

ADOPTION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Ann W. Hardy

LONG TITLE

General Description:

This bill amends provisions relating to adoption procedures and adoptive evaluations.

Highlighted Provisions:

This bill:

- ▶ amends who may receive a criminal history report;
- ▶ expands which reports and information are confidential;
- ▶ authorizes an agency to provide an adoption report to certain other persons in connection with an adoption;
- ▶ changes the timeliness on conducting a preplacement adoptive evaluation;
- ▶ requires a person or agency conducting an adoption evaluation to provide the prospective adoptive parent with literature to assist them in connection with the adoption;
- ▶ amends the notice of adoption proceedings;
- ▶ requires a putative father's name to appear on a birth certificate before the relinquishment or consent for adoption;
- ▶ revises provisions for an unmarried, biological father to declare an interest in the child;
- ▶ makes explicit the biological father's rights when the child is conceived by conduct that would constitute a sexual offense;
- ▶ changes provisions regarding contested adoptions;
- ▶ changes time frames for consent or relinquishment in connection with a child placed for adoption;
- ▶ clarifies venue for adoption proceedings; and

▸ provides for allowance of interested persons to petition the court to determine the rights of other persons in connection with a child.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 53-10-108**, as last amended by Chapter 13, Laws of Utah 2002
- 62A-4a-412**, as last amended by Chapter 68, Laws of Utah 2003
- 78-30-3.5**, as last amended by Chapter 101, Laws of Utah 2001
- 78-30-4.13**, as last amended by Chapter 171, Laws of Utah 2000
- 78-30-4.14**, as last amended by Chapter 101, Laws of Utah 2001
- 78-30-4.16**, as last amended by Chapter 255, Laws of Utah 2001
- 78-30-4.18**, as last amended by Chapter 171, Laws of Utah 2000
- 78-30-4.19**, as renumbered and amended by Chapter 168, Laws of Utah 1995
- 78-30-4.23**, as enacted by Chapter 168, Laws of Utah 1995
- 78-30-4.24**, as enacted by Chapter 168, Laws of Utah 1995
- 78-30-7**, as last amended by Chapter 185, Laws of Utah 2002

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

Section 1. Section **53-10-108** is amended to read:

53-10-108. Restrictions on access, use, and contents of division records -- Limited use of records for employment purposes -- Challenging accuracy of records -- Usage fees -- Missing children records.

(1) Dissemination of information from a criminal history record or warrant of arrest information from division files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for

employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice; and

(ii) the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

(e) agencies or individuals for the purpose of a preplacement adoptive study, in accordance with the requirements of Section 78-30-3.5;

(f) (i) agencies and individuals as the commissioner authorizes for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; and

(ii) private security agencies through guidelines established by the commissioner for employment background checks for their own employees and prospective employees;

(g) a qualifying entity for employment background checks for their own employees and persons who have applied for employment with the qualifying entity; and

(h) other agencies and individuals as the commissioner authorizes and finds necessary for protection of life and property and for offender identification, apprehension, and prosecution pursuant to an agreement.

(2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data.

(3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must obtain a signed waiver from the person whose information is requested.

(b) The waiver must notify the signee:

- (i) that a criminal history background check will be conducted;
 - (ii) who will see the information; and
 - (iii) how the information will be used.
- (c) Information received by a qualifying entity under Subsection (1)(g) may only be:
- (i) available to persons involved in the hiring or background investigation of the employee; and
 - (ii) used for the purpose of assisting in making an employment or promotion decision.
- (d) A person who disseminates or uses information obtained from the division under Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to any penalties provided under this section, is subject to civil liability.
- (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide the employee or employment applicant an opportunity to:
- (i) review the information received as provided under Subsection (8); and
 - (ii) respond to any information received.
- (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules to implement this Subsection (3).
- (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$15.
- (ii) The name check fee under Subsection (1)(g) is \$10.
- (iii) These fees remain in effect until changed by the division through the process under Section 63-38-3.2.
- (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in providing the information.
- (h) The division or its employees are not liable for defamation, invasion of privacy, negligence, or any other claim in connection with the contents of information disseminated under Subsection (1)(g).
- (4) Any criminal history record information obtained from division files may be used only for the purposes for which it was provided and may not be further disseminated, except that a

criminal history provided to an agency pursuant to Subsection (1)(e) may be provided by the agency to the person who is the subject of the history, another licensed child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an adoption.

(5) If an individual has no prior criminal convictions, criminal history record information contained in the division's computerized criminal history files may not include arrest or disposition data concerning an individual who has been acquitted, his charges dismissed, or when no complaint against him has been filed.

(6) (a) This section does not preclude the use of the division's central computing facilities for the storage and retrieval of criminal history record information.

(b) This information shall be stored so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

(7) Direct access through remote computer terminals to criminal history record information in the division's files is limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(8) (a) The commissioner shall establish procedures to allow an individual right of access to review and receive a copy of his criminal history report.

(b) A processing fee for the right of access service, including obtaining a copy of the individual's criminal history report under Subsection (8)(a) is \$10. This fee remains in effect until changed by the commissioner through the process under Section 63-38-3.2.

(c) (i) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the division's computerized criminal history files regarding that individual.

(ii) These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

(9) The private security agencies as provided in Subsection (1)(f)(ii):

(a) shall be charged for access; and

(b) shall be registered with the division according to rules made by the division under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(10) Before providing information requested under this section, the division shall give priority to criminal justice agencies needs.

(11) (a) Misuse of access to criminal history record information is a class B misdemeanor.

(b) The commissioner shall be informed of the misuse.

Section 2. Section **62A-4a-412** is amended to read:

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

(e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before it, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2); ~~and~~

(l) a person filing a petition for a child protective order on behalf of a minor who is the subject of the report~~[-]; and~~

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Section 78-30-3.5.

(2) (a) No person, unless listed in Subsection (1), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) Except as provided in Section 62A-4a-116.3, the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(4) Any person who wilfully permits, or aides and abets the release of data or information

obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Section 78-30-3.5:

(a) may provide this report to the person who is the subject of the report; and

(b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Section 3. Section **78-30-3.5** is amended to read:

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

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

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

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

~~[(d) The requirements of Subsection (1)(a) are satisfied by a previous preplacement~~

~~adoptive evaluation conducted within three years prior to placement of the child, or an annual updated adoptive evaluation conducted after that three-year period or within one year after finalization of a previous adoption.]~~

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

(2) The preplacement adoptive evaluation shall include:

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

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

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

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

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

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

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

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

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

~~[(5)]~~ (6) If the person or agency conducting the evaluation disapproves the adoptive placement, either in the preplacement or postplacement adoptive evaluation, the court may dismiss the petition. However, upon request of a prospective adoptive parent, the court shall order that an additional preplacement or postplacement adoptive evaluation be conducted, and hold a hearing on the suitability of the adoption, including testimony of interested parties.

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

Section 4. Section **78-30-4.13** is amended to read:

78-30-4.13. Notice of adoption proceedings.

(1) An unmarried, biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman, is [~~deemed~~] considered to be on notice that a pregnancy and an adoption proceeding regarding that child may occur, and has a duty to protect his own rights and interests. He is therefore entitled to actual notice of a birth or an adoption proceeding with regard to that child only as provided in this section.

(2) Notice of an adoption proceeding shall be served on each of the following persons:

(a) any person or agency whose consent or relinquishment is required under Section 78-30-4.14 unless that right has been terminated by waiver, relinquishment, consent, or judicial action;

(b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);

(c) any legally appointed custodian or guardian of the adoptee;

(d) the petitioner's spouse, if any, only if he has not joined in the petition;

(e) the adoptee's spouse, if any;

(f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child to a licensed child-placing agency, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) any person who is openly living in the same household with the child at the time the consent is executed or relinquishment made, and who is holding himself out to be the child's father; and

(h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.

(3) (a) In order to preserve any right to notice and consent, an unmarried, biological father may initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file a notice of the initiation of those proceedings with the state registrar of vital statistics within the Department of Health prior to the mother's execution of consent or her

relinquishment to an agency. That action and notice may also be filed prior to the child's birth.

(b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78-13-7.

(c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a), and make those forms available in the office of the county health department in each county.

(4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section may be served immediately after relinquishment or execution of consent, but shall be served at least 30 days prior to the final dispositional hearing. The notice shall specifically state that the person served must respond to the petition within 30 days of service if he intends to intervene in or contest the adoption.

(6) (a) Any person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion in the adoption proceeding within 30 days after service. The motion shall set forth specific relief sought and be accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) Any person who fails to file a motion for relief within 30 days after service of notice waives any right to further notice in connection with the adoption, forfeits all rights in relation to the adoptee, and is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(7) Service of notice under this section shall be made as follows:

(a) With regard to a person whose consent is necessary under Section 78-30-4.14, service shall be in accordance with the provisions of the Utah Rules of Civil Procedure. If service is by publication, the court shall designate the content of the notice regarding the identity of the parties. The notice may not include the name of the person or persons seeking to adopt the adoptee.

(b) As to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient. If that service cannot be completed after two

attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.

(8) The notice required by this section may be waived in writing by the person entitled to receive notice.

(9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption is required under Section 78-30-4.14, the sole purpose of notice under this section is to enable the person served to intervene in the adoption and present evidence to the court relevant to the best interest of the child.

Section 5. Section **78-30-4.14** is amended to read:

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

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

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

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

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

(d) any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent or her relinquishment to

an agency for adoption;

(e) any biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78, Chapter 45e, prior to the mother's execution of consent or her relinquishment to an agency for adoption, which voluntary declaration of paternity is considered filed when entered into a database that can be accessed by the Department of Health;

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

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

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

(a) (i) With regard to a child who is placed with adoptive parents more than six months after birth, an unmarried, biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

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

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

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

(iii) An unmarried, biological father who openly lived with the child for a period of six

months within the one-year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and openly held himself out to be the father of the child during that period, shall be [~~deemed~~] considered to have developed a substantial relationship with the child and to have otherwise met the requirements of Subsection (2)(a)(i).

(b) With regard to a child who is under six months of age at the time he is placed with adoptive parents, an unmarried, biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this Subsection (2) prior to the time the mother executes her consent for adoption or relinquishes the child to a licensed child-placing agency. The father shall:

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

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

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

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

(4) If there is no showing that an unmarried, biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from

the state registrar of vital statistics within the Department of Health, stating that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (2)(b)(ii), and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to entrance of a final decree of adoption.

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

Section 6. Section **78-30-4.16** is amended to read:

78-30-4.16. Contested adoptions -- Rights of parties -- Determination of custody.

~~[(1) Whenever any party contests an adoption, the court shall first determine whether the provisions of this chapter have been complied with. If a party who was entitled to notice and consent under the provisions of this chapter, was denied that right, and did not otherwise waive or forfeit that right under the terms of this chapter, the court may:]~~

~~[(a) enjoin the adoption, or dismiss the adoption petition, and proceed in accordance with Subsection (2); or]~~

~~[(b) determine whether proper grounds for termination of that parent's rights exist and, if so, order that the parent's rights be terminated in accordance with the provisions of this chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.]~~

~~[(2) (a) In any case, and under any circumstance, if a court determines that a petition for adoption may not be granted, the court may not automatically grant custody of a child to a challenging biological parent, but shall conduct an evidentiary hearing in each case, in order to determine who should have custody of the child, in accordance with the child's best interest.]~~

~~[(b) Evidence considered at that hearing may include, but is not limited to, evidence of psychological or emotional bonds that the child had formed with third parties and any detriment that a change in custody may cause to the child. The fact that a person relinquished a child to a licensed child placing agency or executed a consent for adoption may not be considered by the~~

court as evidence of neglect or abandonment.]

(1) If a person whose consent for an adoption is required pursuant to Subsection 78-30-4.14(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(2) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated. If there are not proper grounds to terminate the person's parental rights, the court shall:

(a) dismiss the adoption petition; and

(b) conduct an evidentiary hearing to determine who should have custody of the child and award custody in accordance with the child's best interest.

(3) Evidence considered at the custody hearing may include evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent, and any detriment that a change in custody may cause the child.

(4) The fact that a person relinquished a child to a licensed child-placing agency or consented to the adoption may not be considered as evidence that it is not in the child's best interest for custody to be awarded to such person or that:

(a) the person is unfit or incompetent to be a parent;

(b) the person has neglected or abandoned the child; or

(c) the person is not interested in having custody of the child.

~~(5)~~ (5) Any custody order entered pursuant to this section may also include provisions for parent-time by a biological parent or visitation by an interested third party, and provide for the financial support of the child.

(6) If a person or entity whose consent is required for an adoption under Subsection 78-30-4.14(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2). The court may also finalize the adoption if doing so is in the best interest of the child.

~~(7)~~ (7) An adoption may not be contested after the final decree of adoption is entered.

Section 7. Section **78-30-4.18** is amended to read:

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

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

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

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

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

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

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

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

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

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

Section 8. Section **78-30-4.19** is amended to read:

78-30-4.19. Time period prior to birth mother's consent.

(1) A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child.

(2) The consent or relinquishment of any other person as required by Section 78-30-4.14 may be executed at any time, including prior to the birth of the child.

Section 9. Section **78-30-4.23** is amended to read:

78-30-4.23. Criminal sexual offenses.

~~[The notice and consent provisions of this chapter do not apply in cases where the child is conceived as a result of]~~ A biological father is not entitled to notice of an adoption proceeding, nor is the consent of a biological father required in connection with an adoption proceeding, in cases where it is shown that the child who is the subject of the proceeding was conceived as a result of conduct which would constitute any sexual offense described in Title 76, Chapter 5, Part 4, regardless of whether the biological father is formally charged with or convicted of a criminal offense.

Section 10. Section **78-30-4.24** is amended to read:

78-30-4.24. Determination of rights prior to adoption petition.

Any interested ~~[party]~~ person may petition ~~[the]~~ a court having jurisdiction over adoption proceedings for a determination of the rights and interests of any person who may claim an interest in a child under this chapter, at any time prior to the ~~[filing of a petition for]~~ finalization of the adoption, including any time prior to the child's birth.

Section 11. Section **78-30-7** is amended to read:

78-30-7. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.

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

(a) in the district where the person adopting resides, or if the person adopting is not a resident of this state, in the district where the child was born or in which the child-placing agency that has custody of the child is located; or

(b) with the juvenile court as provided in Subsection 78-3a-104(1)(o).

~~[(2) If a child is conceived in Utah, adoption proceedings may be commenced by filing a petition with the clerk of the district court in the district where the child was born.]~~

~~[(3)]~~ (2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1) [~~or~~ (2)].

~~[(4)]~~ (3) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless the time for filing has been extended by the court, or unless the adoption is arranged by a licensed child-placing agency in which case the agency may extend the filing time.

(4) (a) If a person whose consent for the adoption is required under Section 78-30-4.14 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

(b) The notice may not include:

(i) the name of the person or persons seeking to adopt the adoptee; or

(ii) an unmarried mother without that person's consent.

(5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.

(6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served, shall be sufficient to confer jurisdiction.

(7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.