

### 3rd Sub. H.B. 140

## CHILD AND FAMILY SERVICES AND RELATED JUDICIAL CODE AMENDMENTS

HOUSE FLOOR AMENDMENTS

AMENDMENT 5

FEBRUARY 27, 2004 2:40 PM

Representative **LaVar Christensen** proposes the following amendments:

1. Page 1, Line 25 through Page 2, Line 29:

[[~~25~~ → ~~amends the evidentiary standard for the presumption of reunification services;~~  
26 → ~~specifies that termination of parental rights proceedings are subject to Utah Rules of~~  
27 ~~Evidence;~~  
28 → ~~amends the evidentiary standard in a proceeding to terminate a parent's rights to~~  
29 ~~beyond a reasonable doubt;~~]]

2. Page 2, Lines 33 through 34:

33 ▶ prohibits an attorney guardian ad litem from making public statements [[~~outside of~~  
34 ~~the juvenile court~~]] about a child abuse, neglect, or dependency case; and

3. Page 2, Line 50:

[[~~50~~ → ~~78-3a-406, as last amended by Chapter 332, Laws of Utah 2003~~]]

4. Page 11, Line 322:

322 custody; [[~~and~~]]

5. Page 11, Line 329:

329 possible under the law; and  
(viii) whether the evidentiary standard for the reunification services presumption and  
proceedings to terminate a parent's rights should be changed from clear and convincing to beyond a  
reasonable doubt.

6. Page 24, Lines 720 through 722:

720 [(b)] (3) (a) There is a presumption that reunification services should not be provided  
721 to a parent if the court finds [[+] ] , **by clear and convincing** [[+] ] evidence [[+] ] , [[+] ] [[~~that~~  
establishes beyond a  
722 reasonable doubt]] that any of the following circumstances exist:

7. Page 26, Line 790 through Page 27, Line 811:

[[ 790 ~~Section 10. Section 78-3a-406 is amended to read:~~  
791 ~~78-3a-406. Notice -- Nature of proceedings.~~  
792 ~~(1) After a petition for termination of parental rights has been filed, notice of that fact~~  
793 ~~and of the time and place of the hearing shall be provided, in accordance with the Utah Rules~~  
794 ~~of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of~~  
795 ~~the child, and to any person acting in loco parentis to the child.~~  
796 ~~(2) (a) A hearing shall be held specifically on the question of termination of parental~~  
797 ~~rights no sooner than ten days after service of summons is complete. A verbatim record of the~~  
798 ~~proceedings shall be taken and the parties shall be advised of their right to counsel.~~  
799 ~~(b) The summons shall contain a statement to the effect that the rights of the parent or~~  
800 ~~parents are proposed to be permanently terminated in the proceedings. That statement may be~~  
801 ~~contained in the summons originally issued in the proceeding or in a separate summons~~  
802 ~~subsequently issued.~~  
803 ~~(3) (a) The proceedings are civil in nature and are governed by the Utah Rules of Civil~~  
804 ~~Procedure and the Utah Rules of Evidence.~~  
805 ~~(b) The court shall in all cases require the petitioner to establish the facts [by clear and~~  
806 ~~convincing evidence] beyond a reasonable doubt, and shall give full and careful consideration~~  
807 ~~to all of the evidence presented with regard to the constitutional rights and claims of the parent~~  
808 ~~and, if a parent is found, by reason of [his] the parent's conduct or condition, to be unfit or~~  
809 ~~incompetent based upon any of the grounds for termination described in this part, the court~~  
810 ~~shall then consider the welfare and best interest of the child of paramount importance in~~  
811 ~~determining whether termination of parental rights shall be ordered.-]]~~

Renumber remaining sections of the bill accordingly.

8. Page 27, Line 829 through Page 28, Line 854:

829 (c) (i) The minor's parents or guardian have the right to ~~[[refuse]]~~ object to the  
appointment of a  
830 particular individual to act as an attorney guardian ad litem as provided in this Subsection  
831 (2) ~~[[c-]]~~ .  
832 ~~[[i-]]~~ (ii) If a parent ~~[[refuses]]~~ objects to the appointment by the court of a particular  
individual to act as an  
833 attorney guardian ad litem on behalf of the minor, the court ~~[[shall]]~~ may appoint another individual to  
834 act as an attorney guardian ad litem , including a person ~~[[as]]~~ designated by the parent or guardian.  
[[ 835 ~~(ii) The court may refuse the appointment of an individual designated by the parent or~~  
836 ~~guardian:~~  
837 ~~(A) who does not meet the minimum qualifications and requirements established in~~  
838 ~~Subsection 78-7-45(6)(a); or~~

839 ~~\_\_\_\_\_ (B) for good cause shown on the record;~~  
840 ~~\_\_\_\_\_ (iii) If the court refuses to appoint an individual under Subsection (2)(c)(ii), the court~~  
841 ~~may appoint another individual not previously refused by the parent or guardian.]]~~

842 ~~[[~~(iv)~~]]~~ (iii) An individual appointed as an attorney guardian ad litem under this  
Subsection (2):

(A) is not required to be employed by or under contract with the Office  
843 of the Guardian Ad Litem ~~[[to be appointed as an attorney guardian ad litem in an abuse, neglect,~~  
844 ~~or dependency case.~~

845 ~~\_\_\_\_\_ (d) Except as provided in Subsection (9)(b)(ii), if a parent or guardian refuses the~~  
846 ~~appointment of a guardian ad litem employed by or under contract with the Office of the~~  
847 ~~Guardian Ad Litem, the parent is responsible for all costs incurred from the appointment of a~~  
848 ~~private attorney guardian ad litem to represent the best interest of the minor.]]~~ ; and

(B) shall meet the minimum qualifications and requirements established in Subsection 78-7-  
45(6)(a).

849 ~~[[~~(e)(i)~~]]~~ (d)(i) At any time the minor's parents or guardian may:

~~[[~~850~~ \_\_\_\_\_ (A) petition the court to release a particular attorney guardian ad litem from a case; and]]~~

851 ~~[[~~(B)~~]]~~ (A) petition the court for a report of the activities of the attorney guardian ad litem  
852 relating to the minor ; and

(B) petition the court to release a particular attorney guardian ad litem from a case .

853 (ii) If a petition is made under Subsection (2) ~~[[~~(e)(i)(B)~~]]~~ (d)(i)(B) , the court shall order the  
854 guardian ad litem to provide the information to the parents or guardian in a timely manner.

9. Page 30, Lines 896 through 901:

896 (5) An attorney guardian ad litem appointed under Subsection (2) ~~[[~~(a)~~]]~~ may not be the  
897 attorney responsible for presenting the evidence alleging child abuse, neglect, or dependency.

898 (6) Upon appointment of an attorney guardian ad litem under Subsection (2) ~~[[~~(a)~~]]~~ , the  
899 court shall advise the attorney guardian ad litem of his duty:

900 (a) to represent the best interest of the minor in all proceedings; and

901 (b) to fulfill the duties set forth in Subsection (3).

10. Page 30, Line 919:

919 ~~[(6)]~~ (9) (a) ~~[[+]]~~ The ~~[[+]]~~ ~~[[~~Except as provided in Subsection (2)(c)(i), the~~]]~~ juvenile  
court is

11. Page 32, Lines 968 through 972:

968 (15) An attorney guardian ad litem may not make public statements, or grant interviews ~~[[~~;~~~~  
969 ~~or otherwise communicate information]]~~ that will be disclosed publicly outside of the juvenile

970 court , about a child abuse, neglect, or dependency case, even if the ~~[[~~communication~~]]~~ statement

or interview does not

971 involve the disclosure of a record that is private, controlled, or protected under Title 63,

972 Chapter 2, Government Records Access and Management Act.