

1 **AMENDMENTS TO CHILD WELFARE**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Nora B. Stephens**

5 AN ACT RELATING TO CHILD WELFARE AND ADOPTION; REQUIRING THE  
6 CONSUMER HEARING PANEL TO ESTABLISH DEFINED PROCEDURES; AMENDING  
7 PROCEDURES RELATING TO FOSTER CARE CITIZEN REVIEW BOARDS; REQUIRING  
8 COURT REPORTS TO FOSTER CARE CITIZEN REVIEW BOARDS UNDER SPECIFIED  
9 CIRCUMSTANCES; LIMITING WHO MAY ADOPT; DESCRIBING THE DCFS POLICY  
10 BOARD'S AUTHORITY REGARDING ADOPTION AND FOSTER CARE PLACEMENT;  
11 AND PROVIDING AN EFFECTIVE DATE.

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **62A-4a-102**, as last amended by Chapter 329, Laws of Utah 1997

15 **62A-4a-602**, as renumbered and amended by Chapter 260, Laws of Utah 1994

16 **78-3g-103 (Effective 07/01/00)**, as last amended by Chapter 121, Laws of Utah 1999

17 **78-30-1**, as last amended by Chapter 65, Laws of Utah 1990

18 **78-30-1.5**, as enacted by Chapter 245, Laws of Utah 1990

19 **78-30-9**, as last amended by Chapters 65 and 245, Laws of Utah 1990

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

21 Section 1. Section **62A-4a-102** is amended to read:

22 **62A-4a-102. Board of Child and Family Services.**

23 (1) (a) The Board of Child and Family Services, created in accordance with this section  
24 and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing the policy of the  
25 division in accordance with the requirements of this chapter and Title 78, Chapter 3a, regarding  
26 abuse, neglect, and dependency proceedings, youth services, and domestic violence services. The  
27 board is responsible to see that the legislative purposes for the division are carried out.

28 (b) (i) Effective July 1, 1994, the governor shall appoint, with the advice and consent of  
29 the Senate, 11 members to the Board of Child and Family Services.

30 (ii) Except as required by Subsection (1)(b)(iii), as terms of current board members expire,  
31 the governor shall appoint each new member or reappointed member to a four-year term.

32 (iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at the  
33 time of appointment or reappointment, adjust the length of terms to ensure that the terms of board  
34 members are staggered so that approximately half of the board is appointed every two years.

35 (c) Two members of the board shall be persons who are or have been consumers, two  
36 members of the board shall be persons who are actively involved in children's issues specifically  
37 related to abuse and neglect, one member shall be a licensed foster parent, one member shall be  
38 a recognized expert in the social, developmental, and mental health needs of children, one member  
39 shall be a physician licensed to practice medicine in this state who is also a board certified  
40 pediatrician and who is an expert in child abuse and neglect, and one member shall be an adult  
41 relative of a child who is or has been in the foster care system.

42 (d) Six members of the board are necessary to constitute a quorum at any meeting.

43 (e) When a vacancy occurs in the membership for any reason, the replacement shall be  
44 appointed for the unexpired term.

45 (2) (a) Members shall receive no compensation or benefits for their services, but may  
46 receive per diem and expenses incurred in the performance of the member's official duties at the  
47 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

48 (b) Members may decline to receive per diem and expenses for their service.

49 (3) The board shall:

50 (a) approve fee schedules for programs within the division;

51 (b) establish, by rule, procedures for developing its policies to ensure that private citizens,  
52 consumers, foster parents, private contract providers, allied state and local agencies, and others are  
53 provided with an opportunity to comment and provide input regarding any new policy or proposed  
54 revision of an existing policy; and

55 (c) provide a mechanism for systematic and regular review of existing policy and for  
56 consideration of policy changes proposed by the persons and agencies described in Subsection  
57 (3)(b).

58 (4) (a) The board shall establish a three-member Consumer Hearing Panel to act

59 independently of the board and the division, and to be the sole and final decision-making body to  
60 hear, resolve, and make recommendations regarding consumer complaints relating to the division.  
61 The board may appoint two alternates to serve on the Consumer Hearing Panel in the event that  
62 one or more of the members is unable to serve at any given time. This section does not restrict or  
63 limit access to the courts for any person, or override Title 62A, Chapter 2, Licensure of Programs  
64 and Facilities, or Title 67, Chapter 19, Utah State Personnel Management Act.

65 (b) The Consumer Hearing Panel may not include any employees of the division.

66 (c) Prior to July 1, 2000, the Consumer Hearing Panel shall establish procedures that:

67 (i) provide for reasonable notice of panel hearings to the appropriate consumers;

68 (ii) require both the division and the consumer to present their respective information,  
69 testimony, or evidence at the same hearing unless, after reasonable notice, the consumer fails or  
70 refuses to appear at the scheduled panel hearing; and

71 (iii) affirm the right of affected consumers to be provided with pertinent information  
72 regarding the substance of the division's position, testimony, or evidence either prior to or at the  
73 scheduled panel hearing.

74 ~~(c)~~ (d) The Consumer Hearing Panel shall report its recommendations to the board, the  
75 division, and the Legislative Oversight Panel described in Section 62A-4a-207. The division shall  
76 comply with the recommendations of the Consumer Hearing Panel.

77 ~~(d)~~ (e) The department shall provide staff to the Consumer Hearing Panel.

78 ~~(e)~~ (f) (i) Members of the panel shall receive a per diem allowance for each day or  
79 portion of a day spent in performing the duties of the panel, and shall be reimbursed for all  
80 necessary travel expenses.

81 (ii) The per diem reimbursement described in Subsection ~~(e)~~ (4)(f)(i) may not exceed 75  
82 days for any one individual panel member in any fiscal year.

83 (5) The board may create state advisory committees to advise it concerning programs  
84 offered by the Division of Child and Family Services. The board shall provide each committee  
85 with a specific charge in writing.

86 (6) The board shall establish policies for the determination of eligibility for services  
87 offered by the division in accordance with this chapter. The division may, by rule, establish  
88 eligibility standards for consumers.

89 (7) The board may not adopt any policy regarding placement for adoption or foster care

90 that is more restrictive than applicable statutory provisions.

91 Section 2. Section **62A-4a-602** is amended to read:

92 **62A-4a-602. Licensure requirements -- Prohibited acts.**

93 (1) No person, agency, firm, corporation, association, or group children's home may  
94 engage in child placing, or solicit money or other assistance for child placing, without a valid  
95 license issued by the Office of Licensing, in accordance with Chapter 2 of this title. When a child  
96 placing agency's license is suspended or revoked in accordance with that chapter, the care, control,  
97 or custody of any child who has been in the care, control, or custody of that agency shall be  
98 transferred to the division.

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

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

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

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

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

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

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

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

119 (5) Beginning May 1, 2000, neither the division nor any other licensed child placing  
120 agency may place a child in any setting, or with any individual or individuals that would not be

121 qualified for adoptive placement pursuant to the provisions of Section 78-30-9.

122 Section 3. Section **78-3g-103 (Effective 07/01/00)** is amended to read:

123 **78-3g-103 (Effective 07/01/00). Foster care citizen review boards -- Membership --**  
124 **Responsibilities -- Periodic reviews.**

125 (1) Within appropriations from the Legislature, foster care citizen review boards shall be  
126 established in each Juvenile Court district in the state, to act as the panels described in 42 U.S.C.  
127 Sections 675(5) and (6), which are required to conduct periodic reviews unless court reviews are  
128 conducted.

129 (2) (a) The committee shall appoint seven members to each board. Five of those members  
130 shall be parents.

131 (b) Five members of a board constitute a quorum, and an action of a majority of the  
132 quorum constitutes the action of the board.

133 (c) A board member may not be an employee of the division or the juvenile court.

134 (d) Board members shall be representative of the ethnic, cultural, religious,  
135 socio-economic, and professional diversity found in the community.

136 (e) A board may elect its own chair, vice chair, and other officers as it considers  
137 appropriate.

138 (f) The division may designate a representative to provide technical advice to the board  
139 regarding division policy and procedure.

140 (3) With regard to each child in its custody, the division shall provide the appropriate  
141 boards with access to all records maintained by the division, and shall ensure that each appropriate  
142 board is provided with the entire case file regarding each of its pertinent cases.

143 (4) (a) In districts or areas where foster care citizen review boards have been established,  
144 periodic reviews either by the court or by a foster care citizen review board, shall be conducted  
145 with regard to each child in the division's custody no less frequently than once every six months,  
146 in accordance with Section 78-3a-313 and 42 U.S.C. Sections 675(5) and (6). In cases where the  
147 court has conducted a six month review hearing, a foster care citizen review board shall also  
148 conduct a review within 12 months from the date of the child's removal from his home.

149 (b) In accordance with federal law and with Subsection 78-3a-314(1), periodic reviews  
150 conducted by foster care citizen review boards shall be open to the participation of the child's  
151 natural parents, foster parents, preadoptive parents, and any relative providing care for the child.

152 Notice shall be provided to those persons pursuant to Subsection 78-3a-314(1).

153 (c) At each periodic review, foster care citizen review boards shall:

154 (i) provide opportunities for separate interviews with parents and foster parents in each  
155 case; and

156 (ii) conduct an individual interview with each affected child who is old enough to  
157 participate in an interview, unless the child affirmatively chooses not to participate. At the child's  
158 request, he may be accompanied by a support person of his choice, so long as the support person  
159 is not an alleged perpetrator.

160 [~~c~~] (d) Boards may review additional abuse, neglect, or dependency cases or plans at the  
161 request of the court.

162 (5) Each board shall prepare a dispositional report regarding the child's case and plan. The  
163 periodic review and the dispositional report shall be consistent with the provisions of Title 62A,  
164 Chapter 4a, Child and Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and  
165 Dependency Proceedings, and shall include at least the following considerations:

166 (a) the extent to which the plan's objectives have been implemented or accomplished by  
167 the parent, the child, and the division;

168 (b) whether revisions to the plan are needed, and if so, how the plan should be revised;

169 (c) the extent to which the division has provided the services and interventions described  
170 in the plan, and whether those services and interventions are assisting, or will assist, the parent and  
171 child to achieve the plan's objectives within the statutory time limitations;

172 (d) the extent to which the parent and child have willingly and actively participated in the  
173 interventions described in the plan;

174 (e) the continuing necessity for and appropriateness of the child's placement;

175 (f) the extent of progress that has been made toward alleviating or mitigating the causes  
176 necessitating the child's removal or continued placement;

177 (g) the primary permanency goal and the concurrent permanency goal for the child and, if  
178 a final permanency plan has been established, an opinion regarding the appropriateness of that  
179 permanency plan; and

180 (h) a determination regarding whether the statutory time limitations described in Title 78,  
181 Chapter 3a, Part 3, have been met, specifically, whether the 12 month limitation on reunification  
182 services required by Section 78-3a-311 has been complied with. The board shall also render an

183 opinion regarding when it estimates that the child will achieve permanency.

184 (6) (a) Each board shall submit its dispositional report to the court, the division, and to all  
185 parties to an action within 30 days after a case is reviewed by the board.

186 (b) The board's dispositional report shall be filed with the court, and shall be made a part  
187 of the court's legal file. The dispositional report shall be received and reviewed by the court in the  
188 same manner as the court receives and reviews the reports described in Section 78-3a-505. The  
189 report by a board, if determined to be an ex parte communication with a judge, shall be considered  
190 a communication authorized by law. Foster care citizen review board dispositional reports may  
191 be received as evidence, and may be considered by the court along with other evidence. The court  
192 may require any person who participated in the dispositional report to appear as a witness if the  
193 person is reasonably available.

194 (c) Whenever a court makes a determination or finding other than that recommended by  
195 a board's dispositional report, the court shall notify the applicable board of that determination or  
196 finding.

197 (7) Members of boards may not receive financial compensation or benefits for their  
198 services. Members may not receive per diem or expenses for their service, except that:

199 (a) members may be reimbursed for mileage on days that they are involved in training, at  
200 rates established by the Division of Finance; and

201 (b) members may be provided with a meal on days that they serve on a board.

202 (8) Boards are authorized to receive funds from public and private grants and donations  
203 in accordance with the requirements described in Subsection 78-3g-102(8).

204 (9) In districts or areas where foster care citizen review boards have not been established,  
205 either the court or the Division of Child and Family Services shall conduct the reviews in  
206 accordance with the provisions of Subsections (4)(a) and (b), and Section 78-3a-313.

207 Section 4. Section **78-30-1** is amended to read:

208 **78-30-1. Who may adopt -- Adoption of minor -- Adoption of adult.**

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

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

214 Section 5. Section **78-30-1.5** is amended to read:

215 **78-30-1.5. Legislative intent -- Best interest of child.**

216 (1) It is the intent and desire of the Legislature that in every adoption the best interest of  
217 the child should govern and be of foremost concern in the court's determination.

218 (2) The court shall make a specific finding regarding the best interest of the child, in  
219 accordance with Section 78-30-9 and the provisions of this chapter.

220 Section 6. Section **78-30-9** is amended to read:

221 **78-30-9. Decree of adoption -- Best interest of child -- Legislative finds.**

222 (1) The court shall examine each person appearing before it in accordance with this  
223 chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption,  
224 it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent  
225 or parents and shall be regarded and treated in all respects as the child of the adoptive parent or  
226 parents.

227 (2) The court shall make a specific finding regarding the best interest of the child taking  
228 into consideration information provided to the court pursuant to the requirements of Subsection  
229 78-30-3.5(2) relating to the health, safety, and welfare of the child and the moral climate of the  
230 potential adoptive placement.

231 (3) (a) The Legislature specifically finds that it is not in a child's best interest to be adopted  
232 by a person or persons who are cohabiting in a relationship that is not a legally valid and binding  
233 marriage under the laws of this state, pursuant to the requirements and limitations of Section  
234 30-1-2. Nothing in this section limits or prohibits the placement of a child with a single adult who  
235 is not cohabiting as defined in Subsection (3)(b).

236 (b) For purposes of this section, "cohabiting" means residing with another person and  
237 being involved in a sexual relationship with that person.

238 Section 7. **Effective date.**

239 This act takes effect on May 1, 2000, except that Section 78-3g-104 takes effect on July  
240 1, 2000.

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**Legislative Review Note**  
**as of 1-18-00 9:40 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**