

Representative Merlynn T. Newbold proposes the following substitute bill:

REUNIFICATION SERVICES AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merlynn T. Newbold

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a presumption that reunification services should not be provided to a birth mother if the court finds, by clear and convincing evidence, that the child has fetal alcohol syndrome or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed, a substance abuse treatment program approved by the Department of Human Services;
- ▶ permits a judge to waive the provisions of this bill under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **62A-4a-205**, as last amended by Laws of Utah 2009, Chapter 161

30 **78A-6-312**, as last amended by Laws of Utah 2010, Chapter 322

31

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

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

34 **62A-4a-205. Child and family plan -- Parent-time.**

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

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

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

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

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

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

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

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

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

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

57 parent; and

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

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

62 (a) guardian ad litem;

63 (b) child's natural parents; and

64 (c) child's foster parents.

65 (5) Each child and family plan shall:

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

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

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

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

71 (b) documentation of the:

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

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

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

77 (d) the concurrent permanency goal for the child and the reason for the selection of that
78 goal;

79 (e) if the plan is for the child to return to the child's family:

80 (i) specifically what the parents must do in order to enable the child to be returned
81 home;

82 (ii) specifically how the requirements described in Subsection (6)(e)(i) may be
83 accomplished; and

84 (iii) how the requirements described in Subsection (6)(e)(i) will be measured;

85 (f) the specific services needed to reduce the problems that necessitated placing the
86 child in the division's custody;

87 (g) the name of the person who will provide for and be responsible for case

88 management;

89 (h) subject to Subsection (10), a parent-time schedule between the natural parent and
90 the child;

91 (i) subject to Subsection (7), the health and mental health care to be provided to
92 address any known or diagnosed mental health needs of the child;

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

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

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

100 (i) is placed in residential treatment; and

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

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

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

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

109 (i) federal mandates; and

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

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

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

114 (i) keep a child in placement; and

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

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

118 (f) In particular, the time, place, and amount of services, hearings, and other

119 requirements ordered by the court in the child and family plan shall be designed, as much as
120 practicable, to help the child's parents maintain or obtain employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 Section 2. Section **78A-6-312** is amended to read:

152 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

153 (1) The court may:

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

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

156 (i) individual; or

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

158 (c) order:

159 (i) protective supervision;

160 (ii) family preservation;

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

162 (iv) other services.

163 (2) [~~(a)~~-(i)] Whenever the court orders continued removal at the dispositional hearing,

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

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

166 [~~(B)~~] (b) determine whether, in view of the primary permanency goal, reunification

167 services are appropriate for the minor and the minor's family, pursuant to [~~Subsection (3)~~]

168 Subsections (20) through (22).

169 [~~(ii)~~] (3) Subject to [~~Subsection (2)(b)~~] Subsections (6) and (7), if the court determines

170 that reunification services are appropriate for the minor and the minor's family, the court shall

171 provide for reasonable parent-time with the parent or parents from whose custody the minor

172 was removed, unless parent-time is not in the best interest of the minor.

173 [~~(iii)~~-(A)] (4) In cases where obvious sexual abuse, sexual exploitation, abandonment,

174 severe abuse, or severe neglect are involved, neither the division nor the court has any duty to

175 make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or

176 to attempt to rehabilitate the offending parent or parents.

177 [~~(B)~~] (5) In all cases, the minor's health, safety, and welfare shall be the court's

178 paramount concern in determining whether reasonable efforts to reunify should be made.

179 [~~(b)~~-(i)] (6) For purposes of Subsection [~~(2)(a)(ii)~~] (3), parent-time is in the best

180 interests of a minor unless the court makes a finding that it is necessary to deny parent-time in

181 order to:

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

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

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

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

188 ~~[(A)]~~ (a) prove that the parent has not used legal or illegal substances; or

189 ~~[(B)]~~ (b) comply with an aspect of the child and family plan that is ordered by the
190 court.

191 ~~[(e)(i)]~~ (8) In addition to the primary permanency goal, the court shall establish a
192 concurrent permanency goal that shall include:

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

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

197 ~~[(ii)]~~ (9) A permanency hearing shall be conducted in accordance with Subsection
198 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
199 something other than reunification is initially established as a minor's primary permanency
200 goal.

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

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

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

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

210 ~~[(H)]~~ (ii) the day on which the provision of reunification services, described in Section
211 78A-6-314, ends.

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

216 ~~[(B)]~~ (b) In providing the services described in Subsection ~~[(2)(d)(i)(A)]~~ (11)(a), the
217 minor's health, safety, and welfare shall be the division's paramount concern, and the court
218 shall so order.

219 ~~[(i)]~~ (12) The court shall:

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

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

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

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

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

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

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

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

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

240 ~~[(e)]~~ (15) Any physical custody of the minor by the parent or a relative during the
241 period described in ~~[Subsection (2)(d)]~~ Subsections (11) through (14) does not interrupt the
242 running of the period.

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

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

248 ~~[(iii)]~~ (c) If reunification services are not ordered, a permanency hearing shall be
249 conducted within 30 days, in accordance with Section 78A-6-314.

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

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

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

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

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

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

262 ~~[(i)]~~ (19) When a court conducts a permanency hearing for a minor under Section
263 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
264 sibling group together is:

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

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

267 ~~[(3)]~~ (20) (a) Because of the state's interest in and responsibility to protect and provide
268 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
269 parent's interest in receiving reunification services is limited.

270 (b) The court may determine that:

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

273 (ii) reunification services should not be provided.

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

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

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

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

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

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

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

288 ~~[(H)]~~ (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
289 exploitation;

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

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

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

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

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

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

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

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

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

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

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

308 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
 309 birth mother, the child has fetal alcohol syndrome or was exposed to an illegal or prescription
 310 drug that was abused by the child's mother while the child was in utero, if the child was taken
 311 into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled
 312 in, or has recently and successfully completed, a substance abuse ~~H~~→ treatment ←~~H~~ program
 312a approved by the
 313 department; or

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

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

321 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under
 322 the circumstances of the case, that the substance abuse treatment described in Subsection
 323 (21)(k) is not warranted.

324 ~~[(4)]~~ (23) In determining whether reunification services are appropriate, the court shall
 325 take into consideration:

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

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

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

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

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

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

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

337 [~~(5)~~] (24) (a) If reunification services are not ordered pursuant to [~~Subsection (3)~~]

338 Subsections (20) through (22), and the whereabouts of a parent become known within six

339 months after the day on which the out-of-home placement of the minor is made, the court may

340 order the division to provide reunification services.

341 (b) The time limits described in [~~Subsection (2)~~] Subsections (2) through (19) are not

342 tolled by the parent's absence.

343 [~~(6)~~] (25) (a) If a parent is incarcerated or institutionalized, the court shall order

344 reasonable services unless it determines that those services would be detrimental to the minor.

345 (b) In making the determination described in Subsection [~~(6)~~] (25)(a), the court shall

346 consider:

347 (i) the age of the minor;

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

349 (iii) the length of the sentence;

350 (iv) the nature of the treatment;

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

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

353 (vii) for a minor 10 years of age or older, the minor's attitude toward the

354 implementation of family reunification services; and

355 (viii) any other appropriate factors.

356 (c) Reunification services for an incarcerated parent are subject to the time [~~limitation~~]

357 limitations imposed in [~~Subsection (2)~~] Subsections (2) through (19).

358 (d) Reunification services for an institutionalized parent are subject to the time

359 [~~limitation~~] limitations imposed in [~~Subsection (2)~~] Subsections ~~H~~→ ~~(9), (10), (13),~~

359a and ~~(16)~~

360 through ~~(18)~~ (2) through (19) ←~~H~~, unless the court determines that continued reunification

360a services would be in the

361 minor's best interest.

362 [~~(7)~~] (26) If, pursuant to Subsections [~~(3)(d)(i)(B) through (K)~~] (21)(b) through (l), the

363 court does not order reunification services, a permanency hearing shall be conducted within 30

364 days, in accordance with Section 78A-6-314.

FISCAL NOTE

H.B. 216 1st Sub. (Buff)

SHORT TITLE: Reunification Services Amendments

SPONSOR: **Newbold, M.**

2011 GENERAL SESSION, 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 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.