

REUNIFICATION SERVICES AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merlynn T. Newbold

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Juvenile Court Act of 1996 relating to the provision of reunification services.

Highlighted Provisions:

This bill:

H→ ► defines terms; ←H

► creates a presumption that reunification services should not be provided to a birth mother if the court finds, by clear and convincing evidence, that at the time of birth the child has fetal alcohol syndrome or fetal drug dependency, unless the mother agrees to immediately enroll in, is currently enrolled in, or **H→ , after using the substance that resulted in fetal alcohol syndrome or fetal drug dependency, ←H** has successfully completed, a treatment program approved by the **H→ [Division of Child and Family] Department of Human ←H**

Services; and

► makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-205, as last amended by Laws of Utah 2009, Chapter 161

H→ 78A-6-301, as enacted by Laws of Utah 2008, Chapter 3 78A-6-301, as enacted by Laws of Utah 2008, Chapter 3 ←H

78A-6-312, as last amended by Laws of Utah 2010, Chapter 322



H.B. 216

121 (h) For purposes of Subsection (8)(d), a child and family plan may only include
122 requirements that:

123 (i) address findings made by the court; or

124 (ii) (A) are requested or consented to by a parent or guardian of the child; and

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

126 (9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three
127 years of age or younger, if the goal is not to return the child home, the permanency plan for that
128 child shall be adoption.

129 (b) Notwithstanding Subsection (9)(a), if the division documents to the court that there
130 is a compelling reason that adoption, reunification, guardianship, and a placement described in
131 Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another
132 planned permanent living arrangement in accordance with federal law.

133 (10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a
134 court order issued pursuant to Subsections 78A-6-312[~~(2)(a)(ii) and (b)~~](3), (6), and (7).

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

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

140 (ii) protect the life of the child; or

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

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

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

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

147a **H→ Section 2. Section 78A-6-301 is amended to read:**

147b **78A-6-301. Definitions.**

147c **As used in this part:**

147d **(1) "Custody" means the custody of a minor in the Division of Child and Family Services as of**
147e **the date of disposition.**

147f **(2) "Fetal drug dependency" means that a child is born dependent on a controlled substance,**
147g **as defined in Section 58-37-2, that was unlawfully used by the child's mother during pregnancy.**

147h **[~~2~~] (3) "Protective custody" means the shelter of a child by the Division of Child and**
147i **Family Services from the time the child is removed from home until the earlier of:**

147j **(a) the shelter hearing; or**

147k **(b) the child's return home.**
147l [~~3~~] **(4) "Temporary custody" means the custody of a child in the Division of Child and**
147m **Family Services from the date of the shelter hearing until disposition. ←H**
148 Section ~~H~~ → [2] **3 ←H** . Section **78A-6-312** is amended to read:
149 **78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.**
150 (1) The court may:
151 (a) make any of the dispositions described in Section 78A-6-117;

- 152 (b) place the minor in the custody or guardianship of any:
- 153 (i) individual; or
- 154 (ii) public or private entity or agency; or
- 155 (c) order:
- 156 (i) protective supervision;
- 157 (ii) family preservation;
- 158 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or
- 159 (iv) other services.

160 (2) ~~[(a)-(i)]~~ Whenever the court orders continued removal at the dispositional hearing,
 161 and that the minor remain in the custody of the division, the court shall first:

162 ~~[(A)]~~ (a) establish a primary permanency goal for the minor; and

163 ~~[(B)]~~ (b) determine whether, in view of the primary permanency goal, reunification
 164 services are appropriate for the minor and the minor's family, pursuant to ~~[Subsection (3)]~~

165 Subsections ~~H~~→ ~~(21) and~~ (20) through ←~~H~~ (22).

166 ~~[(ii)]~~ (3) Subject to ~~[Subsection (2)(b)]~~ Subsections (6) and (7), if the court determines
 167 that reunification services are appropriate for the minor and the minor's family, the court shall
 168 provide for reasonable parent-time with the parent or parents from whose custody the minor
 169 was removed, unless parent-time is not in the best interest of the minor.

170 ~~[(iii)-(A)]~~ (4) In cases where obvious sexual abuse, sexual exploitation, abandonment,
 171 severe abuse, or severe neglect are involved, neither the division nor the court has any duty to
 172 make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or
 173 to attempt to rehabilitate the offending parent or parents.

174 ~~[(B)]~~ (5) In all cases, the minor's health, safety, and welfare shall be the court's
 175 paramount concern in determining whether reasonable efforts to reunify should be made.

176 ~~[(b)-(i)]~~ (6) For purposes of Subsection ~~[(2)(a)(ii)]~~ (3), parent-time is in the best
 177 interests of a minor unless the court makes a finding that it is necessary to deny parent-time in
 178 order to:

179 ~~[(A)]~~ (a) protect the physical safety of the minor;

180 ~~[(B)]~~ (b) protect the life of the minor; or

181 ~~[(C)]~~ (c) prevent the minor from being traumatized by contact with the parent due to
 182 the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

214 minor's health, safety, and welfare shall be the division's paramount concern, and the court
215 shall so order.

216 ~~[(ii)]~~ (12) The court shall:

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

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

221 ~~[(C)]~~ (c) identify on the record the responsibilities described in Subsection
222 ~~[(2)(d)(ii)(B)]~~ (12)(b), for the purpose of assisting in any future determination regarding the
223 provision of reasonable efforts, in accordance with state and federal law.

224 ~~[(iii)(A)]~~ (13)(a) The time period for reunification services may not exceed 12 months
225 from the date that the minor was initially removed from the minor's home, unless the time
226 period is extended under Subsection 78A-6-314(8).

227 ~~[(B)]~~ (b) Nothing in this section may be construed to entitle any parent to an entire 12
228 months of reunification services.

229 ~~[(iv)]~~ (14)(a) If reunification services are ordered, the court may terminate those
230 services at any time.

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

234 ~~[(A)]~~ (i) place the minor in accordance with the permanency plan; and

235 ~~[(B)]~~ (ii) complete whatever steps are necessary to finalize the permanent placement of
236 the minor.

237 ~~[(e)]~~ (15) Any physical custody of the minor by the parent or a relative during the
238 period described in ~~H→~~ **[Subsection]** ~~←H~~ ~~[(2)(d)]~~

238a ~~H→~~ ~~[(13)]~~ **Subsections (11) through (14)** ~~←H~~ does not interrupt the running of the period.

239 ~~[(f)(i)]~~ (16)(a) If reunification services are ordered, a permanency hearing shall be
240 conducted by the court in accordance with Section 78A-6-314 at the expiration of the time
241 period for reunification services.

242 ~~[(ii)]~~ (b) The permanency hearing shall be held no later than 12 months after the
243 original removal of the minor.

244 ~~[(iii)]~~ (c) If reunification services are not ordered, a permanency hearing shall be

276 ~~[(A)]~~ (a) the whereabouts of the parents are unknown, based upon a verified affidavit
277 indicating that a reasonably diligent search has failed to locate the parent;

278 ~~[(B)]~~ (b) subject to Subsection ~~[(3)(d)(ii)]~~ (22), the parent is suffering from a mental
279 illness of such magnitude that it renders the parent incapable of utilizing reunification services;

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

282 ~~[(F)]~~ (i) was removed from the custody of the minor's parent;

283 ~~[(H)]~~ (ii) was subsequently returned to the custody of the parent; and

284 ~~[(HH)]~~ (iii) is being removed due to additional physical abuse, sexual abuse, or sexual
285 exploitation;

286 ~~[(D)]~~ (d) the parent:

287 ~~[(F)]~~ (i) caused the death of another minor through abuse or neglect; or

288 ~~[(H)]~~ (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

289 ~~[(Aa)]~~ (A) murder or manslaughter of a child; or

290 ~~[(Bb)]~~ (B) child abuse homicide;

291 ~~[(E)]~~ (e) the minor suffered severe abuse by the parent or by any person known by the
292 parent, if the parent knew or reasonably should have known that the person was abusing the
293 minor;

294 ~~[(F)]~~ (f) the minor is adjudicated an abused child as a result of severe abuse by the
295 parent, and the court finds that it would not benefit the minor to pursue reunification services
296 with the offending parent;

297 ~~[(G)]~~ (g) the parent's rights are terminated with regard to any other minor;

298 ~~[(H)]~~ (h) the minor is removed from the minor's home on at least two previous
299 occasions and reunification services were offered or provided to the family at those times;

300 ~~[(F)]~~ (i) the parent has abandoned the minor for a period of six months or longer;

301 ~~[(F)]~~ (j) the parent permitted the child to reside, on a permanent or temporary basis, at a
302 location where the parent knew or should have known that a clandestine laboratory operation
303 was located; ~~[or]~~

304 (k) with respect to a parent who is the child's birth mother, at the time of birth the child
305 has fetal alcohol syndrome or fetal drug dependency, unless the mother agrees to immediately
306 enroll in, is currently enrolled in, or ~~H~~→ , after using the substance that resulted in fetal alcohol
306a syndrome or fetal drug dependency, ←~~H~~ has successfully completed, a program approved by the

307 ~~H~~→ [division] department ←~~H~~ , as follows:

308 (i) if the child is born with fetal alcohol syndrome, an alcohol abuse treatment
 309 program;

310 (ii) if the child is born with fetal drug dependency, a drug abuse treatment program; or

311 (iii) if the child is born with both fetal alcohol syndrome and fetal drug dependency, an
 312 alcohol abuse and drug abuse treatment program; or

313 ~~[(K)]~~ (L) any other circumstance that the court determines should preclude reunification
 314 efforts or services.

315 ~~[(ii)]~~ (22) The finding under Subsection ~~[(3)(d)(i)(B)]~~ (21)(b) shall be based on
 316 competent evidence from at least two medical or mental health professionals, who are not
 317 associates, establishing that, even with the provision of services, the parent is not likely to be
 318 capable of adequately caring for the minor within 12 months after the day on which the court
 319 finding is made.

320 ~~[(4)]~~ (23) In determining whether reunification services are appropriate, the court shall
 321 take into consideration:

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

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

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

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

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

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

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

333 ~~[(5)]~~ (24) (a) If reunification services are not ordered pursuant to ~~[Subsection (3)]~~
 334 Subsections (20) through (22), and the whereabouts of a parent become known within six
 335 months after the day on which the out-of-home placement of the minor is made, the court may
 336 order the division to provide reunification services.

337 (b) The time limits described in ~~[Subsection (2)]~~ Subsections ~~H~~→ [(9), (10), (13), and (16)]

338 ~~through (18)~~ **(2) through (19)** ←~~H~~ are not tolled by the parent's absence.

339 ~~(6)~~ (25) (a) If a parent is incarcerated or institutionalized, the court shall order
340 reasonable services unless it determines that those services would be detrimental to the minor.

341 (b) In making the determination described in Subsection ~~(6)~~ (25)(a), the court shall
342 consider:

343 (i) the age of the minor;

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

345 (iii) the length of the sentence;

346 (iv) the nature of the treatment;

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

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

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

351 (viii) any other appropriate factors.

352 (c) Reunification services for an incarcerated parent are subject to the time ~~[limitation]~~
353 limitations imposed in ~~[Subsection (2)] Subsections ~~H~~→ ~~(9), (10), (13), and (16) through (18)~~~~ **(2)**
353a **through (19)** ←~~H~~ .

354 (d) Reunification services for an institutionalized parent are subject to the time
355 ~~[limitation]~~ limitations imposed in ~~[Subsection (2)] Subsections (9), (10), (13), and (16)~~
356 through (18), unless the court determines that continued reunification services would be in the
357 minor's best interest.

358 ~~(7)~~ (26) If, pursuant to Subsections ~~(3)(d)(i)(B) through (K)~~ (21)(b) through (l), the
359 court does not order reunification services, a permanency hearing shall be conducted within 30
360 days, in accordance with Section 78A-6-314.

Legislative Review Note

as of 1-13-11 10:44 AM

Office of Legislative Research and General Counsel