

Senator Wayne A. Harper proposes the following substitute bill:

CHILD WELFARE MODIFICATIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Edward H. Redd

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;
- ▶ modifies the division's requirements for completing background checks before placing a child in emergency placement;
- ▶ 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



- 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- 28 before it is repealed July 1, 2019;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 of harm to a child;
- 126 (b) protective capabilities of a child's parent or guardian;
- 127 (c) a child's particular vulnerabilities;
- 128 (d) interventions required to protect a child; and
- 129 (e) likelihood of future harm to a child.

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

131 **62A-4a-209. Emergency placement.**

132 (1) As used in this section:

- 133 (a) "Friend" means the same as that term is defined in Subsection [78A-6-307\(1\)\(a\)](#).
- 134 (b) "Nonrelative" means an individual, other than a noncustodial parent or a relative.
- 135 (c) "Relative" means the same as that term is defined in Subsection [78A-6-307\(1\)\(c\)](#).

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

137 [62A-4a-202.1\(4\)\(b\)\(ii\)](#) when:

- 138 (a) the case worker has made the determination that:
 - 139 (i) the child's home is unsafe;
 - 140 (ii) removal is necessary under the provisions of Section [62A-4a-202.1](#); and
 - 141 (iii) the child's custodial parent or guardian will agree to not remove the child from the
142 home of the person that serves as the placement and not have any contact with the child until
143 after the shelter hearing required by Section [78A-6-306](#);
- 144 (b) a person, with preference being given in accordance with Subsection (4), can be
145 identified who has the ability and is willing to provide care for the child who would otherwise
146 be placed in shelter care, including:
 - 147 (i) taking the child to medical, mental health, dental, and educational appointments at
148 the request of the division; and
 - 149 (ii) making the child available to division services and the guardian ad litem; and

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

152 (i) the person meets the criteria for an emergency placement under Subsection (3);
153 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
154 with the child until after the shelter hearing unless authorized by the division in writing;
155 (iii) the person agrees to contact law enforcement and the division if the custodial
156 parent or guardian attempts to make unauthorized contact with the child;
157 (iv) the person agrees to allow the division and the child's guardian ad litem to have
158 access to the child;
159 (v) the person has been informed and understands that the division may continue to
160 search for other possible placements for long-term care, if needed;
161 (vi) the person is willing to assist the custodial parent or guardian in reunification
162 efforts at the request of the division, and to follow all court orders; and
163 (vii) the child is comfortable with the person.

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

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

168 (i) would the person identified as a reference place a child in the home of the
169 emergency placement; and
170 (ii) are there any other relatives or friends to consider as a possible emergency or
171 long-term placement for the child;

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

174 (c) (i) if the emergency placement will be with a relative of the child, shall comply with
175 the background check provisions described in Subsection (7); or
176 (ii) if the emergency placement will be with a person other than a noncustodial parent
177 or a relative, shall comply with the ~~criminal~~ background check provisions described in
178 ~~[Section 78A-6-308]~~ Subsection (8) for adults living in the household where the child will be
179 placed;

180 (d) shall complete a limited home inspection of the home where the emergency

181 placement is made; and

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

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

186 (i) a noncustodial parent of the child in accordance with Section [78A-6-307](#);

187 (ii) a relative of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

224 (ii) a [~~completed~~] search of the Management Information System described in Section
225 [62A-4a-1003](#).

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

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

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

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

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

234 (iii) a search of the Management Information System described in Section
235 [62A-4a-1003](#).

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

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

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

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

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

250 **62A-4a-213. Psychotropic medication oversight pilot program.**

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

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

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

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

261 (b) a child psychiatrist.

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

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

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

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

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

271 (b) the foster child; or

272 (c) the foster child's:

273 (i) current or past health care provider;

274 (ii) natural parents; or
275 (iii) foster parents.
276 (6) The oversight team may review and monitor the following information about a
277 foster child:
278 (a) the foster child's history;
279 (b) the foster child's health care, including psychotropic medication history and mental
280 or behavioral health history;
281 (c) whether there are less invasive treatment options available to meet the foster child's
282 needs;
283 (d) the dosage or dosage range and appropriateness of the foster child's psychotropic
284 medication;
285 (e) the short-term or long-term risks associated with the use of the foster child's
286 psychotropic medication; or
287 (f) the reported benefits of the foster child's psychotropic medication.
288 (7) (a) The oversight team may make recommendations to the foster child's health care
289 providers concerning the foster child's psychotropic medication or the foster child's mental or
290 behavioral health.
291 (b) The recommendations made in Subsection (7)(a) shall be provided to the foster
292 child's parent or guardian.
293 (8) The division may adopt administrative rules in accordance with Title 63G, Chapter
294 3, Utah Administrative Rulemaking Act, necessary to administer this section.
295 Section 5. Section **62A-4a-302** is amended to read:
296 **62A-4a-302. Definitions.**
297 As used in this part, "council" means the [~~Child Abuse Advisory~~] Child Welfare
298 Improvement Council established under Section 62A-4a-311.
299 Section 6. Section **62A-4a-311** is amended to read:
300 **62A-4a-311. Child Welfare Improvement Council -- Creation -- Membership --**
301 **Expenses.**
302 (1) (a) There is established the [~~Child Abuse Advisory~~] Child Welfare Improvement
303 Council composed of no more than 25 members who are appointed by the division.
304 (b) Except as required by Subsection (1)(c), as terms of current council members

305 expire, the division shall appoint each new member or reappointed member to a four-year term.

306 (c) Notwithstanding the requirements of Subsection (1)(b), the division shall, at the
307 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
308 council members are staggered so that approximately half of the council is appointed every two
309 years.

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

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

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

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

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

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

319 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
320 63A-3-107.

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

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

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

327 (5) The council shall:

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

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

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

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

333 **63I-1-262. Repeal dates, Title 62A.**

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

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

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

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

339 **76-5-308. Human trafficking -- Human smuggling.**

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

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

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

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

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

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

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

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

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

366 (a) citizens of the United States;

367 (b) permanent resident aliens; or
368 (c) otherwise lawfully in this state or entitled to be in this state.

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

370 **76-5-308.5. Human trafficking of a child -- Penalties.**

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

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

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

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

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

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

383 **78A-6-302. Court-ordered protective custody of a child following petition filing --**
384 **Grounds.**

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

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

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

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

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

397 (c) the child or another child residing in the same household has been, or is considered

398 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a
399 parent or guardian, a member of the parent's or guardian's household, or other person known to
400 the parent or guardian;

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

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

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

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

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

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

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

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

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

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

417 (k) the child's natural parent:

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

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

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

424 (l) an infant has been abandoned, as defined in Section 78A-6-316;

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

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

429 where the child resided; or

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

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

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

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

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

446 (3) (a) For purposes of Subsection (1), if the division files a petition under Section
447 78A-6-304, the court shall consider the division's safety and risk assessments described in
448 Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the
449 child's parent or guardian or should otherwise be taken into protective custody.

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

453 [~~(3)~~] (4) In the absence of one of the factors described in Subsection (1), a court may
454 not remove a child from the parent's or guardian's custody on the basis of:

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

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

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

459 [~~(4)~~] (5) A child removed from the custody of the child's parent or guardian under this

460 section may not be placed or kept in a secure detention facility pending further court
461 proceedings unless the child is detainable based on guidelines promulgated by the Division of
462 Juvenile Justice Services.

463 ~~[(5)]~~ (6) This section does not preclude removal of a child from the child's home
464 without a warrant or court order under Section 62A-4a-202.1.

465 ~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b), a court or the Division of
466 Child and Family Services may not remove a child from the custody of the child's parent or
467 guardian on the sole or primary basis that the parent or guardian refuses to consent to:

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

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

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

476 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

477 (1) The court may:

- 478 (a) make any of the dispositions described in Section 78A-6-117;
479 (b) place the minor in the custody or guardianship of any:

- 480 (i) individual; or
481 (ii) public or private entity or agency; or
482 (c) order:
483 (i) protective supervision;
484 (ii) family preservation;
485 (iii) subject to Subsections (12)(b), 78A-6-105(27)(d), and 78A-6-117(2)(n) and

486 Section 78A-6-301.5, medical or mental health treatment; or

487 (iv) other services.

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

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

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

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

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

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

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

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

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

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

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

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

517 (ii) an explanation of the effect of abandoning or modifying the primary permanency
518 plan.

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

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

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

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

525 (9) A permanency hearing shall be conducted in accordance with Subsection
526 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
527 something other than reunification is initially established as a minor's primary permanency
528 plan.

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

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

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

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

538 (ii) the day on which the provision of reunification services, described in Section
539 78A-6-314, ends.

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

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

545 (12) (a) The court shall:

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

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

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

553 federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

583 (17) With regard to a minor in the custody of the division whose parent or parents are

584 ordered to receive reunification services but who have abandoned that minor for a period of six
585 months from the date that reunification services were ordered:

- 586 (a) the court shall terminate reunification services; and
- 587 (b) the division shall petition the court for termination of parental rights.

588 (18) When a court conducts a permanency hearing for a minor under Section
589 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
590 sibling group together is:

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

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

596 (b) The court may determine that:

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

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

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

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

615 exploitation;

616 (d) the parent:

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

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

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

620 (B) child abuse homicide;

621 (iii) committed sexual abuse against the child;

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

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

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

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

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

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

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

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

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

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

642 (k) except as provided in Subsection (21)(b), with respect to a parent who is the child's
643 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
644 exposed to an illegal or prescription drug that was abused by the child's mother while the child
645 was in utero, if the child was taken into division custody for that reason, unless the mother

646 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
647 substance abuse treatment program approved by the department; or

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

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

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

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

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

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

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

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

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

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

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

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

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

676 (24) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable

677 services unless it determines that those services would be detrimental to the minor.

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

680 (i) the age of the minor;

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

682 (iii) the length of the sentence;

683 (iv) the nature of the treatment;

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

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

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

688 (viii) any other appropriate factors.

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

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

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

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

698 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**
699 **parental rights filed -- Hearing on termination of parental rights.**

700 (1) (a) When reunification services have been ordered in accordance with Section
701 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family
702 Services, a permanency hearing shall be held by the court no later than 12 months after the day
703 on which the minor was initially removed from the minor's home.

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

706 (2) (a) If reunification services were ordered by the court in accordance with Section
707 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection

708 (3), whether the minor may safely be returned to the custody of the minor's parent.

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

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

714 (i) the parent or guardian fails to:

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

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

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

718 (ii) the child's natural parent:

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

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

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

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

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

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

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

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

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

732 (4) With regard to a case where reunification services were ordered by the court, if a
733 minor is not returned to the minor's parent or guardian at the permanency hearing, the court
734 shall, unless the time for the provision of reunification services is extended under Subsection
735 (8):

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

737 (b) make a final determination regarding whether termination of parental rights,
738 adoption, or permanent custody and guardianship is the most appropriate final plan for the

739 minor, taking into account the minor's primary permanency plan established by the court
740 pursuant to Section 78A-6-312; and

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

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

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

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

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

755 (b) the Division of Child and Family Services has demonstrated that it has made efforts
756 to normalize the life of the minor while in the division's custody, in accordance with Sections
757 62A-4a-210 through 62A-4a-212;

758 (c) the court has taken into consideration the minor's preference for a permanent
759 placement; and

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

762 ~~[(7)] (6) Except as provided in Subsection ~~[(8)] (7)~~, the court may not extend
763 reunification services beyond 12 months after the day on which the minor was initially
764 removed from the minor's home, in accordance with the provisions of Section 78A-6-312.~~

765 ~~[(8)] (7) (a) Subject to Subsection ~~[(8)] (7)~~(b), the court may extend reunification
766 services for no more than 90 days if the court finds, beyond a preponderance of the evidence,
767 that:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

791 [~~(9)~~] (8) The court may, in its discretion:

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

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

797 [~~(10)~~] (9) If the final plan for the minor is to proceed toward termination of parental
798 rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45
799 calendar days after the permanency hearing.

800 [~~(11)~~] (10) (a) Any party to an action may, at any time, petition the court for an

801 expedited permanency hearing on the basis that continuation of reunification efforts are
802 inconsistent with the permanency needs of the minor.

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

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

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

807 ~~[(12)]~~ (11) Nothing in this section may be construed to:

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

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

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

813 ~~[(13)]~~ (12) (a) Subject to Subsection ~~[(13)]~~ (12)(b), if a petition for termination of
814 parental rights is filed prior to the date scheduled for a permanency hearing, the court may
815 consolidate the hearing on termination of parental rights with the permanency hearing.

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

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

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

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

825 ~~[(14)]~~ (13) If a court determines that a child will not be returned to a parent of the
826 child, the court shall consider appropriate placement options inside and outside of the state.