

1 **CHILD WELFARE AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: Paul Ray

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Code related to child welfare.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends provisions related to a primary permanency plan and a concurrent
13 permanency plan;
- 14 ▶ adds a child interview to the definition of "record" for purposes of the Public
15 Records Management Act;
- 16 ▶ repeals a provision in the Adoption Act related to the Division of Child and Family
17 Services;
- 18 ▶ includes uncodified language directing the Child Welfare Legislative Oversight
19 Panel to study reporting of child abuse and neglect; and
- 20 ▶ makes technical and conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **62A-4a-205**, as last amended by Laws of Utah 2011, Chapters 158, 167, and 233



- 28 **62A-4a-205.6**, as last amended by Laws of Utah 2013, Chapter 438
- 29 **62A-4a-607**, as last amended by Laws of Utah 2008, Chapter 3
- 30 **63A-12-100.5**, as last amended by Laws of Utah 2011, Chapter 265
- 31 **78A-6-312**, as last amended by Laws of Utah 2014, Chapter 35
- 32 **78A-6-314**, as last amended by Laws of Utah 2014, Chapter 35
- 33 **78B-6-141**, as last amended by Laws of Utah 2012, Chapter 340

34 REPEALS:

- 35 **78A-6-511.1**, as enacted by Laws of Utah 2013, Chapter 416
- 36 **78B-6-135**, as last amended by Laws of Utah 2012, Chapter 340

37 **Uncodified Material Affected:**

38 ENACTS UNCODIFIED MATERIAL



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

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

42 **62A-4a-205. Child and family plan -- Parent-time.**

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

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

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

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

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

- 54 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- 55 (ii) the child;
- 56 (iii) the child's foster parents;
- 57 (iv) if appropriate, the child's stepparent; and
- 58 (v) the child's guardian ad litem, if one has been appointed by the court.

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

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

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

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

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

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

71 (a) guardian ad litem;

72 (b) child's natural parents; and

73 (c) child's foster parents.

74 (5) Each child and family plan shall:

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

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

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

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

80 (b) documentation of the:

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

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

85 (c) the primary permanency [~~goal~~] plan for the child and the reason for selection of that
86 [~~goal~~] plan;

87 (d) the concurrent permanency [~~goal~~] plan for the child and the reason for the selection
88 of that [~~goal~~] plan;

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

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

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

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

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

97 (g) the name of the person who will provide for and be responsible for case
98 management;

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

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

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

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

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

110 (i) is placed in residential treatment; and

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

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

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

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

119 (i) federal mandates; and

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

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

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

124 (i) keep a child in placement; and

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

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

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

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

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

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

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

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

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

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

146 (10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a
147 court order issued pursuant to Subsections [78A-6-312\(3\)](#), (6), and (7).

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

- 152 (i) protect the physical safety of the child;
- 153 (ii) protect the life of the child; or
- 154 (iii) consistent with Subsection (10)(c), prevent the child from being traumatized by
- 155 contact with the parent.

156 (c) In determining whether the condition of the parent described in Subsection (10)(b)

157 will traumatize a child, the person supervising the parent-time session shall consider the impact

158 that the parent's condition will have on the child in light of:

- 159 (i) the child's fear of the parent; and
- 160 (ii) the nature of the alleged abuse or neglect.

161 (11) The division shall consider visitation with their grandparents for children in state

162 custody if the division determines visitation to be in the best interest of the child and:

163 (a) there are no safety concerns regarding the behavior or criminal background of the

164 grandparents;

165 (b) allowing visitation would not compete with or undermine the reunification [~~goals~~]

166 plan;

167 (c) there is a substantial relationship between the grandparents and children; and

168 (d) the visitation will not unduly burden the foster parents.

169 Section 2. Section **62A-4a-205.6** is amended to read:

170 **62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.**

171 (1) With regard to a child who has a primary permanency [~~goal~~] plan of adoption or for

172 whom a final plan for pursuing termination of parental rights has been approved in accordance

173 with Section **78A-6-314**, the division shall make intensive efforts to place the child in an

174 adoptive home within 30 days of the earlier of:

175 (a) approval of the final plan; or

176 (b) establishment of the primary permanency [~~goal~~] plan.

177 (2) If within the time periods described in Subsection (1) the division is unable to

178 locate a suitable adoptive home, it shall contract with licensed child placing agencies to search

179 for an appropriate adoptive home for the child, and to place the child for adoption. The

180 division shall comply with the requirements of Section **62A-4a-607** and contract with a variety

181 of child placing agencies licensed under Part 6. In accordance with federal law, the division

182 shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely

183 adoptive or permanent placements for waiting children.

184 (3) The division shall ensure that children who are adopted and were previously in its
185 custody, continue to receive the medical and mental health coverage that they are entitled to
186 under state and federal law.

187 (4) The division may not consider a prospective adoptive parent's willingness or
188 unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a
189 condition of placing a child with the prospective adoptive parent.

190 Section 3. Section 62A-4a-607 is amended to read:

191 **62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive**
192 **parents.**

193 (1) (a) The division and all child placing agencies licensed under this part shall
194 promote adoption when that is a possible and appropriate alternative for a child. Specifically,
195 in accordance with Section 62A-4a-205.6, the division shall actively promote the adoption of
196 all children in its custody who have a final plan for termination of parental rights pursuant to
197 Section 78A-6-314 or a primary permanency [~~goal~~] plan of adoption.

198 (b) Beginning May 1, 2000, the division may not place a child for adoption, either
199 temporarily or permanently, with any individual or individuals who do not qualify for adoptive
200 placement pursuant to the requirements of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

201 (2) The division shall obtain or conduct research of prior adoptive families to
202 determine what families may do to be successful with their adoptive children and shall make
203 this research available to potential adoptive parents.

204 (3) (a) A child placing agency licensed under this part shall inform each potential
205 adoptive parent with whom it is working that:

206 (i) children in the custody of the state are available for adoption;

207 (ii) Medicaid coverage for medical, dental, and mental health services may be available
208 for these children;

209 (iii) tax benefits, including the tax credit provided for in Section 59-10-1104, and
210 financial assistance may be available to defray the costs of adopting these children;

211 (iv) training and ongoing support may be available to the adoptive parents of these
212 children; and

213 (v) information about individual children may be obtained by contacting the division's

214 offices or its Internet site as explained by the child placing agency.

215 (b) A child placing agency shall:

216 (i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity;

217 and

218 (ii) simultaneously distribute a copy of the pamphlet prepared by the division in
219 accordance with Subsection (3)(d).

220 (c) As a condition of licensure, the child placing agency shall certify to the Office of
221 Licensing at the time of license renewal that it has complied with the provisions of this section.

222 (d) Before July 1, 2000, the division shall:

223 (i) prepare a pamphlet that explains the information that is required by Subsection
224 (3)(a); and

225 (ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to child
226 placing agencies.

227 (e) The division shall respond to any inquiry made as a result of the notice provided in
228 Subsection (3)(a).

229 Section 4. Section **63A-12-100.5** is amended to read:

230 **63A-12-100.5. Definitions.**

231 (1) Except as provided under Subsection (2), the definitions in Section [63G-2-103](#)
232 apply to this chapter.

233 (2) As used in this chapter[-];

234 (a) "division" or "state archives" means the Division of Archives and Records
235 Service[-]; and

236 (b) "record" means:

237 (i) the same as that term is defined in Section [63G-2-103](#); or

238 (ii) a video or audio recording of an interview, or a transcript of the video or audio
239 recording, that is conducted at a Children's Justice Center established under Section [67-5b-102](#),
240 the release of which is governed by Section [77-37-4](#).

241 Section 5. Section **78A-6-312** is amended to read:

242 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

243 (1) The court may:

244 (a) make any of the dispositions described in Section [78A-6-117](#);

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

246 (i) individual; or

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

248 (c) order:

249 (i) protective supervision;

250 (ii) family preservation;

251 (iii) subject to Subsections (12)(b) and 78A-6-117(2)(n)(iii), medical or mental health
252 treatment; or

253 (iv) other services.

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

256 (a) establish a primary permanency [~~goal~~] plan for the minor; and

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

260 (3) Subject to Subsections (6) and (7), if the court determines that reunification
261 services are appropriate for the minor and the minor's family, the court shall provide for
262 reasonable parent-time with the parent or parents from whose custody the minor was removed,
263 unless parent-time is not in the best interest of the minor.

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

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

270 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless
271 the court makes a finding that it is necessary to deny parent-time in order to:

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

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

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

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

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

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

280 (8) (a) In addition to the primary permanency [goal] plan, ~~§~~ → [where appropriate] ← ~~§~~ the
 280a court

281 shall establish a concurrent permanency [goal] plan that shall include:

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

284 (ii) an explanation of the effect of abandoning or modifying the primary permanency
 285 [goal] plan.

286 (b) In determining the primary permanency [goal] plan and concurrent permanency
 287 [goal] plan, the court shall consider:

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

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

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

292 (9) A permanency hearing shall be conducted in accordance with Subsection
 293 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
 294 something other than reunification is initially established as a minor's primary permanency
 295 [goal] plan.

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

298 (b) The court is not limited to the terms of the concurrent permanency [goal] plan in
 299 the event that the primary permanency [goal] plan is abandoned.

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

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

305 (ii) the day on which the provision of reunification services, described in Section
 306 78A-6-314, ends.

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

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

312 (12) (a) The court shall:

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

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

317 (iii) identify verbally on the record, or in a written document provided to the parties,
318 the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future
319 determination regarding the provision of reasonable efforts, in accordance with state and
320 federal law.

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

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

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

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

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

333 (14) (a) If reunification services are ordered, the court may terminate those services at
334 any time.

335 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
336 to be inconsistent with the final permanency plan for the minor established pursuant to Section
337 78A-6-314, then measures shall be taken, in a timely manner, to:

338 (i) place the minor in accordance with the permanency plan; and
339 (ii) complete whatever steps are necessary to finalize the permanent placement of the
340 minor.

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

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

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

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

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

353 (a) the court shall terminate reunification services; and

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

355 (18) When a court conducts a permanency hearing for a minor under Section
356 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
357 sibling group together is:

358 (a) practicable; and

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

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

363 (b) The court may determine that:

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

366 (ii) reunification services should not be provided.

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

369 concern.

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

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

375 (b) subject to Subsection (21)(a), the parent is suffering from a mental illness of such
376 magnitude that it renders the parent incapable of utilizing reunification services;

377 (c) the minor was previously adjudicated as an abused child due to physical abuse,
378 sexual abuse, or sexual exploitation, and following the adjudication the minor:

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

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

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

383 (d) the parent:

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

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

386 (A) murder or manslaughter of a child; or

387 (B) child abuse homicide;

388 (iii) committed sexual abuse against the child;

389 (iv) is a registered sex offender or required to register as a sex offender; or

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

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

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

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

399 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,

400 and the court finds that it would not benefit the minor to pursue reunification services with the
401 offending parent;

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

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

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

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

409 (k) except as provided in Subsection (21)(b), with respect to a parent who is the child's
410 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
411 exposed to an illegal or prescription drug that was abused by the child's mother while the child
412 was in utero, if the child was taken into division custody for that reason, unless the mother
413 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
414 substance abuse treatment program approved by the department; or

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

417 (21) (a) The finding under Subsection (20)(b) shall be based on competent evidence
418 from at least two medical or mental health professionals, who are not associates, establishing
419 that, even with the provision of services, the parent is not likely to be capable of adequately
420 caring for the minor within 12 months after the day on which the court finding is made.

421 (b) A judge may disregard the provisions of Subsection (20)(k) if the court finds, under
422 the circumstances of the case, that the substance abuse treatment described in Subsection
423 (20)(k) is not warranted.

424 (22) In determining whether reunification services are appropriate, the court shall take
425 into consideration:

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

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

430 (c) any history of violent behavior directed at the child or an immediate family

431 member;

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

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

434 (f) testimony by a competent professional that the parent's behavior is unlikely to be

435 successful; and

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

437 (23) (a) If reunification services are not ordered pursuant to Subsections (19) through
438 (21), and the whereabouts of a parent become known within six months after the day on which
439 the out-of-home placement of the minor is made, the court may order the division to provide
440 reunification services.

441 (b) The time limits described in Subsections (2) through (18) are not tolled by the
442 parent's absence.

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

445 (b) In making the determination described in Subsection (24)(a), the court shall
446 consider:

447 (i) the age of the minor;

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

449 (iii) the length of the sentence;

450 (iv) the nature of the treatment;

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

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

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

455 (viii) any other appropriate factors.

456 (c) Reunification services for an incarcerated parent are subject to the time limitations
457 imposed in Subsections (2) through (18).

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

461 (25) If, pursuant to Subsections (20)(b) through (l), the court does not order

462 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
463 with Section 78A-6-314.

464 Section 6. Section 78A-6-314 is amended to read:

465 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**
466 **parental rights filed -- Hearing on termination of parental rights.**

467 (1) (a) When reunification services have been ordered in accordance with Section
468 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family
469 Services, a permanency hearing shall be held by the court no later than 12 months after the day
470 on which the minor was initially removed from the minor's home.

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

473 (2) (a) If reunification services were ordered by the court in accordance with Section
474 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection
475 (3), whether the minor may safely be returned to the custody of the minor's parent.

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

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

481 (i) the parent or guardian fails to:

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

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

484 (C) meet the goals of a court approved child and family plan; or

485 (ii) the child's natural parent:

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

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

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

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

493 consider:

- 494 (a) the report prepared by the Division of Child and Family Services;
- 495 (b) any admissible evidence offered by the minor's guardian ad litem;
- 496 (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);
- 497 (d) any evidence regarding the efforts or progress demonstrated by the parent; and
- 498 (e) the extent to which the parent cooperated and utilized the services provided.

499 (4) With regard to a case where reunification services were ordered by the court, if a
 500 minor is not returned to the minor's parent or guardian at the permanency hearing, the court
 501 shall, unless the time for the provision of reunification services is extended under Subsection
 502 (8):

- 503 (a) order termination of reunification services to the parent;
- 504 (b) make a final determination regarding whether termination of parental rights,
 505 adoption, or permanent custody and guardianship is the most appropriate final plan for the
 506 minor, taking into account the minor's primary permanency ~~[goal]~~ plan established by the court
 507 pursuant to Section 78A-6-312; and

508 (c) establish a concurrent permanency plan that identifies the second most appropriate
 509 final plan for the minor ~~Ŝ→~~ **, if appropriate** ~~←Ŝ~~ .

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

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

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

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

- 521 (i) there has been substantial compliance with the child and family plan;
- 522 (ii) reunification is probable within that 90-day period; and
- 523 (iii) the extension is in the best interest of the minor.

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

527 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a
528 basis for the court to extend services for that parent beyond the 12-month period described in
529 Subsection (7).

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

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

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

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

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

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

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

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

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

543 (9) The court may, in its discretion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

579 Section 7. Section **78B-6-141** is amended to read:

580 **78B-6-141. Petition, report, and documents sealed -- Exceptions.**

581 (1) A petition for adoption~~[, the written report described in Section [78B-6-135](#);~~] and
582 any other documents filed in connection with the petition are sealed.

583 (2) The documents described in Subsection (1) may only be open to inspection as
584 follows:

585 (a) in accordance with Subsection (3)(a), by a party to the adoption proceeding:

- 586 (i) while the proceeding is pending; or
587 (ii) within six months after the day on which the adoption decree is entered;
- 588 (b) subject to Subsection (3)(b), a court enters an order permitting access to the
589 documents by a person who has appealed the denial of that person's motion to intervene;
- 590 (c) upon order of the court expressly permitting inspection or copying, after good cause
591 has been shown;
- 592 (d) as provided under Section [78B-6-144](#);
- 593 (e) those records shall become public on the one hundredth anniversary of the date the
594 final decree of adoption was entered; or
- 595 (f) if the adoptee is an adult at the time the final decree of adoption is entered, the
596 documents described in this section are open to inspection and copying without a court order
597 by the adoptee or a parent who adopted the adoptee, unless the final decree of adoption is
598 entered by the juvenile court under Subsection [78B-6-115\(3\)\(b\)](#).
- 599 (3) (a) A person who files a motion to intervene in an adoption proceeding:
- 600 (i) is not a party to the adoption proceeding, unless the motion to intervene is granted;
601 and
- 602 (ii) may not be granted access to the documents described in Subsection (1), unless the
603 motion to intervene is granted.
- 604 (b) An order described in Subsection (2)(b) shall:
- 605 (i) prohibit the person described in Subsection (2)(b) from inspecting a document
606 described in Subsection (1) that contains identifying information of the adoptive or prospective
607 adoptive parent; and
- 608 (ii) permit the person described in Subsection (3)(b)(i) to review a copy of a document
609 described in Subsection (3)(b)(i) after the identifying information described in Subsection
610 (3)(b)(i) is redacted from the document.
- 611 **Section 8. Division of Child and Family Services study item.**
- 612 (1) During the 2015 interim, the Child Welfare Legislative Oversight Panel shall, in
613 consultation with the Division of Child and Family Services and appropriate child welfare
614 stakeholders, study and make recommendations regarding reporting requirements for suspected
615 abuse or neglect under Section [62A-4a-403](#).
- 616 (2) Section 8 of this bill is repealed on January 1, 2016.

617 Section 9. **Repealer.**
618 This bill repeals:
619 Section **78A-6-511.1**, **Posttermination reunification study item.**
620 Section **78B-6-135**, **Division of Child and Family Services -- Duties -- Report -- Fee.**

Legislative Review Note
as of 1-26-15 11:04 AM

Office of Legislative Research and General Counsel