

1 **RESTORATION OF TERMINATED PARENTAL RIGHTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: LaVar Christensen**

5 Senate Sponsor: Margaret Dayton

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies Title 78A, Chapter 6, Juvenile Court Act, by amending provisions
10 relating to the termination of parental rights and permitting the restoration of terminated
11 parental rights.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ permits a child, age 12 or older, to submit a petition for restoration of terminated
16 parental rights under certain circumstances;
- 17 ▶ describes the duties of the Division of Child and Family Services in responding to a
18 petition for restoration of terminated parental rights;
- 19 ▶ describes the circumstances under which a court may grant a petition for restoration
20 of terminated parental rights; and
- 21 ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **78A-6-503**, as last amended by Laws of Utah 2012, Chapter 281

29 **78A-6-513**, as renumbered and amended by Laws of Utah 2008, Chapter 3

30 ENACTS:

31 **78A-6-1401**, Utah Code Annotated 1953

32 **78A-6-1402**, Utah Code Annotated 1953

33 **78A-6-1403**, Utah Code Annotated 1953

34 **78A-6-1404**, Utah Code Annotated 1953

35

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

37 Section 1. Section **78A-6-503** is amended to read:

38 **78A-6-503. Judicial process for termination -- Parent unfit or incompetent -- Best**
39 **interest of child.**

40 (1) Under both the United States Constitution and the constitution of this state, a parent
41 possesses a fundamental liberty interest in the care, custody, and management of the parent's
42 child. For this reason, the termination of family ties by the state may only be done for
43 compelling reasons.

44 (2) The court shall provide a fundamentally fair process to a parent if a party moves to
45 terminate parental rights.

46 (3) If the party moving to terminate parental rights is a governmental entity, the court
47 shall find that any actions or allegations made in opposition to the rights and desires of a parent
48 regarding the parent's child are supported by sufficient evidence to satisfy a parent's
49 constitutional entitlement to heightened protection against government interference with the
50 parent's fundamental rights and liberty interests.

51 (4) The fundamental liberty interest of a parent concerning the care, custody, and
52 management of the parent's child is recognized, protected, and does not cease to exist simply
53 because a parent may fail to be a model parent or because the parent's child is placed in the
54 temporary custody of the state. The court should give serious consideration to the fundamental
55 right of a parent to rear the parent's child, and concomitantly, of the right of the child to be
56 reared by the child's natural parent.

57 (5) At all times, a parent retains a vital interest in preventing the irretrievable

58 destruction of family life.

59 (6) Prior to an adjudication of unfitness, government action in relation to a parent and a
60 parent's child may not exceed the least restrictive means or alternatives available to accomplish
61 a compelling state interest.

62 (7) Until parental unfitness is established and the children suffer, or are substantially
63 likely to suffer, serious detriment as a result, the child and the child's parent share a vital
64 interest in preventing erroneous termination of their relationship and the court may not presume
65 that a child and the child's parents are adversaries.

66 (8) It is in the best interest and welfare of a child to be raised under the care and
67 supervision of the child's natural parents. A child's need for a normal family life in a
68 permanent home, and for positive, nurturing family relationships is usually best met by the
69 child's natural parents. Additionally, the integrity of the family unit and the right of parents to
70 conceive and raise their children are constitutionally protected. For these reasons, the court
71 should only transfer custody of a child from the child's natural parent for compelling reasons
72 and when there is a jurisdictional basis to do so.

73 (9) The right of a fit, competent parent to raise the parent's child without undue
74 government interference is a fundamental liberty interest that has long been protected by the
75 laws and Constitution of this state and of the United States, and is a fundamental public policy
76 of this state.

77 (10) The state recognizes that:

78 (a) a parent has the right, obligation, responsibility, and authority to raise, manage,
79 train, educate, provide for, and reasonably discipline the parent's children; and

80 (b) the state's role is secondary and supportive to the primary role of a parent.

81 (c) It is the public policy of this state that parents retain the fundamental right and duty
82 to exercise primary control over the care, supervision, upbringing, and education of their
83 children.

84 (d) The interests of the state favor preservation and not severance of natural familial
85 bonds in situations where a positive, nurturing parent-child relationship can exist, including

86 extended family association and support.

87 (11) This part provides a judicial process for voluntary and involuntary severance of
88 the parent-child relationship, designed to safeguard the rights and interests of all parties
89 concerned and promote their welfare and that of the state.

90 (12) Wherever possible family life should be strengthened and preserved, but if a
91 parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon
92 any of the grounds for termination described in this part, the court shall then consider the
93 welfare and best interest of the child of paramount importance in determining whether
94 termination of parental rights shall be ordered.

95 Section 2. Section **78A-6-513** is amended to read:

96 **78A-6-513. Effect of decree.**

97 (1) An order for the termination of the parent-child legal relationship divests the child
98 and the parents of all legal rights, powers, immunities, duties, and obligations with respect to
99 each other, except the right of the child to inherit from the parent.

100 (2) An order or decree entered pursuant to this part may not disentitle a child to any
101 benefit due him from any third person, including, but not limited to, any Indian tribe, agency,
102 state, or the United States.

103 (3) [~~After~~] Except as provided in Sections 78A-6-1401 through 78A-6-1404, after the
104 termination of a parent-child legal relationship, the former parent is neither entitled to any
105 notice of proceedings for the adoption of the child nor has any right to object to the adoption or
106 to participate in any other placement proceedings.

107 Section 3. Section **78A-6-1401** is enacted to read:

108 **Part 14. Restoration of Parental Rights Act**

109 **78A-6-1401. Restoration of Parental Rights Act.**

110 This part is known as the "Restoration of Parental Rights Act."

111 Section 4. Section **78A-6-1402** is enacted to read:

112 **78A-6-1402. Definitions.**

113 As used in this part, "former parent" means an individual whose legal parental rights

114 were terminated under this chapter.

115 Section 5. Section **78A-6-1403** is enacted to read:

116 **78A-6-1403. Petition to restore parental rights -- Duties of the division.**

117 (1) A child, or an authorized representative acting on behalf of a child, may file a
118 petition to restore parental rights if:

119 (a) the child is 12 years of age or older or as provided in Subsection (2)(b);

120 (b) 24 months have passed since the court ordered termination of the parent-child legal
121 relationship; and

122 (c) the child:

123 (i) has not been adopted and is not in an adoptive placement, or is unlikely to be
124 adopted before the child is 18 years of age; or

125 (ii) was previously adopted following a termination of a parent-child legal relationship,
126 but the adoption failed and the child was returned to the custody of the division.

127 (2) (a) A child younger than 12 years of age may not petition for restoration of parental
128 rights except as provided in Subsection (2)(b).

129 (b) A child 12 years of age or older, or the child's authorized representative, may
130 petition for restoration of parental rights, and if the child has a sibling who is younger than 12
131 years of age, the child may include the sibling in the petition.

132 (c) The court may grant a petition for restoration of parental rights for a child younger
133 than 12 years of age as described in Subsection 78A-6-1404(2).

134 (3) The petition described in Subsection (1) shall be:

135 (a) filed in the juvenile court that previously terminated the parent-child relationship;
136 and

137 (b) served on the division.

138 (4) The division shall notify and inform a child who qualifies for restoration of parental
139 rights under Subsections (1)(a) through (c) that the child is eligible to petition for restoration
140 under this part.

141 (5) Upon the receipt of a petition to restore parental rights, the division shall:

142 (a) make a diligent effort to locate the former parent whose rights may be restored
143 under this part; and

144 (b) if the former parent is found, as described in Subsection (5)(a), notify the former
145 parent of:

146 (i) the legal effects of restoration; and

147 (ii) the time and date of the hearing on the petition.

148 (6) The court shall set a hearing on the petition at least 30 days, but no more than 60
149 days, after the day on which the petition is filed with the court.

150 (7) Before the hearing described in Subsection (6), the division may submit a
151 confidential report to the court that includes the following information:

152 (a) material changes in circumstances since the termination of parental rights;

153 (b) a summary of the reasons why parental rights were terminated;

154 (c) the date on which parental rights were terminated;

155 (d) the willingness of the former parent to resume contact with the child and have
156 parental rights restored;

157 (e) the ability of the former parent to be involved in the life of the child and accept
158 physical custody of, and responsibility for, the child; and

159 (f) any other information the division reasonably considers appropriate and
160 determinative.

161 Section 6. Section **78A-6-1404** is enacted to read:

162 **78A-6-1404. Hearing on the petition to restore parental rights.**

163 (1) At the hearing on the petition described in Section 78A-6-1403, if the former parent
164 consents and if the court finds by clear and convincing evidence that it is in the best interest of
165 the child, the court may:

166 (a) allow contact between the former parent and child, and describe the conditions
167 under which contact may take place;

168 (b) order that the child be placed with the former parent in a temporary custody and
169 guardianship relationship, to be reevaluated six months from the day on which the child is

170 placed; or

171 (c) restore the parental rights of the parent.

172 (2) The court may restore the parent-child legal relationship for a child who is younger
173 than 12 years of age if:

174 (a) the petitioner:

175 (i) is a sibling of the child;

176 (ii) meets the requirements of Subsection 78A-6-1403(1); and

177 (iii) includes the child who is younger than 12 years of age in the petition described in
178 Section 78A-6-1403;

179 (b) the child who is younger than 12 years of age meets the requirements of
180 Subsections 78A-6-1403(1)(b) and (c);

181 (c) considering the age and maturity of the child, the child consents to the restoration;

182 (d) the former parent consents to the restoration; and

183 (e) the court finds by clear and convincing evidence that restoration is in the best
184 interest of the child who is younger than 12 years of age.

185 (3) In determining whether reunification is appropriate and in the best interest of the
186 child, the court shall consider:

187 (a) whether the former parent has been sufficiently rehabilitated from the behavior that
188 resulted in the termination of the parent-child relationship;

189 (b) extended family support for the former parent; and

190 (c) other material changes of circumstances, if any, that may have occurred that warrant
191 the granting of the motion.

192 (4) If the court orders the child to be placed in the physical custody of the former
193 parent under Subsection (1), the court shall specify in the order:

194 (a) whether that custody is subject to:

195 (i) continued evaluation by the court; or

196 (ii) the supervision of the division; and

197 (b) the terms and conditions of reunification.

