

Representative Matt Throckmorton proposes the following substitute bill:

TERMINATION OF PARENTAL RIGHTS

AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Matt Throckmorton

This act modifies the Judicial Code. The act provides that in court districts where there are more juvenile court judges than one, the juvenile court judge assigned to a termination of parental rights case shall be different than the judge assigned to an abuse, neglect, or dependency case with respect to any child whose parent is also the subject of the termination of parental rights petition. The act amends the grounds for termination of parental rights. The act provides that a juvenile court may not terminate parental rights solely because the parent has failed to complete the requirements of a plan. The act provides that in certain cases in which the court has directed the Division of Child and Family Services to provide reunification services, the court must find that the division made diligent efforts to provide those services before the court may terminate the parent's rights. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-4a-802, as enacted by Chapter 134, Laws of Utah 2001

78-3a-407, as last amended by Chapter 134, Laws of Utah 2001

ENACTS:

78-3a-405.5, Utah Code Annotated 1953

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

Section 1. Section **62A-4a-802** is amended to read:

62A-4a-802. Safe relinquishment of a newborn child.



26 (1) (a) A parent or a parent's designee may safely relinquish a newborn child at a hospital
27 in accordance with the provisions of this part and retain complete anonymity, so long as the child
28 has not been subject to abuse or neglect.

29 (b) Safe relinquishment of a newborn child who has not otherwise been subject to abuse
30 or neglect shall not, in and of itself, constitute neglect as defined in ~~[Subsection]~~ Section
31 62A-4a-101~~[(14)(a)(i)]~~, and the child shall not be considered a neglected child, as defined in
32 Section 78-3a-103, so long as the relinquishment is carried out in substantial compliance with the
33 provisions of this part.

34 (2) (a) Personnel employed by a hospital shall accept a newborn child that is relinquished
35 pursuant to the provisions of this part, and may presume that the person relinquishing is the child's
36 parent or the parent's designee.

37 (b) The person receiving the newborn child may request information regarding the parent
38 and newborn child's medical histories, and identifying information regarding the nonrelinquishing
39 parent of the child.

40 (c) The division shall provide hospitals with medical history forms and stamped envelopes
41 addressed to the division that a hospital may provide to a person relinquishing a child pursuant to
42 the provisions of this part.

43 (d) Personnel employed by a hospital shall:

44 (i) provide any necessary medical care to the child and notify the division as soon as
45 possible, but no later than 24 hours after receipt of the child; and

46 (ii) prepare a birth certificate or foundling birth certificate if parentage is unknown and file
47 with the Office of Vital Records and Statistics.

48 (e) A hospital and personnel employed by a hospital are immune from any civil or criminal
49 liability arising from accepting a newborn child if the personnel employed by the hospital
50 substantially comply with the provisions of this part and medical treatment is administered
51 according to standard medical practice.

52 (3) The division shall assume care and custody of the child immediately upon notice from
53 the hospital.

54 (4) So long as the division determines there is no abuse or neglect of the newborn child,
55 neither the newborn child nor the child's parents are subject to:

56 (a) the provisions of Part 2 of this chapter, Child Welfare Services;

57 (b) the investigation provisions contained in Section 62A-4a-409; or
58 (c) the provisions of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
59 Proceedings.

60 (5) Unless identifying information relating to the nonrelinquishing parent of the newborn
61 child has been provided:

62 (a) the division shall work with local law enforcement and the Bureau of Criminal
63 Identification within the Department of Public Safety in an effort to ensure that the newborn child
64 has not been identified as a missing child;

65 (b) the division shall immediately place or contract for placement of the newborn child in
66 a potential adoptive home and, within ten days after receipt of the child, file a petition for
67 termination of parental rights in accordance with Title 78, Chapter 3a, Part 4, Termination of
68 Parental Rights Act;

69 (c) the division shall direct the Office of Vital Records and Statistics to conduct a search
70 for a birth certificate for the child and an Initiation of Proceedings to Establish Paternity Registry
71 for unmarried biological fathers maintained by the Office of Vital Records and Statistics within
72 the Department of Health and provide notice to each potential father identified on the registry.
73 Notice of termination of parental rights proceedings shall be provided in the same manner as is
74 utilized for any other termination proceeding in which the identity of the child's parents is
75 unknown;

76 (d) if no person has affirmatively identified himself or herself within two weeks after
77 notice is complete and established paternity by scientific testing within as expeditious a time frame
78 as practicable, a hearing on the petition for termination of parental rights shall be scheduled; and

79 (e) if a nonrelinquishing parent is not identified, relinquishment of a newborn child
80 pursuant to the provisions of this part shall be considered grounds for termination of parental rights
81 of both the relinquishing and nonrelinquishing parents under ~~[Subsection]~~ Section 78-3a-407~~(9)~~.

82 (6) If at any time prior to the adoption, a court finds it is in the best interest of the child,
83 the court shall deny the petition for termination of parental rights.

84 (7) The division shall provide for, or contract with a licensed child-placing agency to
85 provide for expeditious adoption of the newborn child.

86 (8) So long as the person relinquishing a newborn child is the child's parent or designee,
87 and there is no abuse or neglect, safe relinquishment of a newborn child in substantial compliance

88 with the provisions of this part is an affirmative defense to any potential criminal liability for
89 abandonment or neglect relating to that relinquishment.

90 Section 2. Section **78-3a-405.5** is enacted to read:

91 **78-3a-405.5. Assigned judge.**

92 In court districts where there are more juvenile court judges than one, the juvenile court
93 judge assigned to a termination of parental rights case filed under this part shall be different than
94 the juvenile court judge assigned to an abuse, neglect, or dependency case under Part 3, Abuse,
95 Neglect, and Dependency Proceedings, with respect to any child whose parent is also the subject
96 of the termination of parental rights petition.

97 Section 3. Section **78-3a-407** is amended to read:

98 **78-3a-407. Grounds for termination of parental rights.**

99 (1) The court may terminate all parental rights with respect to [~~one or both parents~~] a
100 parent if it finds any one of the following:

101 [~~(1)~~] (a) that the parent [~~or parents have~~] has abandoned the child;

102 [~~(2)~~] (b) that the parent [~~or parents have~~] has neglected or abused the child;

103 [~~(3)~~] (c) that the parent [~~or parents are~~] is unfit or incompetent;

104 [~~(4)~~] (d) that the child is being cared for in an out-of-home placement under the
105 supervision of the court or the division [~~that the division or other responsible agency has made~~
106 ~~a diligent effort to provide appropriate services~~] and the parent has substantially neglected, wilfully
107 refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in
108 an out-of-home placement, and there is a substantial likelihood that the parent will not be capable
109 of exercising proper and effective parental care in the near future;

110 [~~(5)~~] (e) failure of parental adjustment, as defined in this chapter;

111 [~~(6)~~] (f) that only token efforts have been made by the parent [~~or parents~~]:

112 [~~(a)~~] (i) to support or communicate with the child;

113 [~~(b)~~] (ii) to prevent neglect of the child;

114 [~~(c)~~] (iii) to eliminate the risk of serious physical, mental, or emotional abuse of the child;

115 or

116 [~~(d)~~] (iv) to avoid being an unfit parent;

117 [~~(7)~~] (g) the parent [~~or parents have~~] has voluntarily relinquished [~~their~~] the parent's

118 parental rights to the child, and the court finds that termination is in the child's best interest;

119 ~~[(8)]~~ (h) the parent ~~[or parents]~~, after a period of trial during which the child was returned
120 to live in ~~[his]~~ the child's own home, substantially and continuously or repeatedly refused or failed
121 to give the child proper parental care and protection; or

122 ~~[(9)]~~ (i) the terms and conditions of safe relinquishment of a newborn child have been
123 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of Newborn Child.

124 (2) Notwithstanding the provisions of Subsection (1), the court may not terminate the
125 parental rights of a parent solely because the parent has failed to complete the requirements of a
126 plan.

127 (3) (a) In any case in which the court has directed the division to provide reunification
128 services to a parent, the court must find that the division made ~~h~~ **[diligent] REASONABLE h** efforts
128a to provide those
129 services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f),
130 or (h).

131 (b) The court is not required to make the finding under Subsection (3)(a) before
132 terminating a parent's rights under Subsection (1)(b) based upon abuse or neglect that occurred
133 subsequent to adjudication.