

JUVENILE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill amends the Juvenile Court Act of 1996 in relation to identifying the responsibilities of a parent in a child and family plan.

Highlighted Provisions:

This bill:

- ▶ gives the court the option to identify verbally or in writing the responsibilities of a parent under a child and family plan; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

Section 1. Section **78A-6-312** is amended to read:

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

(1) The court may:

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

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

- 30 (i) individual; or
- 31 (ii) public or private entity or agency; or
- 32 (c) order:
- 33 (i) protective supervision;
- 34 (ii) family preservation;
- 35 (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or
- 36 (iv) other services.

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

- 39 (A) establish a primary permanency goal for the minor; and
- 40 (B) determine whether, in view of the primary permanency goal, reunification services
41 are appropriate for the minor and the minor's family, pursuant to Subsection (3).

42 (ii) Subject to Subsection (2)(b), if the court determines that reunification services are
43 appropriate for the minor and the minor's family, the court shall provide for reasonable
44 parent-time with the parent or parents from whose custody the minor was removed, unless
45 parent-time is not in the best interest of the minor.

46 (iii) (A) In cases where obvious sexual abuse, sexual exploitation, abandonment,
47 severe abuse, or severe neglect are involved, neither the division nor the court has any duty to
48 make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or
49 to attempt to rehabilitate the offending parent or parents.

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

52 (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a
53 minor unless the court makes a finding that it is necessary to deny parent-time in order to:

- 54 (A) protect the physical safety of the minor;
- 55 (B) protect the life of the minor; or
- 56 (C) prevent the minor from being traumatized by contact with the parent due to the
57 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

58 (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based
59 solely on a parent's failure to:

60 (A) prove that the parent has not used legal or illegal substances; or

61 (B) comply with an aspect of the child and family plan that is ordered by the court.

62 (c) (i) In addition to the primary permanency goal, the court shall establish a concurrent
63 permanency goal that shall include:

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

66 (B) an explanation of the effect of abandoning or modifying the primary permanency
67 goal.

68 (ii) A permanency hearing shall be conducted in accordance with Subsection
69 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if
70 something other than reunification is initially established as a minor's primary permanency
71 goal.

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

74 (B) The court is not limited to the terms of the concurrent permanency goal in the event
75 that the primary permanency goal is abandoned.

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

79 (I) 30 days after the day on which the court makes the determination described in this
80 Subsection (2)(c)(iii)(C); or

81 (II) the day on which the provision of reunification services, described in Section
82 78A-6-314, ends.

83 (d) (i) (A) If the court determines that reunification services are appropriate, it shall
84 order that the division make reasonable efforts to provide services to the minor and the minor's
85 parent for the purpose of facilitating reunification of the family, for a specified period of time.

86 (B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health,
87 safety, and welfare shall be the division's paramount concern, and the court shall so order.

88 (ii) The court shall:

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

91 (B) determine and define the responsibilities of the parent under the child and family
92 plan in accordance with Subsection 62A-4a-205(6)(e); and

93 (C) identify verbally on the record, or in a written document provided to the parties, the
94 responsibilities described in Subsection (2)(d)(ii)(B), for the purpose of assisting in any future
95 determination regarding the provision of reasonable efforts, in accordance with state and
96 federal law.

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

100 (B) Nothing in this section may be construed to entitle any parent to an entire 12
101 months of reunification services.

102 (iv) If reunification services are ordered, the court may terminate those services at any
103 time.

104 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined
105 to be inconsistent with the final permanency plan for the minor established pursuant to Section
106 78A-6-314, then measures shall be taken, in a timely manner, to:

107 (A) place the minor in accordance with the permanency plan; and

108 (B) complete whatever steps are necessary to finalize the permanent placement of the
109 minor.

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

112 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by
113 the court in accordance with Section 78A-6-314 at the expiration of the time period for

114 reunification services.

115 (ii) The permanency hearing shall be held no later than 12 months after the original
116 removal of the minor.

117 (iii) If reunification services are not ordered, a permanency hearing shall be conducted
118 within 30 days, in accordance with Section 78A-6-314.

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

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

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

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

129 (i) the court shall terminate reunification services; and

130 (ii) the division shall petition the court for termination of parental rights.

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

134 (i) practicable; and

135 (ii) in accordance with the best interest of the minor.

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

139 (b) The court may determine that:

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

142 (ii) reunification services should not be provided.

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

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

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

151 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such
152 magnitude that it renders the parent incapable of utilizing reunification services;

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

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

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

157 (III) is being removed due to additional physical abuse, sexual abuse, or sexual
158 exploitation;

159 (D) the parent:

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

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

162 (Aa) murder or manslaughter of a child; or

163 (Bb) child abuse homicide;

164 (E) the minor suffered severe abuse by the parent or by any person known by the
165 parent, if the parent knew or reasonably should have known that the person was abusing the
166 minor;

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

- 170 (G) the parent's rights are terminated with regard to any other minor;
- 171 (H) the minor is removed from the minor's home on at least two previous occasions
- 172 and reunification services were offered or provided to the family at those times;
- 173 (I) the parent has abandoned the minor for a period of six months or longer;
- 174 (J) the parent permitted the child to reside, on a permanent or temporary basis, at a
- 175 location where the parent knew or should have known that a clandestine laboratory operation
- 176 was located; or
- 177 (K) any other circumstance that the court determines should preclude reunification
- 178 efforts or services.

179 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
180 from at least two medical or mental health professionals, who are not associates, establishing
181 that, even with the provision of services, the parent is not likely to be capable of adequately
182 caring for the minor within 12 months after the day on which the court finding is made.

183 (4) In determining whether reunification services are appropriate, the court shall take
184 into consideration:

- 185 (a) failure of the parent to respond to previous services or comply with a previous child
- 186 and family plan;
- 187 (b) the fact that the minor was abused while the parent was under the influence of
- 188 drugs or alcohol;
- 189 (c) any history of violent behavior directed at the child or an immediate family
- 190 member;
- 191 (d) whether a parent continues to live with an individual who abused the minor;
- 192 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;
- 193 (f) testimony by a competent professional that the parent's behavior is unlikely to be
- 194 successful; and
- 195 (g) whether the parent has expressed an interest in reunification with the minor.

196 (5) (a) If reunification services are not ordered pursuant to Subsection (3), and the
197 whereabouts of a parent become known within six months after the day on which the

198 out-of-home placement of the minor is made, the court may order the division to provide
199 reunification services.

200 (b) The time limits described in Subsection (2) are not tolled by the parent's absence.

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

203 (b) In making the determination described in Subsection (6)(a), the court shall
204 consider:

205 (i) the age of the minor;

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

207 (iii) the length of the sentence;

208 (iv) the nature of the treatment;

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

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

211 (vii) for a minor 10 years of age or older, the minor's attitude toward the

212 implementation of family reunification services; and

213 (viii) any other appropriate factors.

214 (c) Reunification services for an incarcerated parent are subject to the time limitation
215 imposed in Subsection (2).

216 (d) Reunification services for an institutionalized parent are subject to the time
217 limitation imposed in Subsection (2), unless the court determines that continued reunification
218 services would be in the minor's best interest.

219 (7) If, pursuant to Subsections (3)(d)(i)(B) through (K), the court does not order
220 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
221 with Section 78A-6-314.