

HUMAN SERVICES AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill modifies Title 62A, Chapter 4a, Child and Family Services, Title 67, Chapter 5, Attorney General, Title 78A, Chapter 2, Judicial Administration, and Title 78A, Chapter 6, Juvenile Court Act.

Highlighted Provisions:

This bill:

- ▶ amends training requirements for Division of Child and Family Services caseworkers;
- ▶ requires the Division of Child and Family Services to make a report to the 2013 Health and Human Services Interim Committee on:
 - shifting resources and staff to in-home services;
 - proposals aimed at keeping sibling groups together, as much as possible, and providing necessary services to structured foster families to avoid sending foster children to proctor homes;
 - the disparity between foster care payments and adoption subsidies, and whether an adjustment to those rates could result in savings to the state; and
 - the utilization of a guardianship placement after a termination of parental rights, if no appropriate adoption placement is available;
- ▶ requires the 2013 Health and Human Services Interim Committee to study whether statewide practice standards should be implemented to assist the Child Welfare Parental Defense Program;
- ▶ requires training for attorneys general who represent the Division of Child and

Family Services, child protective service investigators, and guardians ad litem;

- requires a court, in determining primary permanency and concurrent permanency plans, to prioritize a kinship placement, consider guardianship placement, and

utilize an individualized placement goal as a last resort only;

- eliminate the 8-month time frame for a child younger than 36 months in the custody of the division; and

- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-107, as last amended by Laws of Utah 2012, Chapter 293

62A-4a-401, as last amended by Laws of Utah 2008, Chapter 299

67-5-16, as enacted by Laws of Utah 1998, Chapter 274

78A-2-227.5, as enacted by Laws of Utah 2012, Chapter 223

78A-6-312, as last amended by Laws of Utah 2012, Chapter 293

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

Section 1. Section **62A-4a-107** is amended to read:

62A-4a-107. Mandatory education and training of caseworkers -- Development of curriculum.

(1) There is created within the division a full-time position of Child Welfare Training Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee in that position is not responsible for direct casework services or the supervision of those services, but is required to:

(a) develop child welfare curriculum that:

(i) is current and effective, consistent with the division's mission and purpose for child welfare; and

(ii) utilizes curriculum and resources from a variety of sources including those from:

(A) the public sector;

(B) the private sector; and

(C) inside and outside of the state;

(b) recruit, select, and supervise child welfare trainers;

(c) develop a statewide training program, including a budget and identification of sources of funding to support that training;

(d) evaluate the efficacy of training in improving job performance;

(e) assist child protective services and foster care workers in developing and fulfilling their individual training plans;

(f) monitor staff compliance with division training requirements and individual training plans; and

(g) expand the collaboration between the division and schools of social work within institutions of higher education in developing child welfare services curriculum, and in providing and evaluating training.

(2) (a) The director shall, with the assistance of the child welfare training coordinator, establish a core curriculum for child welfare services that is substantially equivalent to the Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

(b) Any child welfare caseworker who is employed by the division for the first time after July 1, 1999, shall, before assuming significant independent casework responsibilities, successfully complete:

(i) the core curriculum; and

(ii) except as provided in Subsection (2)(c), on-the-job training that consists of observing and accompanying at least two capable and experienced child welfare caseworkers as they perform work-related functions:

(A) for three months if the caseworker has less than six months of on-the-job

86 experience as a child welfare caseworker; or

87 (B) for two months if the caseworker has six months or more but less than 24 months
88 of on-the-job experience as a child welfare caseworker.

89 (c) A child welfare caseworker with at least 24 months of on-the-job experience is not
90 required to receive on-the-job training under Subsection (2)(b)(ii).

91 (3) Child welfare caseworkers shall complete training in:

92 (a) the legal duties of a child welfare caseworker;

93 (b) the responsibility of a child welfare caseworker to protect the safety and legal rights
94 of children, parents, and families at all stages of a case, including:

95 (i) initial contact;

96 (ii) investigation; and

97 (iii) treatment;

98 (c) recognizing situations involving:

99 (i) substance abuse;

100 (ii) domestic violence;

101 (iii) abuse; and

102 (iv) neglect; and

103 (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of
104 the United States to the child welfare caseworker's job, including:

105 (i) search and seizure of evidence;

106 (ii) the warrant requirement;

107 (iii) exceptions to the warrant requirement; and

108 (iv) removing a child from the custody of the child's parent or guardian.

109 (4) The division shall train its child welfare caseworkers to apply the risk assessment
110 tools and rules described in Subsection 62A-4a-1002(2).

111 (5) The division shall use the training of child welfare caseworkers to emphasize:

112 (a) the importance of maintaining the parent-child relationship whenever possible;

113 (b) the preference for providing in-home services over taking a child into protective

custody, both for the emotional well-being of the child and the efficient allocation of resources;
and

(c) the importance and priority of:

(i) kinship placement in the event a child must be taken into protective custody[-]; and

(ii) guardianship placement, in the event the parent-child relationship is legally
terminated and no appropriate adoptive placement is available.

(6) When a child welfare caseworker is hired, before assuming significant independent
casework responsibilities, the child welfare caseworker shall complete the training described in
Subsections (3) through (5).

Section 2. Section **62A-4a-401** is amended to read:

62A-4a-401. Legislative purpose -- Report and study items.

(1) It is the purpose of this part to protect the best interests of children, offer protective
services to prevent harm to children, stabilize the home environment, preserve family life
whenever possible, and encourage cooperation among the states in dealing with the problem of
abuse or neglect.

(2) The division shall, during the 2013 interim, report to the Health and Human
Services Interim Committee on:

(a) the division's efforts to use existing staff and funds while shifting resources away
from foster care and to in-home services;

(b) a proposal to:

(i) keep sibling groups together, as much as possible; and

(ii) provide necessary services to available structured foster families to avoid sending
foster children to proctor homes;

(c) the disparity between foster care payments and adoption subsidies, and whether an
adjustment to those rates could result in savings to the state; and

(d) the utilization of guardianship, in the event an appropriate adoptive placement is
not available after a termination of parental rights.

(3) The Health and Human Services Interim Committee shall, during the 2013 interim,

study whether statewide practice standards should be implemented to assist the Child Welfare Parental Defense Program with its mission to provide legal services to indigent parents whose children are in the custody of the division.

Section 3. Section **67-5-16** is amended to read:

67-5-16. Child protective services investigators within attorney general's office -- Authority -- Training.

(1) The attorney general may employ, with the consent of the Division of Child and Family Services within the Department of Human Services, and in accordance with Section 62A-4a-202.6, child protective services investigators to investigate alleged instances of abuse or neglect of a child that occur while a child is in the custody of the Division of Child and Family Services. Those investigators may also investigate reports of abuse or neglect of a child by an employee of the Department of Human Services, or involving a person or entity licensed to provide substitute care for children in the custody of the Division of Child and Family Services.

(2) Attorneys who represent the Division of Child and Family Services under Section 67-5-17, and child protective services investigators employed by the attorney general under Subsection (1), shall be trained on and implement into practice the following items, in order of preference and priority:

(a) the priority of maintaining a child safely in the child's home, whenever possible;

(b) the importance of:

(i) kinship placement, in the event the child is removed from the home; and

(ii) keeping sibling groups together, whenever practicable and in the best interests of the children;

(c) the preference for kinship adoption over nonkinship adoption, if the parent-child relationship is legally terminated;

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

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

Section 4. Section **78A-2-227.5** is amended to read:

78A-2-227.5. Public policy regarding guardian ad litem -- Training.

(1) A guardian ad litem may not presume that a child and the child's parent are adversaries.

(2) A guardian ad litem shall be trained ~~[in]~~ on and implement into practice:

(a) the parental rights and child and family protection principles provided in Section 62A-4a-201;

(b) the fundamental liberties of parents and the public policy of the state to support family unification to the fullest extent possible;

(c) the constitutionally protected rights of parents, in cases where the state is a party; ~~[and]~~

(d) the use of a least restrictive means analysis regarding state claims of a compelling child welfare interest~~[-]~~;

(e) the priority of maintaining a child safely in the child's home, whenever possible;

(f) the importance of:

(i) kinship placement, in the event the child is removed from the home; and

(ii) keeping sibling groups together, whenever practicable and in the best interests of the children;

(g) the preference for kinship adoption over nonkinship adoption, if the parent-child relationship is legally terminated;

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

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

(3) The Office of the Guardian ad Litem shall implement policies and practice guidelines that reflect the priorities described in Subsections (2)(e) through (i) for the placement of children.

Section 5. 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

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

(iv) 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 goal for the minor; and

(b) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

(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;

- 226 (b) protect the life of the minor; or
- 227 (c) prevent the minor from being traumatized by contact with the parent due to the
- 228 minor's fear of the parent in light of the nature of the alleged abuse or neglect.
- 229 (7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a
- 230 parent's failure to:
- 231 (a) prove that the parent has not used legal or illegal substances; or
- 232 (b) comply with an aspect of the child and family plan that is ordered by the court.
- 233 (8) (a) In addition to the primary permanency goal, the court shall establish a
- 234 concurrent permanency goal that shall include:
- 235 ~~[(a)]~~ (i) a representative list of the conditions under which the primary permanency
- 236 goal will be abandoned in favor of the concurrent permanency goal; and
- 237 ~~[(b)]~~ (ii) an explanation of the effect of abandoning or modifying the primary
- 238 permanency goal.
- 239 (b) In determining the primary permanency goal and concurrent permanency goal, the
- 240 court shall consider:
- 241 (i) the preference for kinship placement over nonkinship placement;
- 242 (ii) the potential for a guardianship placement if the parent-child relationship is legally
- 243 terminated and no appropriate adoption placement is available; and
- 244 (iii) the use of an individualized permanency goal, only as a last resort.
- 245 (9) A permanency hearing shall be conducted in accordance with Subsection
- 246 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
- 247 something other than reunification is initially established as a minor's primary permanency
- 248 goal.
- 249 (10) (a) The court may amend a minor's primary permanency goal before the
- 250 establishment of a final permanency plan under Section 78A-6-314.
- 251 (b) The court is not limited to the terms of the concurrent permanency goal in the event
- 252 that the primary permanency goal is abandoned.
- 253 (c) If, at any time, the court determines that reunification is no longer a minor's primary

permanency goal, 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, it 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 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) The court shall:

(a) 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;

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

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

(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(8).

(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
- (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 who is 36 months of age or younger at the time the minor is initially removed from the home, the court shall:]~~

~~[(a) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78A-6-314; and]~~

~~[(b) order the discontinuance of those services after eight months from the initial removal of the minor from the home if the parent or parents have not made substantial efforts to comply with the child and family plan.]~~

~~[(18)]~~ (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.

~~[(19)]~~ (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

310 sibling group together is:

311 (a) practicable; and

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

313 [~~(20)~~] (19) (a) Because of the state's interest in and responsibility to protect and provide
314 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
315 parent's interest in receiving reunification services is limited.

316 (b) The court may determine that:

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

319 (ii) reunification services should not be provided.

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

323 [~~(21)~~] (20) There is a presumption that reunification services should not be provided to
324 a parent if the court finds, by clear and convincing evidence, that any of the following
325 circumstances exist:

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

328 (b) subject to Subsection [~~(22)~~] (21)(a), the parent is suffering from a mental illness of
329 such magnitude that it renders the parent incapable of utilizing reunification services;

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

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

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

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

336 (d) the parent:

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

- 338 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 339 (A) murder or manslaughter of a child; or
- 340 (B) child abuse homicide;
- 341 (iii) committed sexual abuse against the child; or
- 342 (iv) is a registered sex offender or required to register as a sex offender;
- 343 (e) the minor suffered severe abuse by the parent or by any person known by the
- 344 parent, if the parent knew or reasonably should have known that the person was abusing the
- 345 minor;
- 346 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,
- 347 and the court finds that it would not benefit the minor to pursue reunification services with the
- 348 offending parent;
- 349 (g) the parent's rights are terminated with regard to any other minor;
- 350 (h) the minor is removed from the minor's home on at least two previous occasions and
- 351 reunification services were offered or provided to the family at those times;
- 352 (i) the parent has abandoned the minor for a period of six months or longer;
- 353 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
- 354 location where the parent knew or should have known that a clandestine laboratory operation
- 355 was located;
- 356 (k) except as provided in Subsection [~~(22)~~] (21)(b), with respect to a parent who is the
- 357 child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or
- 358 was exposed to an illegal or prescription drug that was abused by the child's mother while the
- 359 child was in utero, if the child was taken into division custody for that reason, unless the
- 360 mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
- 361 substance abuse treatment program approved by the department; or
- 362 (l) any other circumstance that the court determines should preclude reunification
- 363 efforts or services.
- 364 [~~(22)~~] (21) (a) The finding under Subsection [~~(21)~~] (20)(b) shall be based on competent
- 365 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)~~] (20)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection [~~(21)~~] (20)(k) is not warranted.

[~~(23)~~] (22) 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;

(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)~~] (23) (a) If reunification services are not ordered pursuant to Subsections [~~(20)~~] (19) through [~~(22)~~] (21), 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 [~~(19)~~] (18) are not tolled by the parent's absence.

[~~(25)~~] (24) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection [~~(25)~~] (24)(a), the court shall

394 consider:

395 (i) the age of the minor;

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

397 (iii) the length of the sentence;

398 (iv) the nature of the treatment;

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

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

401 (vii) for a minor 10 years of age or older, the minor's attitude toward the

402 implementation of family reunification services; and

403 (viii) any other appropriate factors.

404 (c) Reunification services for an incarcerated parent are subject to the time limitations

405 imposed in Subsections (2) through [~~(19)~~] (18).

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

407 limitations imposed in Subsections (2) through [~~(19)~~] (18), unless the court determines that

408 continued reunification services would be in the minor's best interest.

409 [~~(26)~~] (25) If, pursuant to Subsections [~~(21)~~] (20)(b) through (l), the court does not

410 order reunification services, a permanency hearing shall be conducted within 30 days, in

411 accordance with Section 78A-6-314.