

SB0173S01 compared with SB0173

~~{deleted text}~~ shows text that was in SB0173 but was deleted in SB0173S01.

inserted text shows text that was not in SB0173 but was inserted into SB0173S01.

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Senator Todd Weiler proposes the following substitute bill:

CHILD PROTECTION AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Juvenile Court Act.

Highlighted Provisions:

This bill:

- ▶ expands the definition of ~~{neglect}~~abuse to include a child's ~~{contact with a natural parent who is}~~natural parent intentionally, knowingly, or recklessly causing the death of another parent of the child; being identified by a law enforcement officer as the primary suspect in an ~~{active murder investigation where the alleged victim is the natural parent's cohabitant or who is}~~investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or being prosecuted for or ~~{has been}~~ convicted of ~~{murder or aggravated murder of the natural parent's cohabitant}~~

SB0173S01 compared with SB0173

- provides that a court may order that a child be removed; intentionally, knowingly, or recklessly causing the death of another parent of the child;
- ▶ adds similar provisions for a court to order a child's removal from the child's home {or otherwise taken into}; continued protective custody {if the court finds, by a preponderance of the evidence, that the child's natural parent is identified by a law enforcement officer as the primary suspect in an active murder investigation where the alleged victim is the natural parent's cohabitant or is being prosecuted for or has been convicted of murder or aggravated murder of the natural parent's cohabitant;
- provides that, of the Division of Child and Family Services (the division) at a shelter hearing {, the court may order that a child be retained in}; denial of reunification services; and continued protective custody of the division {if the court finds, by a preponderance of the evidence, that the child's natural parent is identified by a law enforcement officer as the primary suspect in an active murder investigation where the alleged victim is the natural parent's cohabitant or is being prosecuted for or has been convicted of murder or aggravated murder of the natural parent's cohabitant; and
- establishes a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that the parent is identified by a law enforcement officer as the primary suspect in an active murder investigation where the alleged victim is the natural parent's cohabitant or is being prosecuted for or has been convicted of murder or aggravated murder of the natural parent's cohabitant; at a permanency hearing; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-105, as last amended by Laws of Utah 2012, Chapters 49, 303, and 316

78A-6-302, as last amended by Laws of Utah 2012, Chapter 293

SB0173S01 compared with SB0173

78A-6-306, as last amended by Laws of Utah 2012, Chapter 293

78A-6-312, as last amended by Laws of Utah 2013, Chapters 171 and 416

78A-6-314, as last amended by Laws of Utah 2010, Chapter 322

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

Section 1. Section **78A-6-105** is amended to read:

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

- (i) nonaccidental harm of a child;
- (ii) threatened harm of a child;
- (iii) sexual exploitation; or
- (iv) sexual abuse.

(v) that a child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement officer as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) "Abuse" does not include:

- (i) reasonable discipline or management of a child, including withholding privileges;
- (ii) conduct described in Section 76-2-401; or
- (iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in

Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts

SB0173S01 compared with SB0173

alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

~~{(5) {"Aggravated murder" is as defined in Section 76-5-202.~~

~~—{(5)}{(6)}~~ "Board" means the Board of Juvenile Court Judges.

~~{(6)}{(7)}~~ "Child" means a person under 18 years of age.

~~{(7)}{(8)}~~ "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

~~{(8)}{(9)}~~ "Clandestine laboratory operation" is as defined in Section 58-37d-3.

~~{ —{(10) "Cohabitant" is as defined in Section 78B-7-102.~~

~~{ {(9)}{(11)}~~ "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

~~{(10)}{(12)}~~ "Court" means the juvenile court.

~~{(11)}{(13)}~~ "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

~~{(12)}{(14)}~~ "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

~~{(13)}{(15)}~~ "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

~~{(14)}{(16)}~~ "Division" means the Division of Child and Family Services.

~~{(15)}{(17)}~~ "Formal referral" means a written report from a peace officer or

SB0173S01 compared with SB0173

other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

~~(16)~~ ~~(18)~~ "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

~~(17)~~ ~~(19)~~ "Guardianship of the person" includes the authority to consent to:

- (a) marriage;
- (b) enlistment in the armed forces;
- (c) major medical, surgical, or psychiatric treatment; or
- (d) legal custody, if legal custody is not vested in another person, agency, or institution.

~~(18)~~ ~~(20)~~ "Habitual truant" is as defined in Section 53A-11-101.

~~(19)~~ ~~(21)~~ "Harm" means:

- (a) physical, emotional, or developmental injury or damage;
- (b) sexual abuse; or
- (c) sexual exploitation.

~~(20)~~ ~~(22)~~ (a) "Incest" means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection ~~(20)~~ ~~(22)~~(a) include:

- (i) blood relationships of the whole or half blood, without regard to legitimacy;
- (ii) relationships of parent and child by adoption; and
- (iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

~~(21)~~ ~~(23)~~ "Intellectual disability" means:

(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic

SB0173S01 compared with SB0173

skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

~~(22)~~ ~~(24)~~ "Legal custody" means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

~~(23)~~ ~~(25)~~ "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

~~(24)~~ ~~(26)~~ "Minor" means:

(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

~~(25)~~ ~~(27)~~ "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

~~(28) "Murder" is as defined in Section 76-5-203.~~

~~(26)~~ ~~(29)~~ "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

~~(27)~~ ~~(30)~~ (a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary

SB0173S01 compared with SB0173

subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; ~~{ } or { }~~

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused ~~{ } or~~

~~—— (v) a child to be at risk of being neglected or abused because a child's natural parent:~~

~~—— (A) is identified by a law enforcement officer as the primary suspect in an active murder investigation where the alleged victim is the natural parent's cohabitant; or~~

~~—— (B) is being prosecuted for or has been convicted of murder or aggravated murder of the natural parent's cohabitant.~~

~~{ }~~

(b) The aspect of neglect relating to education, described in Subsection ~~{ }(27){ }~~ ~~(30)~~(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection ~~{ }(27){ }~~ ~~(30)~~(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection ~~{ }(27){ }~~ ~~(30)~~(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

~~{ }(28){ }~~ ~~{ (31) }~~ "Neglected child" means a child who has been subjected to neglect.

~~{ }(29){ }~~ ~~{ (32) }~~ "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

~~{ }(30){ }~~ ~~{ (33) }~~ "Not competent to proceed" means that a minor, due to a mental

SB0173S01 compared with SB0173

disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

~~§§(31)-§§(34)~~ "Physical abuse" means abuse that results in physical injury or damage to a child.

~~§§(32)-§§(35)~~ "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

~~§§(33)-§§(36)~~ "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

~~§§(34)-§§(37)~~ "Related condition" means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

~~§§(35)-§§(38)~~ (a) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

- (i) the responsibility for support;
- (ii) the right to consent to adoption;
- (iii) the right to determine the child's religious affiliation; and
- (iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

- (i) marriage;
- (ii) enlistment; and

SB0173S01 compared with SB0173

(iii) major medical, surgical, or psychiatric treatment.

~~(36)~~ ~~(39)~~ "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

~~(37)~~ ~~(40)~~ "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

~~(38)~~ ~~(41)~~ "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

~~(39)~~ ~~(42)~~ "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed towards a child; or

(b) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7.

~~(40)~~ ~~(43)~~ "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201,

SB0173S01 compared with SB0173

Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

~~(41)~~ ~~(44)~~ "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

~~(42)~~ ~~(45)~~ "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

~~(43)~~ ~~(46)~~ "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

~~(44)~~ ~~(47)~~ "Substantiated" is as defined in Section 62A-4a-101.

~~(45)~~ ~~(48)~~ "Supported" is as defined in Section 62A-4a-101.

~~(46)~~ ~~(49)~~ "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~(47)~~ ~~(50)~~ "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

~~(48)~~ ~~(51)~~ "Unsubstantiated" is as defined in Section 62A-4a-101.

~~(49)~~ ~~(52)~~ "Without merit" is as defined in Section 62A-4a-101.

Section 2. Section **78A-6-302** is amended to read:

78A-6-302. Court-ordered protective custody of a child following petition filing --

Grounds.

(1) After a petition has been filed under Section 78A-6-304, if the child who is the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

(a) (i) there is an imminent danger to the physical health or safety of the child; and

(ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;

SB0173S01 compared with SB0173

(b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer emotional damage; and

(ii) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;

(d) the parent or guardian is unwilling to have physical custody of the child;

(e) the child is abandoned or left without any provision for the child's support;

(f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;

(g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(ii) the whereabouts of the parent or guardian are unknown; and

(iii) reasonable efforts to locate the parent or guardian are unsuccessful;

(h) the child is in immediate need of medical care;

(i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the child's health or safety; or

(ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;

(j) the child or another child residing in the same household has been neglected;

(k) the child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement officer as the primary suspect in an ~~active~~ murder investigation where the alleged victim is the natural parent's cohabitant; or

~~(B)~~ investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of ~~murder or aggravated murder of the natural parent's cohabitant~~ intentionally, knowingly, or recklessly causing the death of

SB0173S01 compared with SB0173

another parent of the child:

~~[(k)]~~ (l) an infant has been abandoned, as defined in Section 78A-6-316;

~~[(t)]~~ (m) (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

~~[(m)]~~ (n) the child's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

(3) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect, truancy, or failure to comply with a court order to attend school;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

(4) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court

SB0173S01 compared with SB0173

proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(5) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.

(6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

- (i) the administration of a psychotropic medication to a child;
- (ii) a psychiatric, psychological, or behavioral treatment for a child; or
- (iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Section 3. Section **78A-6-306** is amended to read:

78A-6-306. Shelter hearing.

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:

- (a) removal of the child from the child's home by the division;
- (b) placement of the child in the protective custody of the division;
- (c) emergency placement under Subsection 62A-4a-202.1(4);
- (d) as an alternative to removal of the child, a parent enters a domestic violence shelter

at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).

(2) Upon the occurrence of any of the circumstances described in Subsections (1)(a) through (e), the division shall issue a notice that contains all of the following:

- (a) the name and address of the person to whom the notice is directed;
- (b) the date, time, and place of the shelter hearing;
- (c) the name of the child on whose behalf a petition is being brought;
- (d) a concise statement regarding:

SB0173S01 compared with SB0173

(i) the reasons for removal or other action of the division under Subsection (1); and
(ii) the allegations and code sections under which the proceeding has been instituted;
(e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with the provisions of Section 78A-6-1111; and

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:

(a) the appropriate guardian ad litem; and
(b) both parents and any guardian of the child, unless the parents or guardians cannot be located.

(4) The following persons shall be present at the shelter hearing:
(a) the child, unless it would be detrimental for the child;
(b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one is requested;
(d) the child's guardian ad litem;
(e) the caseworker from the division who is assigned to the case; and
(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall:
(i) provide an opportunity to provide relevant testimony to:
(A) the child's parent or guardian, if present; and
(B) any other person having relevant knowledge; and
(ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

(b) The court:

SB0173S01 compared with SB0173

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reason why the child was removed from the parent's or guardian's custody;

(b) any services provided to the child and the child's family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and

(e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

(8) (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.

(b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).

(9) (a) If the child is in the protective custody of the division, the court shall order that the child be released from the protective custody of the division unless it finds, by a preponderance of the evidence, that any one of the following exist:

(i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;

(ii) (A) the child is suffering emotional damage; and

SB0173S01 compared with SB0173

(B) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parents;

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent;

(B) member of the parent's household; or

(C) person known to the parent;

(v) the parent is unwilling to have physical custody of the child;

(vi) the child is without any provision for the child's support;

(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent are unknown; and

(C) reasonable efforts to locate the parent are unsuccessful;

(ix) the child is in urgent need of medical care;

(x) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety;

(xi) the child or a minor residing in the same household has been neglected;

(xii) the parent, or an adult residing in the same household as the parent, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;

[~~or~~]

(xiii) the child's welfare is substantially endangered[~~;~~]; or

(xiv) the child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement officer as the primary suspect in an ~~factive~~

SB0173S01 compared with SB0173

~~murder investigation where the alleged victim is the natural parent's cohabitant; or~~

~~(B) investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or~~

(C) is being prosecuted for or has been convicted of ~~murder or aggravated murder of the natural parent's cohabitant~~ intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

(10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make

SB0173S01 compared with SB0173

"reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78A-6-105(25)(b) truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if the child were returned home, the court shall order continued removal regardless of:

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 4. Section **78A-6-312** is amended to read:

78A-6-312. 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 Subsections (12)(b) and 78A-6-117(2)(n)(iii), medical or mental health treatment; or
 - (iv) other services.
- (2) Whenever the court orders continued removal at the dispositional hearing, and that

SB0173S01 compared with SB0173

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 court shall provide for reasonable parent-time 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 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) (a) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:

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

(ii) an explanation of the effect of abandoning or modifying the primary permanency goal.

(b) In determining the primary permanency goal and concurrent permanency goal, the

SB0173S01 compared with SB0173

court shall consider:

(i) the preference for kinship placement over nonkinship placement;

(ii) the potential for a guardianship placement if the parent-child relationship is legally terminated and no appropriate adoption placement is available; and

(iii) the use of an individualized permanency goal, only as a last resort.

(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) (a) The court shall:

(i) 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;

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

(iii) identify verbally on the record, or in a written document provided to the parties,

SB0173S01 compared with SB0173

the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(b) If the parent is in a substance abuse treatment program, other than a certified drug court program:

(i) the court may order the parent to submit to supplementary drug or alcohol testing in addition to the testing recommended by the parent's substance abuse program based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

(ii) the court may order the parent to provide the results of drug or alcohol testing recommended by the substance abuse program to the court or division.

(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.

(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

SB0173S01 compared with SB0173

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

(17) 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.

(18) 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.

(19) (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.

(20) 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 (21)(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, sexual abuse, or sexual exploitation, and following the adjudication the minor:

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

SB0173S01 compared with SB0173

- (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;
 - (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
 - (A) murder or manslaughter of a child; or
 - (B) child abuse homicide;
 - (iii) committed sexual abuse against the child; [or]
 - (iv) is a registered sex offender or required to register as a sex offender; or
 - (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;
(B) is identified by a law enforcement officer as the primary suspect in an ~~active murder investigation where the alleged victim is the natural parent's cohabitant; or~~
~~(B); investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or~~
(C) is being prosecuted for or has been convicted of ~~murder or aggravated murder of the natural parent's cohabitant;~~ intentionally, knowingly, or recklessly causing the death of another parent of the child;
- (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 was 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

SB0173S01 compared with SB0173

was located;

(k) except as provided in Subsection (21)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, 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.

(21) (a) The finding under Subsection (20)(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 (20)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection (20)(k) is not warranted.

(22) 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.

(23) (a) If reunification services are not ordered pursuant to Subsections (19) through (21), and the whereabouts of a parent become known within six months after the day on which

SB0173S01 compared with SB0173

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 (18) are not tolled by the parent's absence.

(24) (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 (24)(a), the court shall consider:

- (i) the age of the minor;
- (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 (18).

(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (18), unless the court determines that continued reunification services would be in the minor's best interest.

(25) If, pursuant to Subsections (20)(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 5. Section **78A-6-314** is amended to read:

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

(1) (a) When reunification services have been ordered in accordance with Section 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the day

SB0173S01 compared with SB0173

on which the minor was initially removed from the minor's home.

(b) If reunification services were not ordered at the dispositional hearing, a permanency hearing shall be held within 30 days after the day on which the dispositional hearing ends.

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

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

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

(i) the parent or guardian fails to:

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

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

~~(iii)~~ (C) meet the goals of a court approved child and family plan~~[-]; or~~

(ii) the child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement officer as the primary suspect in an ~~factive~~ murder investigation where the alleged victim is the natural parent's cohabitant; or

~~(B)~~ investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of ~~{murder or aggravated murder of the natural parent's cohabitant}~~ intentionally, knowingly, or recklessly causing the death of another parent of the child.

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

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

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

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

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

SB0173S01 compared with SB0173

(e) the extent to which the parent cooperated and utilized the services provided.

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

(a) order termination of reunification services to the parent;

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

(c) establish a concurrent plan that identifies the second most appropriate final plan for the minor.

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

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

(7) Except as provided in Subsection (8), the court may not extend reunification services beyond 12 months after the day on which the minor was initially removed from the minor's home, in accordance with the provisions of Section 78A-6-312.

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

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

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

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

(b) (i) Except as provided in Subsection (8)(c), the court may not extend any reunification services beyond 15 months after the day on which the minor was initially removed from the minor's home.

(ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the court to extend services for that parent beyond the 12-month period described in

SB0173S01 compared with SB0173

Subsection (7).

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

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

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

(B) it is likely that reunification will occur within the additional 90-day period; and

(C) the extension is in the best interest of the child;

(ii) the court specifies the facts upon which the findings described in Subsection (8)(c)(i) are based; and

(iii) the court specifies the time period in which it is likely that reunification will occur.

(d) A court may not extend the time period for reunification services without complying with the requirements of this Subsection (8) before the extension.

(e) In determining whether to extend reunification services for a minor, a court shall take into consideration the status of the minor siblings of the minor.

(9) The court may, in its discretion:

(a) enter any additional order that it determines to be in the best interest of the minor, so long as that order does not conflict with the requirements and provisions of Subsections (4) through (8); or

(b) order the division to provide protective supervision or other services to a minor and the minor's family after the division's custody of a minor has been terminated.

(10) If the final plan for the minor is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the permanency hearing.

(11) (a) Any party to an action may, at any time, petition the court for an expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the minor.

(b) If the court so determines, it shall order, in accordance with federal law, that:

(i) the minor be placed in accordance with the permanency plan; and

(ii) whatever steps are necessary to finalize the permanent placement of the minor be completed as quickly as possible.

(12) Nothing in this section may be construed to:

SB0173S01 compared with SB0173

(a) entitle any parent to reunification services for any specified period of time;

(b) limit a court's ability to terminate reunification services at any time prior to a permanency hearing; or

(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.

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

(b) For purposes of Subsection (13)(a), if the court consolidates the hearing on termination of parental rights with the permanency hearing:

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

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

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

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

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Legislative Review Note

~~as of 1-28-14 12:02 PM~~

~~Office of Legislative Research and General Counsel~~