

CHAPTER 77

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 14-062

BY SENATOR(S) Guzman and Roberts, Aguilar, Baumgardner, Cadman, Grantham, Heath, Herpin, Hodge, Johnston, Kefalas, King, Lambert, Lundberg, Marble, Newell, Nicholson, Rivera, Scheffel, Schwartz, Steadman, Tochtrop, Todd, Ulibarri, Zenzinger; also REPRESENTATIVE(S) Foote and Gardner, Conti, Fields, Ginal, Hullinghorst, May, Mitsch Bush, Pabon, Primavera, Schafer, Scott, Singer, Young, Ferrandino.

AN ACT**CONCERNING REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP.**

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

SECTION 1. In Colorado Revised Statutes, **add** 19-3-612 as follows:

19-3-612. Reinstatement of the parent-child legal relationship - circumstances - petition - hearings - legislative declaration. (1) ~~THE GENERAL ASSEMBLY FINDS THAT, FOR VARIOUS REASONS, SOME CHILDREN ARE NOT ADOPTED AFTER THE TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP AND IN SOME CASES MIGHT BENEFIT FROM A REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP IF THE FORMER PARENT HAS REMEDIATED THE ISSUES THAT LED TO THE TERMINATION. THE PURPOSE OF THIS SECTION IS TO ADDRESS THE PROBLEM OF CHILDREN WHO LINGER IN THE CHILD WELFARE SYSTEM BY GIVING THEM A SECOND CHANCE AT ACHIEVING PERMANENCY WITH THEIR REHABILITATED FORMER PARENT. THE PURPOSE OF THIS SECTION IS TO CREATE A PROCESS BY WHICH THE FORMER PARENT'S LEGAL RIGHTS MAY BE RESTORED IF CERTAIN CONDITIONS ARE MET, BOTH THE CHILD AND THE FORMER PARENT WANT REINSTATEMENT OF THE RELATIONSHIP, A TRIAL PERIOD IS SUCCESSFUL, AND IT IS FOUND TO BE IN THE BEST INTERESTS OF THE CHILD. REINSTATEMENT IS A RECOGNITION THAT THE SITUATION OF THE FORMER PARENT AND CHILD HAS CHANGED SINCE THE TIME OF THE TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP, AND REUNIFICATION IS NOW APPROPRIATE AND IN THE BEST INTERESTS OF THE CHILD.~~

(2) ~~A COUNTY DEPARTMENT WITH CUSTODY OF A CHILD WHOSE PARENT'S RIGHTS WERE TERMINATED VOLUNTARILY OR INVOLUNTARILY, OR THE GUARDIAN AD LITEM OF SUCH A CHILD, MAY FILE A PETITION TO REINSTATE THE PARENT-CHILD LEGAL~~

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

RELATIONSHIP ALLEGING THE FOLLOWING:

(a) (I) THE CHILD IS TWELVE YEARS OF AGE OR OLDER; OR

(II) THE CHILD IS YOUNGER THAN TWELVE YEARS OF AGE AND IS PART OF A SIBLING GROUP, AS DEFINED IN SECTION 19-1-103 (98.5), THAT INCLUDES A CHILD DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) FOR WHOM A PETITION TO REINSTATE THE PARENT-CHILD LEGAL RELATIONSHIP HAS BEEN FILED, AND THE YOUNGER SIBLING INDEPENDENTLY MEETS THE CONDITIONS SET FORTH IN PARAGRAPHS (b) TO (f) OF THIS SUBSECTION (2);

(b) BOTH THE CHILD AND THE FORMER PARENT CONSENT TO THE PETITION FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP;

(c) THE CHILD DOES NOT HAVE A LEGAL PARENT, IS NOT IN AN ADOPTIVE PLACEMENT, AND IS NOT LIKELY TO BE ADOPTED WITHIN A REASONABLE PERIOD OF TIME, AND OTHER PERMANENCY OPTIONS HAVE BEEN EXHAUSTED;

(d) THE CHILD IS IN THE LEGAL CUSTODY OF A COUNTY DEPARTMENT;

(e) THE DATE OF THE FINAL ORDER TERMINATING THE PARENT-CHILD LEGAL RELATIONSHIP WAS AT LEAST THREE YEARS BEFORE THE FILING OF THE PETITION OR, IF THE COURT FINDS THAT IT IS IN THE BEST INTERESTS OF THE CHILD TO CONSIDER A PETITION FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP, LESS THAN THREE YEARS FROM THE DATE OF THE FINAL ORDER TERMINATING THE PARENT-CHILD LEGAL RELATIONSHIP; AND

(f) THE DEPENDENCY AND NEGLECT ACTION DID NOT INVOLVE SUBSTANTIATED ALLEGATIONS OF SEXUAL ABUSE OR AN INCIDENT OF EGREGIOUS ABUSE OR NEGLECT AGAINST A CHILD, A NEAR FATALITY, OR A SUSPICIOUS FATALITY OR NEAR FATALITY AS THOSE TERMS ARE DEFINED IN SECTION 26-1-139, C.R.S.

(3) A CHILD WHO IS SIXTEEN YEARS OF AGE OR OLDER, OR HIS OR HER GUARDIAN AD LITEM, MAY ALSO FILE A PETITION TO REINSTATE THE PARENT-CHILD LEGAL RELATIONSHIP ALLEGING THAT THE CONDITIONS SET FORTH IN PARAGRAPHS (b) TO (f) OF SUBSECTION (2) OF THIS SECTION ARE MET.

(4) IF A FORMER PARENT WHOSE RIGHTS HAVE BEEN TERMINATED CONTACTS EITHER THE COUNTY DEPARTMENT THAT HAS CUSTODY OF THE CHILD OR THE CHILD'S GUARDIAN AD LITEM ABOUT THE POSSIBLE REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP THROUGH A PETITION FILED UNDER THIS SECTION, THE COUNTY DEPARTMENT OR THE GUARDIAN AD LITEM WHO WAS CONTACTED MUST NOTIFY THE OTHER PARTY, AS APPLICABLE, WITHIN THIRTY DAYS AFTER THE CONTACT WITH THE NAME AND ADDRESS OF THE FORMER PARENT.

(5) IF A PETITION TO REINSTATE THE PARENT-CHILD LEGAL RELATIONSHIP IS FILED, A FORMER PARENT WHO IS NAMED IN THE PETITION AND WHOSE RIGHTS THE PETITION SEEKS TO HAVE REINSTATED IS ENTITLED TO APPOINTED COUNSEL IF THE FORMER PARENT MEETS THE INCOME ELIGIBILITY CRITERIA FOR PUBLIC COUNSEL, OR THE FORMER PARENT MAY RETAIN COUNSEL AT HIS OR HER OWN EXPENSE.

(6) THE PETITION MUST STATE THE NAME AND AGE OF THE CHILD; THE COUNTY DEPARTMENT THAT HAS LEGAL CUSTODY OF THE CHILD; AND THE NAME AND ADDRESS OF THE FORMER PARENT NAMED IN THE PETITION. THE PETITION SHALL BE VERIFIED, AND THE STATEMENTS IN THE PETITION MAY BE MADE UPON INFORMATION AND BELIEF. THE PARTY FILING A PETITION TO REINSTATE THE PARENT-CHILD LEGAL RELATIONSHIP SHALL SERVE THE PETITION ON THE FOLLOWING NONMOVANTS:

- (a) THE CHILD'S GUARDIAN AD LITEM;
- (b) THE COUNTY DEPARTMENT WITH LEGAL CUSTODY OF THE CHILD; AND
- (c) THE FORMER PARENT WHOSE PARENT-CHILD LEGAL RELATIONSHIP THE PETITION SEEKS TO HAVE REINSTATED.

(7) UPON RECEIPT OF THE PETITION FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP, THE COURT MUST SET A DATE FOR AN INITIAL HEARING TO TAKE PLACE NO MORE THAN SIXTY-THREE DAYS AFTER THE FILING OF THE PETITION. THE COURT SHALL PROVIDE NOTICE OF ALL HEARINGS AND REVIEWS TO:

- (a) THE COUNTY DEPARTMENT WITH LEGAL CUSTODY OF THE CHILD;
- (b) THE GUARDIAN AD LITEM;
- (c) THE FORMER PARENT WHOSE PARENT-CHILD LEGAL RELATIONSHIP THE PETITION SEEKS TO HAVE REINSTATED;
- (d) THE FOSTER PARENTS, IF ANY; AND
- (e) THE CHILD'S TRIBE IF THE CHILD IS AN INDIAN CHILD.

(8) AT THE INITIAL HEARING AND ALL SUBSEQUENT HEARINGS ON THE PETITION, THE COURT SHALL CONSIDER INFORMATION FROM THE COUNTY DEPARTMENT WITH LEGAL CUSTODY OF THE CHILD, THE CHILD, THE CHILD'S GUARDIAN AD LITEM, THE FORMER PARENT, THE PERSON OR AGENCY THAT IS PROVIDING CARE FOR THE CHILD, AND ANY OTHER PERSON OR AGENCY THAT MAY AID THE COURT IN ITS REVIEW.

(9) AT THE INITIAL HEARING, THE COURT SHALL CONSIDER AND MAKE FINDINGS ABOUT THE FOLLOWING THRESHOLD CONDITIONS FOR PURSUING A REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP:

- (a) WHETHER THE ALLEGATIONS FOR FILING THE PETITION IN PARAGRAPHS (a) TO (f) OF SUBSECTION (2) OF THIS SECTION OR IN SUBSECTION (3) OF THIS SECTION HAVE BEEN ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE;
- (b) WHETHER THE CHILD IS OF A SUFFICIENT AGE AND MATURITY AND ABLE TO EXPRESS HIS OR HER PREFERENCE ABOUT REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP;
- (c) WHETHER THE FORMER PARENT HAS REMEDIED THE CONDITIONS THAT LED TO THE CHILD'S REMOVAL AND TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP, IF APPLICABLE;

(d) WHAT TEMPORARY TRANSITION SERVICES WOULD BE NEEDED BY THE CHILD AND THE FORMER PARENT TO HAVE A SUCCESSFUL REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP;

(e) WHETHER THE FORMER PARENT CAN PROVIDE A SAFE AND STABLE HOME FOR THE CHILD; AND

(f) WHETHER THE FORMER PARENT HAS PARTICIPATED IN AN ASSESSMENT THAT SUPPORTS THAT THE REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP IS IN THE BEST INTERESTS OF THE CHILD. THE STATE BOARD MAY ADOPT RULES DEFINING THE TYPES OF ASSESSMENTS THAT MAY BE DONE TO SUPPORT REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP. A PREVIOUS FINDING OF TERMINATION DOES NOT DISQUALIFY THE FORMER PARENT FROM BEING CERTIFIED AS AN APPROPRIATE PLACEMENT FOR A TRIAL PERIOD UNDER THIS SECTION.

(10) AT THE CONCLUSION OF THE INITIAL HEARING, THE COURT SHALL EITHER DISMISS THE PETITION BECAUSE THE THRESHOLD CONDITIONS FOR REINSTATEMENT SET FORTH IN SUBSECTION (9) OF THIS SECTION HAVE NOT BEEN MET OR ENTER AN ORDER FINDING THAT THE THRESHOLD CONDITIONS FOR REINSTATEMENT SET FORTH IN SUBSECTION (9) OF THIS SECTION HAVE BEEN MET AND THAT IT IS IN THE BEST INTERESTS OF THE CHILD TO WORK TOWARD REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP. IF THE COURT FINDS THAT IT IS IN THE BEST INTERESTS OF THE CHILD TO PURSUE REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP, THE COURT MUST APPROVE A TRANSITION PLAN DEVELOPED BY THE COUNTY DEPARTMENT AND DESIGNED FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP, INCLUDING VISITATION OR PLACEMENT OF THE CHILD WITH THE FORMER PARENT FOR A DESIGNATED TRIAL PERIOD OF UP TO SIX MONTHS, DURING WHICH TIME LEGAL CUSTODY OF THE CHILD REMAINS WITH THE COUNTY DEPARTMENT. AS PART OF THE TRANSITION PLAN, THE COUNTY DEPARTMENT SHALL PROVIDE TRANSITION SERVICES, AS NEEDED. THE COUNTY DEPARTMENT SHALL ASSESS THE VISITATION OR TEMPORARY PLACEMENT OF THE CHILD WITH THE FORMER PARENT AND PREPARE A REPORT ABOUT THE SUCCESS OF THE VISITATION OR TEMPORARY PLACEMENT. THE COUNTY DEPARTMENT SHALL SUBMIT THE REPORT TO THE COURT, THE FORMER PARENT, AND THE GUARDIAN AD LITEM NOT LATER THAN THIRTY DAYS PRIOR TO THE EXPIRATION OF THE DESIGNATED TRIAL PERIOD. THE COUNTY DEPARTMENT MAY STOP THE VISITATION OR REMOVE THE CHILD FROM PLACEMENT WITH THE FORMER PARENT AT ANY TIME, IN ACCORDANCE WITH THE PROCEDURES OUTLINED IN SECTIONS 19-3-401 AND 19-3-403, IF IT DEEMS THAT THE CHILD IS NOT SAFE OR THAT IT IS NO LONGER IN THE BEST INTERESTS OF THE CHILD FOR THE CHILD TO REMAIN WITH THE FORMER PARENT.

(11)(a) THE COURT SHALL SCHEDULE A FINAL HEARING PRIOR TO THE EXPIRATION OF THE DESIGNATED TRIAL PERIOD. AT THE FINAL HEARING, THE COURT SHALL CONSIDER THE FOLLOWING:

(I) WHETHER THE THRESHOLD CRITERIA FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP SET FORTH IN SUBSECTION (9) OF THIS SECTION ARE STILL MET;

(II) WHETHER THE TRIAL PERIOD OF VISITATION OR PLACEMENT OF THE CHILD WITH THE FORMER PARENT WAS SUCCESSFUL;

(III) WHETHER THE CHILD WILL LOSE OR GAIN ANY BENEFITS OR SERVICES AS A RESULT OF REINSTATEMENT AND HOW THIS MIGHT AFFECT THE CHILD; AND

(IV) WHETHER REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP IS IN THE BEST INTERESTS OF THE CHILD.

(b) THE COURT SHALL MAKE FINDINGS SUPPORTING THE DISPOSITION OF THE PETITION FOR REINSTATEMENT. THE COURT MAY MAKE THE FOLLOWING ORDERS:

(I) THE COURT MAY GRANT THE PETITION AND ORDER THE REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT IT IS IN THE BEST INTERESTS OF THE CHILD TO REINSTATE THE PARENT-CHILD LEGAL RELATIONSHIP; OR

(II) THE COURT MAY DISMISS THE PETITION, IN WHICH CASE:

(A) THE COUNTY DEPARTMENT RETAINS THE LEGAL CUSTODY OF THE CHILD; AND

(B) THE COUNTY DEPARTMENT SHALL ARRANGE FOR THE IMMEDIATE PLACEMENT OF THE CHILD IN OUT-OF-HOME PLACEMENT; AND

(C) THE COURT SHALL SET A HEARING TO DETERMINE THE PERMANENCY PLAN IN ACCORDANCE WITH SECTION 19-3-702; OR

(III) THE COURT MAY CONTINUE THE MATTER FOR NO MORE THAN SIXTY DAYS AND MAY ISSUE AN ORDER REQUIRING THE FORMER PARENT OR THE COUNTY DEPARTMENT TO TAKE CERTAIN ACTIONS BEFORE THE NEXT HEARING; EXCEPT THAT THE COURT SHALL EITHER DISMISS OR GRANT A MOTION FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP WITHIN TWELVE MONTHS AFTER THE DATE THE PETITION FOR REINSTATEMENT WAS FILED.

(12) AN ORDER REINSTATING THE PARENT-CHILD LEGAL RELATIONSHIP RESTORES ALL RIGHTS, POWERS, PRIVILEGES, IMMUNITIES, DUTIES, AND OBLIGATIONS OF THE FORMER PARENT AS TO THE CHILD, INCLUDING THOSE RELATING TO CUSTODY, CONTROL, AND SUPPORT OF THE CHILD. IF THE PARENT-CHILD LEGAL RELATIONSHIP IS REINSTATED, THE COURT MAY REQUIRE PERIODIC REVIEW WITHIN NINETY DAYS AFTER REINSTATEMENT.

(13) THE GRANTING OF A PETITION FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP DOES NOT VACATE OR OTHERWISE AFFECT THE VALIDITY OF THE ORIGINAL ORDER TERMINATING THE PARENT-CHILD LEGAL RELATIONSHIP.

(14) THE GRANTING OF A PETITION FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP FOR ONE FORMER PARENT DOES NOT RESTORE OR OTHERWISE IMPACT THE RIGHTS OR LEGAL STATUS OF THE OTHER FORMER PARENT.

(15) A PARENT WHOSE PARENT-CHILD LEGAL RELATIONSHIP IS RESTORED PURSUANT TO THIS SECTION IS NOT LIABLE FOR CHILD SUPPORT OR THE COSTS OF ANY SERVICES PROVIDED TO THE CHILD FROM THE DATE OF THE ORIGINAL ORDER TERMINATING THE PARENT-CHILD LEGAL RELATIONSHIP TO THE DATE OF THE ORDER REINSTATING THE PARENT-CHILD LEGAL RELATIONSHIP.

(16) THIS SECTION DOES NOT CREATE A CAUSE OF ACTION AGAINST THE COUNTY DEPARTMENT OR ITS EMPLOYEES CONCERNING THE ORIGINAL ORDER TERMINATING THE PARENT-CHILD LEGAL RELATIONSHIP. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR ALTER THE PROTECTIONS GRANTED TO PUBLIC ENTITIES AND TO THEIR EMPLOYEES UNDER THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.

SECTION 2. In Colorado Revised Statutes, 19-3-201, **amend** (1) as follows:

19-3-201. Venue. (1) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), all proceedings brought under this article shall be commenced in the county in which the child resides or is present.

(b) A COUNTY DEPARTMENT, GUARDIAN AD LITEM, OR OTHER PERSON FILING A PETITION FOR REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP AS SET FORTH IN SECTION 19-3-612 MUST FILE THE PETITION FOR THE REINSTATEMENT OF THE PARENT-CHILD LEGAL RELATIONSHIP IN THE COUNTY OR CITY AND COUNTY THAT HAS LEGAL CUSTODY OF THE CHILD.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 27, 2014