

CHILD WELFARE AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends background check and child placement provisions in the Utah Human Services Code and the Juvenile Court Act of 1996.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that the requirement that a child in state custody may not be placed with a prospective foster or adoptive parent until the Department of Human Services conducts a comprehensive background check, does not prohibit the Division of Child and Family Services or a court placing the child with a noncustodial parent, or with a relative, pending further investigation of the appropriateness of the placement;
- ▶ provides exceptions to certain background check requirements if the exceptions are permitted by federal law or rule;
- ▶ modifies background check requirements for prospective foster or adoptive placements;
- ▶ clarifies the rulemaking authority of the Office of Licensing, within the Department of Human Services;
- ▶ provides that priority shall be given for placing a child with a noncustodial parent, relative, or friend, over placing the child in a shelter;
- ▶ modifies provisions relating to the placement and custody of a child who has been removed from the custody of the child's parents;
- ▶ provides that, in order to be considered a "willing relative or friend" for purposes of determining placement of a child following a shelter care hearing, the friend or relative must be willing to cooperate with the child's permanency goal;
- ▶ describes the limited background check or investigation that must be completed before a child in state custody is placed with a noncustodial parent or relative; and

33 ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40 **62A-2-120**, as last amended by Laws of Utah 2007, Chapter 152
- 41 **62A-4a-202.1**, as last amended by Laws of Utah 2007, Chapter 169
- 42 **62A-4a-206**, as last amended by Laws of Utah 2002, Chapter 306
- 43 **62A-4a-209**, as last amended by Laws of Utah 2007, Chapter 169
- 44 **62A-5-103.5**, as last amended by Laws of Utah 2007, Chapter 152
- 45 **78-3a-306**, as last amended by Laws of Utah 2007, Chapter 169
- 46 **78-3a-307**, as last amended by Laws of Utah 2007, Chapters 169 and 255
- 47 **78-3a-307.1**, as last amended by Laws of Utah 2007, Chapter 152
- 48 **78-3a-315**, as last amended by Laws of Utah 2002, Chapter 306
- 49 **78-30-3.5**, as last amended by Laws of Utah 2007, Chapter 152
- 50 **78-30-3.6**, as last amended by Laws of Utah 2007, Chapters 152 and 196



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

53 Section 1. Section **62A-2-120** is amended to read:

54 **62A-2-120. Criminal background checks -- Direct access to children or**
55 **vulnerable adults.**

56 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
57 license renewal under this chapter shall submit to the office the names and other identifying
58 information, which may include fingerprints, of all persons associated with the licensee, as
59 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

60 (b) The Criminal Investigations and Technical Services Division of the Department of
61 Public Safety, or the office as authorized under Section 53-10-108, shall process the
62 information described in Subsection (1)(a) to determine whether the individual has been
63 convicted of any crime.

64 (c) Except as provided in Subsection (1)(d), if an individual has not continuously lived
65 in Utah for the five years immediately preceding the day on which the information referred to
66 in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI
67 national criminal history record check. The fingerprints shall be submitted to the FBI through
68 the Criminal Investigations and Technical Services Division.

69 (d) An individual is not required to comply with Subsection (1)(c) if:

70 (i) the individual continuously lived in Utah for the five years immediately preceding
71 the day on which the information described in Subsection (1)(a) is submitted to the office,
72 except for time spent outside of the United States and its territories; and

73 (ii) the background check of the individual is being conducted for a purpose other than
74 a purpose described in Subsection (1)(f).

75 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
76 States and its territories during the five years immediately preceding the day on which the
77 information described in Subsection (1)(a) is submitted to the office, the office shall require the
78 applicant to submit documentation establishing whether the applicant was convicted of a crime
79 during the time that the applicant spent outside of the United States and its territories.

80 (f) Notwithstanding ~~[any other provision of this Subsection (1)]~~ Subsections (1)(a)
81 through (e), and except as provided in Subsection (1)(h), an applicant described in Subsection
82 (1)(a) shall submit fingerprints for an FBI national criminal history records check, through the
83 Criminal Investigations and Technical Services Division, if the background check of the
84 applicant is being conducted for the purpose of:

85 (i) licensing a prospective foster home; or

86 (ii) approving a prospective adoptive placement of a child in state custody.

87 (g) ~~[It]~~ Except as provided in Subsection (1)(h), in addition to the other requirements
88 of this section, if the background check of an applicant described in Subsection (1)(a) is being
89 conducted for the purpose of licensing a prospective foster home or approving a prospective
90 adoptive placement of a child in state custody, the office shall:

91 (i) check the child abuse and neglect registry in each state where each prospective
92 foster parent or prospective adoptive parent resided in the five years immediately preceding the
93 day on which the prospective foster parent or prospective adoptive parent applied to be a foster
94 parent or adoptive parent, to determine whether the prospective foster parent or prospective

95 adoptive parent is listed in the registry as having a substantiated or supported finding of child
96 abuse or neglect; and

97 (ii) check the child abuse and neglect registry in each state where each adult living in
98 the home of the prospective foster parent or prospective adoptive parent described in
99 Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the
100 prospective foster parent or prospective adoptive parent applied to be a foster parent or
101 adoptive parent, to determine whether the adult is listed in the registry as having a substantiated
102 or supported finding of child abuse or neglect.

103 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

104 (i) federal law or rule permits otherwise; or

105 (ii) the requirements would prohibit the Division of Child and Family Services or a
106 court from placing a child with:

107 (A) a noncustodial parent under Section 62A-4a-209 or 78-3a-307; or

108 (B) a relative, under Section 62A-4a-209 or 78-3a-307, pending completion of the
109 background check described in Subsections (1)(f) and (g).

110 ~~(h)~~ (i) The office shall make rules, in accordance with Title 63, Chapter 46a, Utah
111 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
112 background checks.

113 (2) The office shall approve a person for whom identifying information is submitted
114 under Subsection (1) to have direct access to children or vulnerable adults in the licensee
115 program if:

116 (a) (i) the person is found to have no criminal history record; or

117 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
118 or infractions not involving any of the offenses described in Subsection (3); and

119 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
120 before the date of the search;

121 (b) the person is not listed in the statewide database of the Division of Aging and Adult
122 Services created by Section 62A-3-311.1;

123 (c) juvenile court records do not show that a court made a substantiated finding, under
124 Section 78-3a-320, that the person committed a severe type of child abuse or neglect;

125 (d) the person is not listed in the Licensing Information System of the Division of

126 Child and Family Services created by Section 62A-4a-1006;

127 (e) the person has not pled guilty or no contest to a pending charge for any:

128 (i) felony;

129 (ii) misdemeanor listed in Subsection (3); or

130 (iii) infraction listed in Subsection (3); and

131 (f) for a person described in Subsection (1)(g), the registry check described in

132 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry

133 of another state as having a substantiated or supported finding of a severe type of child abuse or

134 neglect as defined in Section 62A-4a-1002.

135 (3) Except as provided in Subsection (8), unless at least ten years have passed since the

136 date of conviction, the office may not approve a person to have direct access to children or

137 vulnerable adults in the licensee's human services program if that person has been convicted of

138 an offense, whether a felony, misdemeanor, or infraction, that is:

139 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

140 (b) a violation of any pornography law, including sexual exploitation of a minor;

141 (c) prostitution;

142 (d) included in:

143 (i) Title 76, Chapter 5, Offenses Against the Person;

144 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or

145 (iii) Title 76, Chapter 7, Offenses Against the Family;

146 (e) a violation of Section 76-6-103, aggravated arson;

147 (f) a violation of Section 76-6-203, aggravated burglary;

148 (g) a violation of Section 76-6-302, aggravated robbery; or

149 (h) a conviction for an offense committed outside of the state that, if committed in the
150 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

151 (4) (a) Except as provided in Subsection (8), if a person for whom identifying

152 information is submitted under Subsection (1) is not approved by the office under Subsection

153 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the

154 office shall conduct a comprehensive review of criminal and court records and related

155 circumstances if the reason the approval is not granted is due solely to one or more of the

156 following:

- 157 (i) a conviction for:
- 158 (A) any felony not listed in Subsection (3);
- 159 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
160 date of the search;
- 161 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
162 a similar statute in another state; or
- 163 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years
164 have passed since the date of conviction;
- 165 (ii) a plea of guilty or no contest to a pending:
- 166 (A) felony;
- 167 (B) misdemeanor listed in Subsection (3); or
- 168 (C) infraction listed in Subsection (3);
- 169 (iii) the person is listed in the statewide database of the Division of Aging and Adult
170 Services created by Section 62A-3-311.1;
- 171 (iv) juvenile court records show that a court made a substantiated finding, under
172 Section 78-3a-320, that the person committed a severe type of child abuse or neglect;
- 173 (v) the person is listed in the Licensing Information System of the Division of Child
174 and Family Services created by Section 62A-4a-1006; or
- 175 (vi) the person is listed in a child abuse or neglect registry of another state as having a
176 substantiated or supported finding of a severe type of child abuse or neglect as defined in
177 Section 62A-4a-1002.
- 178 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
- 179 (i) the date of the offense or incident;
- 180 (ii) the nature and seriousness of the offense or incident;
- 181 (iii) the circumstances under which the offense or incident occurred;
- 182 (iv) the age of the perpetrator when the offense or incident occurred;
- 183 (v) whether the offense or incident was an isolated or repeated incident;
- 184 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
185 adult, including:
- 186 (A) actual or threatened, nonaccidental physical or mental harm;
- 187 (B) sexual abuse;

188 (C) sexual exploitation; and

189 (D) negligent treatment;

190 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
191 treatment received, or additional academic or vocational schooling completed, by the person;
192 and

193 (viii) any other pertinent information.

194 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
195 shall approve the person who is the subject of the review to have direct access to children or
196 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or
197 vulnerable adult.

198 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
199 office may make rules, consistent with this chapter, defining procedures for the comprehensive
200 review described in this Subsection (4).

201 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person
202 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
203 the supervising.

204 (b) A licensee may not permit any person to have direct access to a child or a
205 vulnerable adult unless, subject to Subsection (5)(c), that person is:

206 (i) associated with the licensee and:

207 (A) approved by the office to have direct access to children or vulnerable adults under
208 this section; or

209 (B) (I) the office has not determined whether to approve that person to have direct
210 access to children or vulnerable adults;

211 (II) the information described in Subsection (1)(a), relating to that person, is submitted
212 to the department; and

213 (III) that person is directly supervised by a person associated with the licensee who is
214 approved by the office to have direct access to children or vulnerable adults under this section;

215 (ii) (A) not associated with the licensee; and

216 (B) directly supervised by a person associated with the licensee who is approved by the
217 office to have direct access to children or vulnerable adults under this section;

218 (iii) the parent or guardian of the child or vulnerable adult; or

219 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
220 have direct access to the child or vulnerable adult.

221 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
222 or a vulnerable adult if that person is prohibited by court order from having that access.

223 (6) (a) Within 30 days after receiving the identifying information for a person under
224 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
225 with whom the person is associated of:

226 (i) the office's decision regarding its background screening clearance and findings; and

227 (ii) a list of any convictions found in the search.

228 (b) With the notice described in Subsection (6)(a), the office shall also give to the
229 person the details of any comprehensive review conducted under Subsection (4).

230 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
231 direct access to children or vulnerable adults, the notice shall further advise the persons to
232 whom the notice is given that either the person or the licensee or applicant with whom the
233 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
234 department's Office of Administrative Hearings, to challenge the office's decision.

235 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
236 office shall make rules, consistent with this chapter:

237 (i) defining procedures for the challenge of its background screening decision
238 described in this Subsection (6); and

239 (ii) expediting the process for renewal of a license under the requirements of this
240 section and other applicable sections.

241 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
242 an initial license, or license renewal, to operate a substance abuse program that provides
243 services to adults only.

244 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
245 license a person as a prospective foster parent or a prospective adoptive parent if the person has
246 been convicted of:

247 (i) a felony involving conduct that constitutes any of the following:

248 (A) child abuse, as described in Section 76-5-109;

249 (B) commission of domestic violence in the presence of a child, as described in Section

- 250 76-5-109.1;
- 251 (C) abuse or neglect of a disabled child, as described in Section 76-5-110;
- 252 (D) endangerment of a child, as described in Section 76-5-112.5;
- 253 (E) aggravated murder, as described in Section 76-5-202;
- 254 (F) murder, as described in Section 76-5-203;
- 255 (G) manslaughter, as described in Section 76-5-205;
- 256 (H) child abuse homicide, as described in Section 76-5-208;
- 257 (I) homicide by assault, as described in Section 76-5-209;
- 258 (J) kidnapping, as described in Section 76-5-301;
- 259 (K) child kidnapping, as described in Section 76-5-301.1;
- 260 (L) aggravated kidnapping, as described in Section 76-5-302;
- 261 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 262 (N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;
- 263 (O) aggravated arson, as described in Section 76-6-103;
- 264 (P) aggravated burglary, as described in Section 76-6-203;
- 265 (Q) aggravated robbery, as described in Section 76-6-302; or
- 266 (R) domestic violence, as described in Section 77-36-1; or
- 267 (ii) an offense committed outside the state that, if committed in the state, would
- 268 constitute a violation of an offense described in Subsection (8)(a)(i).
- 269 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
- 270 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
- 271 immediately preceding the day on which the person would otherwise be approved or licensed,
- 272 the person has been convicted of a felony involving conduct that constitutes any of the
- 273 following:
- 274 (i) aggravated assault, as described in Section 76-5-103;
- 275 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 276 (iii) mayhem, as described in Section 76-5-105;
- 277 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 278 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 279 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 280 Act;

281 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
282 Precursor Act; or

283 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

284 Section 2. Section **62A-4a-202.1** is amended to read:

285 **62A-4a-202.1. Entering home of a child -- Taking a child into protective custody**
286 **-- Caseworker accompanied by peace officer -- Preventive services -- Shelter facility or**
287 **emergency placement.**

288 (1) A peace officer or child welfare worker may not enter the home of a child who is
289 not under the jurisdiction of the court, remove a child from the child's home or school, or take a
290 child into protective custody unless authorized under Subsection 78-3a-106(2).

291 (2) A child welfare worker within the division may take action under Subsection (1)
292 accompanied by a peace officer, or without a peace officer when a peace officer is not
293 reasonably available.

294 (3) (a) If possible, consistent with the child's safety and welfare, before taking a child
295 into protective custody, the child welfare worker shall also determine whether there are
296 services available that, if provided to a parent or guardian of the child, would eliminate the
297 need to remove the child from the custody of the child's parent or guardian.

298 (b) If the services described in Subsection (3)(a) are reasonably available, they shall be
299 utilized.

300 (c) In determining whether the services described in Subsection (3)(a) are reasonably
301 available, and in making reasonable efforts to provide those services, the child's health, safety,
302 and welfare shall be the child welfare worker's paramount concern.

303 (4) (a) A child removed or taken into custody under this section may not be placed or
304 kept in a secure detention facility pending court proceedings unless the child is detainable
305 based on guidelines promulgated by the Division of Juvenile Justice Services.

306 (b) A child removed from the custody of the child's parent or guardian but who does
307 not require physical restriction shall be given temporary care in:

308 (i) a shelter facility; or

309 (ii) an emergency placement in accordance with Section 62A-4a-209.

310 (c) When making a placement under Subsection (4)(b), the Division of Child and
311 Family Services shall give priority to a placement with a noncustodial parent, relative, or

312 friend, in accordance with Section 62A-4a-209.

313 Section 3. Section **62A-4a-206** is amended to read:

314 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**
315 **process.**

316 (1) (a) The Legislature finds that, except with regard to a child's natural parent or legal
317 guardian, a foster family has a very limited but recognized interest in its familial relationship
318 with a foster child who has been in the care and custody of that family. In making
319 determinations regarding removal of a child from a foster home, the division may not dismiss
320 the foster family as a mere collection of unrelated individuals.

321 (b) The Legislature finds that children in the temporary custody and custody of the
322 division are experiencing multiple changes in foster care placements with little or no
323 documentation, and that numerous studies of child growth and development emphasize the
324 importance of stability in foster care living arrangements.

325 (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide
326 procedural due process for a foster family prior to removal of a foster child from their home,
327 regardless of the length of time the child has been in that home, unless removal is for the
328 purpose of:

329 (i) returning the child to the child's natural parent or legal guardian;

330 (ii) immediately placing the child in an approved adoptive home;

331 (iii) placing the child with a relative, as defined in Subsection 78-3a-307[(5)(d)](1)(b),
332 who obtained custody or asserted an interest in the child within the preference period described
333 in Subsection 78-3a-307[(8)](19)(a); or

334 (iv) placing an Indian child in accordance with preplacement preferences and other
335 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

336 (2) (a) The division shall maintain and utilize due process procedures for removal of a
337 foster child from a foster home, in accordance with the procedures and requirements of Title
338 63, Chapter 46b, Administrative Procedures Act.

339 (b) Those procedures shall include requirements for:

340 (i) personal communication with and explanation to foster parents prior to removal of
341 the child; and

342 (ii) an opportunity for foster parents to present their information and concerns to the

343 division and to request a review by a third party neutral fact finder prior to removal of the
344 child.

345 (c) If the division determines that there is a reasonable basis to believe that the child is
346 in danger or that there is a substantial threat of danger to the health or welfare of the child, it
347 shall place the child in emergency foster care during the pendency of the procedures described
348 in this subsection, instead of making another foster care placement.

349 (3) If the division removes a child from a foster home based upon the child's statement
350 alone, the division shall initiate and expedite the processes described in Subsection (2). The
351 division may take no formal action with regard to that foster parent's license until after those
352 processes, in addition to any other procedure or hearing required by law, have been completed.

353 (4) When a complaint is made to the division by a foster child against a foster parent,
354 the division shall, within 30 business days, provide the foster parent with information regarding
355 the specific nature of the complaint, the time and place of the alleged incident, and who was
356 alleged to have been involved.

357 (5) Whenever the division places a child in a foster home, it shall provide the foster
358 parents with:

359 (a) notification of the requirements of this section;

360 (b) a written description of the procedures enacted by the division pursuant to
361 Subsection (2) and how to access those processes; and

362 (c) written notification of the foster parents' ability to petition the juvenile court
363 directly for review of a decision to remove a foster child who has been in their custody for 12
364 months or longer, in accordance with the limitations and requirements of Section 78-3a-315.

365 (6) The requirements of this section do not apply to the removal of a child based on a
366 foster parent's request for that removal.

367 Section 4. Section **62A-4a-209** is amended to read:

368 **62A-4a-209. Emergency placement.**

369 (1) As used in this section:

370 (a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

371 (b) "Relative" is as defined in Subsection 78-3a-307(1)(b).

372 ~~(1)~~ (2) The division may use an emergency placement under Subsection

373 62A-4a-202.1(4)(b)(ii) when:

- 374 (a) the case worker has made the determination that:
- 375 (i) the child's home is unsafe;
- 376 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and
- 377 (iii) the child's custodial parent or guardian will agree to not remove the child from the
- 378 home of the person that serves as the placement and not have any contact with the child until
- 379 after the shelter hearing required by Section 78-3a-306;
- 380 (b) a person, with preference being given in accordance with Subsection [~~(3)~~] (4), can
- 381 be identified who has the ability and is willing to provide care for the child who would
- 382 otherwise be placed in shelter care, including:
- 383 (i) taking the child to medical, mental health, dental, and educational appointments at
- 384 the request of the division; and
- 385 (ii) making the child available to division services and the guardian ad litem; and
- 386 (c) the person described in Subsection [~~(1)~~] (2)(b) agrees to care for the child on an
- 387 emergency basis under the following conditions:
- 388 (i) the person meets the criteria for an emergency placement under Subsection [~~(2)~~] (3);
- 389 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
- 390 with the child until after the shelter hearing unless authorized by the division in writing;
- 391 (iii) the person agrees to contact law enforcement and the division if the custodial
- 392 parent or guardian attempts to make unauthorized contact with the child;
- 393 (iv) the person agrees to allow the division and the child's guardian ad litem to have
- 394 access to the child;
- 395 (v) the person has been informed and understands that the division may continue to
- 396 search for other possible placements for long-term care, if needed;
- 397 (vi) the person is willing to assist the custodial parent or guardian in reunification
- 398 efforts at the request of the division, and to follow all court orders; and
- 399 (vii) the child is comfortable with the person.
- 400 [~~(2) Before~~] (3) Except as otherwise provided in Subsection (5), before the division
- 401 places a child in an emergency placement, the division:
- 402 (a) may request the name of a reference and may contact the reference to determine the
- 403 answer to the following questions:
- 404 (i) would the person identified as a reference place a child in the home of the

405 emergency placement; and

406 (ii) are there any other relatives or friends to consider as a possible emergency or
407 long-term placement for the child;

408 (b) shall have the custodial parent or guardian sign an emergency placement agreement
409 form during the investigation;

410 (c) (i) ~~[shall complete a]~~ if the emergency placement will be with a relative of the
411 child, shall comply with the background check provisions described in Subsection (7); or

412 (ii) if the emergency placement will be with a person other than a noncustodial parent
413 or a relative, shall comply with the criminal background check provisions described in
414 ~~[Sections 62A-4a-202.4 and]~~ Section 78-3a-307.1 ~~[on all persons]~~ for adults living in the
415 household where the child will be placed;

416 (d) shall complete a limited home inspection of the home where the emergency
417 placement is made; and

418 (e) shall have the emergency placement approved by a family service specialist.

419 ~~[(3)]~~ (4) (a) The following order of preference shall be applied when determining the
420 person with whom a child will be placed in an emergency placement described in this section,
421 provided that the person is willing, and has the ability, to care for the child:

422 (i) a noncustodial parent of the child in accordance with Section 78-3a-307;

423 (ii) a relative of the child;

424 (iii) subject to Subsection ~~[(3)]~~ (4)(b), a friend designated by the custodial parent or
425 guardian of the child, if the friend is a licensed foster parent; and

426 (iv) a shelter facility, former foster placement, or other foster placement designated by
427 the division.

428 (b) Unless the division agrees otherwise, the custodial parent or guardian described in
429 Subsection ~~[(3)]~~ (4)(a)(iii) may only designate one friend as a potential emergency placement.

430 (5) (a) The division may, pending the outcome of the investigation described in
431 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial
432 parent if, based on a limited investigation, prior to making the emergency placement, the
433 division:

434 (i) determines that the noncustodial parent has regular, unsupervised visitation with the
435 child that is not prohibited by law or court order;

436 (ii) determines that there is not reason to believe that the child's health or safety will be
437 endangered during the emergency placement; and

438 (iii) has the custodial parent or guardian sign an emergency placement agreement.

439 (b) Either before or after making an emergency placement with the noncustodial parent
440 of the child, the division may conduct the investigation described in Subsection (3)(a) in
441 relation to the noncustodial parent.

442 (c) Before, or within one day, excluding weekends and holidays, after a child is placed
443 in an emergency placement with the noncustodial parent of the child, the division shall conduct
444 a limited:

445 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

446 (ii) inspection of the home where the emergency placement is made.

447 ~~[(4)]~~ (6) After an emergency placement, the division caseworker must:

448 (a) respond to the emergency placement's calls within one hour if the custodial parents
449 or guardians attempt to make unauthorized contact with the child or attempt to remove the
450 child;

451 (b) complete all removal paperwork, including the notice provided to the custodial
452 parents and guardians under Section 78-3a-306;

453 (c) contact the attorney general to schedule a shelter hearing;

454 (d) complete the placement procedures required in Section 78-3a-307~~[, including,~~
455 ~~within five days after placement, the criminal history record check described in Subsection~~
456 ~~(5)]; and~~

457 (e) continue to search for other relatives as a possible long-term placement, if needed.

458 ~~[(5) (a) In order to determine the suitability of a placement and to conduct a~~
459 ~~background screening and investigation of individuals living in the household in which a child~~
460 ~~is placed, each individual living in the household in which the child is placed who has not lived~~
461 ~~in the state substantially year round for the most recent five consecutive years ending on the~~
462 ~~date the investigation is commenced shall be fingerprinted. If no disqualifying record is~~
463 ~~identified at the state level, the fingerprints shall be forwarded by the division to the Federal~~
464 ~~Bureau of Investigation for a national criminal history record check.]~~

465 ~~[(b) The cost of the investigations described in Subsection (5)(a) shall be borne by~~
466 ~~whomever received placement of the child, except that the division may pay all or part of the~~

467 ~~cost of those investigations if the person with whom the child is placed is unable to pay.]~~

468 (7) (a) The background check described in Subsection (3)(c)(i) shall include:

469 (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
470 background check; and

471 (ii) a completed search of the Management Information System described in Section
472 62A-4a-1003.

473 (b) The division shall determine whether a person passes the background check
474 described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3),
475 and (8).

476 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an
477 individual who is prohibited by court order from having access to that child.

478 Section 5. Section **62A-5-103.5** is amended to read:

479 **62A-5-103.5. Disbursal of public funds -- Background check of a direct service**
480 **worker.**

481 (1) For purposes of this section:

482 (a) "directly supervised" means that the person being supervised is under the
483 uninterrupted visual and auditory surveillance of the person doing the supervising; and

484 (b) "office" is as defined in Section 62A-2-101.

485 (2) Subject to Subsection (4), public funds may not be disbursed to pay a direct service
486 worker for personal services rendered to a person, unless:

487 (a) subject to Subsection (5), the direct service worker is approved by the office to have
488 direct access and provide services to children or vulnerable adults pursuant to Section
489 62A-2-120;

490 (b) except as provided in Subsection (5):

491 (i) during the time that the direct service worker renders the services described in this
492 Subsection (2), the direct service worker who renders the services is directly supervised by a
493 direct service worker who is approved by the office to have direct access and provide services
494 to children or vulnerable adults pursuant to Section 62A-2-120;

495 (ii) the direct service worker who renders the services described in this Subsection (2)
496 has submitted the information required for a background check pursuant to Section 62A-2-120;
497 and

498 (iii) the office has not determined whether to approve the direct service worker
499 described in Subsection (2)(b)(ii) to have direct access and provide services to children or
500 vulnerable adults; or

501 (c) except as provided in Subsection (5), the direct service worker:

502 (i) (A) is a direct ancestor or descendent of the person to whom the services are
503 rendered, but is not the person's parent;

504 (B) is the aunt, uncle, or sibling of the person to whom the services are rendered; or

505 (C) (I) has submitted the information required for a background check pursuant to
506 Section 62A-2-120; and

507 (II) the office has not determined whether to approve the direct service worker to have
508 direct access and provide services to children or vulnerable adults; and

509 (ii) is not listed in:

510 (A) the Licensing Information System of the Division of Child and Family Services
511 created by Section 62A-4a-1006;

512 (B) the statewide database of the Division of Aging and Adult Services created by
513 Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation; or

514 (C) juvenile court records as having a substantiated finding under Section 78-3a-320
515 that the direct service worker committed a severe type of child abuse or neglect.

516 (3) For purposes of Subsection (2), the office shall conduct a background check of a
517 direct service worker:

518 (a) except as provided in Subsection (2)(b) or (c), before public funds are disbursed to
519 pay the direct service worker for the personal services described in Subsection (2); and

520 (b) using the same procedures established for a background check of an applicant for
521 an initial license under Section 62A-2-120.

522 (4) The background check and the approval determination described in this section
523 shall be conducted for a direct service worker on an annual basis.

524 (5) Notwithstanding [~~any other provision of this section~~] Subsections (1) through (4),
525 and except as provided in Subsection (6), a child who is in the legal custody of the department
526 or any of the department's divisions may not be placed with a direct service worker unless,
527 before the child is placed with the direct service worker, the direct service worker passes a
528 background check, pursuant to the requirements of Section 62A-2-120, that includes:

529 (a) submitting the direct service worker's fingerprints for an FBI national criminal
530 history records check, through the Criminal Investigations and Technical Services Division;

531 (b) checking the child abuse and neglect registry in each state where the direct service
532 worker resided in the five years immediately preceding the day on which the direct service
533 worker applied to be a direct service worker; and

534 (c) checking the child abuse and neglect registry in each state where each adult living
535 in the home where the child will be placed resided in the five years immediately preceding the
536 day on which the direct service worker applied to be a direct service worker.

537 (6) The requirements under Subsection (5) do not apply to the extent that federal law or
538 rule permits otherwise.

539 Section 6. Section **78-3a-306** is amended to read:

540 **78-3a-306. Shelter hearing.**

541 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
542 after any one or all of the following occur:

543 (a) removal of the child from the child's home by the division;

544 (b) placement of the child in the protective custody of the division;

545 (c) emergency placement under Subsection 62A-4a-202.1(4);

546 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
547 at the request of the division; or

548 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
549 Subsection 78-3a-106(4).

550 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
551 through (e), the division shall issue a notice that contains all of the following:

552 (a) the name and address of the person to whom the notice is directed;

553 (b) the date, time, and place of the shelter hearing;

554 (c) the name of the child on whose behalf a petition is being brought;

555 (d) a concise statement regarding:

556 (i) the reasons for removal or other action of the division under Subsection (1); and

557 (ii) the allegations and code sections under which the proceeding has been instituted;

558 (e) a statement that the parent or guardian to whom notice is given, and the child, are
559 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is

560 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
561 provided; and

562 (f) a statement that the parent or guardian is liable for the cost of support of the child in
563 the protective custody, temporary custody, and custody of the division, and the cost for legal
564 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
565 ability of the parent or guardian.

566 (3) The notice described in Subsection (2) shall be personally served as soon as
567 possible, but no later than one business day after removal of the child from the child's home, or
568 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
569 78-3a-106(4), on:

570 (a) the appropriate guardian ad litem; and

571 (b) both parents and any guardian of the child, unless the parents or guardians cannot
572 be located.

573 (4) The following persons shall be present at the shelter hearing:

574 (a) the child, unless it would be detrimental for the child;

575 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
576 fail to appear in response to the notice;

577 (c) counsel for the parents, if one is requested;

578 (d) the child's guardian ad litem;

579 (e) the caseworker from the division who is assigned to the case; and

580 (f) the attorney from the attorney general's office who is representing the division.

581 (5) (a) At the shelter hearing, the court shall:

582 (i) provide an opportunity to provide relevant testimony to:

583 (A) the child's parent or guardian, if present; and

584 (B) any other person having relevant knowledge; and

585 (ii) subject to Section 78-3a-305.5, provide an opportunity for the child to testify.

586 (b) The court:

587 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
588 Procedure;

589 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
590 the requesting party, or their counsel; and

591 (iii) may in its discretion limit testimony and evidence to only that which goes to the
592 issues of removal and the child's need for continued protection.

593 (6) If the child is in the protective custody of the division, the division shall report to
594 the court:

595 (a) the reason why the child was removed from the parent's or guardian's custody;

596 (b) any services provided to the child and the child's family in an effort to prevent
597 removal;

598 (c) the need, if any, for continued shelter;

599 (d) the available services that could facilitate the return of the child to the custody of
600 the child's parent or guardian; and

601 (e) subject to ~~[Subsection]~~ Subsections 78-3a-307[(8)(e)](19)(c) through (e), whether
602 any relatives of the child or friends of the child's parents may be able and willing to ~~[take~~
603 temporary custody] accept temporary placement of the child.

604 (7) The court shall consider all relevant evidence provided by persons or entities
605 authorized to present relevant evidence pursuant to this section.

606 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
607 cause shown, the court may grant no more than one continuance, not to exceed five judicial
608 days.

609 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
610 a continuance under Subsection (8)(a).

611 (9) (a) If the child is in the protective custody of the division, the court shall order that
612 the child be released from the protective custody of the division unless it finds, by a
613 preponderance of the evidence, that any one of the following exist:

614 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or
615 safety of the child and the child's physical health or safety may not be protected without
616 removing the child from the custody of the child's parent;

617 (ii) (A) the child is suffering emotional damage; and

618 (B) there are no reasonable means available by which the child's emotional health may
619 be protected without removing the child from the custody of the child's parent;

620 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
621 not removed from the custody of the child's parents;

622 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same
623 household has been physically or sexually abused, or is considered to be at substantial risk of
624 being physically or sexually abused, by a:

- 625 (A) parent;
- 626 (B) member of the parent's household; or
- 627 (C) person known to the parent;

628 (v) the parent is unwilling to have physical custody of the child;

629 (vi) the child is without any provision for the child's support;

630 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
631 and appropriate care for the child;

632 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is
633 unwilling or unable to provide care or support for the child;

- 634 (B) the whereabouts of the parent are unknown; and
- 635 (C) reasonable efforts to locate the parent are unsuccessful;

636 (ix) the child is in urgent need of medical care;

637 (x) the physical environment or the fact that the child is left unattended beyond a
638 reasonable period of time poses a threat to the child's health or safety;

639 (xi) the child or a minor residing in the same household has been neglected;

640 (xii) the parent, or an adult residing in the same household as the parent, is charged or
641 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
642 laboratory operation was located in the residence or on the property where the child resided; or

643 (xiii) the child's welfare is substantially endangered.

644 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is
645 established if:

- 646 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
647 involving the parent; and
- 648 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

649 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly
650 allowed the child to be in the physical care of a person after the parent received actual notice
651 that the person physically or sexually abused the child, that fact constitutes prima facie
652 evidence that there is a substantial risk that the child will be physically or sexually abused.

653 (10) (a) (i) The court shall also make a determination on the record as to whether
654 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
655 child's home and whether there are available services that would prevent the need for continued
656 removal.

657 (ii) If the court finds that the child can be safely returned to the custody of the child's
658 parent or guardian through the provision of those services, the court shall place the child with
659 the child's parent or guardian and order that those services be provided by the division.

660 (b) In making the determination described in Subsection (10)(a), and in ordering and
661 providing services, the child's health, safety, and welfare shall be the paramount concern, in
662 accordance with federal law.

663 (11) Where the division's first contact with the family occurred during an emergency
664 situation in which the child could not safely remain at home, the court shall make a finding that
665 any lack of preplacement preventive efforts was appropriate.

666 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or
667 neglect are involved, neither the division nor the court has any duty to make "reasonable
668 efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to
669 the child's home, provide reunification services, or attempt to rehabilitate the offending parent
670 or parents.

671 (13) The court may not order continued removal of a child solely on the basis of
672 educational neglect as described in Subsection 78-3a-103(1)(u)(ii).

673 (14) (a) Whenever a court orders continued removal of a child under this section, the
674 court shall state the facts on which that decision is based.

675 (b) If no continued removal is ordered and the child is returned home, the court shall
676 state the facts on which that decision is based.

677 (15) If the court finds that continued removal and temporary custody are necessary for
678 the protection of a child because harm may result to the child if the child were returned home,
679 the court shall order continued removal regardless of:

680 (a) any error in the initial removal of the child;

681 (b) the failure of a party to comply with notice provisions; or

682 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
683 and Family Services.

684 Section 7. Section **78-3a-307** is amended to read:

685 **78-3a-307. Shelter hearing -- Placement -- DCFS custody.**

686 (1) As used in this section:

687 (a) (i) "Natural parent," notwithstanding the provisions of Section 78-3a-103, means:

688 (A) a biological or adoptive mother;

689 (B) an adoptive father; or

690 (C) a biological father who:

691 (D) was married to the child's biological mother at the time the child was conceived or

692 born; or

693 (II) has strictly complied with the provisions of Section 78-30-4.14, prior to removal of
694 the child or voluntary surrender of the child by the custodial parent.

695 (ii) The definition of natural parent described in Subsection (1)(a)(i) applies regardless
696 of whether the child has been or will be placed with adoptive parents or whether adoption has
697 been or will be considered as a long term goal for the child.

698 (b) "Relative" means:

699 (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle,
700 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of a child; and

701 (ii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25
702 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that
703 statute.

704 ~~[(+)]~~ (2) (a) At the shelter hearing, when the court orders that a child be removed from
705 the custody of the child's parent in accordance with the requirements of Section 78-3a-306, the
706 court shall first determine whether there is another natural parent ~~[as defined in Subsection~~
707 ~~[(+)](b);]~~ with whom the child was not residing at the time the events or conditions that brought
708 the child within the court's jurisdiction occurred, who desires to assume custody of the child.

709 (b) If ~~[that]~~ another natural parent requests custody under Subsection (2)(a), the court
710 shall place the child with that parent unless it finds that the placement would be unsafe or
711 otherwise detrimental to the child.

712 (c) The provisions of this Subsection ~~[(+)]~~ (2) are limited by the provisions of
713 Subsection ~~[(+)]~~ (19)(b).

714 ~~[(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section~~

715 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a
 716 biological father who was married to the child's biological mother at the time the child was
 717 conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior
 718 to removal of the child or voluntary surrender of the child by the custodial parent. This
 719 definition applies regardless of whether the child has been or will be placed with adoptive
 720 parents or whether adoption has been or will be considered as a long term goal for the child.]

721 ~~[(c)]~~ (d) (i) The court shall make a specific finding regarding the fitness of ~~[that]~~ the
 722 parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of
 723 the placement.

724 (ii) The court shall, at a minimum, order the division to visit the parent's home,
 725 ~~[perform]~~ comply with the criminal background ~~[checks]~~ check provisions described in
 726 ~~[Sections]~~ Section 78-3a-307.1 ~~[and 62A-4a-202.4]~~, and check the division's management
 727 information system for any previous reports of abuse or neglect received by the division
 728 regarding the parent at issue.

729 (iii) The court may order the ~~[Division of Child and Family Services]~~ division to
 730 conduct any further investigation regarding the safety and appropriateness of the placement.

731 (iv) The division shall report its findings in writing to the court.

732 (v) The court may place the child in the temporary custody of the division, pending its
 733 determination regarding that placement.

734 ~~[(2)]~~ (3) If the court orders placement with a parent under Subsection ~~[(1)];~~ (2):

735 (a) the child and the parent are under the continuing jurisdiction of the court~~[-The];~~

736 (b) the court may order:

737 (i) that the parent assume custody subject to the supervision of the court~~[-];~~ and ~~[order]~~

738 (ii) that services be provided to the parent from whose custody the child was removed,
 739 the parent who has assumed custody, or both~~[-The];~~ and

740 (c) the court shall ~~[also provide for]~~ order reasonable parent-time with the parent from
 741 whose custody the child was removed, unless parent-time is not in the best interest of the child.
 742 ~~[The court's order shall be periodically reviewed]~~

743 (4) The court shall periodically review an order described in Subsection (3) to
 744 determine whether:

745 (a) placement with the parent continues to be in the child's best interest;

746 (b) the child should be returned to the original custodial parent;

747 (c) the child should be placed ~~[with]~~ in the custody of a relative, pursuant to

748 ~~[Subsection (5)]~~ Subsections (7) through (12); or

749 (d) the child should be placed in the custody of the division.

750 ~~[(3)]~~ (5) The time limitations described in Section 78-3a-311 with regard to
751 reunification efforts, apply to children placed with a previously noncustodial parent in
752 accordance with Subsection ~~[(1)]~~ (2).

753 ~~[(4)]~~ (6) Legal custody of the child is not affected by an order entered under Subsection
754 ~~[(1) or]~~ (2) or (3). In order to affect a previous court order regarding legal custody, the party
755 must petition that court for modification of the order.

756 ~~[(5)(a)(i)]~~ (7) If, at the time of the shelter hearing, a child is removed from the custody
757 of the child's parent and is not placed in the custody of ~~[his]~~ the child's other parent, the court:

758 (a) shall, at that time, determine whether, subject to ~~[Subsection (8)(c)]~~ Subsections
759 (19)(c) through (e), there is a relative of the child or a friend of a parent of the child who is able
760 and willing to care for the child[-];

761 ~~[(ii) The court]~~ (b) may order the ~~[Division of Child and Family Services]~~ division to
762 conduct a reasonable search to determine whether, subject to ~~[Subsection (8)(c)]~~ Subsections
763 (19)(c) through (e), there are relatives of the child or friends of a parent of the child who are
764 willing and appropriate, in accordance with the requirements of this part and Title 62A,
765 Chapter 4a, Part 2, Child Welfare Services, for placement of the child[- ~~The court~~];

766 (c) shall order the parents to cooperate with the division, within five working days, to,
767 subject to ~~[Subsection (8)(c)]~~ Subsections (19)(c) through (e), provide information regarding
768 relatives of the child or friends who may be able and willing to care for the child[-]; and

769 ~~[(iii) The child]~~ (d) may order that the child be placed in the ~~[temporary]~~ custody of
770 the division pending the determination under Subsection ~~[(5)(a)(ii)]~~ (7)(a).

771 ~~[(iv)]~~ (8) This section may not be construed as a guarantee that an identified relative or
772 friend will receive custody of the child. ~~[However, subject to Subsection (8)(c);]~~

773 (9) Subject to Subsections (19)(c) through (e), preferential consideration shall be given
774 to a relative's or a friend's request for placement of the child, if it is in the best interest of the
775 child, and the provisions of this section are satisfied.

776 ~~[(b)(i)]~~ (10) (a) If a willing relative or friend is identified ~~[pursuant to]~~ under

777 Subsection [~~(5)~~] (7)(a), the court shall make a specific finding regarding:

778 (i) the fitness of that relative or friend [~~to assume custody,~~] as a placement for the
779 child; and

780 (ii) the safety and appropriateness of placement with that relative or friend.

781 (b) In order to be considered a "willing relative or friend" under this section, the
782 relative or friend shall be willing to cooperate [~~if~~] with the child's permanency goal [~~is~~
783 ~~reunification with his parent or parents, and be willing to adopt or take permanent custody of~~
784 ~~the child if that is determined to be in the best interest of the child]~~.

785 [~~(ii) The~~] (11) (a) In making the finding described in Subsection (10)(a), the court
786 shall, at a minimum, order the division to [conduct criminal background checks described in
787 Sections 78-3a-307.1 and 62A-4a-202.4,];

788 (i) if the child may be placed with a relative:

789 (A) conduct a background check of the noncustodial parent or relative that includes:

790 (I) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
791 background check; and

792 (II) a completed search of the Management Information System described in Section
793 62A-4a-1003; and

794 (B) conduct a background check that complies with the criminal background check
795 provisions described in Section 78-3a-307.1, of each adult nonrelative, as defined in
796 Subsection 62A-4a-209(1)(a), of the child who resides in the household where the child may be
797 placed;

798 (ii) if the child will be placed with a noncustodial parent of the child, complete the
799 same background check requirements applicable to an emergency placement with a
800 noncustodial parent, as described in Section 62A-4a-209.

801 (iii) if the child may be placed with an individual other than a noncustodial parent or a
802 relative of the child, conduct a criminal background check of the individual, and each adult that
803 resides in the household where the child may be placed, that complies with the criminal
804 background check provisions described in Section 78-3a-307.1;

805 (iv) visit the relative's or friend's home[;];

806 (v) check the division's Management Information System for any previous reports of
807 abuse or neglect regarding the relative or friend at issue[;];

808 (vi) report [its] the division's findings in writing to the court[;]; and
809 (vii) provide sufficient information so that the court may determine whether:
810 (A) the relative or friend has any history of abusive or neglectful behavior toward other
811 children that may indicate or present a danger to this child;
812 (B) the child is comfortable with the relative or friend;
813 (C) the relative or friend recognizes the parent's history of abuse and is [~~determined~~]
814 committed to protect the child;
815 (D) the relative or friend is strong enough to resist inappropriate requests by the parent
816 for access to the child, in accordance with court orders;
817 (E) the relative or friend is committed to caring for the child as long as necessary; and
818 (F) the relative or friend can provide a secure and stable environment for the child.
819 [(iii)] (b) The division may determine to conduct, or the court may order the [~~Division~~
820 ~~of Child and Family Services~~] division to conduct, any further investigation regarding the
821 safety and appropriateness of the placement.
822 [(iv)] (c) The division shall complete and file its assessment regarding placement with
823 a relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
824 relative or friend.
825 [(e)] (12) (a) The court may place [~~the~~] a child described in Subsection (2)(a) in the
826 temporary custody of the division, pending the division's investigation pursuant to [~~Subsection~~
827 ~~(5)(b)~~] Subsections (10) and (11), and the court's determination regarding the appropriateness
828 of that placement.
829 (b) The court shall ultimately base its determination regarding the appropriateness of a
830 placement with a relative or friend on the best interest of the child.
831 [(d) ~~For purposes of this section, "relative" means an adult who is a grandparent, great~~
832 ~~grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first~~
833 ~~cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under~~
834 ~~the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended~~
835 ~~family member" as defined by that statute.~~]
836 [(6) (a)] (13) When the court [~~vests physical~~] awards custody and guardianship of a
837 child with a relative or friend [~~pursuant to Subsection (5), it~~];
838 (a) the court shall order that:

839 (i) the relative or friend assume custody, subject to the continuing supervision of the
840 court[-]; and [~~shall order that~~]

841 (ii) any necessary services be provided to the child and the relative or friend[~~—That~~
842 ~~child is not within the temporary custody or custody of the Division of Child and Family~~
843 ~~Services. The~~];

844 (b) the child and any relative or friend with whom the child is placed are under the
845 continuing jurisdiction of the court[~~—The~~];

846 (c) the court may enter any order that it considers necessary for the protection and best
847 interest of the child[~~—The~~];

848 (d) the court shall provide for reasonable parent-time with the parent or parents from
849 whose custody the child was removed, unless parent-time is not in the best interest of the
850 child[-]; and

851 [~~(b) (i) Placement with a relative or friend pursuant to Subsection (5)~~]

852 (e) the court shall [~~be periodically reviewed by the court,~~] conduct a periodic review no
853 less often than every six months, to determine whether:

854 [~~(A)~~] (a) placement with the relative or friend continues to be in the child's best
855 interest;

856 [~~(B)~~] (b) the child should be returned home; or

857 [~~(C)~~] (c) the child should be placed in the custody of the division.

858 [~~(ii)~~] (15) No later than 12 months after placement with a relative or friend, the court
859 shall schedule a hearing for the purpose of entering a permanent order in accordance with the
860 best interest of the child.

861 [~~(iii)~~] (16) The time limitations described in Section 78-3a-311, with regard to
862 reunification efforts, apply to children placed with a relative or friend pursuant to Subsection
863 [~~(5)~~] (7).

864 (17) (a) If the court awards custody of a child to the division, and the division places
865 the child with a relative, the division shall:

866 (i) conduct a criminal background check of the relative that complies with the criminal
867 background check provisions described in Section 78-3a-307.1; and

868 (ii) if the results of the criminal background check described in Subsection (17)(a)(i)
869 would prohibit the relative from having direct access to the child under Section 62A-2-120, the

870 division shall:

871 (A) take the child into physical custody; and

872 (B) within one day, excluding weekends and holidays, of taking the child into physical
873 custody under Subsection (17)(a)(ii)(A), give written notice to the court, and all parties to the
874 proceedings, of the division's action.

875 (b) Nothing in Subsection (17)(a) prohibits the division from placing a child with a
876 relative, pending the results of the background check described in Subsection (17)(a) on the
877 relative.

878 ~~[(7)]~~ (18) When the court orders that a child be removed from the custody of the child's
879 parent and does not ~~[vest custody in]~~ award custody and guardianship to another parent,
880 relative, or friend under this section, the court shall order that the child be placed in the
881 temporary custody of the Division of Child and Family Services, to proceed to adjudication and
882 disposition and to be provided with care and services in accordance with this chapter and Title
883 62A, Chapter 4a, Child and Family Services.

884 ~~[(8)]~~ (19) (a) Any preferential consideration that a relative or friend is initially granted
885 pursuant to Subsection ~~[(5)]~~ (9) expires 120 days from the date of the shelter hearing. After
886 that time period has expired, a relative or friend who has not obtained custody or asserted an
887 interest in a child, may not be granted preferential consideration by the division or the court.

888 (b) When the time period described in Subsection ~~[(8)]~~ (19)(a) has expired, the
889 preferential consideration which is initially granted to a natural parent in accordance with
890 Subsection ~~[(1)]~~ (2), is limited. After that time the court shall base its custody decision on the
891 best interest of the child.

892 (c) ~~[(1)]~~ Prior to the expiration of the 120-day period described in Subsection ~~[(8)]~~
893 (19)(a), the following order of preference shall be applied when determining the person with
894 whom a child will be placed, provided that the person is willing, and has the ability, to care for
895 the child:

896 ~~[(A)]~~ (i) a noncustodial parent of the child;

897 ~~[(B)]~~ (ii) a relative of the child;

898 ~~[(C)]~~ (iii) subject to Subsection ~~[(8)(c)(1)]~~ (19)(d), a friend of a parent of the child, if
899 the friend is a licensed foster parent; and

900 ~~[(D)]~~ (iv) other placements that are consistent with the requirements of law.

901 [(~~ii~~)] (d) In determining whether a friend is a willing and appropriate placement for a
902 child, neither the court, nor the division, is required to consider more than one friend
903 designated by each parent of the child.

904 [(~~iii~~)] (e) If a parent of the child is not able to designate a friend who is a licensed
905 foster parent for placement of the child, but is able to identify a friend who is willing to become
906 licensed as a foster parent:

907 [(~~A~~)] (i) the department shall fully cooperate to expedite the licensing process for the
908 friend; and

909 [(~~B~~)] (ii) if the friend becomes licensed as a foster parent within the time frame
910 described in Subsection [(~~8~~)] (19)(a), the court shall determine whether it is in the best interests
911 of the child to place the child [~~in the physical custody of~~] with the friend.

912 [(~~9~~)] (20) If, following the shelter hearing, the child is placed with a person who is not
913 a parent of the child, a relative of the child, a friend of a parent of the child, or a former foster
914 parent of the child, priority shall be given to a foster placement with a man and a woman who
915 are married to each other, unless it is in the best interests of the child to place the child with a
916 single foster parent.

917 [(~~10~~)] (21) In determining the placement of a child, neither the court, nor the [~~Division~~
918 ~~of Child and Family Services~~] division, may take into account, or discriminate against, the
919 religion of a person with whom the child may be placed, unless the purpose of taking religion
920 into account is to place the child with a person or family of the same religion as the child.

921 Section 8. Section **78-3a-307.1** is amended to read:

922 **78-3a-307.1. Criminal background checks for out-of-home placement.**

923 (1) [~~Upon~~] Subject to Subsection (3), upon ordering removal of a child from the
924 custody of the child's parent and placing that child in the custody of the Division of Child and
925 Family Services, prior to the division's placement of that child in out-of-home care, the court
926 shall require the completion of a nonfingerprint background check by the Utah Bureau of
927 Criminal Identification regarding the proposed placement.

928 (2) (a) [~~The Division of Child and Family Services~~] Except as provided in Subsection
929 (4), the division and the Office of the Guardian ad Litem Director may request, or the court
930 upon its own motion may order, the Department of Public Safety to conduct a complete Federal
931 Bureau of Investigation criminal background check through the national criminal history

932 system (NCIC).

933 (b) ~~[Upon request by the Division of Child and Family Services]~~ Except as provided in
934 Subsection (4), the division or the Office of the Guardian ad Litem Director, or upon the court's
935 order, persons subject to the requirements of Subsection (1) shall submit fingerprints and shall
936 be subject to an FBI fingerprint background check. The child may be temporarily placed,
937 pending the outcome of that background check.

938 (c) The cost of those investigations shall be borne by whoever is to receive placement
939 of the child, except that the Division of Child and Family Services may pay all or part of the
940 cost of those investigations ~~[if the person with whom the child is to be placed is unable to pay]~~.

941 (3) ~~[Notwithstanding any other provision of this section, except as otherwise permitted~~
942 ~~by federal law or rule]~~ Except as provided in Subsection (5), a child who is in the legal custody
943 of the state may not be placed with a prospective foster parent or a prospective adoptive parent,
944 unless, before the child is placed with the prospective foster parent or the prospective adoptive
945 parent:

946 (a) a fingerprint based FBI national criminal history records check is conducted on the
947 prospective foster parent or prospective adoptive parent ~~[and each adult living in the home of~~
948 ~~the prospective foster parent or prospective adoptive parent]~~;

949 (b) the Department of Human Services conducts a check of the child abuse and neglect
950 registry in each state where the prospective foster parent or prospective adoptive parent resided
951 in the five years immediately preceding the day on which the prospective foster parent or
952 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
953 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
954 having a substantiated or supported finding of a severe type of child abuse or neglect as defined
955 in Section 62A-4a-1002;

956 (c) the Department of Human Services conducts a check of the child abuse and neglect
957 registry of each state where each adult living in the home of the prospective foster parent or
958 prospective adoptive parent described in Subsection (3)(b) resided in the five years
959 immediately preceding the day on which the prospective foster parent or prospective adoptive
960 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
961 in the registry as having a substantiated or supported finding of a severe type of child abuse or
962 neglect as defined in Section 62A-4a-1002; and

963 (d) each person required to undergo a background check described in this Subsection
 964 (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

965 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial
 966 parent or relative under Section 62A-4a-209 or 78-3a-307, unless the court finds that
 967 compliance with Subsections (2)(a) or (b) is necessary to ensure the safety of the child.

968 (5) The requirements under Subsection (3) do not apply to the extent that:

969 (a) federal law or rule permits otherwise; or

970 (b) the requirements would prohibit the division or a court from placing a child with:

971 (i) a noncustodial parent, under Section 62A-4a-209 or 78-3a-307; or

972 (ii) a relative, under Section 62A-4a-209 or 78-3a-307, pending completion of the
 973 background check described in Subsection (3).

974 Section 9. Section **78-3a-315** is amended to read:

975 **78-3a-315. Review of foster care removal -- Foster parent's standing.**

976 (1) With regard to a child in the custody of the Division of Child and Family Services
 977 who is the subject of a petition alleging abuse, neglect, or dependency, and who has been
 978 placed in foster care with a foster family, the Legislature finds that:

979 (a) except with regard to the child's natural parents, a foster family has a very limited
 980 but recognized interest in its familial relationship with the child; and

981 (b) children in the custody of the division are experiencing multiple changes in foster
 982 care placements with little or no documentation, and that numerous studies of child growth and
 983 development emphasize the importance of stability in foster care living arrangements.

984 (2) For the reasons described in Subsection (1), the Legislature finds that, except with
 985 regard to the child's natural parents, procedural due process protections must be provided to a
 986 foster family prior to removal of a foster child from [~~their~~] the foster home.

987 (3) (a) A foster parent who has had a foster child in [~~his custody~~] the foster parent's
 988 home for 12 months or longer may petition the juvenile court for a review and determination of
 989 the appropriateness of a decision by the Division of Child and Family Services to remove the
 990 child from the [~~child's~~] foster home, unless the removal was for the purpose of:

991 (i) returning the child to the child's natural parent or legal guardian;

992 (ii) immediately placing the child in an approved adoptive home;

993 (iii) placing the child with a relative, as defined in Subsection 78-3a-307[~~(5)(d)~~](1)(b).

994 who obtained custody or asserted an interest in the child within the preference period described
995 in Subsection 78-3a-307[(8)](19)(a); or

996 (iv) placing an Indian child in accordance with preplacement preferences and other
997 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

998 (b) The foster parent may petition the court under this section without exhausting
999 administrative remedies within the division.

1000 (c) The court may order the division to place the child in a specified home, and shall
1001 base its determination on the best interest of the child.

1002 (4) The requirements of this section do not apply to the removal of a child based on a
1003 foster parent's request for that removal.

1004 Section 10. Section **78-30-3.5** is amended to read:

1005 **78-30-3.5. Preplacement and postplacement adoptive evaluations -- Exceptions.**

1006 (1) (a) Except as otherwise provided in this section, a child may not be placed in an
1007 adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive
1008 parent and the prospective adoptive home, has been conducted in accordance with the
1009 requirements of this section.

1010 (b) Except as provided in Subsection (8), the court may, at any time, authorize
1011 temporary placement of a child in a potential adoptive home pending completion of a
1012 preplacement adoptive evaluation described in this section.

1013 (c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be
1014 adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by
1015 half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the
1016 evaluation is otherwise requested by the court. The prospective adoptive parent described in
1017 this Subsection (1)(c) shall, however, obtain the information described in Subsections (2)(a)
1018 and (b), and file that documentation with the court prior to finalization of the adoption.

1019 (d) The required preplacement adoptive evaluation must be completed or updated
1020 within the 12-month period immediately preceding the placement of a child with the
1021 prospective adoptive parent. If the prospective adoptive parent has previously received custody
1022 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed
1023 or updated within the 12-month period immediately preceding the placement of a child with the
1024 prospective adoptive parent and after the placement of the previous child with the prospective

1025 adoptive parent.

1026 (2) The preplacement adoptive evaluation shall include:

1027 (a) criminal history record information regarding each prospective adoptive parent and
1028 any other adult living in the prospective home, prepared by a law enforcement agency based on
1029 a fingerprint criminal history check, no earlier than 18 months immediately preceding
1030 placement of the child;

1031 (b) a report prepared by the Department of Human Services containing all information
1032 regarding reports and investigation of child abuse, neglect, and dependency, with respect to
1033 each prospective adoptive parent and any other adult living in the prospective home, obtained
1034 no earlier than 18 months immediately preceding placement of the child, pursuant to waivers
1035 executed by those parties;

1036 (c) an evaluation conducted by an expert in family relations approved by the court or a
1037 certified social worker, clinical social worker, marriage and family therapist, psychologist,
1038 professional counselor, or other court-determined expert in family relations, who is licensed to
1039 practice under the laws of this state or under the laws of the state where the prospective
1040 adoptive parent or other person living in the prospective adoptive home resides. The
1041 evaluation shall be in a form approved by the Department of Human Services. Neither the
1042 Department of Human Services nor any of its divisions may proscribe who qualifies as an
1043 expert in family relations or who may conduct evaluations pursuant to this Subsection (2); and

1044 (d) if the child to be adopted is a child who is in the custody of any public child welfare
1045 agency, and is a child with special needs as defined in Subsection 62A-4a-902(2), the
1046 preplacement evaluation must be conducted by the Department of Human Services or a
1047 licensed child placing agency which has entered into a contract with the department to conduct
1048 the preplacement evaluations for children with special needs. Any fee assessed by the
1049 evaluating agency is the responsibility of the adopting parent or parents.

1050 (3) The person or agency conducting the preplacement adoptive evaluation shall, in
1051 connection with the evaluation, provide the prospective adoptive parent or parents with
1052 literature approved by the Division of Child and Family Services relating to adoption, and
1053 including information relating to the adoption process, developmental issues that may require
1054 early intervention, and community resources that are available to the adoptive parent or parents.

1055 (4) A copy of the preplacement adoptive evaluation shall be filed with the court.

1056 (5) (a) Except as provided in Subsections (5)(b) and (c), a postplacement evaluation
1057 shall be conducted and submitted to the court prior to the final hearing in an adoption
1058 proceeding. The postplacement evaluation shall include:

1059 (i) verification of the allegations of fact contained in the petition for adoption;
1060 (ii) an evaluation of the progress of the child's placement in the adoptive home; and
1061 (iii) a recommendation regarding whether the adoption is in the best interest of the
1062 child.

1063 (b) The exemptions from and requirements for evaluations, described in Subsections
1064 (1)(c), (2)(c), and (3), also apply to postplacement adoptive evaluations.

1065 (c) Upon the request of the petitioner, the court may waive the postplacement adoptive
1066 evaluation, unless it determines that it is in the best interest of the child to require the
1067 postplacement evaluation. Except where the child to be adopted and the prospective parent are
1068 related as set forth in Subsection (1)(c), the court may waive the postplacement adoptive
1069 evaluation for a child with special needs as defined in Section 62A-4a-902.

1070 (6) If the person or agency conducting the evaluation disapproves the adoptive
1071 placement, either in the preplacement or postplacement adoptive evaluation, the court may
1072 dismiss the petition. However, upon request of a prospective adoptive parent, the court shall
1073 order that an additional preplacement or postplacement adoptive evaluation be conducted, and
1074 hold a hearing on the suitability of the adoption, including testimony of interested parties.

1075 (7) Prior to finalization of a petition for adoption the court shall review and consider
1076 the information and recommendations contained in the preplacement and postplacement
1077 adoptive studies required by this section.

1078 (8) Notwithstanding [~~any other provision of this section, except as otherwise permitted~~
1079 ~~by federal law or rule~~] Subsections (1) through (7), and except as provided in Subsection (9), a
1080 child who is in the legal custody of the state may not be placed with a prospective foster parent
1081 or a prospective adoptive parent, unless, before the child is placed with the prospective foster
1082 parent or the prospective adoptive parent:

1083 (a) a fingerprint based FBI national criminal history records check is conducted on the
1084 prospective foster parent or prospective adoptive parent [~~and each adult living in the home of~~
1085 ~~the prospective foster parent or prospective adoptive parent~~];

1086 (b) the Department of Human Services conducts a check of the child abuse and neglect

1087 registry in each state where the prospective foster parent or prospective adoptive parent resided
1088 in the five years immediately preceding the day on which the prospective foster parent or
1089 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
1090 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
1091 having a substantiated or supported finding of child abuse or neglect;

1092 (c) the Department of Human Services conducts a check of the child abuse and neglect
1093 registry of each state where each adult living in the home of the prospective foster parent or
1094 prospective adoptive parent described in Subsection (8)(b) resided in the five years
1095 immediately preceding the day on which the prospective foster parent or prospective adoptive
1096 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
1097 in the registry as having a substantiated or supported finding of child abuse or neglect; and

1098 (d) each person required to undergo a background check described in this Subsection
1099 (8) passes the background check, pursuant to the provisions of Section 62A-2-120.

1100 (9) The requirements under Subsection (8) do not apply to the extent that:

1101 (a) federal law or rule permits otherwise; or

1102 (b) the requirements would prohibit the division or a court from placing a child with:

1103 (i) a noncustodial parent, under Section 62A-4a-209 or 78-3a-307; or

1104 (ii) a relative, under Section 62A-4a-209 or 78-3a-307, pending completion of the
1105 background check described in Subsection (8).

1106 Section 11. Section **78-30-3.6** is amended to read:

1107 **78-30-3.6. Prospective parent not a resident -- Preplacement requirements.**

1108 (1) When an adoption petition is to be finalized in this state with regard to any
1109 prospective adoptive parent who is not a resident of this state at the time a child is placed in
1110 that person's home, the potential adoptive parent shall:

1111 (a) comply with the provisions of Section 78-30-3.5; and

1112 (b) (i) if the child is in state custody, submit fingerprints for a Federal Bureau of
1113 Investigation national criminal history record check through the Criminal and Technical
1114 Services Division of the Department of Public Safety in accordance with the provisions of
1115 Section 62A-2-120; or

1116 (ii) subject to Subsection (2), if the child is not in state custody:

1117 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history

1118 records check as a personal records check; or

1119 (B) complete a criminal records check and child abuse database check for each state
1120 and, if available, country, where the potential adoptive parent resided during the five years
1121 immediately preceding the day on which the adoption petition is to be finalized.

1122 (2) For purposes of Subsection (1)(b)(ii):

1123 (a) if the adoption is being handled by a human services program, as defined in Section
1124 62A-2-101:

1125 (i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted
1126 in accordance with procedures established by the Criminal Investigations and Technical
1127 Services Division of the Department of Public Safety; and

1128 (ii) subject to Subsection (3), the criminal history check described in Subsection
1129 (1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:

1130 (A) preserve the chain of custody of the results; and

1131 (B) not permit tampering with the results by a prospective adoptive parent or other
1132 interested party; and

1133 (b) if the adoption is being handled by a private attorney, and not a human services
1134 program, the criminal history checks described in Subsection (1)(b)(ii), shall be:

1135 (i) submitted in accordance with procedures established by the Criminal Investigations
1136 and Technical Services Division of the Department of Public Safety; or

1137 (ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:

1138 (A) preserve the chain of custody of the results; and

1139 (B) not permit tampering with the results by a prospective adoptive parent or other
1140 interested party.

1141 (3) In order to comply with Subsection (2)(a)(ii) of (b)(ii), the manner in which the
1142 criminal history check is submitted shall be approved by the court.

1143 (4) ~~[In]~~ Except as provided in Subsection 78-30-3.5(9), in addition to the other
1144 requirements of this section, before a child in state custody is placed with a prospective foster
1145 parent or a prospective adoptive parent, the Department of Human Services shall comply with
1146 Subsections 78-30-3.5(8)(a) through (d).

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