

Representative Fred C. Cox proposes the following substitute bill:

ADOPTIVE AND FOSTER PARENTS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Angela Romero

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill makes terminology changes in adoption and child welfare statutes.

Highlighted Provisions:

This bill:

- changes "man and woman" to "couple" or "spouse" in adoption and child welfare statutes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

Section 1. Section **78A-6-307** is amended to read:



26 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

27 (1) As used in this section:

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

29 (b) (i) "Natural parent," notwithstanding the provisions of Section [78A-6-105](#), means:

30 (A) a biological or adoptive mother;

31 (B) an adoptive father; or

32 (C) a biological father who:

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

35 (II) has strictly complied with the provisions of Sections [78B-6-120](#) through
36 [78B-6-122](#), prior to removal of the child or voluntary surrender of the child by the custodial
37 parent.

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

41 (c) "Relative" means:

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

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

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

49 (2) (a) At the shelter hearing, when the court orders that a child be removed from the
50 custody of the child's parent in accordance with the requirements of Section [78A-6-306](#), the
51 court shall first determine whether there is another natural parent with whom the child was not
52 residing at the time the events or conditions that brought the child within the court's jurisdiction
53 occurred, who desires to assume custody of the child.

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

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

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

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

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

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

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

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

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

73 (b) the court may order:

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

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

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

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

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

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

83 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)
84 through (12); or

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

86 (5) The time limitations described in Section 78A-6-312 with regard to reunification
87 efforts, apply to children placed with a previously noncustodial parent in accordance with

88 Subsection (2).

89 (6) Legal custody of the child is not affected by an order entered under Subsection (2)
90 or (3). In order to affect a previous court order regarding legal custody, the party must petition
91 that court for modification of the order.

92 (7) If, at the time of the shelter hearing, a child is removed from the custody of the
93 child's parent and is not placed in the custody of the child's other parent, the court:

94 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),
95 there is a relative of the child or a friend of a parent of the child who is able and willing to care
96 for the child;

97 (b) may order the division to conduct a reasonable search to determine whether, subject
98 to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the
99 child who are willing and appropriate, in accordance with the requirements of this part and
100 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

101 (c) shall order the parents to cooperate with the division, within five working days, to,
102 subject to Subsections (18)(c) through (e), provide information regarding relatives of the child
103 or friends who may be able and willing to care for the child; and

104 (d) may order that the child be placed in the custody of the division pending the
105 determination under Subsection (7)(a).

106 (8) This section may not be construed as a guarantee that an identified relative or friend
107 will receive custody of the child.

108 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given
109 to a relative's or a friend's request for placement of the child, if it is in the best interest of the
110 child, and the provisions of this section are satisfied.

111 (10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court
112 shall make a specific finding regarding:

113 (i) the fitness of that relative or friend as a placement for the child; and

114 (ii) the safety and appropriateness of placement with that relative or friend.

115 (b) In order to be considered a "willing relative or friend" under this section, the
116 relative or friend shall be willing to cooperate with the child's permanency goal.

117 (11) (a) In making the finding described in Subsection (10)(a), the court shall, at a
118 minimum, order the division to:

119 (i) if the child may be placed with a relative of the child, conduct a background check
120 that includes:

121 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
122 background check of the relative;

123 (B) a completed search, relating to the relative, of the Management Information System
124 described in Section 62A-4a-1003; and

125 (C) a background check that complies with the criminal background check provisions
126 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
127 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;

128 (ii) if the child will be placed with a noncustodial parent of the child, complete a
129 background check that includes:

130 (A) the background check requirements applicable to an emergency placement with a
131 noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);

132 (B) a completed search, relating to the noncustodial parent of the child, of the
133 Management Information System described in Section 62A-4a-1003; and

134 (C) a background check that complies with the criminal background check provisions
135 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
136 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;

137 (iii) if the child may be placed with an individual other than a noncustodial parent or a
138 relative of the child, conduct a criminal background check of the individual, and each adult that
139 resides in the household where the child may be placed, that complies with the criminal
140 background check provisions described in Section 78A-6-308;

141 (iv) visit the relative's or friend's home;

142 (v) check the division's management information system for any previous reports of
143 abuse or neglect regarding the relative or friend at issue;

144 (vi) report the division's findings in writing to the court; and

145 (vii) provide sufficient information so that the court may determine whether:

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

148 (B) the child is comfortable with the relative or friend;

149 (C) the relative or friend recognizes the parent's history of abuse and is committed to

150 protect the child;

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

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

154 (F) the relative or friend can provide a secure and stable environment for the child.

155 (b) The division may determine to conduct, or the court may order the division to
156 conduct, any further investigation regarding the safety and appropriateness of the placement.

157 (c) The division shall complete and file its assessment regarding placement with a
158 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
159 relative or friend.

160 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary
161 custody of the division, pending the division's investigation pursuant to Subsections (10) and
162 (11), and the court's determination regarding the appropriateness of that placement.

163 (b) The court shall ultimately base its determination regarding the appropriateness of a
164 placement with a relative or friend on the best interest of the child.

165 (13) When the court awards custody and guardianship of a child with a relative or
166 friend:

167 (a) the court shall order that:

168 (i) the relative or friend assume custody, subject to the continuing supervision of the
169 court; and

170 (ii) any necessary services be provided to the child and the relative or friend;

171 (b) the child and any relative or friend with whom the child is placed are under the
172 continuing jurisdiction of the court;

173 (c) the court may enter any order that it considers necessary for the protection and best
174 interest of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

202 (17) When the court orders that a child be removed from the custody of the child's
203 parent and does not award custody and guardianship to another parent, relative, or friend under
204 this section, the court shall order that the child be placed in the temporary custody of the
205 Division of Child and Family Services, to proceed to adjudication and disposition and to be
206 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,
207 Child and Family Services.

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

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

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

219 (i) a noncustodial parent of the child;

220 (ii) a relative of the child;

221 (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a
222 licensed foster parent; and

223 (iv) other placements that are consistent with the requirements of law.

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

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

230 (i) the department shall fully cooperate to expedite the licensing process for the friend;
231 and

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

235 (19) If, following the shelter hearing, the child is placed with a person who is not a
236 parent of the child, a relative of the child, a friend of a parent of the child, or a former foster
237 parent of the child, priority shall be given to a foster placement with a [~~man and a woman who~~
238 ~~are married to each other~~] legally married couple, unless it is in the best interests of the child to
239 place the child with a single foster parent.

240 (20) In determining the placement of a child, neither the court, nor the division, may
241 take into account, or discriminate against, the religion of a person with whom the child may be
242 placed, unless the purpose of taking religion into account is to place the child with a person or

243 family of the same religion as the child.

244 Section 2. Section **78B-6-114** is amended to read:

245 **78B-6-114. Adoption by married persons -- Consent.**

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

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

251 Section 3. Section **78B-6-117** is amended to read:

252 **78B-6-117. Who may adopt -- Adoption of minor.**

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

255 (2) A child may be adopted by:

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

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

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

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

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

266 (i) have applied to adopt a child;

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

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

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

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

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

273 (i) is selected by a parent or former parent of the child, if the parent or former parent

274 consented to the adoption of the child; and
275 (ii) the parent or former parent described in Subsection (4)(d)(i):
276 (A) knew the person with whom the child is placed before the parent consented to the
277 adoption; or
278 (B) became aware of the person with whom the child is placed through a source other
279 than the division or the child-placing agency that assists with the adoption of the child; or
280 (e) it is in the best interests of the child to place the child with a single person.