

ACT NO. 7374

BILL NO. 29-0271

TWENTY-NINTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2012

An Act amending title 5 Virgin Islands Code, section 2550 relating to the termination of parental rights of parents

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 5 Virgin Islands Code, chapter 201, subchapter IV, section 2550 is repealed and reenacted with amendments that read as follows:

“§2550. (a) As used in this section, the term:

(1) “Court” means the Family Division of the Superior Court of the Virgin Islands.

(2) “Department” means the Department of Human Services.

(3) “Reasonable efforts” means the exercise of due diligence and care by the Department to utilize all available services related to meeting the needs of the child and the family and to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure, including, consultation and cooperation with the parent in developing a plan for appropriate services; providing services to the family which have been agreed upon, in order to further the goal of family reunification; informing the parent at appropriate intervals of the child's progress, development and health; and facilitating appropriate visitation.

(4) “Relative” means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, nephew, whether related by the whole or half blood, by affinity, or by adoption, or a step parent.

(b) The Department or the guardian ad litem of the child may file a petition in the Family Division of the Superior Court to terminate the parental rights and responsibilities of one or both parents of a child, as provided in this section. The rights of one parent may be terminated without affecting the rights of the other parent.

(c) The Court may terminate the parental rights and responsibilities of one or both parents after the filing of a petition by an interested party, if the Court finds by clear and convincing evidence that the termination of the parent's rights is in the best interest of the child and that any of the following grounds exists:

(1) Abandonment by the parent as defined in section 2102(1);

(2) There has been unwillingness or substantial noncompliance by the parent with the Department's reasonable efforts to achieve reunification;

(3) The child has been removed from the home of the parent for more than six months and:

(A) The conditions that led to the child's removal which in all reasonable probability would cause the child to be subjected to further abuse or neglect still persist;

(B) There is little likelihood that the conditions that led to the child's removal will be remedied within the next 18 months so that the child can be safely returned home in the near future.

(C) For the purposes of this subsection when the child has been in foster care or not in the physical custody of the parent for 15 of the most recent 22 months, a presumption exists that the conditions described in paragraph (4), subparagraph (B) of this subsection exist, unless the parent can prove by a preponderance of the evidence that it is more likely than not that the child will be returned to the parent's physical custody within 6 months;

(4) The parent has been convicted of aggravated child abuse or neglect, as defined in 14 V.I.C. § 506, against the child who is the subject of the petition or against any sibling, half-sibling, or any other child residing temporarily or permanently in the home of the parent;

(5) The parent has been convicted of the intentional and wrongful death of the child's other parent or legal guardian;

(6) The parent is unable to discharge parental duties due to:

(A) Emotional illness, mental illness, or mental deficiency; or

(B) Habitual abuse or addiction to intoxicating liquors, narcotics, or other dangerous drug;

(7) The parent has failed to manifest an ability and willingness to assume legal and physical custody of the child;

(8) Placing custody of the child in the parent's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or

(9) The parent has relinquished the parent's rights or consented to the child's adoption.

(d) Except as provided in subsection (e), the Department shall file a petition to terminate the parental rights of the child's parent under any of the following circumstances:

(1) The child has been in out-of-home-placement for 15 of the most recent 22 months;

(2) The parent has:

(A) Committed murder or manslaughter of any sibling or half-sibling of the child;

(B) Aided, abetted, attempted, conspired, or solicited to commit such murder or a voluntary manslaughter; or

(C) Committed a felony assault that has resulted in serious bodily injury to the child or any sibling or half-sibling of the child;

(3) The Court has made a finding under section 2548 of this title that the parent has on two or more occasions abused or neglected any child; or

(4) Within 18 months after a child's return from an out-of-home placement, the child who is the subject of the petition is removed from the parent's custody and placed in care outside the home a second time.

(e) The Department may determine not to file a petition to terminate the parental rights of the child's parent under the mandatory requirements of subsection (d), if one of the following exists:

(1) The child is being cared for by a relative approved by the Department;
or

(2) The Department has not made reasonable efforts to provide to the family of the child, consistent with the time period in the Department, reunification plan for providing services that the Department considers necessary for the safe return of the child to the child's home.

(f) (1) The Court may not terminate parental rights under when the child:

(A) is age 15 or older,

(B) is sufficiently mature, as determined by the court, to have intelligent views and wishes on the subject of the parent's retention of parental rights; and

(C) objects to the termination.

(2) Parental rights of a child age 15 or older may be terminated over the objection of the child if the Court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise competent to decide.

(g) The Court shall conduct a hearing and rule on a petition for termination of parental rights after the filing of the petition. Any party aggrieved by a grant or denial of a petition for termination of parental rights, in whole or in part, may obtain a review of the order by filing a notice of appeal to the Supreme Court of the Virgin Islands no later than 10 days after the issuance of the Superior Court's order. The appeal must be heard on an expedited basis. The findings of the Superior Court as to the facts are conclusive if supported by substantial evidence.

Thus passed by the Legislature of the Virgin Islands on June 27, 2012.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 18th Day of July, A.D., 2012.



Ronald E. Russell

Ronald E. Russell
President

Sammuel Sanes

Sammuel Sanes
Legislative Secretary

Bill No.29-0271 is hereby approved.

Witness my hand and the Seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 18th day of July A.D., 2012.

John P. de Jongh, Jr.

John P. de Jongh, Jr.
Governor