

## HB0161S02 compared with HB0161

~~text~~ shows text that was in HB0161 but was deleted in HB0161S02.

inserted text shows text that was not in HB0161 but was inserted into HB0161S02.

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Representative LaVar Christensen proposes the following substitute bill:

### RIGHTS OF PARENTS AND CHILDREN

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** LaVar Christensen

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies Title 62A, Chapter 4a, Child and Family Services~~, Title 78A, Chapter 4, Court of Appeals,~~ and Title 78A, Chapter 6, Juvenile Court Act of 1996, by affirming parental rights, amending procedures regarding the Division of Child and Family Services, and amending court procedures regarding the termination of parental rights.

##### Highlighted Provisions:

This bill:

- ▶ requires the Judiciary, Law Enforcement, and Criminal Justice Interim Committee to study issues regarding the rights of parents and children during the 2012 interim and report findings in the 2013 General Session;
- ▶ affirms parental rights in relation to the rights of the state;

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- ▶ requires the court to consider the protections of parental rights ~~{described in Section 62A-4a-201}~~ before terminating parental rights;
- ▶ emphasizes the importance of ~~{in-home}~~ in-home services and kinship placement over other forms of state intervention;
- ~~{~~ → states that a court shall hold a permanency review hearing 12 months after the date of removal for a minor who is 36 months or younger at the date the minor is initially removed from the home;
- ~~}~~ ▶ states that the termination of parental rights should be pursued as a last resort only;
- ▶ requires an appellate court to consider "fundamental liberty interests" in an appeal of a termination of parental rights; ~~{and}~~
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**62A-4a-201**, as last amended by Laws of Utah 2008, Chapters 3 and 299

~~{~~ → ~~**78A-6-312**, as last amended by Laws of Utah 2011, Chapters 98 and 167~~

~~}~~ **78A-6-503**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-6-507**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-132**, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

**62A-4a-122**, Utah Code Annotated 1953

**63I-2-262**, Utah Code Annotated 1953

**78A-4-201**, Utah Code Annotated 1953

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

Section 1. Section ~~{62A-4a-201}~~ **62A-4a-122** is ~~{amended to read:~~

~~}~~ enacted to read:

**62A-4a-122. Review of state policies affecting parents and children.**

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(1) The full, balanced consideration and application of the principles and protections recognized and provided in state law constitutes the best interests of a child.

(2) Before the 2013 General Session of the Utah Legislature, the Judiciary, Law Enforcement, and Criminal Justice Interim Committee shall study and make findings on the status of and need for action regarding:

(a) the Legislative Auditor's report, dated January 2011, and whether:

(i) the rise in the budget for the Division of Child and Family Services from \$45 million to nearly \$160 million per year is:

(A) prudent;

(B) in the best interest of the state; and

(C) consistent with the state's values and public policy; and

(ii) the 19 recommendations for better practice should be implemented;

(b) whether federal law and funding is interfering with the full achievement of state policy regarding parental rights and family unification;

(c) the potential to seek a jury trial in juvenile court when faced with potential termination of parental rights;

(d) appellate review following a termination of parental rights by a juvenile court;

(e) the fairness of fixed time lines and potential for premature findings that can result in a permanent loss of parental rights;

(f) allowing increased opportunity for extended family members to help resolve parental deficiencies in their family without state interference, or loss of a child from the entire family; and

(g) whether the division should:

(i) be designated as an authorized lead entity and redirect its current focus and practices in relation to federal law and the receipt of federal funding to strengthen families and prevent child abuse under 42 U.S.C. 5116; and

(ii) reduce the number of cases and costs associated with foster care, which is approximately \$47,000 per child, in comparison with in-home services, which cost approximately \$1,700 per child, and focus on the strong public policy of fostering family unification to the fullest extent possible and as described in the January 2011 legislative audit.

(3) The division shall provide the interim committee with:

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(a) copies of annual reports and state plans; and

(b) communications regarding child protection that have been provided to or received from the federal government, and which may affect levels of federal funding and current practices of the state.

(4) The interim committee may request additional information from the division, as necessary to fulfill the requirements of this section.

Section 2. Section 62A-4a-201 is amended to read:

**62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.**

(1) (a) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships ~~[with]~~ is usually ~~[+ is]~~ best ~~[be]~~ met by the child's natural parents ~~[, except in extreme cases where additional assistance~~

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~~may be needed~~. Additionally, the integrity of the family unit~~[-]~~ and the right of parents to conceive and raise their children ~~[have found protection in the due process clause of the Fourteenth Amendment to the United States Constitution]~~ are constitutionally protected. The right of a ~~fit~~, competent~~fit~~ parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution ~~[of this state and of the United States]~~ and is a fundamental public policy of this state.

(d) The state recognizes that:

(i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline the parent's children; and

(ii) the state's role is secondary and supportive to the primary role of a parent.

(e) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A, Chapter 6, Juvenile Court Act of 1996. Therefore, the state, as *parens patriae*, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take ~~limited~~ limited action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's ~~verified~~ verified need for protection from immediate harm and the extent to which the child's extended family may provide needed protection. Throughout its involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

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(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may ~~[obtain]~~ ~~seek~~ ~~{temporary}~~ custody of the child for a ~~{}~~planned~~{}~~ ~~limited~~ period and place the child in a safe environment, subject to the requirements of this section and in accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings~~[-], and:~~

(a) when safe and appropriate, return the child to the child's parent; or

(b) as a last resort, pursue another permanency plan.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section 62A-4a-203, both the division's and the court's paramount concern shall be the child's health, safety, and welfare~~{, and the constitutionally protected rights of parents}~~. The desires of a parent for the parent's child, and the constitutionally protected rights of a parent, as described in this section, shall be given full and serious consideration by the division and the court.

(6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

(7) (a) ~~[It is the division's obligation, under federal law, to]~~ The division shall strive to achieve appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, where appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. If in-home services fail or are otherwise insufficient or inappropriate, the division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child. If in-home services and kinship placement are not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected, the division may pursue a foster placement.

(b) If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

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~~[(b) If:]~~ (c) Subject to the parental rights recognized and protected under this section, if because of a parent's conduct or condition, the parent is ~~{conclusively}~~ determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child ~~{}~~ is of paramount importance, and shall ~~[govern]~~ ~~{shall}~~ be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental health care for a child is subject to Subsection 78A-6-117(2)(n).

Section ~~{2}~~3. Section ~~{78A-4-201}~~63I-2-262 is enacted to read:

**63I-2-262. Repeal dates, Title 62A.**

**Section 62A-4a-122 is repealed January 1, 2014.**

**Section 4. Section 78A-4-201 is enacted to read:**

**78A-4-201. Appellate review of juvenile courts.**

To uphold the clear and compelling fundamental liberty interests and constitutionally protected rights of parents and the strong public policy in favor of maximizing family unification, appropriate appellate review shall be ~~{equitably applied and}~~ made available and applied in furtherance of those interests ~~{and before a permanent termination of parental rights order may take full force and effect}~~.

Section ~~{3}~~5. Section ~~{78A-6-312}~~78A-6-503 is amended to read:

~~{78A-6-312}~~78A-6-503. {Dispositional hearing -- Reunification services --

**Exceptions:**

- ~~\_\_\_\_\_~~ **(1) The court may:**
- ~~\_\_\_\_\_~~ **(a) make any of the dispositions described in Section 78A-6-117;**
- ~~\_\_\_\_\_~~ **(b) place the minor in the custody or guardianship of any:**
- ~~\_\_\_\_\_~~ **(i) individual; or**
- ~~\_\_\_\_\_~~ **(ii) public or private entity or agency; or**
- ~~\_\_\_\_\_~~ **(c) order:**
- ~~\_\_\_\_\_~~ **(i) protective supervision;**
- ~~\_\_\_\_\_~~ **(ii) family preservation;**
- ~~\_\_\_\_\_~~ **(iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or**

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~~—— (iv) other services.~~

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

~~—— (a) establish a primary permanency goal for the minor; and~~

~~—— (b) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).~~

~~—— (3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the~~ Judicial process for termination -- Parent unfit or incompetent -- Best interest of child.

(1) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's child.

(2) The court shall provide ~~{for reasonable parent-time}~~ a fundamentally fair process to a parent if a party moves to terminate parental rights.

(3) If the party moving to terminate parental rights is a governmental entity, the court shall find that any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's child are supported by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the ~~{parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.~~

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

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

~~—— (6) For purposes of Subsection (3), parent-time}~~ parent's fundamental rights and liberty interests.

(4) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's child is recognized, protected, and does not cease to exist simply



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because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state.

(5) At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life.

(6) Prior to an adjudication of unfitness, government action in relation to a parent and a parent's child may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest.

(7) Until parental unfitness is established, the child and the child's parent share a vital interest in preventing erroneous termination of their relationship and the court may not presume that a child and the child's parents are adversaries.

(8) It is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

— (a) protect the physical safety of the minor;

— (b) protect the life of the minor; or

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

(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:

— (a) prove that the parent has not used legal or illegal substances; or

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

(8) In addition, interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected.

(9) The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution of this state and of the United States, and is a fundamental public policy of this state.

(10) The state recognizes that:

(a) a parent has the right, obligation, responsibility, and authority to raise, manage,

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train, educate, provide for, and reasonably discipline the parent's children; and

(b) the state's role is secondary and supportive to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:

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

—— (b) an explanation of the effect of abandoning or modifying the primary permanency goal;

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

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

—— (b) The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned;

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

—— (i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or

—— (ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends;

—— (11) (a) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time;

—— (b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order;

—— (12) The court shall:

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

—— (b) determine and define the responsibilities of the parent under the child and family

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~~plan in accordance with Subsection 62A-4a-205(6)(c); and~~

~~—— (c) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)(b), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.~~

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

~~—— (b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.~~

~~—— (14) (a) If reunification services are ordered, the court may terminate those services at any time for good and clearly established cause.~~

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

~~—— (i) place the minor in accordance with the permanency plan; and~~

~~—— (ii) complete whatever steps are necessary to finalize the permanent placement of the minor.~~

~~—— (15) Any physical custody of the minor by the parent or a relative during the period described in Subsections (11) through (14) does not interrupt the running of the period.~~

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

~~—— (b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.~~

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

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

~~—— (a) hold a permanency hearing [eight] 12 months after the date of the initial removal, pursuant to Section 78A-6-314; and~~

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~~—— (b) order the discontinuance of those services after [eight] 12 months from the initial removal of the minor from the home if the parent or parents have not made substantial efforts to comply with the child and family plan.~~

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

~~—— (a) the court shall terminate reunification services; and~~

~~—— (b) the division shall petition the court for termination of parental rights.~~

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

~~—— (a) practicable; and~~

~~—— (b) in accordance with the best interest of the minor.~~

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

~~—— (b) The court may determine that:~~

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

~~—— (ii) reunification services should not be provided.~~

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

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

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

~~—— (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;~~

~~—— (c) the minor was previously adjudicated as an abused child due to physical abuse;~~

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~~sexual abuse, or sexual exploitation, and following the adjudication the minor:~~

~~—— (i) was removed from the custody of the minor's parent;~~

~~—— (ii) was subsequently returned to the custody of the parent; and~~

~~—— (iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;~~

~~—— (d) the parent:~~

~~—— (i) caused the death of another minor through abuse or neglect; or~~

~~—— (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:~~

~~—— (A) murder or manslaughter of a child; or~~

~~—— (B) child abuse homicide;~~

~~—— (e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;~~

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

~~—— (g) the parent's rights are terminated with regard to any other minor;~~

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

~~—— (i) the parent has abandoned the minor for a period of six months or longer;~~

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

~~—— (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's birth mother, 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 division 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; or~~

~~—— (l) any other circumstance that the court determines should preclude reunification efforts or services.~~

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

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

~~—— (23) In determining whether reunification services are appropriate, the court shall take into consideration:~~

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

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

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

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

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

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

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

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

~~—— (b) The time limits described in Subsections (2) through (19) are not tolled by the parent's absence.~~

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

~~—— (b) In making the determination described in Subsection (25)(a), the court shall consider:~~

~~—— (i) the age of the minor;~~

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- ~~—— (ii) the degree of parent-child bonding;~~
- ~~—— (iii) the length of the sentence;~~
- ~~—— (iv) the nature of the treatment;~~
- ~~—— (v) the nature of the crime or illness;~~
- ~~—— (vi) the degree of detriment to the minor if services are not offered;~~
- ~~—— (vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and~~
- ~~—— (viii) any other appropriate factors.~~
- ~~—— (c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (19);~~
- ~~—— (d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (19), unless the court determines that continued reunification services would be in the minor's best interest.~~
- ~~—— (26) If, pursuant to Subsections (21)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.~~
- ~~—— Section 4. Section 78A-6-503 is amended to read:~~
- ~~—— **78A-6-503. Recognition of rights of parents and children -- Judicial process for termination -- Parent unfit or incompetent -- Best interest of child.**~~
- ~~—— (1) The state may only terminate parental rights in extreme cases and after fully and fairly exhausting all reasonably available alternatives and using the least restrictive means as required to satisfy the constitutional protection of parental rights, and to achieve the strong public policy in favor of strengthening and uniting families and avoiding or minimizing removal of a child from the home of the parent to the fullest extent possible.~~
- ~~—— (2) In no event may parental rights be terminated without fully satisfying Section 62A-4a-201.~~
- ~~—— (3) The state shall provide a parent with reasonably sufficient time and support to prevent or correct conditions that may otherwise cause a parent to be charged with unfitness and loss of the parent's child.~~
- ~~—— (4) The state shall make all reasonable efforts to avoid removing a child from the custody of the child's parent and the child's home.~~

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~~(5) When a child is removed from the custody of a parent, the state shall earnestly strive to reunify the family.~~

~~(6) No federal law, mandate, regulation, or financial contribution to the state shall be allowed to interfere with or undermine parental rights and~~ role of a parent.

(c) It is the public policy of this state ~~;~~.

~~(7) When conditions arise that may limit a parent's ability to care and provide for a child, grandparents, extended family, and kin who are willing and able to provide family support are entitled to offer and provide support without interference from the state.~~

~~(8) Temporary deficiencies of a parent are not grounds for permanent termination of parental rights.~~

~~(9) The court may not impose a premature or fixed time limit on the continuing progress of a parent who earnestly seeks to improve the parent's parenting abilities and protect the best interests of the parent's child. The state shall be a support and not a threat thereto.~~

~~(1)~~ (10) that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

~~(11)~~ (11) This part provides a judicial process for voluntary and involuntary severance of the parent-child relationship, designed to safeguard the rights and interests of all parties concerned and promote their welfare and that of the state.

~~(2)~~ ~~(11)~~ (12) Wherever possible family life should be strengthened and preserved, but if a parent is found, by reason of ~~his~~ ~~the parent's~~ conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then ~~balance and~~ consider the welfare and best interest of the child ~~of~~ paramount importance ~~in~~ determining whether termination of parental rights shall be ordered.

Section ~~(5)~~ 6. Section 78A-6-507 is amended to read:

**78A-6-507. Grounds for termination of parental rights -- Findings regarding reasonable efforts.**

(1) [The] ~~As a final, extreme act, subject~~ Subject to the protections and requirements of Section ~~(62A-4a-201 and Section )~~ 78A-6-503, and if the court finds strictly necessary, the court may terminate all parental rights with respect to a parent if the court finds any one of the following:

(a) that the parent has abandoned the child;



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(b) that the parent has neglected or abused the child;

(c) that the parent is ~~{properly deemed permanently}~~ unfit or incompetent;

(d) (i) that the child is being cared for in an out-of-home placement under the supervision of the court or the division;

(ii) that the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and

(iii) that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(e) failure of parental adjustment, as defined in this chapter;

(f) that only token efforts have been made by the parent:

(i) to support or communicate with the child;

(ii) to prevent neglect of the child;

(iii) to eliminate the risk of serious harm to the child; or

(iv) to avoid being an unfit parent;

(g) (i) that the parent has voluntarily relinquished the parent's parental rights to the child; and

(ii) that termination is in the child's best interest;

(h) that, after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or

(i) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.

(2) The court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

(3) (a) Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

(b) Notwithstanding Subsection (3)(a), the court is not required to make the finding

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under Subsection (3)(a) before terminating a parent's rights[:(i)] under Subsection (1)(b), if the court finds that the abuse or neglect occurred subsequent to adjudication[;or].

~~ff~~(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law~~;~~

### Legislative Review Note

~~as of 2-6-12 3:44 PM~~

~~Office of Legislative Research~~, and ~~General Counsel~~ federal law is not inconsistent with Utah law.

Section 7. Section 78B-6-132 is amended to read:

78B-6-132. Children in the custody of the Division of Child and Family Services  
-- Consideration of child's relationship with foster parents who petition for adoption.

(1) In assessing the best interest of a child in the custody of the Division of Child and Family Services whose foster parents have petitioned for adoption, the court shall give special consideration to the relationship of the child with his foster parents, if the child has been in that home for a period of six months or longer.

(2) Nothing in this section shall be construed as requiring an adoption that would be contrary to the public policy of placing an adoptable child with a married couple whenever possible.