

1 **RIGHTS OF PARENTS AND CHILDREN**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: LaVar Christensen**

5 Senate Sponsor: Wayne L. Niederhauser

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies Title 62A, Chapter 4a, Child and Family Services and Title 78A,
10 Chapter 6, Juvenile Court Act of 1996, by affirming parental rights, amending
11 procedures regarding the Division of Child and Family Services, and amending court
12 procedures regarding the termination of parental rights.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ requires the Judiciary, Law Enforcement, and Criminal Justice Interim Committee
- 16 to study issues regarding the rights of parents and children during the 2012 interim
- 17 and report findings in the 2013 General Session;
- 18 ▶ affirms parental rights in relation to the rights of the state;
- 19 ▶ requires the court to consider the protections of parental rights before terminating
- 20 parental rights;
- 21 ▶ emphasizes the importance of in-home services and kinship placement over other
- 22 forms of state intervention;
- 23 ▶ states that the termination of parental rights should be pursued as a last resort only;
- 24 ▶ requires an appellate court to consider "fundamental liberty interests" in an appeal
- 25 of a termination of parental rights;
- 26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **62A-4a-201**, as last amended by Laws of Utah 2008, Chapters 3 and 299

34 **78A-6-503**, as renumbered and amended by Laws of Utah 2008, Chapter 3

35 **78A-6-507**, as renumbered and amended by Laws of Utah 2008, Chapter 3

36 **78B-6-132**, as renumbered and amended by Laws of Utah 2008, Chapter 3

37 ENACTS:

38 **62A-4a-122**, Utah Code Annotated 1953

39 **63I-2-262**, Utah Code Annotated 1953

40 **78A-4-201**, Utah Code Annotated 1953

41

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

43 Section 1. Section **62A-4a-122** is enacted to read:

44 **62A-4a-122. Review of state policies affecting parents and children.**

45 (1) Before the 2013 General Session of the Utah Legislature, the Judiciary, Law
46 Enforcement, and Criminal Justice Interim Committee shall study and make findings on the
47 status of and need for action regarding:

48 (a) the Legislative Auditor's report, dated January 2011, and whether:

49 (i) the rise in the budget for the Division of Child and Family Services from \$45
50 million to nearly \$160 million per year is:

51 (A) prudent;

52 (B) in the best interest of the state; and

53 (C) consistent with the state's values and public policy; and

54 (ii) the 19 recommendations for better practice should be implemented;

55 (b) whether federal law and funding is interfering with the full achievement of state
56 policy regarding parental rights and family unification;

57 (c) the potential to seek a jury trial in juvenile court when faced with potential

58 termination of parental rights;

59 (d) appellate review following a termination of parental rights by a juvenile court;

60 (e) the fairness of fixed timelines and potential for premature findings that can result in
61 a permanent loss of parental rights;

62 (f) allowing increased opportunity for extended family members to help resolve
63 parental deficiencies in their family without state interference, or loss of a child from the entire
64 family;

65 (g) whether the division should:

66 (i) be designated as an authorized lead entity and redirect its current focus and practices
67 in relation to federal law and the receipt of federal funding to strengthen families and prevent
68 child abuse under 42 U.S.C. Sec. 5116; and

69 (ii) reduce the number of cases and costs associated with foster care, which is
70 approximately \$47,000 per child, in comparison with in-home services, which cost
71 approximately \$1,700 per child, and focus on the strong public policy of fostering family
72 unification to the fullest extent possible and as described in the January 2011 legislative audit;

73 (h) the full, balanced consideration and application of the principles and protections
74 recognized and provided in state law constitutes the best interest of a child.

75 (2) The division shall provide the interim committee with:

76 (a) copies of annual reports and state plans; and

77 (b) communications regarding child protection that have been provided to or received
78 from the federal government, and which may affect levels of federal funding and current
79 practices of the state.

80 (3) The interim committee may request additional information from the division, as
81 necessary to fulfill the requirements of this section.

82 Section 2. Section **62A-4a-201** is amended to read:

83 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
84 **state.**

85 (1) (a) Under both the United States Constitution and the constitution of this state, a

86 parent possesses a fundamental liberty interest in the care, custody, and management of the
87 parent's children. A fundamentally fair process must be provided to parents if the state moves
88 to challenge or interfere with parental rights. A governmental entity must support any actions
89 or allegations made in opposition to the rights and desires of a parent regarding the parent's
90 children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened
91 protection against government interference with the parent's fundamental rights and liberty
92 interests.

93 (b) The fundamental liberty interest of a parent concerning the care, custody, and
94 management of the parent's children is recognized, protected, and does not cease to exist
95 simply because a parent may fail to be a model parent or because the parent's child is placed in
96 the temporary custody of the state. At all times, a parent retains a vital interest in preventing
97 the irretrievable destruction of family life. Prior to an adjudication of unfitness, government
98 action in relation to parents and their children may not exceed the least restrictive means or
99 alternatives available to accomplish a compelling state interest. Until the state proves parental
100 unfitness, the child and the child's parents share a vital interest in preventing erroneous
101 termination of their natural relationship and the state cannot presume that a child and the child's
102 parents are adversaries.

103 (c) It is in the best interest and welfare of a child to be raised under the care and
104 supervision of the child's natural parents. A child's need for a normal family life in a
105 permanent home, and for positive, nurturing family relationships ~~[with]~~ is usually best ~~[be]~~ met
106 by the child's natural parents. Additionally, the integrity of the family unit[;] and the right of
107 parents to conceive and raise their children ~~[have found protection in the due process clause of~~
108 ~~the Fourteenth Amendment to the United States Constitution]~~ are constitutionally protected.
109 The right of a fit, competent parent to raise the parent's child without undue government
110 interference is a fundamental liberty interest that has long been protected by the laws and
111 Constitution ~~[of this state and of the United States]~~ and is a fundamental public policy of this
112 state.

113 (d) The state recognizes that:

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

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

117 (e) It is the public policy of this state that parents retain the fundamental right and duty
118 to exercise primary control over the care, supervision, upbringing, and education of their
119 children.

120 (f) Subsections (2) through (7) shall be interpreted and applied consistent with this
121 Subsection (1).

122 (2) It is also the public policy of this state that children have the right to protection
123 from abuse and neglect, and that the state retains a compelling interest in investigating,
124 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A,
125 Chapter 6, Juvenile Court Act of 1996. Therefore, the state, as *parens patriae*, has an interest in
126 and responsibility to protect children whose parents abuse them or do not adequately provide
127 for their welfare. There may be circumstances where a parent's conduct or condition is a
128 substantial departure from the norm and the parent is unable or unwilling to render safe and
129 proper parental care and protection. Under those circumstances, the state may take action for
130 the welfare and protection of the parent's children.

131 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
132 it shall take into account the child's need for protection from immediate harm and the extent to
133 which the child's extended family may provide needed protection. Throughout its involvement,
134 the division shall utilize the least intrusive and least restrictive means available to protect a
135 child, in an effort to ensure that children are brought up in stable, permanent families, rather
136 than in temporary foster placements under the supervision of the state.

137 (4) When circumstances within the family pose a threat to the child's immediate safety
138 or welfare, the division may [~~obtain~~] seek custody of the child for a planned period and place
139 the child in a safe environment, subject to the requirements of this section and in accordance
140 with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency
141 Proceedings[;], and:

142 (a) when safe and appropriate, return the child to the child's parent; or

143 (b) as a last resort, pursue another permanency plan.

144 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to
145 the provisions of Section 62A-4a-203, both the division's and the court's paramount concern
146 shall be the child's health, safety, and welfare. The desires of a parent for the parent's child,
147 and the constitutionally protected rights of a parent, as described in this section, shall be given
148 full and serious consideration by the division and the court.

149 (6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe
150 abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or
151 to, in any other way, attempt to maintain a child in the child's home, provide reunification
152 services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does
153 not exempt the division from providing court-ordered services.

154 (7) (a) ~~[It is the division's obligation, under federal law, to]~~ The division shall strive to
155 achieve appropriate permanency for children who are abused, neglected, or dependent. The
156 division shall provide in-home services, where appropriate and safe, in an effort to help a
157 parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's
158 child. If in-home services fail or are otherwise insufficient or inappropriate, the division shall
159 also seek qualified extended family support or a kinship placement to maintain a sense of
160 security and stability for the child. If in-home services and kinship placement are not safe or
161 appropriate, or in-home services and kinship placement fail and cannot be corrected, the
162 division may pursue a foster placement.

163 (b) If the use or continuation of "reasonable efforts," as described in Subsections (5)
164 and (6), is determined to be inconsistent with the permanency plan for a child, then measures
165 shall be taken, in a timely manner, to place the child in accordance with the permanency plan,
166 and to complete whatever steps are necessary to finalize the permanent placement of the child.

167 ~~[(b) If;]~~ (c) Subject to the parental rights recognized and protected under this section,
168 if, because of a parent's conduct or condition, the parent is determined to be unfit or
169 incompetent based on the grounds for termination of parental rights described in Title 78A,

170 Chapter 6, Part 5, Termination of Parental Rights Act, the continuing welfare and best interest
171 of the child is of paramount importance, and shall [govern] be protected in determining
172 whether that parent's rights should be terminated.

173 (8) The state's right to direct or intervene in the provision of medical or mental health
174 care for a child is subject to Subsection 78A-6-117(2)(n).

175 Section 3. Section **63I-2-262** is enacted to read:

176 **63I-2-262. Repeal dates, Title 62A.**

177 Section 62A-4a-122 is repealed January 1, 2014.

178 Section 4. Section **78A-4-201** is enacted to read:

179 **78A-4-201. Appellate review of juvenile courts.**

180 To uphold the clear and compelling fundamental liberty interests and constitutionally
181 protected rights of parents and the strong public policy in favor of maximizing family
182 unification, appropriate appellate review shall be made available and applied in furtherance of
183 those interests.

184 Section 5. Section **78A-6-503** is amended to read:

185 **78A-6-503. Judicial process for termination -- Parent unfit or incompetent -- Best**
186 **interest of child.**

187 (1) Under both the United States Constitution and the constitution of this state, a parent
188 possesses a fundamental liberty interest in the care, custody, and management of the parent's
189 child.

190 (2) The court shall provide a fundamentally fair process to a parent if a party moves to
191 terminate parental rights.

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

197 (4) The fundamental liberty interest of a parent concerning the care, custody, and

198 management of the parent's child is recognized, protected, and does not cease to exist simply
199 because a parent may fail to be a model parent or because the parent's child is placed in the
200 temporary custody of the state.

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

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

206 (7) Until parental unfitness is established, the child and the child's parent share a vital
207 interest in preventing erroneous termination of their relationship and the court may not presume
208 that a child and the child's parents are adversaries.

209 (8) It is in the best interest and welfare of a child to be raised under the care and
210 supervision of the child's natural parents. A child's need for a normal family life in a
211 permanent home, and for positive, nurturing family relationships is usually best met by the
212 child's natural parents. Additionally, the integrity of the family unit and the right of parents to
213 conceive and raise their children are constitutionally protected.

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

218 (10) The state recognizes that:

219 (a) a parent has the right, obligation, responsibility, and authority to raise, manage,
220 train, educate, provide for, and reasonably discipline the parent's children; and

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

222 (c) It is the public policy of this state that parents retain the fundamental right and duty
223 to exercise primary control over the care, supervision, upbringing, and education of their
224 children.

225 ~~(11)~~ (11) This part provides a judicial process for voluntary and involuntary severance

226 of the parent-child relationship, designed to safeguard the rights and interests of all parties
227 concerned and promote their welfare and that of the state.

228 ~~(2)~~ (12) Wherever possible family life should be strengthened and preserved, but if a
229 parent is found, by reason of his conduct or condition, to be unfit or incompetent based upon
230 any of the grounds for termination described in this part, the court shall then consider the
231 welfare and best interest of the child of paramount importance in determining whether
232 termination of parental rights shall be ordered.

233 Section 6. Section **78A-6-507** is amended to read:

234 **78A-6-507. Grounds for termination of parental rights -- Findings regarding**
235 **reasonable efforts.**

236 (1) ~~[The]~~ Subject to the protections and requirements of Section 78A-6-503, and if the
237 court finds strictly necessary, the court may terminate all parental rights with respect to a parent
238 if the court finds any one of the following:

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

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

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

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

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

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

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

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

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

252 (ii) to prevent neglect of the child;

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

254 (iv) to avoid being an unfit parent;

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

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

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

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

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

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

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

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

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

276 Section 7. Section **78B-6-132** is amended to read:

277 **78B-6-132. Children in the custody of the Division of Child and Family Services**
278 **-- Consideration of child's relationship with foster parents who petition for adoption.**

279 (1) In assessing the best interest of a child in the custody of the Division of Child and
280 Family Services whose foster parents have petitioned for adoption, the court shall give special
281 consideration to the relationship of the child with his foster parents, if the child has been in that

282 home for a period of six months or longer.

283 (2) Nothing in this section shall be construed as requiring an adoption that would be
284 contrary to the public policy of placing an adoptable child with a married couple whenever
285 possible.