

CHILD WELFARE AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Margaret Dayton

LONG TITLE

Committee Note:

The Health and Human Services Interim Committee recommended this bill.

The Child Welfare Legislative Oversight Panel recommended this bill.

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



28 of Human Services;

29 ▶ provides that priority shall be given for placing a child with a noncustodial parent,
30 relative, or friend, over placing the child in a shelter;

31 ▶ modifies provisions relating to the placement and custody of a child who has been
32 removed from the custody of the child's parents;

33 ▶ provides that, in order to be considered a "willing relative or friend" for purposes of
34 determining placement of a child following a shelter care hearing, the friend or
35 relative must be willing to cooperate with the child's permanency goal;

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

38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 **AMENDS:**

45 **62A-2-120**, as last amended by Laws of Utah 2007, Chapter 152

46 **62A-4a-202.1**, as last amended by Laws of Utah 2007, Chapter 169

47 **62A-4a-206**, as last amended by Laws of Utah 2002, Chapter 306

48 **62A-4a-209**, as last amended by Laws of Utah 2007, Chapter 169

49 **62A-5-103.5**, as last amended by Laws of Utah 2007, Chapter 152

50 **78-3a-306**, as last amended by Laws of Utah 2007, Chapter 169

51 **78-3a-307**, as last amended by Laws of Utah 2007, Chapters 169 and 255

52 **78-3a-307.1**, as last amended by Laws of Utah 2007, Chapter 152

53 **78-3a-315**, as last amended by Laws of Utah 2002, Chapter 306

54 **78-30-3.5**, as last amended by Laws of Utah 2007, Chapter 152

55 **78-30-3.6**, as last amended by Laws of Utah 2007, Chapters 152 and 196



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

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

59 **62A-2-120. Criminal background checks -- Direct access to children or**
60 **vulnerable adults.**

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

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

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

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

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

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

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

85 (f) Notwithstanding ~~[any other provision of this Subsection (1)]~~ Subsections (1)(a)
86 through (e), and except as provided in Subsection (1)(h), an applicant described in Subsection
87 (1)(a) shall submit fingerprints for an FBI national criminal history records check, through the
88 Criminal Investigations and Technical Services Division, if the background check of the
89 applicant is being conducted for the purpose of:

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

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

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

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

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

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

112 (A) a noncustodial parent under Section 62A-4a-209 or 78-3a-307; or

113 (B) a relative, under Section 62A-4a-209 or 78-3a-307, pending completion of the
114 background check described in Subsections (1)(f) and (g).

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

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

- 121 (a) (i) the person is found to have no criminal history record; or
122 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
123 or infractions not involving any of the offenses described in Subsection (3); and
124 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
125 before the date of the search;
- 126 (b) the person is not listed in the statewide database of the Division of Aging and Adult
127 Services created by Section 62A-3-311.1;
- 128 (c) juvenile court records do not show that a court made a substantiated finding, under
129 Section 78-3a-320, that the person committed a severe type of child abuse or neglect;
- 130 (d) the person is not listed in the Licensing Information System of the Division of
131 Child 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, that the person committed a severe type of child abuse or neglect;
- 178 (v) the person is listed in the Licensing Information System of the Division of Child
179 and Family Services created by Section 62A-4a-1006; or
- 180 (vi) the person is listed in a child abuse or neglect registry of another state as having a
181 substantiated or supported finding of a severe type of child abuse or neglect as defined in
182 Section 62A-4a-1002.

- 183 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
184 (i) the date of the offense or incident;
185 (ii) the nature and seriousness of the offense or incident;
186 (iii) the circumstances under which the offense or incident occurred;
187 (iv) the age of the perpetrator when the offense or incident occurred;
188 (v) whether the offense or incident was an isolated or repeated incident;
189 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable

190 adult, including:

- 191 (A) actual or threatened, nonaccidental physical or mental harm;
192 (B) sexual abuse;
193 (C) sexual exploitation; and
194 (D) negligent treatment;
195 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
196 treatment received, or additional academic or vocational schooling completed, by the person;
197 and
198 (viii) any other pertinent information.

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

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

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

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

211 (i) associated with the licensee and:

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

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

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

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

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

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

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

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

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

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

231 (i) the office's decision regarding its background screening clearance and findings; and

232 (ii) a list of any convictions found in the search.

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

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

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

242 (i) defining procedures for the challenge of its background screening decision
243 described in this Subsection (6); and

244 (ii) expediting the process for renewal of a license under the requirements of this

245 section and other applicable sections.

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

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

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

253 (A) child abuse, as described in Section 76-5-109;

254 (B) commission of domestic violence in the presence of a child, as described in Section
255 76-5-109.1;

256 (C) abuse or neglect of a disabled child, as described in Section 76-5-110;

257 (D) endangerment of a child, as described in Section 76-5-112.5;

258 (E) aggravated murder, as described in Section 76-5-202;

259 (F) murder, as described in Section 76-5-203;

260 (G) manslaughter, as described in Section 76-5-205;

261 (H) child abuse homicide, as described in Section 76-5-208;

262 (I) homicide by assault, as described in Section 76-5-209;

263 (J) kidnapping, as described in Section 76-5-301;

264 (K) child kidnapping, as described in Section 76-5-301.1;

265 (L) aggravated kidnapping, as described in Section 76-5-302;

266 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

267 (N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;

268 (O) aggravated arson, as described in Section 76-6-103;

269 (P) aggravated burglary, as described in Section 76-6-203;

270 (Q) aggravated robbery, as described in Section 76-6-302; or

271 (R) domestic violence, as described in Section 77-36-1; or

272 (ii) an offense committed outside the state that, if committed in the state, would
273 constitute a violation of an offense described in Subsection (8)(a)(i).

274 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
275 a person as a prospective foster parent or a prospective adoptive parent if, within the five years

276 immediately preceding the day on which the person would otherwise be approved or licensed,
277 the person has been convicted of a felony involving conduct that constitutes any of the
278 following:

- 279 (i) aggravated assault, as described in Section 76-5-103;
- 280 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 281 (iii) mayhem, as described in Section 76-5-105;
- 282 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 283 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 284 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
285 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(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
301 services available that, if provided to a parent or guardian of the child, would eliminate the
302 need to 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
310 based 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
316 Family Services shall give priority to a placement with a noncustodial parent, relative, or
317 friend, in 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)~~(1)(b),
337 who obtained custody or asserted an interest in the child within the preference period described

338 in Subsection 78-3a-307~~(8)~~(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
343 63, 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
349 child.

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

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

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

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

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

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

367 (c) written notification of the foster parents' ability to petition the juvenile court
368 directly for review of a decision to remove a foster child who has been in their custody for 12

369 months or longer, in accordance with the limitations and requirements of Section 78-3a-315.

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

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

373 **62A-4a-209. Emergency placement.**

374 (1) As used in this section:

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

376 (b) "Relative" is as defined in Subsection 78-3a-307(1)(b).

377 ~~[(+)]~~ (2) The division may use an emergency placement under Subsection
378 62A-4a-202.1(4)(b)(ii) when:

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

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

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

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

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

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

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

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

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

394 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
395 with the child until after the shelter hearing unless authorized by the division in writing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

427 (i) a noncustodial parent of the child in accordance with Section 78-3a-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
446 relation 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;

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~~
461 ~~(5)]; 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~~
465 ~~is placed, each individual living in the household in which the child is placed who has not lived~~
466 ~~in the state substantially year round for the most recent five consecutive years ending on the~~
467 ~~date the investigation is commenced shall be fingerprinted. If no disqualifying record is~~
468 ~~identified at the state level, the fingerprints shall be forwarded by the division to the Federal~~
469 ~~Bureau of 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 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
526 an initial license under Section 62A-2-120.

527 (4) The background check and the approval determination described in this section
528 shall 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
540 in the home where the child will be placed resided in the five years immediately preceding the
541 day 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 **78-3a-306** is amended to read:

545 **78-3a-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 78-3a-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 78-3a-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
577 be 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 78-3a-305.5, 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
599 the 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 78-3a-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
626 not 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
628 household has been physically or sexually abused, or is considered to be at substantial risk of
629 being 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
650 established 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
657 evidence 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 78-3a-103(1)(u)(ii).

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
688 and Family Services.

689 Section 7. Section **78-3a-307** is amended to read:

690 **78-3a-307. Shelter hearing -- Placement -- DCFS custody.**

691 (1) As used in this section:

692 (a) (i) "Natural parent," notwithstanding the provisions of Section 78-3a-103, 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 Section 78-30-4.14, prior to removal of
699 the child or voluntary surrender of the child by the custodial parent.

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

703 (b) "Relative" means:

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

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

709 [(+)] (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 78-3a-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 78-3a-103, 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 Section 78-30-4.14 prior~~
723 ~~to removal of the child or voluntary surrender of the child by the custodial parent. This~~
724 ~~definition applies regardless of whether the child has been or will be placed with adoptive~~
725 ~~parents or whether adoption has been or will be considered as a long term goal for the child.]~~

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

729 (ii) The court shall, at a minimum, order the division to visit the parent's home,
730 ~~[perform]~~ comply with the criminal background ~~[checks]~~ check provisions described in
731 ~~[Sections]~~ Section 78-3a-307.1 ~~[and 62A-4a-202.4]~~, and check the division's management
732 information system for any previous reports of abuse or neglect received by the division
733 regarding the parent at issue.

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

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

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

739 ~~[(2)]~~ (3) If the court orders placement with a parent under Subsection ~~[(1);]~~ (2):

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

741 (b) the court may order:

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

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

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

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

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

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

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

752 (c) the child should be placed [~~with~~] in the custody of a relative, pursuant to
753 [~~Subsection (5)~~] Subsections (7) through (12); or

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

755 [~~(3)~~] (5) The time limitations described in Section 78-3a-311 with regard to
756 reunification efforts, apply to children placed with a previously noncustodial parent in
757 accordance with Subsection [~~(1)~~] (2).

758 [~~(4)~~] (6) Legal custody of the child is not affected by an order entered under Subsection
759 [~~(1)~~ ~~or~~] (2) or (3). In order to affect a previous court order regarding legal custody, the party
760 must petition that court for modification of the order.

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

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

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

771 (c) shall order the parents to cooperate with the division, within five working days, to,

772 subject to ~~[Subsection (8)(c)]~~ Subsections (18)(c) through (e), provide information regarding
773 relatives of the child or friends who may be able and willing to care for the child~~[-]; and~~

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

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

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

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

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

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

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

790 ~~[(ii) The]~~ (11) (a) In making the finding described in Subsection (10)(a), the court
791 shall, at a minimum, order the division to ~~[conduct criminal background checks described in~~
792 ~~Sections 78-3a-307.1 and 62A-4a-202.4.];~~

793 (i) if the child may be placed with a relative:

794 (A) conduct a background check of the noncustodial parent or relative that includes:

795 (I) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
796 background check; and

797 (II) a completed search of the Management Information System described in Section
798 62A-4a-1003; and

799 (B) conduct a background check that complies with the criminal background check
800 provisions described in Section 78-3a-307.1, of each adult nonrelative, as defined in
801 Subsection 62A-4a-209(1)(a), of the child who resides in the household where the child may be
802 placed;

803 (ii) if the child will be placed with a noncustodial parent of the child, complete the
804 same background check requirements applicable to an emergency placement with a
805 noncustodial parent, as described in Section 62A-4a-209;

806 (iii) if the child may be placed with an individual other than a noncustodial parent or a
807 relative of the child, conduct a criminal background check of the individual, and each adult that
808 resides in the household where the child may be placed, that complies with the criminal
809 background check provisions described in Section 78-3a-307.1;

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

811 (v) check the division's Management Information System for any previous reports of
812 abuse or neglect regarding the relative or friend at issue[;];

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

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

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

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

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

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

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

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

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

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

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

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

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

841 [(~~6~~)(a)] (13) When the court [~~vests physical~~] awards custody and guardianship of a
842 child with a relative or friend [pursuant to Subsection (5), it]:

843 (a) the court shall order that:

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

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

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

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

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

856 [(b)(i) Placement with a relative or friend pursuant to Subsection (5)]

857 (e) the court shall [~~be periodically reviewed by the court;~~] conduct a periodic review no
858 less often than every six months, to determine whether:

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

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

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

863 [(ii)] (14) No later than 12 months after placement with a relative or friend, the court
864 shall schedule a hearing for the purpose of entering a permanent order in accordance with the

865 best interest of the child.

866 ~~[(iii)]~~ (15) The time limitations described in Section 78-3a-311, with regard to
867 reunification efforts, apply to children placed with a relative or friend pursuant to Subsection
868 ~~[(5)]~~ (7).

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

871 (i) conduct a criminal background check of the relative that complies with the criminal
872 background check provisions described in Section 78-3a-307.1; and

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

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

877 (B) within one day, excluding weekends and holidays, of taking the child into physical
878 custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all parties to the
879 proceedings, of the division's action.

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

883 ~~[(7)]~~ (17) When the court orders that a child be removed from the custody of the child's
884 parent and does not ~~[vest custody in]~~ award custody and guardianship to another parent,
885 relative, or friend under this section, the court shall order that the child be placed in the
886 temporary custody of the Division of Child and Family Services, to proceed to adjudication and
887 disposition and to be provided with care and services in accordance with this chapter and Title
888 62A, Chapter 4a, Child and Family Services.

889 ~~[(8)]~~ (18) (a) Any preferential consideration that a relative or friend is initially granted
890 pursuant to Subsection ~~[(5)]~~ (9) expires 120 days from the date of the shelter hearing. After
891 that time period has expired, a relative or friend who has not obtained custody or asserted an
892 interest in a child, may not be granted preferential consideration by the division or the court.

893 (b) When the time period described in Subsection ~~[(8)]~~ (18)(a) has expired, the
894 preferential consideration which is initially granted to a natural parent in accordance with
895 Subsection ~~[(1)]~~ (2), is limited. After that time the court shall base its custody decision on the

896 best interest of the child.

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

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

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

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

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

906 [(†)] (d) In determining whether a friend is a willing and appropriate placement for a
907 child, neither the court, nor the division, is required to consider more than one friend
908 designated by each parent of the child.

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

912 [(A)] (i) the department shall fully cooperate to expedite the licensing process for the
913 friend; and

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

917 [(9)] (19) If, following the shelter hearing, the child is placed with a person who is not
918 a parent of the child, a relative of the child, a friend of a parent of the child, or a former foster
919 parent of the child, priority shall be given to a foster placement with a man and a woman who
920 are married to each other, unless it is in the best interests of the child to place the child with a
921 single foster parent.

922 [(10)] (20) In determining the placement of a child, neither the court, nor the [~~Division~~
923 ~~of Child and Family Services~~] division, may take into account, or discriminate against, the
924 religion of a person with whom the child may be placed, unless the purpose of taking religion
925 into account is to place the child with a person or family of the same religion as the child.

926 Section 8. Section **78-3a-307.1** is amended to read:

927 **78-3a-307.1. Criminal background checks for out-of-home placement.**

928 (1) ~~[Upon]~~ Subject to Subsection (3), upon ordering removal of a child from the
929 custody of the child's parent and placing that child in the custody of the Division of Child and
930 Family Services, prior to the division's placement of that child in out-of-home care, the court
931 shall require the completion of a nonfingerprint background check by the Utah Bureau of
932 Criminal Identification regarding the proposed placement.

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

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

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

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

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

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

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

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

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

970 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial
971 parent or relative under Section 62A-4a-209 or 78-3a-307, unless the court finds that
972 compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the child.

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

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

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

976 (i) a noncustodial parent, under Section 62A-4a-209 or 78-3a-307; or

977 (ii) a relative, under Section 62A-4a-209 or 78-3a-307, pending completion of the

978 background check described in Subsection (3).

979 Section 9. Section **78-3a-315** is amended to read:

980 **78-3a-315. Review of foster care removal -- Foster parent's standing.**

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

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

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

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

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

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

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

998 (iii) placing the child with a relative, as defined in Subsection 78-3a-307~~[(5)(d)]~~(1)(b),
 999 who obtained custody or asserted an interest in the child within the preference period described
 1000 in Subsection 78-3a-307~~[(8)]~~(18)(a); or

1001 (iv) placing an Indian child in accordance with preplacement preferences and other
 1002 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

1003 (b) The foster parent may petition the court under this section without exhausting
 1004 administrative remedies within the division.

1005 (c) The court may order the division to place the child in a specified home, and shall
 1006 base its determination on the best interest of the child.

1007 (4) The requirements of this section do not apply to the removal of a child based on a
 1008 foster parent's request for that removal.

1009 Section 10. Section **78-30-3.5** is amended to read:

1010 **78-30-3.5. Preplacement and postplacement adoptive evaluations -- Exceptions.**

1011 (1) (a) Except as otherwise provided in this section, a child may not be placed in an
 1012 adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive
 1013 parent and the prospective adoptive home, has been conducted in accordance with the
 1014 requirements of this section.

1015 (b) Except as provided in Subsection (8), the court may, at any time, authorize
 1016 temporary placement of a child in a potential adoptive home pending completion of a
 1017 preplacement adoptive evaluation described in this section.

1018 (c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be
 1019 adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by

1020 half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the
1021 evaluation is otherwise requested by the court. The prospective adoptive parent described in
1022 this Subsection (1)(c) shall, however, obtain the information described in Subsections (2)(a)
1023 and (b), and file that documentation with the court prior to finalization of the adoption.

1024 (d) The required preplacement adoptive evaluation must be completed or updated
1025 within the 12-month period immediately preceding the placement of a child with the
1026 prospective adoptive parent. If the prospective adoptive parent has previously received custody
1027 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed
1028 or updated within the 12-month period immediately preceding the placement of a child with the
1029 prospective adoptive parent and after the placement of the previous child with the prospective
1030 adoptive parent.

1031 (2) The preplacement adoptive evaluation shall include:

1032 (a) criminal history record information regarding each prospective adoptive parent and
1033 any other adult living in the prospective home, prepared by a law enforcement agency based on
1034 a fingerprint criminal history check, no earlier than 18 months immediately preceding
1035 placement of the child;

1036 (b) a report prepared by the Department of Human Services containing all information
1037 regarding reports and investigation of child abuse, neglect, and dependency, with respect to
1038 each prospective adoptive parent and any other adult living in the prospective home, obtained
1039 no earlier than 18 months immediately preceding placement of the child, pursuant to waivers
1040 executed by those parties;

1041 (c) an evaluation conducted by an expert in family relations approved by the court or a
1042 certified social worker, clinical social worker, marriage and family therapist, psychologist,
1043 professional counselor, or other court-determined expert in family relations, who is licensed to
1044 practice under the laws of this state or under the laws of the state where the prospective
1045 adoptive parent or other person living in the prospective adoptive home resides. The
1046 evaluation shall be in a form approved by the Department of Human Services. Neither the
1047 Department of Human Services nor any of its divisions may proscribe who qualifies as an
1048 expert in family relations or who may conduct evaluations pursuant to this Subsection (2); and

1049 (d) if the child to be adopted is a child who is in the custody of any public child welfare
1050 agency, and is a child with special needs as defined in Subsection 62A-4a-902(2), the

1051 preplacement evaluation must be conducted by the Department of Human Services or a
1052 licensed child placing agency which has entered into a contract with the department to conduct
1053 the preplacement evaluations for children with special needs. Any fee assessed by the
1054 evaluating agency is the responsibility of the adopting parent or parents.

1055 (3) The person or agency conducting the preplacement adoptive evaluation shall, in
1056 connection with the evaluation, provide the prospective adoptive parent or parents with
1057 literature approved by the Division of Child and Family Services relating to adoption, and
1058 including information relating to the adoption process, developmental issues that may require
1059 early intervention, and community resources that are available to the adoptive parent or parents.

1060 (4) A copy of the preplacement adoptive evaluation shall be filed with the court.

1061 (5) (a) Except as provided in Subsections (5)(b) and (c), a postplacement evaluation
1062 shall be conducted and submitted to the court prior to the final hearing in an adoption
1063 proceeding. The postplacement evaluation shall include:

1064 (i) verification of the allegations of fact contained in the petition for adoption;
1065 (ii) an evaluation of the progress of the child's placement in the adoptive home; and
1066 (iii) a recommendation regarding whether the adoption is in the best interest of the
1067 child.

1068 (b) The exemptions from and requirements for evaluations, described in Subsections
1069 (1)(c), (2)(c), and (3), also apply to postplacement adoptive evaluations.

1070 (c) Upon the request of the petitioner, the court may waive the postplacement adoptive
1071 evaluation, unless it determines that it is in the best interest of the child to require the
1072 postplacement evaluation. Except where the child to be adopted and the prospective parent are
1073 related as set forth in Subsection (1)(c), the court may waive the postplacement adoptive
1074 evaluation for a child with special needs as defined in Section 62A-4a-902.

1075 (6) If the person or agency conducting the evaluation disapproves the adoptive
1076 placement, either in the preplacement or postplacement adoptive evaluation, the court may
1077 dismiss the petition. However, upon request of a prospective adoptive parent, the court shall
1078 order that an additional preplacement or postplacement adoptive evaluation be conducted, and
1079 hold a hearing on the suitability of the adoption, including testimony of interested parties.

1080 (7) Prior to finalization of a petition for adoption the court shall review and consider
1081 the information and recommendations contained in the preplacement and postplacement

1082 adoptive studies required by this section.

1083 (8) Notwithstanding [~~any other provision of this section, except as otherwise permitted~~
1084 ~~by federal law or rule~~] Subsections (1) through (7), and except as provided in Subsection (9), a
1085 child who is in the legal custody of the state may not be placed with a prospective foster parent
1086 or a prospective adoptive parent, unless, before the child is placed with the prospective foster
1087 parent or the prospective adoptive parent:

1088 (a) a fingerprint based FBI national criminal history records check is conducted on the
1089 prospective foster parent or prospective adoptive parent [~~and each adult living in the home of~~
1090 ~~the prospective foster parent or prospective adoptive parent~~];

1091 (b) the Department of Human Services conducts a check of the child abuse and neglect
1092 registry in each state where the prospective foster parent or prospective adoptive parent resided
1093 in the five years immediately preceding the day on which the prospective foster parent or
1094 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
1095 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
1096 having a substantiated or supported finding of child abuse or neglect;

1097 (c) the Department of Human Services conducts a check of the child abuse and neglect
1098 registry of each state where each adult living in the home of the prospective foster parent or
1099 prospective adoptive parent described in Subsection (8)(b) resided in the five years
1100 immediately preceding the day on which the prospective foster parent or prospective adoptive
1101 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
1102 in the registry as having a substantiated or supported finding of child abuse or neglect; and

1103 (d) each person required to undergo a background check described in this Subsection
1104 (8) passes the background check, pursuant to the provisions of Section 62A-2-120.

1105 (9) The requirements under Subsection (8) do not apply to the extent that:

1106 (a) federal law or rule permits otherwise; or

1107 (b) the requirements would prohibit the division or a court from placing a child with:

1108 (i) a noncustodial parent, under Section 62A-4a-209 or 78-3a-307; or

1109 (ii) a relative, under Section 62A-4a-209 or 78-3a-307, pending completion of the
1110 background check described in Subsection (8).

1111 Section 11. Section **78-30-3.6** is amended to read:

1112 **78-30-3.6. Prospective parent not a resident -- Preplacement requirements.**

1113 (1) When an adoption petition is to be finalized in this state with regard to any
1114 prospective adoptive parent who is not a resident of this state at the time a child is placed in
1115 that person's home, the potential adoptive parent shall:

1116 (a) comply with the provisions of Section 78-30-3.5; and

1117 (b) (i) if the child is in state custody, submit fingerprints for a Federal Bureau of
1118 Investigation national criminal history record check through the Criminal and Technical
1119 Services Division of the Department of Public Safety in accordance with the provisions of
1120 Section 62A-2-120; or

1121 (ii) subject to Subsection (2), if the child is not in state custody:

1122 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
1123 records check as a personal records check; or

1124 (B) complete a criminal records check and child abuse database check for each state
1125 and, if available, country, where the potential adoptive parent resided during the five years
1126 immediately preceding the day on which the adoption petition is to be finalized.

1127 (2) For purposes of Subsection (1)(b)(ii):

1128 (a) if the adoption is being handled by a human services program, as defined in Section
1129 62A-2-101:

1130 (i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted
1131 in accordance with procedures established by the Criminal Investigations and Technical
1132 Services Division of the Department of Public Safety; and

1133 (ii) subject to Subsection (3), the criminal history check described in Subsection
1134 (1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:

1135 (A) preserve the chain of custody of the results; and

1136 (B) not permit tampering with the results by a prospective adoptive parent or other
1137 interested party; and

1138 (b) if the adoption is being handled by a private attorney, and not a human services
1139 program, the criminal history checks described in Subsection (1)(b)(ii), shall be:

1140 (i) submitted in accordance with procedures established by the Criminal Investigations
1141 and Technical Services Division of the Department of Public Safety; or

1142 (ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:

1143 (A) preserve the chain of custody of the results; and

1144 (B) not permit tampering with the results by a prospective adoptive parent or other
1145 interested party.

1146 (3) In order to comply with Subsection (2)(a)(ii) of (b)(ii), the manner in which the
1147 criminal history check is submitted shall be approved by the court.

1148 (4) ~~In~~ Except as provided in Subsection 78-30-3.5(9), in addition to the other
1149 requirements of this section, before a child in state custody is placed with a prospective foster
1150 parent or a prospective adoptive parent, the Department of Human Services shall comply with
1151 Subsections 78-30-3.5(8)(a) through (d).

Legislative Review Note
as of 11-6-07 11:24 AM

Office of Legislative Research and General Counsel

H.B. 36 - Child Welfare Amendments

Fiscal Note

2008 General Session
State of Utah

State Impact

Passage of this legislation will result in a loss in federal Title IVE funding of \$147,400 to allow kinship placements before completion of the background checks required by the federal Adam Walsh legislation. In order to maintain the same level of support, the Division of Child and Family Services will require an appropriation from General Funds of \$147,400 to offset the loss of federal funds.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$147,400	\$147,400	\$0	\$0	\$0
Federal Funds	\$0	(\$147,400)	(\$147,400)	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
