

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:

- defines terms;
- 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:

80-4-102, as last amended by Laws of Utah 2022, Chapter 335

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



26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

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

Section 1. Section **80-4-102** is amended to read:

80-4-102. Definitions.

As used in this chapter:

(1) "Child's point of view" means a focus on finding an outcome that best secures the child's well-being.

(2) "Division" means the Division of Child and Family Services created in Section [80-2-201](#).

~~[(2)]~~ (3) "Failure of parental adjustment" means that a parent or parents are unable or unwilling within a reasonable time to substantially correct the circumstances, conduct, or conditions that led to placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the division to return the child to the home.

~~[(3)]~~ (4) "Former parent" means an individual whose legal parental rights were terminated under this chapter.

~~[(4)]~~ (5) "Petition to restore parental rights" means a petition filed in accordance with this chapter to restore the rights of a parent with regard to a child.

~~[(5)]~~ (6) "Petition for termination of parental rights" means a petition filed in accordance with this chapter to terminate the parental rights of a parent.

~~[(6)]~~ (7) "Temporary custody" means the same as that term is defined in Section [80-2-102](#).

Section 2. Section **80-4-104** is amended to read:

80-4-104. 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 juvenile court shall provide a fundamentally fair process to a parent if a party moves to terminate the parent's parental rights.

(3) If the party moving to terminate parental rights is a governmental entity, the

57 juvenile court shall find that any actions or allegations made in opposition to the rights and
58 desires of a parent regarding the parent's child are supported by sufficient evidence to satisfy a
59 parent's constitutional entitlement to heightened protection against government interference
60 with the parent's fundamental rights and liberty interests.

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

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

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

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

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

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

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

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

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

88 of this state.

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

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

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

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

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

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

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

107 (b) In determining whether termination is in the best interest of the child, and in
108 finding, based on the totality of the circumstances, that termination of parental rights, from the
109 child's point of view, is strictly necessary to promote the child's best interest, the juvenile court
110 shall consider, among other relevant factors, whether:

111 (i) sufficient efforts were dedicated to reunification in accordance with Section
112 [80-4-301](#); and

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

116 Section 3. Section **80-4-301** is amended to read:

117 **80-4-301. Grounds for termination of parental rights -- Findings regarding**
118 **reasonable efforts by division.**

119 (1) Subject to the protections and requirements of Section 80-4-104, and if, based on
120 the totality of the circumstances, the juvenile court finds termination of parental rights, from
121 the child's point of view, is strictly necessary to promote the child's best interest, the juvenile
122 court may terminate all parental rights with respect to the parent if the juvenile court finds any
123 one of the following:

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

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

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

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

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

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

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

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

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

137 (ii) to prevent neglect of the child;

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

139 (iv) to avoid being an unfit parent;

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

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

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

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

148 (2) When determining whether termination of parental rights is strictly necessary to
149 promote the child's best interest, the court shall include, as applicable, the considerations

150 described in Sections 80-4-303 and 80-4-304.

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

153 ~~(3)~~ (4) (a) Except as provided in Subsection ~~[(3)(b)] (4)(b)~~, in any case in which the
154 juvenile court has directed the division to provide reunification services to a parent, the
155 juvenile court must find that the division made reasonable efforts to provide those services
156 before the juvenile court may terminate the parent's rights under Subsection (1)(b), (c), (d), (e),
157 (f), or (h).

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

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

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

164 Section 4. **Effective date.**

165 This bill takes effect on May 1, 2024.