HB0207S02 compared with HB0207S01

~~{deleted text}~~ shows text that was in HB0207S01 but was deleted in HB0207S02.

inserted text shows text that was not in HB0207S01 but was inserted into HB0207S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Wayne A. Harper proposes the following substitute bill:

JUVENILE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends ~~{provisions of the Utah Human Services Code and }~~the Juvenile Court Act of 1996 in relation to ~~{juveniles}~~identifying the responsibilities of a parent in a child and family plan.

Highlighted Provisions:

This bill:

~~{~~

~~• makes an exception to the requirement that consent to interview a child who is in the custody of the Division of Child and Family Services be obtained from the child's guardian ad litem if the child is 14 years of age or older, or if:~~

~~• the child is interviewed solely in relation to a matter in which the child is not a suspect; and~~

~~• the interview is recorded, unless exigent circumstances exist that make~~

~~recording impracticable;~~

~~}~~

- gives the court the option to identify verbally or in writing~~{, rather than on the record,}~~ 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:

~~{ **62A-4a-415**, as enacted by Laws of Utah 2010, Chapter 322~~

~~}~~ **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 ~~**{62A-4a-415}**~~**78A-6-312** is amended to read:

~~{ **62A-4a-415. Law enforcement interviews of children in state custody.**~~

~~(1) Except as provided in Subsection (2), the division may not consent to the interview of a child in the division's custody by a law enforcement officer, unless consent for the interview is obtained from the child's guardian ad litem.~~

~~(2) Subsection (1) does not apply if:~~

~~(a) a guardian ad litem is not appointed for the child[.];~~

~~(b) (i) the child is interviewed solely in relation to a matter in which the child is not a suspect; and~~

~~(ii) the interview is recorded, unless exigent circumstances exist that make recording impracticable; or~~

~~(c) the child is 14 years of age or older.~~

~~Section 2. 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:

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or

(iv) other services.

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

(A) establish a primary permanency goal for the minor; and

(B) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsection (3).

(ii) Subject to Subsection (2)(b), if the court determines that reunification services are appropriate for the minor and the minor's family, the 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.

(iii) (A) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe 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.

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

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

(A) protect the physical safety of the minor;

(B) protect the life of the minor; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) (i) (A) 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 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 (2)(d)(i)(A), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(ii) The court shall:

(A) 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;

(B) determine and define the responsibilities of the parent under the child and family

plan in accordance with Subsection 62A-4a-205(6)(e); and

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

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

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

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

(v) 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 pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

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

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

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

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

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

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

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

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

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

(h) 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 date that reunification services were ordered:

(i) the court shall terminate reunification services; and

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

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

(i) practicable; and

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

(3) (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 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 minor's health, safety, and welfare shall be the paramount concern.

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

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

(B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such magnitude that it 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 minor:

(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; or

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

(Aa) murder or manslaughter of a child; or

(Bb) child abuse homicide;

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

(F) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the 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 is 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 child 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; or

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

(ii) The finding under Subsection (3)(d)(i)(B) shall be based 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 court finding is made.

(4) In determining whether reunification services are appropriate, the 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 child 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.

(5) (a) If reunification services are not ordered pursuant to Subsection (3), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

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

(6) (a) 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.

(b) In making the determination described in Subsection (6)(a), the 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 10 years of age 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 limitation imposed in Subsection (2).

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

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