

Part 5

Termination of Parental Rights Act

78A-6-501 Title.

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

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-502 Definitions.

As used in this chapter:

- (1) "Division" means the Division of Child and Family Services within the Department of Human Services.
- (2) "Failure of parental adjustment" means that a parent or parents are unable or unwilling within a reasonable time to substantially correct the circumstances, conduct, or conditions that led to placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the Division of Child and Family Services to return the child to that home.
- (3) "Plan" means a written agreement between the parents of a child, who has been removed from the child's home by the juvenile court, and the Division of Child and Family Services or written conditions and obligations imposed upon the parents directly by the juvenile court, that have a primary objective of reuniting the family or, if the parents fail or refuse to comply with the terms and conditions of the case plan, freeing the child for adoption.

Renumbered and Amended by Chapter 3, 2008 General Session

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

- (1) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's child. For this reason, the termination of family ties by the state may only be done for compelling reasons.
- (2) The court shall provide a fundamentally fair process to a parent if a party moves to terminate parental rights.
- (3) If the party moving to terminate parental rights is a governmental entity, the court shall find that any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's child are supported by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests.
- (4) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's child is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. The court should give serious consideration to the fundamental right of a parent to rear the parent's child, and concomitantly, of the right of the child to be reared by the child's natural parent.
- (5) At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life.
- (6) Prior to an adjudication of unfitness, government action in relation to a parent and a parent's child may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest.

- (7) Until parental unfitness is established and the children suffer, or are substantially likely to suffer, serious detriment as a result, the child and the child's parent share a vital interest in preventing erroneous termination of their relationship and the court may not presume that a child and the child's parents are adversaries.
- (8) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. For these reasons, the court should only transfer custody of a child from the child's natural parent for compelling reasons and when there is a jurisdictional basis to do so.
- (9) The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution of this state and of the United States, and is a fundamental public policy of this state.
- (10) The state recognizes that:
 - (a) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline the parent's children; and
 - (b) the state's role is secondary and supportive to the primary role of a parent.
 - (c) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.
 - (d) The interests of the state favor preservation and not severance of natural familial bonds in situations where a positive, nurturing parent-child relationship can exist, including extended family association and support.
- (11) This part provides a judicial process for voluntary and involuntary severance of the parent-child relationship, designed to safeguard the rights and interests of all parties concerned and promote their welfare and that of the state.
- (12) Wherever possible family life should be strengthened and preserved, but if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.

Amended by Chapter 340, 2013 General Session

78A-6-504 Petition -- Who may file.

- (1) Any interested party, including a foster parent, may file a petition for termination of the parent-child relationship with regard to a child.
- (2) The attorney general shall file a petition for termination of parental rights under this part on behalf of the division.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-505 Contents of petition.

- (1) The petition for termination of parental rights shall include, to the best information or belief of the petitioner:
 - (a) the name and place of residence of the petitioner;
 - (b) the name, sex, date and place of birth, and residence of the child;

- (c) the relationship of the petitioner to the child;
 - (d) the names, addresses, and dates of birth of the parents, if known;
 - (e) the name and address of the person having legal custody or guardianship, or acting in loco parentis to the child, or the organization or agency having legal custody or providing care for the child;
 - (f) the grounds on which termination of parental rights is sought, in accordance with Section 78A-6-507; and
 - (g) the names and addresses of the persons or the authorized agency to whom legal custody or guardianship of the child might be transferred.
- (2) A copy of any relinquishment or consent, if any, previously executed by the parent or parents shall be attached to the petition.

Renumbered and Amended by Chapter 3, 2008 General Session

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

- (1) After a petition for termination of parental rights has been filed, notice of that fact and of the time and place of the hearing shall be provided, in accordance with the Utah Rules of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of the child, and to any person acting in loco parentis to the child.
- (2) A hearing shall be held specifically on the question of termination of parental rights no sooner than 10 days after service of summons is complete. A verbatim record of the proceedings shall be taken and the parties shall be advised of their right to counsel. The summons shall contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings. That statement may be contained in the summons originally issued in the proceeding or in a separate summons subsequently issued.
- (3) The proceedings are civil in nature and are governed by the Utah Rules of Civil Procedure. The court shall in all cases require the petitioner to establish the facts by clear and convincing evidence, and shall give full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent and, if a parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the court shall then consider the welfare and best interest of the child of paramount importance in determining whether termination of parental rights shall be ordered.

Renumbered and Amended by Chapter 3, 2008 General Session

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

- (1) Subject to the protections and requirements of Section 78A-6-503, and if the court finds strictly necessary, the court may terminate all parental rights with respect to a parent if the court finds any one of the following:
 - (a) that the parent has abandoned the child;
 - (b) that the parent has neglected or abused the child;
 - (c) that the parent is unfit or incompetent;
 - (d)
 - (i) that the child is being cared for in an out-of-home placement under the supervision of the court or the division;

- (ii) that the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and
 - (iii) that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;
 - (e) failure of parental adjustment, as defined in this chapter;
 - (f) that only token efforts have been made by the parent:
 - (i) to support or communicate with the child;
 - (ii) to prevent neglect of the child;
 - (iii) to eliminate the risk of serious harm to the child; or
 - (iv) to avoid being an unfit parent;
 - (g)
 - (i) that the parent has voluntarily relinquished the parent's parental rights to the child; and
 - (ii) that termination is in the child's best interest;
 - (h) that, after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or
 - (i) the terms and conditions of safe relinquishment of a newborn child have been complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.
- (2) The court may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.
- (3)
 - (a) Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).
 - (b) Notwithstanding Subsection (3)(a), the court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:
 - (i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred subsequent to adjudication; or
 - (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law, and federal law is not inconsistent with Utah law.

Amended by Chapter 281, 2012 General Session

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

- (1) In determining whether a parent or parents have abandoned a child, it is prima facie evidence of abandonment that the parent or parents:
- (a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;
 - (b) have failed to communicate with the child by mail, telephone, or otherwise for six months;
 - (c) failed to have shown the normal interest of a natural parent, without just cause; or
 - (d) have abandoned an infant, as described in Subsection 78A-6-316(1).
- (2) In determining whether a parent or parents are unfit or have neglected a child the court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

- (a) emotional illness, mental illness, or mental deficiency of the parent that renders the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;
 - (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;
 - (c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous drugs that render the parent unable to care for the child;
 - (d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for the child's physical, mental, and emotional health and development by a parent or parents who are capable of providing that care;
 - (e) whether the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year;
 - (f) a history of violent behavior; or
 - (g) whether the parent has intentionally exposed the child to pornography or material harmful to a minor, as defined in Section 76-10-1201.
- (3) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.
- (4)
- (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.
 - (b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.
- (5) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.
- (6) The following circumstances constitute prima facie evidence of unfitness:
- (a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent or parents;
 - (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;
 - (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child;
 - (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide; or
 - (e) the parent intentionally, knowingly, or recklessly causes the death of another parent of the child, without legal justification.

Amended by Chapter 409, 2014 General Session

78A-6-509 Specific considerations where child is not in physical custody of parent.

- (1) If a child is not in the physical custody of the parent or parents, the court, in determining whether parental rights should be terminated shall consider, but is not limited to, the following:
- (a) the physical, mental, or emotional condition and needs of the child and his desires regarding the termination, if the court determines he is of sufficient capacity to express his desires; and

- (b) the effort the parent or parents have made to adjust their circumstances, conduct, or conditions to make it in the child's best interest to return him to his home after a reasonable length of time, including but not limited to:
 - (i) payment of a reasonable portion of substitute physical care and maintenance, if financially able;
 - (ii) maintenance of regular parent-time or other contact with the child that was designed and carried out in a plan to reunite the child with the parent or parents; and
 - (iii) maintenance of regular contact and communication with the custodian of the child.
- (2) For purposes of this section, the court shall disregard incidental conduct, contributions, contacts, and communications.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-510 Specific considerations where a child has been placed in foster home.

If a child is in the custody of the division and has been placed and resides in a foster home and the division institutes proceedings under this part regarding the child, with an ultimate goal of having the child's foster parent or parents adopt him, the court shall consider whether the child has become integrated into the foster family to the extent that his familial identity is with that family, and whether the foster family is able and willing permanently to treat the child as a member of the family. The court shall also consider, but is not limited to, the following:

- (1) the love, affection, and other emotional ties existing between the child and the parents, and the child's ties with the foster family;
- (2) the capacity and disposition of the child's parents from whom the child was removed as compared with that of the foster family to give the child love, affection, and guidance and to continue the education of the child;
- (3) the length of time the child has lived in a stable, satisfactory foster home and the desirability of his continuing to live in that environment;
- (4) the permanence as a family unit of the foster family; and
- (5) any other factor considered by the court to be relevant to a particular placement of a child.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-511 Court disposition of child upon termination -- Posttermination reunification.

- (1) As used in this section, "relative" means:
 - (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.
- (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.
- (5) This section does not guarantee that a relative will be permitted to adopt the child.
- (6) A parent whose rights were terminated under this part, or a relative of the child, as defined by Section 78A-6-307, may petition for guardianship of the child if:
 - (a)
 - (i) following an adoptive placement, the child's adoptive parent returns the child to the custody of the division; or
 - (ii) the child is in the custody of the division for one year following the day on which the parent's rights were terminated, and no permanent placement has been found or is likely to be found; and
 - (b) reunification with the child's parent, or guardianship by the child's relative, is in the best interest of the child.

Amended by Chapter 416, 2013 General Session

Amended by Chapter 416, 2013 General Session, (Coordination Clause)

78A-6-512 Review following termination.

- (1) At the conclusion of the hearing in which the court orders termination of the parent-child relationship, the court shall order that a review hearing be held within 90 days after the day on which the parent-child relationship is terminated, if the child has not been permanently placed.
- (2) At that review hearing, the agency or individual vested with custody of the child shall report to the court regarding the plan for permanent placement of the child. The guardian ad litem shall make recommendations to the court, based on an independent investigation, for disposition meeting the best interests of the child.
- (3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

Amended by Chapter 32, 2009 General Session

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 benefit due him from any third person, including, but not limited to, any Indian tribe, agency, state, or the United States.
- (3) Except as provided in 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.

Amended by Chapter 340, 2013 General Session

Amended by Chapter 416, 2013 General Session

Amended by Chapter 416, 2013 General Session, (Coordination Clause)

78A-6-514 Voluntary relinquishment -- Irrevocable.

- (1) Voluntary relinquishment or consent for termination of parental rights shall be signed or confirmed under oath either:
 - (a) before a judge of any court that has jurisdiction over proceedings for termination of parental rights in this state or any other state, or a public officer appointed by that court for the purpose of taking consents or relinquishments; or
 - (b) except as provided in Subsection (2), any person authorized to take consents or relinquishments under Subsections 78B-6-124(1) and (2).
- (2) Only the juvenile court is authorized to take consents or relinquishments from a parent who has any child who is in the custody of a state agency or who has a child who is otherwise under the jurisdiction of the juvenile court.
- (3) The court, appointed officer, or other authorized person shall certify to the best of that person's information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.
- (4) A voluntary relinquishment or consent for termination of parental rights is effective when it is signed and may not be revoked.
- (5) The requirements and processes described in Sections 78A-6-503 through 78A-6-510 do not apply to a voluntary relinquishment or consent for termination of parental rights. The court need only find that the relinquishment or termination is in the child's best interest.
- (6) There is a presumption that voluntary relinquishment or consent for termination of parental rights is not in the child's best interest where it appears to the court that the primary purpose is to avoid a financial support obligation. The presumption may be rebutted, however, if the court finds the relinquishment or consent to termination of parental rights will facilitate the establishment of stability and permanency for the child.
- (7) Upon granting a voluntary relinquishment the court may make orders relating to the child's care and welfare that the court considers to be in the child's best interest.

Renumbered and Amended by Chapter 3, 2008 General Session

78A-6-515 Mental health therapist.

- (1) When a mental health practitioner is to be appointed in a parental rights action to evaluate the mental health of a parent or a child, or to provide mental health services to a parent or a child, the court:
 - (a) may appoint any mental health therapist, as defined in Section 58-60-102, which the court finds to be qualified;
 - (b) may not refuse to appoint a mental health therapist for the reason that the therapist's recommendations in another case have not followed the recommendations of the Division of Child and Family Services or the Office of Guardian Ad Litem; and
 - (c) shall give strong consideration to the parent's or guardian's wishes regarding the selection of a mental health therapist.
- (2) This section applies to all juvenile court proceedings involving:
 - (a) parents and children; or
 - (b) the Division of Child and Family Services.

Amended by Chapter 120, 2012 General Session

