

1                                   **PROCEEDING TO TERMINATE PARENTAL**  
2   **RIGHTS**

3   2000 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Matt Throckmorton**

6 AN ACT RELATING TO THE JUDICIAL CODE; EXTENDING THE RIGHT TO A JURY  
7 TRIAL IN HEARINGS TO TERMINATE PARENTAL RIGHTS; PERMITTING A JUVENILE  
8 COURT JUDGE TO TRANSFER A CASE TO THE DISTRICT COURT WHEN A JURY  
9 TRIAL HAS BEEN REQUESTED; AND MAKING CONFORMING AMENDMENTS.

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

11 AMENDS:

12                   **78-3a-403**, as last amended by Chapter 318, Laws of Utah 1996

13                   **78-3a-406**, as renumbered and amended by Chapter 260, Laws of Utah 1994

14                   **78-3a-407**, as renumbered and amended by Chapter 260, Laws of Utah 1994

15                   **78-3a-408**, as last amended by Chapter 274, Laws of Utah 1998

16                   **78-3a-409**, as last amended by Chapter 329, Laws of Utah 1997

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

18                   Section 1. Section **78-3a-403** is amended to read:

19                   **78-3a-403. Definitions.**

20                   As used in this chapter:

21                   (1) "Division" means the Division of Child and Family Services within the Department  
22 of Human Services.

23                   (2) "Failure of parental adjustment" means that a parent or parents are unable or unwilling  
24 within a reasonable time to substantially correct the circumstances, conduct, or conditions that led  
25 to placement of their child outside of their home, notwithstanding reasonable and appropriate  
26 efforts made by the Division of Child and Family Services to return the child to that home.

27                   (3) "Plan" means a written agreement between the parents of a child, who has been

28 removed from his home by the juvenile court, and the Division of Child and Family Services or  
29 written conditions and obligations imposed upon the parents directly by the juvenile court, that  
30 have a primary objective of reuniting the family or, if the parents neglect or refuse to comply with  
31 the terms and conditions of the case plan, freeing the child for adoption.

32 (4) "Trier of fact" means a court or, if requested pursuant to Section 78-3a-406, a jury  
33 consisting of four members.

34 Section 2. Section **78-3a-406** is amended to read:

35 **78-3a-406. Notice -- Nature of proceedings.**

36 (1) After a petition for termination of parental rights has been filed, notice of that fact  
37 [~~and~~], of the time and place of the hearing, and of the right of a party to request a jury trial within  
38 ten days of service shall be provided, in accordance with the Utah Rules of Civil Procedure, to the  
39 parents, the guardian, the person or agency having legal custody of the child, and to any person  
40 acting in loco parentis to the child.

41 (2) A hearing shall be held specifically on the question of termination of parental rights  
42 no sooner than ten days after service of summons is complete. A jury shall be the trier of fact at  
43 the hearing if requested by a party within ten days of being served notice under Subsection (1) or  
44 as otherwise permitted by the Utah Rules of Civil Procedure. A verbatim record of the  
45 proceedings shall be taken and the parties shall be advised of their right to counsel. The summons  
46 shall contain a statement to the effect that the rights of the parent or parents are proposed to be  
47 permanently terminated in the proceedings. That statement may be contained in the summons  
48 originally issued in the proceeding or in a separate summons subsequently issued.

49 (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil  
50 Procedure and the Utah Rules of Evidence. The court shall in all cases require the petitioner to  
51 establish the facts by clear and convincing evidence, and shall give full and careful consideration  
52 to all of the evidence presented with regard to the constitutional rights and claims of the parent  
53 and, if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based  
54 upon any of the grounds for termination described in this part, the court shall then consider the  
55 welfare and best interest of the child of paramount importance in determining whether termination  
56 of parental rights shall be ordered.

57 (4) Any hearing held pursuant to this part shall be held in closed court without admittance  
58 of any person who is not necessary to the action or proceeding, unless the court determines that

59 holding the hearing in open court will not be detrimental to the child.

60 (5) If a party demands a jury trial, the court may transfer the case to a district court.

61 Section 3. Section **78-3a-407** is amended to read:

62 **78-3a-407. Grounds for termination of parental rights.**

63 The [court] trier of fact may make the determination to terminate all parental rights with  
64 respect to one or both parents if it finds any one of the following:

65 (1) that the parent or parents have abandoned the child;

66 (2) that the parent or parents have neglected or abused the child;

67 (3) that the parent or parents are unfit or incompetent;

68 (4) that the child is being cared for in an out-of-home placement under the supervision of  
69 the court or the division, that the division or other responsible agency has made a diligent effort  
70 to provide appropriate services and the parent has substantially neglected, wilfully refused, or has  
71 been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home  
72 placement, and there is a substantial likelihood that the parent will not be capable of exercising  
73 proper and effective parental care in the near future;

74 (5) failure of parental adjustment, as defined in this chapter;

75 (6) that only token efforts have been made by the parent or parents:

76 (a) to support or communicate with the child;

77 (b) to prevent neglect of the child;

78 (c) to eliminate the risk of serious physical, mental, or emotional abuse of the child; or

79 (d) to avoid being an unfit parent;

80 (7) the parent or parents have voluntarily relinquished their parental rights to the child, and  
81 the court finds that termination is in the child's best interest; or

82 (8) the parent or parents, after a period of trial during which the child was returned to live  
83 in his own home, substantially and continuously or repeatedly refused or failed to give the child  
84 proper parental care and protection.

85 Section 4. Section **78-3a-408** is amended to read:

86 **78-3a-408. Evidence of grounds for termination.**

87 (1) In determining whether a parent or parents have abandoned a child, it is prima facie  
88 evidence of abandonment that the parent or parents:

89 (a) although having legal custody of the child, have surrendered physical custody of the

90 child, and for a period of six months following the surrender have not manifested to the child or  
91 to the person having the physical custody of the child a firm intention to resume physical custody  
92 or to make arrangements for the care of the child;

93 (b) have failed to communicate with the child by mail, telephone, or otherwise for six  
94 months;

95 (c) failed to have shown the normal interest of a natural parent, without just cause; or

96 (d) have abandoned an infant, as described in Section 78-3a-313.5.

97 (2) In determining whether a parent or parents are unfit or have neglected a child the  
98 [court] trier of fact shall consider, but is not limited to, the following circumstances, conduct, or  
99 conditions:

100 (a) emotional illness, mental illness, or mental deficiency of the parent that renders him  
101 unable to care for the immediate and continuing physical or emotional needs of the child for  
102 extended periods of time;

103 (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

104 (c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous  
105 drugs that render the parent unable to care for the child;

106 (d) repeated or continuous failure to provide the child with adequate food, clothing,  
107 shelter, education, or other care necessary for his physical, mental, and emotional health and  
108 development by a parent or parents who are capable of providing that care. However, a parent  
109 who, legitimately practicing his religious beliefs, does not provide specified medical treatment for  
110 a child is not for that reason alone a negligent or unfit parent;

111 (e) with regard to a child who is in the custody of the division, if the parent is incarcerated  
112 as a result of conviction of a felony, and the sentence is of such length that the child will be  
113 deprived of a normal home for more than one year; or

114 (f) a history of violent behavior.

115 (3) If a child has been placed in the custody of the division and the parent or parents fail  
116 to comply substantially with the terms and conditions of a plan within six months after the date  
117 on which the child was placed or the plan was commenced, whichever occurs later, that failure to  
118 comply is evidence of failure of parental adjustment.

119 (4) The following circumstances constitute prima facie evidence of unfitness:

120 (a) sexual abuse, injury, or death of a sibling of the child, or of any child, due to known

121 or substantiated abuse or neglect by the parent or parents;

122 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to  
123 indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's  
124 physical, mental, or emotional health and development;

125 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of  
126 the child; or

127 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit  
128 murder or manslaughter of a child or child abuse homicide.

129 Section 5. Section **78-3a-409** is amended to read:

130 **78-3a-409. Specific considerations where child is not in physical custody of parent.**

131 (1) If a child is not in the physical custody of the parent or parents, the [court] trier of fact,  
132 in determining whether parental rights should be terminated shall consider, but is not limited to,  
133 the following:

134 (a) the physical, mental, or emotional condition and needs of the child and his desires  
135 regarding the termination, if the court determines he is of sufficient capacity to express his desires;  
136 and

137 (b) the effort the parent or parents have made to adjust their circumstances, conduct, or  
138 conditions to make it in the child's best interest to return him to his home after a reasonable length  
139 of time, including but not limited to:

140 (i) payment of a reasonable portion of substitute physical care and maintenance, if  
141 financially able;

142 (ii) maintenance of regular visitation or other contact with the child that was designed and  
143 carried out in a plan to reunite the child with the parent or parents; and

144 (iii) maintenance of regular contact and communication with the custodian of the child.

145 (2) For purposes of this section, the [court] trier of fact shall disregard incidental conduct,  
146 contributions, contacts, and communications.

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**Legislative Review Note**

**as of 2-8-00 3:46 PM**

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

**Office of Legislative Research and General Counsel**