

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. 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 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 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 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 as defined in ~~[Subsection]~~ Section 62A-4a-101~~[(14)(a)(i)]~~, and the child shall not be considered a neglected child, as defined in

Section 78-3a-103, so long as the relinquishment is carried out in substantial compliance with the provisions of this part.

(2) (a) Personnel employed by a hospital shall accept a newborn child that is relinquished pursuant to the provisions of this part, and may presume that the person relinquishing is the 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 child.

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

(d) Personnel employed by a hospital shall:

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

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

(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 custody of the 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 provisions of Part 2 of this chapter, Child Welfare Services;

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

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

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

(a) the division shall 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;

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

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

(d) if no person has affirmatively identified himself or herself within two weeks after notice 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

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

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

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

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

abandonment or neglect relating to that relinquishment.

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

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

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

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

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

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

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

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

(iii) The court may amend a child's primary permanency goal before the establishment of a

final permanency plan under Section 78-3a-312. The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at anytime, the court determines that reunification is no longer a child's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the original removal of the child.

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

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

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

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

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

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

(e) (i) If reunification services have been ordered, a permanency hearing shall be conducted

by the court in accordance with Section 78-3a-312 at the expiration of the time period for reunification services. The permanency hearing shall be held no later than 12 months after the original removal of the child.

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

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

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

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

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

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

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

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

(ii) the parent is suffering from a mental illness of such magnitude that it renders him

incapable of utilizing reunification services; that finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;

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

(iv) the parent has caused the death of another child through abuse or neglect or has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide;

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

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

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

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

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

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

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

(b) The court shall also consider whether the parent has expressed an interest in reunification

with the child, in determining whether reunification services are appropriate.

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

(6) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for minors ten years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month limitation imposed in Subsection (2). Reunification services for an institutionalized parent are subject to the 12-month limitation imposed in Subsection (2), unless the court determines that continued reunification services would be in the child's best interest.

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

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

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

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

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

(2) the parent has fulfilled or is fulfilling identified duties and responsibilities in order to

comply with the requirements of the treatment plan.

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

78-3a-407. Grounds for termination of parental rights -- Findings regarding reasonable efforts.

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

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

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

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

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

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

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

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

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

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

or

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

~~[(7)]~~ (g) the parent ~~[or parents have]~~ has voluntarily relinquished ~~[their]~~ the parent's parental rights to the child, and the court finds that termination is in the child's best interest;

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

~~[(9)]~~ (i) the terms and conditions of safe relinquishment of a newborn child have been

complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child.

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

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

(b) The court is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b) based upon abuse or neglect found by the court to have occurred subsequent to adjudication; or

(ii) if reasonable efforts are not required under federal law.