

HB0033S01 compared with HB0033

~~{deleted text}~~ shows text that was in HB0033 but was deleted in HB0033S01.

inserted text shows text that was not in HB0033 but was inserted into HB0033S01.

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Representative Karianne Lisonbee proposes the following substitute bill:

ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

LONG TITLE

~~{Committee Note:~~

~~_____ The Judiciary Interim Committee recommended this bill.~~

~~_____ Legislative Vote: 11 voting for 0 voting against _____ 5 absent~~

~~{General Description:~~

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

Highlighted Provisions:

This bill:

- ▶ ~~{limits the circumstances for when}~~ allows a party to request a hearing on reunification services if a petition for termination of parental rights ~~{may be filed~~

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~~under Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings}~~ is filed before a dispositional hearing;

- ▶ provides that the court find termination of parental rights is strictly necessary from the child's point of view;
- ▶ requires the court to take into account ~~{certain statutory provisions}~~ reunification and kinship preferences in ~~{abuse, neglect, and dependency proceedings}~~ determining whether to terminate parental rights; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

~~{78A-6-504}~~ **78A-6-503**, as ~~{renumbered and}~~ last amended by Laws of Utah ~~{2008}~~ 2013, Chapter ~~{3}~~ 340

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

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

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

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

Grounds.

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

~~{(1)}~~ (2) After a petition has been filed under Section 78A-6-304, if the child who is

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the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

- (a) (i) there is an imminent danger to the physical health or safety of the child; and
- (ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;
- (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer harm; and
- (ii) there are no less restrictive means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
- (c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;
- (d) the parent or guardian is unwilling to have physical custody of the child;
- (e) the child is abandoned or left without any provision for the child's support;
- (f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;
- (g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
- (ii) the whereabouts of the parent or guardian are unknown; and
- (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- (h) subject to Subsections 78A-6-105(39) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;
- (i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a serious risk to the child's health or safety for which immediate remedial or preventive action is necessary; or
- (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;
- (j) the child or another child residing in the same household has been neglected;

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(k) the child's natural parent:

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

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

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

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

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

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

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

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

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

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

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

~~[(3)]~~ (4) (a) For purposes of Subsection ~~[(1)]~~ (2), if the division files a petition under

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Section 78A-6-304, the court shall consider the division's safety and risk assessments described in Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the child's parent or guardian or should otherwise be taken into protective custody.

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

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

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

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

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

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

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

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

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

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

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

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

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

78A-6-304. Petition filed.

(1) For purposes of this section, "petition" means a petition to commence proceedings

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in a juvenile court alleging that a child is:

- (a) abused;
- (b) neglected; or
- (c) dependent.

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

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

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

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

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

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

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

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

(5) If a petition ~~has been~~ is filed under this section, and a petition for termination of parental rights ~~may not be filed, unless the court has:~~

~~(a) adjudicated or dismissed the petition filed under this section; or~~

~~(b) terminated;~~ is filed under Section 78A-6-504 before a dispositional hearing, a party may request a hearing on whether reunification services are appropriate in accordance with the factors described in Subsection 78A-6-312(23).

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

78A-6-306. Shelter hearing.

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

- (a) removal of the child from the child's home by the division;
- (b) placement of the child in the protective custody of the division;

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(c) emergency placement under Subsection 62A-4a-202.1(4);

(d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).

(2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:

(a) the name and address of the person to whom the notice is directed;

(b) the date, time, and place of the shelter hearing;

(c) the name of the child on whose behalf a petition is being brought;

(d) a concise statement regarding:

(i) the reasons for removal or other action of the division under Subsection (1); and

(ii) the allegations and code sections under which the proceeding has been instituted;

(e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with Title 78B, Chapter 22, Indigent Defense Act; and

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:

(a) the appropriate guardian ad litem; and

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

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

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

(b) the child's parents or guardian, unless the parents or guardian cannot be located, or

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fail to appear in response to the notice;

- (c) counsel for the parents, if one is requested;
- (d) the child's guardian ad litem;
- (e) the caseworker from the division who is assigned to the case; and
- (f) the attorney from the attorney general's office who is representing the division.

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

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

- (A) the child's parent or guardian, if present; and
- (B) any other person having relevant knowledge; [~~and~~]

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

(iii) in accordance with Subsections 78A-6-307(18)(c) through (e), grant preferential consideration to a relative or friend for the temporary placement of the child.

(b) The court:

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

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

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

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

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

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

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

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

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

(7) The court shall consider all relevant evidence provided by persons or entities

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authorized to present relevant evidence pursuant to this section.

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

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

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

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

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

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

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

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

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

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

(A) parent or guardian;

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

(C) person known to the parent or guardian;

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

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- (vi) the child is without any provision for the child's support;
- (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;
- (viii) (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
- (B) the whereabouts of the parent or guardian are unknown; and
- (C) reasonable efforts to locate the parent or guardian are unsuccessful;
- (ix) subject to Subsections 78A-6-105(39)(b) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;
- (x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and
- (B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;
- (xi) (A) the child or a minor residing in the same household has been neglected; and
- (B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;
- (xii) the parent, guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;
- (xiii) (A) the child's welfare is substantially endangered; and
- (B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the danger; or
- (xiv) the child's natural parent:
 - (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;
 - (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.
- (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is

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established if:

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

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

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

(10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

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

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

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

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

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

(14) (a) Whenever a court orders continued removal of a child under this section, the

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court shall state the facts on which that decision is based.

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

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

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

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

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

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

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

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

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

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

- (i) the parent or guardian fails to:
 - (A) participate in a court approved child and family plan;
 - (B) comply with a court approved child and family plan in whole or in part; or
 - (C) meet the goals of a court approved child and family plan; or

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(ii) the minor's natural parent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) the extension is in the best interest of the minor;

(ii) the court specifies the facts upon which the findings described in Subsection (7)(c)(i) are based; and

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

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

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

(8) The court may, in ~~its~~ the court's discretion:

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

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

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

(b) If the division opposes the plan to terminate parental rights, the court may not require the division to file a petition for the termination of parental rights, except as required under Subsection 78A-6-316(2).

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

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

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

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

(11) Nothing in this section may be construed to:

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

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

(c) limit or prohibit ~~the~~ filing of a petition for termination of parental rights by any party, or ~~a~~ hearing on termination of parental rights ~~, or~~ at any time prior to a permanency hearing provided that relative placement and custody options have been fairly considered in accordance with Sections 62A-4a-201 and 78A-6-503.

(12) (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is

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filed prior to the date scheduled for a permanency hearing, the court may consolidate the hearing on termination of parental rights with the permanency hearing.

(b) For purposes of Subsection (12)(a), if the court consolidates the hearing on termination of parental rights with the permanency hearing:

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

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

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

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

(14) (a) If a minor 14 years of age or older desires an opportunity to address the court or testify regarding permanency or placement, the court shall give the minor's wishes added weight, but may not treat the minor's wishes as the single controlling factor under this section.

(b) If the court's decision under this section differs from a minor's express wishes if the minor is of sufficient maturity to articulate the wishes in relation to permanency or the minor's placement, the court shall make findings explaining why the court's decision differs from the minor's wishes.

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

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

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

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

(3) If the party moving to terminate parental rights is a governmental entity, the court shall find that any actions or allegations made in opposition to the rights and desires of a parent

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regarding the parent's child are supported by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests.

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

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

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

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

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

(6) Prior to an adjudication of unfitness, government action in relation to a parent and a parent's child may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest.

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

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

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

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(10) (a) The state recognizes that:

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

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

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

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

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

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

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

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

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

Section ~~{5}6~~. Section ~~{78A-6-504}~~78A-6-507 is amended to read:

~~{78A-6-504}~~78A-6-507. ~~{Petition -- Who may file:~~

~~(1) Any interested party, including a foster parent, may file a petition for termination of the parent-child relationship with regard to a child.~~

~~(2) The attorney general shall file a petition}~~Grounds for termination of parental rights ~~{under this part on behalf of the division.~~

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~~(3) If a petition has been filed under Section 78A-6-304, a petition for termination of;~~ Findings regarding reasonable efforts.

(1) Subject to the protections and requirements of Section 78A-6-503, and if the court finds termination of a parent's parental rights, from the child's point of view, is strictly necessary, the court may terminate all parental rights ~~{may not be filed, unless the court has:~~

~~(a) adjudicated or dismissed the petition filed under Section 78A-6-304; or~~

~~(b) terminated;~~ with respect to [a] the parent if the court finds any one of the following:

(a) that the parent has abandoned the child;

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

(c) that the parent is unfit or incompetent;

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

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

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

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

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

(i) to support or communicate with the child;

(ii) to prevent neglect of the child;

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

(iv) to avoid being an unfit parent;

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

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

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

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

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Child.

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

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

(b) Notwithstanding Subsection (3)(a), the court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred subsequent to adjudication; or

(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law, and federal law is not inconsistent with Utah law.