by the parent or by any person known by the
 292 parent, if the parent knew or reasonably should have known that the person was abusing the
 293 minor;

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

297 ~~[(G)]~~ (g) the parent's rights are terminated with regard to any other minor;

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

300 ~~[(F)]~~ (i) the parent has abandoned the minor for a period of six months or longer;

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

304 (k) with respect to a parent who is the child's birth mother, at the time of birth the child
 305 has fetal alcohol syndrome or fetal drug dependency, unless the mother agrees to immediately
 306 enroll in, is currently enrolled in, or ~~H~~→ , after using the substance that resulted in fetal alcohol
 306a syndrome or fetal drug dependency, ←~~H~~ has successfully completed, a program approved by the

307 ~~H~~→ [division] department ←~~H~~ , as follows:

308 (i) if the child is born with fetal alcohol syndrome, an alcohol abuse treatment
 309 program;

310 (ii) if the child is born with fetal drug dependency, a drug abuse treatment program; or

311 (iii) if the child is born with both fetal alcohol syndrome and fetal drug dependency, an
 312 alcohol abuse and drug abuse treatment program; or

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

315 ~~[(ii)]~~ (22) The finding under Subsection ~~[(3)(d)(i)(B)]~~ (21)(b) shall be based on
 316 competent evidence from at least two medical or mental health professionals, who are not
 317 associates, establishing that, even with the provision of services, the parent is not likely to be
 318 capable of adequately caring for the minor within 12 months after the day on which the court
 319 finding is made.

320 ~~[(4)]~~ (23) In determining whether reunification services are appropriate, the court shall
 321 take into consideration:

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

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

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

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

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

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

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

333 ~~[(5)]~~ (24) (a) If reunification services are not ordered pursuant to ~~[Subsection (3)]~~
 334 Subsections (20) through (22), and the whereabouts of a parent become known within six
 335 months after the day on which the out-of-home placement of the minor is made, the court may
 336 order the division to provide reunification services.

337 (b) The time limits described in ~~[Subsection (2)]~~ Subsections ~~H~~→ [(9), (10), (13), and (16)]

338 ~~through (18)~~ (2) ~~through (19)~~ ←Ĥ are not tolled by the parent's absence.

339 [(6)] (25) (a) If a parent is incarcerated or institutionalized, the court shall order
340 reasonable services unless it determines that those services would be detrimental to the minor.

341 (b) In making the determination described in Subsection [(6)] (25)(a), the court shall
342 consider:

343 (i) the age of the minor;

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

345 (iii) the length of the sentence;

346 (iv) the nature of the treatment;

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

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

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

351 (viii) any other appropriate factors.

352 (c) Reunification services for an incarcerated parent are subject to the time [limitation]
353 limitations imposed in [~~Subsection (2)~~] Subsections Ĥ→ [(9), (10), (13), and (16) through (18)] (2)
353a through (19) ←Ĥ .

354 (d) Reunification services for an institutionalized parent are subject to the time
355 [limitation] limitations imposed in [~~Subsection (2)~~] Subsections (9), (10), (13), and (16)
356 through (18), unless the court determines that continued reunification services would be in the
357 minor's best interest.

358 [(7)] (26) If, pursuant to Subsections [(3)(d)(i)(B) through (K)] (21)(b) through (l), the
359 court does not order reunification services, a permanency hearing shall be conducted within 30
360 days, in accordance with Section 78A-6-314.

Legislative Review Note

as of 1-13-11 10:44 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 216, 2011 General Session

SHORT TITLE: Reunification Services Amendments

SPONSOR: Newbold, M.

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.