

Representative Christine F. Watkins proposes the following substitute bill:

DRUG TESTING AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses drug testing for certain individuals.

Highlighted Provisions:

This bill:

▶ provides that an individual who is receiving services from the Division of Child and Family Services, or is a party to an abuse, neglect, or dependency proceeding, may not be ordered or referred for drug testing that is administered through a sample of hair or fingernails; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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



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

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

62A-4a-105. Division responsibilities.

(1) The division shall:

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

(i) child welfare services;

(ii) domestic violence services; and

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

(b) provide the following services:

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

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

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

(B) family preservation services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

128 (5) The division may not refer an individual who is receiving services from the division
129 for drug testing by means of a hair or fingernail test that is administered to detect the presence
130 of drugs.

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

132 **78A-6-115. Hearings -- Record -- County attorney or district attorney**
133 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
134 **evidence -- Cannabis -- Drug testing.**

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

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

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

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

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

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

149 (A) provide notice to all subjects of the record that a request for release of the record

150 has been made; and

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

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

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

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

162 (i) protection or custody of an abused, neglected, or dependent child; and
163 (ii) petitions for termination of parental rights.

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

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

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

180 (5) (a) Except as provided in Subsections (5)(c) through (e), in an abuse, neglect, or

181 dependency proceeding occurring after the commencement of a shelter hearing under Section
182 78A-6-306 or the filing of a petition under Section 78A-6-304, each party to the proceeding
183 shall provide in writing to the other parties or their counsel any information which the party:

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

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

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

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

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

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

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

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

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

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

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

202 (i) pretrial hearings; and

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

205 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
206 may, in the court's discretion, consider evidence of statements made by a child under eight
207 years of age to an individual in a trust relationship.

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

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

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

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

- 212 (B) "Chronic" does not mean an isolated incident.
- 213 (iv) "Directions of use" means the same as that term is defined in Section 26-61a-102.
- 214 (v) "Dosing guidelines" means the same as that term is defined in Section 26-61a-102.
- 215 (vi) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.
- 216 (vii) "Medical cannabis cardholder" means the same as that term is defined in Section
- 217 26-61a-102.

- 218 (viii) "Qualified medical provider" means the same as that term is defined in Section
- 219 26-61a-102.

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

- 225 (i) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis
- 226 Production Establishments;
- 227 (ii) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or
- 228 (iii) (A) the individual's possession or use complies with Title 26, Chapter 61a, Utah
- 229 Medical Cannabis Act; and

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

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

- 236 (i) the child is harmed because of the child's inhalation or ingestion of cannabis, or
- 237 because of cannabis being introduced to the child's body in another manner; or
- 238 (ii) the child is at an unreasonable risk of harm because of chronic inhalation or
- 239 ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

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

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

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

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

256 (8) If an individual, who is party to a proceeding under Part 3, Abuse, Neglect, and
 257 Dependency Proceedings, is ordered by the juvenile court to submit to drug testing, or is
 258 referred by the division or a guardian ad litem for drug testing, the individual may not be
 259 ordered or referred for drug testing by means of a hair or fingernail test that is administered to
 260 detect the presence of drugs.

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

262 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

263 (1) The court may:

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

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

266 (i) individual; or

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

268 (c) order:

269 (i) protective supervision;

270 (ii) family preservation;

271 (iii) subject to Subsections (12)(b), 78A-6-105(40), and 78A-6-117(2) and Section
 272 78A-6-301.5, medical or mental health treatment;

273 (iv) sibling visitation; or

274 (v) other services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 plan.

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

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

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

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

312 (9) A permanency hearing shall be conducted in accordance with Subsection

313 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if

314 something other than reunification is initially established as a minor's primary permanency
315 plan.

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

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

320 (c) If, at any time, the court determines that reunification is no longer a minor's primary
321 permanency plan, the court shall conduct a permanency hearing in accordance with Section
322 78A-6-314 on or before the earlier of:

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

325 (ii) the day on which the provision of reunification services, described in Section
326 78A-6-314, ends.

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

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

333 (12) (a) The court shall:

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

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

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

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

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

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

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

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

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

357 (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined
358 to be inconsistent with the final permanency plan for the minor established pursuant to Section
359 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

367 reunification services.

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

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

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

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

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

377 (18) When a court conducts a permanency hearing for a minor under Section
378 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the
379 sibling group together is:

380 (a) practicable; and

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

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

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

389 (b) The court may determine that:

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

392 (ii) reunification services should not be provided.

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

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

398 circumstances exist:

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

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

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

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

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

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

409 (d) the parent:

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

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

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

413 (B) child abuse homicide;

414 (iii) committed sexual abuse against the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

473 (i) the age of the minor;

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

475 (iii) the length of the sentence;

476 (iv) the nature of the treatment;

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

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

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

481 (viii) any other appropriate factors.

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

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

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