

CHILD WELFARE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Karianne Lisonbee

LONG TITLE

General Description:

This bill amends provisions regarding the placement of a child.

Highlighted Provisions:

This bill:

- defines terms;
- provides that it is the public policy of the state that, with certain conditions:
 - a parent retains the right to have contact with a child when the child is placed outside of the home; and
 - a child has the right to have contact with siblings when the child is placed apart from the child's siblings;
- directs a juvenile court to make certain findings regarding parent-time;
- requires that parent-time be under the least restrictive conditions necessary to protect the child;
- removes a provision related to the primary permanency plan for a child who is three years old or younger; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-2a-201, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-3-307, as renumbered and amended by Laws of Utah 2022, Chapter 334

80-3-402, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-3-405, as last amended by Laws of Utah 2022, Chapter 335

80-3-406, as last amended by Laws of Utah 2022, Chapters 287, 334

80-3-407, as last amended by Laws of Utah 2022, Chapters 287, 335

80-3-409, as last amended by Laws of Utah 2022, Chapters 287, 335

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

Section 1. Section **80-2a-201** is amended to read:

80-2a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.

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

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's child is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Before an adjudication of unfitness, government action in relation to a parent and the parent's child may not exceed the least restrictive means or

alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result, the child and the child's parent share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parent are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of a parent to conceive and raise the parent's child are constitutionally protected. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution and is a fundamental public policy of this state.

(d) The state recognizes that:

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

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

(e) It is the public policy of this state that:

(i) a parent retains the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's child[-];

(ii) a parent retains the right to have contact with the parent's child when the child is placed outside of the parent's home, and parent-time should be ordered by a court so long as the contact is not contrary to the best interest of the child; and

(iii) a child has the right to have contact with the child's sibling when the child is placed outside of the home and apart from the child's sibling, and sibling visits should be ordered by a court unless the contact would be contrary to the safety or well-being of the child.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this

Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect. Therefore, the state, as *parens patriae*, has an interest in and responsibility to protect a child whose parent abuses the child or does not adequately provide for the child's welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's child.

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

(4) If circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned, temporary period and place the child in a safe environment, subject to the requirements of this section and in accordance with Chapter 3, Abuse, Neglect, and Dependency Proceedings, and when safe and appropriate, return the child to the child's parent or as a last resort, pursue another permanency plan.

(5) In determining and making reasonable efforts with regard to a child, under Section 80-2a-302, both the division's and the juvenile court's paramount concern shall be the child's health, safety, and welfare. The desires of a parent for the parent's child, and the constitutionally protected rights of a parent, as described in this section, shall be given full and serious consideration by the division and the juvenile court.

(6) In accordance with Subsections 80-2a-302(4) and 80-3-301(12), in cases where

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

(7) (a) In accordance with Subsection (1), the division shall strive to achieve appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, if appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. The division may pursue a foster placement only if in-home services fail or are otherwise insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected. The division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child.

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

(c) Subject to the parental rights recognized and protected under this section, if, because of a parent's conduct or condition, the parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in Chapter 4, Termination and Restoration of Parental Rights, the continuing welfare and best interest of the child is of paramount importance, and shall be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental health care for a child is subject to Subsections 80-1-102(58)(b)(i) through (iii) and Sections 80-3-109 and 80-3-304.

Section 2. Section 80-3-307 is amended to read:

80-3-307. Child and family plan developed by division -- Parent-time and relative visitation.

(1) The division shall develop and finalize a child's child and family plan no more than 45 days after the day on which the child enters the temporary custody of the division.

(2) (a) The division may use an interdisciplinary team approach in developing a child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:

- (i) mental health;
- (ii) education; or
- (iii) if appropriate, law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's child and family plan:

- (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- (ii) the child;
- (iii) the child's foster parents; and
- (iv) if appropriate, the child's stepparent.

(b) Subsection (3)(a) does not prohibit any other party not listed in Subsection (3)(a) or a party's counsel from being involved in the development of a child's child and family plan if the party or counsel's participation is otherwise permitted by law.

(c) In relation to all information considered by the division in developing a child and family plan, the division shall give additional weight and attention to the input of the child's natural and foster parents upon the involvement of the child's natural and foster parents under Subsections (3)(a)(i) and (iii).

(d) (i) The division shall make a substantial effort to develop a child and family plan with which the child's parents agree.

(ii) If a parent does not agree with a child and family plan:

(A) the division shall strive to resolve the disagreement between the division and the parent; and

(B) if the disagreement is not resolved, the division shall inform the court of the disagreement.

(4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to:

(a) the guardian ad litem;

(b) the child's natural parents; and

(c) the child's foster parents.

(5) A child and family plan shall:

(a) specifically provide for the safety of the child, in accordance with federal law;

(b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child;

(c) be specific to each child and the child's family, rather than general;

(d) include individualized expectations and contain specific time frames;

(e) except as provided in Subsection (6), address problems that:

(i) keep a child in the child's placement; and

(ii) keep a child from achieving permanence in the child's life;

(f) be designed to:

(i) minimize disruption to the normal activities of the child's family, including employment and school; and

(ii) as much as practicable, help the child's parent maintain or obtain employment; and

(g) set forth, with specificity, at least the following:

(i) the reason the child entered into protective custody or the division's temporary custody or custody;

(ii) documentation of:

(A) the reasonable efforts made to prevent placement of the child in protective custody

191 or the division's temporary custody or custody; or

192 (B) the emergency situation that existed and that prevented the reasonable efforts
193 described in Subsection (5)(g)(ii)(A), from being made;

194 (iii) the primary permanency plan for the child, as described in Section 80-3-406, and
195 the reason for selection of the plan;

196 (iv) the concurrent permanency plan for the child, as described in Section 80-3-406,
197 and the reason for the selection of the plan;

198 (v) if the plan is for the child to return to the child's family:

199 (A) specifically what the parents must do in order to enable the child to be returned
200 home;

201 (B) specifically how the requirements described in Subsection (5)(g)(v)(A) may be
202 accomplished; and

203 (C) how the requirements described in Subsection (5)(g)(v)(A) will be measured;

204 (vi) the specific services needed to reduce the problems that necessitated placing the
205 child in protective custody or the division's temporary custody or custody;

206 (vii) the name of the individual who will provide for and be responsible for case
207 management for the division;

208 (viii) subject to Subsection (10), a parent-time schedule between the natural parent and
209 the child;

210 (ix) subject to Subsection (7), the health and mental health care to be provided to
211 address any known or diagnosed mental health needs of the child;

212 (x) if residential treatment rather than a foster home is the proposed placement, a
213 requirement for a specialized assessment of the child's health needs including an assessment of
214 mental illness and behavior and conduct disorders;

215 (xi) social summaries that include case history information pertinent to case planning;
216 and

217 (xii) subject to Subsection (12), a sibling visitation schedule.

(6) For purposes of Subsection (5)(e), a child and family plan may only include requirements that:

(a) address findings made by the court; or

(b) (i) are requested or consented to by a parent or guardian of the child; and

(ii) are agreed to by the division and the guardian ad litem.

(7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (5)(g)(ix), a child and family plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:

(i) is placed in residential treatment; and

(ii) has medical or mental health issues that need to be addressed.

(b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the parent's choice.

(8) (a) The division shall train the division's employees to develop child and family plans that comply with:

(i) federal mandates; and

(ii) the specific needs of the particular child and the child's family.

(b) The child's natural parents, foster parents, and if appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

~~[(9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years old or younger, if the child and family plan is not to return the child home, the primary permanency plan described in Section 80-3-406 for the child shall be adoption.]~~

~~[(b) Notwithstanding Subsection (9)(a), if]~~

(9) If the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 80-3-301(6)(e) are not in the child's best interest, the court may order another planned permanent living

arrangement in accordance with federal law.

(10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued in accordance with Subsection 80-3-406(9).

(b) Notwithstanding Subsection (10)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for the session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time to:

(i) protect the physical safety of the child;

(ii) protect the life of the child; or

(iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(i) the child's fear of the parent; and

(ii) the nature of the alleged abuse or neglect.

(11) If a child is in the division's temporary custody or custody, the division shall consider visitation with the child's grandparent if:

(a) the division determines the visitation to be in the best interest of the child;

(b) there are no safety concerns regarding the behavior or criminal background of the grandparent;

(c) allowing the grandparent visitation would not compete with or undermine the child's reunification plan;

(d) there is a substantial relationship between the grandparent and child; and

(e) the grandparent visitation will not unduly burden the foster parents.

(12) (a) The division shall incorporate into the child and family plan reasonable efforts to provide sibling visitation if:

(i) siblings are separated due to foster care or adoptive placement;

(ii) the sibling visitation is in the best interest of the child for whom the child and family plan is developed; and

(iii) the division has consent for sibling visitation from the guardian of the sibling.

(b) The division shall obtain consent for sibling visitation from the sibling's guardian if the criteria of Subsections (12)(a)(i) and (ii) are met.

Section 3. Section **80-3-402** is amended to read:

80-3-402. Adjudication hearing -- Dispositional hearing time deadlines -- Scheduling of review and permanency hearing.

(1) If, at the adjudication hearing, the juvenile court finds, by clear and convincing evidence, that the allegations contained in the abuse, neglect, or dependency petition are true, the juvenile court shall conduct a dispositional hearing.

(2) (a) If, at the adjudication hearing, a child remains in an out-of-home placement, the juvenile court shall:

(i) make specific findings regarding the conditions of parent-time that are in the child's best interest; and

(ii) if parent-time is denied, state the facts that justify the denial.

(b) Parent-time shall be under the least restrictive conditions necessary to:

(i) protect the physical safety of the child; or

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

(c) (i) The division or the person designated by the division or a court to supervise a parent-time session may deny parent-time for the session if the division or the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time to:

(A) protect the physical safety of the child;

(B) protect the life of the child; or

(C) consistent with Subsection (2)(c)(ii), prevent the child from being traumatized by contact with the parent.

(ii) In determining whether the condition of the parent described in Subsection (2)(c)(i) will traumatize a child, the division or the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(A) the child's fear of the parent; and

(B) the nature of the alleged abuse or neglect.

~~[(2)]~~ (3) The dispositional hearing may be held on the same date as the adjudication hearing, but shall be held no later than 30 calendar days after the day on which the adjudication hearing is held.

~~[(3)]~~ (4) At the adjudication hearing or the dispositional hearing, the juvenile court shall schedule dates and times for:

(a) the six-month periodic review; and

(b) the permanency hearing.

~~[(4)]~~ (5) If an abuse, neglect, or dependency petition is filed under this chapter and a petition for termination of parental rights is filed under Section 80-4-201, before the day on which a dispositional hearing is held on the abuse, neglect, or dependency petition, a party may request a hearing on whether reunification services are appropriate in accordance with the factors described in Subsections 80-3-406(5) and (7).

Section 4. Section 80-3-405 is amended to read:

80-3-405. Dispositions after adjudication.

(1) (a) Upon adjudication under Subsection 80-3-402(1), the juvenile court may make the dispositions described in Subsection (2) at the dispositional hearing.

(2) (a) (i) The juvenile court may vest custody of an abused, neglected, or dependent minor in the division or any other appropriate person, with or without court-specified child welfare services, in accordance with the requirements and procedures of this chapter.

(ii) When placing a minor in the custody of the division or any other appropriate person, the juvenile court:

(A) shall give primary consideration to the welfare of the minor;

(B) shall give due consideration to the rights of the parent or parents concerning the minor; and

(C) when practicable, may take into consideration the religious preferences of the minor and of the minor's parents or guardian.

(b) (i) The juvenile court may appoint a guardian for the minor if it appears necessary in the interest of the minor.

(ii) A guardian appointed under Subsection (2)(b)(i) may be a public or private institution or agency, but not a nonsecure residential placement provider, in which legal custody of the minor is vested.

(iii) When placing a minor under the guardianship of an individual or of a private agency or institution, the juvenile court:

(A) shall give primary consideration to the welfare of the minor; and

(B) when practicable, may take into consideration the religious preferences of the minor and of the minor's parents or guardian.

(c) The juvenile court may order:

(i) protective supervision;

(ii) family preservation;

(iii) sibling visitation; or

(iv) other services.

(d) (i) If a minor has been placed with an individual or relative as a result of an adjudication under this chapter, the juvenile court may enter an order of permanent legal custody and guardianship with the individual or relative of the minor.

(ii) If a juvenile court enters an order of permanent custody and guardianship with an individual or relative of a minor under Subsection (2)(d)(i), the juvenile court may, in accordance with Section 78A-6-356, enter an order for child support on behalf of the minor against the natural parents of the minor.

(iii) An order under this Subsection (2)(d):

(A) shall remain in effect until the minor is 18 years old;

(B) is not subject to review under Section 78A-6-358; and

(C) may be modified by petition or motion as provided in Section 78A-6-357.

(e) The juvenile court may order a child be committed to the physical custody, as defined in Section 62A-15-701, of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(f) (i) If the child has an intellectual disability, the juvenile court may make an order committing a minor to the Utah State Developmental Center in accordance with Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

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

(g) (i) Subject to Subsection 80-1-102(58)(b) and Section 80-3-304, the juvenile court may order that a minor:

(A) be examined or treated by a mental health therapist, as described in Section 80-3-109; or

(B) receive other special care.

(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(g)(i), the juvenile court may place the minor in a hospital or other suitable facility that is not secure care or secure detention.

(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(g)(i), the juvenile court shall consider:

(A) the desires of the minor;

(B) the desires of the parent or guardian of the minor if the minor is younger than 18 years old; and

(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.

(h) The juvenile court may make other reasonable orders for the best interest of the minor.

(3) (a) At the dispositional hearing described in Subsection 80-3-402(3), if a child remains in an out-of-home placement, the juvenile court shall:

(i) make specific findings regarding the conditions of parent-time that are in the child's best interest; and

(ii) if parent-time is denied, state the facts that justify the denial.

(b) Parent-time shall be under the least restrictive conditions necessary to:

(i) protect the physical safety of the child; or

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

(c) (i) The division or the person designated by the division or a court to supervise a parent-time session may deny parent-time for the session if the division or the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time to:

(A) protect the physical safety of the child;

(B) protect the life of the child; or

(C) consistent with Subsection (3)(c)(ii), prevent the child from being traumatized by contact with the parent.

(ii) In determining whether the condition of the parent described in Subsection (3)(c)(i) will traumatize a child, the division or the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(A) the child's fear of the parent; and

(B) the nature of the alleged abuse or neglect.

407 ~~[(3)]~~ (4) Upon an adjudication under this chapter, the juvenile court may not:

408 (a) commit a minor solely on the ground of abuse, neglect, or dependency to the
409 Division of Juvenile Justice Services;

410 (b) assume the function of developing foster home services; or

411 (c) vest legal custody of an abused, neglected, or dependent minor in the division to
412 primarily address the minor's ungovernable or other behavior, mental health, or disability,
413 unless the division:

414 (i) engages other relevant divisions within the department that are conducting an
415 assessment of the minor and the minor's family's needs;

416 (ii) based on the assessment described in Subsection ~~[(3)(c)(i)]~~ (4)(c)(i), determines
417 that vesting custody of the minor in the division is the least restrictive intervention for the
418 minor that meets the minor's needs; and

419 (iii) consents to legal custody of the minor being vested in the division.

420 ~~[(4)]~~ (5) The juvenile court may combine the dispositions listed in Subsection (2) if
421 combining the dispositions is permissible and the dispositions are compatible.

422 Section 5. Section **80-3-406** is amended to read:

423 **80-3-406. Permanency plan -- Reunification services.**

424 (1) If the juvenile court orders continued removal at the dispositional hearing under
425 Section **80-3-402**, and that the minor remain in the custody of the division, the juvenile court
426 shall first:

427 (a) establish a primary permanency plan and a concurrent permanency plan for the
428 minor in accordance with this section; and

429 (b) determine whether, in view of the primary permanency plan, reunification services
430 are appropriate for the minor and the minor's family under Subsections (5) through (8).

431 (2) (a) The concurrent permanency plan shall include:

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

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

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

(i) the preference for kinship placement over nonkinship placement, including the rebuttable presumption described in Subsection 80-3-302(7)(a);

(ii) the potential for a guardianship placement if parental rights are terminated and no appropriate adoption placement is available; and

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

(3) (a) The juvenile court may amend a minor's primary permanency plan before the establishment of a final permanency plan under Section 80-3-409.

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

(c) If, at any time, the juvenile court determines that reunification is no longer a minor's primary permanency plan, the juvenile court shall conduct a permanency hearing in accordance with Section 80-3-409 on or before the earlier of:

(i) 30 days after the day on which the juvenile court makes the determination described in this Subsection (3)(c); or

(ii) the day on which the provision of reunification services, described in Section 80-3-409, ends.

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

(b) The juvenile court may determine that:

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

(ii) reunification services should not be provided.

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

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

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

(b) subject to Subsection (6)(a), the parent is suffering from a mental illness of such magnitude that the mental illness renders the parent incapable of utilizing reunification services;

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

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

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

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

(d) the parent:

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

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

(A) murder or manslaughter of a minor; or

(B) child abuse homicide;

(iii) committed sexual abuse against the minor;

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

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

(B) is identified by a law enforcement agency as the primary suspect in an investigation

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

(e) the minor suffered severe abuse by the parent or by any individual known by the
parent if the parent knew or reasonably should have known that the individual was abusing the
minor;

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

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

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

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

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

(k) except as provided in Subsection (6)(b), with respect to a parent who is the minor's
birth mother, the minor has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was
exposed to an illegal or prescription drug that was abused by the minor's mother while the
minor was in utero, if the minor was taken into division custody for that reason, unless the
mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a
substance use disorder treatment program approved by the department; or

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

(6) (a) The juvenile court shall base the finding under Subsection (5)(b) on competent
evidence from at least two medical or mental health professionals, who are not associates,
establishing that, even with the provision of services, the parent is not likely to be capable of

adequately caring for the minor within 12 months after the day on which the juvenile court finding is made.

(b) The juvenile court may disregard the provisions of Subsection (5)(k) if the juvenile court finds, under the circumstances of the case, that the substance use disorder treatment described in Subsection (5)(k) is not warranted.

(7) In determining whether reunification services are appropriate, the juvenile 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 minor 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.

(8) If, under Subsections (5)(b) through (l), the juvenile court does not order reunification services, a permanency hearing shall be conducted within 30 days in accordance with Section 80-3-409.

(9) (a) Subject to Subsections (9)(b) [~~and (c)~~] through (e), if the juvenile court determines that reunification services are appropriate for the minor and the minor's family, the juvenile 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.

(b) Parent-time is in the best interests of a minor unless the juvenile court makes a finding that it is necessary to deny parent-time in order to:

- 542 (i) protect the physical safety of the minor;
543 (ii) protect the life of the minor; or
544 (iii) prevent the minor from being traumatized by contact with the parent due to the
545 minor's fear of the parent in light of the nature of the alleged abuse or neglect.
- 546 (c) Notwithstanding Subsection (9)(a), a juvenile court may not deny parent-time based
547 solely on a parent's failure to:
- 548 (i) prove that the parent has not used legal or illegal substances; or
549 (ii) comply with an aspect of the child and family plan that is ordered by the juvenile
550 court.
- 551 (d) Parent-time shall be under the least restrictive conditions necessary to:
552 (i) protect the physical safety of the child; or
553 (ii) prevent the child from being traumatized by contact with the parent due to the
554 minor's fear of the parent in light of the nature of the alleged abuse or neglect.
- 555 (e) (i) The division or the person designated by the division or a court to supervise a
556 parent-time session may deny parent-time for the session if the division or the supervising
557 person determines that, based on the parent's condition, it is necessary to deny parent-time to:
558 (A) protect the physical safety of the child;
559 (B) protect the life of the child; or
560 (C) consistent with Subsection (9)(e)(ii), prevent the child from being traumatized by
561 contact with the parent.
- 562 (ii) In determining whether the condition of the parent described in Subsection (9)(e)(i)
563 will traumatize a child, the division or the person supervising the parent-time session shall
564 consider the impact that the parent's condition will have on the child in light of:
565 (A) the child's fear of the parent; and
566 (B) the nature of the alleged abuse or neglect.
- 567 (10) (a) If the juvenile court determines that reunification services are appropriate, the
568 juvenile court shall order that the division make reasonable efforts to provide services to the

minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

(b) In providing the services described in Subsection (10)(a), the juvenile court and the division shall consider the minor's health, safety, and welfare as the paramount concern.

(11) In cases where sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved:

(a) the juvenile court does not have any duty to order reunification services; and

(b) the division does not have a duty to make reasonable efforts to or in any other way attempt to provide reunification services or attempt to rehabilitate the offending parent or parents.

(12) (a) The juvenile court shall:

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

(ii) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 80-3-307(5)(g)(iii); and

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

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

(i) to submit to supplementary drug or alcohol testing, in accordance with Subsection 80-3-110(6), in addition to the testing recommended by the parent's substance use disorder program based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

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

(13) (a) The time period for reunification services may not exceed 12 months from the day on which the minor was initially removed from the minor's home, unless the time period is extended under Subsection 80-3-409(7).

(b) This section does not entitle any parent to an entire 12 months of reunification services.

(14) (a) If reunification services are ordered, the juvenile 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 under Section 80-3-409, then measures shall be taken, in a timely manner, to:

(i) place the minor in accordance with the final 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 (10) through (14) does not interrupt the running of the period.

(16) (a) If reunification services are ordered, the juvenile court shall conduct a permanency hearing in accordance with Section 80-3-409 before the day on which the time period for reunification services expires.

(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 80-3-409.

(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 day on which reunification services are ordered:

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

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

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

(19) (a) If reunification services are not ordered under this section, and the whereabouts of a parent becomes known within six months after the day on which the out-of-home placement of the minor is made, the juvenile court may order the division to provide reunification services.

(b) The time limits described in this section are not tolled by the parent's absence.

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

(b) In making the determination described in Subsection (20)(a), the juvenile court shall consider:

- (i) the age of the minor;
- (ii) the degree of parent-child bonding;
- (iii) the length of the sentence;
- (iv) the nature of the treatment;
- (v) the nature of the crime or illness;
- (vi) the degree of detriment to the minor if services are not offered;
- (vii) for a minor who is 10 years old or older, the minor's attitude toward the implementation of family reunification services; and
- (viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitations imposed in this section.

(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in this section, unless the juvenile court determines that continued

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

Section 6. Section **80-3-407** is amended to read:

80-3-407. Six-month review hearing -- Findings regarding reasonable efforts by division -- Findings regarding child and family plan compliance.

(1) If reunification efforts have been ordered by the juvenile court under Section **80-3-406**, the juvenile court shall hold a hearing no more than six months after the day on which the minor is initially removed from the minor's home, in order for the juvenile court to determine whether:

~~[(1)]~~ (a) the division has provided and is providing reasonable efforts to reunify the family in accordance with the child and family plan;

~~[(2)]~~ (b) the parent has fulfilled or is fulfilling identified duties and responsibilities in order to comply with the requirements of the child and family plan; and

~~[(3)]~~ (c) the division considered the preferential consideration and rebuttable presumption described in Subsections **80-3-302(7)(a)** and **80-3-303(2)(c)**.

(2) (a) At the hearing described in Subsection (1), if a child remains in an out-of-home placement, the juvenile court shall:

(i) make specific findings regarding the conditions of parent-time that are in the child's best interest; and

(ii) if parent-time is denied, state the facts that justify the denial.

(b) Parent-time shall be under the least restrictive conditions necessary to:

(i) protect the physical safety of the child; or

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

(c) (i) The division or the person designated by the division or a court to supervise a parent-time session may deny parent-time for the session if the division or the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time to:

(A) protect the physical safety of the child;

677 (B) protect the life of the child; or

678 (C) consistent with Subsection (2)(c)(ii), prevent the child from being traumatized by
679 contact with the parent.

680 (ii) In determining whether the condition of the parent described in Subsection (2)(c)(i)
681 will traumatize a child, the division or the person supervising the parent-time session shall
682 consider the impact that the parent's condition will have on the child in light of:

683 (A) the child's fear of the parent; and

684 (B) the nature of the alleged abuse or neglect.

685 Section 7. Section **80-3-409** is amended to read:

686 **80-3-409. Permanency hearing -- Final plan -- Petition for termination of**
687 **parental rights filed -- Hearing on termination of parental rights.**

688 (1) (a) If reunification services are ordered under Section **80-3-406**, with regard to a
689 minor who is in the custody of the division, the juvenile court shall hold a permanency hearing
690 no later than 12 months after the day on which the minor is initially removed from the minor's
691 home.

692 (b) If reunification services are not ordered at the dispositional hearing, the juvenile
693 court shall hold a permanency hearing within 30 days after the day on which the dispositional
694 hearing ends.

695 (2) (a) If reunification services are ordered in accordance with Section **80-3-406**, the
696 juvenile court shall, at the permanency hearing, determine, consistent with Subsection (3),
697 whether the minor may safely be returned to the custody of the minor's parent.

698 (b) If the juvenile court finds, by a preponderance of the evidence, that return of the
699 minor to the minor's parent would create a substantial risk of detriment to the minor's physical
700 or emotional well-being, the minor may not be returned to the custody of the minor's parent.

701 (c) Prima facie evidence that return of the minor to a parent or guardian would create a
702 substantial risk of detriment to the minor is established if:

703 (i) the parent or guardian fails to:

- 704 (A) participate in a court approved child and family plan;
705 (B) comply with a court approved child and family plan in whole or in part; or
706 (C) meet the goals of a court approved child and family plan; or
707 (ii) the minor's natural parent:
- 708 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
709 minor;
- 710 (B) is identified by a law enforcement agency as the primary suspect in an investigation
711 for intentionally, knowingly, or recklessly causing the death of another parent of the minor; or
712 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
713 recklessly causing the death of another parent of the minor.
- 714 (3) In making a determination under Subsection (2)(a), the juvenile court shall:
- 715 (a) review and consider:
- 716 (i) the report prepared by the division;
717 (ii) in accordance with the Utah Rules of Evidence, any admissible evidence offered by
718 the minor's attorney guardian ad litem;
- 719 (iii) any report submitted by the division under Subsection 80-3-408(3)(a)(i);
720 (iv) any evidence regarding the efforts or progress demonstrated by the parent; and
721 (v) the extent to which the parent cooperated and used the services provided; and
722 (b) attempt to keep the minor's sibling group together if keeping the sibling group
723 together is:
- 724 (i) practicable; and
725 (ii) in accordance with the best interest of the minor.
- 726 (4) With regard to a case where reunification services are ordered by the juvenile court,
727 if a minor is not returned to the minor's parent or guardian at the permanency hearing, the
728 juvenile court shall, unless the time for the provision of reunification services is extended
729 under Subsection (7):
- 730 (a) order termination of reunification services to the parent;

(b) make a final determination regarding whether termination of parental rights, adoption, or permanent custody and guardianship is the most appropriate final plan for the minor, taking into account the minor's primary permanency plan established by the juvenile court under Section 80-3-406; and

(c) in accordance with Subsection 80-3-406(2), establish a concurrent permanency plan that identifies the second most appropriate final plan for the minor, if appropriate.

(5) The juvenile court may order another planned permanent living arrangement other than reunification for a minor who is 16 years old or older upon entering the following findings:

(a) the division has documented intensive, ongoing, and unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a placement for the minor with a guardian, an adoptive parent, or an individual described in Subsection 80-3-301(6)(e);

(b) the division has demonstrated that the division has made efforts to normalize the life of the minor while in the division's custody, in accordance with Section 80-2-308;

(c) the minor prefers another planned permanent living arrangement; and

(d) there is a compelling reason why reunification or a placement described in Subsection (5)(a) is not in the minor's best interest.

(6) Except as provided in Subsection (7), the juvenile court may not extend reunification services beyond 12 months after the day on which the minor is initially removed from the minor's home, in accordance with the provisions of Section 80-3-406.

(7) (a) Subject to Subsection (7)(b), the juvenile court may extend reunification services for no more than 90 days if the juvenile court finds, beyond a preponderance of the evidence, that:

(i) there has been substantial compliance with the child and family plan;

(ii) reunification is probable within that 90-day period; and

(iii) the extension is in the best interest of the minor.

(b) (i) Except as provided in Subsection (7)(c), the juvenile court may not extend any

reunification services beyond 15 months after the day on which the minor is initially removed from the minor's home.

(ii) Delay or failure of a parent to establish paternity or seek custody does not provide a basis for the juvenile court to extend services for the parent beyond the 12-month period described in Subsection (6).

(c) In accordance with Subsection (7)(d), the juvenile court may extend reunification services for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:

(i) the juvenile court finds, by clear and convincing evidence, that:

(A) the parent has substantially complied with the child and family plan;

(B) it is likely that reunification will occur within the additional 90-day period; and

(C) the extension is in the best interest of the minor;

(ii) the juvenile court specifies the facts upon which the findings described in Subsection (7)(c)(i) are based; and

(iii) the juvenile court specifies the time period in which it is likely that reunification will occur.

(d) A juvenile court may not extend the time period for reunification services without complying with the requirements of this Subsection (7) before the extension.

(e) In determining whether to extend reunification services for a minor, a juvenile court shall take into consideration the status of the minor siblings of the minor.

(8) (a) At the permanency hearing, if a child remains in an out-of-home placement, the juvenile court shall:

(i) make specific findings regarding the conditions of parent-time that are in the child's best interest; and

(ii) if parent-time is denied, state the facts that justify the denial.

(b) Parent-time shall be under the least restrictive conditions necessary to:

(i) protect the physical safety of the child; or

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

(c) (i) The division or the person designated by the division or a court to supervise a parent-time session may deny parent-time for the session if the division or the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time to:

(A) protect the physical safety of the child;

(B) protect the life of the child; or

(C) consistent with Subsection (8)(c)(ii), prevent the child from being traumatized by contact with the parent.

(ii) In determining whether the condition of the parent described in Subsection (8)(c)(i) will traumatize a child, the division or the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

(A) the child's fear of the parent; and

(B) the nature of the alleged abuse or neglect.

(9) The juvenile court may, in the juvenile court's discretion:

(a) enter any additional order that the juvenile court determines to be in the best interest of the minor, so long as that order does not conflict with the requirements and provisions of Subsections (4) through ~~[(7)]~~ (8); or

(b) order the division to provide protective supervision or other services to a minor and the minor's family after the division's custody of a minor is terminated.

~~[(9)]~~ (10) (a) If the final plan for the minor is to proceed toward termination of parental rights, the petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days after the day on which the permanency hearing is held.

(b) If the division opposes the plan to terminate parental rights, the juvenile court may not require the division to file a petition for the termination of parental rights, except as required under Subsection 80-4-203(2).

~~[(10)]~~ (11) (a) Any party to an action may, at any time, petition the juvenile court for an

expedited permanency hearing on the basis that continuation of reunification efforts are inconsistent with the permanency needs of the minor.

(b) If the juvenile court so determines, the juvenile court shall order, in accordance with federal law, that:

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

(ii) whatever steps are necessary to finalize the permanent placement of the minor be completed as quickly as possible.

~~[(11)]~~ (12) Nothing in this section may be construed to:

(a) entitle any parent to reunification services for any specified period of time;

(b) limit a juvenile court's ability to terminate reunification services at any time before a permanency hearing; or

(c) limit or prohibit the filing of a petition for termination of parental rights by any party, or a hearing on termination of parental rights, at any time before a permanency hearing provided that relative placement and custody options have been fairly considered in accordance with Sections 80-2a-201 and 80-4-104.

~~[(12)]~~ (13) (a) Subject to Subsection ~~[(12)(b)]~~ (13)(b), if a petition for termination of parental rights is filed before the date scheduled for a permanency hearing, the juvenile court may consolidate the hearing on termination of parental rights with the permanency hearing.

(b) For purposes of Subsection ~~[(12)(a)]~~ (13)(a), if the juvenile court consolidates the hearing on termination of parental rights with the permanency hearing:

(i) the juvenile court shall first make a finding regarding whether reasonable efforts have been made by the division to finalize the permanency plan for the minor; and

(ii) any reunification services shall be terminated in accordance with the time lines described in Section 80-3-406.

(c) The juvenile court shall make a decision on a petition for termination of parental rights within 18 months after the day on which the minor is initially removed from the minor's home.

839 ~~[(13)]~~ (14) (a) If a juvenile court determines that a minor will not be returned to a
840 parent of the minor, the juvenile court shall consider appropriate placement options inside and
841 outside of the state.

842 (b) In considering appropriate placement options under Subsection ~~[(13)(a)]~~ (14)(a),
843 the juvenile court shall provide preferential consideration to a relative's request for placement
844 of the minor.

845 ~~[(14)]~~ (15) (a) In accordance with Section [80-3-108](#), if a minor 14 years old or older
846 desires an opportunity to address the juvenile court or testify regarding permanency or
847 placement, the juvenile court shall give the minor's wishes added weight, but may not treat the
848 minor's wishes as the single controlling factor under this section.

849 (b) If the juvenile court's decision under this section differs from a minor's express
850 wishes if the minor is of sufficient maturity to articulate the wishes in relation to permanency
851 or the minor's placement, the juvenile court shall make findings explaining why the juvenile
852 court's decision differs from the minor's wishes.