

Representative Christine F. Watkins proposes the following substitute bill:

DRUG TESTING AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses drug testing for certain individuals.

Highlighted Provisions:

This bill:

- ▶ provides that an individual who is receiving services from the Division of Child and Family Services, or is a party to an abuse, neglect, or dependency proceeding, may only be ordered or referred for drug testing that is administered through a sample of blood, saliva, or urine; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-105, as last amended by Laws of Utah 2020, Chapters 108 and 250

78A-6-312, as last amended by Laws of Utah 2020, Chapter 214

78A-6-317, as last amended by Laws of Utah 2019, Chapters 326 and 335



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

Section 1. Section **62A-4a-105** is amended to read:

62A-4a-105. Division responsibilities.

(1) The division shall:

(a) administer services to minors and families, including:

(i) child welfare services;

(ii) domestic violence services; and

(iii) all other responsibilities that the Legislature or the executive director may assign to the division;

(b) provide the following services:

(i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;

(ii) non-custodial and in-home services, including:

(A) services designed to prevent family break-up; and

(B) family preservation services;

(iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

(iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;

(v) shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

(vi) domestic violence services, in accordance with the requirements of federal law;

(vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

(viii) substitute care for dependent, abused, and neglected children;

(ix) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Sections 76-10-1302 and 76-10-1313; and

- 57 (x) training for staff and providers involved in the administration and delivery of
- 58 services offered by the division in accordance with this chapter;
- 59 (c) establish standards for all:
- 60 (i) contract providers of out-of-home care for minors and families;
- 61 (ii) facilities that provide substitute care for dependent, abused, and neglected children
- 62 placed in the custody of the division; and
- 63 (iii) direct or contract providers of domestic violence services described in Subsection
- 64 (1)(b)(vi);
- 65 (d) have authority to:
- 66 (i) contract with a private, nonprofit organization to recruit and train foster care
- 67 families and child welfare volunteers in accordance with Section [62A-4a-107.5](#); and
- 68 (ii) approve facilities that meet the standards established under Subsection (1)(c) to
- 69 provide substitute care for dependent, abused, and neglected children placed in the custody of
- 70 the division;
- 71 (e) cooperate with the federal government in the administration of child welfare and
- 72 domestic violence programs and other human service activities assigned by the department;
- 73 (f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of
- 74 division records to the same extent that the division is required to protect division records,
- 75 cooperate with and share all appropriate information in the division's possession regarding an
- 76 Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child
- 77 with the Indian tribe that is affiliated with the Indian child;
- 78 (g) in accordance with Subsection (2)(a), promote and enforce state and federal laws
- 79 enacted for the protection of abused, neglected, and dependent children, in accordance with the
- 80 requirements of this chapter, unless administration is expressly vested in another division or
- 81 department of the state;
- 82 (h) cooperate with the Workforce Development Division within the Department of
- 83 Workforce Services in meeting the social and economic needs of an individual who is eligible
- 84 for public assistance;
- 85 (i) compile relevant information, statistics, and reports on child and family service
- 86 matters in the state;
- 87 (j) prepare and submit to the department, the governor, and the Legislature reports of

88 the operation and administration of the division in accordance with the requirements of
89 Sections 62A-4a-117 and 62A-4a-118;

90 (k) within appropriations from the Legislature, provide or contract for a variety of
91 domestic violence services and treatment methods;

92 (l) ensure regular, periodic publication, including electronic publication, regarding the
93 number of children in the custody of the division who:

94 (i) have a permanency goal of adoption; or

95 (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314,
96 and promote adoption of those children;

97 (m) subject to [~~Subsection (2)(b);~~] Subsections (2)(b) and (5), refer an individual
98 receiving services from the division to the local substance abuse authority or other private or
99 public resource for a court-ordered drug screening test;

100 (n) report before November 30, 2020, and every third year thereafter, to the Social
101 Services Appropriations Subcommittee regarding:

102 (i) the daily reimbursement rate that is provided to licensed foster parents based on
103 level of care;

104 (ii) the amount of money spent on daily reimbursements for licensed foster parents in
105 the state during the previous fiscal year; and

106 (iii) any recommended changes to the division's budget to support the daily
107 reimbursement rates described in Subsection (1)(n)(i); and

108 (o) perform other duties and functions required by law.

109 (2) (a) In carrying out the requirements of Subsection (1)(g), the division shall:

110 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
111 with all public and private licensed child welfare agencies and institutions to develop and
112 administer a broad range of services and support;

113 (ii) take the initiative in all matters involving the protection of abused or neglected
114 children, if adequate provisions have not been made or are not likely to be made; and

115 (iii) make expenditures necessary for the care and protection of the children described
116 in this Subsection (2)(a), within the division's budget.

117 (b) When an individual is referred to a local substance abuse authority or other private
118 or public resource for court-ordered drug screening under Subsection (1)(m), the court shall

119 order the individual to pay all costs of the tests unless:

120 (i) the cost of the drug screening is specifically funded or provided for by other federal
121 or state programs;

122 (ii) the individual is a participant in a drug court; or

123 (iii) the court finds that the individual is impecunious.

124 (3) Except to the extent provided by rule, the division is not responsible for
125 investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

126 (4) The division may not require a parent who has a child in the custody of the division
127 to pay for some or all of the cost of any drug testing the parent is required to undergo.

128 (5) The division may only refer an individual who is receiving services from the
129 division for drug testing by means of a test that is administered to detect the presence of drugs
130 from a sample of blood, saliva, or urine.

131 Section 2. Section 78A-6-312 is amended to read:

132 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

133 (1) The court may:

134 (a) make any of the dispositions described in Section 78A-6-117;

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

136 (i) individual; or

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

138 (c) order:

139 (i) protective supervision;

140 (ii) family preservation;

141 (iii) subject to Subsections (12)(b), 78A-6-105(40), and 78A-6-117(2) and Section
142 78A-6-301.5, medical or mental health treatment;

143 (iv) sibling visitation; or

144 (v) other services.

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

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

148 (b) determine whether, in view of the primary permanency plan, reunification services
149 are appropriate for the minor and the minor's family, pursuant to Subsections (21) through (23).

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

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

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

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

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

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

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

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

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

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

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

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

174 (ii) an explanation of the effect of abandoning or modifying the primary permanency
175 plan.

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

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

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

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

182 (9) A permanency hearing shall be conducted in accordance with Subsection
183 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
184 something other than reunification is initially established as a minor's primary permanency
185 plan.

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

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

190 (c) If, at any time, the court determines that reunification is no longer a minor's primary
191 permanency plan, the court shall conduct a permanency hearing in accordance with Section
192 78A-6-314 on or before the earlier of:

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

195 (ii) the day on which the provision of reunification services, described in Section
196 78A-6-314, ends.

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

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

203 (12) (a) The court shall:

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

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

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

212 (b) If the parent is in a substance use disorder treatment program, other than a certified
213 drug court program:

214 (i) the court may order the parent to submit to supplementary drug or alcohol testing, in
215 accordance with Subsection 78A-6-317(6), in addition to the testing recommended by the
216 parent's substance use disorder program based on a finding of reasonable suspicion that the
217 parent is abusing drugs or alcohol; and

218 (ii) the court may order the parent to provide the results of drug or alcohol testing
219 recommended by the substance use disorder program to the court or division.

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

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

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

227 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
228 to be inconsistent with the final permanency plan for the minor established pursuant to Section
229 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

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

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

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

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

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

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

247 (18) When a court conducts a permanency hearing for a minor under Section

248 [78A-6-314](#), the court shall attempt to keep the minor's sibling group together if keeping the
249 sibling group together is:

250 (a) practicable; and

251 (b) in accordance with the best interest of the minor.

252 (19) When a child is under the custody of the division and has been separated from a
253 sibling due to foster care or adoptive placement, a court may order sibling visitation, subject to
254 the division obtaining consent from the sibling's legal guardian, according to the court's
255 determination of the best interests of the child for whom the hearing is held.

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

259 (b) The court may determine that:

260 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
261 based on the individual circumstances; and

262 (ii) reunification services should not be provided.

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

266 (21) There is a presumption that reunification services should not be provided to a
267 parent if the court finds, by clear and convincing evidence, that any of the following
268 circumstances exist:

269 (a) the whereabouts of the parents are unknown, based upon a verified affidavit
270 indicating that a reasonably diligent search has failed to locate the parent;

271 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such
272 magnitude that it renders the parent incapable of utilizing reunification services;

273 (c) the minor was previously adjudicated as an abused child due to physical abuse,

274 sexual abuse, or sexual exploitation, and following the adjudication the minor:
275 (i) was removed from the custody of the minor's parent;
276 (ii) was subsequently returned to the custody of the parent; and
277 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
278 exploitation;
279 (d) the parent:
280 (i) caused the death of another minor through abuse or neglect;
281 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
282 (A) murder or manslaughter of a child; or
283 (B) child abuse homicide;
284 (iii) committed sexual abuse against the child;
285 (iv) is a registered sex offender or required to register as a sex offender; or
286 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the
287 child;
288 (B) is identified by a law enforcement agency as the primary suspect in an investigation
289 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
290 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
291 recklessly causing the death of another parent of the child;
292 (e) the minor suffered severe abuse by the parent or by any person known by the
293 parent, if the parent knew or reasonably should have known that the person was abusing the
294 minor;
295 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
296 and the court finds that it would not benefit the minor to pursue reunification services with the
297 offending parent;
298 (g) the parent's rights are terminated with regard to any other minor;
299 (h) the minor was removed from the minor's home on at least two previous occasions
300 and reunification services were offered or provided to the family at those times;
301 (i) the parent has abandoned the minor for a period of six months or longer;
302 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
303 location where the parent knew or should have known that a clandestine laboratory operation
304 was located;

305 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's
306 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
307 exposed to an illegal or prescription drug that was abused by the child's mother while the child
308 was in utero, if the child was taken into division custody for that reason, unless the mother
309 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
310 substance use disorder treatment program approved by the department; or

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

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

317 (b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under
318 the circumstances of the case, that the substance use disorder treatment described in Subsection
319 (21)(k) is not warranted.

320 (23) In determining whether reunification services are appropriate, the court shall take
321 into consideration:

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

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

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

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

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

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

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

333 (24) (a) If reunification services are not ordered pursuant to Subsections (20) through
334 (22), and the whereabouts of a parent become known within six months after the day on which
335 the out-of-home placement of the minor is made, the court may order the division to provide

336 reunification services.

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

339 (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
340 services unless the court determines that those services would be detrimental to the minor.

341 (b) In making the determination described in Subsection (25)(a), the court shall
342 consider:

343 (i) the age of the minor;

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

345 (iii) the length of the sentence;

346 (iv) the nature of the treatment;

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

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

349 (vii) for a minor 10 years old or older, the minor's attitude toward the implementation
350 of family reunification services; and

351 (viii) any other appropriate factors.

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

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

357 (26) If, pursuant to Subsections (21)(b) through (l), the court does not order
358 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
359 with Section [78A-6-314](#).

360 Section 3. Section **78A-6-317** is amended to read:

361 **78A-6-317. All proceedings -- Persons entitled to be present -- Legal**
362 **representation -- Records sharing -- Drug testing.**

363 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
364 pursuant to Section [78A-6-306](#) or [78A-6-310](#), preadoptive parents, foster parents, and any
365 relative providing care for the child, are:

366 (a) entitled to notice of, and to be present at, each hearing and proceeding held under

367 this part, including administrative reviews; and

368 (b) have a right to be heard at each hearing and proceeding described in Subsection
369 (1)(a).

370 (2) A child shall be represented at each hearing by the guardian ad litem appointed to
371 the child's case by the court. The child has a right to be present at each hearing, subject to the
372 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

373 (3) (a) The parent or guardian of a child who is the subject of a petition under this part
374 has the right to be represented by counsel, and to present evidence, at each hearing.

375 (b) A court may appoint an indigent defense service provider as provided in [Title 78B](#),
376 Chapter 22, Indigent Defense Act.

377 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court
378 shall order that the child be represented by a guardian ad litem, in accordance with Section
379 [78A-6-902](#). The guardian ad litem shall represent the best interest of the child, in accordance
380 with the requirements of that section, at the shelter hearing and at all subsequent court and
381 administrative proceedings, including any proceeding for termination of parental rights in
382 accordance with Part 5, Termination of Parental Rights Act.

383 (5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other
384 provision of law:

385 (i) counsel for all parties to the action shall be given access to all records, maintained
386 by the division or any other state or local public agency, that are relevant to the abuse, neglect,
387 or dependency proceeding under this chapter; and

388 (ii) if the natural parent of a child is not represented by counsel, the natural parent shall
389 have access to the records described in Subsection (5)(a)(i).

390 (b) The disclosures described in Subsection (5)(a) are not required in the following
391 circumstances:

392 (i) subject to Subsection (5)(c), the division or other state or local public agency did not
393 originally create the record being requested;

394 (ii) disclosure of the record would jeopardize the life or physical safety of a child who
395 has been a victim of abuse or neglect, or any person who provided substitute care for the child;

396 (iii) disclosure of the record would jeopardize the anonymity of the person or persons
397 making the initial report of abuse or neglect or any others involved in the subsequent

398 investigation;

399 (iv) disclosure of the record would jeopardize the life or physical safety of an
400 individual who has been a victim of domestic violence;

401 (v) the record is a report maintained in the Management Information System, for which
402 a finding of unsubstantiated, unsupported, or without merit has been made, unless the person
403 requesting the information is the alleged perpetrator in the report or counsel for the alleged
404 perpetrator in the report; or

405 (vi) the record is a Children's Justice Center interview, including a video or audio
406 recording, and a transcript of the recording, the release of which is governed by Section
407 [77-37-4](#).

408 (c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the
409 person making the request of the following:

410 (i) the existence of all records in the possession of the division or any other state or
411 local public agency;

412 (ii) the name and address of the person or agency that originally created the record; and

413 (iii) that the requesting person must seek access to the record from the person or
414 agency that originally created the record.

415 (6) If an individual, who is party to a proceeding under this chapter, is ordered by the
416 juvenile court to submit to drug testing, or is referred by the division or a guardian ad litem for
417 drug testing, the individual may only be ordered or referred for drug testing by means of a test
418 that is administered to detect the presence of drugs from a sample of blood, saliva, or urine.