

Effective 5/12/2015

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

- (1) As used in this section:
 - (a) "Friend" means an adult the child knows and is comfortable with.
 - (b)
 - (i) "Natural parent," notwithstanding the provisions of Section 78A-6-105, means:
 - (A) a biological or adoptive mother;
 - (B) an adoptive father; or
 - (C) a biological father who:
 - (I) was married to the child's biological mother at the time the child was conceived or born;
or
 - (II) has strictly complied with the provisions of Sections 78B-6-120 through 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial parent.
 - (ii) The definition of "natural parent" described in Subsection (1)(b)(i) applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long-term goal for the child.
 - (c) "Relative" means:
 - (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or a first cousin of the child's parent;
 - (ii) an adult who is an adoptive parent of the child's sibling; or
 - (iii) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that statute.
- (2)
 - (a) At the shelter hearing, when the court orders that a child be removed from the custody of the child's parent in accordance with the requirements of Section 78A-6-306, the court shall first determine whether there is another natural parent with whom the child was not residing at the time the events or conditions that brought the child within the court's jurisdiction occurred, who desires to assume custody of the child.
 - (b) If another natural parent requests custody under Subsection (2)(a), the court shall place the child with that parent unless it finds that the placement would be unsafe or otherwise detrimental to the child.
 - (c) The provisions of this Subsection (2) are limited by the provisions of Subsection (18)(b).
 - (d)
 - (i) The court shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement.
 - (ii) The court shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 78A-6-308, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.
 - (iii) The court may order the division to conduct any further investigation regarding the safety and appropriateness of the placement.
 - (iv) The division shall report its findings in writing to the court.
 - (v) The court may place the child in the temporary custody of the division, pending its determination regarding that placement.
- (3) If the court orders placement with a parent under Subsection (2):
 - (a) the child and the parent are under the continuing jurisdiction of the court;
 - (b) the court may order:

- (i) that the parent assume custody subject to the supervision of the court; and
 - (ii) that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both; and
 - (c) the court shall order reasonable parent-time with the parent from whose custody the child was removed, unless parent-time is not in the best interest of the child.
- (4) The court shall periodically review an order described in Subsection (3) to determine whether:
- (a) placement with the parent continues to be in the child's best interest;
 - (b) the child should be returned to the original custodial parent;
 - (c) the child should be placed in the custody of a relative, pursuant to Subsections (7) through (12); or
 - (d) the child should be placed in the custody of the division.
- (5) The time limitations described in Section 78A-6-312 with regard to reunification efforts, apply to children placed with a previously noncustodial parent in accordance with Subsection (2).
- (6) Legal custody of the child is not affected by an order entered under Subsection (2) or (3). In order to affect a previous court order regarding legal custody, the party must petition that court for modification of the order.
- (7) If, at the time of the shelter hearing, a child is removed from the custody of the child's parent and is not placed in the custody of the child's other parent, the court:
- (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e), there is a relative of the child or a friend of a parent of the child who is able and willing to care for the child;
 - (b) may order the division to conduct a reasonable search to determine whether, subject to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;
 - (c) shall order the parents to cooperate with the division, within five working days, to, subject to Subsections (18)(c) through (e), provide information regarding relatives of the child or friends who may be able and willing to care for the child; and
 - (d) may order that the child be placed in the custody of the division pending the determination under Subsection (7)(a).
- (8) This section may not be construed as a guarantee that an identified relative or friend will receive custody of the child.
- (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given to a relative's or a friend's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.
- (10)
- (a) If a willing relative or friend is identified under Subsection (7)(a), the court shall make a specific finding regarding:
 - (i) the fitness of that relative or friend as a placement for the child; and
 - (ii) the safety and appropriateness of placement with that relative or friend.
 - (b) In order to be considered a "willing relative or friend" under this section, the relative or friend shall be willing to cooperate with the child's permanency goal.
- (11)
- (a) In making the finding described in Subsection (10)(a), the court shall, at a minimum, order the division to:
 - (i) if the child may be placed with a relative of the child, conduct a background check that includes:

- (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification background check of the relative;
 - (B) a completed search, relating to the relative, of the Management Information System described in Section 62A-4a-1003; and
 - (C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;
- (ii) if the child will be placed with a noncustodial parent of the child, complete a background check that includes:
 - (A) the background check requirements applicable to an emergency placement with a noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);
 - (B) a completed search, relating to the noncustodial parent of the child, of the Management Information System described in Section 62A-4a-1003; and
 - (C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Subsection 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;
 - (iii) if the child may be placed with an individual other than a noncustodial parent or a relative of the child, conduct a criminal background check of the individual, and each adult that resides in the household where the child may be placed, that complies with the criminal background check provisions described in Section 78A-6-308;
 - (iv) visit the relative's or friend's home;
 - (v) check the division's management information system for any previous reports of abuse or neglect regarding the relative or friend at issue;
 - (vi) report the division's findings in writing to the court; and
 - (vii) provide sufficient information so that the court may determine whether:
 - (A) the relative or friend has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;
 - (B) the child is comfortable with the relative or friend;
 - (C) the relative or friend recognizes the parent's history of abuse and is committed to protect the child;
 - (D) the relative or friend is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;
 - (E) the relative or friend is committed to caring for the child as long as necessary; and
 - (F) the relative or friend can provide a secure and stable environment for the child.
 - (b) The division may determine to conduct, or the court may order the division to conduct, any further investigation regarding the safety and appropriateness of the placement.
 - (c) The division shall complete and file its assessment regarding placement with a relative or friend as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.
- (12)
- (a) The court may place a child described in Subsection (2)(a) in the temporary custody of the division, pending the division's investigation pursuant to Subsections (10) and (11), and the court's determination regarding the appropriateness of that placement.
 - (b) The court shall ultimately base its determination regarding the appropriateness of a placement with a relative or friend on the best interest of the child.
- (13) When the court awards custody and guardianship of a child with a relative or friend:

- (a) the court shall order that:
 - (i) the relative or friend assume custody, subject to the continuing supervision of the court; and
 - (ii) any necessary services be provided to the child and the relative or friend;
- (b) the child and any relative or friend with whom the child is placed are under the continuing jurisdiction of the court;
- (c) the court may enter any order that it considers necessary for the protection and best interest of the child;
- (d) the court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed, unless parent-time is not in the best interest of the child; and
- (e) the court shall conduct a periodic review no less often than every six months, to determine whether:
 - (i) placement with the relative or friend continues to be in the child's best interest;
 - (ii) the child should be returned home; or
 - (iii) the child should be placed in the custody of the division.
- (14) No later than 12 months after placement with a relative or friend, the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.
- (15) The time limitations described in Section 78A-6-312, with regard to reunification efforts, apply to children placed with a relative or friend pursuant to Subsection (7).
- (16)
 - (a) If the court awards custody of a child to the division, and the division places the child with a relative, the division shall:
 - (i) conduct a criminal background check of the relative that complies with the criminal background check provisions described in Section 78A-6-308; and
 - (ii) if the results of the criminal background check described in Subsection (16)(a)(i) would prohibit the relative from having direct access to the child under Section 62A-2-120, the division shall:
 - (A) take the child into physical custody; and
 - (B) within three days, excluding weekends and holidays, after taking the child into physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all parties to the proceedings, of the division's action.
 - (b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a relative, pending the results of the background check described in Subsection (16)(a) on the relative.
- (17) When the court orders that a child be removed from the custody of the child's parent and does not award custody and guardianship to another parent, relative, or friend under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.
- (18)
 - (a) Any preferential consideration that a relative or friend is initially granted pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.
 - (b) When the time period described in Subsection (18)(a) has expired, the preferential consideration, which is initially granted to a natural parent in accordance with Subsection (2), is limited. After that time the court shall base its custody decision on the best interest of the child.

- (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the following order of preference shall be applied when determining the person with whom a child will be placed, provided that the person is willing, and has the ability, to care for the child:
 - (i) a noncustodial parent of the child;
 - (ii) a relative of the child;
 - (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a licensed foster parent; and
 - (iv) other placements that are consistent with the requirements of law.
- (d) In determining whether a friend is a willing and appropriate placement for a child, neither the court, nor the division, is required to consider more than one friend designated by each parent of the child.
- (e) If a parent of the child is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent:
 - (i) the department shall fully cooperate to expedite the licensing process for the friend; and
 - (ii) if the friend becomes licensed as a foster parent within the time frame described in Subsection (18)(a), the court shall determine whether it is in the best interests of the child to place the child with the friend.
- (19) If, following the shelter hearing, the child is placed with a person who is not a parent of the child, a relative of the child, a friend of a parent of the child, or a former foster parent of the child, priority shall be given to a foster placement with a man and a woman who are married to each other, unless it is in the best interests of the child to place the child with a single foster parent.
- (20) In determining the placement of a child, neither the court, nor the division, may take into account, or discriminate against, the religion of a person with whom the child may be placed, unless the purpose of taking religion into account is to place the child with a person or family of the same religion as the child.

Amended by Chapter 142, 2015 General Session