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**CLARIFICATION OF TIME LIMITS FOR
REUNIFICATION SERVICES**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Matt Throckmorton

This act modifies the Judicial Code to address concerns that statutory time limits for achieving permanency for foster children are not consistently applied. This act clarifies time requirements for reunification services for children two years of age or younger. This act clarifies the finding that must be made by a court when permanency hearings are consolidated with hearings on termination of parental rights. This act requires the court to schedule dates for the six month review and the permanency hearing at the adjudication hearing.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

78-3a-310, as last amended by Chapter 329, Laws of Utah 1997

78-3a-311, as last amended by Chapter 121, Laws of Utah 1999

78-3a-312, as last amended by Chapter 121, Laws of Utah 1999

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

Section 1. Section **78-3a-310** is amended to read:

78-3a-310. Adjudication -- Dispositional hearing -- Time deadlines.

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

(2) 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 date of the adjudication hearing.

(3) At the adjudication hearing or the dispositional hearing the court shall schedule ~~or direct the scheduling of~~ dates and times for:

(a) the six month periodic review; and

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(b) the permanency hearing.

Section 2. Section **78-3a-311** is amended to read:

78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may make any of the dispositions described in Section 78-3a-118, place the child in the custody or guardianship of any individual or public or private entity or agency, order protective supervision, family preservation, medical or mental health treatment, or other services.

(2) (a) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the Division of Child and Family Services, it shall first establish a primary permanency goal for the minor and determine whether, in view of the primary permanency goal, reunification services are appropriate for the child and the child's family, pursuant to Subsection (3). In cases where obvious sexual abuse, abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(b) (i) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal. The concurrent permanency goal shall include a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal and an explanation of the effect of abandoning or modifying the primary permanency goal.

(ii) A permanency hearing shall be conducted in accordance with Subsection 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a child's primary permanency goal.

(iii) The court may amend a child's primary permanency goal before the establishment of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at anytime, the court determines that reunification is no longer a child's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the original removal of the child.

(c) If the court determines that reunification services are appropriate, it shall order that the

division make reasonable efforts to provide services to the minor and his parent for the purpose of facilitating reunification of the family, for a specified period of time. In providing those services, the child's health, safety, and welfare shall be the division's paramount concern, and the court shall so order. The time period for reunification services may not exceed 12 months from the date that the child was initially removed from his home. Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services. If reunification services have been ordered, the court may terminate those services at any time. If, at any time, continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final permanency plan for the child established pursuant to Subsection 78-3a-312, 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.

(d) Any physical custody of the minor by the parent or a relative during the period described in Subsection (2)(c) does not interrupt the running of the period.

(e) (i) If reunification services have been ordered, a permanency hearing shall be conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period for reunification services. The permanency hearing shall be held no later than 12 months after the original removal of the child.

(ii) If reunification services have not been ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

(f) With regard to a child who is two years of age or younger at the time the ~~court orders reunification services~~ child is removed from the home, the court shall order the discontinuance of those services after ~~six~~ eight months from the removal of the child from the home if the parent or parents have not made substantial efforts to comply with the treatment plan. The burden is upon the parents, and the division if it supports continued reunification services, to show that the parents have made substantial efforts to comply with the plan during the first ~~six~~ eight months ~~of reunification services~~ after removal of the child from the home.

(g) With regard to a child in the custody of the division whose parent or parents have been ordered to receive reunification services but who have abandoned that child for a period of six months since the date that reunification services were ordered, the court shall terminate reunification services, and the division shall petition the court for termination of parental rights.

(3) (a) Because of the state's interest in and responsibility to protect and provide

90 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
91 parent's interest in receiving reunification services is limited. The court may, under any
92 circumstances, determine that efforts to reunify a child with his family are not reasonable or
93 appropriate, based on the individual circumstances, and that reunification services should not be
94 provided. In determining "reasonable efforts" to be made with respect to a child, and in making
95 "reasonable efforts," the child's health, safety, and welfare shall be the paramount concern.

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

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

100 (ii) the parent is suffering from a mental illness of such magnitude that it renders him
101 incapable of utilizing reunification services; that finding shall be based on competent evidence
102 from mental health professionals establishing that, even with the provision of services, the parent
103 is unlikely to be capable of adequately caring for the child within 12 months;

104 (iii) the minor has been previously adjudicated as an abused child due to physical or sexual
105 abuse, that following the adjudication the child was removed from the custody of his parent, was
106 subsequently returned to the custody of that parent, and the minor is being removed due to
107 additional physical or sexual abuse;

108 (iv) the parent has caused the death of another child through abuse or neglect or has
109 committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter
110 of a child or child abuse homicide;

111 (v) the minor has suffered severe abuse by the parent or by any person known by the
112 parent, if the parent knew or reasonably should have known that the person was abusing the minor;

113 (vi) the minor has been adjudicated an abused child as a result of severe abuse by the
114 parent, and the court finds that it would not benefit the child to pursue reunification services with
115 the offending parent;

116 (vii) the parent's rights have been terminated with regard to any other child;

117 (viii) the child has been removed from his home on at least two previous occasions and
118 reunification services were offered or provided to the family at those times; or

119 (ix) the parent has abandoned the child for a period of six months or longer; or

120 (x) any other circumstance that the court determines should preclude reunification efforts

or services.

(4) (a) Failure of the parent to respond to previous services or comply with any previous treatment plan, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to live with an individual who abused the child, any patterns of the parent's behavior that have exposed the child to repeated abuse, or testimony by a competent professional that the parent's behavior is unlikely to be successful, shall be considered in determining whether reunification services are appropriate.

(b) The court shall also consider whether the parent has expressed an interest in reunification with the child, in determining whether reunification services are appropriate.

(5) If reunification services are not ordered pursuant to Subsection (3)(a), and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court may order the division to provide reunification services. The time limits described in Subsection (2), however, are not tolled by the parent's absence.

(6) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for minors ten years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month limitation imposed in Subsection (2). Reunification services for an institutionalized parent are subject to the 12-month limitation imposed in Subsection (2), unless the court determines that continued reunification services would be in the child's best interest.

(7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

Section 3. Section **78-3a-312** is amended to read:

78-3a-312. 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 78-3a-311, with regard to a child 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 original removal of the child.

(b) When no reunification services were ordered at the dispositional hearing, a permanency hearing shall be held within 30 days from the date of the dispositional hearing.

(2) (a) If reunification services were ordered by the court in accordance with Section 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be returned to the custody of his parent. If the court finds, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being, the child may not be returned to the custody of his parent. The failure of a parent or guardian to participate in, comply with, in whole or in part, or to meet the goals of a court approved treatment plan constitutes prima facie evidence that return of the child to that parent would create a substantial risk of detriment.

(b) In making a determination under this Subsection (2), the court shall review the report prepared by the Division of Child and Family Services, a report prepared by the child's guardian ad litem, any report prepared by a foster care citizen review board pursuant to Section 78-3g-103, any evidence regarding the efforts or progress demonstrated by the parent, and the extent to which the parent cooperated and availed himself of services provided.

(3) (a) With regard to a case where reunification services were ordered by the court, if a child is not returned to his parent or guardian at the permanency hearing, the court shall order termination of reunification services to the parent, and make a final determination regarding whether termination of parental rights, adoption, guardianship, or long-term foster care is the most appropriate final plan for the child, taking into account the child's primary permanency goal established by the court pursuant to Section 78-3a-311. If the child clearly desires contact with the parent, the court shall take the child's desire into consideration in determining the final plan. In addition, the court shall establish a concurrent plan that identifies the second most appropriate final plan for the child. The court may not extend reunification services beyond 12 months from the date the child was initially removed from his home, in accordance with the provisions of Section 78-3a-311, except that the court may extend reunification services for no more than 90 days if it finds that there has been substantial compliance with the treatment plan, that reunification is probable within that 90 day period, and that the extension is in the best interest of the child. In no event may any reunification services extend beyond 15 months from the date the child was initially

removed from his home. 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 that 12 month period.

(b) The court may, in its discretion, enter any additional order that it determines to be in the best interest of the child, so long as that order does not conflict with the requirements and provisions of Subsection (3)(a). The court may order the division to provide protective supervision or other services to a child and the child's family after the division's custody of a child has been terminated.

(4) If the final plan for the child 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.

(5) 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 child. If the court so determines, it shall order, in accordance with federal law, that the child be placed in accordance with the permanency plan, and that whatever steps are necessary to finalize the permanent placement of the child be completed as quickly as possible.

(6) 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. If a petition for termination of parental rights is filed prior to the date scheduled for a permanency hearing, the court may ~~[schedule]~~ consolidate the hearing on termination of parental rights ~~[in lieu of]~~ with the permanency hearing~~[- combine the permanency hearing and the hearing on termination of parental rights; or schedule the hearings separately]~~. If the court ~~[schedules]~~ consolidates the hearing on termination of parental rights ~~[in lieu of]~~ with the permanency hearing, it shall first make a finding whether reasonable efforts have been made by the Division of Child and Family Services to finalize the permanency goal for the child, and any reunification services shall be terminated in accordance with the time lines described in Section 78-3a-311 ~~[and a]~~. A decision on the petition for termination of parental rights shall be made within 18 months from the date of the child's removal.

Legislative Review Note
as of 11-20-00 1:32 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Health and Human Services Interim Committee recommended this bill.