

CHILD WELFARE PROCEEDINGS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael S. Kennedy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Juvenile Court Act relating to petitions for termination of parental rights.

Highlighted Provisions:

This bill:

▸ requires the court, under certain circumstances, to render a decision on a petition for termination of parental rights within a specified time.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78A-6-314, as last amended by Laws of Utah 2016, Chapter 231

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

Section 1. Section **78A-6-314** is amended to read:

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



28 78A-6-312, with regard to a minor who is in the custody of the Division of Child and Family
29 Services, a permanency hearing shall be held by the court no later than 12 months after the day
30 on which the minor was initially removed from the minor's home.

31 (b) If reunification services were not ordered at the dispositional hearing, a permanency
32 hearing shall be held within 30 days after the day on which the dispositional hearing ends.

33 (2) (a) If reunification services were ordered by the court in accordance with Section
34 78A-6-312, the court shall, at the permanency hearing, determine, consistent with Subsection
35 (3), whether the minor may safely be returned to the custody of the minor's parent.

36 (b) If the court finds, by a preponderance of the evidence, that return of the minor to
37 the minor's parent would create a substantial risk of detriment to the minor's physical or
38 emotional well-being, the minor may not be returned to the custody of the minor's parent.

39 (c) Prima facie evidence that return of the minor to a parent or guardian would create a
40 substantial risk of detriment to the minor is established if:

41 (i) the parent or guardian fails to:

42 (A) participate in a court approved child and family plan;

43 (B) comply with a court approved child and family plan in whole or in part; or

44 (C) meet the goals of a court approved child and family plan; or

45 (ii) the child's natural parent:

46 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
47 child;

48 (B) is identified by a law enforcement agency as the primary suspect in an investigation
49 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

50 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
51 recklessly causing the death of another parent of the child.

52 (3) In making a determination under Subsection (2)(a), the court shall review and
53 consider:

54 (a) the report prepared by the Division of Child and Family Services;

55 (b) any admissible evidence offered by the minor's guardian ad litem;

56 (c) any report submitted by the division under Subsection 78A-6-315(3)(a)(i);

57 (d) any evidence regarding the efforts or progress demonstrated by the parent; and

58 (e) the extent to which the parent cooperated and utilized the services provided.

59 (4) With regard to a case where reunification services were ordered by the court, if a
60 minor is not returned to the minor's parent or guardian at the permanency hearing, the court
61 shall, unless the time for the provision of reunification services is extended under Subsection
62 (8):

63 (a) order termination of reunification services to the parent;

64 (b) make a final determination regarding whether termination of parental rights,
65 adoption, or permanent custody and guardianship is the most appropriate final plan for the
66 minor, taking into account the minor's primary permanency plan established by the court
67 pursuant to Section 78A-6-312; and

68 (c) establish a concurrent permanency plan that identifies the second most appropriate
69 final plan for the minor, if appropriate.

70 (5) The court may order another planned permanent living arrangement for a minor 16
71 years old or older upon entering the following findings:

72 (a) the Division of Child and Family Services has documented intensive, ongoing, and
73 unsuccessful efforts to reunify the minor with the minor's parent or parents, or to secure a
74 placement for the minor with a guardian, an adoptive parent, or an individual described in
75 Subsection 78A-6-306(6)(e);

76 (b) the Division of Child and Family Services has demonstrated that the division has
77 made efforts to normalize the life of the minor while in the division's custody, in accordance
78 with Sections 62A-4a-210 through 62A-4a-212;

79 (c) the minor prefers another planned permanent living arrangement; and

80 (d) there is a compelling reason why reunification or a placement described in
81 Subsection (5)(a) is not in the minor's best interest.

82 (6) Except as provided in Subsection (7), the court may not extend reunification
83 services beyond 12 months after the day on which the minor was initially removed from the
84 minor's home, in accordance with the provisions of Section 78A-6-312.

85 (7) (a) Subject to Subsection (7)(b), the court may extend reunification services for no
86 more than 90 days if the court finds, beyond a preponderance of the evidence, that:

87 (i) there has been substantial compliance with the child and family plan;

88 (ii) reunification is probable within that 90-day period; and

89 (iii) the extension is in the best interest of the minor.

90 (b) (i) Except as provided in Subsection (7)(c), the court may not extend any
91 reunification services beyond 15 months after the day on which the minor was initially
92 removed from the minor's home.

93 (ii) Delay or failure of a parent to establish paternity or seek custody does not provide a
94 basis for the court to extend services for that parent beyond the 12-month period described in
95 Subsection (6).

96 (c) In accordance with Subsection (7)(d), the court may extend reunification services
97 for one additional 90-day period, beyond the 90-day period described in Subsection (7)(a), if:

98 (i) the court finds, by clear and convincing evidence, that:

99 (A) the parent has substantially complied with the child and family plan;

100 (B) it is likely that reunification will occur within the additional 90-day period; and

101 (C) the extension is in the best interest of the child;

102 (ii) the court specifies the facts upon which the findings described in Subsection
103 (7)(c)(i) are based; and

104 (iii) the court specifies the time period in which it is likely that reunification will occur.

105 (d) A court may not extend the time period for reunification services without
106 complying with the requirements of this Subsection (7) before the extension.

107 (e) In determining whether to extend reunification services for a minor, a court shall
108 take into consideration the status of the minor siblings of the minor.

109 (8) The court may, in its discretion:

110 (a) enter any additional order that it determines to be in the best interest of the minor,
111 so long as that order does not conflict with the requirements and provisions of Subsections (4)
112 through (7); or

113 (b) order the division to provide protective supervision or other services to a minor and
114 the minor's family after the division's custody of a minor has been terminated.

115 (9) If the final plan for the minor is to proceed toward termination of parental rights,
116 the petition for termination of parental rights shall be filed, and a pretrial held, within 45
117 calendar days after the permanency hearing.

118 (10) (a) Any party to an action may, at any time, petition the court for an expedited
119 permanency hearing on the basis that continuation of reunification efforts are inconsistent with
120 the permanency needs of the minor.

- 121 (b) If the court so determines, it shall order, in accordance with federal law, that:
122 (i) the minor be placed in accordance with the permanency plan; and
123 (ii) whatever steps are necessary to finalize the permanent placement of the minor be
124 completed as quickly as possible.
- 125 (11) Nothing in this section may be construed to:
126 (a) entitle any parent to reunification services for any specified period of time;
127 (b) limit a court's ability to terminate reunification services at any time prior to a
128 permanency hearing; or
129 (c) limit or prohibit the filing of a petition for termination of parental rights by any
130 party, or a hearing on termination of parental rights, at any time prior to a permanency hearing.
- 131 (12) (a) Subject to Subsection (12)(b), if a petition for termination of parental rights is
132 filed prior to the date scheduled for a permanency hearing, the court may consolidate the
133 hearing on termination of parental rights with the permanency hearing.
- 134 (b) For purposes of Subsection (12)(a), if the court consolidates the hearing on
135 termination of parental rights with the permanency hearing:
136 (i) the court shall first make a finding regarding whether reasonable efforts have been
137 made by the Division of Child and Family Services to finalize the permanency plan for the
138 minor; and
139 (ii) any reunification services shall be terminated in accordance with the time lines
140 described in Section [78A-6-312](#).
- 141 (c) A decision on a petition for termination of parental rights filed in connection with
142 or subsequent to a permanency hearing described in this section shall be made within 18
143 months from the day on which the minor is removed from the minor's home.
- 144 (d) (i) If, before a permanency hearing described in Subsection (1), the court finds, by
145 clear and convincing evidence pursuant to Subsection [78A-6-312\(20\)](#), that it is not in the best
146 interest of the minor to provide reunification services to a parent, and if the final plan for the
147 minor is termination of parental rights, the petition to terminate parental rights shall be filed,
148 and a pretrial hearing held, within 45 calendar days after the permanency hearing.
- 149 (ii) The court shall adjudicate the petition and render a decision no later than four
150 months from the date of the pretrial hearing on the petition to terminate parental rights.
- 151 (13) If a court determines that a child will not be returned to a parent of the child, the

152 court shall consider appropriate placement options inside and outside of the state.

Legislative Review Note
Office of Legislative Research and General Counsel