

Effective 9/1/2021

**Part 1
General Provisions**

80-4-102 Definitions.

As used in this chapter:

- (1) "Division" means the Division of Child and Family Services created in Section 80-2-201.
- (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 to return the child to the home.
- (3) "Former parent" means an individual whose legal parental rights were terminated under this chapter.
- (4) "Petition to restore parental rights" means a petition filed in accordance with this chapter to restore the rights of a parent with regard to a child.
- (5) "Petition for termination of parental rights" means a petition filed in accordance with this chapter to terminate the parental rights of a parent.
- (6) "Temporary custody" means the same as that term is defined in Section 80-2-102.

Amended by Chapter 335, 2022 General Session

80-4-103 Nature of the proceedings -- Rules of procedure -- Burden of proof.

- (1) The proceedings under this chapter are civil in nature and are governed by the Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure.
- (2) The juvenile court shall:
 - (a) in all cases filed under this chapter require the petitioner to establish the facts by clear and convincing evidence;
 - (b) give full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent; and
 - (c) if a parent is found, by reason of the parent's conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this chapter, consider the welfare and best interest of the child of paramount importance in determining whether to terminate parental rights.

Enacted by Chapter 261, 2021 General Session

80-4-104 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 juvenile court shall provide a fundamentally fair process to a parent if a party moves to terminate the parent's parental rights.
- (3) If the party moving to terminate parental rights is a governmental entity, the juvenile 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)
 - (a) 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:
 - (i) a parent may fail to be a model parent; or
 - (ii) the parent's child is placed in the temporary custody of the state.
 - (b) The juvenile 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) Before 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 juvenile 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 juvenile 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)
 - (a) The state recognizes that:
 - (i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline the parent's child; and
 - (ii) the state's role is secondary and supportive to the primary role of a parent.
 - (b) It is the public policy of this state that a parent retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's child.
 - (c) 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 chapter 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)
 - (a) Wherever possible, family life should be strengthened and preserved, but if a parent is found, by reason of the parent's conduct or condition, to be unfit or incompetent based upon any of the grounds for termination described in this part, the juvenile 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.

- (b) In determining whether termination is in the best interest of the child, and in finding, based on the totality of the circumstances, that termination of parental rights, from the child's point of view, is strictly necessary to promote the child's best interest, the juvenile court shall consider, among other relevant factors, whether:
 - (i) sufficient efforts were dedicated to reunification in accordance with Section 80-4-301; and
 - (ii) pursuant to Section 80-3-302, the efforts to place the child with a relative who has, or is willing to come forward to care for the child, were given due weight.

Amended by Chapter 293, 2024 General Session

80-4-105 Effect of decree.

- (1) An order for the termination of parental rights 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 under this chapter may not disentitle a child to any benefit due to the child from any third person, including any Indian tribe, agency, state, or the United States.
- (3) Except as provided in Sections 80-4-401 and 80-4-402, after the termination of a parent's parental rights, the former parent:
 - (a) is not entitled to any notice of proceedings for the adoption of the child; and
 - (b) does not have any right to object to the adoption or to participate in any other placement proceedings.
- (4) An order terminating the rights of a parent, guardian, or custodian does not expire with termination of the jurisdiction of the juvenile court.

Amended by Chapter 334, 2022 General Session

80-4-106 Individuals entitled to be present at proceedings -- Legal representation -- Attorney general responsibilities.

- (1)
 - (a) The parties shall be advised of the parties' right to counsel, including the appointment of counsel for a parent or guardian facing any action initiated by a private party under this chapter or under Section 78B-6-112 for termination of parental rights.
 - (b) If a parent or guardian is the subject of a petition for the termination of parental rights, the juvenile court shall:
 - (i) appoint an indigent defense service provider for a parent or guardian determined to be an indigent individual in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel; and
 - (ii) order indigent defense services for the parent or guardian who is determined to be an indigent individual in accordance with Title 78B, Chapter 22, Part 2, Appointment of Counsel.
 - (c) In any action under this chapter, a guardian ad litem, as defined in Section 78A-2-801, shall represent the child in accordance with Sections 78A-2-803 and 80-3-104.
- (2) Subject to Section 67-5-17 and the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall, in accordance with Section 80-2-303, enforce this chapter, Chapter 2, Child Welfare Services, and Chapter 2a, Removal and Protective Custody of a Child, relating to the termination of parental rights.

- (3)
 - (a) The juvenile court shall admit any individual to a hearing unless the juvenile court makes a finding upon the record that the individual's presence at the hearing would:
 - (i) be detrimental to the best interest of a child who is a party to the proceeding;
 - (ii) impair the fact-finding process; or
 - (iii) be otherwise contrary to the interests of justice.
 - (b) The juvenile court may exclude an individual from a hearing under Subsection (3)(a) on the juvenile court's own motion or by motion of a party to the proceeding.

Amended by Chapter 334, 2022 General Session

80-4-107 Record of proceedings -- Written reports and other materials -- Statements of a child.

- (1) As used in this section, "record of a proceeding" means the same as that term is defined in Section 80-3-106.
- (2) A record of a proceeding under this chapter:
 - (a) shall be taken in accordance with Section 80-3-106; and
 - (b) may be requested for release as described in Section 80-3-106.
- (3)
 - (a) For purposes of determining proper disposition of a child in hearings upon a petition for termination of parental rights, written reports and other material relating to the child's mental, physical, and social history and condition may be:
 - (i) received in evidence; and
 - (ii) considered by the court along with other evidence.
 - (b) The court may require that an individual who wrote a report or prepared the material under Subsection (3)(a) to appear as a witness if the individual is reasonably available.
- (4) For the purpose of establishing abuse, neglect, or dependency under this chapter, the juvenile court may, in the juvenile court's discretion, consider evidence of statements made by a child under eight years old to an individual in a trust relationship.

Amended by Chapter 334, 2022 General Session

80-4-108 Physical or mental health examination during proceedings.

- (1) In a proceeding under this chapter, the juvenile court may appoint any mental health therapist, as defined in Section 58-60-102, who the juvenile court finds to be qualified to:
 - (a) evaluate the mental health of, or provide mental health services to, the child; or
 - (b) after notice and a hearing set for the specific purpose, evaluate the mental health of a parent, or provide mental health services to a parent, if the juvenile court finds from the evidence presented at the hearing that the parent's mental or emotional condition may be a factor in the parent's unfitness.
- (2) The juvenile court:
 - (a) may not refuse to appoint a mental health therapist under Subsection (1) for the reason that the therapist's recommendations in another case did not follow the recommendations of the division or the Office of Guardian Ad Litem; and
 - (b) shall give strong consideration to the parent's or guardian's wishes regarding the selection of a mental health therapist.
- (3) In a proceeding under this chapter, the juvenile court may appoint a physician, or a physician assistant, who the court finds to be qualified to:

- (a) physically examine the child; or
 - (b) after notice and a hearing set for a specific purpose, physically examine the parent if the juvenile court finds from the evidence presented at the hearing that the parent's physical condition may be a factor in causing the parent's unfitness.
- (4) The division shall, with regard to a child in the division's custody:
- (a) take reasonable measures to notify a parent of any non-emergency health treatment or care scheduled for a child;
 - (b) include the parent as fully as possible in making health care decisions for the child;
 - (c) defer to the parent's reasonable and informed decisions regarding the child's health care to the extent that the child's health and well-being are not unreasonably compromised by the parent's decision; and
 - (d) notify the parent of the child within five business days after the day on which the child receives emergency health care or treatment.
- (5) An examination conducted in accordance with Subsection (1) or (2) is not a privileged communication under Utah Rules of Evidence, Rule 506(d)(3), and is exempt from the general rule of privilege.
- (6) This section applies to all juvenile court proceedings under this chapter involving:
- (a) parents and children; or
 - (b) the division.

Renumbered and Amended by Chapter 261, 2021 General Session

80-4-109 Consideration of cannabis during proceedings.

- (1) As used in this section:
- (a) "Cannabis" means the same as that term is defined in Section 26B-4-201.
 - (b) "Cannabis product" means the same as that term is defined in Section 26B-4-201.
 - (c)
 - (i) "Chronic" means repeated or patterned.
 - (ii) "Chronic" does not mean an isolated incident.
 - (d) "Directions of use" means the same as that term is defined in Section 26B-4-201.
 - (e) "Dosing guidelines" means the same as that term is defined in Section 26B-4-201.
 - (f) "Medical cannabis" means the same as that term is defined in Section 26B-4-201.
 - (g) "Medical cannabis cardholder" means the same as that term is defined in Section 26B-4-201.
 - (h) "Qualified medical provider" means the same as that term is defined in Section 26B-4-201.
- (2) In a proceeding under this chapter in which the juvenile court makes a finding, determination, or otherwise considers an individual's possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the juvenile court may not consider or treat the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance if:
- (a) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies;
 - (b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or
 - (c)
 - (i) the individual's possession or use complies with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; and
 - (ii) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's qualified medical provider or through a consultation described in Subsection 26B-4-230(5).

- (3) In a proceeding under this chapter, a parent's or guardian's use of cannabis or a cannabis product is not abuse or neglect of a child unless there is evidence showing that:
 - (a) the child is harmed because of the child's inhalation or ingestion of cannabis, or because of cannabis being introduced to the child's body in another manner; or
 - (b) the child is at an unreasonable risk of harm because of chronic inhalation or ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.
- (4) Unless there is harm or an unreasonable risk of harm to the child as described in Subsection (3), a parent's or guardian's use of medical cannabis or a cannabis product is not contrary to the best interests of a child if:
 - (a) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's possession or use complies with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, and there is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates from the directions of use and dosing guidelines determined by the parent's or guardian's qualified medical provider or through a consultation described in Subsection 26B-4-230(5); or
 - (b) before January 1, 2021, the parent's or guardian's possession or use complies with Subsection 58-37-3.7(2) or (3).
- (5) Subsection (3) does not prohibit a finding of abuse or neglect of a child and Subsection (3) does not prohibit a finding that a parent's or guardian's use of medical cannabis or a cannabis product is contrary to the best interests of a child, if there is evidence showing a nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior that would separately constitute abuse or neglect of the child.

Amended by Chapter 273, 2023 General Session

Amended by Chapter 317, 2023 General Session

Amended by Chapter 330, 2023 General Session

Amended by Chapter 330, 2023 General Session, (Coordination Clause)