

PARENT AND CHILD AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions that relate to child welfare.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "harm" in the Juvenile Court Act;
- ▶ amends provisions related to the medical treatment of a child; and
- ▶ amends provisions related to the custody of a child with the Division of Child and Family Services.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-201, as last amended by Laws of Utah 2012, Chapter 281

78A-6-105, as last amended by Laws of Utah 2014, Chapter 35

78A-6-117, as last amended by Laws of Utah 2011, Chapter 366

78A-6-302, as last amended by Laws of Utah 2014, Chapter 35

78A-6-306, as last amended by Laws of Utah 2014, Chapter 35

78A-6-312, as last amended by Laws of Utah 2014, Chapter 35



28 ENACTS:

29 [78A-6-301.5](#), Utah Code Annotated 1953

30 [78A-6-312.5](#), Utah Code Annotated 1953

31

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

33 Section 1. Section **62A-4a-201** is amended to read:

34 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
35 **state.**

36 (1) (a) Under both the United States Constitution and the constitution of this state, a
37 parent possesses a fundamental liberty interest in the care, custody, and management of the
38 parent's children. A fundamentally fair process must be provided to parents if the state moves
39 to challenge or interfere with parental rights. A governmental entity must support any actions
40 or allegations made in opposition to the rights and desires of a parent regarding the parent's
41 children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened
42 protection against government interference with the parent's fundamental rights and liberty
43 interests.

44 (b) The fundamental liberty interest of a parent concerning the care, custody, and
45 management of the parent's children is recognized, protected, and does not cease to exist
46 simply because a parent may fail to be a model parent or because the parent's child is placed in
47 the temporary custody of the state. At all times, a parent retains a vital interest in preventing
48 the irretrievable destruction of family life. Prior to an adjudication of unfitness, government
49 action in relation to parents and their children may not exceed the least restrictive means or
50 alternatives available to accomplish a compelling state interest. Until the state proves parental
51 unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result,
52 the child and the child's parents share a vital interest in preventing erroneous termination of
53 their natural relationship and the state cannot presume that a child and the child's parents are
54 adversaries.

55 (c) It is in the best interest and welfare of a child to be raised under the care and
56 supervision of the child's natural parents. A child's need for a normal family life in a
57 permanent home, and for positive, nurturing family relationships is usually best met by the
58 child's natural parents. Additionally, the integrity of the family unit and the right of parents to

59 conceive and raise their children are constitutionally protected. The right of a fit, competent
60 parent to raise the parent's child without undue government interference is a fundamental
61 liberty interest that has long been protected by the laws and Constitution and is a fundamental
62 public policy of this state.

63 (d) The state recognizes that:

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

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

67 (e) It is the public policy of this state that parents retain the fundamental right and duty
68 to exercise primary control over the care, supervision, upbringing, and education of their
69 children.

70 (f) Subsections (2) through (7) shall be interpreted and applied consistent with this
71 Subsection (1).

72 (2) It is also the public policy of this state that children have the right to protection
73 from abuse and neglect, and that the state retains a compelling interest in investigating,
74 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A,
75 Chapter 6, Juvenile Court Act of 1996. Therefore, the state, as *parens patriae*, has an interest in
76 and responsibility to protect children whose parents abuse them or do not adequately provide
77 for their welfare. There may be circumstances where a parent's conduct or condition is a
78 substantial departure from the norm and the parent is unable or unwilling to render safe and
79 proper parental care and protection. Under those circumstances, the state may take action for
80 the welfare and protection of the parent's children.

81 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
82 it shall take into account the child's need for protection from immediate harm and the extent to
83 which the child's extended family may provide needed protection. Throughout its involvement,
84 the division shall utilize the least intrusive and least restrictive means available to protect a
85 child, in an effort to ensure that children are brought up in stable, permanent families, rather
86 than in temporary foster placements under the supervision of the state.

87 (4) When circumstances within the family pose a threat to the child's immediate safety
88 or welfare, the division may seek custody of the child for a planned, temporary period and
89 place the child in a safe environment, subject to the requirements of this section and in

90 accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
91 Dependency Proceedings, and:

92 (a) when safe and appropriate, return the child to the child's parent; or

93 (b) as a last resort, pursue another permanency plan.

94 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to
95 the provisions of Section 62A-4a-203, both the division's and the court's paramount concern
96 shall be the child's health, safety, and welfare. The desires of a parent for the parent's child,
97 and the constitutionally protected rights of a parent, as described in this section, shall be given
98 full and serious consideration by the division and the court.

99 (6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
100 abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or
101 to, in any other way, attempt to maintain a child in the child's home, provide reunification
102 services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does
103 not exempt the division from providing court-ordered services.

104 (7) (a) The division shall strive to achieve appropriate permanency for children who are
105 abused, neglected, or dependent. The division shall provide in-home services, where
106 appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse,
107 neglect, or dependency of the parent's child. ~~[If] The division may pursue a foster placement~~
108 only if in-home services fail or are otherwise insufficient or inappropriate~~[, the]~~. The division
109 shall also seek qualified extended family support or a kinship placement to maintain a sense of
110 security and stability for the child. If in-home services and kinship placement are not safe or
111 appropriate, or in-home services and kinship placement fail and cannot be corrected~~[, the~~
112 ~~division may pursue a foster placement]~~.

113 (b) If the use or continuation of "reasonable efforts," as described in Subsections (5)
114 and (6), is determined to be inconsistent with the permanency plan for a child, then measures
115 shall be taken, in a timely manner, to place the child in accordance with the permanency plan,
116 and to complete whatever steps are necessary to finalize the permanent placement of the child.

117 (c) Subject to the parental rights recognized and protected under this section, if,
118 because of a parent's conduct or condition, the parent is determined to be unfit or incompetent
119 based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part
120 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of

121 paramount importance, and shall be protected in determining whether that parent's rights
122 should be terminated.

123 (8) The state's right to direct or intervene in the provision of medical or mental health
124 care for a child is subject to ~~[Subsection]~~ Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n)
125 and Section 78A-6-301.5.

126 Section 2. Section **78A-6-105** is amended to read:

127 **78A-6-105. Definitions.**

128 As used in this chapter:

129 (1) (a) "Abuse" means:

130 (i) nonaccidental harm of a child;

131 (ii) threatened harm of a child;

132 (iii) sexual exploitation; or

133 (iv) sexual abuse.

134 (v) that a child's natural parent:

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

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

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

141 (b) "Abuse" does not include:

142 (i) reasonable discipline or management of a child, including withholding privileges;

143 (ii) conduct described in Section 76-2-401; or

144 (iii) the use of reasonable and necessary physical restraint or force on a child:

145 (A) in self-defense;

146 (B) in defense of others;

147 (C) to protect the child; or

148 (D) to remove a weapon in the possession of a child for any of the reasons described in
149 Subsections (1)(b)(iii)(A) through (C).

150 (2) "Abused child" means a child who has been subjected to abuse.

151 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts

152 alleged in the petition have been proved. A finding of not competent to proceed pursuant to
153 Section 78A-6-1302 is not an adjudication.

154 (4) "Adult" means a person 18 years of age or over, except that a person 18 years or
155 over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall
156 be referred to as a minor.

157 (5) "Board" means the Board of Juvenile Court Judges.

158 (6) "Child" means a person under 18 years of age.

159 (7) "Child placement agency" means:

160 (a) a private agency licensed to receive a child for placement or adoption under this
161 code; or

162 (b) a private agency that receives a child for placement or adoption in another state,
163 which agency is licensed or approved where such license or approval is required by law.

164 (8) "Clandestine laboratory operation" [~~is as~~] means the same as that term is defined in
165 Section 58-37d-3.

166 (9) "Commit" means, unless specified otherwise:

167 (a) with respect to a child, to transfer legal custody; and

168 (b) with respect to a minor who is at least 18 years of age, to transfer custody.

169 (10) "Court" means the juvenile court.

170 (11) "Dependent child" includes a child who is homeless or without proper care
171 through no fault of the child's parent, guardian, or custodian.

172 (12) "Deprivation of custody" means transfer of legal custody by the court from a
173 parent or the parents or a previous legal custodian to another person, agency, or institution.

174 (13) "Detention" means home detention and secure detention as defined in Section
175 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
176 restricting facility:

177 (a) pending court disposition or transfer to another jurisdiction; or

178 (b) while under the continuing jurisdiction of the court.

179 (14) "Division" means the Division of Child and Family Services.

180 (15) "Formal referral" means a written report from a peace officer or other person
181 informing the court that a minor is or appears to be within the court's jurisdiction and that a
182 petition may be filed.

183 (16) "Group rehabilitation therapy" means psychological and social counseling of one
184 or more persons in the group, depending upon the recommendation of the therapist.

185 (17) "Guardianship of the person" includes the authority to consent to:

186 (a) marriage;

187 (b) enlistment in the armed forces;

188 (c) major medical, surgical, or psychiatric treatment; or

189 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

190 (18) "Habitual truant" [~~is-as~~] means the same as that term is defined in Section

191 [53A-11-101](#).

192 (19) "Harm" means:

193 (a) physical~~[-emotional]~~, or developmental injury or damage;

194 (b) substantial emotional damage that results in an observable and material impairment

195 in the child's growth, development, or psychological functioning;

196 [~~(b)~~] (c) sexual abuse; or

197 [~~(c)~~] (d) sexual exploitation.

198 (20) (a) "Incest" means engaging in sexual intercourse with a person whom the
199 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
200 nephew, niece, or first cousin.

201 (b) The relationships described in Subsection (20)(a) include:

202 (i) blood relationships of the whole or half blood, without regard to legitimacy;

203 (ii) relationships of parent and child by adoption; and

204 (iii) relationships of stepparent and stepchild while the marriage creating the
205 relationship of a stepparent and stepchild exists.

206 (21) "Intellectual disability" means:

207 (a) significantly subaverage intellectual functioning, an IQ of approximately 70 or
208 below on an individually administered IQ test, for infants, a clinical judgment of significantly
209 subaverage intellectual functioning;

210 (b) concurrent deficits or impairments in present adaptive functioning, the person's
211 effectiveness in meeting the standards expected for his or her age by the person's cultural
212 group, in at least two of the following areas: communication, self-care, home living,
213 social/interpersonal skills, use of community resources, self-direction, functional academic

214 skills, work, leisure, health, and safety; and

215 (c) the onset is before the person reaches the age of 18 years.

216 (22) "Legal custody" means a relationship embodying the following rights and duties:

217 (a) the right to physical custody of the minor;

218 (b) the right and duty to protect, train, and discipline the minor;

219 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
220 medical care;

221 (d) the right to determine where and with whom the minor shall live; and

222 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

223 (23) "Mental disorder" means a serious emotional and mental disturbance that severely
224 limits a minor's development and welfare over a significant period of time.

225 (24) "Minor" means:

226 (a) a child; or

227 (b) a person who is:

228 (i) at least 18 years of age and younger than 21 years of age; and

229 (ii) under the jurisdiction of the juvenile court.

230 (25) "Molestation" means that a person, with the intent to arouse or gratify the sexual
231 desire of any person:

232 (a) touches the anus or any part of the genitals of a child;

233 (b) takes indecent liberties with a child; or

234 (c) causes a child to take indecent liberties with the perpetrator or another.

235 (26) "Natural parent" means a minor's biological or adoptive parent, and includes the
236 minor's noncustodial parent.

237 (27) (a) "Neglect" means action or inaction causing:

238 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
239 Relinquishment of a Newborn Child;

240 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
241 guardian, or custodian;

242 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
243 subsistence, education, or medical care, or any other care necessary for the child's health,
244 safety, morals, or well-being; or

245 (iv) a child to be at risk of being neglected or abused because another child in the same
246 home is neglected or abused.

247 (b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii),
248 means that, after receiving a notice of compulsory education violation under Section
249 [53A-11-101.5](#), or notice that a parent or guardian has failed to cooperate with school
250 authorities in a reasonable manner as required under Subsection [53A-11-101.7\(5\)\(a\)](#), the parent
251 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
252 education.

253 (c) A parent or guardian legitimately practicing religious beliefs and who, for that
254 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

255 (d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by
256 the child's parent or guardian does not constitute neglect unless the state or other party to the
257 proceeding shows, by clear and convincing evidence, that the health care decision is not
258 reasonable and informed.

259 (ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising
260 the right to obtain a second health care opinion.

261 (28) "Neglected child" means a child who has been subjected to neglect.

262 (29) "Nonjudicial adjustment" means closure of the case by the assigned probation
263 officer without judicial determination upon the consent in writing of:

264 (a) the assigned probation officer; and

265 (b) (i) the minor; or

266 (ii) the minor and the minor's parent, legal guardian, or custodian.

267 (30) "Not competent to proceed" means that a minor, due to a mental disorder,
268 intellectual disability, or related condition as defined, lacks the ability to:

269 (a) understand the nature of the proceedings against them or of the potential disposition
270 for the offense charged; or

271 (b) consult with counsel and participate in the proceedings against them with a
272 reasonable degree of rational understanding.

273 (31) "Physical abuse" means abuse that results in physical injury or damage to a child.

274 (32) "Probation" means a legal status created by court order following an adjudication
275 on the ground of a violation of law or under Section [78A-6-103](#), whereby the minor is

276 permitted to remain in the minor's home under prescribed conditions and under supervision by
277 the probation department or other agency designated by the court, subject to return to the court
278 for violation of any of the conditions prescribed.

279 (33) "Protective supervision" means a legal status created by court order following an
280 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
281 remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or
282 dependency is provided by the probation department or other agency designated by the court.

283 (34) "Related condition" means a condition closely related to intellectual disability in
284 accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah
285 Administrative Code.

286 (35) (a) "Residual parental rights and duties" means those rights and duties remaining
287 with the parent after legal custody or guardianship, or both, have been vested in another person
288 or agency, including:

- 289 (i) the responsibility for support;
- 290 (ii) the right to consent to adoption;
- 291 (iii) the right to determine the child's religious affiliation; and
- 292 (iv) the right to reasonable parent-time unless restricted by the court.

293 (b) If no guardian has been appointed, "residual parental rights and duties" also include
294 the right to consent to:

- 295 (i) marriage;
- 296 (ii) enlistment; and
- 297 (iii) major medical, surgical, or psychiatric treatment.

298 (36) "Secure facility" means any facility operated by or under contract with the
299 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
300 youth offenders committed to the division for custody and rehabilitation.

301 (37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
302 child.

303 (38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
304 child.

305 (39) "Sexual abuse" means:

- 306 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation

307 directed towards a child; or

308 (b) engaging in any conduct with a child that would constitute an offense under any of
309 the following, regardless of whether the person who engages in the conduct is actually charged
310 with, or convicted of, the offense:

311 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;

312 (ii) child bigamy, Section 76-7-101.5;

313 (iii) incest, Section 76-7-102;

314 (iv) lewdness, Section 76-9-702;

315 (v) sexual battery, Section 76-9-702.1;

316 (vi) lewdness involving a child, Section 76-9-702.5; or

317 (vii) voyeurism, Section 76-9-702.7.

318 (40) "Sexual exploitation" means knowingly:

319 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

320 (i) pose in the nude for the purpose of sexual arousal of any person; or

321 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
322 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

323 (b) displaying, distributing, possessing for the purpose of distribution, or selling
324 material depicting a child:

325 (i) in the nude, for the purpose of sexual arousal of any person; or

326 (ii) engaging in sexual or simulated sexual conduct; or

327 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
328 sexual exploitation of a minor, regardless of whether the person who engages in the conduct is
329 actually charged with, or convicted of, the offense.

330 (41) "Shelter" means the temporary care of a child in a physically unrestricted facility
331 pending court disposition or transfer to another jurisdiction.

332 (42) "State supervision" means a disposition that provides a more intensive level of
333 intervention than standard probation but is less intensive or restrictive than a community
334 placement with the Division of Juvenile Justice Services.

335 (43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
336 substances.

337 (44) "Substantiated" [~~is as~~] means the same as that term is defined in Section

338 62A-4a-101.

339 (45) "Supported" [~~is as~~] means the same as that term is defined in Section 62A-4a-101.

340 (46) "Termination of parental rights" means the permanent elimination of all parental
341 rights and duties, including residual parental rights and duties, by court order.

342 (47) "Therapist" means:

343 (a) a person employed by a state division or agency for the purpose of conducting
344 psychological treatment and counseling of a minor in its custody; or

345 (b) any other person licensed or approved by the state for the purpose of conducting
346 psychological treatment and counseling.

347 (48) "Unsubstantiated" [~~is as~~] means the same as that term is defined in Section
348 62A-4a-101.

349 (49) "Without merit" [~~is as~~] means the same as that term is defined in Section
350 62A-4a-101.

351 Section 3. Section 78A-6-117 is amended to read:

352 **78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
353 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**
354 **sample.**

355 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
356 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
357 jurisdiction over the minor. However, in cases within the provisions of Subsection
358 78A-6-103(1), findings of fact are not necessary.

359 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
360 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
361 to the school superintendent of the district in which the minor resides or attends school. Notice
362 shall be made to the district superintendent within three days of the adjudication and shall
363 include:

364 (i) the specific offenses for which the minor was adjudicated; and

365 (ii) if available, if the victim:

366 (A) resides in the same school district as the minor; or

367 (B) attends the same school as the minor.

368 (2) Upon adjudication the court may make the following dispositions by court order:

369 (a) (i) The court may place the minor on probation or under protective supervision in
370 the minor's own home and upon conditions determined by the court, including compensatory
371 service as provided in Subsection (2)(m)(iii).

372 (ii) The court may place the minor in state supervision with the probation department
373 of the court, under the legal custody of:

374 (A) the minor's parent or guardian;

375 (B) the Division of Juvenile Justice Services; or

376 (C) the Division of Child and Family Services.

377 (iii) If the court orders probation or state supervision, the court shall direct that notice
378 of its order be provided to designated persons in the local law enforcement agency and the
379 school or transferee school, if applicable, that the minor attends. The designated persons may
380 receive the information for purposes of the minor's supervision and student safety.

381 (iv) Any employee of the local law enforcement agency and the school that the minor
382 attends who discloses the court's order of probation is not:

383 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
384 provided in Section 63G-7-202; and

385 (B) civilly or criminally liable except when the disclosure constitutes a knowing
386 violation of Section 63G-2-801.

387 (b) The court may place the minor in the legal custody of a relative or other suitable
388 person, with or without probation or protective supervision, but the juvenile court may not
389 assume the function of developing foster home services.

390 (c) (i) The court may:

391 (A) vest legal custody of the minor in the Division of Child and Family Services,
392 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
393 and

394 (B) order the Department of Human Services to provide dispositional
395 recommendations and services.

396 (ii) For minors who may qualify for services from two or more divisions within the
397 Department of Human Services, the court may vest legal custody with the department.

398 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
399 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,

400 Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A,
401 Chapter 4a, Part 2a, Minors in Custody on Grounds other than Abuse or Neglect.

402 (B) Before the court entering an order to place a minor in the custody of the Division of
403 Child and Family Services on grounds other than abuse or neglect, the court shall provide the
404 division with notice of the hearing no later than five days before the time specified for the
405 hearing so the division may attend the hearing.

406 (C) Before committing a child to the custody of the Division of Child and Family
407 Services, the court shall make a finding as to what reasonable efforts have been attempted to
408 prevent the child's removal from the child's home.

409 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
410 secure confinement.

411 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
412 or dependency under Subsection [78A-6-103\(1\)\(c\)](#) may not be committed to the Division of
413 Juvenile Justice Services.

414 (e) The court may commit a minor, subject to the court retaining continuing
415 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice
416 Services for observation and evaluation for a period not to exceed 45 days, which period may
417 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
418 Services.

419 (f) (i) The court may commit a minor to a place of detention or an alternative to
420 detention for a period not to exceed 30 days subject to the court retaining continuing
421 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
422 ordered by the court.

423 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

424 (A) an act which if committed by an adult would be a criminal offense; or

425 (B) contempt of court under Section [78A-6-1101](#).

426 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
427 the Division of Child and Family Services or any other appropriate person in accordance with
428 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
429 Dependency Proceedings.

430 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care

431 and also for work, if possible, if the person, agency, or association operating the facility has
432 been approved or has otherwise complied with all applicable state and local laws. A minor
433 placed in a forestry camp or similar facility may be required to work on fire prevention,
434 forestation and reforestation, recreational works, forest roads, and on other works on or off the
435 grounds of the facility and may be paid wages, subject to the approval of and under conditions
436 set by the court.

437 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
438 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
439 Section [78A-6-321](#) and impose fines in limited amounts.

440 (ii) The court may also require a minor to reimburse an individual, entity, or
441 governmental agency who offered and paid a reward to a person or persons for providing
442 information resulting in a court adjudication that the minor is within the jurisdiction of the
443 juvenile court due to the commission of a criminal offense.

444 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
445 court may order the minor to make restitution for costs expended by any governmental entity
446 for the return.

447 (j) The court may issue orders necessary for the collection of restitution and fines
448 ordered by the court, including garnishments, wage withholdings, and executions.

449 (k) (i) The court may through its probation department encourage the development of
450 employment or work programs to enable minors to fulfill their obligations under Subsection
451 (2)(i) and for other purposes considered desirable by the court.

452 (ii) Consistent with the order of the court, the probation officer may permit a minor
453 found to be within the jurisdiction of the court to participate in a program of work restitution or
454 compensatory service in lieu of paying part or all of the fine imposed by the court.

455 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
456 addition to any other disposition authorized by this section:

457 (A) restrain the minor from driving for periods of time the court considers necessary;
458 and

459 (B) take possession of the minor's driver license.

460 (ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the
461 suspension of driving privileges for an offense under Section [78A-6-606](#) is governed only by

462 Section 78A-6-606.

463 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
464 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
465 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
466 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
467 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
468 completion of an approved substance abuse prevention or treatment program may be credited
469 by the court as compensatory service hours.

470 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
471 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court
472 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
473 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
474 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
475 approved substance abuse prevention or treatment program may be credited by the court as
476 compensatory service hours.

477 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
478 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
479 order the minor to clean up graffiti created by the minor or any other person at a time and place
480 within the jurisdiction of the court. Compensatory service required under this section may be
481 performed in the presence and under the direct supervision of the minor's parent or legal
482 guardian. The parent or legal guardian shall report completion of the order to the court. The
483 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal
484 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
485 court may also require the minor to perform other alternative forms of restitution or repair to
486 the damaged property pursuant to Subsection 77-18-1(8).

487 (A) For a first adjudication, the court may require the minor to clean up graffiti for not
488 less than eight hours.

489 (B) For a second adjudication, the court may require the minor to clean up graffiti for
490 not less than 16 hours.

491 (C) For a third adjudication, the court may require the minor to clean up graffiti for not
492 less than 24 hours.

- 493 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:
494 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or
495 (B) receive other special care.
- 496 (ii) For purposes of receiving the examination, treatment, or care described in
497 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.
- 498 (iii) In determining whether to order the examination, treatment, or care described in
499 Subsection (2)(n)(i), the court shall consider:
- 500 (A) the desires of the minor;
501 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
502 minor; and
503 (C) whether the potential benefits of the examination, treatment, or care outweigh the
504 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
505 function impairment, or emotional or physical harm resulting from the compulsory nature of
506 the examination, treatment, or care.
- 507 (iv) (A) The court may not order a minor who is in the legal custody of the Division of
508 Child and Family Services to receive, and an individual may not administer, any
509 non-emergency treatment or care without the written consent of the parent or guardian.
- 510 (B) A parent or guardian shall be given an opportunity to consult with an attorney of
511 the parent or guardian before consenting under Subsection (2)(n)(iv)(A).
- 512 (C) Any consent given by a parent or guardian for treatment or care under Subsection
513 (2)(n)(iv)(A) may be revoked by the parent or guardian through a written statement delivered to
514 the division and effective upon the division's receipt of the written statement.
- 515 (v) The person who administered treatment or care to the minor shall notify the parent
516 or guardian within five business days after treatment or care has been administered.
- 517 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
518 interest of the minor, and may appoint as guardian a public or private institution or agency in
519 which legal custody of the minor is vested.
- 520 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
521 private agency or institution, the court shall give primary consideration to the welfare of the
522 minor. When practicable, the court may take into consideration the religious preferences of the
523 minor and of a child's parents.

524 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable
525 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
526 or any other person who has been made a party to the proceedings. Conditions may include:

- 527 (A) parent-time by the parents or one parent;
- 528 (B) restrictions on the minor's associates;
- 529 (C) restrictions on the minor's occupation and other activities; and
- 530 (D) requirements to be observed by the parents or custodian.

531 (ii) A minor whose parents or guardians successfully complete a family or other
532 counseling program may be credited by the court for detention, confinement, or probation time.

533 (q) The court may order the child to be committed to the physical custody of a local
534 mental health authority, in accordance with the procedures and requirements of Title 62A,
535 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
536 Mental Health.

537 (r) (i) The court may make an order committing a minor within the court's jurisdiction
538 to the Utah State Developmental Center if the minor has an intellectual disability in accordance
539 with the provisions of Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility
540 for People with an Intellectual Disability.

541 (ii) The court shall follow the procedure applicable in the district courts with respect to
542 judicial commitments to the Utah State Developmental Center when ordering a commitment
543 under Subsection (2)(r)(i).

544 (s) The court may terminate all parental rights upon a finding of compliance with the
545 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

546 (t) The court may make any other reasonable orders for the best interest of the minor or
547 as required for the protection of the public, except that a child may not be committed to jail or
548 prison.

549 (u) The court may combine the dispositions listed in this section if they are compatible.

550 (v) Before depriving any parent of custody, the court shall give due consideration to the
551 rights of parents concerning their child. The court may transfer custody of a minor to another
552 person, agency, or institution in accordance with the requirements and procedures of Title 78A,
553 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

554 (w) Except as provided in Subsection (2)(y)(i), an order under this section for

555 probation or placement of a minor with an individual or an agency shall include a date certain
556 for a review of the case by the court. A new date shall be set upon each review.

557 (x) In reviewing foster home placements, special attention shall be given to making
558 adoptable children available for adoption without delay.

559 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
560 with an individual or relative of a child where the court has previously acquired jurisdiction as
561 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
562 order for child support on behalf of the child against the natural or adoptive parents of the
563 child.

564 (ii) Orders under Subsection (2)(y)(i):

565 (A) shall remain in effect until the child reaches majority;

566 (B) are not subject to review under Section 78A-6-118; and

567 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

568 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
569 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
570 of the juvenile court.

571 (3) In addition to the dispositions described in Subsection (2), when a minor comes
572 within the court's jurisdiction, the minor may be given a choice by the court to serve in the
573 National Guard in lieu of other sanctions, provided:

574 (a) the minor meets the current entrance qualifications for service in the National
575 Guard as determined by a recruiter, whose determination is final;

576 (b) the minor is not under the jurisdiction of the court for any act that:

577 (i) would be a felony if committed by an adult;

578 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

579 (iii) was committed with a weapon; and

580 (c) the court retains jurisdiction over the minor under conditions set by the court and
581 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

582 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
583 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
584 designated employees of the court or, if the minor is in the legal custody of the Division of
585 Juvenile Justice Services, then by designated employees of the division under Subsection

586 53-10-404(5)(b).

587 (b) The responsible agency shall ensure that employees designated to collect the saliva
588 DNA specimens receive appropriate training and that the specimens are obtained in accordance
589 with accepted protocol.

590 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
591 Specimen Restricted Account created in Section 53-10-407.

592 (d) Payment of the reimbursement is second in priority to payments the minor is
593 ordered to make for restitution under this section and treatment under Section 78A-6-321.

594 Section 4. Section 78A-6-301.5 is enacted to read:

595 **78A-6-301.5. Second medical opinion.**

596 (1) In cases where the division seeks protective custody, temporary custody, or custody
597 of the child based on the report or testimony of a physician, a parent or guardian shall have a
598 reasonable amount of time to obtain a second opinion from another physician of the parent's or
599 guardian's choosing who has expertise in the applicable field.

600 (2) The child may remain in the custody of the parent or guardian while the appropriate
601 medical treatment is being determined.

602 (3) If the second opinion results in a diagnosis different from the report of the
603 physician the division used, or if the second opinion results in a course of action less restrictive
604 than the recommendation of the physician the division used, the parent or guardian shall have
605 the option of pursuing care and treatment pursuant to the second opinion, unless the division
606 shows, by clear and convincing evidence, that the health care decision is not reasonable and
607 informed.

608 Section 5. Section 78A-6-302 is amended to read:

609 **78A-6-302. Court-ordered protective custody of a child following petition filing --**
610 **Grounds.**

611 (1) After a petition has been filed under Section 78A-6-304, if the child who is the
612 subject of the petition is not in the protective custody of the division, a court may order that the
613 child be removed from the child's home or otherwise taken into protective custody if the court
614 finds, by [~~a preponderance of the~~] clear and convincing evidence, that any one or more of the
615 following circumstances exist:

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

- 617 (ii) the child's physical health or safety may not be protected without removing the
618 child from the custody of the child's parent or guardian;
- 619 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
620 that causes the child to suffer emotional damage; and
- 621 (ii) there are no reasonable means available by which the child's emotional health may
622 be protected without removing the child from the custody of the child's parent or guardian;
- 623 (c) the child or another child residing in the same household has been, or is considered
624 to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a
625 parent or guardian, a member of the parent's or guardian's household, or other person known to
626 the parent or guardian;
- 627 (d) the parent or guardian is unwilling to have physical custody of the child;
- 628 (e) the child is abandoned or left without any provision for the child's support;
- 629 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
630 or cannot arrange for safe and appropriate care for the child;
- 631 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
632 guardian is unwilling or unable to provide care or support for the child;
- 633 (ii) the whereabouts of the parent or guardian are unknown; and
- 634 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- 635 (h) subject to the provisions of Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n)
636 and Section 78A-6-301.5, the child is in immediate need of medical or mental health care;
- 637 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
638 environment that poses a threat to the child's health or safety; or
- 639 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
640 a threat to the child's health or safety;
- 641 (j) the child or another child residing in the same household has been neglected;
- 642 (k) the child's natural parent:
- 643 (i) intentionally, knowingly, or recklessly causes the death of another parent of the
644 child;
- 645 (ii) is identified by a law enforcement agency as the primary suspect in an investigation
646 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
- 647 (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or

648 recklessly causing the death of another parent of the child;

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

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

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

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

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

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

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

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

671 (3) In the absence of one of the factors described in Subsection (1), a court may not
672 remove a child from the parent's or guardian's custody on the basis of:

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

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

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

677 (4) A child removed from the custody of the child's parent or guardian under this
678 section may not be placed or kept in a secure detention facility pending further court

679 proceedings unless the child is detainable based on guidelines promulgated by the Division of
680 Juvenile Justice Services.

681 (5) This section does not preclude removal of a child from the child's home without a
682 warrant or court order under Section 62A-4a-202.1.

683 (6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and
684 Family Services may not remove a child from the custody of the child's parent or guardian on
685 the sole or primary basis that the parent or guardian refuses to consent to:

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

689 (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family
690 Services may remove a child under conditions that would otherwise be prohibited under
691 Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a
692 serious, imminent risk to the child's physical safety or the physical safety of others.

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

694 **78A-6-306. Shelter hearing.**

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

- 697 (a) removal of the child from the child's home by the division;
- 698 (b) placement of the child in the protective custody of the division;
- 699 (c) emergency placement under Subsection 62A-4a-202.1(4);
- 700 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
701 at the request of the division; or

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

704 (2) [~~Upon the occurrence of any~~] If one of the circumstances described in Subsections
705 (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:

- 706 (a) the name and address of the person to whom the notice is directed;
- 707 (b) the date, time, and place of the shelter hearing;
- 708 (c) the name of the child on whose behalf a petition is being brought;
- 709 (d) a concise statement regarding:

- 710 (i) the reasons for removal or other action of the division under Subsection (1); and
- 711 (ii) the allegations and code sections under which the proceeding has been instituted;
- 712 (e) a statement that the parent or guardian to whom notice is given, and the child, are
- 713 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
- 714 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
- 715 provided in accordance with the provisions of Section [78A-6-1111](#); and
- 716 (f) a statement that the parent or guardian is liable for the cost of support of the child in
- 717 the protective custody, temporary custody, and custody of the division, and the cost for legal
- 718 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
- 719 ability of the parent or guardian.
- 720 (3) The notice described in Subsection (2) shall be personally served as soon as
- 721 possible, but no later than one business day after removal of the child from the child's home, or
- 722 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
- 723 [78A-6-106\(4\)](#), on:
- 724 (a) the appropriate guardian ad litem; and
- 725 (b) both parents and any guardian of the child, unless the parents or guardians cannot
- 726 be located.
- 727 (4) The following persons shall be present at the shelter hearing:
- 728 (a) the child, unless it would be detrimental for the child;
- 729 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
- 730 fail to appear in response to the notice;
- 731 (c) counsel for the parents, if one is requested;
- 732 (d) the child's guardian ad litem;
- 733 (e) the caseworker from the division who is assigned to the case; and
- 734 (f) the attorney from the attorney general's office who is representing the division.
- 735 (5) (a) At the shelter hearing, the court shall:
- 736 (i) provide an opportunity to provide relevant testimony to:
- 737 (A) the child's parent or guardian, if present; and
- 738 (B) any other person having relevant knowledge; and
- 739 (ii) subject to Section [78A-6-305](#), provide an opportunity for the child to testify.
- 740 (b) The court:

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

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

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

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

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

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

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

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

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

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

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

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

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

768 (9) (a) If the child is in the protective custody of the division, the court shall order that
769 the child be [~~released from the protective custody of the division~~] returned to the custody of the
770 parent or guardian unless it finds, by [~~a preponderance of the~~] clear and convincing evidence,
771 that any one of the following exist:

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

775 (ii) (A) the child is suffering substantial emotional damage~~[, and]~~ that results in an
776 observable and material impairment in the child's growth, development, or psychological
777 functioning;

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

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

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

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

787 (A) parent or guardian;

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

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

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

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

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

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

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

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

798 (ix) subject to Subsections 78A-6-105(27)(d) and 78A-6-117(2)(n) and Section
799 78A-6-301.5, the child is in ~~[urgent]~~ immediate need of medical or mental health care;

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

802 (B) the parent or guardian is unwilling or unable to make reasonable changes that

803 would remove the threat;

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

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

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

811 (xiii) (A) the child's welfare is substantially endangered; [~~or~~] and

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

814 (xiv) the child's natural parent:

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

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

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

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

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

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

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

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

834 removal.

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

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

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

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

849 (13) The court may not order continued removal of a child solely on the basis of
850 educational neglect as described in Subsection 78A-6-105[(25)](27)(b)₂ truancy, or failure to
851 comply with a court order to attend school.

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

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

856 (15) If the court finds that continued removal and temporary custody are necessary for
857 the protection of a child [~~because harm may result to the child if the child were returned home~~]
858 pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

859 (a) any error in the initial removal of the child;

860 (b) the failure of a party to comply with notice provisions; or

861 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
862 and Family Services.

863 Section 7. Section 78A-6-312 is amended to read:

864 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

- 865 (1) The court may:
- 866 (a) make any of the dispositions described in Section [78A-6-117](#);
- 867 (b) place the minor in the custody or guardianship of any:
- 868 (i) individual; or
- 869 (ii) public or private entity or agency; or
- 870 (c) order:
- 871 (i) protective supervision;
- 872 (ii) family preservation;
- 873 (iii) subject to Subsections (12)(b) [~~and~~], [78A-6-105\(27\)\(d\)](#), and [78A-6-117\(2\)\(n\)](#)[(~~iii~~)]
- 874 and Section [78A-6-301.5](#), medical or mental health treatment; or
- 875 (iv) other services.
- 876 (2) Whenever the court orders continued removal at the dispositional hearing, and that
- 877 the minor remain in the custody of the division, the court shall first:
- 878 (a) establish a primary permanency goal for the minor; and
- 879 (b) determine whether, in view of the primary permanency goal, reunification services
- 880 are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).
- 881 (3) Subject to Subsections (6) and (7), if the court determines that reunification
- 882 services are appropriate for the minor and the minor's family, the court shall provide for
- 883 reasonable parent-time with the parent or parents from whose custody the minor was removed,
- 884 unless parent-time is not in the best interest of the minor.
- 885 (4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe
- 886 abuse, or severe neglect are involved, neither the division nor the court has any duty to make
- 887 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to
- 888 attempt to rehabilitate the offending parent or parents.
- 889 (5) In all cases, the minor's health, safety, and welfare shall be the court's paramount
- 890 concern in determining whether reasonable efforts to reunify should be made.
- 891 (6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless
- 892 the court makes a finding that it is necessary to deny parent-time in order to:
- 893 (a) protect the physical safety of the minor;
- 894 (b) protect the life of the minor; or
- 895 (c) prevent the minor from being traumatized by contact with the parent due to the

896 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

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

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

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

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

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

905 (ii) an explanation of the effect of abandoning or modifying the primary permanency
906 goal.

907 (b) In determining the primary permanency goal and concurrent permanency goal, the
908 court shall consider:

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

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

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

913 (9) A permanency hearing shall be conducted in accordance with Subsection
914 [78A-6-314](#)(1)(b) within 30 days after the day on which the dispositional hearing ends if
915 something other than reunification is initially established as a minor's primary permanency
916 goal.

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

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

921 (c) If, at any time, the court determines that reunification is no longer a minor's primary
922 permanency goal, the court shall conduct a permanency hearing in accordance with Section
923 [78A-6-314](#) on or before the earlier of:

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

926 (ii) the day on which the provision of reunification services, described in Section

927 78A-6-314, ends.

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

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

933 (12) (a) The court shall:

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

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

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

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

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

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

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

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

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

956 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
957 to be inconsistent with the final permanency plan for the minor established pursuant to Section

958 78A-6-314, then measures shall be taken, in a timely manner, to:

- 959 (i) place the minor in accordance with the permanency plan; and
- 960 (ii) complete whatever steps are necessary to finalize the permanent placement of the
- 961 minor.

962 (15) Any physical custody of the minor by the parent or a relative during the period

963 described in Subsections (11) through (14) does not interrupt the running of the period.

964 (16) (a) If reunification services are ordered, a permanency hearing shall be conducted

965 by the court in accordance with Section 78A-6-314 at the expiration of the time period for

966 reunification services.

967 (b) The permanency hearing shall be held no later than 12 months after the original

968 removal of the minor.

969 (c) If reunification services are not ordered, a permanency hearing shall be conducted

970 within 30 days, in accordance with Section 78A-6-314.

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

972 ordered to receive reunification services but who have abandoned that minor for a period of six

973 months from the date that reunification services were ordered:

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

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

977 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the

978 sibling group together is:

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

981 (19) (a) Because of the state's interest in and responsibility to protect and provide

982 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a

983 parent's interest in receiving reunification services is limited.

- 984 (b) The court may determine that:
 - 985 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
 - 986 based on the individual circumstances; and
 - 987 (ii) reunification services should not be provided.
- 988 (c) In determining "reasonable efforts" to be made with respect to a minor, and in

989 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
990 concern.

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

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

996 (b) subject to Subsection (21)(a), the parent is suffering from a mental illness of such
997 magnitude that it renders the parent incapable of utilizing reunification services;

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

1000 (i) was removed from the custody of the minor's parent;

1001 (ii) was subsequently returned to the custody of the parent; and

1002 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
1003 exploitation;

1004 (d) the parent:

1005 (i) caused the death of another minor through abuse or neglect;

1006 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

1007 (A) murder or manslaughter of a child; or

1008 (B) child abuse homicide;

1009 (iii) committed sexual abuse against the child;

1010 (iv) is a registered sex offender or required to register as a sex offender; or

1011 (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the
1012 child;

1013 (B) is identified by a law enforcement agency as the primary suspect in an investigation
1014 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

1015 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
1016 recklessly causing the death of another parent of the child;

1017 (e) the minor suffered severe abuse by the parent or by any person known by the
1018 parent, if the parent knew or reasonably should have known that the person was abusing the
1019 minor;

1020 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
1021 and the court finds that it would not benefit the minor to pursue reunification services with the
1022 offending parent;

1023 (g) the parent's rights are terminated with regard to any other minor;

1024 (h) the minor was removed from the minor's home on at least two previous occasions
1025 and reunification services were offered or provided to the family at those times;

1026 (i) the parent has abandoned the minor for a period of six months or longer;

1027 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
1028 location where the parent knew or should have known that a clandestine laboratory operation
1029 was located;

1030 (k) except as provided in Subsection (21)(b), with respect to a parent who is the child's
1031 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
1032 exposed to an illegal or prescription drug that was abused by the child's mother while the child
1033 was in utero, if the child was taken into division custody for that reason, unless the mother
1034 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
1035 substance abuse treatment program approved by the department; or

1036 (l) any other circumstance that the court determines should preclude reunification
1037 efforts or services.

1038 (21) (a) The finding under Subsection (20)(b) shall be based on competent evidence
1039 from at least two medical or mental health professionals, who are not associates, establishing
1040 that, even with the provision of services, the parent is not likely to be capable of adequately
1041 caring for the minor within 12 months after the day on which the court finding is made.

1042 (b) A judge may disregard the provisions of Subsection (20)(k) if the court finds, under
1043 the circumstances of the case, that the substance abuse treatment described in Subsection
1044 (20)(k) is not warranted.

1045 (22) In determining whether reunification services are appropriate, the court shall take
1046 into consideration:

1047 (a) failure of the parent to respond to previous services or comply with a previous child
1048 and family plan;

1049 (b) the fact that the minor was abused while the parent was under the influence of
1050 drugs or alcohol;

- 1051 (c) any history of violent behavior directed at the child or an immediate family
1052 member;
- 1053 (d) whether a parent continues to live with an individual who abused the minor;
- 1054 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;
- 1055 (f) testimony by a competent professional that the parent's behavior is unlikely to be
1056 successful; and
- 1057 (g) whether the parent has expressed an interest in reunification with the minor.
- 1058 (23) (a) If reunification services are not ordered pursuant to Subsections (19) through
1059 (21), and the whereabouts of a parent become known within six months after the day on which
1060 the out-of-home placement of the minor is made, the court may order the division to provide
1061 reunification services.
- 1062 (b) The time limits described in Subsections (2) through (18) are not tolled by the
1063 parent's absence.
- 1064 (24) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
1065 services unless it determines that those services would be detrimental to the minor.
- 1066 (b) In making the determination described in Subsection (24)(a), the court shall
1067 consider:
- 1068 (i) the age of the minor;
- 1069 (ii) the degree of parent-child bonding;
- 1070 (iii) the length of the sentence;
- 1071 (iv) the nature of the treatment;
- 1072 (v) the nature of the crime or illness;
- 1073 (vi) the degree of detriment to the minor if services are not offered;
- 1074 (vii) for a minor 10 years of age or older, the minor's attitude toward the
1075 implementation of family reunification services; and
- 1076 (viii) any other appropriate factors.
- 1077 (c) Reunification services for an incarcerated parent are subject to the time limitations
1078 imposed in Subsections (2) through (18).
- 1079 (d) Reunification services for an institutionalized parent are subject to the time
1080 limitations imposed in Subsections (2) through (18), unless the court determines that continued
1081 reunification services would be in the minor's best interest.

1082 (25) If, pursuant to Subsections (20)(b) through (l), the court does not order
1083 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
1084 with Section [78A-6-314](#).

1085 Section 8. Section **78A-6-312.5** is enacted to read:

1086 **78A-6-312.5. Child and family plan hearing.**

1087 (1) (a) A parent or guardian may petition the court to schedule a hearing at any time
1088 after the child and family plan is finalized under Section [62A-4a-205](#).

1089 (b) The petition for a hearing shall include relevant statements, documents, and other
1090 information demonstrating the compliance of the parent or guardian with the child and family
1091 plan.

1092 (c) Upon receiving the petition, the court shall schedule a hearing within five business
1093 days.

1094 (2) If the court finds that the parent or guardian has completed the requirements of the
1095 child and family plan, the court shall order the division to relinquish custody of the child to the
1096 parent or guardian.

Legislative Review Note
as of 2-18-15 1:32 PM

Office of Legislative Research and General Counsel