

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 former parent, or a legally authorized representative of a child, age 14 or older, to submit a motion for restoration of terminated parental rights under certain circumstances;
- ▶ describes the duties of the Division of Child and Family Services in responding to a motion for restoration of terminated parental rights;
- ▶ describes the circumstances under which a court may grant a motion for restoration of terminated parental rights; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **78A-6-511**, as last amended by Laws of Utah 2012, Chapter 293

30 **78A-6-513**, as renumbered and amended by Laws of Utah 2008, Chapter 3

31 ENACTS:

32 **78A-6-1401**, Utah Code Annotated 1953

33 **78A-6-1402**, Utah Code Annotated 1953

34 **78A-6-1403**, Utah Code Annotated 1953

35 **78A-6-1404**, Utah Code Annotated 1953



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

38 Section 1. Section **78A-6-511** is amended to read:

39 **78A-6-511. Court disposition of child upon termination.**

40 (1) As used in this section, "relative" means:

41 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
42 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;
43 and

44 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25
45 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that
46 statute.

47 (2) Upon entry of an order under this part the court may:

48 (a) place the child in the legal custody and guardianship of a licensed child placement
49 agency or the division for adoption; or

50 (b) make any other disposition of the child authorized under Section 78A-6-117.

51 (3) Subject to the requirements of Subsections (4) and (5), all adoptable children
52 placed in the custody of the division shall be placed for adoption.

53 (4) If the parental rights of all parents of an adoptable child placed in the custody of the
54 division have been terminated and a suitable adoptive placement is not already available, the
55 court:

56 (a) shall determine whether there is a relative who desires to adopt the child;

57 (b) may order the division to conduct a reasonable search to determine whether there
58 are relatives who are willing to adopt the child; and

59 (c) shall, if a relative desires to adopt the child:

60 (i) make a specific finding regarding the fitness of the relative to adopt the child; and

61 (ii) place the child for adoption with that relative unless it finds that adoption by the
62 relative is not in the best interest of the child.

63 (5) This section does not guarantee that a relative will be permitted to adopt the child.

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

65 **78A-6-513. Effect of decree.**

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

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

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

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

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

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

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

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

81 **78A-6-1402. Definitions.**

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

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

85 **78A-6-1403. Motion to restore parental rights -- Duties of the division.**

86 (1) (a) The following individuals may file a motion to restore parental rights:

87 (i) a legally authorized individual acting on behalf of a child age 14 or older whose

88 parent-child relationship to the former parent was terminated under this chapter; or

89 (ii) a former parent of the child named in the motion.

90 (b) If a court finds by a preponderance of the evidence that the former parent seeking
91 restoration of parental rights under Subsection (1)(a)(ii) has intentionally acted to prevent the
92 child from being adopted, or to disrupt an adoptive placement, the court shall dismiss the
93 motion with prejudice.

94 (2) (a) An individual described in Subsection (1)(a) may file a motion to restore
95 parental rights or parental contact between a child and a parent whose rights have been
96 terminated if:

97 (i) 18 months have passed since the court ordered termination of the parent-child legal
98 relationship and:

99 (A) the child has not been adopted; and

100 (B) the child is not in an adoptive placement; or

101 (ii) the child has been adopted, but the adoption has failed and custody and
102 guardianship have returned to the state by court order.

103 (b) The motion described in Subsection (2)(a) shall be filed:

104 (i) in the court that has jurisdiction to determine the child's custody; and

105 (ii) on the division.

106 (3) The court shall set a hearing on the motion at least 30 days, but no more than 60
107 days, after the day on which the motion is filed with the court.

108 (4) Upon receipt of the motion to restore parental rights, the division shall, if the
109 individual who filed the motion is a child:

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

112 (b) notify the former parent of:

113 (i) the legal effects of restoration; and

114 (ii) the time and date of the hearing on the motion.

115 (5) Before the hearing described in Subsection (3), the division may submit a
116 confidential report to the court and the petitioner that includes the following information:

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

118 (b) a summary of the reasons why parental rights were terminated;

- 119 (c) the date on which parental rights were terminated;
- 120 (d) the willingness of the former parent to resume contact with the child and have
- 121 parental rights restored;
- 122 (e) the willingness of the child to resume contact with the former parent and have
- 123 parental rights restored;
- 124 (f) the ability of the former parent to be involved in the life of the child and accept
- 125 physical custody of, and responsibility for, the child; and
- 126 (g) any other information the division reasonably considers appropriate and
- 127 determinative.

128 (6) A person who files a motion described in Subsection (2)(a) shall include the

129 information described in Subsection (5)(a) through (f), and any other information the person

130 considers appropriate and determinative, in a memorandum accompanying the motion.

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

132 **78A-6-1404. Hearing on the motion to restore parental rights.**

133 (1) At the hearing on the motion described in Section 78A-6-1403, the court, if it finds

134 by clear and convincing evidence that it is in the best interest of the child, may:

- 135 (a) allow contact between the former parent and child, and describe the conditions
- 136 under which contact may take place;
- 137 (b) order that the child be placed with the former parent in a temporary custody and
- 138 guardianship relationship, to be re-evaluated six months from the day on which the child is
- 139 placed; or
- 140 (c) restore the parental rights of the parent.

141 (2) (a) In determining whether reunification is appropriate and in the best interest of the

142 child, the court shall consider:

- 143 (i) whether the former parent has been sufficiently rehabilitated from the behavior that
- 144 resulted in the termination of the parent-child relationship;
- 145 (ii) extended family support for the former parent; and
- 146 (iii) other material changes of circumstances, if any, that may have occurred that
- 147 warrant the granting of the motion.

148 (b) The court shall also consider, balance, and protect the fundamental liberty interests

149 of both parents and children.

150 (3) If the court orders the child to be placed in the physical custody of the former
151 parent under Subsection (1), the court shall specify in the order:
152 (a) whether that custody is subject to:
153 (i) continued evaluation by the court; or
154 (ii) the supervision of the division; and
155 (b) the terms and conditions of reunification.