

**ADOPTIVE AND FOSTER PARENTS AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Angela Romero**

Senate Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**General Description:**

This bill makes terminology changes throughout the adoption and foster parent statutes.

**Highlighted Provisions:**

This bill:

► changes "man and woman" to "couple" or "spouse" within the adoption and foster parent statutes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**62A-4a-120**, as last amended by Laws of Utah 2008, Chapter 382

**62A-4a-205.5**, as last amended by Laws of Utah 2010, Chapter 237

**62A-4a-602**, as last amended by Laws of Utah 2008, Chapter 3

**78A-6-307**, as last amended by Laws of Utah 2015, Chapter 142

**78B-6-114**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-117**, as enacted by Laws of Utah 2008, Chapter 3

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



28 Section 1. Section **62A-4a-120** is amended to read:

29 **62A-4a-120. Accommodation of moral and religious beliefs and culture.**

30 (1) The division shall adopt rules in accordance with Title 63G, Chapter 3, Utah  
31 Administrative Rulemaking Act, and establish procedures to accommodate the moral and  
32 religious beliefs, sexual orientation, and culture[-] of the minors and families it serves,  
33 including:

34 (a) the immediate family and other relatives of a minor in any type of custody or  
35 otherwise under the jurisdiction of the court;

36 (b) foster and other out-of-home placement families; and

37 (c) adoptive families.

38 (2) The accommodation under Subsection (1) applies to placements, treatment plans,  
39 services, and other activities of the division.

40 Section 2. Section **62A-4a-205.5** is amended to read:

41 **62A-4a-205.5. Prohibition of discrimination based on race, color, or ethnicity.**

42 (1) As used in this section, "adoptable children" means children:

43 (a) who are in the custody of the division; and

44 (b) (i) who have permanency goals of adoption; or

45 (ii) for whom a final plan for pursuing termination of parental rights has been approved  
46 in accordance with Section [78A-6-314](#).

47 (2) Except as required under the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963,  
48 the division may not base its decision for placement of adoptable children on the race, color,  
49 ethnicity, sexual orientation, or national origin of either the child or the prospective adoptive  
50 parents.

51 (3) The basis of a decision for placement of an adoptable child shall be the best interest  
52 of the child.

53 Section 3. Section **62A-4a-602** is amended to read:

54 **62A-4a-602. Licensure requirements -- Prohibited acts.**

55 (1) No person, agency, firm, corporation, association, or group children's home may  
56 engage in child placing, or solicit money or other assistance for child placing, without a valid  
57 license issued by the Office of Licensing, in accordance with Chapter 2, Licensure of Programs  
58 and Facilities. When a child placing agency's license is suspended or revoked in accordance

59 with that chapter, the care, control, or custody of any child who has been in the care, control, or  
60 custody of that agency shall be transferred to the division.

61 (2) (a) An attorney, physician, or other person may assist a parent in identifying or  
62 locating a person interested in adopting the parent's child, or in identifying or locating a child to  
63 be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of  
64 value of any kind, or promise or agreement to make the same, may be made for that assistance.

65 (b) An attorney, physician, or other person may not:

66 (i) issue or cause to be issued to any person a card, sign, or device indicating that he is  
67 available to provide that assistance;

68 (ii) cause, permit, or allow any sign or marking indicating that he is available to  
69 provide that assistance, on or in any building or structure;

70 (iii) announce or cause, permit, or allow an announcement indicating that he is  
71 available to provide that assistance, to appear in any newspaper, magazine, directory, or on  
72 radio or television; or

73 (iv) advertise by any other means that he is available to provide that assistance.

74 (3) Nothing in this part precludes payment of fees for medical, legal, or other lawful  
75 services rendered in connection with the care of a mother, delivery and care of a child, or  
76 lawful adoption proceedings; and no provision of this part abrogates the right of procedures for  
77 independent adoption as provided by law.

78 (4) In accordance with federal law, only agents or employees of the division and of  
79 licensed child placing agencies may certify to the United States Immigration and Naturalization  
80 Service that a family meets the division's preadoption requirements.

81 (5) (a) Beginning May 1, 2000, neither a licensed child placing agency nor any attorney  
82 practicing in this state may place a child for adoption, either temporarily or permanently, with  
83 any individual or individuals that would not be qualified for adoptive placement pursuant to the  
84 provisions of Sections [78B-6-117](#), [78B-6-102](#), and [78B-6-137](#).

85 (b) Beginning May 1, 2000, the division, as a licensed child placing agency, may not  
86 place a child in foster care with any individual or individuals that would not be qualified for  
87 adoptive placement pursuant to the provisions of Sections [78B-6-117](#), [78B-6-102](#), and  
88 [78B-6-137](#). However, nothing in this Subsection (5)(b) limits the placement of a child in foster  
89 care with the child's biological or adoptive parent.

90 (c) Beginning May 1, 2000, with regard to children who are in the custody of the state,  
91 the division shall establish a policy providing that priority for foster care and adoptive  
92 placement shall be provided to families in which [~~both a man and a woman are~~] the prospective  
93 parents are legally married under the laws of this state. However, nothing in this Subsection  
94 (5)(c) limits the placement of a child with the child's biological or adoptive parent.

95 Section 4. Section **78A-6-307** is amended to read:

96 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

97 (1) As used in this section:

98 (a) "Friend" means an adult the child knows and is comfortable with.

99 (b) (i) "Natural parent," notwithstanding the provisions of Section **78A-6-105**, means:

100 (A) a biological or adoptive mother;

101 (B) an adoptive father; or

102 (C) a biological father who:

103 (I) was married to the child's biological mother at the time the child was conceived or  
104 born; or

105 (II) has strictly complied with the provisions of Sections **78B-6-120** through  
106 **78B-6-122**, prior to removal of the child or voluntary surrender of the child by the custodial  
107 parent.

108 (ii) The definition of "natural parent" described in Subsection (1)(b)(i) applies  
109 regardless of whether the child has been or will be placed with adoptive parents or whether  
110 adoption has been or will be considered as a long-term goal for the child.

111 (c) "Relative" means:

112 (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle,  
113 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or a first  
114 cousin of the child's parent;

115 (ii) an adult who is an adoptive parent of the child's sibling; or

116 (iii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25  
117 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that  
118 statute.

119 (2) (a) At the shelter hearing, when the court orders that a child be removed from the  
120 custody of the child's parent in accordance with the requirements of Section **78A-6-306**, the

121 court shall first determine whether there is another natural parent with whom the child was not  
122 residing at the time the events or conditions that brought the child within the court's jurisdiction  
123 occurred, who desires to assume custody of the child.

124 (b) If another natural parent requests custody under Subsection (2)(a), the court shall  
125 place the child with that parent unless it finds that the placement would be unsafe or otherwise  
126 detrimental to the child.

127 (c) The provisions of this Subsection (2) are limited by the provisions of Subsection  
128 (18)(b).

129 (d) (i) The court shall make a specific finding regarding the fitness of the parent  
130 described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the  
131 placement.

132 (ii) The court shall, at a minimum, order the division to visit the parent's home, comply  
133 with the criminal background check provisions described in Section [78A-6-308](#), and check the  
134 division's management information system for any previous reports of abuse or neglect  
135 received by the division regarding the parent at issue.

136 (iii) The court may order the division to conduct any further investigation regarding the  
137 safety and appropriateness of the placement.

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

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

141 (3) If the court orders placement with a parent under Subsection (2):

142 (a) the child and the parent are under the continuing jurisdiction of the court;

143 (b) the court may order:

144 (i) that the parent assume custody subject to the supervision of the court; and

145 (ii) that services be provided to the parent from whose custody the child was removed,  
146 the parent who has assumed custody, or both; and

147 (c) the court shall order reasonable parent-time with the parent from whose custody the  
148 child was removed, unless parent-time is not in the best interest of the child.

149 (4) The court shall periodically review an order described in Subsection (3) to  
150 determine whether:

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

- 152 (b) the child should be returned to the original custodial parent;
- 153 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)
- 154 through (12); or
- 155 (d) the child should be placed in the custody of the division.
- 156 (5) The time limitations described in Section [78A-6-312](#) with regard to reunification
- 157 efforts, apply to children placed with a previously noncustodial parent in accordance with
- 158 Subsection (2).
- 159 (6) Legal custody of the child is not affected by an order entered under Subsection (2)
- 160 or (3). In order to affect a previous court order regarding legal custody, the party must petition
- 161 that court for modification of the order.
- 162 (7) If, at the time of the shelter hearing, a child is removed from the custody of the
- 163 child's parent and is not placed in the custody of the child's other parent, the court:
- 164 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),
- 165 there is a relative of the child or a friend of a parent of the child who is able and willing to care
- 166 for the child;
- 167 (b) may order the division to conduct a reasonable search to determine whether, subject
- 168 to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the
- 169 child who are willing and appropriate, in accordance with the requirements of this part and
- 170 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;
- 171 (c) shall order the parents to cooperate with the division, within five working days, to,
- 172 subject to Subsections (18)(c) through (e), provide information regarding relatives of the child
- 173 or friends who may be able and willing to care for the child; and
- 174 (d) may order that the child be placed in the custody of the division pending the
- 175 determination under Subsection (7)(a).
- 176 (8) This section may not be construed as a guarantee that an identified relative or friend
- 177 will receive custody of the child.
- 178 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given
- 179 to a relative's or a friend's request for placement of the child, if it is in the best interest of the
- 180 child, and the provisions of this section are satisfied.
- 181 (10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court
- 182 shall make a specific finding regarding:

- 183 (i) the fitness of that relative or friend as a placement for the child; and  
184 (ii) the safety and appropriateness of placement with that relative or friend.
- 185 (b) In order to be considered a "willing relative or friend" under this section, the  
186 relative or friend shall be willing to cooperate with the child's permanency goal.
- 187 (11) (a) In making the finding described in Subsection (10)(a), the court shall, at a  
188 minimum, order the division to:
- 189 (i) if the child may be placed with a relative of the child, conduct a background check  
190 that includes:
- 191 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification  
192 background check of the relative;
- 193 (B) a completed search, relating to the relative, of the Management Information System  
194 described in Section [62A-4a-1003](#); and
- 195 (C) a background check that complies with the criminal background check provisions  
196 described in Section [78A-6-308](#), of each nonrelative, as defined in Subsection  
197 [62A-4a-209\(1\)\(b\)](#), of the child who resides in the household where the child may be placed;
- 198 (ii) if the child will be placed with a noncustodial parent of the child, complete a  
199 background check that includes:
- 200 (A) the background check requirements applicable to an emergency placement with a  
201 noncustodial parent that are described in Subsections [62A-4a-209\(5\)](#) and (7);
- 202 (B) a completed search, relating to the noncustodial parent of the child, of the  
203 Management Information System described in Section [62A-4a-1003](#); and
- 204 (C) a background check that complies with the criminal background check provisions  
205 described in Section [78A-6-308](#), of each nonrelative, as defined in Subsection  
206 [62A-4a-209\(1\)\(b\)](#), of the child who resides in the household where the child may be placed;
- 207 (iii) if the child may be placed with an individual other than a noncustodial parent or a  
208 relative of the child, conduct a criminal background check of the individual, and each adult that  
209 resides in the household where the child may be placed, that complies with the criminal  
210 background check provisions described in Section [78A-6-308](#);
- 211 (iv) visit the relative's or friend's home;
- 212 (v) check the division's management information system for any previous reports of  
213 abuse or neglect regarding the relative or friend at issue;

- 214 (vi) report the division's findings in writing to the court; and
- 215 (vii) provide sufficient information so that the court may determine whether:
  - 216 (A) the relative or friend has any history of abusive or neglectful behavior toward other
  - 217 children that may indicate or present a danger to this child;
  - 218 (B) the child is comfortable with the relative or friend;
  - 219 (C) the relative or friend recognizes the parent's history of abuse and is committed to
  - 220 protect the child;
  - 221 (D) the relative or friend is strong enough to resist inappropriate requests by the parent
  - 222 for access to the child, in accordance with court orders;
  - 223 (E) the relative or friend is committed to caring for the child as long as necessary; and
  - 224 (F) the relative or friend can provide a secure and stable environment for the child.
- 225 (b) The division may determine to conduct, or the court may order the division to
- 226 conduct, any further investigation regarding the safety and appropriateness of the placement.
- 227 (c) The division shall complete and file its assessment regarding placement with a
- 228 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
- 229 relative or friend.
- 230 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary
- 231 custody of the division, pending the division's investigation pursuant to Subsections (10) and
- 232 (11), and the court's determination regarding the appropriateness of that placement.
- 233 (b) The court shall ultimately base its determination regarding the appropriateness of a
- 234 placement with a relative or friend on the best interest of the child.
- 235 (13) When the court awards custody and guardianship of a child with a relative or
- 236 friend:
  - 237 (a) the court shall order that:
    - 238 (i) the relative or friend assume custody, subject to the continuing supervision of the
    - 239 court; and
    - 240 (ii) any necessary services be provided to the child and the relative or friend;
  - 241 (b) the child and any relative or friend with whom the child is placed are under the
  - 242 continuing jurisdiction of the court;
  - 243 (c) the court may enter any order that it considers necessary for the protection and best
  - 244 interest of the child;



245 (d) the court shall provide for reasonable parent-time with the parent or parents from  
246 whose custody the child was removed, unless parent-time is not in the best interest of the child;  
247 and

248 (e) the court shall conduct a periodic review no less often than every six months, to  
249 determine whether:

250 (i) placement with the relative or friend continues to be in the child's best interest;

251 (ii) the child should be returned home; or

252 (iii) the child should be placed in the custody of the division.

253 (14) No later than 12 months after placement with a relative or friend, the court shall  
254 schedule a hearing for the purpose of entering a permanent order in accordance with the best  
255 interest of the child.

256 (15) The time limitations described in Section 78A-6-312, with regard to reunification  
257 efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

258 (16) (a) If the court awards custody of a child to the division, and the division places  
259 the child with a relative, the division shall:

260 (i) conduct a criminal background check of the relative that complies with the criminal  
261 background check provisions described in Section 78A-6-308; and

262 (ii) if the results of the criminal background check described in Subsection (16)(a)(i)  
263 would prohibit the relative from having direct access to the child under Section 62A-2-120, the  
264 division shall:

265 (A) take the child into physical custody; and

266 (B) within three days, excluding weekends and holidays, after taking the child into  
267 physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all  
268 parties to the proceedings, of the division's action.

269 (b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a  
270 relative, pending the results of the background check described in Subsection (16)(a) on the  
271 relative.

272 (17) When the court orders that a child be removed from the custody of the child's  
273 parent and does not award custody and guardianship to another parent, relative, or friend under  
274 this section, the court shall order that the child be placed in the temporary custody of the  
275 Division of Child and Family Services, to proceed to adjudication and disposition and to be

276 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,  
277 Child and Family Services.

278 (18) (a) Any preferential consideration that a relative or friend is initially granted  
279 pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that  
280 time period has expired, a relative or friend who has not obtained custody or asserted an  
281 interest in a child, may not be granted preferential consideration by the division or the court.

282 (b) When the time period described in Subsection (18)(a) has expired, the preferential  
283 consideration, which is initially granted to a natural parent in accordance with Subsection (2),  
284 is limited. After that time the court shall base its custody decision on the best interest of the  
285 child.

286 (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the  
287 following order of preference shall be applied when determining the person with whom a child  
288 will be placed, provided that the person is willing, and has the ability, to care for the child:

- 289 (i) a noncustodial parent of the child;
- 290 (ii) a relative of the child;
- 291 (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a  
292 licensed foster parent; and
- 293 (iv) other placements that are consistent with the requirements of law.

294 (d) In determining whether a friend is a willing and appropriate placement for a child,  
295 neither the court, nor the division, is required to consider more than one friend designated by  
296 each parent of the child.

297 (e) If a parent of the child is not able to designate a friend who is a licensed foster  
298 parent for placement of the child, but is able to identify a friend who is willing to become  
299 licensed as a foster parent:

- 300 (i) the department shall fully cooperate to expedite the licensing process for the friend;  
301 and

302 (ii) if the friend becomes licensed as a foster parent within the time frame described in  
303 Subsection (18)(a), the court shall determine whether it is in the best interests of the child to  
304 place the child with the friend.

305 (19) If, following the shelter hearing, the child is placed with a person who is not a  
306 parent of the child, a relative of the child, a friend of a parent of the child, or a former foster

307 parent of the child, priority shall be given to a foster placement with a [~~man and a woman who~~  
308 ~~are married to each other~~] legally married couple, unless it is in the best interests of the child to  
309 place the child with a single foster parent.

310 (20) In determining the placement of a child, neither the court, nor the division, may  
311 take into account, or discriminate against, the religion of a person with whom the child may be  
312 placed, unless the purpose of taking religion into account is to place the child with a person or  
313 family of the same religion as the child.

314 Section 5. Section **78B-6-114** is amended to read:

315 **78B-6-114. Adoption by married persons -- Consent.**

316 [(1)] A married [~~man~~] person who is not lawfully separated from his [~~wife~~] or her  
317 spouse may not adopt a child without the consent of his [~~wife~~] or her spouse, if his [~~wife~~] or  
318 her spouse is capable of giving consent.

319 [(2) ~~A married woman who is not lawfully separated from her husband may not adopt a~~  
320 ~~child without his consent, if he is capable of giving his consent.~~]

321 Section 6. Section **78B-6-117** is amended to read:

322 **78B-6-117. Who may adopt -- Adoption of minor.**

323 (1) A minor child may be adopted by an adult person, in accordance with the  
324 provisions and requirements of this section and this part.

325 (2) A child may be adopted by:

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

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

329 (3) A child may not be adopted by a person who is cohabiting in a relationship that is  
330 not a legally valid and binding marriage under the laws of this state.

331 (4) In order to provide a child who is in the custody of the division with the most  
332 beneficial family structure, when a child in the custody of the division is placed for adoption,  
333 the division or child-placing agency shall place the child with a [~~man and a woman who are~~]  
334 legally married [~~to each other~~] couple, unless:

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

336 (i) have applied to adopt a child;

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

- 338 (iii) are an appropriate placement for the child;
- 339 (b) the child is placed with a relative of the child;
- 340 (c) the child is placed with a person who has already developed a substantial
- 341 relationship with the child;
- 342 (d) the child is placed with a person who:
- 343 (i) is selected by a parent or former parent of the child, if the parent or former parent
- 344 consented to the adoption of the child; and
- 345 (ii) the parent or former parent described in Subsection (4)(d)(i):
- 346 (A) knew the person with whom the child is placed before the parent consented to the
- 347 adoption; or
- 348 (B) became aware of the person with whom the child is placed through a source other
- 349 than the division or the child-placing agency that assists with the adoption of the child; or
- 350 (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**  
**Office of Legislative Research and General Counsel**