

Effective 5/10/2016

78A-6-314 Permanency hearing -- Final plan -- Petition for termination of parental rights filed -- Hearing on termination of parental rights.

- (1)
 - (a) When reunification services have been ordered in accordance with Section 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family Services, a permanency hearing shall be held by the court no later than 12 months after the day on which the minor was initially removed from the minor's home.
 - (b) If reunification services were not ordered at the dispositional hearing, a permanency hearing shall be held within 30 days after the day on which the dispositional hearing ends.
- (2)
 - (a) If reunification services were ordered by the court in accordance with Section 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection (3), whether the minor may safely be returned to the custody of the minor's parent.
 - (b) If the court finds, by a preponderance of the evidence, that return of the minor to the minor's parent would create a substantial risk of detriment to the minor's physical or emotional well-being, the minor may not be returned to the custody of the minor's parent.
 - (c) Prima facie evidence that return of the minor to a parent or guardian would create a substantial risk of detriment to the minor is established if:
 - (i) the parent or guardian fails to:
 - (A) participate in a court approved child and family plan;
 - (B) comply with a court approved child and family plan in whole or in part; or
 - (C) meet the goals of a court approved child and family plan; or
 - (ii) the child's natural parent:
 - (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;
 - (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 child; or
 - (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.
- (3) In making a determination under Subsection (2)(a), the court shall review and consider:
 - (a) the report prepared by the Division of Child and Family Services;
 - (b) any admissible evidence offered by the minor's guardian ad litem;
 - (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);
 - (d) any evidence regarding the efforts or progress demonstrated by the parent; and
 - (e) the extent to which the parent cooperated and utilized the services provided.
- (4) With regard to a case where reunification services were ordered by the court, if a minor is not returned to the minor's parent or guardian at the permanency hearing, the court shall, unless the time for the provision of reunification services is extended under Subsection (8):
 - (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 court pursuant to Section 78A-6-312; and
 - (c) establish a concurrent permanency plan that identifies the second most appropriate final plan for the minor, if appropriate.
- (5) The court may order another planned permanent living arrangement for a minor 16 years old or older upon entering the following findings:

- (a) the Division of Child and Family Services 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 78A-6-306(6)(e);
 - (b) the Division of Child and Family Services has demonstrated that the division has made efforts to normalize the life of the minor while in the division's custody, in accordance with Sections 62A-4a-210 through 62A-4a-212;
 - (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 court may not extend reunification services beyond 12 months after the day on which the minor was initially removed from the minor's home, in accordance with the provisions of Section 78A-6-312.
- (7)
- (a) Subject to Subsection (7)(b), the court may extend reunification services for no more than 90 days if the 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 court may not extend any reunification services beyond 15 months after the day on which the minor was 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 court to extend services for that parent beyond the 12-month period described in Subsection (6).
 - (c) In accordance with Subsection (7)(d), the court may extend reunification services for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:
 - (i) the 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 child;
 - (ii) the court specifies the facts upon which the findings described in Subsection (7)(c)(i) are based; and
 - (iii) the court specifies the time period in which it is likely that reunification will occur.
 - (d) A 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 court shall take into consideration the status of the minor siblings of the minor.
- (8) The court may, in its discretion:
- (a) enter any additional order that it 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); 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 has been terminated.
- (9) 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 permanency hearing.

(10)

- (a) Any party to an action may, at any time, petition the 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 court so determines, it 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) Nothing in this section may be construed to:

- (a) entitle any parent to reunification services for any specified period of time;
- (b) limit a court's ability to terminate reunification services at any time prior to 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 prior to a permanency hearing.

(12)

- (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is filed prior to the date scheduled for a permanency hearing, the court may consolidate the hearing on termination of parental rights with the permanency hearing.
- (b) For purposes of Subsection (12)(a), if the court consolidates the hearing on termination of parental rights with the permanency hearing:
 - (i) the court shall first make a finding regarding whether reasonable efforts have been made by the Division of Child and Family Services 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 78A-6-312.
- (c) A decision on a petition for termination of parental rights shall be made within 18 months from the day on which the minor is removed from the minor's home.

(13) If a court determines that a child will not be returned to a parent of the child, the court shall consider appropriate placement options inside and outside of the state.

Amended by Chapter 231, 2016 General Session