

**Effective 9/1/2021**

**Chapter 4  
Termination and Restoration of Parental Rights**

**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 that termination of parental rights, from the child's point of view, is strictly necessary, 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) the efforts to place the child with kin who have, or are willing to come forward to care for the child, were given due weight.

Renumbered and Amended by Chapter 261, 2021 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)

## **Part 2**

### **Petition for Termination of Parental Rights**

#### **80-4-201 Petition -- Who may file -- Dismissal.**

- (1) Any interested party, including a foster parent, may file a petition for termination of parental rights.
- (2) The attorney general shall file a petition for termination of parental rights under this chapter on behalf of the division.
- (3) The juvenile court may dismiss a petition for termination of parental rights at any stage of the proceedings.

Renumbered and Amended by Chapter 261, 2021 General Session

#### **80-4-202 Contents of petition.**

- (1) A petition for termination of parental rights shall include, to the best information or belief of the petitioner:
  - (a) the information required by Utah Rules of Juvenile Procedure, Rule 17;
  - (b) the grounds on which termination of parental rights is sought, in accordance with Section 80-4-301; and
  - (c) the names and addresses of the individuals or the authorized agency to whom legal custody or guardianship of the child might be transferred.
- (2) The petitioner shall attach a copy of a relinquishment or consent, if any, previously executed by the parent or parents to the petition described in Subsection (1).

Renumbered and Amended by Chapter 261, 2021 General Session

**80-4-203 Mandatory petition for termination of parental rights.**

- (1) For purposes of this section, "abandoned infant" means a child who is 12 months old or younger and whose parent or parents:
  - (a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;
  - (b) have failed to:
    - (i) maintain physical custody; and
    - (ii) exhibit the normal interest of a natural parent without just cause; or
  - (c) are unwilling to have physical custody of the child.
- (2) Except as provided in Subsection (3), notwithstanding any other provision of this chapter, Chapter 2, Child Welfare Services, or Chapter 2a, Removal and Protective Custody of a Child, the division shall file a petition for termination of parental rights with regard to:
  - (a) an abandoned infant; or
  - (b) the child of a parent, whenever a court has determined that the parent has:
    - (i) committed murder or child abuse homicide of another child of that parent;
    - (ii) committed manslaughter of another child of that parent;
    - (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or
    - (iv) committed a felony assault or abuse that results in serious physical injury to:
      - (A) another child of that parent; or
      - (B) the other parent of the child.
- (3) The division is not required to file a petition for termination of parental rights under Subsection (2) if:
  - (a) the child is being cared for by a relative;
  - (b) the division has:
    - (i) documented in the child's child and family plan a compelling reason for determining that filing a petition for termination of parental rights is not in the child's best interest; and
    - (ii) made that child and family plan available to the juvenile court for the juvenile court's review; or
  - (c)
    - (i) the juvenile court has previously determined, in accordance with the provisions and limitations of Sections 80-2a-201, 80-2a-302, 80-3-301, and 80-3-406, that reasonable efforts to reunify the child with the child's parent or parents were required; and
    - (ii) the division has not provided, within the time period specified in the child and family plan, services that had been determined to be necessary for the safe return of the child.

Amended by Chapter 335, 2022 General Session

**80-4-204 Notice of petition.**

- (1)
  - (a) After a petition for termination of parental rights is filed, notice shall:
    - (i) be provided to the parents, the guardian, the individual or agency having legal custody of the child, and any individual acting in loco parentis to the child; and
    - (ii) indicate the:
      - (A) nature of the petition;
      - (B) time and place of the hearing;
      - (C) right to counsel; and
      - (D) right to the appointment of counsel for a party whom the juvenile court determines is indigent and at risk of losing the party's parental rights.
  - (b) The notice described in Subsection (1)(a), or a separate notice subsequently issued, shall contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceedings.
- (2) The juvenile court shall hold a hearing specifically on the question of termination of parental rights no sooner than 10 days after the day on which the notice described in Subsection (1) is served.

Renumbered and Amended by Chapter 261, 2021 General Session

**80-4-205 Expedited hearing for temporary custody.**

- (1) At any time after a petition for termination of parental rights is filed, the juvenile court may make an order in accordance with this chapter:
  - (a) providing for temporary custody of the child who is the subject of the petition; or
  - (b) that the division provide protective services to the child who is the subject of the petition if the juvenile court determines that:
    - (i) the child is at risk of being removed from the child's home due to abuse and neglect; and
    - (ii) the provision of protective services may make the removal described in Subsection (1)(b)(i) unnecessary.
- (2)
  - (a) The juvenile court shall hold an expedited hearing to determine whether a child should be placed in temporary custody if:
    - (i) a person files a petition for termination of parental rights;
    - (ii) a party to the proceeding files a motion for expedited placement in temporary custody; and
    - (iii) notice of the hearing described in this Subsection (1)(a) is served consistent with the requirements for notice of a shelter hearing under Section 80-3-301.
  - (b) The hearing described in Subsection (2)(a):
    - (i) shall be held within 72 hours, excluding weekends and holidays, after the time in which the motion described in Subsection (2)(a)(ii) is filed; and
    - (ii) shall be considered a shelter hearing under Section 80-3-301 and Utah Rules of Juvenile Procedure, Rule 13.
- (3)
  - (a) The hearing and notice described in Subsection (1) are subject to:
    - (i) Section 80-3-301;
    - (ii) Section 80-3-302; and
    - (iii) the Utah Rules of Juvenile Procedure.



- (b) After the hearing described in Subsection (1), the juvenile court may order a child placed in the temporary custody of the division.

Enacted by Chapter 261, 2021 General Session

**80-4-206 Mediation.**

If a petition for termination of parental rights is filed, or if the matter is referred to the juvenile court under Subsection 78A-6-104(1)(a)(iii), the juvenile court may require the parties to participate in mediation in accordance with Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

Enacted by Chapter 261, 2021 General Session

**80-4-207 Modification of petition -- Continuance.**

- (1) When it appears that evidence presented in a proceeding under this chapter points to material facts not alleged in the petition for termination of parental rights, the juvenile court may consider the additional or different matters raised by the evidence if the parties consent.
- (2) The juvenile court, by a motion of any interested party or on the juvenile court's own motion, shall direct that the petition for termination of parental rights be amended to conform to the evidence described in Subsection (1).
- (3) If the amendment described in Subsection (2) results in a substantial departure from the facts originally alleged in the petition for the termination of parental rights, the juvenile court shall grant a continuance as justice may require in accordance with Utah Rules of Juvenile Procedure, Rule 54.

Enacted by Chapter 261, 2021 General Session

**Part 3**  
**Termination and Post-termination of Parental Rights**

**80-4-301 Grounds for termination of parental rights -- Findings regarding reasonable efforts by division.**

- (1) Subject to the protections and requirements of Section 80-4-104, and if the juvenile court finds termination of parental rights, from the child's point of view, is strictly necessary, the juvenile court may terminate all parental rights with respect to the parent if the juvenile 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 juvenile court or the division;
    - (ii) that the parent has substantially neglected, willfully 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, in accordance with Part 5, Safe Relinquishment of a Newborn Child.
- (2) The juvenile 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 juvenile court has directed the division to provide reunification services to a parent, the juvenile court must find that the division made reasonable efforts to provide those services before the juvenile court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).
  - (b) Notwithstanding Subsection (3)(a), the juvenile 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 juvenile 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 335, 2022 General Session

**80-4-302 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 Section 80-4-203.
- (2) In determining whether a parent or parents are unfit or have neglected a child the juvenile court shall consider:
- (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;
  - (g) whether the parent has intentionally exposed the child to pornography or material harmful to a minor, as defined in Section 76-10-1201; or
  - (h) any other circumstance, conduct, or condition that the court considers relevant in the determination of whether a parent or parents are unfit or have neglected the child.
- (3) Notwithstanding Subsection (2)(c), the juvenile court may not discriminate against a parent because of or otherwise consider the parent's lawful possession or consumption of cannabis in a medicinal dosage form, a cannabis product, as those terms are defined in Section 26B-4-201 or a medical cannabis device, in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.
- (4) 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.
- (5)
- (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 (5)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.
- (6) 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.
- (7) The following circumstances are 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 330, 2023 General Session

**80-4-303 Specific considerations when child is not in physical custody of parent.**

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

- (b) the effort the child's parent or parents have made to adjust the parent's or parents' circumstances, conduct, or conditions to make it in the child's best interest to return the child to the child's home after a reasonable length of time, including:
    - (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; and
  - (c) any other factor that the juvenile court considers relevant in the determination of whether to terminate parental rights.
- (2) For purposes of this section, the juvenile court shall disregard incidental conduct, contributions, contacts, and communications.

Renumbered and Amended by Chapter 261, 2021 General Session

**80-4-304 Specific considerations when child is 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 chapter regarding the child, with an ultimate goal of having the child's foster parent or parents adopt the child, the juvenile court shall consider:

- (1) whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family;
- (2) whether the foster family is able and willing permanently to treat the child as a member of the family;
- (3) the love, affection, and other emotional ties existing between the child and the parents, and the child's ties with the foster family;
- (4) 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;
- (5) the length of time the child has lived in a stable, satisfactory foster home and the desirability of the child continuing to live in that environment;
- (6) the permanence as a family unit of the foster family; and
- (7) any other factor that the juvenile court considers relevant to a particular placement of a child.

Renumbered and Amended by Chapter 261, 2021 General Session

**80-4-305 Court disposition of child upon termination of parental rights -- Posttermination reunification.**

- (1) Except as provided in Subsection (7), 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 who is an Indian child, an extended family member as defined in the Indian Child Welfare Act, 25 U.S.C. Sec. 1903.
- (2) Upon entry of an order under this chapter, the juvenile court may:
  - (a) place the child in the legal custody and guardianship of a child-placing agency or the division for adoption; or
  - (b) make any other disposition of the child authorized under Section 80-3-405 .
- (3) Subject to Subsections (4) and (6), the division shall place all adoptable children placed in the custody of the division for adoption.

- (4) If the parental rights of all parents of an adoptable child placed in the custody of the division are terminated and a suitable adoptive placement is not already available, the juvenile 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 is a relative who is 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 the relative unless the juvenile court finds that adoption by the relative is not in the best interest of the child.
- (5) If an individual who is not a relative of the child desires to adopt the child, the juvenile court shall, before entering an order for adoption of the child, determine whether due weight was given to the relative's preferential consideration under Subsection 80-3-302(7)(a)(i).
- (6) This section does not guarantee that a relative will be permitted to adopt the child.
- (7) A parent whose rights are terminated under this chapter, or a relative of the child, as defined by Section 80-3-102 , 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 287, 2022 General Session

Amended by Chapter 334, 2022 General Session

**80-4-306 Review following termination.**

- (1) At the conclusion of the hearing in which the juvenile court orders termination of parental rights, the juvenile court shall order that a review hearing be held within 90 days after the day on which parental rights are terminated if the child has not been permanently placed.
- (2) At the review hearing described in Subsection (1):
  - (a) the agency or individual vested with custody of the child shall report to the juvenile court regarding the plan for permanent placement of the child; and
  - (b) the guardian ad litem shall make recommendations to the juvenile court, based on an independent investigation, for disposition meeting the best interests of the child.
- (3) The juvenile 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 is accomplished.

Renumbered and Amended by Chapter 261, 2021 General Session

**80-4-307 Voluntary relinquishment -- Irrevocable.**

- (1) The individual consenting to termination of parental rights or voluntarily relinquishing parental rights shall sign or confirm the consent or relinquishment under oath before:
  - (a) 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 individual executing the consent or relinquishment has read and understands the consent or relinquishment and has signed the consent or relinquishment freely and voluntarily.
- (4) A voluntary relinquishment or consent for termination of parental rights is effective when the voluntary relinquishment or consent is signed and may not be revoked.
- (5)
  - (a) The requirements and processes described in Section 80-4-104, Sections 80-4-301 through 80-4-304, and Part 2, Petition for Termination of Parental Rights, do not apply to a voluntary relinquishment or consent for termination of parental rights.
  - (b) When determining voluntary relinquishment or consent for termination of parental rights, the juvenile court need only find that the relinquishment or termination is in the child's best interest.
- (6)
  - (a) 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 juvenile court that the primary purpose for relinquishment or consent for termination is to avoid a financial support obligation.
  - (b) The presumption described in Subsection (6)(a) may be rebutted if the juvenile 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 juvenile court may make orders relating to the child's care and welfare that the juvenile court considers to be in the child's best interest.

Amended by Chapter 274, 2022 General Session

## **Part 4**

### **Restoration of Parental Rights**

#### **80-4-401 Petition to restore parental rights -- Division duties.**

- (1) A child, who is 12 years old or older, or an authorized representative acting on behalf of a child of any age, may file a petition to restore parental rights if:
  - (a) 24 months have passed since the day on which the juvenile court ordered termination of the former parent's parental rights; and
  - (b) the child:
    - (i) has not been adopted and is not in an adoptive placement, or is unlikely to be adopted before the child is 18 years old; or
    - (ii) was previously adopted following a termination of parental rights, but the adoption failed and the child was returned to the custody of the division.
- (2) The petition to restore parental rights shall be:
  - (a) filed in the juvenile court that previously terminated parental rights; and
  - (b) served on the division.

- (3) The division shall notify and inform a child who is 12 years old or older and who qualifies for restoration of parental rights under Subsection (1) that the child is eligible to file a petition to restore parental rights under this part.
- (4) Upon the receipt of a petition to restore parental rights, filed by a child or an authorized representative acting on behalf of a child, the division shall:
  - (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 (4)(a), notify the former parent of:
    - (i) the legal effects of restoration; and
    - (ii) the time and date of the hearing on the petition to restore parental rights.
- (5) The juvenile court shall set a hearing on the petition to restore parental rights at least 30 days, but no more than 60 days, after the day on which the petition to restore parental rights is filed with the juvenile court.
- (6) Before the hearing described in Subsection (5), the division may submit a confidential report to the juvenile court 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 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
  - (f) any other information the division reasonably considers appropriate and determinative.
- (7)
  - (a) A former parent who remedies the circumstances that resulted in the termination of the former parent's parental rights and who is capable of exercising proper and effective parental care, shall notify the division that if the circumstances described in Subsection (1) are established, the former parent desires and requests to have the former parent's parental rights restored.
  - (b) The former parent's request to the division shall be fully and fairly considered by the division for appropriate submittal to the court.

Renumbered and Amended by Chapter 261, 2021 General Session

**80-4-402 Hearing on petition to restore parental rights.**

- (1) The juvenile court may restore a parent's parental rights if:
  - (a) the child meets the requirements of Subsection 80-4-401(1);
  - (b) considering the age and maturity of the child, the child consents to the restoration;
  - (c) the former parent consents to the restoration; and
  - (d) the juvenile court finds by clear and convincing evidence that restoration is in the best interest of the child.
- (2) In determining whether reunification under this section is appropriate and in the best interest of the child, the juvenile court shall consider:
  - (a) whether the former parent has been sufficiently rehabilitated from the behavior that resulted in the termination of parental rights;
  - (b) extended family support for the former parent; and
  - (c) other material changes of circumstances, if any, that may have occurred that warrant the granting of the motion.

- (3) At the hearing on a petition to restore parental rights, if the former parent consents and if the juvenile court finds by clear and convincing evidence that it is in the best interest of the child, the juvenile court may:
  - (a) allow contact between the former parent and the 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 reevaluated after the child has been placed with the former parent for six months; or
  - (c) restore the parental rights of the parent.
- (4) If the juvenile court orders the child to be placed in the physical custody of the former parent under Subsection (3), the juvenile 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.

Renumbered and Amended by Chapter 261, 2021 General Session

## **Part 5**

### **Safe Relinquishment of a Newborn Child**

#### **80-4-501 Definitions.**

As used in this part:

- (1) "Hospital" means a general acute hospital, as that term is defined in Section 26B-2-201, that is:
  - (a) equipped with an emergency room;
  - (b) open 24 hours a day, seven days a week; and
  - (c) employs full-time health care professionals who have emergency medical services training.
- (2) "Newborn child" means a child who is approximately 30 days old or younger, as determined within a reasonable degree of medical certainty.

Amended by Chapter 330, 2023 General Session

#### **80-4-502 Safe relinquishment of a newborn child -- Termination of parental rights -- Affirmative defense.**

- (1)
  - (a) A parent or a parent's designee may safely relinquish a newborn child at a hospital in accordance with this part and retain complete anonymity, so long as the newborn child has not been subject to abuse or neglect.
  - (b) Safe relinquishment of a newborn child who has not otherwise been subject to abuse or neglect shall not, in and of itself, constitute neglect, and the newborn child may not be considered a neglected child so long as the relinquishment is carried out in substantial compliance with this part.
- (2)
  - (a) Personnel employed by a hospital shall accept a newborn child who is relinquished under this part, and may presume that the individual relinquishing is the newborn child's parent or the parent's designee.



- (b) The person receiving the newborn child may request information regarding the parent and newborn child's medical histories, and identifying information regarding the nonrelinquishing parent of the newborn child.
  - (c) If the newborn child's parent or the parent's designee provides the person receiving the newborn child with any of the information described in Subsection (2)(b) or any other personal items, the person shall provide the information or personal items to the division.
  - (d) Personnel employed by the hospital shall:
    - (i) provide any necessary medical care to the newborn child;
    - (ii) notify the division of receipt of the newborn child as soon as possible, but no later than 24 hours after receipt of the newborn child; and
    - (iii) prepare a birth certificate or foundling birth certificate if parentage is unknown for the newborn child and file the certificate with the Office of Vital Records and Statistics within the Department of Health.
  - (e) A hospital and personnel employed by a hospital are immune from any civil or criminal liability arising from accepting a newborn child if the personnel employed by the hospital substantially comply with the provisions of this part and medical treatment is administered according to standard medical practice.
- (3) The division shall assume care and protective custody of the newborn child immediately upon notice from the hospital.
- (4) So long as the division determines there is no abuse or neglect of the newborn child, neither the newborn child nor the child's parents are subject to:
- (a) the investigation provisions contained in Section 80-2-701; or
  - (b) the provisions of Chapter 3, Abuse, Neglect, and Dependency Proceedings.
- (5)
- (a) Unless identifying information relating to the nonrelinquishing parent of the newborn child is provided, the division shall:
    - (i) work with local law enforcement and the Bureau of Criminal Identification within the Department of Public Safety in an effort to ensure that the newborn child has not been identified as a missing child;
    - (ii) immediately place or contract for placement of the newborn child in a potential adoptive home and, within 10 days after the day on which the child is received, file a petition for termination of parental rights in accordance with this chapter;
    - (iii) direct the Office of Vital Records and Statistics within the Department of Health to conduct a search for:
      - (A) a birth certificate for the newborn child; and
      - (B) unmarried biological fathers in the registry maintained by the Office of Vital Records and Statistics in accordance with Title 78B, Chapter 15, Part 4, Registry; and
    - (iv) provide notice to each potential father identified on the registry described in Subsection (5)(a)(iii) in accordance with Title 78B, Chapter 15, Part 4, Registry.
  - (b)
    - (i) If no individual has affirmatively identified himself or herself within two weeks after the day on which notice under Subsection (5)(a)(iv) is complete and established paternity by scientific testing within as expeditious a time frame as practicable, a hearing on the petition for termination of parental rights shall be scheduled and notice provided in accordance with this chapter.
    - (ii) If a nonrelinquishing parent is not identified, relinquishment of a newborn child under this part is considered grounds for termination of parental rights of both the relinquishing and nonrelinquishing parents under Section 80-4-301.

- (6) If at any time before the day on which the newborn child is adopted, the juvenile court finds it is in the best interest of the newborn child, the court shall deny the petition for termination of parental rights.
- (7) The division shall provide for, or contract with a child-placing agency to provide for expeditious adoption of the newborn child.
- (8) So long as the individual relinquishing a newborn child is the newborn child's parent or designee, and there is no abuse or neglect, safe relinquishment of a newborn child in substantial compliance with this part is an affirmative defense to any potential criminal liability for abandonment or neglect relating to the relinquishment.

Amended by Chapter 139, 2023 General Session