

HB0073S04 compared with HB0073S03

~~deleted text~~ shows text that was in HB0073S03 but was deleted in HB0073S04.

inserted text shows text that was not in HB0073S03 but was inserted into HB0073S04.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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~~not be ordered or referred for drug testing that is administered through a sample of ~~blood, saliva,~~hair or ~~urine~~fingernails; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

HB0073S04 compared with HB0073S03

None

Utah Code Sections Affected:

AMENDS:

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

78A-6-115, as last amended by Laws of Utah 2020, Chapters 12, 132, 250, and 354

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

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,

HB0073S04 compared with HB0073S03

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

(x) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(c) establish standards for all:

(i) contract providers of out-of-home care for minors and families;

(ii) facilities that provide substitute care for dependent, abused, and neglected children placed in the custody of the division; and

(iii) direct or contract providers of domestic violence services described in Subsection (1)(b)(vi);

(d) have authority to:

(i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

(ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, and neglected children placed in the custody of the division;

(e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;

(f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of division records to the same extent that the division is required to protect division records, cooperate with and share all appropriate information in the division's possession regarding an Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child with the Indian tribe that is affiliated with the Indian child;

(g) in accordance with Subsection (2)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, and dependent children, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state;

HB0073S04 compared with HB0073S03

(h) cooperate with the Workforce Development Division within the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;

(i) compile relevant information, statistics, and reports on child and family service matters in the state;

(j) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;

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

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

(i) have a permanency goal of adoption; or

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

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

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

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

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

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

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

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

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

HB0073S04 compared with HB0073S03

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

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

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)(m), the court shall order the individual to pay all costs of the tests unless:

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

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

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

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

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

(5) The division may ~~only~~ not refer an individual who is receiving services from the division for drug testing by means of a ~~hair or fingernail~~ test that is administered to detect the presence of drugs ~~from a sample of blood, saliva, or urine~~.

Section 2. Section **78A-6-115** is amended to read:

78A-6-115. Hearings -- Record -- County attorney or district attorney responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of evidence -- Cannabis -- Drug testing.

(1) (a) A verbatim record of the proceedings shall be taken in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(b) (i) For purposes of this Subsection (1)(b):

(A) "Record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a).

(B) "Subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

HB0073S04 compared with HB0073S03

(ii) Notwithstanding any other provision, including Title 63G, Chapter 2, Government Records Access and Management Act, the court shall release a record of a proceeding made under Subsection (1)(a) to any person upon a finding on the record for good cause.

(iii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iv) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months before the day on which the request is made.

(2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) Subject to the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and this chapter, relating to:

(i) protection or custody of an abused, neglected, or dependent child; and

(ii) petitions for termination of parental rights.

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.

(4) (a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the individual who wrote the report or prepared the material appear as a witness if the individual is reasonably available.

HB0073S04 compared with HB0073S03

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division under Section 78A-6-315 may be received in evidence and may be considered by the court along with other evidence. The court may require any individual who participated in preparing the dispositional report to appear as a witness, if the individual is reasonably available.

(5) (a) Except as provided in Subsections (5)(c) through (e), in an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

(i) plans to report to the court at the proceeding; or

(ii) could reasonably expect would be requested of the party by the court at the proceeding.

(b) The disclosure required under Subsection (5)(a) shall be made:

(i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than five days before the day on which the proceeding is held;

(ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

(iii) for all other proceedings, no less than five days before the day on which the proceeding is held.

(c) The division is not required to provide a court report or a child and family plan to each party to the proceeding if:

(i) the information is electronically filed with the court; and

(ii) each party to the proceeding has access to the electronically filed information.

(d) If a party to a proceeding obtains information after the deadline in Subsection (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the party certifies to the court that the information was obtained after the deadline.

(e) Subsection (5)(a) does not apply to:

(i) pretrial hearings; and

(ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance use disorder treatment.

(6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court

HB0073S04 compared with HB0073S03

may, in the court's discretion, consider evidence of statements made by a child under eight years of age to an individual in a trust relationship.

(7) (a) As used in this Subsection (7):

(i) "Cannabis" means the same as that term is defined in Section 26-61a-102.

(ii) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

(iii) (A) "Chronic" means repeated or patterned.

(B) "Chronic" does not mean an isolated incident.

(iv) "Directions of use" means the same as that term is defined in Section 26-61a-102.

(v) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.

(vi) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

(vii) "Medical cannabis cardholder" means the same as that term is defined in Section 26-61a-102.

(viii) "Qualified medical provider" means the same as that term is defined in Section 26-61a-102.

(b) In any child welfare proceeding in which the court makes a finding, determination, or otherwise considers an individual's possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the court may not consider or treat the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance if:

(i) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis Production Establishments;

(ii) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

(iii) (A) the individual's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(B) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5).

(c) In a child welfare proceeding, a parent's or guardian's use of cannabis or a cannabis product is not abuse or neglect of a child under Section 78A-6-105 unless there is evidence showing that:

(i) the child is harmed because of the child's inhalation or ingestion of cannabis, or

HB0073S04 compared with HB0073S03

because of cannabis being introduced to the child's body in another manner; or

(ii) the child is at an unreasonable risk of harm because of chronic inhalation or ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

(d) Unless there is harm or an unreasonable risk of harm to the child as described in Subsection (7)(c), in a child welfare proceeding a parent's or guardian's use of medical cannabis or a cannabis product is not contrary to the best interests of a child if:

(i) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates from the directions of use and dosing guidelines determined by the parent's or guardian's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5); or

(ii) before January 1, 2021, the parent's or guardian's possession or use complies with Subsection 58-37-3.7(2) or (3).

(e) Subsection (7)(c) does not prohibit a finding of abuse or neglect of a child under Section 78A-6-105, and Subsection (7)(d) does not prohibit a finding that a parent's or guardian's use of medical cannabis or a cannabis product is contrary to the best interests of a child, if there is evidence showing a nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior that would separately constitute abuse or neglect of the child.

(8) If an individual, who is party to a proceeding under Part 3, Abuse, Neglect, and Dependency Proceedings, is ordered by the juvenile court to submit to drug testing, or is referred by the division or a guardian ad litem for drug testing, the individual may ~~only~~ not be ordered or referred for drug testing by means of a hair or fingernail test that is administered to detect the presence of drugs ~~{ from a sample of blood, saliva, or urine }.~~

Section 3. Section **78A-6-312** is amended to read:

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

(1) The court may:

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

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

(i) individual; or

(ii) public or private entity or agency; or

HB0073S04 compared with HB0073S03

(c) order:

(i) protective supervision;

(ii) family preservation;

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

(iv) sibling visitation; or

(v) other services.

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

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

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

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

(4) In cases where obvious 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 provide reunification services, or to attempt to rehabilitate the offending parent or parents.

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

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

(a) protect the physical safety of the minor;

(b) protect the life of the minor; or

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

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

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

HB0073S04 compared with HB0073S03

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0073S04 compared with HB0073S03

of time.

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

(12) (a) The court shall:

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

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

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

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

(i) the court may order the parent to submit to supplementary drug or alcohol testing, in accordance with Subsection 78A-6-115(8), in addition to the testing recommended by the parent's substance use disorder program based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

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

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

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

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

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

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

HB0073S04 compared with HB0073S03

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

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

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

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

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

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

(a) the court shall terminate reunification services; and

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

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

(a) practicable; and

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

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

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

(b) The court may determine that:

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

HB0073S04 compared with HB0073S03

(ii) reunification services should not be provided.

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

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

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

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

(c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

(i) was removed from the custody of the minor's parent;

(ii) was subsequently returned to the custody of the parent; and

(iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

(d) the parent:

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

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

(A) murder or manslaughter of a child; or

(B) child abuse homicide;

(iii) committed sexual abuse against the child;

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

(v) (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;

(e) the minor suffered severe abuse by the parent or by any person known by the

HB0073S04 compared with HB0073S03

parent, if the parent knew or reasonably should have known that the person was abusing the minor;

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

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

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

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

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

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

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

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

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

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

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

HB0073S04 compared with HB0073S03

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

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

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

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

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

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

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

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

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

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

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

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

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

(viii) any other appropriate factors.

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

(d) Reunification services for an institutionalized parent are subject to the time

HB0073S04 compared with HB0073S03

limitations imposed in Subsections (2) through (18), unless the court determines that continued reunification services would be in the minor's best interest.

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