

1 **CHILD WELFARE MODIFICATIONS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

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

5 House Sponsor: Edward H. Redd

7 **LONG TITLE**

8 **General Description:**

9 This bill amends and enacts provisions concerning child and family services.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ amends the name of the Child Abuse Advisory Council to the Child Welfare
13 Improvement Council;
- 14 ▶ requires child welfare caseworkers within the Division of Child and Family
15 Services (the division) to use evidence-informed or evidence-based safety and risk
16 assessments to guide decisions concerning a child throughout a child protection
17 investigation or proceeding;
- 18 ▶ requires a juvenile court to consider the division's safety and risk assessments to
19 determine whether a child should be removed from the custody of the child's parent
20 or guardian;
- 21 ▶ modifies the division's requirements for completing background checks before
22 placing a child in emergency placement;
- 23 ▶ requires the division, through contract with the Department of Health, to establish
24 and operate a psychotropic medication oversight pilot program for children in foster
25 care to ensure that foster children are being prescribed psychotropic medication
26 consistent with their needs;
- 27 ▶ provides for sunset review of the psychotropic medication oversight pilot program
28 before it is repealed July 1, 2019;
- 29 ▶ modifies the Utah Criminal Code regarding the offenses of human trafficking and

30 human trafficking of a child;

31 ▶ provides that a juvenile court may order another planned permanent living
32 arrangement for a minor 16 years old or older under certain circumstances; and

33 ▶ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **62A-4a-117**, as last amended by Laws of Utah 2012, Chapter 242

41 **62A-4a-209**, as last amended by Laws of Utah 2015, Chapters 142 and 255

42 **62A-4a-302**, as last amended by Laws of Utah 2008, Chapter 299

43 **62A-4a-311**, as last amended by Laws of Utah 2010, Chapters 278 and 286

44 **63I-1-262**, as last amended by Laws of Utah 2014, Chapter 226

45 **76-5-308**, as last amended by Laws of Utah 2013, Chapter 196

46 **76-5-308.5**, as enacted by Laws of Utah 2015, Chapter 160

47 **78A-6-302**, as last amended by Laws of Utah 2015, Chapter 274

48 **78A-6-312**, as last amended by Laws of Utah 2015, Chapters 274 and 322

49 **78A-6-314**, as last amended by Laws of Utah 2015, Chapter 322

50 ENACTS:

51 **62A-4a-203.1**, Utah Code Annotated 1953

52 **62A-4a-213**, Utah Code Annotated 1953



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

55 Section 1. Section **62A-4a-117** is amended to read:

56 **62A-4a-117. Performance monitoring system -- Annual report.**

57 (1) As used in this section:

58 (a) "~~[Committee]~~ Council" means the ~~[state qualitative improvement committee,]~~
59 Child Welfare Improvement Council established ~~[by the division to provide community and~~
60 ~~professional input on the performance of the division]~~ under Section 62A-4a-311.

61 (b) "Performance indicators" means actual performance in a program, activity, or other
62 function for which there is a performance standard.

63 (c) (i) "Performance standards" means the targeted or expected level of performance of
64 each area in the child welfare system, including:

- 65 (A) child protection services;
- 66 (B) adoption;
- 67 (C) foster care; and
- 68 (D) other substitute care.

69 (ii) "Performance standards" includes the performance goals and measures in effect in
70 2008 that the division was subject to under federal court oversight, as amended pursuant to
71 Subsection (2), including:

- 72 (A) the qualitative case review; and
- 73 (B) the case process review.

74 (2) (a) The division may not amend the performance standards unless the amendment
75 is:

- 76 (i) necessary and proper for the effective administration of the division; or
- 77 (ii) necessary to comply with, or implement changes in, the law.

78 (b) Before amending the performance standards, the division shall provide written
79 notice of the proposed amendment to the ~~[committee]~~ council.

80 (c) The notice described in Subsection (2)(b) shall include:

- 81 (i) the proposed amendment;
- 82 (ii) a summary of the reason for the proposed amendment; and
- 83 (iii) the proposed effective date of the amendment.

84 (d) Within 45 days after the day on which the division provides the notice described in
85 Subsection (2)(b) to the ~~[committee, the committee]~~ council, the council shall provide to the

86 division written comments on the proposed amendment.

87 (e) The division may not implement a proposed amendment to the performance
88 standards until the earlier of:

89 (i) seven days after the day on which the division receives the written comments
90 regarding the proposed change described in Subsection (2)(d); or

91 (ii) 52 days after the day on which the division provides the notice described in
92 Subsection (2)(b) to the [~~committee~~] council.

93 (f) The division shall:

94 (i) give full, fair, and good faith consideration to all comments and objections received
95 from the [~~committee~~] council;

96 (ii) notify the [~~committee~~] council in writing of:

97 (A) the division's decision regarding the proposed amendment; and

98 (B) the reasons that support the decision;

99 (iii) include complete information on all amendments to the performance standards in
100 the report described in Subsection (4); and

101 (iv) post the changes on the division's website.

102 (3) The division shall maintain a performance monitoring system to regularly:

103 (a) collect information on performance indicators; and

104 (b) compare performance indicators to performance standards.

105 (4) Before January 1 each year the director shall submit a written report to the Child
106 Welfare Legislative Oversight Panel and the Social Services Appropriations Subcommittee that
107 includes:

108 (a) a comparison between the performance indicators for the prior fiscal year and the
109 performance standards;

110 (b) for each performance indicator that does not meet the performance standard:

111 (i) the reason the standard was not met;

112 (ii) the measures that need to be taken to meet the standard; and

113 (iii) the division's plan to comply with the standard for the current fiscal year;

114 (c) data on the extent to which new and experienced division employees have received
115 training pursuant to statute and division policy; and

116 (d) an analysis of the use and efficacy of in-home services, both before and after
117 removal of a child from the child's home.

118 Section 2. Section **62A-4a-203.1** is enacted to read:

119 **62A-4a-203.1. Safety and risk assessments.**

120 (1) Child welfare caseworkers within the division shall use evidence-informed or
121 evidence-based safety and risk assessments to guide decisions concerning a child throughout a
122 child protection investigation or proceeding.

123 (2) As part of the evidence-informed or evidence-based safety and risk assessments, the
124 division shall assess at least the following:

125 (a) threat to a child's safety;

126 (b) protective capabilities of a parent or guardian, including the parent or guardian's
127 readiness, willingness, and ability to plan for the child's safety;

128 (c) a child's particular vulnerabilities;

129 (d) interventions required to protect a child; and

130 (e) likelihood of future harm to a child.

131 Section 3. Section **62A-4a-209** is amended to read:

132 **62A-4a-209. Emergency placement.**

133 (1) As used in this section:

134 (a) "Friend" means the same as that term is defined in Subsection [78A-6-307\(1\)\(a\)](#).

135 (b) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

136 (c) "Relative" means the same as that term is defined in Subsection [78A-6-307\(1\)\(c\)](#).

137 (2) The division may use an emergency placement under Subsection

138 [62A-4a-202.1\(4\)\(b\)\(ii\)](#) when:

139 (a) the case worker has made the determination that:

140 (i) the child's home is unsafe;

141 (ii) removal is necessary under the provisions of Section [62A-4a-202.1](#); and

142 (iii) the child's custodial parent or guardian will agree to not remove the child from the
143 home of the person that serves as the placement and not have any contact with the child until
144 after the shelter hearing required by Section 78A-6-306;

145 (b) a person, with preference being given in accordance with Subsection (4), can be
146 identified who has the ability and is willing to provide care for the child who would otherwise
147 be placed in shelter care, including:

148 (i) taking the child to medical, mental health, dental, and educational appointments at
149 the request of the division; and

150 (ii) making the child available to division services and the guardian ad litem; and

151 (c) the person described in Subsection (2)(b) agrees to care for the child on an
152 emergency basis under the following conditions:

153 (i) the person meets the criteria for an emergency placement under Subsection (3);

154 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
155 with the child until after the shelter hearing unless authorized by the division in writing;

156 (iii) the person agrees to contact law enforcement and the division if the custodial
157 parent or guardian attempts to make unauthorized contact with the child;

158 (iv) the person agrees to allow the division and the child's guardian ad litem to have
159 access to the child;

160 (v) the person has been informed and understands that the division may continue to
161 search for other possible placements for long-term care, if needed;

162 (vi) the person is willing to assist the custodial parent or guardian in reunification
163 efforts at the request of the division, and to follow all court orders; and

164 (vii) the child is comfortable with the person.

165 (3) Except as otherwise provided in Subsection (5), before the division places a child
166 in an emergency placement, the division:

167 (a) may request the name of a reference and may contact the reference to determine the
168 answer to the following questions:

169 (i) would the person identified as a reference place a child in the home of the

170 emergency placement; and

171 (ii) are there any other relatives or friends to consider as a possible emergency or
172 long-term placement for the child;

173 (b) shall have the custodial parent or guardian sign an emergency placement agreement
174 form during the investigation;

175 (c) (i) if the emergency placement will be with a relative of the child, shall comply with
176 the background check provisions described in Subsection (7); or

177 (ii) if the emergency placement will be with a person other than a noncustodial parent
178 or a relative, shall comply with the [~~criminal~~] background check provisions described in
179 [~~Section 78A-6-308~~] Subsection (8) for adults living in the household where the child will be
180 placed;

181 (d) shall complete a limited home inspection of the home where the emergency
182 placement is made; and

183 (e) shall have the emergency placement approved by a family service specialist.

184 (4) (a) The following order of preference shall be applied when determining the person
185 with whom a child will be placed in an emergency placement described in this section,
186 provided that the person is willing, and has the ability, to care for the child:

187 (i) a noncustodial parent of the child in accordance with Section 78A-6-307;

188 (ii) a relative of the child;

189 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or
190 guardian of the child; and

191 (iv) a shelter facility, former foster placement, or other foster placement designated by
192 the division.

193 (b) Unless the division agrees otherwise, the custodial parent or guardian described in
194 Subsection (4)(a)(iii) may designate up to two friends as a potential emergency placement.

195 (5) (a) The division may, pending the outcome of the investigation described in
196 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial
197 parent if, based on a limited investigation, prior to making the emergency placement, the

198 division:

199 (i) determines that the noncustodial parent has regular, unsupervised visitation with the
200 child that is not prohibited by law or court order;

201 (ii) determines that there is not reason to believe that the child's health or safety will be
202 endangered during the emergency placement; and

203 (iii) has the custodial parent or guardian sign an emergency placement agreement.

204 (b) Either before or after making an emergency placement with the noncustodial parent
205 of the child, the division may conduct the investigation described in Subsection (3)(a) in
206 relation to the noncustodial parent.

207 (c) Before, or within one day, excluding weekends and holidays, after a child is placed
208 in an emergency placement with the noncustodial parent of the child, the division shall conduct
209 a limited:

210 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

211 (ii) inspection of the home where the emergency placement is made.

212 (6) After an emergency placement, the division caseworker must:

213 (a) respond to the emergency placement's calls within one hour if the custodial parents
214 or guardians attempt to make unauthorized contact with the child or attempt to remove the
215 child;

216 (b) complete all removal paperwork, including the notice provided to the custodial
217 parents and guardians under Section [78A-6-306](#);

218 (c) contact the attorney general to schedule a shelter hearing;

219 (d) complete the placement procedures required in Section [78A-6-307](#); and

220 (e) continue to search for other relatives as a possible long-term placement, if needed.

221 (7) (a) The background check described in Subsection (3)(c)(i) shall include
222 completion of:

223 (i) [~~completion of a nonfingerprint-based~~] a name-based, Utah Bureau of Criminal
224 Identification background check; and

225 (ii) a [~~completed~~] search of the Management Information System described in Section

226 [62A-4a-1003.](#)

227 (b) The division shall determine whether a person passes the background check
228 described in this Subsection (7) pursuant to the provisions of Subsection [62A-2-120\(13\)](#).

229 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an
230 individual who is prohibited by court order from having access to that child.

231 (8) (a) The background check described in Subsection (3)(c)(ii) shall include
232 completion of:

233 (i) a name-based, Utah Bureau of Criminal Identification background check;

234 (ii) a federal name-based criminal background check; and

235 (iii) a search of the Management Information System described in Section

236 [62A-4a-1003.](#)

237 (b) The division shall determine whether a person passes the background checks
238 described in this Subsection (8) pursuant to the provisions of Subsection [62A-2-120](#).

239 (c) If the division denies placement of a child as a result of a name-based criminal
240 background check described in Subsection (8)(a), and the person contests that denial, the
241 person shall submit a complete set of fingerprints with written permission to the Utah Bureau
242 of Criminal Identification for submission to the Federal Bureau of Investigation for a
243 fingerprint-based criminal background check.

244 (d) (i) Within 15 calendar days of the name-based background checks, the division
245 shall require a person to provide a complete set of fingerprints with written permission to the
246 Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation
247 for a fingerprint-based criminal background check.

248 (ii) If a person fails to provide the fingerprints and written permission described in
249 Subsection (8)(d)(i), the child shall immediately be removed from the home.

250 Section 4. Section **62A-4a-213** is enacted to read:

251 **62A-4a-213. Psychotropic medication oversight pilot program.**

252 (1) As used in this section, "psychotropic medication" means medication prescribed to
253 affect or alter thought processes, mood, or behavior, including antipsychotic, antidepressant,

254 anxiolytic, or behavior medication.

255 (2) The division shall, through contract with the Department of Health, establish and
256 operate a psychotropic medication oversight pilot program for children in foster care to ensure
257 that foster children are being prescribed psychotropic medication consistent with their needs.

258 (3) The division shall establish an oversight team to manage the psychotropic
259 medication oversight program, composed of at least the following individuals:

260 (a) an "advanced practice registered nurse," as defined in Subsection [58-31b-102\(13\)](#),
261 employed by the Department of Health; and

262 (b) a child psychiatrist.

263 (4) The oversight team shall monitor foster children:

264 (a) six years old or younger who are being prescribed one or more psychotropic
265 medications; and

266 (b) seven years old or older who are being prescribed two or more psychotropic
267 medications.

268 (5) The oversight team shall, upon request, be given information or records related to
269 the foster child's health care history, including psychotropic medication history and mental and
270 behavioral health history, from:

271 (a) the foster child's current or past caseworker;

272 (b) the foster child; or

273 (c) the foster child's:

274 (i) current or past health care provider;

275 (ii) natural parents; or

276 (iii) foster parents.

277 (6) The oversight team may review and monitor the following information about a
278 foster child:

279 (a) the foster child's history;

280 (b) the foster child's health care, including psychotropic medication history and mental
281 or behavioral health history;

282 (c) whether there are less invasive treatment options available to meet the foster child's
283 needs;

284 (d) the dosage or dosage range and appropriateness of the foster child's psychotropic
285 medication;

286 (e) the short-term or long-term risks associated with the use of the foster child's
287 psychotropic medication; or

288 (f) the reported benefits of the foster child's psychotropic medication.

289 (7) (a) The oversight team may make recommendations to the foster child's health care
290 providers concerning the foster child's psychotropic medication or the foster child's mental or
291 behavioral health.

292 (b) The oversight team shall provide the recommendations made in Subsection (7)(a)
293 to the foster child's parent or guardian after discussing the recommendations with the foster
294 child's current health care providers.

295 (8) The division may adopt administrative rules in accordance with Title 63G, Chapter
296 3, Utah Administrative Rulemaking Act, necessary to administer this section.

297 Section 5. Section **62A-4a-302** is amended to read:

298 **62A-4a-302. Definitions.**

299 As used in this part, "council" means the [~~Child Abuse Advisory~~] Child Welfare
300 Improvement Council established under Section **62A-4a-311**.

301 Section 6. Section **62A-4a-311** is amended to read:

302 **62A-4a-311. Child Welfare Improvement Council -- Creation -- Membership --**
303 **Expenses.**

304 (1) (a) There is established the [~~Child Abuse Advisory~~] Child Welfare Improvement
305 Council composed of no more than 25 members who are appointed by the division.

306 (b) Except as required by Subsection (1)(c), as terms of current council members
307 expire, the division shall appoint each new member or reappointed member to a four-year term.

308 (c) Notwithstanding the requirements of Subsection (1)(b), the division shall, at the
309 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

310 council members are staggered so that approximately half of the council is appointed every two
311 years.

312 (d) The council shall have geographic, economic, gender, cultural, and philosophical
313 diversity.

314 (e) When a vacancy occurs in the membership for any reason, the replacement shall be
315 appointed for the unexpired term.

316 (2) The council shall elect a chairperson from its membership at least biannually.

317 (3) A member may not receive compensation or benefits for the member's service, but
318 may receive per diem and travel expenses in accordance with:

319 (a) Section 63A-3-106;

320 (b) Section 63A-3-107; and

321 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
322 63A-3-107.

323 (4) (a) The council shall hold a public meeting quarterly.

324 (b) Within budgetary constraints, meetings may also be held on the call of the chair, or
325 of a majority of the members.

326 (c) A majority of the members currently appointed to the council constitute a quorum
327 at any meeting and the action of the majority of the members present shall be the action of the
328 council.

329 (5) The council shall:

330 (a) advise the division on matters relating to abuse and neglect; ~~and~~

331 (b) recommend to the division how funds contained in the Children's Account should
332 be allocated; and

333 (c) provide community and professional input on the performance of the division.

334 Section 7. Section 63I-1-262 is amended to read:

335 **63I-1-262. Repeal dates, Title 62A.**

336 ~~[(1) Section 62A-2-120.5, Pilot program for expedited background check of a qualified~~
337 ~~human services applicant, is repealed July 1, 2017.]~~

338 (1) Section [62A-4a-213](#) is repealed July 1, 2019.

339 (2) Subsection [62A-15-1101\(5\)](#) is repealed July 1, 2018.

340 Section 8. Section **76-5-308** is amended to read:

341 **76-5-308. Human trafficking -- Human smuggling.**

342 (1) An actor commits human trafficking for forced labor or forced sexual exploitation
343 if the actor recruits, harbors, transports, ~~or~~ obtains, patronizes, or solicits a person through the
344 use of force, fraud, or coercion by means of:

345 (a) threatening serious harm to, or physical restraint against, that person or a third
346 person;

347 (b) destroying, concealing, removing, confiscating, or possessing any passport,
348 immigration document, or other government identification document;

349 (c) abusing or threatening abuse of the law or legal process against the person or a third
350 person;

351 (d) using a condition of a person being a debtor due to a pledge of the debtor's personal
352 services or the personal services of a person under the control of the debtor as a security for
353 debt where the reasonable value of the services is not applied toward the liquidation of the debt
354 or the length and nature of those services are not respectively limited and defined; or

355 (e) using a condition of servitude by means of any scheme, plan, or pattern intended to
356 cause a person to believe that if the person did not enter into or continue in a condition of
357 servitude, that person or a third person would suffer serious harm or physical restraint, or
358 would be threatened with abuse of legal process.

359 (2) (a) Human trafficking for forced labor includes forced labor in industrial facilities,
360 sweatshops, households, agricultural enterprises, and any other workplace.

361 (b) Human trafficking for forced sexual exploitation includes all forms of forced
362 commercial sexual activity, including forced sexually explicit performance, forced prostitution,
363 forced participation in the production of pornography, forced performance in strip clubs, and
364 forced exotic dancing or display.

365 (3) A person commits human smuggling by transporting or procuring the transportation

366 for one or more persons for a commercial purpose, knowing or having reason to know that the
367 person or persons transported or to be transported are not:

- 368 (a) citizens of the United States;
- 369 (b) permanent resident aliens; or
- 370 (c) otherwise lawfully in this state or entitled to be in this state.

371 Section 9. Section **76-5-308.5** is amended to read:

372 **76-5-308.5. Human trafficking of a child -- Penalties.**

373 (1) "Commercial sexual activity with a child" means any sexual act with a child, on
374 account of which anything of value is given to or received by any person.

375 (2) An actor commits human trafficking of a child if the actor recruits, harbors,
376 transports, [or] obtains, patronizes, or solicits a child for sexual exploitation or forced labor.

377 (3) (a) Human trafficking of a child for forced labor includes labor in industrial
378 facilities, sweatshops, households, agricultural enterprises, or any other workplace.

379 (b) Human trafficking of a child for sexual exploitation includes all forms of
380 commercial sexual activity with a child, including sexually explicit performance, prostitution,
381 participation in the production of pornography, performance in a strip club, and exotic dancing
382 or display.

383 (4) Human trafficking of a child in violation of this section is a first degree felony.

384 Section 10. Section **78A-6-302** is amended to read:

385 **78A-6-302. Court-ordered protective custody of a child following petition filing --**
386 **Grounds.**

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

- 392 (a) (i) there is an imminent danger to the physical health or safety of the child; and
- 393 (ii) the child's physical health or safety may not be protected without removing the

394 child from the custody of the child's parent or guardian;

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

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

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

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

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

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

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

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

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

411 (h) subject to the provisions of Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n)
412 and Section 78A-6-301.5, the child is in immediate need of medical care;

413 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
414 environment that poses a serious risk to the child's health or safety for which immediate
415 remedial or preventive action is necessary; or

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

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

419 (k) the child's natural parent:

420 (i) intentionally, knowingly, or recklessly causes the death of another parent of the
421 child;

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

424 (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or
425 recklessly causing the death of another parent of the child;

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

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

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

432 (n) the child's welfare is otherwise endangered.

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

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

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

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

448 (3) (a) For purposes of Subsection (1), if the division files a petition under Section
449 [78A-6-304](#), the court shall consider the division's safety and risk assessments described in

450 Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the
451 child's parent or guardian or should otherwise be taken into protective custody.

452 (b) The division shall make a diligent effort to provide the safety and risk assessments
453 described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or
454 guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

455 ~~[(3)]~~ (4) In the absence of one of the factors described in Subsection (1), a court may
456 not remove a child from the parent's or guardian's custody on the basis of:

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

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

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

461 ~~[(4)]~~ (5) A child removed from the custody of the child's parent or guardian under this
462 section may not be placed or kept in a secure detention facility pending further court
463 proceedings unless the child is detainable based on guidelines promulgated by the Division of
464 Juvenile Justice Services.

465 ~~[(5)]~~ (6) This section does not preclude removal of a child from the child's home
466 without a warrant or court order under Section 62A-4a-202.1.

467 ~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), a court or the Division of
468 Child and Family Services may not remove a child from the custody of the child's parent or
469 guardian on the sole or primary basis that the parent or guardian refuses to consent to:

470 (i) the administration of a psychotropic medication to a child;

471 (ii) a psychiatric, psychological, or behavioral treatment for a child; or

472 (iii) a psychiatric or behavioral health evaluation of a child.

473 (b) Notwithstanding Subsection ~~[(6)]~~ (7)(a), a court or the Division of Child and
474 Family Services may remove a child under conditions that would otherwise be prohibited under
475 Subsection ~~[(6)]~~ (7)(a) if failure to take an action described under Subsection ~~[(6)]~~ (7)(a) would
476 present a serious, imminent risk to the child's physical safety or the physical safety of others.

477 Section 11. Section 78A-6-312 is amended to read:

- 478 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**
- 479 (1) The court may:
- 480 (a) make any of the dispositions described in Section 78A-6-117;
- 481 (b) place the minor in the custody or guardianship of any:
- 482 (i) individual; or
- 483 (ii) public or private entity or agency; or
- 484 (c) order:
- 485 (i) protective supervision;
- 486 (ii) family preservation;
- 487 (iii) subject to Subsections (12)(b), 78A-6-105(27)(d), and 78A-6-117(2)(n) and
- 488 Section 78A-6-301.5, medical or mental health treatment; or
- 489 (iv) other services.
- 490 (2) Whenever the court orders continued removal at the dispositional hearing, and that
- 491 the minor remain in the custody of the division, the court shall first:
- 492 (a) establish a primary permanency plan for the minor; and
- 493 (b) determine whether, in view of the primary permanency plan, reunification services
- 494 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).
- 495 (3) Subject to Subsections (6) and (7), if the court determines that reunification
- 496 services are appropriate for the minor and the minor's family, the court shall provide for
- 497 reasonable parent-time with the parent or parents from whose custody the minor was removed,
- 498 unless parent-time is not in the best interest of the minor.
- 499 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
- 500 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
- 501 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
- 502 attempt to rehabilitate the offending parent or parents.
- 503 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
- 504 concern in determining whether reasonable efforts to reunify should be made.
- 505 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless

506 the court makes a finding that it is necessary to deny parent-time in order to:

- 507 (a) protect the physical safety of the minor;
- 508 (b) protect the life of the minor; or
- 509 (c) prevent the minor from being traumatized by contact with the parent due to the
- 510 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

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

- 513 (a) prove that the parent has not used legal or illegal substances; or
- 514 (b) comply with an aspect of the child and family plan that is ordered by the court.

515 (8) (a) In addition to the primary permanency plan, the court shall establish a
516 concurrent permanency plan that shall include:

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

519 (ii) an explanation of the effect of abandoning or modifying the primary permanency
520 plan.

521 (b) In determining the primary permanency plan and concurrent permanency plan, the
522 court shall consider:

- 523 (i) the preference for kinship placement over nonkinship placement;
- 524 (ii) the potential for a guardianship placement if the parent-child relationship is legally
525 terminated and no appropriate adoption placement is available; and
- 526 (iii) the use of an individualized permanency plan, only as a last resort.

527 (9) A permanency hearing shall be conducted in accordance with Subsection
528 [78A-6-314\(1\)\(b\)](#) within 30 days after the day on which the dispositional hearing ends if
529 something other than reunification is initially established as a minor's primary permanency
530 plan.

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

533 (b) The court is not limited to the terms of the concurrent permanency plan in the event

534 that the primary permanency plan is abandoned.

535 (c) If, at any time, the court determines that reunification is no longer a minor's primary
536 permanency plan, the court shall conduct a permanency hearing in accordance with Section
537 [78A-6-314](#) on or before the earlier of:

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

540 (ii) the day on which the provision of reunification services, described in Section
541 [78A-6-314](#), ends.

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

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

547 (12) (a) The court shall:

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

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

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

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

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

561 (ii) the court may order the parent to provide the results of drug or alcohol testing

562 recommended by the substance abuse program to the court or division.

563 (13) (a) The time period for reunification services may not exceed 12 months from the
564 date that the minor was initially removed from the minor's home, unless the time period is
565 extended under Subsection [78A-6-314](#)~~(8)~~(7).

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

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

570 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
571 to be inconsistent with the final permanency plan for the minor established pursuant to Section
572 [78A-6-314](#), then measures shall be taken, in a timely manner, to:

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

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

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

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

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

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

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

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

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

590 (18) When a court conducts a permanency hearing for a minor under Section
591 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
592 sibling group together is:

- 593 (a) practicable; and
- 594 (b) in accordance with the best interest of the minor.

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

598 (b) The court may determine that:

- 599 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
600 based on the individual circumstances; and
- 601 (ii) reunification services should not be provided.

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

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

- 608 (a) the whereabouts of the parents are unknown, based upon a verified affidavit
609 indicating that a reasonably diligent search has failed to locate the parent;
- 610 (b) subject to Subsection (21)(a), the parent is suffering from a mental illness of such
611 magnitude that it renders the parent incapable of utilizing reunification services;
- 612 (c) the minor was previously adjudicated as an abused child due to physical abuse,
613 sexual abuse, or sexual exploitation, and following the adjudication the minor:
 - 614 (i) was removed from the custody of the minor's parent;
 - 615 (ii) was subsequently returned to the custody of the parent; and
 - 616 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
617 exploitation;

- 618 (d) the parent:
- 619 (i) caused the death of another minor through abuse or neglect;
- 620 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 621 (A) murder or manslaughter of a child; or
- 622 (B) child abuse homicide;
- 623 (iii) committed sexual abuse against the child;
- 624 (iv) is a registered sex offender or required to register as a sex offender; or
- 625 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the
- 626 child;
- 627 (B) is identified by a law enforcement agency as the primary suspect in an investigation
- 628 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
- 629 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
- 630 recklessly causing the death of another parent of the child;
- 631 (e) the minor suffered severe abuse by the parent or by any person known by the
- 632 parent, if the parent knew or reasonably should have known that the person was abusing the
- 633 minor;
- 634 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
- 635 and the court finds that it would not benefit the minor to pursue reunification services with the
- 636 offending parent;
- 637 (g) the parent's rights are terminated with regard to any other minor;
- 638 (h) the minor was removed from the minor's home on at least two previous occasions
- 639 and reunification services were offered or provided to the family at those times;
- 640 (i) the parent has abandoned the minor for a period of six months or longer;
- 641 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
- 642 location where the parent knew or should have known that a clandestine laboratory operation
- 643 was located;
- 644 (k) except as provided in Subsection (21)(b), with respect to a parent who is the child's
- 645 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was

646 exposed to an illegal or prescription drug that was abused by the child's mother while the child
647 was in utero, if the child was taken into division custody for that reason, unless the mother
648 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
649 substance abuse treatment program approved by the department; or

650 (1) any other circumstance that the court determines should preclude reunification
651 efforts or services.

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

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

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

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

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

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

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

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

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

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

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

674 the out-of-home placement of the minor is made, the court may order the division to provide
675 reunification services.

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

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

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

682 (i) the age of the minor;

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

684 (iii) the length of the sentence;

685 (iv) the nature of the treatment;

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

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

688 (vii) for a minor 10 years [~~of age~~] old or older, the minor's attitude toward the
689 implementation of family reunification services; and

690 (viii) any other appropriate factors.

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

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

696 (25) If, pursuant to Subsections (20)(b) through (l), the court does not order
697 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
698 with Section [78A-6-314](#).

699 Section 12. Section **78A-6-314** is amended to read:

700 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**
701 **parental rights filed -- Hearing on termination of parental rights.**

702 (1) (a) When reunification services have been ordered in accordance with Section
703 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family
704 Services, a permanency hearing shall be held by the court no later than 12 months after the day
705 on which the minor was initially removed from the minor's home.

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

708 (2) (a) If reunification services were ordered by the court in accordance with Section
709 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection
710 (3), whether the minor may safely be returned to the custody of the minor's parent.

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

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

716 (i) the parent or guardian fails to:

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

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

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

720 (ii) the child's natural parent:

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

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

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

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

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

730 (b) any admissible evidence offered by the minor's guardian ad litem;
731 (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);
732 (d) any evidence regarding the efforts or progress demonstrated by the parent; and
733 (e) the extent to which the parent cooperated and utilized the services provided.
734 (4) With regard to a case where reunification services were ordered by the court, if a
735 minor is not returned to the minor's parent or guardian at the permanency hearing, the court
736 shall, unless the time for the provision of reunification services is extended under Subsection
737 (8):

738 (a) order termination of reunification services to the parent;
739 (b) make a final determination regarding whether termination of parental rights,
740 adoption, or permanent custody and guardianship is the most appropriate final plan for the
741 minor, taking into account the minor's primary permanency plan established by the court
742 pursuant to Section 78A-6-312; and
743 (c) establish a concurrent permanency plan that identifies the second most appropriate
744 final plan for the minor, if appropriate.

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

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

751 (5) The court may order another planned permanent living arrangement for a minor 16
752 years old or older upon entering the following findings:

753 (a) the Division of Child and Family Services has documented intensive, ongoing, and
754 unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a
755 placement for the minor with a guardian, an adoptive parent, or an individual described in
756 Subsection 78A-6-306(6)(e);

757 (b) the Division of Child and Family Services has demonstrated that the division has

758 made efforts to normalize the life of the minor while in the division's custody, in accordance
759 with Sections 62A-4a-210 through 62A-4a-212;

760 (c) the minor prefers another planned permanent living arrangement; and

761 (d) there is a compelling reason why reunification or a placement described in

762 Subsection (5)(a) is not in the minor's best interest.

763 ~~[(7)]~~ (6) Except as provided in Subsection ~~[(8)]~~ (7), the court may not extend
764 reunification services beyond 12 months after the day on which the minor was initially
765 removed from the minor's home, in accordance with the provisions of Section 78A-6-312.

766 ~~[(8)]~~ (7) (a) Subject to Subsection ~~[(8)]~~ (7)(b), the court may extend reunification
767 services for no more than 90 days if the court finds, beyond a preponderance of the evidence,
768 that:

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

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

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

772 (b) (i) Except as provided in Subsection ~~[(8)]~~ (7)(c), the court may not extend any
773 reunification services beyond 15 months after the day on which the minor was initially
774 removed from the minor's home.

775 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a
776 basis for the court to extend services for that parent beyond the 12-month period described in
777 Subsection ~~[(7)]~~ (6).

778 (c) In accordance with Subsection ~~[(8)]~~ (7)(d), the court may extend reunification
779 services for one additional 90-day period, beyond the 90-day period described in Subsection
780 ~~[(8)]~~ (7)(a), if:

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

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

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

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

785 (ii) the court specifies the facts upon which the findings described in Subsection ~~[(8)]~~

786 (7)(c)(i) are based; and

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

788 (d) A court may not extend the time period for reunification services without
789 complying with the requirements of this Subsection [~~(8)~~] (7) before the extension.

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

792 [~~(9)~~] (8) The court may, in its discretion:

793 (a) enter any additional order that it determines to be in the best interest of the minor,
794 so long as that order does not conflict with the requirements and provisions of Subsections (4)
795 through [~~(8)~~] (7); or

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

798 [~~(10)~~] (9) If the final plan for the minor is to proceed toward termination of parental
799 rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45
800 calendar days after the permanency hearing.

801 [~~(11)~~] (10) (a) Any party to an action may, at any time, petition the court for an
802 expedited permanency hearing on the basis that continuation of reunification efforts are
803 inconsistent with the permanency needs of the minor.

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

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

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

808 [~~(12)~~] (11) Nothing in this section may be construed to:

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

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

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

814 ~~[(13)]~~ (12) (a) Subject to Subsection ~~[(13)]~~ (12)(b), if a petition for termination of
815 parental rights is filed prior to the date scheduled for a permanency hearing, the court may
816 consolidate the hearing on termination of parental rights with the permanency hearing.

817 (b) For purposes of Subsection ~~[(13)]~~ (12)(a), if the court consolidates the hearing on
818 termination of parental rights with the permanency hearing:

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

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

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

826 ~~[(14)]~~ (13) If a court determines that a child will not be returned to a parent of the
827 child, the court shall consider appropriate placement options inside and outside of the state.