

1                                   **DIVISION OF CHILD AND FAMILY**  
2                                   **SERVICES AMENDMENTS**

3                                   2000 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: Wayne A. Harper**

6 AN ACT RELATING TO THE CHILD WELFARE ACT; AMENDING THE DEFINITION OF  
7 RELATIVE; EXTENDING THE TIME FOR PREFERENTIAL CONSIDERATION OF A  
8 RELATIVE AFTER PROTECTIVE PROCEEDINGS HAVE BEGUN; AND ALLOWING FOR  
9 LICENSURE OR APPROVAL OF RELATIVE FOR FOSTER CARE.

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

11 AMENDS:

12                   **78-3a-307**, as last amended by Chapter 274, Laws of Utah 1998

13 ENACTS:

14                   **62A-2-117.5**, Utah Code Annotated 1953

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

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

17                   **62A-2-117.5. Foster care licensure or approval of child's relative.**

18                   (1) In accordance with federal law, the division shall provide for licensure or approval of  
19 a child's relative for foster or substitute care, when the child is in the temporary custody or custody  
20 of the Division of Child and Family Services.

21                   (2) For purposes of this section:

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

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

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

26                   **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**  
27 **DCFS custody.**

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

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

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

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

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

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

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

54 (2) If the court orders placement with a parent under Subsection (1), the child and the  
55 parent are under the continuing jurisdiction of the court. The court may order that the parent  
56 assume custody subject to the supervision of the court, and order that services be provided to the  
57 parent from whose custody the child was removed, the parent who has assumed custody, or both.  
58 The court may also provide for reasonable visitation with the parent from whose custody the child

59 was removed, if that is in the best interest of the child. The court's order shall be periodically  
60 reviewed to determine whether:

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

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

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

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

81 (b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make  
82 a specific finding regarding the fitness of that relative to assume custody, and the safety and  
83 appropriateness of placement with that relative. In order to be considered a "willing relative"  
84 under this section, the relative shall be willing to cooperate if the child's permanency goal is  
85 reunification with his parent or parents, and be willing to adopt or take permanent custody of the  
86 child if that is determined to be in the best interest of the child.

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

90 the relative at issue, report its findings in writing to the court, and provide sufficient information  
91 so that the court may determine whether:

92 (A) the relative has any history of abusive or neglectful behavior toward other children that  
93 may indicate or present a danger to this child;

94 (B) the child is comfortable with the relative;

95 (C) the relative recognizes the parent's history of abuse and is determined to protect the  
96 child;

97 (D) the relative is strong enough to resist inappropriate requests by the parent for access  
98 to the child, in accordance with court orders;

99 (E) the relative is committed to caring for the child as long as necessary; and

100 (F) the relative can provide a secure and stable environment for the child.

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

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

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

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

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

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

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

124 (B) the child should be returned home; or

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

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

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

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

136 (8) (a) Any preferential consideration that a relative may be initially granted pursuant to  
137 Subsection (5) expires [30] the latter of 90 days from the date of the shelter hearing or 60 days  
138 from the date of adjudication. After that time period has expired, a relative who has not obtained  
139 custody or asserted an interest in a child, may not be granted preferential consideration by the  
140 division or the court.

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

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**Legislative Review Note**  
**as of 1-28-00 4:17 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**