

CHAPTER 147

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 94-1042

BY REPRESENTATIVES George, Acquafresca, Adkins, Agler, Blue, Chlouber, DeGette, Foster, Kaufman, Keller, Kreutz, Lawrence, Lyle, Martin, Pierson, Reeser, Snyder, Strom, Sullivan, Taylor, and Wright;
also SENATORS Owens, Feeley, Gallagher, Hopper, Lacy, Mares, Norton, Ruddick, Schroeder, Tebedo, Traylor, and Wells.

AN ACT

CONCERNING PARENTAL RIGHTS, AND, IN CONNECTION THEREWITH, MODIFYING PROCEEDINGS INVOLVING THE RELINQUISHMENT OF PARENTAL RIGHTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 5 of title 19, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

19-5-100.2. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS THAT PARENTAL RELINQUISHMENT AND ADOPTION OF CHILDREN ARE IMPORTANT AND NECESSARY OPTIONS TO FACILITATE THE PERMANENT PLACEMENT OF MINOR CHILDREN IF THE BIRTH PARENTS ARE UNABLE OR UNWILLING TO PROVIDE PROPER PARENTAL CARE. THE GENERAL ASSEMBLY FURTHER FINDS THAT ADOPTION OFFERS SIGNIFICANT PSYCHOLOGICAL, LEGAL, ECONOMIC, AND SOCIAL BENEFITS NOT ONLY FOR CHILDREN WHO MIGHT OTHERWISE BE HOMELESS, BUT ALSO FOR PARENTS WHO ARE UNABLE TO CARE FOR THEIR CHILDREN AND FOR ADOPTIVE PARENTS WHO DESIRE CHILDREN TO NURTURE, CARE FOR, AND SUPPORT. CONVERSELY, THE GENERAL ASSEMBLY RECOGNIZES THAT DISRUPTED ADOPTIVE PLACEMENTS OFTEN HAVE A PROFOUND AND NEGATIVE IMPACT ON INDIVIDUALS, PARTICULARLY CHILDREN, INVOLVED IN THE ADOPTION PROCEEDINGS.

(2) IT IS THE PURPOSE OF THIS ARTICLE TO PROMOTE THE INTEGRITY AND FINALITY OF ADOPTIONS TO ENSURE THAT CHILDREN PLACED IN ADOPTIVE PLACEMENTS WILL BE RAISED IN STABLE, LOVING, AND PERMANENT FAMILIES. THE GENERAL ASSEMBLY INTENDS THAT BY ENACTING THIS LEGISLATION, IT WILL BE PROTECTING CHILDREN FROM BEING UPROOTED FROM ADOPTIVE PLACEMENTS AND FROM THE LIFE-LONG EMOTIONAL AND PSYCHOLOGICAL TRAUMA THAT OFTEN ACCOMPANIES BEING

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INDISCRIMINATELY MOVED.

SECTION 2. 19-5-104, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

19-5-104. Final order of relinquishment. (4.3) IF ONE PARENT FILES A PETITION FOR THE RELINQUISHMENT OF A CHILD AND THE AGENCY OR PERSON HAVING CUSTODY OF THE CHILD FILES A PETITION TO TERMINATE THE RIGHTS OF THE OTHER PARENT PURSUANT TO SECTION 19-5-105, THE COURT SHALL SET A HEARING, AS EXPEDITIOUSLY AS POSSIBLE, ON THE RELINQUISHMENT PETITION. A COURT MAY ENTER AN ORDER OF RELINQUISHMENT FOR THE PURPOSE OF ADOPTION PRIOR TO THE RELINQUISHMENT OR TERMINATION OF THE OTHER PARENT'S PARENTAL RIGHTS. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4.5) OF THIS SECTION, AN ORDER OF RELINQUISHMENT IS FINAL AND IRREVOCABLE.

(4.5) (a) A RELINQUISHMENT MAY BE REVOKED ONLY IF, WITHIN NINETY DAYS AFTER THE ENTRY OF THE RELINQUISHMENT ORDER, THE RELINQUISHING PARENT ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT SUCH RELINQUISHMENT WAS OBTAINED BY FRAUD OR DURESS.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (4.5), A RELINQUISHMENT MAY NOT BE REVOKED ON THE BASIS THAT THE RELINQUISHMENT OR TERMINATION OF THE OTHER PARENT'S PARENTAL RIGHTS WAS NOT OBTAINED BECAUSE THE RELINQUISHING PARENT KNEW, BUT DID NOT DISCLOSE, THE NAME OR WHEREABOUTS OF SUCH OTHER PARENT.

(4.7) IF THE RELINQUISHMENT BY AN INDIVIDUAL IS REVOKED PURSUANT TO SUBSECTION (4.5) OF THIS SECTION AND NO GROUNDS EXIST UNDER SECTION 19-5-105 OR UNDER PART 6 OF ARTICLE 3 OF THIS TITLE FOR TERMINATING THE PARENTAL RIGHTS OF THAT INDIVIDUAL, THE COURT SHALL DISMISS ANY PROCEEDING FOR ADOPTION AND SHALL PROVIDE FOR THE CARE AND CUSTODY OF THE CHILD ACCORDING TO THE CHILD'S BEST INTERESTS.

SECTION 3. 19-5-105, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-5-105. Proceeding to terminate parent-child legal relationship. (1) If one parent relinquishes or proposes to relinquish or consents to the adoption of a child, ~~who does not have another presumed parent under section 19-4-105 (1) or has a parent whose relationship to the child has been determined by a court or a parent as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of a relinquishment proceeding,~~ the agency or person having custody of the child shall file a petition in the juvenile court to terminate the parent-child legal relationship of the other parent, unless the other parent's relationship to the child has been previously terminated or determined by a court not to exist. THIS SECTION APPLIES WHETHER OR NOT THE OTHER PARENT IS A PRESUMED PARENT PURSUANT TO SECTION 19-4-105 (1).

(2) In an effort to identify the other ~~natural~~ BIRTH parent, the court shall cause inquiry to be made of the known parent and any other appropriate person. The

inquiry shall include the following: Whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(3) If, after the inquiry, the other ~~natural~~ BIRTH parent is identified to the satisfaction of the court or if more than one person is identified as a possible parent, each shall be given notice of the proceeding in accordance with subsection (5) of this section. If any of them fails to appear or, if appearing, ~~fails to claim custodial rights;~~ ~~his~~ CANNOT PERSONALLY ASSUME LEGAL AND PHYSICAL CUSTODY PROMPTLY, TAKING INTO ACCOUNT THE CHILD'S AGE, NEEDS, AND INDIVIDUAL CIRCUMSTANCES, SUCH PERSON'S parent-child legal relationship with reference to the child shall be terminated. If the other ~~natural~~ BIRTH parent or a person representing himself OR HERSELF to be the other ~~natural~~ BIRTH parent appears and ~~claims custodial rights~~ DEMONSTRATES THE DESIRE AND ABILITY TO PERSONALLY ASSUME LEGAL AND PHYSICAL CUSTODY OF THE CHILD PROMPTLY, TAKING INTO ACCOUNT THE CHILD'S AGE, NEEDS, AND INDIVIDUAL CIRCUMSTANCES, the court shall proceed to determine parentage under ~~this article~~ ARTICLE 4 OF THIS TITLE. If the court determines that the person is the other ~~natural~~ BIRTH parent, the court shall ~~conduct a preliminary investigation~~ SET A HEARING, AS EXPEDITIOUSLY AS POSSIBLE, to determine whether the interests of the child or of the community require that ~~further action be taken.~~ ~~Based upon such investigation, the court shall:~~

~~(a) Award custody to the other natural parent; or~~

~~(b) Direct that a dependency and neglect action be filed pursuant to part 5 of article 3 of this title and make any appropriate order for the protection of the child during the pendency of the action.~~ THE OTHER PARENT'S RIGHTS BE TERMINATED OR, IF THEY ARE NOT TERMINATED, TO DETERMINE WHETHER:

(a) TO AWARD CUSTODY TO THE OTHER BIRTH PARENT OR TO THE PHYSICAL CUSTODIAN OF THE CHILD; OR

(b) TO DIRECT THAT A DEPENDENCY AND NEGLECT ACTION BE FILED PURSUANT TO PART 5 OF ARTICLE 3 OF THIS TITLE WITH APPROPRIATE ORDERS FOR THE PROTECTION OF THE CHILD DURING THE PENDENCY OF THE ACTION.

(3.1) THE COURT MAY ORDER THE TERMINATION OF THE OTHER BIRTH PARENT'S PARENTAL RIGHTS UPON A FINDING THAT TERMINATION IS IN THE BEST INTERESTS OF THE CHILD AND THAT THERE IS CLEAR AND CONVINCING EVIDENCE OF ONE OR MORE OF THE FOLLOWING:

(a) THAT THE PARENT IS UNFIT. IN CONSIDERING THE FITNESS OF THE CHILD'S PARENT, THE COURT SHALL CONSIDER, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING:

(I) EMOTIONAL ILLNESS, MENTAL ILLNESS, OR MENTAL DEFICIENCY OF THE PARENT OF SUCH DURATION OR NATURE AS TO RENDER THE PARENT UNLIKELY, WITHIN A REASONABLE PERIOD OF TIME, TO CARE FOR THE ONGOING PHYSICAL, MENTAL, AND

EMOTIONAL NEEDS OF THE CHILD;

(II) A SINGLE INCIDENT OF LIFE-THREATENING OR GRAVELY DISABLING INJURY OR DISFIGUREMENT OF THE CHILD OR OTHER CHILDREN;

(III) CONDUCT TOWARD THE CHILD OR OTHER CHILDREN OF A PHYSICALLY OR SEXUALLY ABUSIVE NATURE;

(IV) A HISTORY OF VIOLENT BEHAVIOR THAT DEMONSTRATES THAT THE INDIVIDUAL IS UNFIT TO MAINTAIN A PARENT-CHILD RELATIONSHIP WITH THE MINOR;

(V) EXCESSIVE USE OF INTOXICATING LIQUORS OR USE OF CONTROLLED SUBSTANCES, AS DEFINED IN SECTION 12-22-303 (7), C.R.S., THAT AFFECTS THE ABILITY OF THE INDIVIDUAL TO CARE AND PROVIDE FOR THE CHILD;

(VI) NEGLECT OF THE CHILD OR OTHER CHILDREN; AND

(VII) INJURY OR DEATH OF A SIBLING OR OTHER CHILDREN DUE TO PROVEN ABUSE OR NEGLECT BY SUCH PARENT.

(b) THAT THE PARENT HAS NOT ESTABLISHED A SUBSTANTIAL, POSITIVE RELATIONSHIP WITH THE CHILD. THE COURT SHALL CONSIDER, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING IN DETERMINING WHETHER THE PARENT HAS ESTABLISHED A SUBSTANTIAL, POSITIVE RELATIONSHIP WITH THE CHILD:

(I) WHETHER THE PARENT HAS MAINTAINED REGULAR AND MEANINGFUL CONTACT WITH THE CHILD;

(II) WHETHER THE PARENT HAS OPENLY LIVED WITH THE CHILD FOR AT LEAST ONE HUNDRED EIGHTY DAYS WITHIN THE YEAR PRECEDING THE FILING OF THE RELINQUISHMENT PETITION OR, IF THE CHILD IS LESS THAN ONE YEAR OLD AT THE TIME OF THE FILING OF THE RELINQUISHMENT PETITION, FOR AT LEAST ONE-HALF OF THE CHILD'S LIFE; AND

(III) WHETHER THE PARENT HAS OPENLY HELD OUT THE CHILD AS HIS OR HER OWN CHILD.

(c) THAT THE PARENT HAS NOT PROMPTLY TAKEN SUBSTANTIAL PARENTAL RESPONSIBILITY FOR THE CHILD. IN MAKING THIS DETERMINATION THE COURT SHALL CONSIDER, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING:

(I) WHETHER THE PARENT WHO IS THE SUBJECT OF THE PETITION IS SERVED WITH NOTICE AND FAILS TO FILE AN ANSWER, PURSUANT TO RULE 12 OF THE COLORADO RULES OF CIVIL PROCEDURE, OR FAILS TO FILE A PATERNITY ACTION, PURSUANT TO ARTICLE 4 OF THIS TITLE, WITHIN THIRTY DAYS AFTER THE BIRTH OF THE CHILD OR WITHIN THIRTY DAYS AFTER RECEIVING NOTICE THAT HE IS THE FATHER OR LIKELY FATHER OF THE CHILD;

(II) WHETHER THE PARENT HAS FAILED TO PAY REGULAR AND REASONABLE SUPPORT FOR THE CARE OF THE CHILD, ACCORDING TO THAT PARENT'S MEANS; AND

(III) WHETHER THE BIRTH FATHER HAS FAILED TO SUBSTANTIALLY ASSIST THE MOTHER IN THE PAYMENT OF THE MEDICAL, HOSPITAL, AND NURSING EXPENSES, ACCORDING TO THAT PARENT'S MEANS, INCURRED IN CONNECTION WITH THE PREGNANCY AND BIRTH OF THE CHILD.

(3.2) IN CONSIDERING THE TERMINATION OF A PARENT'S PARENTAL RIGHTS, THE COURT SHALL GIVE PARAMOUNT CONSIDERATION TO THE PHYSICAL, MENTAL, AND EMOTIONAL CONDITIONS AND NEEDS OF THE CHILD. SUCH CONSIDERATION SHALL SPECIFICALLY INCLUDE WHETHER THE CHILD HAS FORMED A STRONG, POSITIVE BOND WITH THE CHILD'S PHYSICAL CUSTODIAN, THE TIME PERIOD THAT THE BOND HAS EXISTED, AND WHETHER REMOVAL OF THE CHILD FROM THE PHYSICAL CUSTODIAN WOULD LIKELY CAUSE SIGNIFICANT PSYCHOLOGICAL HARM TO THE CHILD.

(3.3) IF THE CHILD IS UNDER ONE YEAR OF AGE AT THE TIME THAT THE RELINQUISHMENT PETITION IS FILED, THERE IS AN AFFIRMATIVE DEFENSE TO ANY ALLEGATIONS UNDER SUBPARAGRAPH (VI) OF PARAGRAPH (a), PARAGRAPH (b), AND PARAGRAPH (c) OF SUBSECTION (3.1) OF THIS SECTION THAT THE PARENT'S NEGLIGENCE, FAILURE TO ESTABLISH A SUBSTANTIAL RELATIONSHIP, OR FAILURE TO TAKE SUBSTANTIAL RESPONSIBILITY FOR THE CHILD WAS DUE TO IMPEDIMENTS CREATED BY THE OTHER PARENT OR PERSON HAVING CUSTODY. A PARENT SHALL DEMONSTRATE SUCH IMPEDIMENTS CREATED BY THE OTHER PARENT OR PERSON HAVING CUSTODY BY A PREPONDERANCE OF THE EVIDENCE.

(3.4) (a) IF THE COURT DETERMINES NOT TO TERMINATE THE NONRELINQUISHING PARENT'S PARENTAL RIGHTS, NOR TO DIRECT THAT A DEPENDENCY AND NEGLIGENCE ACTION BE FILED, THE COURT SHALL PROCEED TO DETERMINE CUSTODY OF THE CHILD, PARENTING TIME WITH THE CHILD, DUTY OF SUPPORT, AND RECOVERY OF CHILD SUPPORT DEBT.

(b) THE COURT SHALL DETERMINE CUSTODY BASED UPON THE BEST INTERESTS OF THE CHILD GIVING PARAMOUNT CONSIDERATION TO THE PHYSICAL, MENTAL, AND EMOTIONAL CONDITIONS AND NEEDS OF THE CHILD.

(c) IF THE CHILD HAS BEEN OUT OF HIS OR HER BIRTH PARENTS' CARE FOR MORE THAN ONE YEAR, IRRESPECTIVE OF INCIDENTAL COMMUNICATIONS OR VISITS FROM THE RELINQUISHING OR NONRELINQUISHING PARENT, THERE IS A REBUTTABLE PRESUMPTION THAT THE BEST INTERESTS OF THE CHILD WILL BE SERVED BY GRANTING CUSTODY TO THE PERSON IN WHOSE CARE THE CHILD HAS BEEN FOR THAT PERIOD. SUCH PRESUMPTION MAY BE OVERCOME BY A PREPONDERANCE OF THE EVIDENCE.

(3.5) NOTWITHSTANDING SUBSECTION (3.4) OF THIS SECTION, THE COURT SHALL GRANT CUSTODY OF THE CHILD TO THE NONRELINQUISHING BIRTH PARENT IF THE COURT FINDS THAT THE BIRTH PARENT HAS THE ABILITY AND THE DESIRE TO ASSUME PERSONALLY LEGAL AND PHYSICAL CUSTODY OF THE CHILD PROMPTLY AND THAT ALL OF THE FOLLOWING EXISTS:

(a) THE NONRELINQUISHING PARENT HAS ESTABLISHED A SUBSTANTIAL, POSITIVE RELATIONSHIP WITH THE CHILD;

(b) THE NONRELINQUISHING PARENT HAS PROMPTLY TAKEN SUBSTANTIAL PARENTAL RESPONSIBILITY FOR THE CHILD; AND

(c) THE AWARD OF CUSTODY TO THE NONRELINQUISHING PARENT IS IN THE BEST INTERESTS OF THE CHILD.

(3.6) EXCEPT FOR A PARENT WHOSE PARENTAL RIGHTS HAVE BEEN RELINQUISHED PURSUANT TO SECTION 19-5-104, A PERSON WHO HAS OR DID HAVE THE CHILD IN HIS OR HER CARE HAS THE RIGHT TO INTERVENE AS AN INTERESTED PARTY AND TO PRESENT EVIDENCE TO THE COURT REGARDING THE NONRELINQUISHING PARENT'S CONTACT, COMMUNICATION, AND RELATIONSHIP WITH THE CHILD. IF CUSTODY IS AT ISSUE PURSUANT TO SUBSECTION (3.4) OF THIS SECTION, SUCH PERSON ALSO HAS THE RIGHT TO PRESENT EVIDENCE REGARDING THE BEST INTERESTS OF THE CHILD AND HIS OR HER OWN SUITABILITY AS A PLACEMENT FOR THE CHILD.

(4) If, after the inquiry, the court is unable to identify the other ~~natural~~ BIRTH parent or any other possible ~~natural~~ BIRTH parent and no person has appeared claiming to be the other ~~natural~~ BIRTH parent and claiming custodial rights, the court shall enter an order terminating the unknown ~~natural~~ BIRTH parent's parent-child legal relationship with reference to the child. Subject to the disposition of an appeal upon the expiration of ~~three months~~ THIRTY DAYS after an order terminating a parent-child legal relationship is issued under SUBSECTION (3) OF THIS SECTION OR this subsection (4), the order cannot be questioned by any person, in any manner, or upon any ground, except fraud upon the court or fraud upon a party. UPON AN ALLEGATION OF FRAUD, THE TERMINATION ORDER CANNOT BE QUESTIONED BY ANY PERSON, IN ANY MANNER OR UPON ANY GROUND, AFTER THE EXPIRATION OF NINETY DAYS FROM THE DATE THAT THE ORDER WAS ENTERED.

(5) Notice of the proceeding shall be given to every person identified as the ~~natural~~ OTHER BIRTH parent or a possible ~~natural~~ BIRTH parent in the manner appropriate under the Colorado rules of juvenile procedure for the service of process, or in any manner the court directs. THE NOTICE SHALL INFORM THE PARENT OR ALLEGED PARENT WHOSE RIGHTS ARE TO BE DETERMINED THAT FAILURE TO FILE AN ANSWER OR TO APPEAR WITHIN TWENTY DAYS AFTER SERVICE AND, IN THE CASE OF AN ALLEGED FATHER, FAILURE TO FILE A CLAIM OF PATERNITY UNDER ARTICLE 4 OF THIS TITLE WITHIN THIRTY DAYS AFTER SERVICE, IF A CLAIM HAS NOT PREVIOUSLY BEEN FILED, MAY LIKELY RESULT IN TERMINATION OF THE PARENT'S OR THE ALLEGED PARENT'S PARENTAL RIGHTS TO THE MINOR. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the ~~natural~~ BIRTH parent, ~~or a possible parent~~, the court ~~on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order~~ THAT NOTICE BE PROVIDED TO ALL POSSIBLE PARENTS BY publication or public posting OF THE NOTICE at times and in places and manner ~~if~~ THE COURT deems appropriate.

SECTION 4. 19-5-107, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

19-5-107. When notice of relinquishment proceedings required. ~~If one parent relinquishes or proposes to relinquish or consents to the adoption of a child who has another presumed parent under section 19-4-105 (1), another parent whose relationship to the child has been determined by a court, or another parent as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, such other parent shall be given notice of the relinquishment proceedings~~

~~and have the rights provided under article 4 of this title, unless such other parent's relationship to the child has been previously terminated or determined by the court not to exist. If the custodial parent has assigned rights to support for a child who is the subject of relinquishment proceedings to the state department of social services, notice of the relinquishment proceedings shall be given, by the parent proposing to relinquish a child or by that parent's counsel, to the appropriate delegate child support enforcement unit in cases where there is no adoption proceeding pending.~~

SECTION 5. 19-5-214, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-5-214. Limitation on annulment of adoption. No final decree of adoption shall be attacked by reason of any jurisdictional or procedural defect after the expiration of ~~two years~~ NINETY DAYS following the entry of the final decree; EXCEPT THAT IN CASES OF STEPPARENT ADOPTION, NO FINAL DECREE OF ADOPTION SHALL BE ATTACKED BY REASON OF FRAUD UPON THE COURT OR FRAUD UPON A PARTY, WHETHER OR NOT THERE IS A JURISDICTIONAL OR PROCEDURAL DEFECT, AFTER THE EXPIRATION OF ONE YEAR FOLLOWING THE ENTRY OF THE FINAL DECREE OF ADOPTION.

SECTION 6. Effective date - applicability. This act shall take effect upon passage, and shall apply to all orders of relinquishment and termination and all decrees of adoption entered on or after said date.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 20, 1994