

Representative LaVar Christensen proposes the following substitute bill:

RIGHTS OF PARENTS AND CHILDREN AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies Title 78A, Chapter 6, Juvenile Court Act, by permitting a parent who has been served with a petition for termination of parental rights to request a jury trial.

Highlighted Provisions:

This bill:

- ▶ states that a parent who has been served with a petition for termination of parental rights maintains fundamental liberty interests guaranteed by the United States Constitution;
- ▶ permits a parent to request a jury trial in a proceeding for termination of parental rights;
- ▶ requires the court to grant a parent's request for a jury trial in a proceeding for termination of parental rights; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 78A-6-114, as renumbered and amended by Laws of Utah 2008, Chapter 3

28 78A-6-506, as renumbered and amended by Laws of Utah 2008, Chapter 3

29 78A-6-507, as last amended by Laws of Utah 2012, Chapter 281

30 78A-6-508, as last amended by Laws of Utah 2009, Chapter 161

31

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

33 Section 1. Section 78A-6-114 is amended to read:

34 **78A-6-114. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
35 **cases heard separately from adult cases -- Minor or parents or custodian heard**
36 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**
37 **one minor.**

38 (1) [Hearings] Except as provided in Section 78A-6-506, hearings in minor's cases
39 shall be held before the court without a jury and may be conducted in an informal manner.

40 (a) (i) In abuse, neglect, and dependency cases the court shall admit any person to a
41 hearing, including a hearing under Section 78A-6-322, unless the court makes a finding upon
42 the record that the person's presence at the hearing would:

- 43 (A) be detrimental to the best interest of a child who is a party to the proceeding;
- 44 (B) impair the fact-finding process; or
- 45 (C) be otherwise contrary to the interests of justice.

46 (ii) The court may exclude a person from a hearing under Subsection (1)(a)(i) on its
47 own motion or by motion of a party to the proceeding.

48 (b) In delinquency cases the court shall admit all persons who have a direct interest in
49 the case and may admit persons requested by the parent or legal guardian to be present. The
50 court shall exclude all other persons except as provided in Subsection (1)(c).

51 (c) In delinquency cases in which the minor charged is 14 years of age or older, the
52 court shall admit any person unless the hearing is closed by the court upon findings on the
53 record for good cause if:

- 54 (i) the minor has been charged with an offense which would be a felony if committed
55 by an adult; or
- 56 (ii) the minor is charged with an offense that would be a class A or B misdemeanor if

57 committed by an adult, and the minor has been previously charged with an offense which
58 would be a misdemeanor or felony if committed by an adult.

59 (d) The victim of any act charged in a petition or information involving an offense
60 committed by a minor which if committed by an adult would be a felony or a class A or class B
61 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
62 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
63 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not
64 apply to important juvenile justice hearings as defined in Section 77-38-2.

65 (e) A victim, upon request to appropriate juvenile court personnel, shall have the right
66 to inspect and duplicate juvenile court legal records that have not been expunged concerning:

- 67 (i) the scheduling of any court hearings on the petition;
- 68 (ii) any findings made by the court; and
- 69 (iii) any sentence or decree imposed by the court.

70 (2) Minor's cases shall be heard separately from adult cases. The minor or the parents
71 or custodian of a minor may be heard separately when considered necessary by the court. The
72 hearing may be continued from time to time to a date specified by court order.

73 (3) When more than one child is involved in a home situation which may be found to
74 constitute neglect or dependency, or when more than one minor is alleged to be involved in the
75 same law violation, the proceedings may be consolidated, except that separate hearings may be
76 held with respect to disposition.

77 Section 2. Section 78A-6-506 is amended to read:

78 **78A-6-506. Notice -- Nature of proceedings.**

79 (1) After a petition for termination of parental rights has been filed, notice of that fact
80 and of the time and place of the hearing shall be provided, in accordance with the Utah Rules
81 of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of
82 the child, and to any person acting in loco parentis to the child.

83 (2) A hearing shall be held specifically on the question of termination of parental rights
84 no sooner than [10] 30 days after the day on which service of summons is complete.

85 (3) A verbatim record of the proceedings shall be taken and the parties shall be advised
86 of their right to counsel and trial by jury.

87 (4) (a) The summons shall contain a statement to the effect that the rights of the parent

88 ~~[or parents]~~ are proposed to be permanently terminated in the proceedings~~[- That statement]~~
89 and that the parent has a right to request a jury trial.

90 (b) The statement described in Subsection (4)(a) may be contained in the summons
91 originally issued in the proceeding or in a separate summons subsequently issued.

92 ~~[(3)]~~ (5) The proceedings are civil in nature and are governed by the Utah Rules of
93 Civil Procedure.

94 (6) A parent who has been served with a petition for termination of parental rights:

95 (a) continues to possess protected, fundamental rights and liberty interests recognized
96 by the United States Constitution and as stated and described in this part;

97 (b) is entitled to the required heightened protection and least restrictive means analysis
98 described in Section [78A-6-503](#);

99 (c) has a right to, and may request, a final determination by jury trial regarding the
100 parent's fitness and whether the parent-child relationship should be terminated; and

101 (d) shall request the jury trial described in Subsection (6)(c) no later than 45 days after
102 the day on which the parent receives the notice described in Subsection (1).

103 (7) If a parent requests a jury trial, the parent shall pay the same filing fee set by the
104 court for a civil case with a demand for jury trial.

105 (8) The court ~~[shall in all cases]~~:

106 (a) shall grant a request for a jury trial and set a pretrial conference;

107 (b) may transfer the case to district court for trial by jury;

108 (c) shall require the petitioner to establish the facts by clear and convincing evidence~~[-~~
109 and shall give]; and

110 (d) shall give, or instruct the jury to give, full and careful consideration to all of the
111 evidence presented with regard to the constitutional rights and claims of the parent ~~[and, if a~~
112 parent is found,].

113 (9) (a) Unless the court finds that due process requires otherwise, in a jury trial
114 pursuant to this section:

115 (i) a child may not be required or compelled to attend or testify unless the court finds
116 that:

117 (A) the child desires an opportunity to be present or to testify and communicates the
118 child's desire to the guardian ad litem;

119 (B) the child is sufficiently mature to articulate the child's wishes in relation to the jury
120 trial; and

121 (C) it would not be detrimental to the child or impractical to have the child be present
122 or to testify; and

123 (ii) the court shall take judicial notice of any adjudicated facts from an earlier hearing,
124 including any testimony from the child or any admissible recording of a child's statement or
125 testimony.

126 (b) The court shall instruct the jury as to the noticed fact described in Subsection
127 (9)(a)(ii) in accordance with Rule 201 of the Utah Rule of Evidence.

128 (10) If the jury, or the court in cases where the parent does not request a jury trial, finds
129 a parent, by reason of [his] the parent's conduct or condition, to be unfit or incompetent based
130 upon [any-of] the grounds for termination described in this part, [the] and subject to the
131 principles and recognized rights described in Section 78A-6-503, the jury or court shall then
132 consider the welfare and best interest of the child of paramount importance in determining
133 whether termination of parental rights shall be ordered.

134 Section 3. Section 78A-6-507 is amended to read:

135 **78A-6-507. Grounds for termination of parental rights -- Findings regarding**
136 **reasonable efforts.**

137 (1) Subject to the protections and requirements of Section 78A-6-503, and if the court
138 or trier of fact finds strictly necessary, the court or trier of fact may terminate all parental rights
139 with respect to a parent if the court or trier of fact finds any one of the following:

140 (a) that the parent has abandoned the child;

141 (b) that the parent has neglected or abused the child;

142 (c) that the parent is unfit or incompetent;

143 (d) (i) that the child is being cared for in an out-of-home placement under the
144 supervision of the court or the division;

145 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or
146 unwilling to remedy the circumstances that cause the child to be in an out-of-home placement;
147 and

148 (iii) that there is a substantial likelihood that the parent will not be capable of
149 exercising proper and effective parental care in the near future;

- 150 (e) failure of parental adjustment, as defined in this chapter;
- 151 (f) that only token efforts have been made by the parent:
 - 152 (i) to support or communicate with the child;
 - 153 (ii) to prevent neglect of the child;
 - 154 (iii) to eliminate the risk of serious harm to the child; or
 - 155 (iv) to avoid being an unfit parent;
- 156 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the
- 157 child; and
 - 158 (ii) that termination is in the child's best interest;
- 159 (h) that, after a period of trial during which the child was returned to live in the child's
- 160 own home, the parent substantially and continuously or repeatedly refused or failed to give the
- 161 child proper parental care and protection; or
 - 162 (i) the terms and conditions of safe relinquishment of a newborn child have been
 - 163 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
 - 164 Child.
- 165 (2) The court or trier of fact may not terminate the parental rights of a parent because
- 166 the parent has failed to complete the requirements of a child and family plan.
- 167 (3) (a) Except as provided in Subsection (3)(b), in any case in which the court has
- 168 directed the division to provide reunification services to a parent, the court or trier of fact must
- 169 find that the division made reasonable efforts to provide those services before the court or trier
- 170 of fact may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).
- 171 (b) Notwithstanding Subsection (3)(a), the court or trier of fact is not required to make
- 172 the finding under Subsection (3)(a) before terminating a parent's rights:
 - 173 (i) under Subsection (1)(b), if the court or trier of fact finds that the abuse or neglect
 - 174 occurred subsequent to adjudication; or
 - 175 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not
 - 176 required under federal law, and federal law is not inconsistent with Utah law.

177 Section 4. Section **78A-6-508** is amended to read:

178 **78A-6-508. Evidence of grounds for termination.**

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

181 (a) although having legal custody of the child, have surrendered physical custody of the
182 child, and for a period of six months following the surrender have not manifested to the child
183 or to the person having the physical custody of the child a firm intention to resume physical
184 custody or to make arrangements for the care of the child;

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

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

188 (d) have abandoned an infant, as described in Subsection 78A-6-316(1).

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

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

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

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

199 (d) repeated or continuous failure to provide the child with adequate food, clothing,
200 shelter, education, or other care necessary for the child's physical, mental, and emotional health
201 and development by a parent or parents who are capable of providing that care;

202 (e) whether the parent is incarcerated as a result of conviction of a felony, and the
203 sentence is of such length that the child will be deprived of a normal home for more than one
204 year; or

205 (f) a history of violent behavior.

206 (3) A parent who, legitimately practicing the parent's religious beliefs, does not provide
207 specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

208 (4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or
209 unfit because of a health care decision made for a child by the child's parent unless the state or
210 other party to the proceeding shows, by clear and convincing evidence, that the health care
211 decision is not reasonable and informed.

212 (b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to
213 obtain a second health care opinion.

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

218 (6) The following circumstances constitute prima facie evidence of unfitness:

219 (a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any
220 child, due to known or substantiated abuse or neglect by the parent or parents;

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

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

226 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to
227 commit murder or manslaughter of a child or child abuse homicide; or

228 (e) the parent intentionally, knowingly, or recklessly causes the death of another parent
229 of the child, without legal justification.