

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 requires a juvenile court to make certain findings regarding a treatment plan and reunification services \hat{h} . \hat{h} The act amends the grounds

for termination of parental rights. The act provides that a court may not terminate parental rights for failure of a parent to complete the requirements of a treatment plan. The act provides \hat{h} [than] that \hat{h} 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 reasonable 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-311, as last amended by Chapters 21 and 153, Laws of Utah 2001

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

ENACTS:

78-3a-311.5, 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.

(1) (a) A parent or a parent's designee may safely relinquish a newborn child at a hospital in accordance with the provisions of this part and retain complete anonymity, so long as the child



26 has not been subject to abuse or neglect.

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

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

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

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

41 (d) Personnel employed by a hospital shall:

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

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

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

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

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

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

55 (b) the investigation provisions contained in Section 62A-4a-409; or

56 (c) the provisions of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency

57 Proceedings.

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

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

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

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

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

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

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

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

84 (8) So long as the person relinquishing a newborn child is the child's parent or designee,
85 and there is no abuse or neglect, safe relinquishment of a newborn child in substantial compliance
86 with the provisions of this part is an affirmative defense to any potential criminal liability for
87 abandonment or neglect relating to that relinquishment.

88 Section 2. Section **78-3a-311** is amended to read:

89 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

90 (1) The court may make any of the dispositions described in Section 78-3a-118, place the
91 child in the custody or guardianship of any individual or public or private entity or agency, order
92 protective supervision, family preservation, medical or mental health treatment, or other services.

93 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing, and
94 that the minor remain in the custody of the Division of Child and Family Services, it shall first
95 establish a primary permanency goal for the minor and determine whether, in view of the primary
96 permanency goal, reunification services are appropriate for the child and the child's family,
97 pursuant to Subsection (3).

98 (ii) When the court determines that reunification services are appropriate for the child and
99 the child's family, the court shall provide for reasonable parent-time with the parent or parents
100 from whose custody the child was removed, unless parent-time is not in the best interest of the
101 child.

102 (iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or
103 neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
104 or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the
105 offending parent or parents. In all cases, the child's health, safety, and welfare shall be the court's
106 paramount concern in determining whether reasonable efforts to reunify should be made.

107 (b) (i) In addition to the primary permanency goal, the court shall establish a concurrent
108 permanency goal. The concurrent permanency goal shall include a representative list of the
109 conditions under which the primary permanency goal will be abandoned in favor of the concurrent
110 permanency goal and an explanation of the effect of abandoning or modifying the primary
111 permanency goal.

112 (ii) A permanency hearing shall be conducted in accordance with Subsection
113 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
114 child's primary permanency goal.

115 (iii) The court may amend a child's primary permanency goal before the establishment of
116 a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the
117 concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at
118 anytime, the court determines that reunification is no longer a child's primary permanency goal,

119 the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the
120 earlier of 30 days of the court's determination or 12 months from the original removal of the child.

121 (c) (i) If the court determines that reunification services are appropriate, it shall order that
122 the division make reasonable efforts to provide services to the ~~minor~~ child and ~~his~~ the child's
123 parent for the purpose of facilitating reunification of the family, for a specified period of time. In
124 providing those services, the child's health, safety, and welfare shall be the division's paramount
125 concern, and the court shall so order.

126 (ii) The court shall determine whether the services offered or provided by the division
127 under the treatment plan constitute "reasonable efforts" on the part of the division. The court shall
128 also determine and define the responsibilities of the parent under the treatment plan. Those duties
129 and responsibilities shall be identified on the record, for the purpose of assisting in any future
130 determination regarding the provision of reasonable efforts, in accordance with state and federal
131 law.

132 (iii) The time period for reunification services may not exceed 12 months from the date
133 that the child was initially removed from ~~his~~ the child's home. Nothing in this section may be
134 construed to entitle any parent to an entire 12 months of reunification services.

135 (iv) If reunification services have been ordered, the court may terminate those services at
136 any time.

137 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to be
138 inconsistent with the final permanency plan for the child established pursuant to Subsection
139 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance with
140 the permanency plan, and to complete whatever steps are necessary to finalize the permanent
141 placement of the child.

142 (d) Any physical custody of the minor by the parent or a relative during the period
143 described in Subsection (2)(c) does not interrupt the running of the period.

144 (e) (i) If reunification services have been ordered, a permanency hearing shall be
145 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period
146 for reunification services. The permanency hearing shall be held no later than 12 months after the
147 original removal of the child.

148 (ii) If reunification services have not been ordered, a permanency hearing shall be
149 conducted within 30 days, in accordance with Section 78-3a-312.

150 (f) With regard to a child who is 36 months of age or younger at the time the child is
151 initially removed from the home, the court shall:

152 (i) hold a permanency hearing eight months after the date of the initial removal, pursuant
153 to Section 78-3a-312; and

154 (ii) order the discontinuance of those services after eight months from the initial removal
155 of the child from the home if the parent or parents have not made substantial efforts to comply with
156 the treatment plan.

157 (g) With regard to a child in the custody of the division whose parent or parents have been
158 ordered to receive reunification services but who have abandoned that child for a period of six
159 months since the date that reunification services were ordered, the court shall terminate
160 reunification services, and the division shall petition the court for termination of parental rights.

161 (3) (a) Because of the state's interest in and responsibility to protect and provide
162 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
163 parent's interest in receiving reunification services is limited. The court may determine that efforts
164 to reunify a child with ~~his~~ the child's family are not reasonable or appropriate, based on the
165 individual circumstances, and that reunification services should not be provided. In determining
166 "reasonable efforts" to be made with respect to a child, and in making "reasonable efforts," the
167 child's health, safety, and welfare shall be the paramount concern.

168 (b) There is a presumption that reunification services should not be provided to a parent
169 if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

170 (i) the whereabouts of the parents are unknown, based upon a verified affidavit indicating
171 that a reasonably diligent search has failed to locate the parent;

172 (ii) the parent is suffering from a mental illness of such magnitude that it renders him
173 incapable of utilizing reunification services; that finding shall be based on competent evidence
174 from mental health professionals establishing that, even with the provision of services, the parent
175 is unlikely to be capable of adequately caring for the child within 12 months;

176 (iii) the minor has been previously adjudicated as an abused child due to physical or sexual
177 abuse, that following the adjudication the child was removed from the custody of his parent, was
178 subsequently returned to the custody of that parent, and the minor is being removed due to
179 additional physical or sexual abuse;

180 (iv) the parent has caused the death of another child through abuse or neglect or has

181 committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter
182 of a child or child abuse homicide;

183 (v) the minor has suffered severe abuse by the parent or by any person known by the
184 parent, if the parent knew or reasonably should have known that the person was abusing the minor;

185 (vi) the minor has been adjudicated an abused child as a result of severe abuse by the
186 parent, and the court finds that it would not benefit the child to pursue reunification services with
187 the offending parent;

188 (vii) the parent's rights have been terminated with regard to any other child;

189 (viii) the child has been removed from his home on at least two previous occasions and
190 reunification services were offered or provided to the family at those times; or

191 (ix) the parent has abandoned the child for a period of six months or longer; or

192 (x) any other circumstance that the court determines should preclude reunification efforts
193 or services.

194 (4) (a) Failure of the parent to respond to previous services or comply with any previous
195 treatment plan, the fact that the child was abused while the parent was under the influence of drugs
196 or alcohol, a past history of violent behavior, whether a parent continues to live with an individual
197 who abused the child, any patterns of the parent's behavior that have exposed the child to repeated
198 abuse, or testimony by a competent professional that the parent's behavior is unlikely to be
199 successful, shall be considered in determining whether reunification services are appropriate.

200 (b) The court shall also consider whether the parent has expressed an interest in
201 reunification with the child, in determining whether reunification services are appropriate.

202 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
203 whereabouts of a parent become known within six months of the out-of-home placement of the
204 minor, the court may order the division to provide reunification services. The time limits
205 described in Subsection (2), however, are not tolled by the parent's absence.

206 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable services
207 unless it determines that those services would be detrimental to the minor. In determining
208 detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
209 length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of
210 detriment to the child if services are not offered and, for minors ten years of age or older, the
211 minor's attitude toward the implementation of family reunification services, and any other

212 appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month
213 limitation imposed in Subsection (2). Reunification services for an institutionalized parent are
214 subject to the 12-month limitation imposed in Subsection (2), unless the court determines that
215 continued reunification services would be in the child's best interest.

216 (7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv),(v), (vi), (vii), (viii), (ix), or (x), the court
217 does not order reunification services, a permanency hearing shall be conducted within 30 days, in
218 accordance with Section 78-3a-312.

219 Section 3. Section **78-3a-311.5** is enacted to read:

220 **78-3a-311.5. Six-month review hearing -- Court determination regarding reasonable**
221 **efforts by the Division of Child and Family Services and parental compliance with treatment**
222 **plan requirements**

223 If reunification efforts have been ordered by the court, a hearing shall be held no more than
224 six months after initial removal of a child from the child's home, in order for the court to determine
225 whether:

226 (1) the division has provided and is providing "reasonable efforts" to reunify a family, in
227 accordance with the treatment plan established under Section 62A-4a-205; and

228 (2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order to
229 comply with the requirements of the treatment plan.

230 Section 4. Section **78-3a-407** is amended to read:

231 **78-3a-407. Grounds for termination of parental rights.**

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

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

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

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

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

243 ~~[(5)]~~ (e) failure of parental adjustment, as defined in this chapter;
 244 ~~[(6)]~~ (f) that only token efforts have been made by the parent ~~[or parents]~~:
 245 ~~[(a)]~~ (i) to support or communicate with the child;
 246 ~~[(b)]~~ (ii) to prevent neglect of the child;
 247 ~~[(c)]~~ (iii) to eliminate the risk of serious physical, mental, or emotional abuse of the child;

248 or

249 ~~[(d)]~~ (iv) to avoid being an unfit parent;
 250 ~~[(7)]~~ (g) the parent ~~[or parents have]~~ has voluntarily relinquished ~~[their]~~ the parent's
 251 parental rights to the child, and the court finds that termination is in the child's best interest;
 252 ~~[(8)]~~ (h) the parent ~~[or parents]~~, after a period of trial during which the child was returned
 253 to live in ~~[his]~~ the child's own home, substantially and continuously or repeatedly refused or failed
 254 to give the child proper parental care and protection; or
 255 ~~[(9)]~~ (i) the terms and conditions of safe relinquishment of a newborn child have been
 256 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
 257 Child.

258 (2) The court may not terminate the parental rights of a parent because the parent has failed
 259 to complete the requirements of a treatment plan.

260 (3) (a) In any case in which the court has directed the division to provide reunification
 261 services to a parent, the court must find that the division made reasonable efforts to provide those
 262 services before the court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f),
 263 or (h).

264 (b) The court is not required to make the finding under Subsection (3)(a) before
 265 terminating a parent's rights § : (i) § under Subsection (1)(b) based upon abuse or neglect found by the
 266 court to have occurred subsequent to adjudication § ; OR (ii) IF REASONABLE EFFORTS ARE NOT
 266a REQUIRED UNDER FEDERAL LAW § .