

Senator Michael K. McKell proposes the following substitute bill:

CHILD WELFARE PLACEMENT REVIEW AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill amends provisions of the Utah Juvenile Code related to the termination of parental rights.

Highlighted Provisions:

This bill:

- addresses the analysis a juvenile court undertakes when evaluating whether to terminate parental rights; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-4-104, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-4-301, as last amended by Laws of Utah 2022, Chapter 335

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



26 Section 1. Section **80-4-104** is amended to read:

27 **80-4-104. Judicial process for termination -- Parent unfit or incompetent -- Best**
28 **interest of child.**

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

33 (2) The juvenile court shall provide a fundamentally fair process to a parent if a party
34 moves to terminate the parent's parental rights.

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

40 (4) (a) The fundamental liberty interest of a parent concerning the care, custody, and
41 management of the parent's child is recognized, protected, and does not cease to exist simply
42 because:

43 (i) a parent may fail to be a model parent; or

44 (ii) the parent's child is placed in the temporary custody of the state.

45 (b) The juvenile court should give serious consideration to the fundamental right of a
46 parent to rear the parent's child, and concomitantly, of the right of the child to be reared by the
47 child's natural parent.

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

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

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

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

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

68 (10) (a) The state recognizes that:

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

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

72 (b) It is the public policy of this state that a parent retain the fundamental right and duty
73 to exercise primary control over the care, supervision, upbringing, and education of the parent's
74 child.

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

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

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

86 (b) In determining whether termination is in the best interest of the child, and in
87 finding, based on the totality of the circumstances, that termination of parental rights, from the

88 child's point of view, is strictly necessary to promote the child's best interest, the juvenile court
89 shall consider, among other relevant factors, whether:

90 (i) sufficient efforts were dedicated to reunification in accordance with Section
91 [80-4-301](#); and

92 (ii) pursuant to Section [80-3-302](#), the efforts to place the child with [~~kin who have, or~~
93 ~~are~~] a relative who has, or is willing to come forward to care for the child, were given due
94 weight.

95 Section 2. Section **80-4-301** is amended to read:

96 **80-4-301. Grounds for termination of parental rights -- Findings regarding**
97 **reasonable efforts by division.**

98 (1) Subject to the protections and requirements of Section [80-4-104](#), and if, based on
99 the totality of the circumstances, the juvenile court finds termination of parental rights, from
100 the child's point of view, is strictly necessary to promote the child's best interest, the juvenile
101 court may terminate all parental rights with respect to the parent if the juvenile court finds any
102 one of the following:

103 (a) that the parent has abandoned the child;

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

105 (c) that the parent is unfit or incompetent;

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

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

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

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

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

115 (i) to support or communicate with the child;

116 (ii) to prevent neglect of the child;

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

118 (iv) to avoid being an unfit parent;

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

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

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

125 (i) the terms and conditions of safe relinquishment of a newborn child have been
126 complied with, in accordance with Part 5, Safe Relinquishment of a Newborn Child.

127 (2) When determining whether termination of parental rights is strictly necessary to
128 promote the child's best interest, the court shall:

129 (a) undertake the analysis from the child's point of view;

130 (b) focus on finding the outcome that best secures the child's well-being; ~~→~~ **[and]** ~~←~~

131 (c) include, as applicable, the considerations described in Sections 80-4-303 and

132 80-4-304 ~~→~~ **[; and]**

132a **(d) explore whether other feasible options exist that could address the specific problems or**
132b **issues facing the family, short of imposing the ultimate remedy of terminating the parent's**
132c **right.** ~~←~~

133 (3) The juvenile court may not terminate the parental rights of a parent because the
134 parent has failed to complete the requirements of a child and family plan.

135 ~~[(3)]~~ (4) (a) Except as provided in Subsection ~~[(3)(b)]~~ (4)(b), in any case in which the
136 juvenile court has directed the division to provide reunification services to a parent, the
137 juvenile court must find that the division made reasonable efforts to provide those services
138 before the juvenile court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e),
139 (f), or (h).

140 (b) Notwithstanding Subsection ~~[(3)(a)]~~ (4)(a), the juvenile court is not required to
141 make the finding under Subsection ~~[(3)(a)]~~ (4)(a) before terminating a parent's rights:

142 (i) under Subsection (1)(b), if the juvenile court finds that the abuse or neglect occurred
143 subsequent to adjudication; or

144 (ii) if reasonable efforts to provide the services described in Subsection ~~[(3)(a)]~~ (4)(a)
145 are not required under federal law, and federal law is not inconsistent with Utah law.

146 Section 3. **Effective date.**

147 This bill takes effect on May 1, 2024.