

**CHILD WELFARE MODIFICATIONS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies Title 62A, Chapter 4a, Child and Family Services, and Title 78A, Chapter 6, Juvenile Court Act, by amending procedures relating to child welfare and delays the effective date of uncodified laws of Utah relating to the Office of the Guardian ad Litem.

**Highlighted Provisions:**

This bill:

- ▶ states that a parent is not required to provide child support to the Division of Child and Family Services for a child in the protective custody, temporary custody, or custody of the division if the parent's only form of income is a government-issued disability benefit;
- ▶ permits a parent or guardian to name two friends as potential emergency placements, if the division removes the child from the parent or guardian's home;
- ▶ prohibits the court from ordering additional drug or alcohol testing beyond what is recommended by a parent's substance abuse treatment program;
- ▶ modifies the definition of a "relative" to include the first cousin of the child's parent;
- ▶ permits a parent whose rights were terminated to petition for guardianship of the parent's child if the child is not adopted within a year of termination, and no adoption is likely to occur, or if the child's adoptive parents return the child to the custody of the division;



- 28           ▶ delays the effective date of Uncodified Section 10, Laws of Utah 2012, Chapter
- 29 223; and
- 30           ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           This bill provides revisor instructions.

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37           **62A-4a-114**, as last amended by Laws of Utah 2008, Chapter 3
- 38           **62A-4a-209**, as last amended by Laws of Utah 2008, Chapters 3 and 17
- 39           **78A-6-307**, as last amended by Laws of Utah 2008, Chapter 17 and renumbered and
- 40 amended by Laws of Utah 2008, Chapter 3
- 41           **78A-6-312**, as last amended by Laws of Utah 2012, Chapter 293
- 42           **78A-6-511**, as last amended by Laws of Utah 2012, Chapter 293
- 43           **78A-6-513**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 44           **78A-6-1106**, as renumbered and amended by Laws of Utah 2008, Chapter 3

45 **Uncodified Material Affected:**

46 AMENDS UNCODIFIED MATERIAL:

47           **Uncodified Section 10, Laws of Utah 2012, Chapter 223**

48           This uncodified section affects Sections 30-3-5.2, 51-9-408, 78A-2-227, 78A-2-228,  
49 78B-3-102, 78B-7-106, 78B-7-202, and 78B-15-612.



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

52           Section 1. Section **62A-4a-114** is amended to read:

53           **62A-4a-114. Financial reimbursement by parent or legal guardian.**

54           (1) ~~[The]~~ Except as provided in Subsection (5), the division shall seek reimbursement  
55 of funds it has expended on behalf of a child in the protective custody, temporary custody, or  
56 custody of the division, from the child's parents or legal guardians in accordance with an order  
57 for child support under Section 78A-6-1106.

58           (2) A parent or any other obligated person is not responsible for support for periods of

59 time that a child is removed upon a finding by the juvenile court that there were insufficient  
 60 grounds for that removal and that child is returned to the home of the parent, parents, or legal  
 61 guardians based upon that finding.

62 (3) In the event that the juvenile court finds that there were insufficient grounds for the  
 63 initial removal, but that the child is to remain in the custody of the state, the juvenile court shall  
 64 order that the parents or any other obligated persons are responsible for support from the point  
 65 at which it became improper to return the child to the home of ~~[his or her]~~ the child's parent,  
 66 parents, or legal guardians.

67 (4) The attorney general shall represent the division in any legal action taken to enforce  
 68 this section.

69 (5) (a) A parent or any other obligated person is not responsible for support if:

70 (i) the parent or other obligated person's only source of income is a government-issued  
 71 disability benefit; and

72 (ii) the benefit described in Subsection (5)(a)(i) is issued because of the parent or other  
 73 person's disability, and not the child's disability.

74 (b) A person who seeks to be excused from providing support under Subsection (5)(a)  
 75 shall provide the division and the Office of Recovery Services with evidence that the person  
 76 meets the requirements of Subsection (5)(a).

77 Section 2. Section **62A-4a-209** is amended to read:

78 **62A-4a-209. Emergency placement.**

79 (1) As used in this section:

80 (a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

81 (b) "Relative" is as defined in Subsection 78A-6-307(1)(b).

82 (2) The division may use an emergency placement under Subsection

83 62A-4a-202.1(4)(b)(ii) when:

84 (a) the case worker has made the determination that:

85 (i) the child's home is unsafe;

86 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

87 (iii) the child's custodial parent or guardian will agree to not remove the child from the

88 home of the person that serves as the placement and not have any contact with the child until

89 after the shelter hearing required by Section 78A-6-306;

90 (b) a person, with preference being given in accordance with Subsection (4), can be  
91 identified who has the ability and is willing to provide care for the child who would otherwise  
92 be placed in shelter care, including:

93 (i) taking the child to medical, mental health, dental, and educational appointments at  
94 the request of the division; and

95 (ii) making the child available to division services and the guardian ad litem; and

96 (c) the person described in Subsection (2)(b) agrees to care for the child on an  
97 emergency basis under the following conditions:

98 (i) the person meets the criteria for an emergency placement under Subsection (3);

99 (ii) the person agrees to not allow the custodial parent or guardian to have any contact  
100 with the child until after the shelter hearing unless authorized by the division in writing;

101 (iii) the person agrees to contact law enforcement and the division if the custodial  
102 parent or guardian attempts to make unauthorized contact with the child;

103 (iv) the person agrees to allow the division and the child's guardian ad litem to have  
104 access to the child;

105 (v) the person has been informed and understands that the division may continue to  
106 search for other possible placements for long-term care, if needed;

107 (vi) the person is willing to assist the custodial parent or guardian in reunification  
108 efforts at the request of the division, and to follow all court orders; and

109 (vii) the child is comfortable with the person.

110 (3) Except as otherwise provided in Subsection (5), before the division places a child  
111 in an emergency placement, the division:

112 (a) may request the name of a reference and may contact the reference to determine the  
113 answer to the following questions:

114 (i) would the person identified as a reference place a child in the home of the  
115 emergency placement; and

116 (ii) are there any other relatives or friends to consider as a possible emergency or  
117 long-term placement for the child;

118 (b) shall have the custodial parent or guardian sign an emergency placement agreement  
119 form during the investigation;

120 (c) (i) if the emergency placement will be with a relative of the child, shall comply with

121 the background check provisions described in Subsection (7); or

122 (ii) if the emergency placement will be with a person other than a noncustodial parent  
123 or a relative, shall comply with the criminal background check provisions described in Section  
124 78A-6-308 for adults living in the household where the child will be placed;

125 (d) shall complete a limited home inspection of the home where the emergency  
126 placement is made; and

127 (e) shall have the emergency placement approved by a family service specialist.

128 (4) (a) The following order of preference shall be applied when determining the person  
129 with whom a child will be placed in an emergency placement described in this section,  
130 provided that the person is willing, and has the ability, to care for the child:

131 (i) a noncustodial parent of the child in accordance with Section 78A-6-307;

132 (ii) a relative of the child;

133 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or  
134 guardian of the child, if the friend is a licensed foster parent; and

135 (iv) a shelter facility, former foster placement, or other foster placement designated by  
136 the division.

137 (b) Unless the division agrees otherwise, the custodial parent or guardian described in  
138 Subsection (4)(a)(iii) may [~~only~~] designate [~~one friend~~] up to two friends as a potential  
139 emergency placement.

140 (5) (a) The division may, pending the outcome of the investigation described in  
141 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial  
142 parent if, based on a limited investigation, prior to making the emergency placement, the  
143 division:

144 (i) determines that the noncustodial parent has regular, unsupervised visitation with the  
145 child that is not prohibited by law or court order;

146 (ii) determines that there is not reason to believe that the child's health or safety will be  
147 endangered during the emergency placement; and

148 (iii) has the custodial parent or guardian sign an emergency placement agreement.

149 (b) Either before or after making an emergency placement with the noncustodial parent  
150 of the child, the division may conduct the investigation described in Subsection (3)(a) in  
151 relation to the noncustodial parent.

152 (c) Before, or within one day, excluding weekends and holidays, after a child is placed  
153 in an emergency placement with the noncustodial parent of the child, the division shall conduct  
154 a limited:

155 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

156 (ii) inspection of the home where the emergency placement is made.

157 (6) After an emergency placement, the division caseworker must:

158 (a) respond to the emergency placement's calls within one hour if the custodial parents  
159 or guardians attempt to make unauthorized contact with the child or attempt to remove the  
160 child;

161 (b) complete all removal paperwork, including the notice provided to the custodial  
162 parents and guardians under Section 78A-6-306;

163 (c) contact the attorney general to schedule a shelter hearing;

164 (d) complete the placement procedures required in Section 78A-6-307; and

165 (e) continue to search for other relatives as a possible long-term placement, if needed.

166 (7) (a) The background check described in Subsection (3)(c)(i) shall include:

167 (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification  
168 background check; and

169 (ii) a completed search of the Management Information System described in Section  
170 62A-4a-1003.

171 (b) The division shall determine whether a person passes the background check  
172 described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3),  
173 and (8).

174 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an  
175 individual who is prohibited by court order from having access to that child.

176 Section 3. Section **78A-6-307** is amended to read:

177 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

178 (1) As used in this section:

179 (a) (i) "Natural parent," notwithstanding the provisions of Section 78A-6-105, means:

180 (A) a biological or adoptive mother;

181 (B) an adoptive father; or

182 (C) a biological father who:

183 (I) was married to the child's biological mother at the time the child was conceived or  
184 born; or

185 (II) has strictly complied with the provisions of Sections 78B-6-120 through  
186 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial  
187 parent.

188 (ii) The definition of "natural parent" described in Subsection (1)(a)(i) applies  
189 regardless of whether the child has been or will be placed with adoptive parents or whether  
190 adoption has been or will be considered as a long-term goal for the child.

191 (b) "Relative" means:

192 (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle,  
193 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, [~~or~~] sibling of a child, or a  
194 first cousin of the child's parent; and

195 (ii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25  
196 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that  
197 statute.

198 (2) (a) At the shelter hearing, when the court orders that a child be removed from the  
199 custody of the child's parent in accordance with the requirements of Section 78A-6-306, the  
200 court shall first determine whether there is another natural parent with whom the child was not  
201 residing at the time the events or conditions that brought the child within the court's jurisdiction  
202 occurred, who desires to assume custody of the child.

203 (b) If another natural parent requests custody under Subsection (2)(a), the court shall  
204 place the child with that parent unless it finds that the placement would be unsafe or otherwise  
205 detrimental to the child.

206 (c) The provisions of this Subsection (2) are limited by the provisions of Subsection  
207 (18)(b).

208 (d) (i) The court shall make a specific finding regarding the fitness of the parent  
209 described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the  
210 placement.

211 (ii) The court shall, at a minimum, order the division to visit the parent's home, comply  
212 with the criminal background check provisions described in Section 78A-6-308, and check the  
213 division's management information system for any previous reports of abuse or neglect

214 received by the division regarding the parent at issue.

215 (iii) The court may order the division to conduct any further investigation regarding the  
216 safety and appropriateness of the placement.

217 (iv) The division shall report its findings in writing to the court.

218 (v) The court may place the child in the temporary custody of the division, pending its  
219 determination regarding that placement.

220 (3) If the court orders placement with a parent under Subsection (2):

221 (a) the child and the parent are under the continuing jurisdiction of the court;

222 (b) the court may order:

223 (i) that the parent assume custody subject to the supervision of the court; and

224 (ii) that services be provided to the parent from whose custody the child was removed,  
225 the parent who has assumed custody, or both; and

226 (c) the court shall order reasonable parent-time with the parent from whose custody the  
227 child was removed, unless parent-time is not in the best interest of the child.

228 (4) The court shall periodically review an order described in Subsection (3) to  
229 determine whether:

230 (a) placement with the parent continues to be in the child's best interest;

231 (b) the child should be returned to the original custodial parent;

232 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)  
233 through (12); or

234 (d) the child should be placed in the custody of the division.

235 (5) The time limitations described in Section 78A-6-312 with regard to reunification  
236 efforts, apply to children placed with a previously noncustodial parent in accordance with  
237 Subsection (2).

238 (6) Legal custody of the child is not affected by an order entered under Subsection (2)  
239 or (3). In order to affect a previous court order regarding legal custody, the party must petition  
240 that court for modification of the order.

241 (7) If, at the time of the shelter hearing, a child is removed from the custody of the  
242 child's parent and is not placed in the custody of the child's other parent, the court:

243 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),  
244 there is a relative of the child or a friend of a parent of the child who is able and willing to care



245 for the child;

246 (b) may order the division to conduct a reasonable search to determine whether, subject  
247 to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the  
248 child who are willing and appropriate, in accordance with the requirements of this part and  
249 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

250 (c) shall order the parents to cooperate with the division, within five working days, to,  
251 subject to Subsections (18)(c) through (e), provide information regarding relatives of the child  
252 or friends who may be able and willing to care for the child; and

253 (d) may order that the child be placed in the custody of the division pending the  
254 determination under Subsection (7)(a).

255 (8) This section may not be construed as a guarantee that an identified relative or friend  
256 will receive custody of the child.

257 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given  
258 to a relative's or a friend's request for placement of the child, if it is in the best interest of the  
259 child, and the provisions of this section are satisfied.

260 (10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court  
261 shall make a specific finding regarding:

262 (i) the fitness of that relative or friend as a placement for the child; and

263 (ii) the safety and appropriateness of placement with that relative or friend.

264 (b) In order to be considered a "willing relative or friend" under this section, the  
265 relative or friend shall be willing to cooperate with the child's permanency goal.

266 (11) (a) In making the finding described in Subsection (10)(a), the court shall, at a  
267 minimum, order the division to:

268 (i) if the child may be placed with a relative of the child, conduct a background check  
269 that includes:

270 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification  
271 background check of the relative;

272 (B) a completed search, relating to the relative, of the Management Information System  
273 described in Section 62A-4a-1003; and

274 (C) a background check that complies with the criminal background check provisions  
275 described in Section 78A-6-308, of each nonrelative, as defined in Subsection

276 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

277 (ii) if the child will be placed with a noncustodial parent of the child, complete a

278 background check that includes:

279 (A) the background check requirements applicable to an emergency placement with a  
280 noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);

281 (B) a completed search, relating to the noncustodial parent of the child, of the  
282 Management Information System described in Section 62A-4a-1003; and

283 (C) a background check that complies with the criminal background check provisions  
284 described in Section 78A-6-308, of each nonrelative, as defined in Subsection

285 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

286 (iii) if the child may be placed with an individual other than a noncustodial parent or a  
287 relative of the child, conduct a criminal background check of the individual, and each adult that

288 resides in the household where the child may be placed, that complies with the criminal  
289 background check provisions described in Section 78A-6-308;

290 (iv) visit the relative's or friend's home;

291 (v) check the division's management information system for any previous reports of  
292 abuse or neglect regarding the relative or friend at issue;

293 (vi) report the division's findings in writing to the court; and

294 (vii) provide sufficient information so that the court may determine whether:

295 (A) the relative or friend has any history of abusive or neglectful behavior toward other  
296 children that may indicate or present a danger to this child;

297 (B) the child is comfortable with the relative or friend;

298 (C) the relative or friend recognizes the parent's history of abuse and is committed to  
299 protect the child;

300 (D) the relative or friend is strong enough to resist inappropriate requests by the parent  
301 for access to the child, in accordance with court orders;

302 (E) the relative or friend is committed to caring for the child as long as necessary; and

303 (F) the relative or friend can provide a secure and stable environment for the child.

304 (b) The division may determine to conduct, or the court may order the division to  
305 conduct, any further investigation regarding the safety and appropriateness of the placement.

306 (c) The division shall complete and file its assessment regarding placement with a

307 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a  
308 relative or friend.

309 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary  
310 custody of the division, pending the division's investigation pursuant to Subsections (10) and  
311 (11), and the court's determination regarding the appropriateness of that placement.

312 (b) The court shall ultimately base its determination regarding the appropriateness of a  
313 placement with a relative or friend on the best interest of the child.

314 (13) When the court awards custody and guardianship of a child with a relative or  
315 friend:

316 (a) the court shall order that:

317 (i) the relative or friend assume custody, subject to the continuing supervision of the  
318 court; and

319 (ii) any necessary services be provided to the child and the relative or friend;

320 (b) the child and any relative or friend with whom the child is placed are under the  
321 continuing jurisdiction of the court;

322 (c) the court may enter any order that it considers necessary for the protection and best  
323 interest of the child;

324 (d) the court shall provide for reasonable parent-time with the parent or parents from  
325 whose custody the child was removed, unless parent-time is not in the best interest of the child;  
326 and

327 (e) the court shall conduct a periodic review no less often than every six months, to  
328 determine whether:

329 (i) placement with the relative or friend continues to be in the child's best interest;

330 (ii) the child should be returned home; or

331 (iii) the child should be placed in the custody of the division.

332 (14) No later than 12 months after placement with a relative or friend, the court shall  
333 schedule a hearing for the purpose of entering a permanent order in accordance with the best  
334 interest of the child.

335 (15) The time limitations described in Section 78A-6-312, with regard to reunification  
336 efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

337 (16) (a) If the court awards custody of a child to the division, and the division places

338 the child with a relative, the division shall:

339 (i) conduct a criminal background check of the relative that complies with the criminal  
340 background check provisions described in Section 78A-6-308; and

341 (ii) if the results of the criminal background check described in Subsection (16)(a)(i)  
342 would prohibit the relative from having direct access to the child under Section 62A-2-120, the  
343 division shall:

344 (A) take the child into physical custody; and

345 (B) within three days, excluding weekends and holidays, after taking the child into  
346 physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all  
347 parties to the proceedings, of the division's action.

348 (b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a  
349 relative, pending the results of the background check described in Subsection (16)(a) on the  
350 relative.

351 (17) When the court orders that a child be removed from the custody of the child's  
352 parent and does not award custody and guardianship to another parent, relative, or friend under  
353 this section, the court shall order that the child be placed in the temporary custody of the  
354 Division of Child and Family Services, to proceed to adjudication and disposition and to be  
355 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,  
356 Child and Family Services.

357 (18) (a) Any preferential consideration that a relative or friend is initially granted  
358 pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that  
359 time period has expired, a relative or friend who has not obtained custody or asserted an  
360 interest in a child, may not be granted preferential consideration by the division or the court.

361 (b) When the time period described in Subsection (18)(a) has expired, the preferential  
362 consideration, which is initially granted to a natural parent in accordance with Subsection (2),  
363 is limited. After that time the court shall base its custody decision on the best interest of the  
364 child.

365 (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the  
366 following order of preference shall be applied when determining the person with whom a child  
367 will be placed, provided that the person is willing, and has the ability, to care for the child:

368 (i) a noncustodial parent of the child;

- 369 (ii) a relative of the child;
- 370 (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a
- 371 licensed foster parent; and
- 372 (iv) other placements that are consistent with the requirements of law.

373 (d) In determining whether a friend is a willing and appropriate placement for a child,

374 neither the court, nor the division, is required to consider more than one friend designated by

375 each parent of the child.

376 (e) If a parent of the child is not able to designate a friend who is a licensed foster

377 parent for placement of the child, but is able to identify a friend who is willing to become

378 licensed as a foster parent:

379 (i) the department shall fully cooperate to expedite the licensing process for the friend;

380 and

381 (ii) if the friend becomes licensed as a foster parent within the time frame described in

382 Subsection (18)(a), the court shall determine whether it is in the best interests of the child to

383 place the child with the friend.

384 (19) If, following the shelter hearing, the child is placed with a person who is not a

385 parent of the child, a relative of the child, a friend of a parent of the child, or a former foster

386 parent of the child, priority shall be given to a foster placement with a man and a woman who

387 are married to each other, unless it is in the best interests of the child to place the child with a

388 single foster parent.

389 (20) In determining the placement of a child, neither the court, nor the division, may

390 take into account, or discriminate against, the religion of a person with whom the child may be

391 placed, unless the purpose of taking religion into account is to place the child with a person or

392 family of the same religion as the child.

393 Section 4. Section **78A-6-312** is amended to read:

394 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**

395 (1) The court may:

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

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

398 (i) individual; or

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

- 400 (c) order:
- 401 (i) protective supervision;
- 402 (ii) family preservation;
- 403 (iii) subject to ~~[Subsection]~~ Subsections (12)(b) and 78A-6-117(2)(n)(iii), medical or
- 404 mental health treatment; or
- 405 (iv) other services.

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

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

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

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

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

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

- 423 (a) protect the physical safety of the minor;
- 424 (b) protect the life of the minor; or
- 425 (c) prevent the minor from being traumatized by contact with the parent due to the  
426 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

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

- 429 (a) prove that the parent has not used legal or illegal substances; or
- 430 (b) comply with an aspect of the child and family plan that is ordered by the court.

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

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

435 (b) an explanation of the effect of abandoning or modifying the primary permanency  
436 goal.

437 (9) A permanency hearing shall be conducted in accordance with Subsection  
438 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if  
439 something other than reunification is initially established as a minor's primary permanency  
440 goal.

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

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

445 (c) If, at any time, the court determines that reunification is no longer a minor's primary  
446 permanency goal, the court shall conduct a permanency hearing in accordance with Section  
447 78A-6-314 on or before the earlier of:

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

450 (ii) the day on which the provision of reunification services, described in Section  
451 78A-6-314, ends.

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

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

457 (12) (a) The court shall:

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

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

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

466            (b) If the parent is in a substance abuse treatment program:

467            (i) the court may not order the parent to submit to supplementary drug or alcohol  
468 testing in addition to the testing recommended by the parent's substance abuse program as a  
469 condition of reunification or maintaining custody of the parent's child; and

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

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

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

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

479            (b) If, at any time, continuation of reasonable efforts to reunify a minor is determined  
480 to be inconsistent with the final permanency plan for the minor established pursuant to Section  
481 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

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

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



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

494 (17) With regard to a minor who is 36 months of age or younger at the time the minor  
495 is initially removed from the home, the court shall:

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

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

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

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

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

506 (19) When a court conducts a permanency hearing for a minor under Section  
507 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the  
508 sibling group together is:

509 (a) practicable; and

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

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

514 (b) The court may determine that:

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

517 (ii) reunification services should not be provided.

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

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

- 524 (a) the whereabouts of the parents are unknown, based upon a verified affidavit  
525 indicating that a reasonably diligent search has failed to locate the parent;
- 526 (b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such  
527 magnitude that it renders the parent incapable of utilizing reunification services;
- 528 (c) the minor was previously adjudicated as an abused child due to physical abuse,  
529 sexual abuse, or sexual exploitation, and following the adjudication the minor:
- 530 (i) was removed from the custody of the minor's parent;
- 531 (ii) was subsequently returned to the custody of the parent; and
- 532 (iii) is being removed due to additional physical abuse, sexual abuse, or sexual  
533 exploitation;
- 534 (d) the parent:
- 535 (i) caused the death of another minor through abuse or neglect;
- 536 (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:
- 537 (A) murder or manslaughter of a child; or
- 538 (B) child abuse homicide;
- 539 (iii) committed sexual abuse against the child; or
- 540 (iv) is a registered sex offender or required to register as a sex offender;
- 541 (e) the minor suffered severe abuse by the parent or by any person known by the  
542 parent, if the parent knew or reasonably should have known that the person was abusing the  
543 minor;
- 544 (f) the minor is adjudicated an abused child as a result of severe abuse by the parent,  
545 and the court finds that it would not benefit the minor to pursue reunification services with the  
546 offending parent;
- 547 (g) the parent's rights are terminated with regard to any other minor;
- 548 (h) the minor [~~is~~] was removed from the minor's home on at least two previous  
549 occasions and reunification services were offered or provided to the family at those times;
- 550 (i) the parent has abandoned the minor for a period of six months or longer;
- 551 (j) the parent permitted the child to reside, on a permanent or temporary basis, at a  
552 location where the parent knew or should have known that a clandestine laboratory operation  
553 was located;
- 554 (k) except as provided in Subsection (22)(b), with respect to a parent who is the child's

555 birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was  
556 exposed to an illegal or prescription drug that was abused by the child's mother while the child  
557 was in utero, if the child was taken into division custody for that reason, unless the mother  
558 agrees to enroll in, is currently enrolled in, or has recently and successfully completed a  
559 substance abuse treatment program approved by the department; or

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

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

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

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

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

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

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

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

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

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

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

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

586 (b) The time limits described in Subsections (2) through (19) are not tolled by the  
587 parent's absence.

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

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

592 (i) the age of the minor;

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

594 (iii) the length of the sentence;

595 (iv) the nature of the treatment;

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

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

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

600 (viii) any other appropriate factors.

601 (c) Reunification services for an incarcerated parent are subject to the time limitations  
602 imposed in Subsections (2) through (19).

603 (d) Reunification services for an institutionalized parent are subject to the time  
604 limitations imposed in Subsections (2) through (19), unless the court determines that continued  
605 reunification services would be in the minor's best interest.

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

609 Section 5. Section **78A-6-511** is amended to read:

610 **78A-6-511. Court disposition of child upon termination -- Posttermination**  
611 **reunification.**

612 (1) As used in this section, "relative" means:

613 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great  
614 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;  
615 and

616 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25

617 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that  
618 statute.

619 (2) Upon entry of an order under this part the court may:

620 (a) place the child in the legal custody and guardianship of a licensed child placement  
621 agency or the division for adoption; or

622 (b) make any other disposition of the child authorized under Section 78A-6-117.

623 (3) Subject to the requirements of Subsections (4) and (5), all adoptable children  
624 placed in the custody of the division shall be placed for adoption.

625 (4) If the parental rights of all parents of an adoptable child placed in the custody of the  
626 division have been terminated and a suitable adoptive placement is not already available, the  
627 court:

628 (a) shall determine whether there is a relative who desires to adopt the child;

629 (b) may order the division to conduct a reasonable search to determine whether there  
630 are relatives who are willing to adopt the child; and

631 (c) shall, if a relative desires to adopt the child:

632 (i) make a specific finding regarding the fitness of the relative to adopt the child; and

633 (ii) place the child for adoption with that relative unless it finds that adoption by the  
634 relative is not in the best interest of the child.

635 (5) This section does not guarantee that a relative will be permitted to adopt the child.

636 (6) A parent whose rights were terminated under this part may petition for guardianship  
637 of the parent's child if:

638 (a) (i) following an adoptive placement, the child's adoptive parent returns the child to  
639 the custody of the division; or

640 (ii) the child is in the custody of the division for one year following the day on which  
641 the parent's rights were terminated, and no permanent placement has been found or is likely to  
642 be found; and

643 (b) reunification is in the best interest of the child.

644 Section 6. Section **78A-6-513** is amended to read:

645 **78A-6-513. Effect of decree.**

646 (1) ~~[An]~~ Except as provided in Subsection 78A-6-511(6), an order for the termination  
647 of the parent-child legal relationship divests the child and the parents of all legal rights, powers,

648 immunities, duties, and obligations with respect to each other, except the right of the child to  
649 inherit from the parent.

650 (2) An order or decree entered pursuant to this part may not disentitle a child to any  
651 benefit due ~~[him]~~ the child from any third person, including, but not limited to, any Indian  
652 tribe, agency, state, or the United States.

653 (3) ~~[After]~~ Except as provided in Subsection 78A-6-511(6), after the termination of a  
654 parent-child legal relationship, the former parent is neither entitled to any notice of proceedings  
655 for the adoption of the child nor has any right to object to the adoption or to participate in any  
656 other placement proceedings.

657 Section 7. Section **78A-6-1106** is amended to read:

658 **78A-6-1106. Child support obligation when custody of a child is vested in an**  
659 **individual or institution.**

660 (1) ~~[When]~~ Except as provided in Subsection (11), when legal custody of a child is  
661 vested by the court in a secure youth corrections facility or any other state department, division,  
662 or agency other than the child's parents, or if the guardianship of the child has been granted to  
663 another party and an agreement for a guardianship subsidy has been signed by the guardian, the  
664 court shall order the parents, a parent, or any other obligated person to pay child support for  
665 each month the child is in custody. In the same proceeding the court shall inform the parents, a  
666 parent, or any other obligated person, verbally and in writing, of the requirement to pay child  
667 support in accordance with Title 78B, Chapter 12, Utah Child Support Act.

668 (2) If legal custody of a child is vested by the court in a secure youth corrections  
669 facility, or any other state department, division, or agency, the court may refer the  
670 establishment of a child support order to the Office of Recovery Services. The referral shall be  
671 sent to the Office of Recovery Services within three working days of the hearing. Support  
672 obligation amounts shall be set by the Office of Recovery Services in accordance with Title  
673 78B, Chapter 12, Utah Child Support Act.

674 (3) If referred to the Office of Recovery Services pursuant to Subsection (2), the court  
675 shall also inform the parties that they are required to contact the Office of Recovery Services  
676 within 30 days of the date of the hearing to establish a child support order and the penalty in  
677 Subsection (5) for failing to do so. If there is no existing child support order for the child, the  
678 liability for support shall accrue beginning on the 61st day following the hearing that occurs the

679 first time the court vests custody of the child in a secure youth corrections facility, or any other  
680 state department, division, or agency other than [his] the child's parents.

681 (4) If a child is returned home and legal custody is subsequently vested by the court in  
682 a secure youth corrections facility or any other state department, division, or agency other than  
683 [his] the child's parents, the liability for support shall accrue from the date the child is  
684 subsequently removed from the home, including time spent in detention or sheltered care.

685 (5) (a) If the parents, parent, or other obligated person meets with the Office of  
686 Recovery Services within 30 days of the date of the hearing, the child support order may not  
687 include a judgment for past due support for more than two months.

688 (b) Notwithstanding Subsection (5)(a), the court may order the liability of support to  
689 begin to accrue from the date of the proceeding referenced in Subsection (1) if:

690 (i) the parents, parent, or any other person obligated fails to meet with the Office of  
691 Recovery Services within 30 days after being informed orally and in writing by the court of that  
692 requirement; and

693 (ii) the Office of Recovery Services took reasonable steps under the circumstances to  
694 contact the parents, parent, or other person obligated within the subsequent 30-day period to  
695 facilitate the establishment of the child support order.

696 (c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be  
697 presumed to have taken reasonable steps if the office:

698 (i) has a signed, returned receipt for a certified letter mailed to the address of the  
699 parents, parent, or other obligated person regarding the requirement that a child support order  
700 be established; or

701 (ii) has had a documented conversation, whether by telephone or in person, with the  
702 parents, parent, or other obligated person regarding the requirement that a child support order  
703 be established.

704 (6) In collecting arrears, the Office of Recovery Services shall comply with Section  
705 62A-11-320 in setting a payment schedule or demanding payment in full.

706 (7) Unless otherwise ordered, the parents or other person shall pay the child support to  
707 the Office of Recovery Services. The clerk of the court, the Office of Recovery Services, or the  
708 Department of Human Services and its divisions shall have authority to receive periodic  
709 payments for the care and maintenance of the child, such as Social Security payments or

710 railroad retirement payments made in the name of or for the benefit of the child.

711 (8) No court order under this section against a parent or other person shall be entered,  
712 unless notice of hearing has been served within the state, a voluntary appearance is made, or a  
713 waiver of service given. The notice shall specify that a hearing with respect to the financial  
714 support of the child will be held.

715 (9) An existing child support order payable to a parent or other obligated person shall  
716 be assigned to the Department of Human Services as provided in Section 62A-1-117.

717 (10) (a) Subsections (3) through (9) shall not apply if legal custody of a child is vested  
718 by the court in an individual.

719 (b) If legal custody of a child is vested by the court in an individual, the court may  
720 order the parents, a parent, or any other obligated person to pay child support to the individual.  
721 In the same proceeding the court shall inform the parents, a parent, or any other obligated  
722 person, verbally and in writing, of the requirement to pay child support in accordance with  
723 Title 78B, Chapter 12, Utah Child Support Act.

724 (11) (a) The court may not order the parent or any other obligated person to pay child  
725 support for a child in state custody if:

726 (i) the parent or other obligated person's only form of income is a government-issued  
727 disability benefit; and

728 (ii) the benefit described in Subsection (11)(a)(i) is issued because of the parent or  
729 other person's disability, and not the child's disability.

730 (b) If a person seeks to be excused from providing support under Subsection (11)(a),  
731 the person shall provide the court and the Office of Recovery Services with evidence that the  
732 person meets the requirements of Subsection (11)(a).

733 Section 8. **Uncodified Section 10, Laws of Utah 2012, Chapter 223** is amended to  
734 read:

735 Section 10. **Effective date.**

736 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

737 (2) The following sections take effect on July 1, [~~2013~~] 2014:

738 (a) Section 30-3-5.2;

739 (b) Section 51-9-408;

740 (c) Section 78A-2-227;



741 (d) Section 78A-2-228;

742 (e) Section 78B-3-102;

743 (f) Section 78B-7-106;

744 (g) Section 78B-7-202; and

745 (h) Section 78B-15-612.

746 Section 9. **Revisor instructions.**

747 The Legislature intends that the Office of Legislative Research and General Counsel, in

748 preparing the Utah Code database for publication, change the effective date in Sections

749 30-3-5.2, 51-9-408, 78A-2-227, 78A-2-228, 78B-3-102, 78B-7-106, 78B-7-202, and

750 78B-15-612 from July 1, 2013 to July 1, 2014.

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**Legislative Review Note**

**as of 1-17-13 9:08 AM**

**Office of Legislative Research and General Counsel**