

**DIVISION OF CHILD AND FAMILY SERVICES AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Wayne A. Harper**

AN ACT RELATING TO THE CHILD WELFARE ACT; AMENDING THE DEFINITION OF RELATIVE; EXTENDING THE TIME FOR PREFERENTIAL CONSIDERATION OF A RELATIVE AFTER PROTECTIVE PROCEEDINGS HAVE BEGUN; AND DESCRIBING FOSTER CARE PROCEDURES REGARDING A CHILD'S RELATIVE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**78-3a-307**, as last amended by Chapter 274, Laws of Utah 1998

ENACTS:

**62A-2-117.5**, Utah Code Annotated 1953

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

Section 1. Section **62A-2-117.5** is enacted to read:

**62A-2-117.5. Foster care by a child's relative.**

(1) In accordance with state and federal law, the division shall provide for licensure of a child's relative for foster or substitute care, when the child is in the temporary custody or custody of the Division of Child and Family Services. If it is determined that, under federal law, allowance is made for an approval process requiring less than full foster parent licensure proceedings for a child's relative, the division shall establish an approval process to accomplish that purpose.

(2) For purposes of this section:

(a) "Custody" and "temporary custody" mean the same as those terms are defined in Section 62A-4a-101.

(b) "Relative" means the same as that term is defined in Section 78-3a-307.

Section 2. Section **78-3a-307** is amended to read:

**78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative -- DCFS custody.**

(1) (a) At the shelter hearing, when the court orders that a child be removed from the

custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall first determine whether there is another natural parent as defined in Subsection (1)(b), with whom the child was not residing at the time the events or conditions that brought him within the court's jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody, the court shall place the minor with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the provisions of Subsection (8)(b).

(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the custodial parent. This definition applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long term goal for the child.

(c) (i) The court shall make a specific finding regarding the fitness of that parent to assume custody, and the safety and appropriateness of the placement.

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

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

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

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

(2) If the court orders placement with a parent under Subsection (1), the child and the parent are under the continuing jurisdiction of the court. The court may order that the parent assume custody subject to the supervision of the court, and order that services be provided to the parent from

whose custody the child was removed, the parent who has assumed custody, or both. The court may also provide for reasonable visitation with the parent from whose custody the child was removed, if that is in the best interest of the child. The court's order shall be periodically reviewed to determine whether:

- (a) placement with the parent continues to be in the child's best interest;
- (b) the child should be returned to the original custodial parent;
- (c) the child should be placed with a relative, pursuant to Subsection (5); or
- (d) the child should be placed in the custody of the division.

(3) The time limitations described in Section 78-3a-311 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (1).

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

(5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his parent and is not placed in the custody of his other parent, the court shall, at that time, determine whether there is a relative who is able and willing to care for the child. The court may order the Division of Child and Family Services to conduct a reasonable search to determine whether there are relatives of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The court shall order the parents to cooperate with the division, within five working days, to provide information regarding relatives who may be able and willing to care for the child. The child may be placed in the temporary custody of the division pending that determination. This section may not be construed as a guarantee that an identified relative will receive custody of the child. However, preferential consideration may be given to a relative's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.

(b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make a specific finding regarding the fitness of that relative to assume custody, and the safety and appropriateness of placement with that relative. In order to be considered a "willing relative" under

this section, the relative shall be willing to cooperate if the child's permanency goal is reunification with his parent or parents, and be willing to adopt or take permanent custody of the child if that is determined to be in the best interest of the child.

(ii) The court shall, at a minimum, order the division to conduct criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the division's management information system for any previous reports of abuse or neglect regarding the relative at issue, report its findings in writing to the court, and provide sufficient information so that the court may determine whether:

- (A) the relative has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;
- (B) the child is comfortable with the relative;
- (C) the relative recognizes the parent's history of abuse and is determined to protect the child;
- (D) the relative is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;
- (E) the relative is committed to caring for the child as long as necessary; and
- (F) the relative can provide a secure and stable environment for the child.

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

(iv) The division shall complete and file its assessment regarding placement with a relative as soon as practicable, in an effort to facilitate placement of the child with a relative.

(c) The court may place the child in the temporary custody of the division, pending the division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that placement. The court shall ultimately base its determination regarding placement with a relative on the best interest of the child.

(d) For purposes of this section, "relative" means an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended family member" as defined

by that statute.

(6) (a) When the court vests physical custody of a child with a relative pursuant to Subsection (5), it shall order that the relative assume custody subject to the continuing supervision of the court, and shall order that any necessary services be provided to the minor and the relative. That child is not within the temporary custody or custody of the Division of Child and Family Services. The child and any relative with whom the child is placed are under the continuing jurisdiction of the court. The court may enter any order that it considers necessary for the protection and best interest of the child.

(b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed by the court, no less often than every six months, to determine whether:

(A) placement with the relative continues to be in the child's best interest;

(B) the child should be returned home; or

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

(ii) No later than 12 months after placement with a relative the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(iii) The time limitations described in Section 78-3a-311, with regard to reunification efforts, apply to children placed with a relative pursuant to Subsection (5).

(7) When the court orders that a child be removed from the custody of his parent and does not vest custody in another parent or relative under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

(8) (a) Any preferential consideration that a relative may be initially granted pursuant to Subsection (5) expires ~~[30]~~ 120 days from the date of the shelter hearing. After that time period has expired, a relative who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.

(b) When [~~a period of 30 days from the date of the shelter hearing~~] the time period described in Subsection (8)(a) has expired, the preferential consideration which may initially be granted to a natural parent in accordance with Subsection (1), is limited. After that time the court shall base its

custody decision on the best interest of the child.