

HB0156S06 compared with HB0156S04

~~text~~ shows text that was in HB0156S04 but was deleted in HB0156S06.

text shows text that was not in HB0156S04 but was inserted into HB0156S06.

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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

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of terminated parental rights; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

78A-6-1401, Utah Code Annotated 1953

78A-6-1402, Utah Code Annotated 1953

78A-6-1403, Utah Code Annotated 1953

78A-6-1404, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

(7) Until parental unfitness is established and the children suffer, or are substantially likely to suffer, serious detriment as a result, the child and the child's parent share a vital interest in preventing erroneous termination of their relationship and the court may not presume that a child and the child's parents are adversaries.

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

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

(10) The state recognizes that:

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

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

(c) It is the public policy of this state that parents retain the fundamental right and duty

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to exercise primary control over the care, supervision, upbringing, and education of their children.

(d) The interests of the state favor preservation **and not severance** of natural familial bonds in situations where a positive, nurturing parent-child relationship can exist, including extended family association and support.

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

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

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

78A-6-513. Effect of decree.

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

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

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

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

Part 14. Restoration of Parental Rights Act

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

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

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

78A-6-1402. Definitions.

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

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

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

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

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

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

(c) the child:

(i) has not been adopted~~†,†~~ and **is not in an adoptive placement, or** is unlikely to be adopted before the child is 18 years of age; or

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

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

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

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

(3) The petition described in Subsection (1) shall be ~~† filed†~~:

(a) **filed** in the juvenile court that previously terminated the parent-child relationship; and

(b) **served** on the division.

(4) The division shall notify **and inform** a child who qualifies for restoration of parental rights under Subsection (1)(a) through (c) that the child is eligible to petition for restoration under this part.

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

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

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

(i) the legal effects of restoration; and

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

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

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

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

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

(c) the date on which parental rights were terminated;

(d) the willingness of the former parent to resume contact with the child and have parental rights restored;

(e) the ability of the former parent to be involved in the life of the child and accept physical custody of, and responsibility for, the child; and

(f) any other information the division reasonably considers appropriate and determinative.

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

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

(1) At the hearing on the petition described in Section 78A-6-1403, if the former parent consents and if the court finds by clear and convincing evidence that it is in the best interest of the child, the court may:

(a) allow contact between the former parent and child, and describe the conditions under which contact may take place;

(b) order that the child be placed with the former parent in a temporary custody and guardianship relationship, to be reevaluated six months from the day on which the child is placed; or

(c) restore the parental rights of the parent.

(2) The court may restore the parent-child legal relationship for a child who is younger than 12 years of age if:

(a) the petitioner:

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(i) is a sibling of the child;

(ii) meets the requirements of Subsection 78A-6-1403(1); and

(iii) includes the child who is younger than 12 years of age in the petition described in Section 78A-6-1403;

(b) the child who is younger than 12 years of age meets the requirements of Subsections 78A-6-1403(1)(b) and (c);

(c) considering the age and maturity of the child, the child consents to the restoration;

(d) the former parent consents to the restoration; and

(e) the court finds by clear and convincing evidence that restoration is in the best interest of the child who is younger than 12 years of age.

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

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

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

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

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

(a) whether that custody is subject to:

(i) continued evaluation by the court; or

(ii) the supervision of the division; and

(b) the terms and conditions of reunification.