

Representative Wayne A. Harper proposes the following substitute bill:

JUVENILE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Human Services Code and the Juvenile Court Act of 1996 in relation to juveniles.

Highlighted Provisions:

This bill:

- ▶ makes an exception to the requirement that consent to interview a child who is in the custody of the Division of Child and Family Services be obtained from the child's guardian ad litem if the child is 14 years of age or older, or if:
 - the child is interviewed solely in relation to a matter in which the child is not a suspect; and
 - the interview is recorded, unless exigent circumstances exist that make recording impracticable;
- ▶ gives the court the option to identify in writing, rather than on the record, the responsibilities of a parent under a child and family plan; 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-415**, as enacted by Laws of Utah 2010, Chapter 322

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-415** is amended to read:

34 **62A-4a-415. Law enforcement interviews of children in state custody.**

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

38 (2) Subsection (1) does not apply if:

39 (a) a guardian ad litem is not appointed for the child[-];

40 (b) (i) the child is interviewed solely in relation to a matter in which the child is not a
41 suspect; and

42 (ii) the interview is recorded, unless exigent circumstances exist that make recording
43 impracticable; or

44 (c) the child is 14 years of age or older.

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

46 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

47 (1) The court may:

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

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

50 (i) individual; or

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

52 (c) order:

53 (i) protective supervision;

54 (ii) family preservation;

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

56 (iv) other services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 (ii) A permanency hearing shall be conducted in accordance with Subsection
89 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
90 something other than reunification is initially established as a minor's primary permanency
91 goal.

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

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

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

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

101 (II) the day on which the provision of reunification services, described in Section
102 78A-6-314, ends.

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

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

108 (ii) The court shall:

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

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

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

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

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

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

123 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined
124 to be inconsistent with the final permanency plan for the minor established pursuant to Section
125 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

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

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

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

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

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

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

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

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

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

153 (i) practicable; and

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

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

158 (b) The court may determine that:

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

161 (ii) reunification services should not be provided.

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

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

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

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

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

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

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

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

178 (D) the parent:

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

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

- 181 (Aa) murder or manslaughter of a child; or
182 (Bb) child abuse homicide;
183 (E) the minor suffered severe abuse by the parent or by any person known by the
184 parent, if the parent knew or reasonably should have known that the person was abusing the
185 minor;
186 (F) the minor is adjudicated an abused child as a result of severe abuse by the parent,
187 and the court finds that it would not benefit the minor to pursue reunification services with the
188 offending parent;
189 (G) the parent's rights are terminated with regard to any other minor;
190 (H) the minor is removed from the minor's home on at least two previous occasions
191 and reunification services were offered or provided to the family at those times;
192 (I) the parent has abandoned the minor for a period of six months or longer;
193 (J) the parent permitted the child to reside, on a permanent or temporary basis, at a
194 location where the parent knew or should have known that a clandestine laboratory operation
195 was located; or
196 (K) any other circumstance that the court determines should preclude reunification
197 efforts or services.
198 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
199 from at least two medical or mental health professionals, who are not associates, establishing
200 that, even with the provision of services, the parent is not likely to be capable of adequately
201 caring for the minor within 12 months after the day on which the court finding is made.
202 (4) In determining whether reunification services are appropriate, the court shall take
203 into consideration:
204 (a) failure of the parent to respond to previous services or comply with a previous child
205 and family plan;
206 (b) the fact that the minor was abused while the parent was under the influence of
207 drugs or alcohol;
208 (c) any history of violent behavior directed at the child or an immediate family
209 member;
210 (d) whether a parent continues to live with an individual who abused the minor;
211 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

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

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

215 (5) (a) If reunification services are not ordered pursuant to Subsection (3), and the
216 whereabouts of a parent become known within six months after the day on which the
217 out-of-home placement of the minor is made, the court may order the division to provide
218 reunification services.

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

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

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

224 (i) the age of the minor;

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

226 (iii) the length of the sentence;

227 (iv) the nature of the treatment;

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

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

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

232 (viii) any other appropriate factors.

233 (c) Reunification services for an incarcerated parent are subject to the time limitation
234 imposed in Subsection (2).

235 (d) Reunification services for an institutionalized parent are subject to the time
236 limitation imposed in Subsection (2), unless the court determines that continued reunification
237 services would be in the minor's best interest.

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

FISCAL NOTE

H.B. 207 1st Sub. (Buff)

SHORT TITLE: **Juvenile Amendments**

SPONSOR: **Harper, W.**

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 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.