

CHILD WELFARE AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends background check and child placement provisions in the Utah Human Services Code and the Juvenile Court Act of 1996.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that the requirement that a child in state custody may not be placed with a prospective foster or adoptive parent until the Department of Human Services conducts a comprehensive background check, does not prohibit the Division of Child and Family Services or a court placing the child with a noncustodial parent, or with a relative, pending further investigation of the appropriateness of the placement;
- ▶ provides exceptions to certain background check requirements if the exceptions are permitted by federal law or rule;
- ▶ modifies background check requirements for prospective foster or adoptive placements;
- ▶ clarifies the rulemaking authority of the Office of Licensing, within the Department of Human Services;
- ▶ provides that priority shall be given for placing a child with a noncustodial parent, relative, or friend, over placing the child in a shelter;
- ▶ modifies provisions relating to the placement and custody of a child who has been removed from the custody of the child's parents;
- ▶ provides that, in order to be considered a "willing relative or friend" for purposes of

30 determining placement of a child following a shelter care hearing, the friend or relative must be
31 willing to cooperate with the child's permanency goal;

32 ▶ describes the limited background check or investigation that must be completed
33 before a child in state custody is placed with a noncustodial parent or relative; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides an immediate effective date.

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **62A-2-120**, as last amended by Laws of Utah 2007, Chapter 152

42 **62A-4a-202.1**, as last amended by Laws of Utah 2007, Chapter 169

43 **62A-4a-206**, as last amended by Laws of Utah 2002, Chapter 306

44 **62A-4a-209**, as last amended by Laws of Utah 2007, Chapter 169

45 **62A-5-103.5**, as last amended by Laws of Utah 2007, Chapter 152

46 **78A-6-306**, as renumbered and amended by Laws of Utah 2008, Chapter 3

47 **78A-6-307**, as renumbered and amended by Laws of Utah 2008, Chapter 3

48 **78A-6-308**, as renumbered and amended by Laws of Utah 2008, Chapter 3

49 **78A-6-318**, as renumbered and amended by Laws of Utah 2008, Chapter 3

50 **78B-6-113**, as renumbered and amended by Laws of Utah 2008, Chapter 3

51 **78B-6-131**, as enacted by Laws of Utah 2008, Chapter 3

52 ENACTS:

53 **78A-6-307.5**, Utah Code Annotated 1953



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

56 Section 1. Section **62A-2-120** is amended to read:

57 **62A-2-120. Criminal background checks -- Direct access to children or**

58 **vulnerable adults.**

59 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
60 license renewal under this chapter shall submit to the office the names and other identifying
61 information, which may include fingerprints, of all persons associated with the licensee, as
62 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

63 (b) The Criminal Investigations and Technical Services Division of the Department of
64 Public Safety, or the office as authorized under Section 53-10-108, shall process the information
65 described in Subsection (1)(a) to determine whether the individual has been convicted of any
66 crime.

67 (c) Except as provided in Subsection (1)(d), if an individual has not continuously lived
68 in Utah for the five years immediately preceding the day on which the information referred to in
69 Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI
70 national criminal history record check. The fingerprints shall be submitted to the FBI through
71 the Criminal Investigations and Technical Services Division.

72 (d) An individual is not required to comply with Subsection (1)(c) if:

73 (i) the individual continuously lived in Utah for the five years immediately preceding the
74 day on which the information described in Subsection (1)(a) is submitted to the office, except
75 for time spent outside of the United States and its territories; and

76 (ii) the background check of the individual is being conducted for a purpose other than
77 a purpose described in Subsection (1)(f).

78 (e) If an applicant described in Subsection (1)(a) spent time outside of the United States
79 and its territories during the five years immediately preceding the day on which the information
80 described in Subsection (1)(a) is submitted to the office, the office shall require the applicant to
81 submit documentation establishing whether the applicant was convicted of a crime during the
82 time that the applicant spent outside of the United States and its territories.

83 (f) Notwithstanding ~~[any other provision of this Subsection (1)]~~ Subsections (1)(a)
84 through (e), and except as provided in Subsection (1)(h), an applicant described in Subsection
85 (1)(a) shall submit fingerprints for an FBI national criminal history records check, through the

86 Criminal Investigations and Technical Services Division, if the background check of the
87 applicant is being conducted for the purpose of:

- 88 (i) licensing a prospective foster home; or
- 89 (ii) approving a prospective adoptive placement of a child in state custody.

90 (g) ~~[It]~~ Except as provided in Subsection (1)(h), in addition to the other requirements
91 of this section, if the background check of an applicant described in Subsection (1)(a) is being
92 conducted for the purpose of licensing a prospective foster home or approving a prospective
93 adoptive placement of a child in state custody, the office shall:

94 (i) check the child abuse and neglect registry in each state where each prospective foster
95 parent or prospective adoptive parent resided in the five years immediately preceding the day on
96 which the prospective foster parent or prospective adoptive parent applied to be a foster parent
97 or adoptive parent, to determine whether the prospective foster parent or prospective adoptive
98 parent is listed in the registry as having a substantiated or supported finding of child abuse or
99 neglect; and

100 (ii) check the child abuse and neglect registry in each state where each adult living in the
101 home of the prospective foster parent or prospective adoptive parent described in Subsection
102 (1)(g)(i) resided in the five years immediately preceding the day on which the prospective foster
103 parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to
104 determine whether the adult is listed in the registry as having a substantiated or supported
105 finding of child abuse or neglect.

106 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

107 (i) federal law or rule permits otherwise; or

108 (ii) the requirements would prohibit the Division of Child and Family Services or a
109 court from placing a child with:

110 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

111 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
112 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)
113 and (g).

114 ~~[(h)]~~ (i) The office shall make rules, in accordance with Title 63, Chapter 46a, Utah
115 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
116 background checks.

117 (2) The office shall approve a person for whom identifying information is submitted
118 under Subsection (1) to have direct access to children or vulnerable adults in the licensee
119 program if:

120 (a) (i) the person is found to have no criminal history record; or

121 (ii) (A) the only convictions in the person's criminal history record are misdemeanors or
122 infractions not involving any of the offenses described in Subsection (3); and

123 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
124 before the date of the search;

125 (b) the person is not listed in the statewide database of the Division of Aging and Adult
126 Services created by Section 62A-3-311.1;

127 (c) juvenile court records do not show that a court made a substantiated finding, under
128 Section ~~[78-3a-320]~~ 78A-6-323, that the person committed a severe type of child abuse or
129 neglect;

130 (d) the person is not listed in the Licensing Information System of the Division of Child
131 and Family Services created by Section 62A-4a-1006;

132 (e) the person has not pled guilty or no contest to a pending charge for any:

133 (i) felony;

134 (ii) misdemeanor listed in Subsection (3); or

135 (iii) infraction listed in Subsection (3); and

136 (f) for a person described in Subsection (1)(g), the registry check described in
137 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry
138 of another state as having a substantiated or supported finding of a severe type of child abuse or
139 neglect as defined in Section 62A-4a-1002.

140 (3) Except as provided in Subsection (8), unless at least ten years have passed since the
141 date of conviction, the office may not approve a person to have direct access to children or

142 vulnerable adults in the licensee's human services program if that person has been convicted of
143 an offense, whether a felony, misdemeanor, or infraction, that is:

144 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

145 (b) a violation of any pornography law, including sexual exploitation of a minor;

146 (c) prostitution;

147 (d) included in:

148 (i) Title 76, Chapter 5, Offenses Against the Person;

149 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or

150 (iii) Title 76, Chapter 7, Offenses Against the Family;

151 (e) a violation of Section 76-6-103, aggravated arson;

152 (f) a violation of Section 76-6-203, aggravated burglary;

153 (g) a violation of Section 76-6-302, aggravated robbery; or

154 (h) a conviction for an offense committed outside of the state that, if committed in the
155 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

156 (4) (a) Except as provided in Subsection (8), if a person for whom identifying
157 information is submitted under Subsection (1) is not approved by the office under Subsection
158 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the
159 office shall conduct a comprehensive review of criminal and court records and related
160 circumstances if the reason the approval is not granted is due solely to one or more of the
161 following:

162 (i) a conviction for:

163 (A) any felony not listed in Subsection (3);

164 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
165 date of the search;

166 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
167 a similar statute in another state; or

168 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years
169 have passed since the date of conviction;

- 170 (ii) a plea of guilty or no contest to a pending:
- 171 (A) felony;
- 172 (B) misdemeanor listed in Subsection (3); or
- 173 (C) infraction listed in Subsection (3);
- 174 (iii) the person is listed in the statewide database of the Division of Aging and Adult
- 175 Services created by Section 62A-3-311.1;
- 176 (iv) juvenile court records show that a court made a substantiated finding, under
- 177 Section ~~[78-3a-320]~~ 78A-6-323, that the person committed a severe type of child abuse or
- 178 neglect;
- 179 (v) the person is listed in the Licensing Information System of the Division of Child and
- 180 Family Services created by Section 62A-4a-1006; or
- 181 (vi) the person is listed in a child abuse or neglect registry of another state as having a
- 182 substantiated or supported finding of a severe type of child abuse or neglect as defined in
- 183 Section 62A-4a-1002.
- 184 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
- 185 (i) the date of the offense or incident;
- 186 (ii) the nature and seriousness of the offense or incident;
- 187 (iii) the circumstances under which the offense or incident occurred;
- 188 (iv) the age of the perpetrator when the offense or incident occurred;
- 189 (v) whether the offense or incident was an isolated or repeated incident;
- 190 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 191 adult, including:
- 192 (A) actual or threatened, nonaccidental physical or mental harm;
- 193 (B) sexual abuse;
- 194 (C) sexual exploitation; and
- 195 (D) negligent treatment;
- 196 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
- 197 treatment received, or additional academic or vocational schooling completed, by the person;

198 and

199 (viii) any other pertinent information.

200 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
201 shall approve the person who is the subject of the review to have direct access to children or
202 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or
203 vulnerable adult.

204 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
205 office may make rules, consistent with this chapter, defining procedures for the comprehensive
206 review described in this Subsection (4).

207 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person
208 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
209 the supervising.

210 (b) A licensee may not permit any person to have direct access to a child or a vulnerable
211 adult unless, subject to Subsection (5)(c), that person is:

212 (i) associated with the licensee and:

213 (A) approved by the office to have direct access to children or vulnerable adults under
214 this section; or

215 (B) (I) the office has not determined whether to approve that person to have direct
216 access to children or vulnerable adults;

217 (II) the information described in Subsection (1)(a), relating to that person, is submitted
218 to the department; and

219 (III) that person is directly supervised by a person associated with the licensee who is
220 approved by the office to have direct access to children or vulnerable adults under this section;

221 (ii) (A) not associated with the licensee; and

222 (B) directly supervised by a person associated with the licensee who is approved by the
223 office to have direct access to children or vulnerable adults under this section;

224 (iii) the parent or guardian of the child or vulnerable adult; or

225 (iv) a person approved by the parent or guardian of the child or vulnerable adult to have

226 direct access to the child or vulnerable adult.

227 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
228 or a vulnerable adult if that person is prohibited by court order from having that access.

229 (6) (a) Within 30 days after receiving the identifying information for a person under
230 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
231 with whom the person is associated of:

- 232 (i) the office's decision regarding its background screening clearance and findings; and
- 233 (ii) a list of any convictions found in the search.

234 (b) With the notice described in Subsection (6)(a), the office shall also give to the
235 person the details of any comprehensive review conducted under Subsection (4).

236 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
237 direct access to children or vulnerable adults, the notice shall further advise the persons to
238 whom the notice is given that either the person or the licensee or applicant with whom the
239 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
240 department's Office of Administrative Hearings, to challenge the office's decision.

241 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
242 office shall make rules, consistent with this chapter:

- 243 (i) defining procedures for the challenge of its background screening decision described
244 in this Subsection (6); and
- 245 (ii) expediting the process for renewal of a license under the requirements of this section
246 and other applicable sections.

247 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for an
248 initial license, or license renewal, to operate a substance abuse program that provides services to
249 adults only.

250 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
251 license a person as a prospective foster parent or a prospective adoptive parent if the person has
252 been convicted of:

- 253 (i) a felony involving conduct that constitutes any of the following:

- 254 (A) child abuse, as described in Section 76-5-109;
- 255 (B) commission of domestic violence in the presence of a child, as described in Section
256 76-5-109.1;
- 257 (C) abuse or neglect of a disabled child, as described in Section 76-5-110;
- 258 (D) endangerment of a child, as described in Section 76-5-112.5;
- 259 (E) aggravated murder, as described in Section 76-5-202;
- 260 (F) murder, as described in Section 76-5-203;
- 261 (G) manslaughter, as described in Section 76-5-205;
- 262 (H) child abuse homicide, as described in Section 76-5-208;
- 263 (I) homicide by assault, as described in Section 76-5-209;
- 264 (J) kidnapping, as described in Section 76-5-301;
- 265 (K) child kidnapping, as described in Section 76-5-301.1;
- 266 (L) aggravated kidnapping, as described in Section 76-5-302;
- 267 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 268 (N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;
- 269 (O) aggravated arson, as described in Section 76-6-103;
- 270 (P) aggravated burglary, as described in Section 76-6-203;
- 271 (Q) aggravated robbery, as described in Section 76-6-302; or
- 272 (R) domestic violence, as described in Section 77-36-1; or
- 273 (ii) an offense committed outside the state that, if committed in the state, would
274 constitute a violation of an offense described in Subsection (8)(a)(i).
- 275 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
276 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
277 immediately preceding the day on which the person would otherwise be approved or licensed,
278 the person has been convicted of a felony involving conduct that constitutes any of the
279 following:
- 280 (i) aggravated assault, as described in Section 76-5-103;
- 281 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

- 282 (iii) mayhem, as described in Section 76-5-105;
- 283 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 284 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 285 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
- 286 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

287 Precursor Act; or

- 288 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

289 Section 2. Section **62A-4a-202.1** is amended to read:

290 **62A-4a-202.1. Entering home of a child -- Taking a child into protective custody**
291 **-- Caseworker accompanied by peace officer -- Preventive services -- Shelter facility or**
292 **emergency placement.**

293 (1) A peace officer or child welfare worker may not enter the home of a child who is
294 not under the jurisdiction of the court, remove a child from the child's home or school, or take a
295 child into protective custody unless authorized under Subsection [~~78-3a-106~~] 78A-6-106(2).

296 (2) A child welfare worker within the division may take action under Subsection (1)
297 accompanied by a peace officer, or without a peace officer when a peace officer is not
298 reasonably available.

299 (3) (a) If possible, consistent with the child's safety and welfare, before taking a child
300 into protective custody, the child welfare worker shall also determine whether there are services
301 available that, if provided to a parent or guardian of the child, would eliminate the need to
302 remove the child from the custody of the child's parent or guardian.

303 (b) If the services described in Subsection (3)(a) are reasonably available, they shall be
304 utilized.

305 (c) In determining whether the services described in Subsection (3)(a) are reasonably
306 available, and in making reasonable efforts to provide those services, the child's health, safety,
307 and welfare shall be the child welfare worker's paramount concern.

308 (4) (a) A child removed or taken into custody under this section may not be placed or
309 kept in a secure detention facility pending court proceedings unless the child is detainable based

310 on guidelines promulgated by the Division of Juvenile Justice Services.

311 (b) A child removed from the custody of the child's parent or guardian but who does
312 not require physical restriction shall be given temporary care in:

313 (i) a shelter facility; or

314 (ii) an emergency placement in accordance with Section 62A-4a-209.

315 (c) When making a placement under Subsection (4)(b), the Division of Child and Family
316 Services shall give priority to a placement with a noncustodial parent, relative, or friend, in
317 accordance with Section 62A-4a-209.

318 Section 3. Section **62A-4a-206** is amended to read:

319 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**
320 **process.**

321 (1) (a) The Legislature finds that, except with regard to a child's natural parent or legal
322 guardian, a foster family has a very limited but recognized interest in its familial relationship
323 with a foster child who has been in the care and custody of that family. In making
324 determinations regarding removal of a child from a foster home, the division may not dismiss
325 the foster family as a mere collection of unrelated individuals.

326 (b) The Legislature finds that children in the temporary custody and custody of the
327 division are experiencing multiple changes in foster care placements with little or no
328 documentation, and that numerous studies of child growth and development emphasize the
329 importance of stability in foster care living arrangements.

330 (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide
331 procedural due process for a foster family prior to removal of a foster child from their home,
332 regardless of the length of time the child has been in that home, unless removal is for the
333 purpose of:

334 (i) returning the child to the child's natural parent or legal guardian;

335 (ii) immediately placing the child in an approved adoptive home;

336 (iii) placing the child with a relative, as defined in Subsection [~~78-3a-307(5)(d)~~]

337 78A-6-307(1)(b), who obtained custody or asserted an interest in the child within the preference

338 period described in Subsection [~~78-3a-307(8)~~] 78A-6-307(18)(a); or

339 (iv) placing an Indian child in accordance with preplacement preferences and other
340 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

341 (2) (a) The division shall maintain and utilize due process procedures for removal of a
342 foster child from a foster home, in accordance with the procedures and requirements of Title 63,
343 Chapter 46b, Administrative Procedures Act.

344 (b) Those procedures shall include requirements for:

345 (i) personal communication with and explanation to foster parents prior to removal of
346 the child; and

347 (ii) an opportunity for foster parents to present their information and concerns to the
348 division and to request a review by a third party neutral fact finder prior to removal of the child.

349 (c) If the division determines that there is a reasonable basis to believe that the child is
350 in danger or that there is a substantial threat of danger to the health or welfare of the child, it
351 shall place the child in emergency foster care during the pendency of the procedures described
352 in this subsection, instead of making another foster care placement.

353 (3) If the division removes a child from a foster home based upon the child's statement
354 alone, the division shall initiate and expedite the processes described in Subsection (2). The
355 division may take no formal action with regard to that foster parent's license until after those
356 processes, in addition to any other procedure or hearing required by law, have been completed.

357 (4) When a complaint is made to the division by a foster child against a foster parent,
358 the division shall, within 30 business days, provide the foster parent with information regarding
359 the specific nature of the complaint, the time and place of the alleged incident, and who was
360 alleged to have been involved.

361 (5) Whenever the division places a child in a foster home, it shall provide the foster
362 parents with:

363 (a) notification of the requirements of this section;

364 (b) a written description of the procedures enacted by the division pursuant to
365 Subsection (2) and how to access those processes; and

366 (c) written notification of the foster parents' ability to petition the juvenile court directly
367 for review of a decision to remove a foster child who has been in their custody for 12 months or
368 longer, in accordance with the limitations and requirements of Section [~~78-3a-315~~] 78A-6-318.

369 (6) The requirements of this section do not apply to the removal of a child based on a
370 foster parent's request for that removal.

371 Section 4. Section **62A-4a-209** is amended to read:

372 **62A-4a-209. Emergency placement.**

373 (1) As used in this section:

374 (a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

375 (b) "Relative" is as defined in Subsection 78A-6-307(1)(b).

376 [~~(1)~~] (2) The division may use an emergency placement under Subsection
377 62A-4a-202.1(4)(b)(ii) when:

378 (a) the case worker has made the determination that:

379 (i) the child's home is unsafe;

380 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

381 (iii) the child's custodial parent or guardian will agree to not remove the child from the
382 home of the person that serves as the placement and not have any contact with the child until
383 after the shelter hearing required by Section [~~78-3a-306~~] 78A-6-306;

384 (b) a person, with preference being given in accordance with Subsection [~~(3)~~] (4), can
385 be identified who has the ability and is willing to provide care for the child who would otherwise
386 be placed in shelter care, including:

387 (i) taking the child to medical, mental health, dental, and educational appointments at
388 the request of the division; and

389 (ii) making the child available to division services and the guardian ad litem; and

390 (c) the person described in Subsection [~~(1)~~] (2)(b) agrees to care for the child on an
391 emergency basis under the following conditions:

392 (i) the person meets the criteria for an emergency placement under Subsection [~~(2)~~] (3);

393 (ii) the person agrees to not allow the custodial parent or guardian to have any contact

394 with the child until after the shelter hearing unless authorized by the division in writing;

395 (iii) the person agrees to contact law enforcement and the division if the custodial
396 parent or guardian attempts to make unauthorized contact with the child;

397 (iv) the person agrees to allow the division and the child's guardian ad litem to have
398 access to the child;

399 (v) the person has been informed and understands that the division may continue to
400 search for other possible placements for long-term care, if needed;

401 (vi) the person is willing to assist the custodial parent or guardian in reunification
402 efforts at the request of the division, and to follow all court orders; and

403 (vii) the child is comfortable with the person.

404 [~~(2) Before~~] (3) Except as otherwise provided in Subsection (5), before the division
405 places a child in an emergency placement, the division:

406 (a) may request the name of a reference and may contact the reference to determine the
407 answer to the following questions:

408 (i) would the person identified as a reference place a child in the home of the emergency
409 placement; and

410 (ii) are there any other relatives or friends to consider as a possible emergency or
411 long-term placement for the child;

412 (b) shall have the custodial parent or guardian sign an emergency placement agreement
413 form during the investigation;

414 (c) (i) [shall complete a] if the emergency placement will be with a relative of the child,
415 shall comply with the background check provisions described in Subsection (7); or

416 (ii) if the emergency placement will be with a person other than a noncustodial parent or
417 a relative, shall comply with the criminal background check provisions described in [Sections
418 62A-4a-202.4 and 78-3a-307.1 on all persons] Section 78A-6-308 for adults living in the
419 household where the child will be placed;

420 (d) shall complete a limited home inspection of the home where the emergency
421 placement is made; and

422 (e) shall have the emergency placement approved by a family service specialist.

423 [~~(3)~~] (4) (a) The following order of preference shall be applied when determining the
424 person with whom a child will be placed in an emergency placement described in this section,
425 provided that the person is willing, and has the ability, to care for the child:

426 (i) a noncustodial parent of the child in accordance with Section [~~78-3a-307~~]
427 78A-6-307;

428 (ii) a relative of the child;

429 (iii) subject to Subsection [~~(3)~~] (4)(b), a friend designated by the custodial parent or
430 guardian of the child, if the friend is a licensed foster parent; and

431 (iv) a shelter facility, former foster placement, or other foster placement designated by
432 the division.

433 (b) Unless the division agrees otherwise, the custodial parent or guardian described in
434 Subsection [~~(3)~~] (4)(a)(iii) may only designate one friend as a potential emergency placement.

435 (5) (a) The division may, pending the outcome of the investigation described in
436 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial
437 parent if, based on a limited investigation, prior to making the emergency placement, the
438 division:

439 (i) determines that the noncustodial parent has regular, unsupervised visitation with the
440 child that is not prohibited by law or court order;

441 (ii) determines that there is not reason to believe that the child's health or safety will be
442 endangered during the emergency placement; and

443 (iii) has the custodial parent or guardian sign an emergency placement agreement.

444 (b) Either before or after making an emergency placement with the noncustodial parent
445 of the child, the division may conduct the investigation described in Subsection (3)(a) in relation
446 to the noncustodial parent.

447 (c) Before, or within one day, excluding weekends and holidays, after a child is placed
448 in an emergency placement with the noncustodial parent of the child, the division shall conduct
449 a limited:

450 (i) background check of the noncustodial parent, pursuant to Subsection (7); and
451 (ii) inspection of the home where the emergency placement is made.

452 [~~(4)~~] (6) After an emergency placement, the division caseworker must:

453 (a) respond to the emergency placement's calls within one hour if the custodial parents
454 or guardians attempt to make unauthorized contact with the child or attempt to remove the
455 child;

456 (b) complete all removal paperwork, including the notice provided to the custodial
457 parents and guardians under Section [~~78-3a-306~~] 78A-6-306;

458 (c) contact the attorney general to schedule a shelter hearing;

459 (d) complete the placement procedures required in Section [~~78-3a-307, including,~~
460 ~~within five days after placement, the criminal history record check described in Subsection (5)]~~
461 78A-6-307; and

462 (e) continue to search for other relatives as a possible long-term placement, if needed.

463 [~~(5) (a) In order to determine the suitability of a placement and to conduct a
464 background screening and investigation of individuals living in the household in which a child is
465 placed, each individual living in the household in which the child is placed who has not lived in
466 the state substantially year round for the most recent five consecutive years ending on the date
467 the investigation is commenced shall be fingerprinted. If no disqualifying record is identified at
468 the state level, the fingerprints shall be forwarded by the division to the Federal Bureau of
469 Investigation for a national criminal history record check.]~~

470 [~~(b) The cost of the investigations described in Subsection (5)(a) shall be borne by
471 whomever received placement of the child, except that the division may pay all or part of the
472 cost of those investigations if the person with whom the child is placed is unable to pay:]~~

473 (7) (a) The background check described in Subsection (3)(c)(i) shall include:

474 (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
475 background check; and

476 (ii) a completed search of the Management Information System described in Section
477 62A-4a-1003.

478 **(b) The division shall determine whether a person passes the background check**
479 **described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3),**
480 **and (8).**

481 **(c) Notwithstanding Subsection (7)(b), the division may not place a child with an**
482 **individual who is prohibited by court order from having access to that child.**

483 Section 5. Section **62A-5-103.5** is amended to read:

484 **62A-5-103.5. Disbursal of public funds -- Background check of a direct service**
485 **worker.**

486 (1) For purposes of this section:

487 (a) "directly supervised" means that the person being supervised is under the
488 uninterrupted visual and auditory surveillance of the person doing the supervising; and

489 (b) "office" is as defined in Section 62A-2-101.

490 (2) Subject to Subsection (4), public funds may not be disbursed to pay a direct service
491 worker for personal services rendered to a person, unless:

492 (a) subject to Subsection (5), the direct service worker is approved by the office to have
493 direct access and provide services to children or vulnerable adults pursuant to Section
494 62A-2-120;

495 (b) except as provided in Subsection (5):

496 (i) during the time that the direct service worker renders the services described in this
497 Subsection (2), the direct service worker who renders the services is directly supervised by a
498 direct service worker who is approved by the office to have direct access and provide services
499 to children or vulnerable adults pursuant to Section 62A-2-120;

500 (ii) the direct service worker who renders the services described in this Subsection (2)
501 has submitted the information required for a background check pursuant to Section 62A-2-120;
502 and

503 (iii) the office has not determined whether to approve the direct service worker
504 described in Subsection (2)(b)(ii) to have direct access and provide services to children or
505 vulnerable adults; or

506 (c) except as provided in Subsection (5), the direct service worker:
507 (i) (A) is a direct ancestor or descendent of the person to whom the services are
508 rendered, but is not the person's parent;
509 (B) is the aunt, uncle, or sibling of the person to whom the services are rendered; or
510 (C) (I) has submitted the information required for a background check pursuant to
511 Section 62A-2-120; and
512 (II) the office has not determined whether to approve the direct service worker to have
513 direct access and provide services to children or vulnerable adults; and
514 (ii) is not listed in:
515 (A) the Licensing Information System of the Division of Child and Family Services
516 created by Section 62A-4a-1006;
517 (B) the statewide database of the Division of Aging and Adult Services created by
518 Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation; or
519 (C) juvenile court records as having a substantiated finding under Section ~~[78-3a-320]~~
520 78A-6-323 that the direct service worker committed a severe type of child abuse or neglect.
521 (3) For purposes of Subsection (2), the office shall conduct a background check of a
522 direct service worker:
523 (a) except as provided in Subsection (2)(b) or (c), before public funds are disbursed to
524 pay the direct service worker for the personal services described in Subsection (2); and
525 (b) using the same procedures established for a background check of an applicant for an
526 initial license under Section 62A-2-120.
527 (4) The background check and the approval determination described in this section shall
528 be conducted for a direct service worker on an annual basis.
529 (5) Notwithstanding ~~[any other provision of this section]~~ Subsections (1) through (4),
530 and except as provided in Subsection (6), a child who is in the legal custody of the department
531 or any of the department's divisions may not be placed with a direct service worker unless,
532 before the child is placed with the direct service worker, the direct service worker passes a
533 background check, pursuant to the requirements of Section 62A-2-120, that includes:

534 (a) submitting the direct service worker's fingerprints for an FBI national criminal
535 history records check, through the Criminal Investigations and Technical Services Division;

536 (b) checking the child abuse and neglect registry in each state where the direct service
537 worker resided in the five years immediately preceding the day on which the direct service
538 worker applied to be a direct service worker; and

539 (c) checking the child abuse and neglect registry in each state where each adult living in
540 the home where the child will be placed resided in the five years immediately preceding the day
541 on which the direct service worker applied to be a direct service worker.

542 (6) The requirements under Subsection (5) do not apply to the extent that federal law or
543 rule permits otherwise.

544 Section 6. Section **78A-6-306** is amended to read:

545 **78A-6-306. Shelter hearing.**

546 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
547 after any one or all of the following occur:

548 (a) removal of the child from the child's home by the division;

549 (b) placement of the child in the protective custody of the division;

550 (c) emergency placement under Subsection 62A-4a-202.1(4);

551 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
552 at the request of the division; or

553 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
554 Subsection 78A-6-106(4).

555 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
556 through (e), the division shall issue a notice that contains all of the following:

557 (a) the name and address of the person to whom the notice is directed;

558 (b) the date, time, and place of the shelter hearing;

559 (c) the name of the child on whose behalf a petition is being brought;

560 (d) a concise statement regarding:

561 (i) the reasons for removal or other action of the division under Subsection (1); and

- 562 (ii) the allegations and code sections under which the proceeding has been instituted;
- 563 (e) a statement that the parent or guardian to whom notice is given, and the child, are
564 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
565 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
566 provided; and
- 567 (f) a statement that the parent or guardian is liable for the cost of support of the child in
568 the protective custody, temporary custody, and custody of the division, and the cost for legal
569 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
570 ability of the parent or guardian.
- 571 (3) The notice described in Subsection (2) shall be personally served as soon as
572 possible, but no later than one business day after removal of the child from the child's home, or
573 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
574 78A-6-106(4), on:
- 575 (a) the appropriate guardian ad litem; and
- 576 (b) both parents and any guardian of the child, unless the parents or guardians cannot be
577 located.
- 578 (4) The following persons shall be present at the shelter hearing:
- 579 (a) the child, unless it would be detrimental for the child;
- 580 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
581 fail to appear in response to the notice;
- 582 (c) counsel for the parents, if one is requested;
- 583 (d) the child's guardian ad litem;
- 584 (e) the caseworker from the division who is assigned to the case; and
- 585 (f) the attorney from the attorney general's office who is representing the division.
- 586 (5) (a) At the shelter hearing, the court shall:
- 587 (i) provide an opportunity to provide relevant testimony to:
- 588 (A) the child's parent or guardian, if present; and
- 589 (B) any other person having relevant knowledge; and

590 (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

591 (b) The court:

592 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
593 Procedure;

594 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
595 the requesting party, or their counsel; and

596 (iii) may in its discretion limit testimony and evidence to only that which goes to the
597 issues of removal and the child's need for continued protection.

598 (6) If the child is in the protective custody of the division, the division shall report to the
599 court:

600 (a) the reason why the child was removed from the parent's or guardian's custody;

601 (b) any services provided to the child and the child's family in an effort to prevent
602 removal;

603 (c) the need, if any, for continued shelter;

604 (d) the available services that could facilitate the return of the child to the custody of
605 the child's parent or guardian; and

606 (e) subject to ~~[Subsection]~~ Subsections 78A-6-307(8)(c)(18)(c) through (e), whether
607 any relatives of the child or friends of the child's parents may be able and willing to ~~[take~~
608 ~~temporary custody]~~ accept temporary placement of the child.

609 (7) The court shall consider all relevant evidence provided by persons or entities
610 authorized to present relevant evidence pursuant to this section.

611 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
612 cause shown, the court may grant no more than one continuance, not to exceed five judicial
613 days.

614 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
615 a continuance under Subsection (8)(a).

616 (9) (a) If the child is in the protective custody of the division, the court shall order that
617 the child be released from the protective custody of the division unless it finds, by a

618 preponderance of the evidence, that any one of the following exist:

619 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or
620 safety of the child and the child's physical health or safety may not be protected without
621 removing the child from the custody of the child's parent;

622 (ii) (A) the child is suffering emotional damage; and

623 (B) there are no reasonable means available by which the child's emotional health may
624 be protected without removing the child from the custody of the child's parent;

625 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not
626 removed from the custody of the child's parents;

627 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household
628 has been physically or sexually abused, or is considered to be at substantial risk of being
629 physically or sexually abused, by a:

630 (A) parent;

631 (B) member of the parent's household; or

632 (C) person known to the parent;

633 (v) the parent is unwilling to have physical custody of the child;

634 (vi) the child is without any provision for the child's support;

635 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
636 and appropriate care for the child;

637 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is
638 unwilling or unable to provide care or support for the child;

639 (B) the whereabouts of the parent are unknown; and

640 (C) reasonable efforts to locate the parent are unsuccessful;

641 (ix) the child is in urgent need of medical care;

642 (x) the physical environment or the fact that the child is left unattended beyond a
643 reasonable period of time poses a threat to the child's health or safety;

644 (xi) the child or a minor residing in the same household has been neglected;

645 (xii) the parent, or an adult residing in the same household as the parent, is charged or

646 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
647 laboratory operation was located in the residence or on the property where the child resided; or
648 (xiii) the child's welfare is substantially endangered.

649 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established
650 if:

651 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
652 involving the parent; and

653 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

654 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly
655 allowed the child to be in the physical care of a person after the parent received actual notice
656 that the person physically or sexually abused the child, that fact constitutes prima facie evidence
657 that there is a substantial risk that the child will be physically or sexually abused.

658 (10) (a) (i) The court shall also make a determination on the record as to whether
659 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
660 child's home and whether there are available services that would prevent the need for continued
661 removal.

662 (ii) If the court finds that the child can be safely returned to the custody of the child's
663 parent or guardian through the provision of those services, the court shall place the child with
664 the child's parent or guardian and order that those services be provided by the division.

665 (b) In making the determination described in Subsection (10)(a), and in ordering and
666 providing services, the child's health, safety, and welfare shall be the paramount concern, in
667 accordance with federal law.

668 (11) Where the division's first contact with the family occurred during an emergency
669 situation in which the child could not safely remain at home, the court shall make a finding that
670 any lack of preplacement preventive efforts was appropriate.

671 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or
672 neglect are involved, neither the division nor the court has any duty to make "reasonable
673 efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to

674 the child's home, provide reunification services, or attempt to rehabilitate the offending parent
675 or parents.

676 (13) The court may not order continued removal of a child solely on the basis of
677 educational neglect as described in Subsection 78A-6-105(21)(b).

678 (14) (a) Whenever a court orders continued removal of a child under this section, the
679 court shall state the facts on which that decision is based.

680 (b) If no continued removal is ordered and the child is returned home, the court shall
681 state the facts on which that decision is based.

682 (15) If the court finds that continued removal and temporary custody are necessary for
683 the protection of a child because harm may result to the child if the child were returned home,
684 the court shall order continued removal regardless of:

- 685 (a) any error in the initial removal of the child;
- 686 (b) the failure of a party to comply with notice provisions; or
- 687 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and
688 Family Services.

689 Section 7. Section **78A-6-307** is amended to read:

690 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

691 (1) As used in this section:

692 (a) (i) "Natural parent," notwithstanding the provisions of Section 78A-6-105, means:

693 (A) a biological or adoptive mother;

694 (B) an adoptive father; or

695 (C) a biological father who:

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

698 (II) has strictly complied with the provisions of Sections 78B-6-120 through
699 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial
700 parent.

701 (ii) The definition of "natural parent" described in Subsection (1)(a)(i) applies regardless

702 of whether the child has been or will be placed with adoptive parents or whether adoption has
703 been or will be considered as a long term goal for the child.

704 (b) "Relative" means:

705 (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great
706 uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of a child; and

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

709 ~~[(1)]~~ (2) (a) At the shelter hearing, when the court orders that a child be removed from
710 the custody of the child's parent in accordance with the requirements of Section 78A-6-306, the
711 court shall first determine whether there is another natural parent ~~[as defined in Subsection~~
712 ~~(1)(b);]~~ with whom the child was not residing at the time the events or conditions that brought
713 the child within the court's jurisdiction occurred, who desires to assume custody of the child.

714 (b) If ~~[that]~~ another natural parent requests custody under Subsection (2)(a), the court
715 shall place the child with that parent unless it finds that the placement would be unsafe or
716 otherwise detrimental to the child.

717 (c) The provisions of this Subsection ~~[(1)]~~ (2) are limited by the provisions of
718 Subsection ~~[(8)]~~ (18)(b).

719 ~~[(b) Notwithstanding the provisions of Section 78A-6-105, for purposes of this section~~
720 ~~"natural parent" includes only a biological or adoptive mother, an adoptive father, or a~~
721 ~~biological father who was married to the child's biological mother at the time the child was~~
722 ~~conceived or born, or who has strictly complied with the provisions of Sections 78B-6-120~~
723 ~~through 78B-6-122 prior to removal of the child or voluntary surrender of the child by the~~
724 ~~custodial parent. This definition applies regardless of whether the child has been or will be~~
725 ~~placed with adoptive parents or whether adoption has been or will be considered as a long term~~
726 ~~goal for the child.]~~

727 ~~[(c)]~~ (d) (i) The court shall make a specific finding regarding the fitness of ~~[that]~~ the
728 parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of
729 the placement.

730 (ii) The court shall, at a minimum, order the division to visit the parent's home,
 731 ~~[perform]~~ comply with the criminal background ~~[checks]~~ check provisions described in
 732 ~~[Sections]~~ Section 78A-6-308 ~~[and 62A-4a-202.4]~~, and check the division's management
 733 information system for any previous reports of abuse or neglect received by the division
 734 regarding the parent at issue.

735 (iii) The court may order the ~~[Division of Child and Family Services]~~ division to
 736 conduct any further investigation regarding the safety and appropriateness of the placement.

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

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

740 ~~[(2)]~~ (3) If the court orders placement with a parent under Subsection ~~[(+)]~~ (2):

741 (a) the child and the parent are under the continuing jurisdiction of the court~~[-The]~~;

742 (b) the court may order:

743 (i) that the parent assume custody subject to the supervision of the court~~[-]~~; and ~~[order]~~

744 (ii) that services be provided to the parent from whose custody the child was removed,
 745 the parent who has assumed custody, or both~~[-The]~~; and

746 (c) the court shall ~~[also provide for]~~ order reasonable parent-time with the parent from
 747 whose custody the child was removed, unless parent-time is not in the best interest of the child.

748 ~~[The court's order shall be periodically reviewed]~~

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

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

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

753 (c) the child should be placed ~~[with]~~ in the custody of a relative, pursuant to

754 ~~[Subsection (5)]~~ Subsections (7) through (12); or

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

756 ~~[(3)]~~ (5) The time limitations described in Section 78A-6-312 with regard to

757 reunification efforts, apply to children placed with a previously noncustodial parent in

758 accordance with Subsection ~~[(1)]~~ (2).

759 ~~[(4)]~~ (6) Legal custody of the child is not affected by an order entered under Subsection
760 ~~[(1) or]~~ (2) or (3). In order to affect a previous court order regarding legal custody, the party
761 must petition that court for modification of the order.

762 ~~[(5)(a)(i)]~~ (7) If, at the time of the shelter hearing, a child is removed from the custody
763 of the child's parent and is not placed in the custody of ~~[his]~~ the child's other parent, the court:

764 (a) shall, at that time, determine whether, subject to ~~[Subsection (8)(c)]~~ Subsections
765 (18)(c) through (e), there is a relative of the child or a friend of a parent of the child who is able
766 and willing to care for the child~~[-];~~

767 ~~[(ii) The court]~~ (b) may order the ~~[Division of Child and Family Services]~~ division to
768 conduct a reasonable search to determine whether, subject to ~~[Subsection (8)(c)]~~ Subsections
769 (18)(c) through (e), there are relatives of the child or friends of a parent of the child who are
770 willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter
771 4a, Part 2, Child Welfare Services, for placement of the child~~[-The court];~~

772 (c) shall order the parents to cooperate with the division, within five working days, to,
773 subject to ~~[Subsection (8)(c)]~~ Subsections (18)(c) through (e), provide information regarding
774 relatives of the child or friends who may be able and willing to care for the child~~[-]; and~~

775 ~~[(iii) The child]~~ (d) may order that the child be placed in the ~~[temporary]~~ custody of the
776 division pending the determination under Subsection ~~[(5)(a)(ii)]~~ (7)(a).

777 ~~[(iv)]~~ (8) This section may not be construed as a guarantee that an identified relative or
778 friend will receive custody of the child. ~~[However, subject to Subsection (8)(c);]~~

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

782 ~~[(b)(i)]~~ (10) (a) If a willing relative or friend is identified ~~[pursuant to]~~ under
783 Subsection ~~[(5)]~~ (7)(a), the court shall make a specific finding regarding:

784 (i) the fitness of that relative or friend ~~[to assume custody;]~~ as a placement for the child;
785 and

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

787 (b) In order to be considered a "willing relative or friend" under this section, the relative
788 or friend shall be willing to cooperate [if] with the child's permanency goal [~~is reunification with~~
789 ~~his parent or parents, and be willing to adopt or take permanent custody of the child if that is~~
790 ~~determined to be in the best interest of the child~~].

791 ~~[(ii) The]~~ (11) (a) In making the finding described in Subsection (10)(a), the court
792 shall, at a minimum, order the division to [conduct criminal background checks described in
793 Sections 78A-6-308 and 62A-4a-202.4,];

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

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

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

800 (C) a background check that complies with the criminal background check provisions
801 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
802 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

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

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

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

809 (C) a background check that complies with the criminal background check provisions
810 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
811 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;

812 (iii) if the child may be placed with an individual other than a noncustodial parent or a
813 relative of the child, conduct a criminal background check of the individual, and each adult that

814 resides in the household where the child may be placed, that complies with the criminal
815 background check provisions described in Section 78A-6-308;

816 (iv) visit the relative's or friend's home[;];

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

819 (vi) report [its] the division's findings in writing to the court[;]; and

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

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

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

824 (C) the relative or friend recognizes the parent's history of abuse and is [~~determined~~]
825 committed to protect the child;

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

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

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

830 [(iii)] (b) The division may determine to conduct, or the court may order the [~~Division~~
831 ~~of Child and Family Services~~] division to conduct, any further investigation regarding the safety
832 and appropriateness of the placement.

833 [(iv)] (c) The division shall complete and file its assessment regarding placement with a
834 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
835 relative or friend.

836 [(e)] (12) (a) The court may place [~~the~~] a child described in Subsection (2)(a) in the
837 temporary custody of the division, pending the division's investigation pursuant to [~~Subsection~~
838 ~~(5)(b)~~] Subsections (10) and (11), and the court's determination regarding the appropriateness
839 of that placement.

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

842 ~~[(d) For purposes of this section, "relative" means an adult who is a grandparent, great~~
843 ~~grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first~~
844 ~~cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under the~~
845 ~~Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended family~~
846 ~~member" as defined by that statute.]~~

847 ~~[(6)(a)]~~ (13) When the court ~~[vests physical]~~ awards custody and guardianship of a
848 child with a relative or friend ~~[pursuant to Subsection (5), it]:~~

849 (a) the court shall order that:

850 (i) the relative or friend assume custody, subject to the continuing supervision of the
851 court~~[-]; and [shall order that]~~

852 (ii) any necessary services be provided to the child and the relative or friend~~[-That~~
853 ~~child is not within the temporary custody or custody of the Division of Child and Family~~
854 ~~Services. The];~~

855 (b) the child and any relative or friend with whom the child is placed are under the
856 continuing jurisdiction of the court~~[-The];~~

857 (c) the court may enter any order that it considers necessary for the protection and best
858 interest of the child~~[- The];~~

859 (d) the court shall provide for reasonable parent-time with the parent or parents from
860 whose custody the child was removed, unless parent-time is not in the best interest of the
861 child~~[-]; and~~

862 ~~[(b)(i) Placement with a relative or friend pursuant to Subsection (5) shall be~~
863 ~~periodically reviewed by the court,]~~

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

866 ~~[(A)]~~ (i) placement with the relative or friend continues to be in the child's best interest;

867 ~~[(B)]~~ (ii) the child should be returned home; or

868 ~~[(C)]~~ (iii) the child should be placed in the custody of the division.

869 ~~[(ii)]~~ (14) No later than 12 months after placement with a relative or friend, the court

870 shall schedule a hearing for the purpose of entering a permanent order in accordance with the
871 best interest of the child.

872 ~~[(iii)]~~ (15) The time limitations described in Section 78A-6-312, with regard to
873 reunification efforts, apply to children placed with a relative or friend pursuant to Subsection
874 ~~[(5)]~~ (7).

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

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

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

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

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

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

889 ~~[(7)]~~ (17) When the court orders that a child be removed from the custody of the child's
890 parent and does not ~~[vest custody in]~~ award custody and guardianship to another parent,
891 relative, or friend under this section, the court shall order that the child be placed in the
892 temporary custody of the Division of Child and Family Services, to proceed to adjudication and
893 disposition and to be provided with care and services in accordance with this chapter and Title
894 62A, Chapter 4a, Child and Family Services.

895 ~~[(8)]~~ (18) (a) Any preferential consideration that a relative or friend is initially granted
896 pursuant to Subsection ~~[(5)]~~ (9) expires 120 days from the date of the shelter hearing. After
897 that time period has expired, a relative or friend who has not obtained custody or asserted an

898 interest in a child, may not be granted preferential consideration by the division or the court.

899 (b) When the time period described in Subsection [~~(8)~~] (18)(a) has expired, the
900 preferential consideration which is initially granted to a natural parent in accordance with
901 Subsection [~~(1)~~] (2), is limited. After that time the court shall base its custody decision on the
902 best interest of the child.

903 (c) [~~(i)~~] Prior to the expiration of the 120-day period described in Subsection [~~(8)~~]
904 (18)(a), the following order of preference shall be applied when determining the person with
905 whom a child will be placed, provided that the person is willing, and has the ability, to care for
906 the child:

907 [~~(A)~~] (i) a noncustodial parent of the child;

908 [~~(B)~~] (ii) a relative of the child;

909 [~~(C)~~] (iii) subject to Subsection [~~(8)(c)(ii)~~] (18)(d), a friend of a parent of the child, if
910 the friend is a licensed foster parent; and

911 [~~(D)~~] (iv) other placements that are consistent with the requirements of law.

912 [~~(i)~~] (d) In determining whether a friend is a willing and appropriate placement for a
913 child, neither the court, nor the division, is required to consider more than one friend designated
914 by each parent of the child.

915 [~~(iii)~~] (e) If a parent of the child is not able to designate a friend who is a licensed foster
916 parent for placement of the child, but is able to identify a friend who is willing to become
917 licensed as a foster parent:

918 [~~(A)~~] (i) the department shall fully cooperate to expedite the licensing process for the
919 friend; and

920 [~~(B)~~] (ii) if the friend becomes licensed as a foster parent within the time frame
921 described in Subsection [~~(8)~~] (18)(a), the court shall determine whether it is in the best interests
922 of the child to place the child [~~in the physical custody of~~] with the friend.

923 [~~(9)~~] (19) If, following the shelter hearing, the child is placed with a person who is not a
924 parent of the child, a relative of the child, a friend of a parent of the child, or a former foster
925 parent of the child, priority shall be given to a foster placement with a man and a woman who

926 are married to each other, unless it is in the best interests of the child to place the child with a
927 single foster parent.

928 ~~[(10)]~~ (20) In determining the placement of a child, neither the court, nor the ~~[Division~~
929 ~~of Child and Family Services]~~ division, may take into account, or discriminate against, the
930 religion of a person with whom the child may be placed, unless the purpose of taking religion
931 into account is to place the child with a person or family of the same religion as the child.

932 Section 8. Section **78A-6-307.5** is enacted to read:

933 **78A-6-307.5. Post-shelter hearing placement of a child who is in division custody.**

934 (1) If the court awards custody of a child to the division under Section 78A-6-307, or
935 as otherwise permitted by law, the division shall determine ongoing placement of the child.

936 (2) In placing a child under Subsection (1), the division:

937 (a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable
938 background check provisions described in Section 78A-6-307;

939 (b) is not required to receive approval from the court prior to making the placement;

940 (c) shall, within three days, excluding weekends and holidays, after making the
941 placement, give written notice to the court, and all parties to the proceedings, that the
942 placement has been made; and

943 (d) may place the child with a noncustodial parent or relative of the child, using the
944 same criteria established for an emergency placement under Section 62A-4a-209, pending the
945 results of:

946 (i) the background check described in Subsection 78A-6-307(16)(a); and

947 (ii) evaluation with the noncustodial parent or relative to determine the noncustodial
948 parent's or relative's capacity to provide ongoing care to the child.

949 Section 9. Section **78A-6-308** is amended to read:

950 **78A-6-308. Criminal background checks necessary prior to out-of-home**
951 **placement.**

952 (1) ~~[Upon]~~ Subject to Subsection (3), upon ordering removal of a child from the
953 custody of the child's parent and placing that child in the custody of the Division of Child and

954 Family Services, prior to the division's placement of that child in out-of-home care, the court
955 shall require the completion of a nonfingerprint-based background check by the Utah Bureau of
956 Criminal Identification regarding the proposed placement.

957 (2) (a) [~~The Division of Child and Family Services~~] Except as provided in Subsection
958 (4), the division and the Office of the Guardian ad Litem Director may request, or the court
959 upon its own motion may order, the Department of Public Safety to conduct a complete Federal
960 Bureau of Investigation criminal background check through the national criminal history system
961 (NCIC).

962 (b) [~~Upon request by the Division of Child and Family Services~~] Except as provided in
963 Subsection (4), upon request by the division or the Office of the Guardian ad Litem Director, or
964 upon the court's order, persons subject to the requirements of Subsection (1) shall submit
965 fingerprints and shall be subject to an FBI fingerprint background check. The child may be
966 temporarily placed, pending the outcome of that background check.

967 (c) The cost of those investigations shall be borne by whoever is to receive placement
968 of the child, except that the Division of Child and Family Services may pay all or part of the cost
969 of those investigations [~~if the person with whom the child is to be placed is unable to pay~~].

970 (3) [~~Notwithstanding any other provision of this section, except as otherwise permitted~~
971 ~~by federal law or rule~~] Except as provided in Subsection (5), a child who is in the legal custody
972 of the state may not be placed with a prospective foster parent or a prospective adoptive parent,
973 unless, before the child is placed with the prospective foster parent or the prospective adoptive
974 parent:

975 (a) a fingerprint based FBI national criminal history records check is conducted on the
976 prospective foster parent or prospective adoptive parent [~~and each adult living in the home of~~
977 ~~the prospective foster parent or prospective adoptive parent~~];

978 (b) the Department of Human Services conducts a check of the child abuse and neglect
979 registry in each state where the prospective foster parent or prospective adoptive parent resided
980 in the five years immediately preceding the day on which the prospective foster parent or
981 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine

982 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
983 having a substantiated or supported finding of a severe type of child abuse or neglect as defined
984 in Section 62A-4a-1002;

985 (c) the Department of Human Services conducts a check of the child abuse and neglect
986 registry of each state where each adult living in the home of the prospective foster parent or
987 prospective adoptive parent described in Subsection (3)(b) resided in the five years immediately
988 preceding the day on which the prospective foster parent or prospective adoptive parent applied
989 to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry
990 as having a substantiated or supported finding of a severe type of child abuse or neglect as
991 defined in Section 62A-4a-1002; and

992 (d) each person required to undergo a background check described in this Subsection
993 (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

994 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial
995 parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless the court
996 finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the child.

997 (5) The requirements under Subsection (3) do not apply to the extent that:

998 (a) federal law or rule permits otherwise; or

999 (b) the requirements would prohibit the division or a court from placing a child with:

1000 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

1001 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending

1002 completion of the background check described in Subsection (3).

1003 Section 10. Section **78A-6-318** is amended to read:

1004 **78A-6-318. Review of foster care removal -- Foster parent's standing.**

1005 (1) With regard to a child in the custody of the Division of Child and Family Services
1006 who is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed
1007 in foster care with a foster family, the Legislature finds that:

1008 (a) except with regard to the child's natural parents, a foster family has a very limited
1009 but recognized interest in its familial relationship with the child; and

1010 (b) children in the custody of the division are experiencing multiple changes in foster
1011 care placements with little or no documentation, and that numerous studies of child growth and
1012 development emphasize the importance of stability in foster care living arrangements.

1013 (2) For the reasons described in Subsection (1), the Legislature finds that, except with
1014 regard to the child's natural parents, procedural due process protections must be provided to a
1015 foster family prior to removal of a foster child from [~~their~~] the foster home.

1016 (3) (a) A foster parent who has had a foster child in [~~his custody~~] the foster parent's
1017 home for 12 months or longer may petition the juvenile court for a review and determination of
1018 the appropriateness of a decision by the Division of Child and Family Services to remove the
1019 child from the [~~child's~~] foster home, unless the removal was for the purpose of:

1020 (i) returning the child to the child's natural parent or legal guardian;

1021 (ii) immediately placing the child in an approved adoptive home;

1022 (iii) placing the child with a relative, as defined in Subsection 78A-6-307[~~(5)(d)~~](1)(b),
1023 who obtained custody or asserted an interest in the child within the preference period described
1024 in Subsection 78A-6-307[~~(8)~~](18)(a); or

1025 (iv) placing an Indian child in accordance with preplacement preferences and other
1026 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

1027 (b) The foster parent may petition the court under this section without exhausting
1028 administrative remedies within the division.

1029 (c) The court may order the division to place the child in a specified home, and shall
1030 base its determination on the best interest of the child.

1031 (4) The requirements of this section do not apply to the removal of a child based on a
1032 foster parent's request for that removal.

1033 Section 11. Section **78B-6-113** is amended to read:

1034 **78B-6-113. Prospective parent not a resident -- Preplacement requirements.**

1035 (1) When an adoption petition is to be finalized in this state with regard to any
1036 prospective adoptive parent who is not a resident of this state at the time a child is placed in that
1037 person's home, the potential adoptive parent shall:

- 1038 (a) comply with the provisions of Sections 78B-6-128 and 78B-6-130; and
- 1039 (b) (i) if the child is in state custody, submit fingerprints for a Federal Bureau of
- 1040 Investigation national criminal history record check through the Criminal and Technical Services
- 1041 Division of the Department of Public Safety in accordance with the provisions of Section
- 1042 62A-2-120; or
- 1043 (ii) subject to Subsection (2), if the child is not in state custody:
- 1044 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
- 1045 records check as a personal records check; or
- 1046 (B) complete a criminal records check and child abuse database check for each state
- 1047 and, if available, country, where the potential adoptive parent resided during the five years
- 1048 immediately preceding the day on which the adoption petition is to be finalized.
- 1049 (2) For purposes of Subsection (1)(b)(ii):
- 1050 (a) if the adoption is being handled by a human services program, as defined in Section
- 1051 62A-2-101:
- 1052 (i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted in
- 1053 accordance with procedures established by the Criminal Investigations and Technical Services
- 1054 Division of the Department of Public Safety; and
- 1055 (ii) subject to Subsection (3), the criminal history check described in Subsection
- 1056 (1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:
- 1057 (A) preserve the chain of custody of the results; and
- 1058 (B) not permit tampering with the results by a prospective adoptive parent or other
- 1059 interested party; and
- 1060 (b) if the adoption is being handled by a private attorney, and not a human services
- 1061 program, the criminal history checks described in Subsection (1)(b)(ii), shall be:
- 1062 (i) submitted in accordance with procedures established by the Criminal Investigations
- 1063 and Technical Services Division of the Department of Public Safety; or
- 1064 (ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:
- 1065 (A) preserve the chain of custody of the results; and

1066 (B) not permit tampering with the results by a prospective adoptive parent or other
1067 interested party.

1068 (3) In order to comply with Subsection (2)(a)(ii) of (b)(ii), the manner in which the
1069 criminal history check is submitted shall be approved by the court.

1070 (4) ~~[H]~~ Except as provided in Subsection 78B-6-131(2), in addition to the other
1071 requirements of this section, before a child in state custody is placed with a prospective foster
1072 parent or a prospective adoptive parent, the Department of Human Services shall comply with
1073 Section 78B-6-131.

1074 Section 12. Section **78B-6-131** is amended to read:

1075 **78B-6-131. Child in custody of state -- Placement.**

1076 (1) Notwithstanding ~~[any other provision of this section, except as otherwise permitted~~
1077 ~~by federal law or rule]~~ Sections 78B-6-128 through 78B-6-130, and except as provided in
1078 Subsection (2), a child who is in the legal custody of the state may not be placed with a
1079 prospective foster parent or a prospective adoptive parent, unless, before the child is placed
1080 with the prospective foster parent or the prospective adoptive parent:

1081 ~~[(+)]~~ (a) a fingerprint based FBI national criminal history records check is conducted on
1082 the prospective foster parent or prospective adoptive parent ~~[and each adult living in the home~~
1083 ~~of the prospective foster parent or prospective adoptive parent];~~

1084 ~~[(2)]~~ (b) the Department of Human Services conducts a check of the child abuse and
1085 neglect registry in each state where the prospective foster parent or prospective adoptive parent
1086 resided in the five years immediately preceding the day on which the prospective foster parent
1087 or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
1088 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
1089 having a substantiated or supported finding of child abuse or neglect;

1090 ~~[(3)]~~ (c) the Department of Human Services conducts a check of the child abuse and
1091 neglect registry of each state where each adult living in the home of the prospective foster
1092 parent or prospective adoptive parent described in Subsection ~~[(2)]~~ (1)(b) resided in the five
1093 years immediately preceding the day on which the prospective foster parent or prospective

1094 adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult
1095 is listed in the registry as having a substantiated or supported finding of child abuse or neglect;
1096 and

1097 ~~[(4)]~~ (d) each person required to undergo a background check described in this section
1098 passes the background check, pursuant to the provisions of Section 62A-2-120.

1099 (2) The requirements under Subsection (1) do not apply to the extent that:

1100 (a) federal law or rule permits otherwise; or

1101 (b) the requirements would prohibit the division or a court from placing a child with:

1102 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

1103 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending

1104 completion of the background check described in Subsection (1).

1105 Section 13. **Effective date.**

1106 If approved by two-thirds of all the members elected to each house, this bill takes effect

1107 upon approval by the governor, or the day following the constitutional time limit of Utah

1108 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

1109 the date of veto override.