

## HB0156S02 compared with HB0156

~~{deleted text}~~ shows text that was in HB0156 but was deleted in HB0156S02.

inserted text shows text that was not in HB0156 but was inserted into HB0156S02.

**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 bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Todd Weiler proposes the following substitute bill:

### RESTORATION OF TERMINATED PARENTAL RIGHTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: ~~{~~ Margaret Dayton }

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~{authorizes a parent to nominate a relative to serve as a legal guardian for the parent's child in the event of a termination of parental rights;~~
- ▶ ~~describes the circumstances under which a court may grant a guardianship petition;~~
- ▶ ~~permits a former parent, or a child 12 years of age;~~ permits a child, age 14 or older, to submit a ~~{motion}~~ petition for restoration of terminated parental rights under

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certain circumstances;

- ▶ describes the duties of the Division of Child and Family Services in responding to a ~~{motion}~~petition for restoration of terminated parental rights;
- ▶ describes the circumstances under which a court may grant a ~~{motion}~~petition for restoration of terminated parental rights; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

~~{~~ ~~78A-6-511~~, as last amended by Laws of Utah 2012, Chapter 293

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

ENACTS:

~~{~~ ~~78A-6-502.5~~, Utah Code Annotated 1953

~~————~~ ~~78A-6-507.5~~, Utah Code Annotated 1953

~~}~~ 78A-6-1401, Utah Code Annotated 1953

78A-6-1402, Utah Code Annotated 1953

78A-6-1403, Utah Code Annotated 1953

78A-6-1404, Utah Code Annotated 1953

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

Section 1. Section ~~{78A-6-502.5}~~78A-6-513 is ~~{enacted to read:~~

~~————~~ ~~78A-6-502.5~~. **Statement of parental liberty interests.**

~~————~~ ~~(1) The severance and termination of family ties by the state is a step of the utmost gravity, which may only be done for the most compelling reasons.~~

~~————~~ ~~(2) It is generally in the best interest and welfare of a child to be reared under the care of the child's natural parents.~~

~~————~~ ~~(3) Termination of parental rights cannot be decreed without giving full and serious consideration to the prior and fundamental right of a parent to rear the parent's child and.~~

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~~concomitantly, of the right of the child to be reared by the child's natural parent.~~

~~—— (4) A parent has a fundamental right protected by the U.S. Constitution to sustain the parent's relationship with the parent's child.~~

~~—— (5) (a) Recognition of due process and retained rights of parents promotes values essential to the preservation of human freedom and dignity and the perpetuation of our democratic society.~~

~~—— (b) Any invasion of the sanctity of the family, even with the loftiest of motives, unavoidably threatens the values described in Subsection (5)(a).~~

~~—— (6) No court shall, but for the gravest of reasons, transfer a child from the child's natural parent to any other person, since the right of a parent under natural law to establish a home and bring up children is fundamental and beyond the reach of any court.~~

~~—— (7) Where there is still reason to believe that positive, nurturing parent-child relationships can exist, including extended family association and support, the interest of the state favors preservation, not severance, of natural familial bonds.~~

~~—— Section 2. Section 78A-6-507.5 is enacted to read:~~

~~—— **78A-6-507.5. Contesting a petition to terminate parental rights -- Submitting a nominee for guardianship -- Guardianship process.**~~

~~—— (1) A parent who receives notice of a petition to terminate parental rights under Section 78A-6-506 and disputes that the parent's parental rights should be terminated, may:~~

~~—— (a) contest the petition; and~~

~~—— (b) in the alternative, submit a petition naming an individual to serve as legal guardian for the child, if:~~

~~—— (i) the nominee is an adult who is a grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of the child;~~

~~—— (ii) the nominee consents to the guardianship relationship; and~~

~~—— (iii) the parent's rights are ultimately terminated.~~

~~—— (2) The division shall make a recommendation to the court regarding the fitness of the nominee described in Subsection (1) to serve as the child's guardian.~~

~~—— (3) The court shall:~~

~~—— (a) consider:~~

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~~(i) the principles, rights, protections, and requirements described and recognized in this part;~~

~~(ii) the recommendation of the division, described in Subsection (2);~~

~~(iii) the desires of the child, if the child is 12 years of age or older;~~

~~(iv) the fundamental right of a parent to choose who shall raise and care for the parent's child; and~~

~~(v) the fundamental right of a child to be reared by the child's parent or the parent's designee; and~~

~~(b) if it appears the parent will not be able to successfully contest the petition for termination of parental rights, order a legal guardianship relationship between the child and the nominee, if it is in the best interest of the child and a means of achieving the strong public policy in support of family preservation.~~

~~(4) In an order granting the petition for guardianship, the court shall describe:~~

~~(a) what limitations, if any, the guardian shall place on the parent's access to the child as a condition for continued guardianship; and~~

~~(b) what role, if any, the division will fill in supervising the guardianship placement.~~

~~(5) If granted, the court shall review the guardianship placement six months after the day on which the guardianship petition is granted to review whether guardianship is still appropriate and consistent with controlling constitutional rights.~~

~~(6) Nothing in this section shall be construed as a guarantee that a nominee will be allowed to serve as a legal guardian for a child, but the nominee shall be given added weight and strong and thorough consideration.~~

~~(7) Legal guardianship, as described and established in this section, is:~~

~~(a) considered a permanent placement for purposes of complying with federal law, if the guardianship is ordered without the continued supervision of the division; and~~

~~(b) most appropriate when a former parent:~~

~~(i) has made progress toward becoming a fit parent, but has not yet succeeded; and~~

~~(ii) may become a fit parent with additional time and assistance.~~

~~Section 3. Section 78A-6-511 is amended to read:~~

~~**78A-6-511. Court disposition of child upon termination.**~~

~~(1) As used in this section, "relative" means:~~

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~~— (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child; and~~

~~— (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that statute;~~

~~— (2) Upon entry of an order under this part the court may:~~

~~— (a) place the child in the legal custody and guardianship of a licensed child placement agency or the division for adoption; [or]~~

~~— (b) make any other disposition of the child authorized under Section 78A-6-117[.]; or~~

~~— (c) place the child in a guardianship relationship under Section 78A-6-513.5;~~

~~— (3) Subject to the requirements of Subsections (4) and (5), all adoptable children placed in the custody of the division shall be placed for adoption.~~

~~— (4) If the parental rights of all parents of an adoptable child placed in the custody of the division have been terminated and a suitable adoptive placement is not already available, the court:~~

~~— (a) shall determine whether there is a relative who desires to adopt the child;~~

~~— (b) may order the division to conduct a reasonable search to determine whether there are relatives who are willing to adopt the child; [and]~~

~~— (c) shall, if a relative desires to adopt the child:~~

~~— (i) make a specific finding regarding the fitness of the relative to adopt the child; and~~

~~— (ii) place the child for adoption with that relative unless it finds that adoption by the relative is not in the best interest of the child[.]; and~~

~~— (d) shall consider a legal guardianship, under Section 78A-6-513.5;~~

~~— (5) This section does not guarantee that a relative will be permitted to adopt the child.~~

~~— Section 4. Section 78A-6-513 is } amended to read:~~

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

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

(2) An order or decree entered pursuant to this part may not disentitle a child to any

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benefit due him from any third person, including, but not limited to, any Indian tribe, agency, state, or the United States.

(3) [After] ~~Except as provided in Section 78A-6-513.5~~ Sections 78A-6-1401 through 78A-6-1404, after the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings.

Section ~~{5}~~2. Section **78A-6-1401** is enacted to read:

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

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

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

Section ~~{6}~~3. Section **78A-6-1402** is enacted to read:

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

As used in this part, "former parent" means an individual whose legal parental rights were terminated under this chapter.

Section ~~{7}~~4. Section **78A-6-1403** is enacted to read:

#### **78A-6-1403. Motion to restore parental rights -- Duties of the division.**

(1) ~~{The following individuals may file a motion to restore parental rights:~~

~~—— (a) a child, age 12 or older, whose parent-child relationship to the former parent was terminated under this chapter, or an individual acting on the child's behalf; or~~

~~—— (b) a former parent of the child named in the motion.~~

~~—— (2) (a) An individual described in Subsection (1) may file a motion;~~ A child, or an authorized representative of a child, may file a petition to restore parental rights ~~{or parental contact between a child and a parent whose rights have been terminated if:~~

~~—— (i) 12;~~ if:

(a) the child is 14 years of age or older;

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

(c) the child:

(i) has not been adopted, and is unlikely to be adopted before the child is 18 years of age; or

(ii) ~~{the child has been adopted}~~ was previously adopted following a termination of a

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parent-child legal relationship, but the ~~adoptive parents have relinquished~~ adoption failed and  
the child was returned to the custody of the division ~~or another person~~.

~~(b)2~~ The ~~motion~~petition described in Subsection ~~(2)(a)1~~ shall be filed:

~~(i)a~~ in the ~~court in which permanency hearings for the child are being conducted;~~

and

~~(ii) juvenile court that previously terminated the parent-child relationship; and~~

(b) on the division.

~~(3) The court shall set a hearing on the motion at least 30 days, but no more than 60 days, after the day on which the motion is filed with the court.~~

~~(4) Upon receipt of the motion~~Upon the receipt of a petition to restore parental rights, the division shall ~~if the individual who filed the motion is a child~~:

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

(b) if the former parent is found, as described in Subsection (3)(a), notify the former parent of:

(i) the legal effects of restoration; and

(ii) the time and date of the hearing on the ~~motion~~

petition.

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

~~(5) Before the hearing described in Subsection (3)4, the division shall~~may submit a confidential report to the court ~~and the petitioner~~ that includes the following information:

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

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

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

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

~~(e) the willingness of the child to resume contact with the former parent and have parental rights restored;~~

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

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~~(g)~~f) any other information the division reasonably considers appropriate and determinative.

Section ~~8~~5. Section **78A-6-1404** is enacted to read:

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

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

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

(b) order that the child be placed with the former parent in a temporary ~~custody and~~ guardianship relationship, to be ~~re-evaluated~~reevaluated six months from the day on which the child is placed; or

(c) restore the parental rights of the parent.

(2) ~~(a)~~ In determining whether reunification is ~~required~~appropriate and in the best interest of the child, the court shall consider:

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

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

~~(b) The court shall also consider the fundamental liberty interests of the former parent and child;~~c) other material changes of circumstances, if any, that may have occurred that warrant the granting of the motion.

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

(a) whether that custody is subject to:

(i) continued evaluation by the court; or

(ii) the supervision of the division; and

(b) the terms and conditions of reunification.

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**Legislative Review Note**

~~as of 2-21-13 7:59 AM~~

~~Office of Legislative Research and General Counsel~~