

RESTORATION OF TERMINATED PARENTAL RIGHTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: _____

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;
- ▶ authorizes a parent to nominate a relative to serve as a legal guardian for the parent's child in the event of a termination of parental rights;
- ▶ describes the circumstances under which a court may grant a guardianship petition;
- ▶ permits a former parent, or a child 12 years of age 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:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **78A-6-511**, as last amended by Laws of Utah 2012, Chapter 293

32 **78A-6-513**, as renumbered and amended by Laws of Utah 2008, Chapter 3

33 ENACTS:

34 **78A-6-502.5**, Utah Code Annotated 1953

35 **78A-6-507.5**, Utah Code Annotated 1953

36 **78A-6-1401**, Utah Code Annotated 1953

37 **78A-6-1402**, Utah Code Annotated 1953

38 **78A-6-1403**, Utah Code Annotated 1953

39 **78A-6-1404**, Utah Code Annotated 1953



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

42 Section 1. Section **78A-6-502.5** is enacted to read:

43 **78A-6-502.5. Statement of parental liberty interests.**

44 (1) The severance and termination of family ties by the state is a step of the utmost
45 gravity, which may only be done for the most compelling reasons.

46 (2) It is generally in the best interest and welfare of a child to be reared under the care
47 of the child's natural parents.

48 (3) Termination of parental rights cannot be decreed without giving full and serious
49 consideration to the prior and fundamental right of a parent to rear the parent's child and,
50 concomitantly, of the right of the child to be reared by the child's natural parent.

51 (4) A parent has a fundamental right protected by the U.S. Constitution to sustain the
52 parent's relationship with the parent's child.

53 (5) (a) Recognition of due process and retained rights of parents promotes values
54 essential to the preservation of human freedom and dignity and the perpetuation of our
55 democratic society.

56 (b) Any invasion of the sanctity of the family, even with the loftiest of motives,
57 unavoidably threatens the values described in Subsection (5)(a).

58 (6) No court shall, but for the gravest of reasons, transfer a child from the child's

59 natural parent to any other person, since the right of a parent under natural law to establish a
 60 home and bring up children is fundamental and beyond the reach of any court.

61 (7) Where there is still reason to believe that positive, nurturing parent-child
 62 relationships can exist, including extended family association and support, the interest of the
 63 state favors preservation, not severance, of natural familial bonds.

64 Section 2. Section **78A-6-507.5** is enacted to read:

65 **78A-6-507.5. Contesting a petition to terminate parental rights -- Submitting a**
 66 **nominee for guardianship -- Guardianship process.**

67 (1) A parent who receives notice of a petition to terminate parental rights under Section
 68 78A-6-506 and disputes that the parent's parental rights should be terminated, may:

69 (a) contest the petition; and

70 (b) in the alternative, ~~Ĥ~~→ [submit a petition naming] name ←~~Ĥ~~ an individual ~~Ĥ~~→ [to
 70a serve] for the court to consider ←~~Ĥ~~ as legal guardian
 71 for the child, if:

72 (i) the nominee is an adult who is a grandparent, great-grandparent, aunt, great-aunt,
 73 uncle, great-uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling
 74 of the child;

75 (ii) the nominee consents to the guardianship relationship; and

76 (iii) the parent's rights are ultimately terminated.

77 ~~Ĥ~~→ [~~(2) The division shall make a recommendation to the court regarding the fitness of the~~
 78 nominee described in Subsection (1) to serve as the child's guardian.]

79 [~~(3)~~] (2) ←~~Ĥ~~ The court shall:

80 (a) consider:

81 (i) the principles, rights, protections, and requirements described and recognized in this
 82 part;

83 ~~Ĥ~~→ [~~(ii) the recommendation of the division, described in Subsection (2);]~~

84 [~~(iii)~~] (ii) ←~~Ĥ~~ the desires of the child, if the child is 12 years of age or older;

85 ~~Ĥ~~→ [~~(iv)~~] (iii) ←~~Ĥ~~ the fundamental right of a parent to choose who shall raise and care for
 85a the parent's
 86 child; and

87 ~~Ĥ~~→ [~~(v)~~] (iv) ←~~Ĥ~~ the fundamental right of a child to be reared by the child's parent or the
 87a parent's
 88 designee; and

89 (b) if it appears the parent will not be able to successfully contest the petition for

90 termination of parental rights, order a legal guardianship relationship between the child and the
 91 nominee, if it is in the best interest of the child and a means of achieving the strong public
 92 policy in support of family preservation.

93 ~~H→ [(4)] (3) ←H~~ In an order granting H→ [the petition for] ←H guardianship H→ under
 93a this section ←H , the court shall describe:

94 (a) what limitations, if any, the guardian shall place on the parent's access to the child
 95 as a condition for continued guardianship; and

96 (b) what role, if any, the division will fill in supervising the guardianship placement.

97 ~~H→ [(5)] (4) ←H~~ If granted, the court shall review the guardianship placement six months
 97a after the
 98 day on which the guardianship petition is granted to review whether guardianship is still
 99 appropriate and consistent with controlling constitutional rights.

100 ~~H→ [(6)] (5) ←H~~ Nothing in this section shall be construed as a guarantee that a nominee
 100a will be
 101 allowed to serve as a legal guardian for a child, but the nominee shall be given added weight
 102 and strong and thorough consideration.

103 ~~H→ [(7)] (6) ←H~~ Legal guardianship, as described and established in this section, is:

104 (a) considered a permanent placement for purposes of complying with federal law, if
 105 the guardianship is ordered without the continued supervision of the division; and

106 (b) most appropriate when a former parent:

107 (i) has made progress toward becoming a fit parent, but has not yet succeeded; and

108 (ii) may become a fit parent with additional time and assistance.

109 Section 3. Section **78A-6-511** is amended to read:

110 **78A-6-511. Court disposition of child upon termination.**

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

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

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

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

119 (a) place the child in the legal custody and guardianship of a licensed child placement
 120 agency or the division for adoption; [or]

121 (b) make any other disposition of the child authorized under Section 78A-6-117[-]; or
122 (c) place the child in a guardianship relationship under Section 78A-6-513.5.

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

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

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

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

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

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

133 (ii) place the child for adoption with that relative unless it finds that adoption by the
134 relative is not in the best interest of the child[-]; and

135 (d) shall consider a legal guardianship, under Section 78A-6-513.5.

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

137 Section 4. Section **78A-6-513** is amended to read:

138 **78A-6-513. Effect of decree.**

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

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

145 (3) ~~After~~ Except as provided in Section 78A-6-513.5, after the termination of a
146 parent-child legal relationship, the former parent is neither entitled to any notice of proceedings
147 for the adoption of the child nor has any right to object to the adoption or to participate in any
148 other placement proceedings.

149 Section 5. Section **78A-6-1401** is enacted to read:

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

151 **78A-6-1401. Restoration of Parental Rights Act.**

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

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

154 **78A-6-1402. Definitions.**

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

157 Section 7. Section **78A-6-1403** is enacted to read:

158 **78A-6-1403. Motion to restore parental rights -- Duties of the division.**

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

160 (a) a child, age 12 or older, whose parent-child relationship to the former parent was
 161 terminated under this chapter, or an individual acting on the child's behalf; or

162 (b) a former parent of the child named in the motion.

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

165 (i) 12 months have passed since the court ordered termination of the parent-child legal
 166 relationship and the child has not been adopted; or

167 (ii) the child has been adopted, but the adoptive parents have ~~H→~~ returned and ~~←H~~
 167a relinquished the child to
 168 the custody of the division or another person.

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

170 (i) in the court ~~H→~~ [~~in which permanency hearings for the child are being conducted~~] that
 170a has jurisdiction to determine the child's custody ~~←H~~ ; and

171 (ii) on the division.

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

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

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

178 (b) notify the former parent of:

179 (i) the legal effects of restoration; and

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

181 (5) Before the hearing described in Subsection (3), the division ~~H→~~ [~~shall~~] may ~~←H~~
 181a submit a

182 confidential report to the court and the petitioner that includes the following information:

- 183 (a) material changes in circumstances since the termination of parental rights;
 184 (b) a summary of the reasons why parental rights were terminated;
 185 (c) the date on which parental rights were terminated;
 186 (d) the willingness of the former parent to resume contact with the child and have
 187 parental rights restored;
 188 (e) the willingness of the child to resume contact with the former parent and have
 189 parental rights restored;
 190 (f) the ability of the former parent to be involved in the life of the child and accept
 191 physical custody of, and responsibility for, the child; and
 192 (g) any other information the division reasonably considers appropriate and
 193 determinative.

193a **H→ (6) A person who files a motion described in Subsection (2)(a) shall include the**
 193b **information described in Subsection (5)(a) through (f), and any other information the person**
 193c **considers appropriate and determinative, in a memorandum accompanying the motion. ←H**

194 Section 8. Section **78A-6-1404** is enacted to read:

195 **78A-6-1404. Hearing on the motion to restore parental rights.**

196 (1) At the hearing on the motion described in Section 78A-6-1403, the court, if it finds
 197 by a preponderance of the evidence that it is in the best interest of the child, may:

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

200 (b) order that the child be placed with the former parent in a temporary guardianship
 201 relationship, to be re-evaluated six months from the day on which the child is placed; or

202 (c) restore the parental rights of the parent.

203 (2) (a) In determining whether reunification is required and in the best interest of the
 204 child, the court shall consider:

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

207 (ii) extended family support for the former parent.

208 (b) The court shall also consider the fundamental liberty interests of the former parent
 209 and child.

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

212 (a) whether that custody is subject to:

213 (i) continued evaluation by the court; or

- 214 (ii) the supervision of the division; and
- 215 (b) the terms and conditions of reunification.

Legislative Review Note
as of **2-21-13 7:59 AM**

Office of Legislative Research and General Counsel