

HB0318S01 compared with HB0318

~~text~~ shows text that was in HB0318 but was deleted in HB0318S01.

text shows text that was not in HB0318 but was inserted into HB0318S01.

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Representative LaVar Christensen proposes the following substitute bill:

RIGHTS OF PARENTS AND CHILDREN AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies Title 78A, Chapter 6, Juvenile Court Act, by permitting a parent who has been served with a petition for termination of parental rights to request a jury trial.

Highlighted Provisions:

This bill:

- ▶ states that a parent who has been served with a petition for termination of parental rights maintains fundamental liberty interests guaranteed by the United States Constitution;
- ▶ permits a parent to request a jury trial in a proceeding for termination of parental rights;
- ▶ requires the court to grant a parent's request for a jury trial in a proceeding for termination of parental rights; and

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- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[78A-6-114, as renumbered and amended by Laws of Utah 2008, Chapter 3](#)

[78A-6-506, as renumbered and amended by Laws of Utah 2008, Chapter 3](#)

[78A-6-507, as last amended by Laws of Utah 2012, Chapter 281](#)

[78A-6-508, as last amended by Laws of Utah 2009, Chapter 161](#)

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

[Section 1. Section 78A-6-114 is amended to read:](#)

78A-6-114. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing -- Consolidation of proceedings involving more than one minor.

(1) [\[Hearings\] Except as provided in Section 78A-6-506, hearings](#) in minor's cases shall be held before the court without a jury and may be conducted in an informal manner.

(a) (i) In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Section 78A-6-322, unless the court makes a finding upon the record that the person's presence at the hearing would:

- (A) be detrimental to the best interest of a child who is a party to the proceeding;
- (B) impair the fact-finding process; or
- (C) be otherwise contrary to the interests of justice.

(ii) The court may exclude a person from a hearing under Subsection (1)(a)(i) on its own motion or by motion of a party to the proceeding.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).

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(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(i) the minor has been charged with an offense which would be a felony if committed by an adult; or

(ii) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not apply to important juvenile justice hearings as defined in Section 77-38-2.

(e) A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:

(i) the scheduling of any court hearings on the petition;

(ii) any findings made by the court; and

(iii) any sentence or decree imposed by the court.

(2) Minor's cases shall be heard separately from adult cases. The minor or the parents or custodian of a minor may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order.

(3) When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

Section ~~71~~2. Section **78A-6-506** is amended to read:

78A-6-506. Notice -- Nature of proceedings.

(1) After a petition for termination of parental rights has been filed, notice of that fact and of the time and place of the hearing shall be provided, in accordance with the Utah Rules of Civil Procedure, to the parents, the guardian, the person or agency having legal custody of

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the child, and to any person acting in loco parentis to the child.

(2) A hearing shall be held specifically on the question of termination of parental rights no sooner than ~~[+0]~~ 30 days after the day on which service of summons is complete.

(3) A verbatim record of the proceedings shall be taken and the parties shall be advised of their right to counsel and trial by jury.

(4)(a) The summons shall contain a statement to the effect that the rights of the parent ~~[or parents]~~ are proposed to be permanently terminated in the proceedings~~[-That statement]~~ and that the parent has a right to request a jury trial.

(b) The statement described in Subsection (4)(a) may be contained in the summons originally issued in the proceeding or in a separate summons subsequently issued.

~~[(3)]~~ (5) The proceedings are civil in nature and are governed by the Utah Rules of Civil Procedure.

(6) A parent who has been served with a petition for termination of parental rights:

(a) continues to possess protected, fundamental rights and liberty interests recognized by the United States Constitution and as stated and described in this part;

(b) is entitled to the required heightened protection and least restrictive means analysis described in Section 78A-6-503;

(c) has a right to, and may request, a final determination by jury trial regarding the parent's fitness and whether the parent-child relationship should be terminated; and

(d) shall request the jury trial described in Subsection (6)(c) no later than 45 days after the day on which the parent receives the notice described in Subsection (1).

(7) If a parent requests a jury trial, the parent shall pay the same filing fee set by the court for a civil case with a demand for jury trial.

(8) The court ~~[shall in all cases]~~:

(a) shall grant a request for a jury trial and set a pretrial conference;

(b) may transfer the case to district court for trial by jury;

(c) shall require the petitioner to establish the facts by clear and convincing evidence~~[-and shall give]~~; and

(d) shall give, or instruct the jury to give, full and careful consideration to all of the evidence presented with regard to the constitutional rights and claims of the parent ~~[and, if a parent is found,]~~.

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(9) (a) Unless the court finds that due process requires otherwise, in a jury trial pursuant to this section:

(i) a child may not be required or compelled to attend or testify unless the court finds that:

(A) the child desires an opportunity to be present or to testify and communicates the child's desire to the guardian ad litem;

(B) the child is sufficiently mature to articulate the child's wishes in relation to the jury trial; and

(C) it would not be detrimental to the child or impractical to have the child be present or to testify; and

(ii) the court shall take judicial notice of any adjudicated facts from an earlier hearing, including any testimony from the child or any admissible recording of a child's statement or testimony.

(b) The court shall instruct the jury as to the noticed fact described in Subsection (9)(a)(ii) in accordance with Rule 201 of the Utah Rule of Evidence.

(9)10) If the jury, or the court in cases where the parent does not request a jury trial, finds a parent, by reason of [his] the parent's conduct or condition, to be unfit or incompetent based upon [any of] the grounds for termination described in this part, [the] and subject to the principles and recognized rights described in Section 78A-6-503, the jury or 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.

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Legislative Review Note

— as of ~~2-4-14 11:54 AM~~

— ~~Office of Legislative Research and General Counsel~~ Section 3. Section 78A-6-507 is amended to read:

78A-6-507. Grounds for termination of parental rights -- Findings regarding

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reasonable efforts.

(1) Subject to the protections and requirements of Section 78A-6-503, and if the court or trier of fact finds strictly necessary, the court or trier of fact may terminate all parental rights with respect to a parent if the court or trier of fact finds any one of the following:

(a) that the parent has abandoned the child;

(b) that the parent has neglected or abused the child;

(c) that the parent is unfit or incompetent;

(d) (i) that the child is being cared for in an out-of-home placement under the supervision of the court or the division;

(ii) that the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement; and

(iii) that there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(e) failure of parental adjustment, as defined in this chapter;

(f) that only token efforts have been made by the parent:

(i) to support or communicate with the child;

(ii) to prevent neglect of the child;

(iii) to eliminate the risk of serious harm to the child; or

(iv) to avoid being an unfit parent;

(g) (i) that the parent has voluntarily relinquished the parent's parental rights to the child; and

(ii) that termination is in the child's best interest;

(h) that, after a period of trial during which the child was returned to live in the child's own home, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection; or

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

(2) The court or trier of fact may not terminate the parental rights of a parent because the parent has failed to complete the requirements of a child and family plan.

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(3) (a) Except as provided in Subsection (3)(b), in any case in which the court has directed the division to provide reunification services to a parent, the court or trier of fact must find that the division made reasonable efforts to provide those services before the court or trier of fact may terminate the parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

(b) Notwithstanding Subsection (3)(a), the court or trier of fact is not required to make the finding under Subsection (3)(a) before terminating a parent's rights:

(i) under Subsection (1)(b), if the court or trier of fact finds that the abuse or neglect occurred subsequent to adjudication; or

(ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not required under federal law, and federal law is not inconsistent with Utah law.

Section 4. Section 78A-6-508 is amended to read:

78A-6-508. Evidence of grounds for termination.

(1) In determining whether a parent or parents have abandoned a child, it is prima facie evidence of abandonment that the parent or parents:

(a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;

(c) failed to have shown the normal interest of a natural parent, without just cause; or

(d) have abandoned an infant, as described in Subsection 78A-6-316(1).

(2) In determining whether a parent or parents are unfit or have neglected a child the court or trier of fact shall consider, but is not limited to, the following circumstances, conduct, or conditions:

(a) emotional illness, mental illness, or mental deficiency of the parent that renders the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;

(b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

(c) habitual or excessive use of intoxicating liquors, controlled substances, or

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dangerous drugs that render the parent unable to care for the child;

(d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for the child's physical, mental, and emotional health and development by a parent or parents who are capable of providing that care;

(e) whether the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year; or

(f) a history of violent behavior.

(3) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

(4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to obtain a second health care opinion.

(5) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

(6) The following circumstances constitute prima facie evidence of unfitness:

(a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent or parents;

(b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child;

(d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide; or

(e) the parent intentionally, knowingly, or recklessly causes the death of another parent

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of the child, without legal justification.