

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 excepts from this requirement a case where the parent voluntarily relinquishes parental rights. 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 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-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



26 **78-3a-405.5**, Utah Code Annotated 1953

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

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

29 **62A-4a-802. Safe relinquishment of a newborn child.**

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

33 (b) Safe relinquishment of a newborn child who has not otherwise been subject to abuse
34 or neglect shall not, in and of itself, constitute neglect as defined in [~~Subsection~~] Section
35 62A-4a-101[(14)(a)(i)], and the child shall not be considered a neglected child, as defined in
36 Section 78-3a-103, so long as the relinquishment is carried out in substantial compliance with the
37 provisions of this part.

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

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

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

47 (d) Personnel employed by a hospital shall:

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

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

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

56 (3) The division shall assume care and custody of the child immediately upon notice from

57 the hospital.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

95 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

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

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

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

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

118 (ii) A permanency hearing shall be conducted in accordance with Subsection

119 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
120 child's primary permanency goal.

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

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

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

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

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

143 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to be
144 inconsistent with the final permanency plan for the child established pursuant to Subsection
145 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance with
146 the permanency plan, and to complete whatever steps are necessary to finalize the permanent
147 placement of the child.

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

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

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

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

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

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

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

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

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

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

178 (ii) the parent is suffering from a mental illness of such magnitude that it renders him
179 incapable of utilizing reunification services; that finding shall be based on competent evidence
180 from mental health professionals establishing that, even with the provision of services, the parent

181 is unlikely to be capable of adequately caring for the child within 12 months;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

226 **78-3a-311.5. Six-month review hearing -- Court determination regarding reasonable**
 227 **efforts by the Division of Child and Family Services and parental compliance with treatment**
 228 **plan requirements**

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

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

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

236 Section 4. Section **78-3a-405.5** is enacted to read:

237 **78-3a-405.5. Assigned judge.**

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

243 (2) Subsection (1) does not apply to a termination of parental rights case where the parent
 244 gives a voluntary relinquishment or consent for termination under Section 78-3a-414.

245 Section 5. Section **78-3a-407** is amended to read:

246 **78-3a-407. Grounds for termination of parental rights.**

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

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

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

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

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

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

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

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

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

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

263 or

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

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

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

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

273 (2) Notwithstanding the provisions of Subsection (1), the court may not terminate the

274 parental rights of a parent because the parent has failed to complete the requirements of a treatment
275 plan.

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

280 (b) The court is not required to make the finding under Subsection (3)(a) before
281 terminating a parent's rights under Subsection (1)(b) based upon abuse or neglect found by the
282 court to have occurred subsequent to adjudication.