

1                                   **CHILD WELFARE REMOVAL - ADOPTION**  
2   **OPTION**

3   2005 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Parley G. Hellewell**

---

---

7   **LONG TITLE**

8   **General Description:**

9                   This bill amends provisions of the Utah Human Services Code and the Judicial Code  
10 relating to child protection, adoption, and rights of parents.

11 **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ requires that a notice of the rights of parents be included in the written statement  
14 that is made available to the parent, guardian, or responsible relative of a child when  
15 the child is taken into protective custody;
- 16                   ▶ establishes a procedure for a parent of a child taken into custody by the Division of  
17 Child and Family Services, who voluntarily waives the parent's parental rights  
18 within a specified period of time, to:
- 19                   • participate in the selection of the adoptive parents;
  - 20                   • receive general, nonidentifying information regarding the adoptive parents and  
21 the adoptive family; and
  - 22                   • receive annual updates on the status and progress of the child;
- 23                   ▶ provides that a parent may waive the rights established by this bill;
- 24                   ▶ provides exceptions to the requirements of this bill;
- 25                   ▶ provides restrictions on the disclosure of certain records;
- 26                   ▶ provides a criminal penalty for the unlawful disclosure of certain records;
- 27                   ▶ requires that a statement of the rights of parents be attached to:



- 28 • a petition to commence proceedings in the juvenile court alleging that a child is
- 29 abused, neglected, or dependent; and
- 30 • a petition for termination of a parent's parental rights; and
- 31 ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **62A-4a-202.2**, as last amended by Chapter 10, Laws of Utah 2001, First Special  
39 Session

40 **78-3a-305**, as last amended by Chapters 68 and 326, Laws of Utah 2003

41 **78-3a-405**, as renumbered and amended by Chapter 260, Laws of Utah 1994

42 ENACTS:

43 **62A-4a-205.7**, Utah Code Annotated 1953



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

46 Section 1. Section **62A-4a-202.2** is amended to read:

47 **62A-4a-202.2. Notice to parents upon removal of child -- Locating noncustodial**  
48 **parent -- Written statement of procedural rights and preliminary proceedings.**

49 (1) (a) Any peace officer or caseworker who takes a minor into protective custody  
50 pursuant to Section 62A-4a-202.1 shall immediately use reasonable efforts to locate and  
51 inform, through the most efficient means available, the parents, including a noncustodial  
52 parent, the guardian, or responsible relative:

- 53 (i) that the minor has been taken into protective custody;
- 54 (ii) the reasons for removal and placement in protective custody;
- 55 (iii) that a written statement is available that explains the parent's procedural rights and
- 56 the preliminary stages of the investigation and shelter hearing; and
- 57 (iv) of a telephone number where the parent may access further information.
- 58 (b) For purposes of locating and informing the noncustodial parent as required in

59 Subsection (1)(a), the division shall search for the noncustodial parent through the national  
 60 parent locator database if the division is unable to locate the noncustodial parent through other  
 61 reasonable efforts.

62 (2) (a) The attorney general's office shall adopt, print, and distribute a form for the  
 63 written statement described in Subsection (1)(a)(iii).

64 (b) The statement described in Subsection (1)(a)(iii) shall:

65 (i) be made available to the division and for distribution in:

66 (A) schools[;];

67 (B) health care facilities[;];

68 (C) local police and sheriff's offices[;];

69 (D) the division[;]; and

70 (E) any other appropriate office within the Department of Human Services. [~~The~~

71 ~~notice shall]~~

72 (ii) be in simple language; and

73 (iii) include at least the following information:

74 [~~(a)~~] (A) the conditions under which a minor may be released[;];

75 (B) hearings that may be required[~~, and~~];

76 (C) the means by which the parent may access further specific information about a  
 77 minor's case and conditions of protective and temporary custody; [~~and]~~

78 [~~(b)~~] (D) the rights of a minor and of the parent or guardian to legal counsel and to  
 79 appeal[;]; and

80 (E) the rights of the parent under Section 62A-4a-205.7.

81 (3) If a good faith attempt was made by the peace officer or caseworker to notify the  
 82 parent or guardian in accordance with the requirements of Subsection (1), failure to notify:

83 (a) shall be considered to be due to circumstances beyond the control of the peace  
 84 officer or caseworker; and

85 (b) may not be construed to permit a new defense to any juvenile or judicial proceeding  
 86 or to interfere with any rights, procedures, or investigations provided for by this chapter or Title  
 87 78, Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996.

88 Section 2. Section **62A-4a-205.7** is enacted to read:

89 **62A-4a-205.7. Involvement of parent in adoption -- Annual update on status of**

90 **adoptee -- Confidentiality and disclosure of records -- Criminal penalty for unlawful**  
91 **disclosure.**

92 (1) A parent of a child in the custody of the division is entitled to participate in the  
93 adoption process of the parent's child in the manner described in Subsection (2) if the parent  
94 consents to the termination of the parent's parental rights relating to the child under Section  
95 78-3a-414, within the earlier of 90 days from the day on which:

96 (a) the child is first taken into custody by the division;

97 (b) a petition to commence proceedings in the juvenile court alleging that the child is  
98 abused, neglected, or dependent is filed under Section 78-3a-305; or

99 (c) a petition for termination of the parent's parental rights relating to the child is filed  
100 under Sections 78-3a-404 and 78-3a-405.

101 (2) Except as provided in Subsection (5), when a parent of a child in the custody of the  
102 division consents to the termination of the parent's parental rights in the manner described in  
103 Subsection (1):

104 (a) the division shall:

105 (i) except as provided in Subsections (3)(a) and (b), select at least three sets of  
106 potential adoptive parents that are:

107 (A) willing to adopt the child; and

108 (B) approved by the division as an appropriate placement for the child;

109 (ii) provide the parent of the child with general, nonidentifying information regarding  
110 each selected potential adoptive parent and family, including:

111 (A) the size of the family;

112 (B) the age and gender of the siblings in the family; and

113 (C) each parent's:

114 (I) level of education;

115 (II) general type of employment; and

116 (III) religion;

117 (iii) except as provided in Subsection (3)(b), permit the parent of the child seven days  
118 to specify an order of preference for placing the child with the potential adoptive parents  
119 selected by the division under Subsection (2)(a);

120 (iv) except as provided in Subsections (3)(b) and (c), place the child with the potential

121 adoptive parents with the highest preference specified under Subsection (2)(a)(iii) who:  
122 (A) are willing to adopt the child at the time the child is placed for adoption; and  
123 (B) are approved by the court as an appropriate placement for the child;  
124 (v) inform the parent of the child of the general, nonidentifying information described  
125 in Subsection (2)(a)(ii) regarding the adoptive parents and family that the child is placed with;  
126 and  
127 (vi) before placing the child with adoptive parents, require the adoptive parents to sign  
128 an agreement to provide the division with the annual written statement described in Subsection  
129 (2)(b); and  
130 (b) the parents that adopt the child from or through the division shall annually provide  
131 the division with a written statement:  
132 (i) regarding the status and progress of the child; and  
133 (ii) on a form provided by the division.  
134 (3) (a) Notwithstanding Subsection (2)(a)(i), if, after a diligent search, the division is  
135 only able to find two sets of potential adoptive parents, the division shall only be required to  
136 select two sets of potential adoptive parents.  
137 (b) Notwithstanding Subsections (2)(a)(i) and (iii), if, after a diligent search, the  
138 division is only able to find one set of potential adoptive parents, the division:  
139 (i) shall only be required to select one set of potential adoptive parents; and  
140 (ii) shall not be required to comply with Subsection (2)(a)(iii) or (iv).  
141 (c) Notwithstanding Subsection (2)(a)(iv), the division may seek to place the child with  
142 any family that the division considers appropriate if:  
143 (i) each family selected by the division under Subsection (2)(a)(i):  
144 (A) decides not to adopt the child; or  
145 (B) is not approved by the court as an appropriate placement for the child; or  
146 (ii) (A) both parents of the child exercise the right described in Subsection (2)(a)(iv);  
147 and  
148 (B) the parents of the child cannot agree on the order of preference described in  
149 Subsection (2)(a)(iii).  
150 (4) (a) On an annual basis, the division shall mail to the parents described in  
151 Subsection (2)(b):

152 (i) a copy of the form described in Subsection (2)(b)(ii); and  
153 (ii) a letter requesting that the adoptive parents complete the form and return the form  
154 to the division within seven days of the day on which the adoptive parents receive the letter.

155 (b) After receiving the completed form described in Subsection (4)(a), the division  
156 shall:

157 (i) redact any information that may identify the adoptive parents or the family of the  
158 adoptive parents; and

159 (ii) forward a copy of the redacted form to the parent described in Subsection (1).

160 (5) A parent may waive any of the rights described in Subsections (1) through (4).

161 (6) Except as provided in Subsection (7)(a):

162 (a) the redacted form described in Subsection (4)(b)(ii) may only be provided, upon  
163 presentation of positive identification, to:

164 (i) the parent described in Subsection (1);

165 (ii) the adoptive parents; or

166 (iii) the child to whom the redacted form relates when the child reaches the age of 18;

167 and

168 (b) the unredacted version of the form described in Subsection (4)(b) may only be  
169 provided, upon presentation of positive identification, to:

170 (i) the adoptive parents; or

171 (ii) subject to Subsection (7)(c), the child to whom the unredacted form relates when  
172 the child reaches the age of 18.

173 (7) (a) The information described in Subsection (6) may not be disclosed except:

174 (i) as provided in this section; or

175 (ii) pursuant to a court order.

176 (b) Any person who discloses the information described in Subsection (6) in violation  
177 of this section, or who knowingly allows that information to be disclosed in violation of this  
178 section is guilty of a class A misdemeanor.

179 (c) Prior to disclosing the information described in Subsection (6)(b), the division shall  
180 redact privacy information of any person other than the child described in Subsection (6)(b)(ii).

181 Section 3. Section **78-3a-305** is amended to read:

182 **78-3a-305. Petition filed -- Protective orders.**

183 (1) (a) Any interested person may file a petition to commence proceedings in the  
184 juvenile court alleging that a minor is abused, neglected, or dependent.

185 (b) The person shall first make a referral with the division.

186 (2) (a) If the child who is the subject of a petition was removed from his home by the  
187 Division of Child and Family Services that petition shall be filed on or before the date of the  
188 initial shelter hearing described in Section 78-3a-306.

189 (b) If a petition is requested by the division, the attorney general shall file the petition  
190 within 72 hours of the completion of the investigation and request, excluding weekends and  
191 holidays, if:

192 (i) the child who is the subject of the requested petition has not been removed from his  
193 home by the division; and

194 (ii) without an expedited hearing and services ordered under the protective supervision  
195 of the court, the child will likely be taken into protective custody.

196 (3) The petition shall be verified, and contain all of the following:

197 (a) the name, age, and address, if any, of the minor upon whose behalf the petition is  
198 brought;

199 (b) the names and addresses, if known to the petitioner, of both parents and any  
200 guardian of the minor;

201 (c) a concise statement of facts, separately stated, to support the conclusion that the  
202 minor upon whose behalf the petition is being brought is abused, neglected, or dependent; and

203 (d) a statement regarding whether the minor is in protective custody, and if so, the date  
204 and precise time the minor was taken into protective custody.

205 (4) A person who files a petition under this section shall attach to the petition a  
206 statement of the rights of the parents of the child who is the subject of the petition established  
207 under Section 62A-4a-205.7.

208 Section 4. Section **78-3a-405** is amended to read:

209 **78-3a-405. Contents of petition.**

210 (1) The petition for termination of parental rights shall include, to the best information  
211 or belief of the petitioner:

212 (a) the name and place of residence of the petitioner;

213 (b) the name, sex, date and place of birth, and residence of the child;

- 214 (c) the relationship of the petitioner to the child;
- 215 (d) the names, addresses, and dates of birth of the parents, if known;
- 216 (e) the name and address of the person having legal custody or guardianship, or acting
- 217 in loco parentis to the child, or the organization or agency having legal custody or providing
- 218 care for the child;
- 219 (f) the grounds on which termination of parental rights is sought, in accordance with
- 220 Section 78-3a-407; and
- 221 (g) the names and addresses of the persons or the authorized agency to whom legal
- 222 custody or guardianship of the child might be transferred.
- 223 (2) A copy of any relinquishment or consent, if any, previously executed by the parent
- 224 or parents shall be attached to the petition.
- 225 (3) A person who files a petition under this section shall attach to the petition a
- 226 statement of the rights of the parents of the child who is the subject of the petition established
- 227 under Section 62A-4a-205.7 unless:
- 228 (a) the division is not a party to the termination proceeding; and
- 229 (b) it does not appear that the division will become involved in the termination
- 230 proceeding.

---

---

**Legislative Review Note**  
**as of 2-9-05 10:16 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

---

---

**Fiscal Note**  
**Bill Number SB0186**

**Child Welfare Removal - Adoption Option**

*15-Feb-05*

*10:44 AM*

---

---

**State Impact**

The Division of Child and Family Services will need one full-time accounting technician to handle the requirements from this legislation at a cost of \$41,400 (\$33,900 General Fund) in FY 2006, which includes \$2,000 in one-time equipment costs. The expenditure of State General Funds will generate \$7,500 in matching federal funds.

---

**Individual and Business Impact**

No fiscal impact.

---

**Office of the Legislative Fiscal Analyst**