

CHILD WELFARE MODIFICATIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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- ▶ provides for sunset review of the psychotropic medication oversight pilot program before it is repealed July 1, 2019;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



28 human trafficking of a child;

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

31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **62A-4a-117**, as last amended by Laws of Utah 2012, Chapter 242

39 **62A-4a-302**, as last amended by Laws of Utah 2008, Chapter 299

40 **62A-4a-311**, as last amended by Laws of Utah 2010, Chapters 278 and 286

41 **63I-1-262**, as last amended by Laws of Utah 2014, Chapter 226

42 **76-5-308**, as last amended by Laws of Utah 2013, Chapter 196

43 **76-5-308.5**, as enacted by Laws of Utah 2015, Chapter 160

44 **78A-6-302**, as last amended by Laws of Utah 2015, Chapter 274

45 **78A-6-312**, as last amended by Laws of Utah 2015, Chapters 274 and 322

46 **78A-6-314**, as last amended by Laws of Utah 2015, Chapter 322

47 ENACTS:

48 **62A-4a-203.1**, Utah Code Annotated 1953

49 **62A-4a-213**, Utah Code Annotated 1953



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

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

53 **62A-4a-117. Performance monitoring system -- Annual report.**

54 (1) As used in this section:

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

58 (b) "Performance indicators" means actual performance in a program, activity, or other

59 function for which there is a performance standard.

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

62 (A) child protection services;

63 (B) adoption;

64 (C) foster care; and

65 (D) other substitute care.

66 (ii) "Performance standards" includes the performance goals and measures in effect in
67 2008 that the division was subject to under federal court oversight, as amended pursuant to
68 Subsection (2), including:

69 (A) the qualitative case review; and

70 (B) the case process review.

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

73 (i) necessary and proper for the effective administration of the division; or

74 (ii) necessary to comply with, or implement changes in, the law.

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

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

78 (i) the proposed amendment;

79 (ii) a summary of the reason for the proposed amendment; and

80 (iii) the proposed effective date of the amendment.

81 (d) Within 45 days after the day on which the division provides the notice described in
82 Subsection (2)(b) to the ~~[committee, the committee]~~ council, the council shall provide to the
83 division written comments on the proposed amendment.

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

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

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

- 90 (f) The division shall:
- 91 (i) give full, fair, and good faith consideration to all comments and objections received
- 92 from the [committee] council;
- 93 (ii) notify the [committee] council in writing of:
- 94 (A) the division's decision regarding the proposed amendment; and
- 95 (B) the reasons that support the decision;
- 96 (iii) include complete information on all amendments to the performance standards in
- 97 the report described in Subsection (4); and

- 98 (iv) post the changes on the division's website.
- 99 (3) The division shall maintain a performance monitoring system to regularly:
- 100 (a) collect information on performance indicators; and
- 101 (b) compare performance indicators to performance standards.

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

- 105 (a) a comparison between the performance indicators for the prior fiscal year and the
- 106 performance standards;
- 107 (b) for each performance indicator that does not meet the performance standard:
- 108 (i) the reason the standard was not met;
- 109 (ii) the measures that need to be taken to meet the standard; and
- 110 (iii) the division's plan to comply with the standard for the current fiscal year;
- 111 (c) data on the extent to which new and experienced division employees have received
- 112 training pursuant to statute and division policy; and
- 113 (d) an analysis of the use and efficacy of in-home services, both before and after
- 114 removal of a child from the child's home.

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

116 **62A-4a-203.1. Safety and risk assessments.**

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

120 (2) As part of the evidence-informed or evidence-based safety and risk assessments, the

121 division shall assess at least the following:

- 122 (a) threat of harm to a child;
- 123 (b) protective capabilities of a child's parent or guardian;
- 124 (c) a child's particular vulnerabilities;
- 125 (d) interventions required to protect a child; and
- 126 (e) likelihood of future harm to a child.

127 Section 3. Section **62A-4a-213** is enacted to read:

128 **62A-4a-213. Psychotropic medication oversight pilot program.**

129 (1) As used in this section, "psychotropic medication" means medication prescribed to
130 affect or alter thought processes, mood, or behavior, including antipsychotic, antidepressant,
131 anxiolytic, or behavior medication.

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

135 (3) The division may establish a screening system to determine which foster children
136 should be monitored in the psychotropic medication oversight program.

137 (4) The division shall establish an oversight team to manage the psychotropic
138 medication oversight program, composed of at least the following individuals:

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

141 (b) a child psychiatrist.

142 (5) The oversight team may receive information or records related to the foster child's
143 health care history, including psychotropic medication history and mental and behavioral health
144 history, from:

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

146 (b) the foster child; or

147 (c) the foster child's:

148 (i) current or past health care provider;

149 (ii) natural parents; or

150 (iii) foster parents.

151 (6) The oversight team may review and monitor the following information about a

152 foster child:

153 (a) the foster child's history;

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

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

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

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

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

163 (7) The oversight team may make recommendations to the foster child's health care
164 providers concerning the foster child's psychotropic medication or the foster child's mental or
165 behavioral health.

166 (8) As part of Subsection (7), the oversight team may involve, as appropriate, the foster
167 child's current or past caseworker, the child, the child's natural parents, the child's foster
168 parents, and the child's guardian ad litem.

169 (9) The division may adopt administrative rules in accordance with Title 63G, Chapter
170 3, Utah Administrative Rulemaking Act necessary to administer this section.

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

172 **62A-4a-302. Definitions.**

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

175 Section 5. Section **62A-4a-311** is amended to read:

176 **62A-4a-311. Child Welfare Improvement Council -- Creation -- Membership --**
177 **Expenses.**

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

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

182 (c) Notwithstanding the requirements of Subsection (1)(b), the division shall, at the

183 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
 184 council members are staggered so that approximately half of the council is appointed every two
 185 years.

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

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

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

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

193 (a) Section [63A-3-106](#);

194 (b) Section [63A-3-107](#); and

195 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
 196 [63A-3-107](#).

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

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

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

203 (5) The council shall:

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

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

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

208 Section 6. Section **63I-1-262** is amended to read:

209 **63I-1-262. Repeal dates, Title 62A.**

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

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

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

214 Section 7. Section **76-5-308** is amended to read:

215 **76-5-308. Human trafficking -- Human smuggling.**

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

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

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

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

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

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

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

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

239 (3) A person commits human smuggling by transporting or procuring the transportation
240 for one or more persons for a commercial purpose, knowing or having reason to know that the
241 person or persons transported or to be transported are not:

242 (a) citizens of the United States;

243 (b) permanent resident aliens; or

244 (c) otherwise lawfully in this state or entitled to be in this state.

245 Section 8. Section 76-5-308.5 is amended to read:

246 **76-5-308.5. Human trafficking of a child -- Penalties.**

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

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

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

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

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

258 Section 9. Section 78A-6-302 is amended to read:

259 **78A-6-302. Court-ordered protective custody of a child following petition filing --**
260 **Grounds.**

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

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

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

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

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

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

276 the parent or guardian;

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

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

279 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged

280 or cannot arrange for safe and appropriate care for the child;

281 (g) (i) a relative or other adult custodian with whom the child is left by the parent or

282 guardian is unwilling or unable to provide care or support for the child;

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

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

285 (h) subject to the provisions of Subsections [78A-6-105\(27\)\(d\)](#) and [78A-6-117\(2\)\(n\)](#)

286 and Section [78A-6-301.5](#), the child is in immediate need of medical care;

287 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an

288 environment that poses a serious risk to the child's health or safety for which immediate

289 remedial or preventive action is necessary; or

290 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose

291 a threat to the child's health or safety;

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

293 (k) the child's natural parent:

294 (i) intentionally, knowingly, or recklessly causes the death of another parent of the

295 child;

296 (ii) is identified by a law enforcement agency as the primary suspect in an investigation

297 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

298 (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or

299 recklessly causing the death of another parent of the child;

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

301 (m) (i) the parent or guardian, or an adult residing in the same household as the parent

302 or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab

303 Act; and

304 (ii) any clandestine laboratory operation was located in the residence or on the property

305 where the child resided; or

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

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

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

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

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

322 (3) (a) For purposes of Subsection (1), if the division files a petition under Section
323 78A-6-304, the court shall consider the division's safety and risk assessments described in
324 Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the
325 child's parent or guardian or should otherwise be taken into protective custody.

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

329 [~~3~~] (4) In the absence of one of the factors described in Subsection (1), a court may
330 not remove a child from the parent's or guardian's custody on the basis of:

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

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

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

335 [~~4~~] (5) A child removed from the custody of the child's parent or guardian under this
336 section may not be placed or kept in a secure detention facility pending further court
337 proceedings unless the child is detainable based on guidelines promulgated by the Division of

338 Juvenile Justice Services.

339 ~~[(5)]~~ (6) This section does not preclude removal of a child from the child's home
340 without a warrant or court order under Section [62A-4a-202.1](#).

341 ~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), a court or the Division of
342 Child and Family Services may not remove a child from the custody of the child's parent or
343 guardian on the sole or primary basis that the parent or guardian refuses to consent to:

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

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

351 Section 10. Section **78A-6-312** is amended to read:

352 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

353 (1) The court may:

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

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

356 (i) individual; or

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

358 (c) order:

359 (i) protective supervision;

360 (ii) family preservation;

361 (iii) subject to Subsections (12)(b), [78A-6-105\(27\)\(d\)](#), and [78A-6-117\(2\)\(n\)](#) and

362 Section [78A-6-301.5](#), medical or mental health treatment; or

363 (iv) other services.

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

366 (a) establish a primary permanency plan for the minor; and

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

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

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

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

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

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

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

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

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

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

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

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

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

393 (ii) an explanation of the effect of abandoning or modifying the primary permanency
394 plan.

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

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

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

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

401 (9) A permanency hearing shall be conducted in accordance with Subsection
402 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
403 something other than reunification is initially established as a minor's primary permanency
404 plan.

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

407 (b) The court is not limited to the terms of the concurrent permanency plan in the event
408 that the primary permanency plan is abandoned.

409 (c) If, at any time, the court determines that reunification is no longer a minor's primary
410 permanency plan, the court shall conduct a permanency hearing in accordance with Section
411 78A-6-314 on or before the earlier of:

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

414 (ii) the day on which the provision of reunification services, described in Section
415 78A-6-314, ends.

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

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

421 (12) (a) The court shall:

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

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

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

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

431 court program:

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

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

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

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

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

444 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
445 to be inconsistent with the final permanency plan for the minor established pursuant to Section
446 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

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

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

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

- 462 (a) the court shall terminate reunification services; and
- 463 (b) the division shall petition the court for termination of parental rights.
- 464 (18) When a court conducts a permanency hearing for a minor under Section
- 465 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
- 466 sibling group together is:
 - 467 (a) practicable; and
 - 468 (b) in accordance with the best interest of the minor.
- 469 (19) (a) Because of the state's interest in and responsibility to protect and provide
- 470 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
- 471 parent's interest in receiving reunification services is limited.
 - 472 (b) The court may determine that:
 - 473 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
 - 474 based on the individual circumstances; and
 - 475 (ii) reunification services should not be provided.
 - 476 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
 - 477 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
 - 478 concern.
- 479 (20) There is a presumption that reunification services should not be provided to a
- 480 parent if the court finds, by clear and convincing evidence, that any of the following
- 481 circumstances exist:
 - 482 (a) the whereabouts of the parents are unknown, based upon a verified affidavit
 - 483 indicating that a reasonably diligent search has failed to locate the parent;
 - 484 (b) subject to Subsection (21)(a), the parent is suffering from a mental illness of such
 - 485 magnitude that it renders the parent incapable of utilizing reunification services;
 - 486 (c) the minor was previously adjudicated as an abused child due to physical abuse,
 - 487 sexual abuse, or sexual exploitation, and following the adjudication the minor:
 - 488 (i) was removed from the custody of the minor's parent;
 - 489 (ii) was subsequently returned to the custody of the parent; and
 - 490 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
 - 491 exploitation;
 - 492 (d) the parent:

- 493 (i) caused the death of another minor through abuse or neglect;
- 494 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 495 (A) murder or manslaughter of a child; or
- 496 (B) child abuse homicide;
- 497 (iii) committed sexual abuse against the child;
- 498 (iv) is a registered sex offender or required to register as a sex offender; or
- 499 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the
- 500 child;
- 501 (B) is identified by a law enforcement agency as the primary suspect in an investigation
- 502 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
- 503 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
- 504 recklessly causing the death of another parent of the child;
- 505 (e) the minor suffered severe abuse by the parent or by any person known by the
- 506 parent, if the parent knew or reasonably should have known that the person was abusing the
- 507 minor;
- 508 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
- 509 and the court finds that it would not benefit the minor to pursue reunification services with the
- 510 offending parent;
- 511 (g) the parent's rights are terminated with regard to any other minor;
- 512 (h) the minor was removed from the minor's home on at least two previous occasions
- 513 and reunification services were offered or provided to the family at those times;
- 514 (i) the parent has abandoned the minor for a period of six months or longer;
- 515 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
- 516 location where the parent knew or should have known that a clandestine laboratory operation
- 517 was located;
- 518 (k) except as provided in Subsection (21)(b), with respect to a parent who is the child's
- 519 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
- 520 exposed to an illegal or prescription drug that was abused by the child's mother while the child
- 521 was in utero, if the child was taken into division custody for that reason, unless the mother
- 522 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
- 523 substance abuse treatment program approved by the department; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

554 (b) In making the determination described in Subsection (24)(a), the court shall

555 consider:

556 (i) the age of the minor;

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

558 (iii) the length of the sentence;

559 (iv) the nature of the treatment;

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

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

562 (vii) for a minor 10 years [~~of age~~] old or older, the minor's attitude toward the

563 implementation of family reunification services; and

564 (viii) any other appropriate factors.

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

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

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

573 Section 11. Section **78A-6-314** is amended to read:

574 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**
575 **parental rights filed -- Hearing on termination of parental rights.**

576 (1) (a) When reunification services have been ordered in accordance with Section
577 [78A-6-312](#), with regard to a minor who is in the custody of the Division of Child and Family
578 Services, a permanency hearing shall be held by the court no later than 12 months after the day
579 on which the minor was initially removed from the minor's home.

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

582 (2) (a) If reunification services were ordered by the court in accordance with Section
583 [78A-6-312](#), the court shall, at the permanency hearing, determine, consistent with Subsection
584 (3), whether the minor may safely be returned to the custody of the minor's parent.

585 (b) If the court finds, by a preponderance of the evidence, that return of the minor to

586 the minor's parent would create a substantial risk of detriment to the minor's physical or
587 emotional well-being, the minor may not be returned to the custody of the minor's parent.

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

590 (i) the parent or guardian fails to:

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

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

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

594 (ii) the child's natural parent:

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

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

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

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

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

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

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

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

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

608 (4) With regard to a case where reunification services were ordered by the court, if a
609 minor is not returned to the minor's parent or guardian at the permanency hearing, the court
610 shall, unless the time for the provision of reunification services is extended under Subsection
611 (8):

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

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

617 (c) establish a concurrent permanency plan that identifies the second most appropriate
618 final plan for the minor, if appropriate.

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

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

625 (5) The court may order another planned permanent living arrangement for a minor 16
626 years old or older if:

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

631 (b) the Division of Child and Family Services has demonstrated that it has made efforts
632 to normalize the life of the minor while in the division's custody, in accordance with Sections
633 62A-4a-210 through 62A-4a-212;

634 (c) the court has asked the minor about the minor's preference for a permanent
635 placement; and

636 (d) there is a compelling reason why reunification or a placement described in
637 Subsection (5)(a) is not in the minor's best interest.

638 [(7)] (6) Except as provided in Subsection [(8)] (7), the court may not extend
639 reunification services beyond 12 months after the day on which the minor was initially
640 removed from the minor's home, in accordance with the provisions of Section 78A-6-312.

641 [(8)] (7) (a) Subject to Subsection [(8)] (7)(b), the court may extend reunification
642 services for no more than 90 days if the court finds, beyond a preponderance of the evidence,
643 that:

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

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

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

647 (b) (i) Except as provided in Subsection [(8)] (7)(c), the court may not extend any

648 reunification services beyond 15 months after the day on which the minor was initially
649 removed from the minor's home.

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

653 (c) In accordance with Subsection ~~[(8)]~~ (7)(d), the court may extend reunification
654 services for one additional 90-day period, beyond the 90-day period described in Subsection
655 ~~[(8)]~~ (7)(a), if:

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

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

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

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

660 (ii) the court specifies the facts upon which the findings described in Subsection ~~[(8)]~~
661 (7)(c)(i) are based; and

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

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

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

667 ~~[(9)]~~ (8) The court may, in its discretion:

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

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

673 ~~[(10)]~~ (9) If the final plan for the minor is to proceed toward termination of parental
674 rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45
675 calendar days after the permanency hearing.

676 ~~[(11)]~~ (10) (a) Any party to an action may, at any time, petition the court for an
677 expedited permanency hearing on the basis that continuation of reunification efforts are
678 inconsistent with the permanency needs of the minor.

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

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

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

683 ~~[(12)]~~ (11) Nothing in this section may be construed to:

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

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

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

689 ~~[(13)]~~ (12) (a) Subject to Subsection ~~[(13)]~~ (12)(b), if a petition for termination of
690 parental rights is filed prior to the date scheduled for a permanency hearing, the court may
691 consolidate the hearing on termination of parental rights with the permanency hearing.

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

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

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

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

701 ~~[(14)]~~ (13) If a court determines that a child will not be returned to a parent of the
702 child, the court shall consider appropriate placement options inside and outside of the state.