

Senator John L. Valentine proposes to substitute the following bill:

AMENDMENTS TO CHILD WELFARE

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Nora B. Stephens

AN ACT RELATING TO CHILD WELFARE AND ADOPTION; REQUIRING THE CONSUMER HEARING PANEL TO ESTABLISH DEFINED PROCEDURES; AMENDING PROCEDURES RELATING TO FOSTER CARE CITIZEN REVIEW BOARDS; REQUIRING COURT REPORTS TO FOSTER CARE CITIZEN REVIEW STEERING COMMITTEE; LIMITING WHO MAY ADOPT; PROVIDING A SPECIFIED PREFERENCE REGARDING FOSTER CARE AND ADOPTIVE PLACEMENTS OF CHILDREN IN DCFS CUSTODY; DESCRIBING THE DCFS POLICY BOARD'S AUTHORITY REGARDING ADOPTION AND FOSTER CARE PLACEMENT; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

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

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

62A-4a-607, as last amended by Chapters 195 and 329, Laws of Utah 1997

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

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

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

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

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

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

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

(1) (a) The Board of Child and Family Services, created in accordance with this section

26 and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing by rule, pursuant to
27 Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the policy of the division in
28 accordance with the requirements of this chapter and Title 78, Chapter 3a, regarding abuse,
29 neglect, and dependency proceedings, youth services, and domestic violence services. The board
30 is responsible to see that the legislative purposes for the division are carried out.

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

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

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

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

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

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

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

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

52 (3) The board shall:

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

54 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
55 establish, by rule, [~~procedures for developing its~~] policies to ensure that private citizens,
56 consumers, foster parents, private contract providers, allied state and local agencies, and others are

57 provided with an opportunity to comment and provide input regarding any new policy or proposed
58 revision of an existing policy; and

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

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

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

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

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

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

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

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

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

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

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

87 (5) The board may create state advisory committees to advise it concerning programs

88 offered by the Division of Child and Family Services. The board shall provide each committee
89 with a specific charge in writing.

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

93 (7) The board may not adopt or maintain any policy regarding placement for adoption or
94 foster care that is more restrictive than applicable statutory provisions.

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

96 **62A-4a-602. Licensure requirements -- Prohibited acts.**

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

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

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

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

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

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

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

116 (3) Nothing in this part precludes payment of fees for medical, legal, or other lawful
117 services rendered in connection with the care of a mother, delivery and care of a child, or lawful
118 adoption proceedings; and no provision of this part abrogates the right of procedures for

119 independent adoption as provided by law.

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

123 (5) (a) Beginning May 1, 2000, neither a licensed child placing agency nor any attorney
124 practicing in this state may place a child for adoption, either temporarily or permanently, with any
125 individual or individuals that would not be qualified for adoptive placement pursuant to the
126 provisions of Sections 78-30-1, 78-30-1.5, and 78-30-9.

127 (b) Beginning May 1, 2000, the division, as a licensed child placing agency, may not place
128 a child in foster care with any individual or individuals that would not be qualified for adoptive
129 placement pursuant to the provisions of Sections 78-30-1, 78-30-1.5, and 78-30-9. However,
130 nothing in this Subsection (5)(b) limits the placement of a child in foster care with the child's
131 biological or adoptive parent.

132 (c) Beginning May 1, 2000, with regard to children who are in the custody of the state, the
133 division shall establish a policy providing that priority for foster care and adoptive placement shall
134 be provided to families in which both a man and a woman are legally married under the laws of
135 this state. However, nothing in this Subsection (5)(c) limits the placement of a child with the
136 child's biological or adoptive parent.

137 Section 3. Section **62A-4a-607** is amended to read:

138 **62A-4a-607. Promotion of adoption -- Agency notification of potential adoptive**
139 **parents -- DCFS utilization of those parents.**

140 (1) (a) The division and all agencies licensed under this part shall promote adoption when
141 that is a possible and appropriate alternative for a child. Specifically, in accordance with Section
142 62A-4a-205.6, the division shall actively promote the adoption of all children in its custody who
143 have a final plan for termination of parental rights pursuant to Section 78-3a-312, or a permanency
144 goal of adoption.

145 (b) Beginning May 1, 2000, the division may not place a child for adoption, either
146 temporarily or permanently, with any individual or individuals who do not qualify for adoptive
147 placement pursuant to the requirements of Sections 78-30-1, 78-30-1.5, and 78-30-9.

148 (2) The division shall obtain or conduct research of prior adoptive families to determine
149 what families may do to be successful with their adoptive children and shall make this research

150 available to potential adoptive parents.

151 (3) (a) On or before July 1, 1997, each agency licensed under this part shall provide all
152 potential adoptive parents who have applied for adoption with that agency with information
153 regarding all children in the custody of the division who have a permanency goal of adoption and
154 who are eligible for adoption. That notification shall include information regarding adoption
155 subsidies, ongoing medical and mental health coverage for the adopted child, training for adoptive
156 parents, and continued support for adoptive parents pursuant to Section 62A-4a-205.6.

157 (b) The notification and information provided pursuant to Subsection (3)(a) shall include
158 a time-limited request for permission from the potential adoptive parents to provide the division
159 with their names. With regard to those parents who grant permission, the agency shall provide the
160 division with those names within ten calendar days of receiving permission. Upon receipt of those
161 names, the division shall consider the suitability of those persons as potential adoptive parents for
162 children in the custody of the division, provide the agency with the names and complete case
163 histories of appropriate children, and provide the training and support described in Subsection
164 62A-4a-205.6(4).

165 Section 4. Section **78-3g-103 (Effective 07/01/00)** is amended to read:

166 **78-3g-103 (Effective 07/01/00). Foster care citizen review boards -- Membership --**
167 **Responsibilities -- Periodic reviews.**

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

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

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

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

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

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

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

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

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

192 (b) In accordance with federal law and with Subsection 78-3a-314(1), periodic reviews
193 conducted by foster care citizen review boards shall be open to the participation of the child's
194 natural parents, foster parents, preadoptive parents, and any relative providing care for the child.
195 Notice shall be provided to those persons pursuant to Subsection 78-3a-314(1).

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

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

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

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

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

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

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

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

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

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

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

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

223 (h) a determination regarding whether the statutory time limitations described in Title 78,
224 Chapter 3a, Part 3, have been met, specifically, whether the 12 month limitation on reunification
225 services required by Section 78-3a-311 has been complied with. The board shall also render an
226 opinion regarding when it estimates that the child will achieve permanency.

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

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

237 (c) Whenever a court makes a determination or finding it shall provide for notice to the
238 committee regarding that determination or finding. The committee shall provide that information
239 to the applicable board.

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

242 (a) members may be reimbursed for mileage on days that they are involved in training, at

243 rates established by the Division of Finance; and

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

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

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

250 Section 5. Section **78-30-1** is amended to read:

251 **78-30-1. Who may adopt -- Adoption of minor -- Adoption of adult.**

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

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

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

258 (i) adults who are legally married to each other, including adoption by a stepparent; or

259 (ii) any single adult, except as provided in Subsection (3)(b).

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

264 Section 6. Section **78-30-1.5** is amended to read:

265 **78-30-1.5. Legislative intent -- Best interest of child.**

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

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

270 Section 7. Section **78-30-9** is amended to read:

271 **78-30-9. Decree of adoption -- Best interest of child -- Legislative findings.**

272 (1) The court shall examine each person appearing before it in accordance with this
273 chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption,

274 it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent
275 or parents and shall be regarded and treated in all respects as the child of the adoptive parent or
276 parents.

277 (2) The court shall make a specific finding regarding the best interest of the child, taking
278 into consideration information provided to the court pursuant to the requirements of this chapter
279 relating to the health, safety, and welfare of the child and the moral climate of the potential
280 adoptive placement.

281 (3) (a) The Legislature specifically finds that it is not in a child's best interest to be adopted
282 by a person or persons who are cohabiting in a relationship that is not a legally valid and binding
283 marriage under the laws of this state. Nothing in this section limits or prohibits the court's
284 placement of a child with a single adult who is not cohabiting as defined in Subsection (3)(b).

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

287 **Section 8. Effective date.**

288 This act takes effect on May 1, 2000, except that Section 78-3g-103 takes effect on July
289 1, 2000.