

**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
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78A-6-506**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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  
57  
58

---

---

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

Section 1. 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 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]~~:

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

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

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

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

65a Ĥ→ (9) (a) Unless the court finds that due process requires otherwise, in a jury trial  
65b pursuant to this section:

65c (i) a child may not be required or compelled to attend or testify unless the court  
65d finds that:

65e (A) the child desires an opportunity to be present or to testify and communicates the  
65f child's desire to the guardian ad litem;

65g (B) the child is sufficiently mature to articulate the child's wishes in relation to the  
65h jury trial; and

65i (C) it would not be detrimental to the child or impractical to have the child be present  
65j or to testify; and

65k (ii) the court shall take judicial notice of any adjudicated facts from an earlier hearing,  
65l including any testimony from the child or any admissible recording of a child's statement or  
65m testimony.

65n (b) The court shall instruct the jury as to the noticed fact described in Subsection  
65o (9)(a)(ii) in accordance with Rule 201 of the Utah Rule of Evidence.

66 [~~9~~] (10) ←Ĥ If the jury, or the court in cases where the parent does not request a jury  
66a trial, finds

67 a parent, by reason of [his] the parent's conduct or condition, to be unfit or incompetent based

68 upon [any of] the grounds for termination described in this part, [the] and subject to the

69 principles and recognized rights described in Section [78A-6-503](#), the jury or court shall then

70 consider the welfare and best interest of the child of paramount importance in determining

71 whether termination of parental rights shall be ordered.

Legislative Review Note

as of 2-4-14 11:54 AM

Office of Legislative Research and General Counsel