

ADOPTION LAW AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies the Termination of Parental Rights Act and the Adoption Act. The act expands those who are authorized to take consents or relinquishments under the Termination of Parental Rights Act to include any person who is authorized to take consents or relinquishments under the Adoption Act. The act amends the Adoption Act to require a father to file an executed voluntary declaration of paternity with the state registrar of vital statistics as required by the Voluntary Declaration of Paternity Act. The act clarifies that a notice of the commencement of paternity proceedings is considered filed when the notice is entered in the registry of notices from unmarried biological fathers. The act provides that licensed experts in family relations of the state where prospective adoptive parents reside may conduct preplacement evaluations. The act establishes background check requirements for prospective adoptive parents who have not been residents of Utah for five consecutive years preceding the time of the filing of a petition for adoption. The act expands the jurisdiction of Utah courts to allow a family to finalize an adoption in the Utah district court where a child was born. The act makes technical changes.

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

AMENDS:

78-3a-414, as last amended by Chapter 161, Laws of Utah 2000

78-30-3.5, as last amended by Chapter 21, Laws of Utah 1999

78-30-4.14, as enacted by Chapter 168, Laws of Utah 1995

78-30-4.18, as last amended by Chapter 171, Laws of Utah 2000

78-30-7, as last amended by Chapter 10, Laws of Utah 1997

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

Section 1. Section **78-3a-414** is amended to read:

28 **78-3a-414. Voluntary relinquishment -- Irrevocable.**

29 (1) Voluntary relinquishment or consent for termination of parental rights shall be signed
30 or confirmed under oath either:

31 (a) before a judge of any court that has jurisdiction over proceedings for termination of
32 parental rights in this state or any other state, or a public officer appointed by that court for the
33 purpose of taking consents or relinquishments[-]; or

34 (b) any person authorized to take consents or relinquishments under Subsections
35 78-30-4.18(1) and (2).

36 (2) The court [or], appointed officer, or other authorized person shall certify to the best of
37 that person's information and belief that the person executing the consent or relinquishment has
38 read and understands the consent or relinquishment and has signed it freely and voluntarily.

39 (3) A voluntary relinquishment or consent for termination of parental rights is effective
40 when it is signed and may not be revoked.

41 (4) The requirements and processes described in Sections 78-3a-402 through 78-3a-410
42 do not apply to a voluntary relinquishment or consent for termination of parental rights. The court
43 need only find that the relinquishment or termination is in the child's best interest.

44 (5) There is a presumption that voluntary relinquishment or consent for termination of
45 parental rights is not in the child's best interest where it appears to the court that the primary
46 purpose is to avoid a financial support obligation. The presumption may be rebutted, however, if
47 the court finds the relinquishment or consent to termination of parental rights will facilitate the
48 establishment of stability and permanency for the child.

49 (6) Upon granting a voluntary relinquishment the court may make orders relating to the
50 child's care and welfare that the court considers to be in the child's best interest.

51 Section 2. Section **78-30-3.5** is amended to read:

52 **78-30-3.5. Preplacement and postplacement adoptive evaluations -- Exceptions.**

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

57 (b) The court may, at any time, authorize temporary placement of a child in a potential
58 adoptive home pending completion of a preplacement adoptive evaluation described in this

59 section.

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

66 (d) The requirements of Subsection (1)(a) are satisfied by a previous preplacement
67 adoptive evaluation conducted within three years prior to placement of the child, or an annual
68 updated adoptive evaluation conducted after that three-year period or within one year after
69 finalization of a previous adoption.

70 (2) ~~[The]~~ For each prospective adoptive parent or any other adult living in the prospective
71 home who has been a resident of Utah for five consecutive years immediately preceding the time
72 of the filing of the petition for adoption, the preplacement adoptive evaluation shall include all
73 of the following:

74 (a) a criminal history record ~~[information]~~ regarding each prospective adoptive parent and
75 any other adult living in the prospective home, received from the Criminal Investigations and
76 Technical Services Division of the Department of Public Safety, in accordance with Section
77 53-10-108, no earlier than 18 months immediately preceding placement of the child;

78 (b) a report from the Department of Human Services containing all information regarding
79 reports and investigation of child abuse, neglect, and dependency, with respect to each prospective
80 adoptive parent and any other adult living in the prospective home, obtained no earlier than 18
81 months immediately preceding placement of the child, ~~[pursuant]~~ according to waivers executed
82 by those parties; and

83 (c) an evaluation conducted by an expert in family relations approved by the court or a
84 certified social worker, clinical social worker, marriage and family therapist, psychologist,
85 professional counselor, or other court-determined expert in family relations, who is licensed to
86 practice under the laws of this state. The evaluation shall be in a form approved by the Department
87 of Human Services. Neither the Department of Human Services nor any of its divisions may
88 proscribe who qualifies as an expert in family relations or who may conduct evaluations ~~[pursuant~~
89 to] under this Subsection (2)(c).

90 (3) For each prospective adoptive parent or any other adult living in the prospective home
91 who has not been a resident of Utah for five consecutive years immediately preceding the time of
92 the filing of the petition for adoption, the preplacement adoptive evaluation shall include all of the
93 following:

94 (a) An investigation and report of criminal history received from the state agencies
95 designated to maintain criminal records, in accordance with Section 53-10-108, for all states of
96 residence for the five years immediately preceding the adoptive placement of the child with the
97 prospective adoptive parents, and obtained no earlier than 18 months immediately preceding
98 placement of the child. The prospective adoptive parent or other adult living in the prospective
99 adoptive home is responsible for all costs associated with obtaining the criminal history.

100 (b) An investigation and report on child abuse, neglect, and dependency from the state
101 agencies designated to maintain child abuse, neglect, and dependency records, for all states of
102 residence dating back five years of the prospective adoptive parent or any other adult living in the
103 prospective adoptive home.

104 (c) An evaluation, as required under Subsection (2)(c), by a person either licensed to
105 practice under the laws of this state or under the laws of the state where the prospective adoptive
106 parent or other adult living in the prospective adoptive home resides.

107 [~~3~~] (4) A copy of the preplacement adoptive evaluation shall be filed with the court.

108 [~~4~~] (5) (a) Except as provided in Subsections (5)(b) and (c), a postplacement evaluation
109 shall be conducted and submitted to the court prior to the final hearing in an adoption proceeding.

110 The postplacement evaluation shall include:

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

114 (b) The exemptions from and requirements for evaluations, described in Subsections
115 (1)(c), (2)(c), [~~and~~] (3)(c), and (4) also apply to postplacement adoptive evaluations.

116 (c) Upon the request of the petitioner, the court may waive the postplacement adoptive
117 evaluation, unless it determines that it is in the best interest of the child to require the
118 postplacement evaluation.

119 [~~5~~] (6) If the person or agency conducting the evaluation disapproves the adoptive
120 placement, either in the preplacement or postplacement adoptive evaluation, the court may dismiss

121 the petition. However, upon request of a prospective adoptive parent, the court shall order that an
122 additional preplacement or postplacement adoptive evaluation be conducted, and hold a hearing
123 on the suitability of the adoption, including testimony of interested parties.

124 ~~[(6)]~~ (7) Prior to finalization of a petition for adoption the court shall review and consider
125 the information and recommendations contained in the preplacement and postplacement adoptive
126 studies required by this section.

127 Section 3. Section **78-30-4.14** is amended to read:

128 **78-30-4.14. Necessary consent to adoption or relinquishment for adoption.**

129 (1) Either relinquishment for adoption to a licensed child-placing agency or consent to
130 adoption is required from:

131 (a) the adoptee, if he is more than 12 years of age, unless he does not have the mental
132 capacity to consent;

133 (b) both parents or the surviving parent of an adoptee who was conceived or born within
134 a marriage, unless the adoptee is 18 years of age or older;

135 (c) the mother of an adoptee born outside of marriage;

136 (d) any biological parent who has been adjudicated to be the child's biological father by
137 a court of competent jurisdiction prior to the mother's execution of consent or her relinquishment
138 to an agency for adoption;

139 (e) any biological parent who has executed and filed a voluntary declaration of paternity
140 with the state registrar of vital statistics within the Department of Health in accordance with Title
141 78, Chapter 45e, prior to the mother's execution of consent or her relinquishment to an agency for
142 adoption;

143 (f) an unmarried biological father of an adoptee, as defined in Section 78-30-4.11, only if
144 the requirements and conditions of Subsection (2)(a) or (b) have been proven; and

145 (g) the licensed child-placing agency to whom an adoptee has been relinquished and that
146 is placing the child for adoption.

147 (2) In accordance with Subsection (1), the consent of an unmarried biological father is
148 necessary only if the father has strictly complied with the requirements of this section.

149 (a) (i) With regard to a child who is placed with adoptive parents more than six months
150 after birth, an unmarried biological father shall have developed a substantial relationship with the
151 child, taken some measure of responsibility for the child and the child's future, and demonstrated

152 a full commitment to the responsibilities of parenthood by financial support of the child, of a fair
153 and reasonable sum and in accordance with the father's ability, when not prevented from doing so
154 by the person or authorized agency having lawful custody of the child, and either:

155 (A) visiting the child at least monthly when physically and financially able to do so, and
156 when not prevented from doing so by the person or authorized agency having lawful custody of
157 the child; or

158 (B) regular communication with the child or with the person or agency having the care or
159 custody of the child, when physically and financially unable to visit the child, and when not
160 prevented from doing so by the person or authorized agency having lawful custody of the child.

161 (ii) The subjective intent of an unmarried biological father, whether expressed or
162 otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a
163 determination that the father failed to meet the requirements of this Subsection (2)(a)(ii).

164 (iii) An unmarried biological father who openly lived with the child for a period of six
165 months within the one-year period after the birth of the child and immediately preceding placement
166 of the child with adoptive parents, and openly held himself out to be the father of the child during
167 that period, shall be deemed to have developed a substantial relationship with the child and to have
168 otherwise met the requirements of this Subsection (2)(a)(iii).

169 (b) With regard to a child who is under six months of age at the time he is placed with
170 adoptive parents, an unmarried biological father shall have manifested a full commitment to his
171 parental responsibilities by performing all of the acts described in this subsection prior to the time
172 the mother executes her consent for adoption or relinquishes the child to a licensed child-placing
173 agency. The father shall:

174 (i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on
175 Paternity, and file with that court a sworn affidavit stating that he is fully able and willing to have
176 full custody of the child, setting forth his plans for care of the child, and agreeing to a court order
177 of child support and the payment of expenses incurred in connection with the mother's pregnancy
178 and the child's birth;

179 (ii) file notice of the commencement of paternity proceedings with the state registrar of
180 vital statistics within the Department of Health, in a confidential registry established by the
181 department for that purpose, which notice is considered filed when the notice is entered in the
182 registry of notices from unmarried biological fathers; and

183 (iii) if he had actual knowledge of the pregnancy, paid a fair and reasonable amount of the
184 expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance
185 with his means, and when not prevented from doing so by the person or authorized agency having
186 lawful custody of the child.

187 (3) An unmarried biological father whose consent is required under Subsection (1) or (2)
188 may nevertheless lose his right to consent if the court determines, in accordance with the
189 requirements and procedures of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act,
190 that his rights should be terminated, based on the petition of any interested party.

191 (4) If there is no showing that an unmarried biological father has consented to or waived
192 his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from
193 the state registrar of vital statistics within the Department of Health, stating that a diligent search
194 has been made of the registry of notices from unmarried biological fathers described in Subsection
195 (2)(b)(ii), and that no filing has been found pertaining to the father of the child in question, or if
196 a filing is found, stating the name of the putative father and the time and date of filing. That
197 certificate shall be filed with the court prior to entrance of a final decree of adoption.

198 (5) An unmarried biological father who does not fully and strictly comply with each of the
199 conditions provided in this section, is deemed to have waived and surrendered any right in relation
200 to the child, including the right to notice of any judicial proceeding in connection with the adoption
201 of the child, and his consent to the adoption of the child is not required.

202 Section 4. Section **78-30-4.18** is amended to read:

203 **78-30-4.18. Persons who may take consents and relinquishments.**

204 (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

205 (a) a judge of any court that has jurisdiction over adoption proceedings, or a public officer
206 appointed by that judge for the purpose of taking consents or relinquishments; or

207 (b) a person who is authorized by a licensed child-placing agency to take consents or
208 relinquishments so long as the signature is notarized or witnessed by two individuals who are not
209 members of the birth mother's immediate family.

210 (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it
211 shall be signed before:

212 (a) a person who is authorized by a child-placing agency licensed by that state to take
213 consents or relinquishments; or

214 (b) a person authorized or appointed to take consents or relinquishments by a court of this
215 state that has jurisdiction over adoption proceedings, or a court of that state that has jurisdiction
216 over adoption proceedings.

217 (3) The consent or relinquishment of any other person or agency as required by Section
218 78-30-4.14 may be signed before a Notary Public or any person authorized to take a consent or
219 relinquishment under Subsection (1) or (2).

220 (4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall
221 certify to the best of [his] that person's information and belief that the person executing the consent
222 or relinquishment has read and understands the consent or relinquishment and has signed it freely
223 and voluntarily.

224 (5) A person executing a consent or relinquishment is entitled to a copy of the consent or
225 relinquishment.

226 Section 5. Section **78-30-7** is amended to read:

227 **78-30-7. Jurisdiction of district and juvenile court -- Time for filing.**

228 (1) Adoption proceedings shall be commenced by filing a petition with the clerk of the
229 district court either:

230 (a) in the district where the person adopting resides[~~, or~~];

231 (b) if a child is conceived in Utah, in the district where the child was born; or

232 (c) with the juvenile court as provided in Section 78-3a-105.

233 (2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the
234 clerk of [that] the district court where the adoption proceedings were commenced under Subsection
235 (1).

236 [~~(2)~~] (3) A petition for adoption shall be filed within 30 days of the date the adoptee is
237 placed in the home of the petitioners for the purpose of adoption, unless the time for filing has
238 been extended by the court, or unless the adoption is arranged by a licensed child-placing agency
239 in which case the agency may extend the filing time.

Legislative Review Note

as of 1-12-01 10:37 AM

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

Office of Legislative Research and General Counsel