

CHAPTER 114

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 03-1286

BY REPRESENTATIVE(S) Hefley, Clapp, Romanoff, Boyd, Carroll, Crane, Frangas, Harvey, Jahn, Marshall, McFadyen, Spence, Tochtrop, Weddig, and Williams S.;
also SENATOR(S) Dyer.

AN ACT

CONCERNING ACCELERATION OF THE PROCESS FOR TERMINATING THE PARENT-CHILD LEGAL RELATIONSHIP OF CHILDREN UNDER ONE YEAR OF AGE, AND, IN CONNECTION THEREWITH, EXPEDITING THE VOLUNTARY RELINQUISHMENT PROCESS.

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, is amended BY THE ADDITION OF A NEW SECTION to read:

19-5-103.5. Expedited relinquishment procedure - children under one year of age - other birth parents - notice - termination. (1) (a) NOTWITHSTANDING THE PROVISIONS OF SECTION 19-5-103 TO THE CONTRARY, A PARENT DESIRING TO RELINQUISH HIS OR HER CHILD MAY SEEK AN EXPEDITED ORDER TERMINATING HIS OR HER PARENT-CHILD LEGAL RELATIONSHIP WITHOUT THE NECESSITY OF A COURT HEARING IF:

(I) THE CHILD IS UNDER ONE YEAR OF AGE, AT THE TIME OF FILING THE PETITION;

(II) THE RELINQUISHING PARENT IS BEING ASSISTED BY A LICENSED CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT OF SOCIAL SERVICES IN THE COUNTY WHERE SUCH PARENT RESIDES;

(III) THE REQUIREMENTS OF SECTION 19-5-103 (1) HAVE BEEN MET; AND

(IV) THE PARENT SIGNS AN AFFIDAVIT STATING HIS OR HER DESIRE TO VOLUNTARILY RELINQUISH HIS OR HER PARENT-CHILD LEGAL RELATIONSHIP WITH THE CHILD AND CONSENTING TO A WAIVER OF HIS OR HER RIGHT TO CONTEST A TERMINATION OF PARENTAGE.

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

(b) (I) THE AFFIDAVIT REQUIRED TO BE SIGNED BY THE PARENT SEEKING TO RELINQUISH HIS OR HER PARENTAL RIGHTS PURSUANT TO THIS SECTION SHALL ADVISE THE RELINQUISHING PARENT OF THE CONSEQUENCES OF THE RELINQUISHMENT DECISION AND SHALL FURTHER ADVISE THE RELINQUISHING PARENT THAT HE OR SHE IS STILL REQUIRED TO OBTAIN THE RELINQUISHMENT COUNSELING DESCRIBED IN SECTION 19-5-103 (1) (a) AND (2). THE RELINQUISHING PARENT SHALL BE ADVISED OF THE OPPORTUNITY TO SEEK INDEPENDENT COUNSELING. THE AFFIDAVIT SHALL ALSO ADVISE THE RELINQUISHING PARENT THAT HE OR SHE MAY WITHDRAW THE AFFIDAVIT ANYTIME AFTER SIGNING IT BUT BEFORE THE AFFIDAVIT AND PETITION ARE FILED WITH THE COURT. THE RELINQUISHING PARENT MAY SIGN THE AFFIDAVIT BEFORE THE BIRTH OF THE CHILD. THE RELINQUISHING BIRTH PARENT MAY WITHDRAW THE AFFIDAVIT FROM THE CHILD PLACEMENT AGENCY OR COUNTY DEPARTMENT OF SOCIAL SERVICES IN THE COUNTY WHERE SUCH PARENT RESIDES ANY TIME AFTER SIGNING IT BUT BEFORE THE AFFIDAVIT AND PETITION ARE FILED WITH THE COURT.

(II) THE AFFIDAVIT SHALL INCLUDE THE FOLLOWING:

(A) A STATEMENT THAT THE PETITIONER HAS COMPLETED THE RELINQUISHMENT COUNSELING REQUIRED IN SECTION 19-5-103 (1) AND (2) OR UNDERSTANDS HE OR SHE MUST COMPLETE THE COUNSELING PRIOR TO ENTRY OF THE ORDER OF TERMINATION;

(B) A STATEMENT THAT THE CHILD TO BE RELINQUISHED IS UNDER ONE YEAR OF AGE AT THE TIME OF FILING THE PETITION;

(C) A STATEMENT THAT THE RELINQUISHING PARENT'S DECISION IS KNOWING AND VOLUNTARY AND NOT THE RESULT OF THREATS, COERCION, OR UNDUE INFLUENCE OR INDUCEMENTS; AND

(D) A STATEMENT THAT THE RELINQUISHING PARENT BELIEVES THE RELINQUISHMENT IS IN THE BEST INTERESTS OF THE CHILD.

(III) THE RELINQUISHING PARENT'S SIGNATURE ON THE AFFIDAVIT SHALL BE WITNESSED BY TWO WITNESSES, ONE OF WHOM SHALL BE EITHER A REPRESENTATIVE OF THE LICENSED CHILD PLACEMENT AGENCY WITH WHICH THE RELINQUISHING PARENT HAS CONTRACTED OR A REPRESENTATIVE OF THE COUNTY DEPARTMENT OF SOCIAL SERVICES IN THE COUNTY WHERE SUCH PARENT RESIDES, WHICHEVER IS ASSISTING THE PARENT. THE OTHER WITNESS SHALL NOT BE ASSOCIATED WITH EITHER THE LICENSED CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT OF SOCIAL SERVICES IN THE COUNTY WHERE SUCH PARENT RESIDES, WHICHEVER IS ASSISTING THE PARENT, AND SHALL NOT BE THE POTENTIAL ADOPTIVE PARENT OF THE CHILD TO BE RELINQUISHED.

(IV) THE AFFIDAVIT SHALL BE NOTARIZED AND SHALL BE ATTACHED TO THE PETITION FOR RELINQUISHMENT AND FILED WITH THE COURT AFTER THE BIRTH OF THE CHILD. THE PETITION FOR RELINQUISHMENT MAY NOT BE FILED UNTIL AT LEAST FOUR DAYS AFTER THE BIRTH OF THE CHILD.

(c) IF THE BIRTH PARENT HAS SIGNED THE AFFIDAVIT DESCRIBED IN THIS SUBSECTION (1) AND IF IT IS PROPERLY WITNESSED AND NOTARIZED AND ATTACHED TO THE PETITION, THE COURT MAY VACATE THE HEARING REQUIRED PURSUANT TO

SECTION 19-5-103 (3) AND, UPON MAKING THE FINDINGS SET FORTH IN SECTION 19-5-103 (7) (a), SHALL ENTER AN ORDER OF RELINQUISHMENT, WITHOUT A HEARING, NO MORE THAN SEVEN BUSINESS DAYS AFTER THE DATE OF THE FILING OF THE PETITION FOR RELINQUISHMENT AND THE ACCOMPANYING AFFIDAVIT.

(2) (a) NOTWITHSTANDING THE PROVISIONS OF SECTION 19-5-105 TO THE CONTRARY, IN THOSE CASES IN WHICH A PARENT SEEKS TO RELINQUISH HIS OR HER PARENT-CHILD LEGAL RELATIONSHIP WITH A CHILD PURSUANT TO THIS SECTION, THE LICENSED CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT OF SOCIAL SERVICES ASSISTING THE RELINQUISHING PARENT SHALL PROCEED WITH FILING THE PETITION FOR TERMINATION OF THE OTHER BIRTH PARENT'S OR POSSIBLE BIRTH PARENTS' PARENT-CHILD LEGAL RELATIONSHIP AND NOTIFY THE OTHER BIRTH PARENT OR POSSIBLE BIRTH PARENTS AS PROVIDED IN SECTION 19-5-105; EXCEPT THAT THE LICENSED CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT OF SOCIAL SERVICES ASSISTING THE RELINQUISHING PARENT MAY SERVE THE OTHER BIRTH PARENT OR POSSIBLE BIRTH PARENTS, WHETHER BY PERSONAL SERVICE, PUBLICATION, OR POSTING, PRIOR TO THE BIRTH OF THE CHILD.

(b) NOTICE OF THE PROCEEDING PURSUANT TO THIS SECTION SHALL BE GIVEN TO EVERY PERSON IDENTIFIED AS THE OTHER BIRTH PARENT OR A POSSIBLE 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 TWENTY 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 CHILD. THE NOTICE SHALL ALSO INFORM THE PARENT OR ALLEGED PARENT WHOSE RIGHTS ARE TO BE DETERMINED THAT THE PERSON HAS THE RIGHT TO WAIVE HIS OR HER RIGHT TO APPEAR AND CONTEST AND THAT FAILURE TO APPEAR AND CONTEST MAY LIKELY RESULT IN TERMINATION OF THE PARENT'S OR THE ALLEGED PARENT'S PARENTAL RIGHTS TO THE CHILD. PROOF OF GIVING THE NOTICE SHALL BE FILED WITH THE COURT BEFORE THE PETITION IS HEARD OR OTHERWISE ACTED UPON. IF NO PERSON HAS BEEN IDENTIFIED AS THE BIRTH PARENT, THE COURT SHALL ORDER THAT NOTICE BE PROVIDED TO ALL POSSIBLE BIRTH PARENTS BY PUBLICATION OR PUBLIC POSTING OF THE NOTICE AT TIMES AND IN THE PLACES AND MANNER THE COURT DEEMS APPROPRIATE.

(c) THE OTHER BIRTH PARENT OR POSSIBLE BIRTH PARENTS MAY SIGN THE AFFIDAVIT OF VOLUNTARY RELINQUISHMENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION. SUCH BIRTH PARENT MAY SIGN THE AFFIDAVIT PRIOR TO THE BIRTH OF THE CHILD. IF THE OTHER BIRTH PARENT OR POSSIBLE BIRTH PARENT SIGNS AN AFFIDAVIT OF VOLUNTARY RELINQUISHMENT, HE OR SHE MAY WITHDRAW THE AFFIDAVIT FROM THE CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT OF SOCIAL SERVICES ASSISTING THE RELINQUISHING PARENT ANY TIME AFTER SIGNING IT BUT BEFORE THE AFFIDAVIT AND PETITION ARE FILED WITH THE COURT.

(d) IF THE OTHER BIRTH PARENT, OR ANY OTHER POSSIBLE BIRTH PARENT, HAS WAIVED HIS OR HER RIGHT TO CONTEST THE TERMINATION OF PARENTAL RIGHTS OR HAS FAILED TO APPEAR AND CONTEST OR TO FILE AN ANSWER TO THE PETITION FOR

TERMINATION OR TO FILE A PATERNITY ACTION WITHIN THE PRESCRIBED TWENTY DAYS FOLLOWING THE DATE OF THE SERVICE, PUBLICATION, OR POSTING OF THE NOTICE AS PROVIDED IN THE NOTICE PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) OR HAS SIGNED THE AFFIDAVIT OF VOLUNTARY RELINQUISHMENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THEN THE COURT SHALL VACATE THE PROCEEDING AND, AT THE TIME OF THE REVIEW OF THE CASE PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, ENTER AN ORDER TERMINATING THE OTHER BIRTH PARENT'S OR POSSIBLE BIRTH PARENTS' PARENT-CHILD LEGAL RELATIONSHIP. IF THE OTHER BIRTH PARENT OR POSSIBLE BIRTH PARENT EXPRESSES HIS OR HER DESIRE TO APPEAR AND CONTEST THE TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP, THE COURT SHALL PROCEED WITH A HEARING ON THE PETITION FOR TERMINATION OF THE OTHER BIRTH PARENT'S PARENT-CHILD LEGAL RELATIONSHIP.

(3) THE LICENSED CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT OF SOCIAL SERVICES ASSISTING THE RELINQUISHING PARENT SHALL NOT SUBMIT THE DOCUMENTS REFERENCED IN SUBSECTIONS (1) AND (2) OF THIS SECTION FOR JUDICIAL REVIEW UNLESS A PERMANENT PLACEMENT FOR THE CHILD HAS BEEN IDENTIFIED.

(4) THE COURT SHALL NOT BE BOUND TO ENTER AN ORDER TERMINATING A PARENT-CHILD LEGAL RELATIONSHIP UPON THE AFFIDAVIT OF THE RELINQUISHING PARENT PURSUANT TO SUBSECTION (1) OF THIS SECTION AND THE COURT SHALL NOT BE BOUND TO ENTER AN ORDER TERMINATING A PARENT-CHILD LEGAL RELATIONSHIP OF THE OTHER BIRTH PARENT OR POSSIBLE BIRTH PARENTS PURSUANT TO SUBSECTION (2) OF THIS SECTION, BUT THE COURT MAY, UPON ITS OWN MOTION, REQUIRE THAT A FORMAL HEARING BE HELD TO DETERMINE ANY OR ALL ISSUES PRESENTED BY THE PLEADINGS.

SECTION 2. 19-5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-5-103. Relinquishment procedure - petition - hearings. (2.5) IN THOSE CASES IN WHICH A PARENT PROPOSES TO RELINQUISH HIS OR HER PARENT-CHILD LEGAL RELATIONSHIP WITH RESPECT TO A CHILD WHO IS UNDER ONE YEAR OF AGE PURSUANT TO THE EXPEDITED PROCEDURES SET FORTH IN SECTION 19-5-103.5, THE LICENSED CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT OF SOCIAL SERVICES ASSISTING THE RELINQUISHING PARENT SHALL PROCEED WITH FILING THE PETITION AND PROVIDING NOTICE AS SET FORTH IN SECTION 19-5-103.5.

SECTION 3. 19-5-105 (3.1) (c) (I), Colorado Revised Statutes, is amended, and the said 19-5-105 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

19-5-105. Proceeding to terminate parent-child legal relationship. (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:

(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 within thirty days after service of the notice and petition to terminate the parent-child legal relationship, OR WITHIN TWENTY DAYS IF THE PETITION FOR TERMINATION WAS FILED PURSUANT TO SECTION 19-5-103.5, 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, OR, FOR THOSE PETITIONS FILED PURSUANT TO SECTION 19-5-103.5, WITHIN TWENTY DAYS AFTER THE BIRTH OF THE CHILD OR AFTER RECEIVING NOTICE THAT HE IS THE FATHER OR LIKELY FATHER OF THE CHILD;

(6) IN THOSE CASES IN WHICH A PARENT PROPOSES TO RELINQUISH HIS OR HER PARENT-CHILD LEGAL RELATIONSHIP WITH A CHILD WHO IS UNDER ONE YEAR OF AGE, PURSUANT TO THE EXPEDITED PROCEDURES SET FORTH IN SECTION 19-5-103.5, THE LICENSED CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT OF SOCIAL SERVICES ASSISTING THE RELINQUISHING PARENT SHALL PROCEED WITH FILING THE PETITION FOR TERMINATION OF THE OTHER BIRTH PARENT'S OR POSSIBLE BIRTH PARENTS' PARENT-CHILD LEGAL RELATIONSHIP AND NOTIFY THE OTHER BIRTH PARENT OR POSSIBLE BIRTH PARENTS AS PROVIDED IN SECTION 19-5-103.5 (2).

SECTION 4. Effective date - applicability. This act shall take effect July 1, 2003, and shall apply to petitions filed on or after said date.

SECTION 5. 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 7, 2003