

1 **ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS**

2 **AMENDMENTS**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Karianne Lisonbee**

6 Senate Sponsor: Wayne A. Harper

7

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses proceedings in regards to the abuse, neglect, or dependency of a
11 child and termination of parental rights.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ allows a party to request a hearing on reunification services if a petition for
15 termination of parental rights is filed before a dispositional hearing;
- 16 ▶ provides that the court find termination of parental rights is strictly necessary from
17 the child's point of view;
- 18 ▶ requires the court to take into account reunification and kinship preferences in
19 determining whether to terminate parental rights; and
- 20 ▶ makes technical and conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **78A-6-302**, as last amended by Laws of Utah 2019, Chapters 136, 335, and 388

28 **78A-6-304**, as renumbered and amended by Laws of Utah 2008, Chapter 3

29 78A-6-306, as last amended by Laws of Utah 2019, Chapters 136, 326, and 335

30 78A-6-314, as last amended by Laws of Utah 2019, Chapter 71

31 78A-6-503, as last amended by Laws of Utah 2013, Chapter 340

32 78A-6-507, as last amended by Laws of Utah 2012, Chapter 281

33

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

35 Section 1. Section 78A-6-302 is amended to read:

36 78A-6-302. **Court-ordered protective custody of a child following petition filing --**
37 **Grounds.**

38 (1) When a petition is filed under Section 78A-6-304, the court shall apply, in
39 addressing the petition, the least restrictive means and alternatives available to accomplish a
40 compelling state interest and to prevent irretrievable destruction of family life as described in
41 Subsections 62A-4a-201(1) and (7)(a) and Section 78A-6-503.

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

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

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

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

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

54 (c) the child or another child residing in the same household has been, or is considered
55 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a

56 parent or guardian, a member of the parent's or guardian's household, or other person known to
57 the parent or guardian;

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

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

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

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

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

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

66 (h) subject to Subsections 78A-6-105(39) and 78A-6-117(2) and Section 78A-6-301.5,
67 the child is in immediate need of medical care;

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

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

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

74 (k) the child's natural parent:

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

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

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

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

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

83 or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab
84 Act; and

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

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

88 [~~2~~] (3) (a) For purposes of Subsection [~~1~~] (2)(a), if a child has previously been
89 adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or
90 dependency occurs involving the same substantiated abuser or under similar circumstance as
91 the previous abuse, that fact constitutes prima facie evidence that the child cannot safely
92 remain in the custody of the child's parent.

93 (b) For purposes of Subsection [~~1~~] (2)(c):

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

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

104 [~~3~~] (4) (a) For purposes of Subsection [~~1~~] (2), if the division files a petition under
105 Section [78A-6-304](#), the court shall consider the division's safety and risk assessments described
106 in Section [62A-4a-203.1](#) to determine whether a child should be removed from the custody of
107 the child's parent or guardian or should otherwise be taken into protective custody.

108 (b) The division shall make a diligent effort to provide the safety and risk assessments
109 described in Section [62A-4a-203.1](#) to the court, guardian ad litem, and counsel for the parent or

110 guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

111 ~~[(4)]~~ (5) In the absence of one of the factors described in Subsection ~~[(1)]~~ (2), a court
112 may not remove a child from the parent's or guardian's custody on the basis of:

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

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

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

117 ~~[(5)]~~ (6) A child removed from the custody of the child's parent or guardian under this
118 section may not be placed or kept in a secure detention facility pending further court
119 proceedings unless the child is detainable based on guidelines promulgated by the Division of
120 Juvenile Justice Services.

121 ~~[(6)]~~ (7) This section does not preclude removal of a child from the child's home
122 without a warrant or court order under Section 62A-4a-202.1.

123 ~~[(7)]~~ (8) (a) Except as provided in Subsection ~~[(7)]~~ (8)(b), a court or the Division of
124 Child and Family Services may not remove a child from the custody of the child's parent or
125 guardian on the sole or primary basis that the parent or guardian refuses to consent to:

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

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

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

129 (b) Notwithstanding Subsection ~~[(7)]~~ (8)(a), a court or the Division of Child and
130 Family Services may remove a child under conditions that would otherwise be prohibited under
131 Subsection ~~[(7)]~~ (8)(a) if failure to take an action described under Subsection ~~[(7)]~~ (8)(a) would
132 present a serious, imminent risk to the child's physical safety or the physical safety of others.

133 Section 2. Section 78A-6-304 is amended to read:

134 **78A-6-304. Petition filed.**

135 (1) For purposes of this section, "petition" means a petition to commence proceedings
136 in a juvenile court alleging that a child is:

137 (a) abused;

138 (b) neglected; or

139 (c) dependent.

140 (2) (a) Subject to Subsection (2)(b), any interested person may file a petition.

141 (b) A person described in Subsection (2)(a) shall make a referral with the division
142 before the person files a petition.

143 (3) If the child who is the subject of a petition is removed from the child's home by the
144 division, the petition shall be filed on or before the date of the initial shelter hearing described
145 in Section [78A-6-306](#).

146 (4) The petition shall be verified, and contain all of the following:

147 (a) the name, age, and address, if any, of the child upon whose behalf the petition is
148 brought;

149 (b) the names and addresses, if known to the petitioner, of both parents and any
150 guardian of the child;

151 (c) a concise statement of facts, separately stated, to support the conclusion that the
152 child upon whose behalf the petition is being brought is abused, neglected, or dependent; and

153 (d) a statement regarding whether the child is in protective custody, and if so, the date
154 and precise time the child was taken into protective custody.

155 (5) If a petition is filed under this section, and a petition for termination of parental
156 rights is filed under Section [78A-6-504](#) before a dispositional hearing, a party may request a
157 hearing on whether reunification services are appropriate in accordance with the factors
158 described in Subsections [78A-6-312](#)(21) and (23).

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

160 **78A-6-306. Shelter hearing.**

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

163 (a) removal of the child from the child's home by the division;

- 164 (b) placement of the child in the protective custody of the division;
- 165 (c) emergency placement under Subsection 62A-4a-202.1(4);
- 166 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
- 167 at the request of the division; or
- 168 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
- 169 Subsection 78A-6-106(4).
- 170 (2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the
- 171 division shall issue a notice that contains all of the following:
- 172 (a) the name and address of the person to whom the notice is directed;
- 173 (b) the date, time, and place of the shelter hearing;
- 174 (c) the name of the child on whose behalf a petition is being brought;
- 175 (d) a concise statement regarding:
- 176 (i) the reasons for removal or other action of the division under Subsection (1); and
- 177 (ii) the allegations and code sections under which the proceeding has been instituted;
- 178 (e) a statement that the parent or guardian to whom notice is given, and the child, are
- 179 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
- 180 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
- 181 provided in accordance with Title 78B, Chapter 22, Indigent Defense Act; and
- 182 (f) a statement that the parent or guardian is liable for the cost of support of the child in
- 183 the protective custody, temporary custody, and custody of the division, and the cost for legal
- 184 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
- 185 ability of the parent or guardian.
- 186 (3) The notice described in Subsection (2) shall be personally served as soon as
- 187 possible, but no later than one business day after removal of the child from the child's home, or
- 188 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
- 189 78A-6-106(4), on:
- 190 (a) the appropriate guardian ad litem; and

191 (b) both parents and any guardian of the child, unless the parents or guardians cannot
192 be located.

193 (4) The following persons shall be present at the shelter hearing:

194 (a) the child, unless it would be detrimental for the child;

195 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
196 fail to appear in response to the notice;

197 (c) counsel for the parents, if one is requested;

198 (d) the child's guardian ad litem;

199 (e) the caseworker from the division who is assigned to the case; and

200 (f) the attorney from the attorney general's office who is representing the division.

201 (5) (a) At the shelter hearing, the court shall:

202 (i) provide an opportunity to provide relevant testimony to:

203 (A) the child's parent or guardian, if present; and

204 (B) any other person having relevant knowledge; [~~and~~]

205 (ii) subject to Section [78A-6-305](#), provide an opportunity for the child to testify[-]; and

206 (iii) in accordance with Subsections [78A-6-307\(18\)\(c\)](#) through (e), grant preferential

207 consideration to a relative or friend for the temporary placement of the child.

208 (b) The court:

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

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

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

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

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

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

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

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

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

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

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

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

233 (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice
234 described in Subsection (2) within the time described in Subsection (3), the court may grant the
235 request of a parent or guardian for a continuance, not to exceed five judicial days.

236 (9) (a) If the child is in the protective custody of the division, the court shall order that
237 the child be returned to the custody of the parent or guardian unless it finds, by a
238 preponderance of the evidence, consistent with the protections and requirements provided in
239 Subsection 62A-4a-201(1), that any one of the following exists:

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

243 (ii) (A) the child is suffering emotional damage that results in a serious impairment in
244 the child's growth, development, behavior, or psychological functioning;

245 (B) the parent or guardian is unwilling or unable to make reasonable changes that
246 would sufficiently prevent future damage; and

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

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

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

254 (A) parent or guardian;

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

256 (C) person known to the parent or guardian;

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

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

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

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

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

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

265 (ix) subject to Subsections [78A-6-105\(39\)\(b\)](#) and [78A-6-117\(2\)](#) and Section
266 [78A-6-301.5](#), the child is in immediate need of medical care;

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

269 (B) the parent or guardian is unwilling or unable to make reasonable changes that
270 would remove the threat;

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

272 (B) the parent or guardian is unwilling or unable to make reasonable changes that
273 would prevent the neglect;

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

278 (xiii) (A) the child's welfare is substantially endangered; and

279 (B) the parent or guardian is unwilling or unable to make reasonable changes that
280 would remove the danger; or

281 (xiv) the child's natural parent:

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

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

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

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

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

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

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

298 (10) (a) (i) The court shall also make a determination on the record as to whether

299 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
300 child's home and whether there are available services that would prevent the need for continued
301 removal.

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

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

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

311 (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
312 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
313 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
314 return a child to the child's home, provide reunification services, or attempt to rehabilitate the
315 offending parent or parents.

316 (13) The court may not order continued removal of a child solely on the basis of
317 educational neglect as defined in Section [78A-6-105](#), truancy, or failure to comply with a court
318 order to attend school.

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

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

323 (15) If the court finds that continued removal and temporary custody are necessary for
324 the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal
325 regardless of:

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

330 Section 4. Section **78A-6-314** is amended to read:

331 **78A-6-314. Permanency hearing -- Final plan -- Petition for termination of**
332 **parental rights filed -- Hearing on termination of parental rights.**

333 (1) (a) When reunification services have been ordered in accordance with Section
334 [78A-6-312](#), with regard to a minor who is in the custody of the Division of Child and Family
335 Services, a permanency hearing shall be held by the court no later than 12 months after the day
336 on which the minor was initially removed from the minor's home.

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

339 (2) (a) If reunification services were ordered by the court in accordance with Section
340 [78A-6-312](#), the court shall, at the permanency hearing, determine, consistent with Subsection
341 (3), whether the minor may safely be returned to the custody of the minor's parent.

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

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

347 (i) the parent or guardian fails to:

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

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

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

351 (ii) the minor's natural parent:

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

353 minor;

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

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

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

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

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

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

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

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

365 (4) With regard to a case where reunification services were ordered by the court, if a
366 minor is not returned to the minor's parent or guardian at the permanency hearing, the court
367 shall, unless the time for the provision of reunification services is extended under Subsection
368 (7):

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

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

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

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

378 (a) the Division of Child and Family Services has documented intensive, ongoing, and
379 unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a

380 placement for the minor with a guardian, an adoptive parent, or an individual described in
381 Subsection 78A-6-306(6)(e);

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

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

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

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

391 (7) (a) Subject to Subsection (7)(b), the court may extend reunification services for no
392 more than 90 days if the court finds, beyond a preponderance of the evidence, that:

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

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

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

396 (b) (i) Except as provided in Subsection (7)(c), the court may not extend any
397 reunification services beyond 15 months after the day on which the minor was initially
398 removed from the minor's home.

399 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a
400 basis for the court to extend services for that parent beyond the 12-month period described in
401 Subsection (6).

402 (c) In accordance with Subsection (7)(d), the court may extend reunification services
403 for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:

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

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

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

407 (C) the extension is in the best interest of the minor;
408 (ii) the court specifies the facts upon which the findings described in Subsection
409 (7)(c)(i) are based; and
410 (iii) the court specifies the time period in which it is likely that reunification will occur.
411 (d) A court may not extend the time period for reunification services without
412 complying with the requirements of this Subsection (7) before the extension.
413 (e) In determining whether to extend reunification services for a minor, a court shall
414 take into consideration the status of the minor siblings of the minor.
415 (8) The court may, in its discretion:
416 (a) enter any additional order that it determines to be in the best interest of the minor,
417 so long as that order does not conflict with the requirements and provisions of Subsections (4)
418 through (7); or
419 (b) order the division to provide protective supervision or other services to a minor and
420 the minor's family after the division's custody of a minor has been terminated.
421 (9) (a) If the final plan for the minor is to proceed toward termination of parental
422 rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45
423 calendar days after the permanency hearing.
424 (b) If the division opposes the plan to terminate parental rights, the court may not
425 require the division to file a petition for the termination of parental rights, except as required
426 under Subsection [78A-6-316\(2\)](#).
427 (10) (a) Any party to an action may, at any time, petition the court for an expedited
428 permanency hearing on the basis that continuation of reunification efforts are inconsistent with
429 the permanency needs of the minor.
430 (b) If the court so determines, it shall order, in accordance with federal law, that:
431 (i) the minor be placed in accordance with the permanency plan; and
432 (ii) whatever steps are necessary to finalize the permanent placement of the minor be
433 completed as quickly as possible.

434 (11) Nothing in this section may be construed to:
435 (a) entitle any parent to reunification services for any specified period of time;
436 (b) limit a court's ability to terminate reunification services at any time before a
437 permanency hearing; or
438 (c) limit or prohibit the filing of a petition for termination of parental rights by any
439 party, or a hearing on termination of parental rights, at any time prior to a permanency hearing
440 provided that relative placement and custody options have been fairly considered in accordance
441 with Sections [62A-4a-201](#) and [78A-6-503](#).
442 (12) (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is
443 filed prior to the date scheduled for a permanency hearing, the court may consolidate the
444 hearing on termination of parental rights with the permanency hearing.
445 (b) For purposes of Subsection (12)(a), if the court consolidates the hearing on
446 termination of parental rights with the permanency hearing:
447 (i) the court shall first make a finding regarding whether reasonable efforts have been
448 made by the Division of Child and Family Services to finalize the permanency plan for the
449 minor; and
450 (ii) any reunification services shall be terminated in accordance with the time lines
451 described in Section [78A-6-312](#).
452 (c) A decision on a petition for termination of parental rights shall be made within 18
453 months from the day on which the minor is removed from the minor's home.
454 (13) If a court determines that a minor will not be returned to a parent of the minor, the
455 court shall consider appropriate placement options inside and outside of the state.
456 (14) (a) If a minor 14 years of age or older desires an opportunity to address the court
457 or testify regarding permanency or placement, the court shall give the minor's wishes added
458 weight, but may not treat the minor's wishes as the single controlling factor under this section.
459 (b) If the court's decision under this section differs from a minor's express wishes if the
460 minor is of sufficient maturity to articulate the wishes in relation to permanency or the minor's

461 placement, the court shall make findings explaining why the court's decision differs from the
462 minor's wishes.

463 Section 5. Section **78A-6-503** is amended to read:

464 **78A-6-503. Judicial process for termination -- Parent unfit or incompetent -- Best**
465 **interest of child.**

466 (1) Under both the United States Constitution and the constitution of this state, a parent
467 possesses a fundamental liberty interest in the care, custody, and management of the parent's
468 child. For this reason, the termination of family ties by the state may only be done for
469 compelling reasons.

470 (2) The court shall provide a fundamentally fair process to a parent if a party moves to
471 terminate the parent's parental rights.

472 (3) If the party moving to terminate parental rights is a governmental entity, the court
473 shall find that any actions or allegations made in opposition to the rights and desires of a parent
474 regarding the parent's child are supported by sufficient evidence to satisfy a parent's
475 constitutional entitlement to heightened protection against government interference with the
476 parent's fundamental rights and liberty interests.

477 (4) (a) The fundamental liberty interest of a parent concerning the care, custody, and
478 management of the parent's child is recognized, protected, and does not cease to exist simply
479 because:

480 (i) a parent may fail to be a model parent; or [~~because~~]

481 (ii) the parent's child is placed in the temporary custody of the state.

482 (b) The court should give serious consideration to the fundamental right of a parent to
483 rear the parent's child, and concomitantly, of the right of the child to be reared by the child's
484 natural parent.

485 (5) At all times, a parent retains a vital interest in preventing the irretrievable
486 destruction of family life.

487 (6) Prior to an adjudication of unfitness, government action in relation to a parent and a

488 parent's child may not exceed the least restrictive means or alternatives available to accomplish
489 a compelling state interest.

490 (7) Until parental unfitness is established and the children suffer, or are substantially
491 likely to suffer, serious detriment as a result, the child and the child's parent share a vital
492 interest in preventing erroneous termination of their relationship and the court may not presume
493 that a child and the child's parents are adversaries.

494 (8) It is in the best interest and welfare of a child to be raised under the care and
495 supervision of the child's natural parents. A child's need for a normal family life in a
496 permanent home, and for positive, nurturing family relationships is usually best met by the
497 child's natural parents. Additionally, the integrity of the family unit and the right of parents to
498 conceive and raise their children are constitutionally protected. For these reasons, the court
499 should only transfer custody of a child from the child's natural parent for compelling reasons
500 and when there is a jurisdictional basis to do so.

501 (9) The right of a fit, competent parent to raise the parent's child without undue
502 government interference is a fundamental liberty interest that has long been protected by the
503 laws and Constitution of this state and of the United States, and is a fundamental public policy
504 of this state.

505 (10) (a) The state recognizes that:

506 ~~[(a)]~~ (i) a parent has the right, obligation, responsibility, and authority to raise, manage,
507 train, educate, provide for, and reasonably discipline the parent's ~~[children]~~ child; and

508 ~~[(b)]~~ (ii) the state's role is secondary and supportive to the primary role of a parent.

509 ~~[(c)]~~ (b) It is the public policy of this state that ~~[parents]~~ a parent retain the fundamental
510 right and duty to exercise primary control over the care, supervision, upbringing, and education
511 of ~~[their children]~~ the parent's child.

512 ~~[(d)]~~ (c) The interests of the state favor preservation and not severance of natural
513 familial bonds in situations where a positive, nurturing parent-child relationship can exist,
514 including extended family association and support.

515 (11) This part provides a judicial process for voluntary and involuntary severance of
516 the parent-child relationship, designed to safeguard the rights and interests of all parties
517 concerned and promote their welfare and that of the state.

518 (12) (a) Wherever possible, family life should be strengthened and preserved, but if a
519 parent is found, by reason of [~~his~~] the parent's conduct or condition, to be unfit or incompetent
520 based upon any of the grounds for termination described in this part, the court shall then
521 consider the welfare and best interest of the child of paramount importance in determining
522 whether termination of parental rights shall be ordered.

523 (b) In determining whether termination is in the best interest of the child, and in
524 finding that termination of parental rights, from the child's point of view, is strictly necessary,
525 the court shall consider, among other relevant factors, whether:

526 (i) sufficient efforts were dedicated to reunification in accordance with Subsection
527 78A-6-507(3)(a); and

528 (ii) the efforts to place the child with kin who have, or are willing to come forward to
529 care for the child, were given due weight.

530 Section 6. Section 78A-6-507 is amended to read:

531 **78A-6-507. Grounds for termination of parental rights -- Findings regarding**
532 **reasonable efforts.**

533 (1) Subject to the protections and requirements of Section 78A-6-503, and if the court
534 finds termination of a parent's parental rights, from the child's point of view, is strictly
535 necessary, the court may terminate all parental rights with respect to [a] the parent if the court
536 finds any one of the following:

537 (a) that the parent has abandoned the child;

538 (b) that the parent has neglected or abused the child;

539 (c) that the parent is unfit or incompetent;

540 (d) (i) that the child is being cared for in an out-of-home placement under the
541 supervision of the court or the division;

542 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or
543 unwilling to remedy the circumstances that cause the child to be in an out-of-home placement;
544 and

545 (iii) that there is a substantial likelihood that the parent will not be capable of
546 exercising proper and effective parental care in the near future;

547 (e) failure of parental adjustment, as defined in this chapter;

548 (f) that only token efforts have been made by the parent:

549 (i) to support or communicate with the child;

550 (ii) to prevent neglect of the child;

551 (iii) to eliminate the risk of serious harm to the child; or

552 (iv) to avoid being an unfit parent;

553 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the
554 child; and

555 (ii) that termination is in the child's best interest;

556 (h) that, after a period of trial during which the child was returned to live in the child's
557 own home, the parent substantially and continuously or repeatedly refused or failed to give the
558 child proper parental care and protection; or

559 (i) the terms and conditions of safe relinquishment of a newborn child have been
560 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
561 Child.

562 (2) The court may not terminate the parental rights of a parent because the parent has
563 failed to complete the requirements of a child and family plan.

564 (3) (a) Except as provided in Subsection (3)(b), in any case in which the court has
565 directed the division to provide reunification services to a parent, the court must find that the
566 division made reasonable efforts to provide those services before the court may terminate the
567 parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

568 (b) Notwithstanding Subsection (3)(a), the court is not required to make the finding

569 under Subsection (3)(a) before terminating a parent's rights:

570 (i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred

571 subsequent to adjudication; or

572 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not

573 required under federal law, and federal law is not inconsistent with Utah law.