

1                                   **FOSTER PLACEMENT AND ADOPTION**

2   **AMENDMENTS**

3   2007 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Lorie D. Fowlke**

6   Senate Sponsor: Dan R. Eastman

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill amends provisions of the Judicial Code relating to foster placements and  
11 adoption.

12                   **Highlighted Provisions:**

13                   This bill:

14                   ▶ subject to certain exceptions, establishes a priority for placing a child with a man  
15 and a woman who are married to each other when the child is placed in a foster  
16 placement or for adoption;

17                   ▶ prohibits taking religion into account, or discriminating against a particular religion,  
18 when determining the placement of a child in foster care, unless religion is taken  
19 into account for the purpose of placing the child with a person or family of the same  
20 religion as the child; and

21                   ▶ makes technical changes.

22                   **Monies Appropriated in this Bill:**

23                   None

24                   **Other Special Clauses:**

25                   None

26                   **Utah Code Sections Affected:**

27                   AMENDS:



28           **78-3a-307**, as last amended by Chapter 281, Laws of Utah 2006

29           **78-30-1**, as last amended by Chapter 208, Laws of Utah 2000



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

32           Section 1. Section **78-3a-307** is amended to read:

33           **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**  
34 **DCFS custody.**

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

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

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

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

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

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

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

61 (2) If the court orders placement with a parent under Subsection (1), the child and the  
62 parent are under the continuing jurisdiction of the court. The court may order that the parent  
63 assume custody subject to the supervision of the court, and order that services be provided to  
64 the parent from whose custody the child was removed, the parent who has assumed custody, or  
65 both. The court shall also provide for reasonable parent-time with the parent from whose  
66 custody the child was removed, unless parent-time is not in the best interest of the child. The  
67 court's order shall be periodically reviewed to determine whether:

68 (a) placement with the parent continues to be in the child's best interest;

69 (b) the child should be returned to the original custodial parent;

70 (c) the child should be placed with a relative, pursuant to Subsection (5); or

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

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

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

78 (5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of  
79 the child's parent and is not placed in the custody of his other parent, the court shall, at that  
80 time, determine whether there is a relative who is able and willing to care for the child.

81 (ii) The court may order the Division of Child and Family Services to conduct a  
82 reasonable search to determine whether there are relatives of the child who are willing and  
83 appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2,  
84 Child Welfare Services, for placement of the child. The court shall order the parents to  
85 cooperate with the division, within five working days, to provide information regarding  
86 relatives who may be able and willing to care for the child.

87 (iii) The child may be placed in the temporary custody of the division pending the  
88 determination under Subsection (5)(a)(ii).

89 (iv) This section may not be construed as a guarantee that an identified relative will

90 receive custody of the child. However, preferential consideration shall be given to a relative's  
91 request for placement of the child, if it is in the best interest of the child, and the provisions of  
92 this section are satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

126 (6) (a) When the court vests physical custody of a child with a relative pursuant to  
127 Subsection (5), it shall order that the relative assume custody subject to the continuing  
128 supervision of the court, and shall order that any necessary services be provided to the child  
129 and the relative. That child is not within the temporary custody or custody of the Division of  
130 Child and Family Services. The child and any relative with whom the child is placed are under  
131 the continuing jurisdiction of the court. The court may enter any order that it considers  
132 necessary for the protection and best interest of the child. The court shall provide for  
133 reasonable parent-time with the parent or parents from whose custody the child was removed  
134 unless parent-time is not in the best interest of the child.

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

- 137 (A) placement with the relative continues to be in the child's best interest;  
138 (B) the child should be returned home; or  
139 (C) the child should be placed in the custody of the division.

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

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

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

150 (8) (a) Any preferential consideration that a relative is initially granted pursuant to  
151 Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has

152 expired, a relative who has not obtained custody or asserted an interest in a child, may not be  
153 granted preferential consideration by the division or the court.

154 (b) When the time period described in Subsection (8)(a) has expired, the preferential  
155 consideration which is initially granted to a natural parent in accordance with Subsection (1), is  
156 limited. After that time the court shall base its custody decision on the best interest of the  
157 child.

158 (9) If, following the shelter hearing, the court decides to place the child with a person  
159 who is not a parent, relative, or former foster parent of the child, the court, and the Division of  
160 Child and Family Services, shall give priority to a foster placement with a man and a woman  
161 who are married to each other, unless it is in the best interests of the child to place the child  
162 with a single foster parent.

163 (10) In determining the placement of a child, neither the court, nor the Division of  
164 Child and Family Services, may take into account, or discriminate against, the religion of a  
165 person with whom the child may be placed, unless the purpose of taking religion into account  
166 is to place the child with a person or family of the same religion as the child.

167 Section 2. Section **78-30-1** is amended to read:

168 **78-30-1. Who may adopt -- Adoption of minor -- Adoption of adult -- Priority**  
169 **among adoptive parents.**

170 (1) Any minor child may be adopted by an adult person, in accordance with the  
171 provisions and requirements of this section and this chapter.

172 (2) Any adult may be adopted by another adult. However, all provisions of this chapter  
173 apply to the adoption of an adult just as though the person being adopted were a minor, except  
174 that consent of the parents of an adult person being adopted is not required.

175 (3) (a) A child may be adopted by:

176 (i) adults who are legally married to each other in accordance with the laws of this  
177 state, including adoption by a stepparent; or

178 (ii) subject to Subsection (4), any single adult, except as provided in Subsection (3)(b).

179 (b) A child may not be adopted by a person who is cohabiting in a relationship that is  
180 not a legally valid and binding marriage under the laws of this state. For purposes of this  
181 Subsection (3)(b), "cohabiting" means residing with another person and being involved in a  
182 sexual relationship with that person.

183           (4) In order to provide a child who is in the custody of the division with the most  
184 beneficial family structure, when a child in the custody of the division is placed for adoption,  
185 the division or child-placing agency shall place the child with a man and a woman who are  
186 married to each other, unless:

187           (a) there are no qualified married couples who:

188           (i) have applied to adopt a child;

189           (ii) are willing to adopt the child; and

190           (iii) are an appropriate placement for the child;

191           (b) the child is placed with a relative of the child;

192           (c) the child is placed with a person who has already developed a substantial  
193 relationship with the child;

194           (d) the child is placed with a person who:

195           (i) is selected by a parent or former parent of the child, if the parent or former parent  
196 consented to the adoption of the child; and

197           (ii) the parent or former parent described in Subsection (4)(d)(i):

198           (A) knew the person with whom the child is placed before the parent consented to the  
199 adoption; or

200           (B) became aware of the person with whom the child is placed through a source other  
201 than the division or the child-placing agency that assists with the adoption of the child; or

202           (e) it is in the best interests of the child to place the child with a single person.

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**Legislative Review Note**  
as of 1-23-07 5:04 PM

**Office of Legislative Research and General Counsel**

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**H.B. 343 - Foster Placement and Adoption Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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*1/30/2007, 9:51:09 AM, Lead Analyst: Byrne, D.*

**Office of the Legislative Fiscal Analyst**