

Senator Todd Weiler proposes the following substitute bill:

RESTORATION OF TERMINATED PARENTAL RIGHTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies Title 78A, Chapter 6, Juvenile Court Act, by amending provisions relating to the termination of parental rights and permitting the restoration of terminated parental rights.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits a child, age 12 or older, to submit a petition for restoration of terminated parental rights under certain circumstances;
- ▶ describes the duties of the Division of Child and Family Services in responding to a petition for restoration of terminated parental rights;
- ▶ describes the circumstances under which a court may grant a petition for restoration of terminated parental rights; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **78A-6-503**, as last amended by Laws of Utah 2012, Chapter 281

29 **78A-6-513**, as renumbered and amended by Laws of Utah 2008, Chapter 3

30 ENACTS:

31 **78A-6-1401**, Utah Code Annotated 1953

32 **78A-6-1402**, Utah Code Annotated 1953

33 **78A-6-1403**, Utah Code Annotated 1953

34 **78A-6-1404**, Utah Code Annotated 1953



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

37 Section 1. Section **78A-6-503** is amended to read:

38 **78A-6-503. Judicial process for termination -- Parent unfit or incompetent -- Best**
39 **interest of child.**

40 (1) Under both the United States Constitution and the constitution of this state, a parent
41 possesses a fundamental liberty interest in the care, custody, and management of the parent's
42 child. For this reason, the termination of family ties by the state may only be done for
43 compelling reasons.

44 (2) The court shall provide a fundamentally fair process to a parent if a party moves to
45 terminate parental rights.

46 (3) If the party moving to terminate parental rights is a governmental entity, the court
47 shall find that any actions or allegations made in opposition to the rights and desires of a parent
48 regarding the parent's child are supported by sufficient evidence to satisfy a parent's
49 constitutional entitlement to heightened protection against government interference with the
50 parent's fundamental rights and liberty interests.

51 (4) The fundamental liberty interest of a parent concerning the care, custody, and
52 management of the parent's child is recognized, protected, and does not cease to exist simply
53 because a parent may fail to be a model parent or because the parent's child is placed in the
54 temporary custody of the state. The court should give serious consideration to the fundamental
55 right of a parent to rear the parent's child, and concomitantly, of the right of the child to be
56 reared by the child's natural parent.

57 (5) At all times, a parent retains a vital interest in preventing the irretrievable
58 destruction of family life.

59 (6) Prior to an adjudication of unfitness, government action in relation to a parent and a
60 parent's child may not exceed the least restrictive means or alternatives available to accomplish
61 a compelling state interest.

62 (7) Until parental unfitness is established, the child and the child's parent share a vital
63 interest in preventing erroneous termination of their relationship and the court may not presume
64 that a child and the child's parents are adversaries.

65 (8) It is in the best interest and welfare of a child to be raised under the care and
66 supervision of the child's natural parents. A child's need for a normal family life in a
67 permanent home, and for positive, nurturing family relationships is usually best met by the
68 child's natural parents. Additionally, the integrity of the family unit and the right of parents to
69 conceive and raise their children are constitutionally protected. For these reasons, the court
70 should only transfer §→ custody of ←§ a child §→ [away] ←§ from the child's natural parent
70a §→ [for the gravest of reasons] §→ for compelling reasons and ←§ when there is a
70b jurisdictional basis to do so ←§ .

71 (9) The right of a fit, competent parent to raise the parent's child without undue
72 government interference is a fundamental liberty interest that has long been protected by the
73 laws and Constitution of this state and of the United States, and is a fundamental public policy
74 of this state.

75 (10) The state recognizes that:

76 (a) a parent has the right, obligation, responsibility, and authority to raise, manage,
77 train, educate, provide for, and reasonably discipline the parent's children; and

78 (b) the state's role is secondary and supportive to the primary role of a parent.

79 (c) It is the public policy of this state that parents retain the fundamental right and duty
80 to exercise primary control over the care, supervision, upbringing, and education of their
81 children.

82 (d) The interests of the state favor preservation of natural familial bonds in situations
83 where a positive, nurturing parent-child relationship can exist, including extended family
84 association and support.

85 (11) This part provides a judicial process for voluntary and involuntary severance of
86 the parent-child relationship, designed to safeguard the rights and interests of all parties
87 concerned and promote their welfare and that of the state.

88 (12) Wherever possible family life should be strengthened and preserved, but if a
89 parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon
90 any of the grounds for termination described in this part, the court shall then consider the
91 welfare and best interest of the child of paramount importance in determining whether
92 termination of parental rights shall be ordered.

93 Section 2. Section **78A-6-513** is amended to read:

94 **78A-6-513. Effect of decree.**

95 (1) An order for the termination of the parent-child legal relationship divests the child
96 and the parents of all legal rights, powers, immunities, duties, and obligations with respect to
97 each other, except the right of the child to inherit from the parent.

98 (2) An order or decree entered pursuant to this part may not disentitle a child to any
99 benefit due him from any third person, including, but not limited to, any Indian tribe, agency,
100 state, or the United States.

101 (3) ~~[After]~~ Except as provided in Sections 78A-6-1401 through 78A-6-1404, after the
102 termination of a parent-child legal relationship, the former parent is neither entitled to any
103 notice of proceedings for the adoption of the child nor has any right to object to the adoption or
104 to participate in any other placement proceedings.

105 Section 3. Section **78A-6-1401** is enacted to read:

106 **Part 14. Restoration of Parental Rights Act**

107 **78A-6-1401. Restoration of Parental Rights Act.**

108 This part is known as the "Restoration of Parental Rights Act."

109 Section 4. Section **78A-6-1402** is enacted to read:

110 **78A-6-1402. Definitions.**

111 As used in this part, "former parent" means an individual whose legal parental rights
112 were terminated under this chapter.

113 Section 5. Section **78A-6-1403** is enacted to read:

114 **78A-6-1403. Motion to restore parental rights -- Duties of the division.**

115 (1) A child, or an authorized representative acting on behalf of a child, may file a
116 petition to restore parental rights if:

117 (a) the child is 12 years of age or older or as provided in Subsection (2)(b);

118 (b) 24 months have passed since the court ordered termination of the parent-child legal

119 relationship; and

120 (c) the child:

121 (i) has not been adopted, and is unlikely to be adopted before the child is 18 years of
122 age; or

123 (ii) was previously adopted following a termination of a parent-child legal relationship,
124 but the adoption failed and the child was returned to the custody of the division.

125 (2) (a) A child younger than 12 years of age may not petition for restoration of parental
126 rights except as provided in Subsection (2)(b).

127 (b) A child 12 years of age or older, or the child's authorized representative, may
128 petition for restoration of parental rights, and if the child has a sibling who is younger than 12
129 years of age, the child may include the sibling in the petition.

130 (c) The court may grant a petition for restoration of parental rights for a child younger
131 than 12 years of age as described in Subsection 78A-6-1404(2).

132 (3) The petition described in Subsection (1) shall be ~~§~~ → [filed] ← ~~§~~ :

133 (a) ~~§~~ → filed ← ~~§~~ in the juvenile court that previously terminated the parent-child
133a relationship; and

134 (b) ~~§~~ → served ← ~~§~~ on the division.

135 (4) The division shall notify ~~§~~ → and inform ← ~~§~~ a child who qualifies for restoration of
135a parental rights

136 under Subsection (1)(a) through (c) that the child is eligible to petition for restoration under
137 this part.

138 (5) Upon the receipt of a petition to restore parental rights, the division shall:

139 (a) make a diligent effort to locate the former parent whose rights may be restored
140 under this part; and

141 (b) if the former parent is found, as described in Subsection (5)(a), notify the former
142 parent of:

143 (i) the legal effects of restoration; and

144 (ii) the time and date of the hearing on the petition.

145 (6) The court shall set a hearing on the petition at least 30 days, but no more than 60
146 days, after the day on which the petition is filed with the court.

147 (7) Before the hearing described in Subsection (6), the division may submit a
148 confidential report to the court that includes the following information:

149 (a) material changes in circumstances since the termination of parental rights;

- 150 (b) a summary of the reasons why parental rights were terminated;
- 151 (c) the date on which parental rights were terminated;
- 152 (d) the willingness of the former parent to resume contact with the child and have
- 153 parental rights restored;
- 154 (e) the ability of the former parent to be involved in the life of the child and accept
- 155 physical custody of, and responsibility for, the child; and
- 156 (f) any other information the division reasonably considers appropriate and
- 157 determinative.

158 Section 6. Section **78A-6-1404** is enacted to read:

159 **78A-6-1404. Hearing on the petition to restore parental rights.**

160 (1) At the hearing on the petition described in Section 78A-6-1403, if the former parent

161 consents and if the court finds by clear and convincing evidence that it is in the best interest of

162 the child, the court may:

- 163 (a) allow contact between the former parent and child, and describe the conditions
- 164 under which contact may take place;
- 165 (b) order that the child be placed with the former parent in a temporary custody and
- 166 guardianship relationship, to be reevaluated six months from the day on which the child is
- 167 placed; or

168 (c) restore the parental rights of the parent.

169 (2) The court may restore the parent-child legal relationship for a child who is younger

170 than 12 years of age if:

- 171 (a) the petitioner:
- 172 (i) is a sibling of the child;
- 173 (ii) meets the requirements of Subsection 78A-6-1403(1); and
- 174 (iii) includes the child who is younger than 12 years of age in the petition described in
- 175 Section 78A-6-1403;

176 (b) the child who is younger than 12 years of age meets the requirements of

177 Subsections 78A-6-1403(1)(b) and (c);

- 178 (c) considering the age and maturity of the child, the child consents to the restoration;
- 179 (d) the former parent consents to the restoration; and
- 180 (e) the court finds by clear and convincing evidence that restoration is in the best

181 interest of the child who is younger than 12 years of age.

182 (3) In determining whether reunification is appropriate and in the best interest of the
183 child, the court shall consider:

184 (a) whether the former parent has been sufficiently rehabilitated from the behavior that
185 resulted in the termination of the parent-child relationship;

186 (b) extended family support for the former parent; and

187 (c) other material changes of circumstances, if any, that may have occurred that warrant
188 the granting of the motion.

189 (4) If the court orders the child to be placed in the physical custody of the former
190 parent under Subsection (1), the court shall specify in the order:

191 (a) whether that custody is subject to:

192 (i) continued evaluation by the court; or

193 (ii) the supervision of the division; and

194 (b) the terms and conditions of reunification.