

**Senator Margaret Dayton** proposes the following substitute bill:

**CHILD WELFARE AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

Senate Sponsor: Margaret Dayton

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**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;



- 26           ▶ provides that priority shall be given for placing a child with a noncustodial parent,  
27 relative, or friend, over placing the child in a shelter;
- 28           ▶ modifies provisions relating to the placement and custody of a child who has been  
29 removed from the custody of the child's parents;
- 30           ▶ provides that, in order to be considered a "willing relative or friend" for purposes of  
31 determining placement of a child following a shelter care hearing, the friend or  
32 relative must be willing to cooperate with the child's permanency goal;
- 33           ▶ describes the limited background check or investigation that must be completed  
34 before a child in state custody is placed with a noncustodial parent or relative; and
- 35           ▶ makes technical changes.

36 **Monies Appropriated in this Bill:**

37           None

38 **Other Special Clauses:**

39           This bill provides an immediate effective date.

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42           **62A-2-120**, as last amended by Laws of Utah 2007, Chapter 152
- 43           **62A-4a-202.1**, as last amended by Laws of Utah 2007, Chapter 169
- 44           **62A-4a-206**, as last amended by Laws of Utah 2002, Chapter 306
- 45           **62A-4a-209**, as last amended by Laws of Utah 2007, Chapter 169
- 46           **62A-5-103.5**, as last amended by Laws of Utah 2007, Chapter 152
- 47           **78A-6-306**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 48           **78A-6-307**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 49           **78A-6-308**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 50           **78A-6-318**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 51           **78B-6-113**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 52           **78B-6-131**, as enacted by Laws of Utah 2008, Chapter 3

53 ENACTS:

54           **78A-6-307.5**, Utah Code Annotated 1953



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

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

58 **62A-2-120. Criminal background checks -- Direct access to children or**  
59 **vulnerable adults.**

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

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

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

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

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

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

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

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

88 applicant is being conducted for the purpose of:

89 (i) licensing a prospective foster home; or

90 (ii) approving a prospective adoptive placement of a child in state custody.

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

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

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

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

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

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

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

112 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,  
113 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)  
114 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~~] 78A-6-323, that the person committed a severe type of child abuse or  
130 neglect;

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

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

134 (i) felony;

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

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

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

141 (3) Except as provided in Subsection (8), unless at least ten years have passed since the  
142 date of conviction, the office may not approve a person to have direct access to children or  
143 vulnerable adults in the licensee's human services program if that person has been convicted of  
144 an offense, whether a felony, misdemeanor, or infraction, that is:

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

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

147 (c) prostitution;

148 (d) included in:

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

- 150 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or
- 151 (iii) Title 76, Chapter 7, Offenses Against the Family;
- 152 (e) a violation of Section 76-6-103, aggravated arson;
- 153 (f) a violation of Section 76-6-203, aggravated burglary;
- 154 (g) a violation of Section 76-6-302, aggravated robbery; or
- 155 (h) a conviction for an offense committed outside of the state that, if committed in the
- 156 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

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

- 163 (i) a conviction for:
  - 164 (A) any felony not listed in Subsection (3);
  - 165 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
  - 166 date of the search;
  - 167 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
  - 168 a similar statute in another state; or
  - 169 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years
  - 170 have passed since the date of conviction;
- 171 (ii) a plea of guilty or no contest to a pending:
  - 172 (A) felony;
  - 173 (B) misdemeanor listed in Subsection (3); or
  - 174 (C) infraction listed in Subsection (3);
- 175 (iii) the person is listed in the statewide database of the Division of Aging and Adult
- 176 Services created by Section 62A-3-311.1;
- 177 (iv) juvenile court records show that a court made a substantiated finding, under
- 178 Section [~~78-3a-320~~] 78A-6-323, that the person committed a severe type of child abuse or
- 179 neglect;
- 180 (v) the person is listed in the Licensing Information System of the Division of Child

181 and Family Services created by Section 62A-4a-1006; or

182 (vi) the person is listed in a child abuse or neglect registry of another state as having a  
183 substantiated or supported finding of a severe type of child abuse or neglect as defined in  
184 Section 62A-4a-1002.

185 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:

186 (i) the date of the offense or incident;

187 (ii) the nature and seriousness of the offense or incident;

188 (iii) the circumstances under which the offense or incident occurred;

189 (iv) the age of the perpetrator when the offense or incident occurred;

190 (v) whether the offense or incident was an isolated or repeated incident;

191 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable  
192 adult, including:

193 (A) actual or threatened, nonaccidental physical or mental harm;

194 (B) sexual abuse;

195 (C) sexual exploitation; and

196 (D) negligent treatment;

197 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric  
198 treatment received, or additional academic or vocational schooling completed, by the person;  
199 and

200 (viii) any other pertinent information.

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

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

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

211 (b) A licensee may not permit any person to have direct access to a child or a

212 vulnerable adult unless, subject to Subsection (5)(c), that person is:

213 (i) associated with the licensee and:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

242 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the



243 office shall make rules, consistent with this chapter:

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

246 (ii) expediting the process for renewal of a license under the requirements of this  
247 section and other applicable sections.

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

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

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

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

256 (B) commission of domestic violence in the presence of a child, as described in Section  
257 76-5-109.1;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

276 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license  
277 a person as a prospective foster parent or a prospective adoptive parent if, within the five years  
278 immediately preceding the day on which the person would otherwise be approved or licensed,  
279 the person has been convicted of a felony involving conduct that constitutes any of the  
280 following:

281 (i) aggravated assault, as described in Section 76-5-103;

282 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

283 (iii) mayhem, as described in Section 76-5-105;

284 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

285 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

286 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances  
287 Act;

288 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance  
289 Precursor Act; or

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

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

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

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

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

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

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

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

310 (4) (a) A child removed or taken into custody under this section may not be placed or  
311 kept in a secure detention facility pending court proceedings unless the child is detainable  
312 based on guidelines promulgated by the Division of Juvenile Justice Services.

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

315 (i) a shelter facility; or

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

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

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

321 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**  
322 **process.**

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

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

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

- 336 (i) returning the child to the child's natural parent or legal guardian;
- 337 (ii) immediately placing the child in an approved adoptive home;
- 338 (iii) placing the child with a relative, as defined in Subsection [~~78-3a-307(5)(d)~~  
339 78A-6-307(1)(b), who obtained custody or asserted an interest in the child within the  
340 preference period described in Subsection [~~78-3a-307(8)~~] 78A-6-307(18)(a); or
- 341 (iv) placing an Indian child in accordance with preplacement preferences and other  
342 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.
- 343 (2) (a) The division shall maintain and utilize due process procedures for removal of a  
344 foster child from a foster home, in accordance with the procedures and requirements of Title  
345 63, Chapter 46b, Administrative Procedures Act.
- 346 (b) Those procedures shall include requirements for:
- 347 (i) personal communication with and explanation to foster parents prior to removal of  
348 the child; and
- 349 (ii) an opportunity for foster parents to present their information and concerns to the  
350 division and to request a review by a third party neutral fact finder prior to removal of the  
351 child.
- 352 (c) If the division determines that there is a reasonable basis to believe that the child is  
353 in danger or that there is a substantial threat of danger to the health or welfare of the child, it  
354 shall place the child in emergency foster care during the pendency of the procedures described  
355 in this subsection, instead of making another foster care placement.
- 356 (3) If the division removes a child from a foster home based upon the child's statement  
357 alone, the division shall initiate and expedite the processes described in Subsection (2). The  
358 division may take no formal action with regard to that foster parent's license until after those  
359 processes, in addition to any other procedure or hearing required by law, have been completed.
- 360 (4) When a complaint is made to the division by a foster child against a foster parent,  
361 the division shall, within 30 business days, provide the foster parent with information regarding  
362 the specific nature of the complaint, the time and place of the alleged incident, and who was  
363 alleged to have been involved.
- 364 (5) Whenever the division places a child in a foster home, it shall provide the foster  
365 parents with:
- 366 (a) notification of the requirements of this section;

367 (b) a written description of the procedures enacted by the division pursuant to  
368 Subsection (2) and how to access those processes; and  
369 (c) written notification of the foster parents' ability to petition the juvenile court  
370 directly for review of a decision to remove a foster child who has been in their custody for 12  
371 months or longer, in accordance with the limitations and requirements of Section [~~78-3a-315~~  
372 78A-6-318].

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

375 Section 4. Section ~~62A-4a-209~~ is amended to read:

376 **~~62A-4a-209~~. Emergency placement.**

377 (1) As used in this section:

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

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

380 [~~(1)~~] (2) The division may use an emergency placement under Subsection  
381 ~~62A-4a-202.1(4)(b)(ii)~~ when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

408 [~~2~~] ~~Before~~ (3) Except as otherwise provided in Subsection (5), before the division  
409 places a child in an emergency placement, the division:

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

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

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

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

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

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

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

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

427 [~~3~~] (4) (a) The following order of preference shall be applied when determining the  
428 person with whom a child will be placed in an emergency placement described in this section,

429 provided that the person is willing, and has the ability, to care for the child:

430 (i) a noncustodial parent of the child in accordance with Section [~~78-3a-307~~]

431 78A-6-307;

432 (ii) a relative of the child;

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

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

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

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

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

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

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

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

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

454 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

455 (ii) inspection of the home where the emergency placement is made.

456 [~~(4)~~] (6) After an emergency placement, the division caseworker must:

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

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

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

463 (d) complete the placement procedures required in Section ~~[78-3a-307, including,~~  
464 ~~within five days after placement, the criminal history record check described in Subsection (5)]~~  
465 78A-6-307; and

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

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

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

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

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

480 (ii) a completed search of the Management Information System described in Section  
481 62A-4a-1003.

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

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

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

488 **62A-5-103.5. Disbursal of public funds -- Background check of a direct service**  
489 **worker.**

490 (1) For purposes of this section:



491 (a) "directly supervised" means that the person being supervised is under the  
492 uninterrupted visual and auditory surveillance of the person doing the supervising; and  
493 (b) "office" is as defined in Section 62A-2-101.

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

496 (a) subject to Subsection (5), the direct service worker is approved by the office to have  
497 direct access and provide services to children or vulnerable adults pursuant to Section  
498 62A-2-120;

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

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

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

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

510 (c) except as provided in Subsection (5), the direct service worker:

511 (i) (A) is a direct ancestor or descendent of the person to whom the services are  
512 rendered, but is not the person's parent;

513 (B) is the aunt, uncle, or sibling of the person to whom the services are rendered; or  
514 (C) (I) has submitted the information required for a background check pursuant to  
515 Section 62A-2-120; and

516 (II) the office has not determined whether to approve the direct service worker to have  
517 direct access and provide services to children or vulnerable adults; and

518 (ii) is not listed in:

519 (A) the Licensing Information System of the Division of Child and Family Services  
520 created by Section 62A-4a-1006;

521 (B) the statewide database of the Division of Aging and Adult Services created by

522 Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation; or

523 (C) juvenile court records as having a substantiated finding under Section [~~78-3a-320~~]

524 78A-6-323 that the direct service worker committed a severe type of child abuse or neglect.

525 (3) For purposes of Subsection (2), the office shall conduct a background check of a  
526 direct service worker:

527 (a) except as provided in Subsection (2)(b) or (c), before public funds are disbursed to  
528 pay the direct service worker for the personal services described in Subsection (2); and

529 (b) using the same procedures established for a background check of an applicant for  
530 an initial license under Section 62A-2-120.

531 (4) The background check and the approval determination described in this section  
532 shall be conducted for a direct service worker on an annual basis.

533 (5) Notwithstanding [~~any other provision of this section~~] Subsections (1) through (4),  
534 and except as provided in Subsection (6), a child who is in the legal custody of the department  
535 or any of the department's divisions may not be placed with a direct service worker unless,  
536 before the child is placed with the direct service worker, the direct service worker passes a  
537 background check, pursuant to the requirements of Section 62A-2-120, that includes:

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

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

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

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

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

549 **78A-6-306. Shelter hearing.**

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

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

553 (b) placement of the child in the protective custody of the division;  
554 (c) emergency placement under Subsection 62A-4a-202.1(4);  
555 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter  
556 at the request of the division; or

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

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

- 561 (a) the name and address of the person to whom the notice is directed;
- 562 (b) the date, time, and place of the shelter hearing;
- 563 (c) the name of the child on whose behalf a petition is being brought;
- 564 (d) a concise statement regarding:
  - 565 (i) the reasons for removal or other action of the division under Subsection (1); and
  - 566 (ii) the allegations and code sections under which the proceeding has been instituted;
- 567 (e) a statement that the parent or guardian to whom notice is given, and the child, are  
568 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is  
569 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be  
570 provided; and

571 (f) a statement that the parent or guardian is liable for the cost of support of the child in  
572 the protective custody, temporary custody, and custody of the division, and the cost for legal  
573 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial  
574 ability of the parent or guardian.

575 (3) The notice described in Subsection (2) shall be personally served as soon as  
576 possible, but no later than one business day after removal of the child from the child's home, or  
577 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection  
578 78A-6-106(4), on:

- 579 (a) the appropriate guardian ad litem; and
- 580 (b) both parents and any guardian of the child, unless the parents or guardians cannot  
581 be located.

582 (4) The following persons shall be present at the shelter hearing:

- 583 (a) the child, unless it would be detrimental for the child;

584 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or  
585 fail to appear in response to the notice;

586 (c) counsel for the parents, if one is requested;

587 (d) the child's guardian ad litem;

588 (e) the caseworker from the division who is assigned to the case; and

589 (f) the attorney from the attorney general's office who is representing the division.

590 (5) (a) At the shelter hearing, the court shall:

591 (i) provide an opportunity to provide relevant testimony to:

592 (A) the child's parent or guardian, if present; and

593 (B) any other person having relevant knowledge; and

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

595 (b) The court:

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

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

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

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

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

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

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

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

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

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

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

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

620 (9) (a) If the child is in the protective custody of the division, the court shall order that  
621 the child be released from the protective custody of the division unless it finds, by a  
622 preponderance of the evidence, that any one of the following exist:

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

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

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

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

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

634 (A) parent;

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

636 (C) person known to the parent;

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

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

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

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

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

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

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

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

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

649 (xii) the parent, or an adult residing in the same household as the parent, is charged or  
650 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine  
651 laboratory operation was located in the residence or on the property where the child resided; or

652 (xiii) the child's welfare is substantially endangered.

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

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

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

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

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

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

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

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

675 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or  
676 neglect are involved, neither the division nor the court has any duty to make "reasonable

677 efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to  
678 the child's home, provide reunification services, or attempt to rehabilitate the offending parent  
679 or parents.

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

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

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

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

689 (a) any error in the initial removal of the child;

690 (b) the failure of a party to comply with notice provisions; or

691 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child  
692 and Family Services.

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

694 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

695 (1) As used in this section:

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

697 (A) a biological or adoptive mother;

698 (B) an adoptive father; or

699 (C) a biological father who:

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

702 (II) has strictly complied with the provisions of Sections 78B-6-120 through  
703 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial  
704 parent.

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

708 (b) "Relative" means:

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

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

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

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

722 (c) The provisions of this Subsection ~~[(+)]~~ (2) are limited by the provisions of  
723 Subsection ~~[(8)]~~ (18)(b).

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

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

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



739 regarding the parent at issue.

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

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

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

745 [~~(2)~~] (3) If the court orders placement with a parent under Subsection [~~(1)~~];(2):

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

747 (b) the court may order:

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

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

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

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

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

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

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

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

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

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

761 [~~(3)~~] (5) The time limitations described in Section 78A-6-312 with regard to  
762 reunification efforts, apply to children placed with a previously noncustodial parent in  
763 accordance with Subsection [~~(1)~~] (2).

764 [~~(4)~~] (6) Legal custody of the child is not affected by an order entered under Subsection  
765 [~~(1) or~~] (2) or (3). In order to affect a previous court order regarding legal custody, the party  
766 must petition that court for modification of the order.

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

769 (a) shall, at that time, determine whether, subject to [~~Subsection (8)(c)~~] Subsections

770 (18)(c) through (e), there is a relative of the child or a friend of a parent of the child who is able  
771 and willing to care for the child[-];

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

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

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

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

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

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

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

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

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

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

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

- 801 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification  
802 background check of the relative;
- 803 (B) a completed search, relating to the relative, of the Management Information System  
804 described in Section 62A-4a-1003; and
- 805 (C) a background check that complies with the criminal background check provisions  
806 described in Section 78A-6-308, of each nonrelative, as defined in Subsection  
807 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;
- 808 (ii) if the child will be placed with a noncustodial parent of the child, complete a  
809 background check that includes:
- 810 (A) the background check requirements applicable to an emergency placement with a  
811 noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);
- 812 (B) a completed search, relating to the noncustodial parent of the child, of the  
813 Management Information System described in Section 62A-4a-1003; and
- 814 (C) a background check that complies with the criminal background check provisions  
815 described in Section 78A-6-308, of each nonrelative, as defined in Subsection  
816 62A-4a-209(1)(a), of the child who resides in the household where the child may be placed;
- 817 (iii) if the child may be placed with an individual other than a noncustodial parent or a  
818 relative of the child, conduct a criminal background check of the individual, and each adult that  
819 resides in the household where the child may be placed, that complies with the criminal  
820 background check provisions described in Section 78A-6-308;
- 821 (iv) visit the relative's or friend's home[;];
- 822 (v) check the division's management information system for any previous reports of  
823 abuse or neglect regarding the relative or friend at issue[;];
- 824 (vi) report [its] the division's findings in writing to the court[;]; and
- 825 (vii) provide sufficient information so that the court may determine whether:
- 826 (A) the relative or friend has any history of abusive or neglectful behavior toward other  
827 children that may indicate or present a danger to this child;
- 828 (B) the child is comfortable with the relative or friend;
- 829 (C) the relative or friend recognizes the parent's history of abuse and is [determined]  
830 committed to protect the child;
- 831 (D) the relative or friend is strong enough to resist inappropriate requests by the parent

832 for access to the child, in accordance with court orders;

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

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

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

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

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

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

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

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

854 (a) the court shall order that:

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

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

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

862 (c) the court may enter any order that it considers necessary for the protection and best

863 interest of the child~~[-The]~~;

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

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

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

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

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

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

875 ~~[(ii)]~~ (14) No later than 12 months after placement with a relative or friend, the court  
876 shall schedule a hearing for the purpose of entering a permanent order in accordance with the  
877 best interest of the child.

878 ~~[(iii)]~~ (15) The time limitations described in Section 78A-6-312, with regard to  
879 reunification efforts, apply to children placed with a relative or friend pursuant to Subsection  
880 ~~[(5)]~~ (7).

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

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

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

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

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

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

894 relative.

895           ~~[(7)]~~ (17) When the court orders that a child be removed from the custody of the child's  
896 parent and does not ~~[vest custody in]~~ award custody and guardianship to another parent,  
897 relative, or friend under this section, the court shall order that the child be placed in the  
898 temporary custody of the Division of Child and Family Services, to proceed to adjudication and  
899 disposition and to be provided with care and services in accordance with this chapter and Title  
900 62A, Chapter 4a, Child and Family Services.

901           ~~[(8)]~~ (18) (a) Any preferential consideration that a relative or friend is initially granted  
902 pursuant to Subsection ~~[(5)]~~ (9) expires 120 days from the date of the shelter hearing. After  
903 that time period has expired, a relative or friend who has not obtained custody or asserted an  
904 interest in a child, may not be granted preferential consideration by the division or the court.

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

909           (c) ~~[(1)]~~ Prior to the expiration of the 120-day period described in Subsection ~~[(8)]~~  
910 (18)(a), the following order of preference shall be applied when determining the person with  
911 whom a child will be placed, provided that the person is willing, and has the ability, to care for  
912 the child:

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

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

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

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

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

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

924           ~~[(A)]~~ (i) the department shall fully cooperate to expedite the licensing process for the

925 friend; and

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

929 ~~[(9)]~~ (19) If, following the shelter hearing, the child is placed with a person who is not  
930 a parent of the child, a relative of the child, a friend of a parent of the child, or a former foster  
931 parent of the child, priority shall be given to a foster placement with a man and a woman who  
932 are married to each other, unless it is in the best interests of the child to place the child with a  
933 single foster parent.

934 ~~[(10)]~~ (20) In determining the placement of a child, neither the court, nor the ~~[Division~~  
935 ~~of Child and Family Services]~~ division, may take into account, or discriminate against, the  
936 religion of a person with whom the child may be placed, unless the purpose of taking religion  
937 into account is to place the child with a person or family of the same religion as the child.

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

939 **78A-6-307.5. Post-shelter hearing placement of a child who is in division custody.**

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

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

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

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

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

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

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

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

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

956           **78A-6-308. Criminal background checks necessary prior to out-of-home**  
957 **placement.**

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

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

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

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

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

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

984           (b) the Department of Human Services conducts a check of the child abuse and neglect  
985 registry in each state where the prospective foster parent or prospective adoptive parent resided  
986 in the five years immediately preceding the day on which the prospective foster parent or



987 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine  
988 whether the prospective foster parent or prospective adoptive parent is listed in the registry as  
989 having a substantiated or supported finding of a severe type of child abuse or neglect as defined  
990 in Section 62A-4a-1002;

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

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

1000 (4) Subsections (2)(a) and (b) do not apply to a child who is placed with a noncustodial  
1001 parent or relative under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, unless the court  
1002 finds that compliance with Subsection (2)(a) or (b) is necessary to ensure the safety of the  
1003 child.

1004 (5) The requirements under Subsection (3) do not apply to the extent that:

1005 (a) federal law or rule permits otherwise; or

1006 (b) the requirements would prohibit the division or a court from placing a child with:

1007 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

1008 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending

1009 completion of the background check described in Subsection (3).

1010 Section 10. Section **78A-6-318** is amended to read:

1011 **78A-6-318. Review of foster care removal -- Foster parent's standing.**

1012 (1) With regard to a child in the custody of the Division of Child and Family Services  
1013 who is the subject of a petition alleging abuse, neglect, or dependency, and who has been  
1014 placed in foster care with a foster family, the Legislature finds that:

1015 (a) except with regard to the child's natural parents, a foster family has a very limited  
1016 but recognized interest in its familial relationship with the child; and

1017 (b) children in the custody of the division are experiencing multiple changes in foster

1018 care placements with little or no documentation, and that numerous studies of child growth and  
1019 development emphasize the importance of stability in foster care living arrangements.

1020 (2) For the reasons described in Subsection (1), the Legislature finds that, except with  
1021 regard to the child's natural parents, procedural due process protections must be provided to a  
1022 foster family prior to removal of a foster child from ~~[their]~~ the foster home.

1023 (3) (a) A foster parent who has had a foster child in ~~[his custody]~~ the foster parent's  
1024 home for 12 months or longer may petition the juvenile court for a review and determination of  
1025 the appropriateness of a decision by the Division of Child and Family Services to remove the  
1026 child from the ~~[child's]~~ foster home, unless the removal was for the purpose of:

1027 (i) returning the child to the child's natural parent or legal guardian;

1028 (ii) immediately placing the child in an approved adoptive home;

1029 (iii) placing the child with a relative, as defined in Subsection 78A-6-307~~[(5)(d)]~~(1)(b),  
1030 who obtained custody or asserted an interest in the child within the preference period described  
1031 in Subsection 78A-6-307~~[(8)]~~(18)(a); or

1032 (iv) placing an Indian child in accordance with preplacement preferences and other  
1033 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

1034 (b) The foster parent may petition the court under this section without exhausting  
1035 administrative remedies within the division.

1036 (c) The court may order the division to place the child in a specified home, and shall  
1037 base its determination on the best interest of the child.

1038 (4) The requirements of this section do not apply to the removal of a child based on a  
1039 foster parent's request for that removal.

1040 Section 11. Section **78B-6-113** is amended to read:

1041 **78B-6-113. Prospective parent not a resident -- Preplacement requirements.**

1042 (1) When an adoption petition is to be finalized in this state with regard to any  
1043 prospective adoptive parent who is not a resident of this state at the time a child is placed in  
1044 that person's home, the potential adoptive parent shall:

1045 (a) comply with the provisions of Sections 78B-6-128 and 78B-6-130; and

1046 (b) (i) if the child is in state custody, submit fingerprints for a Federal Bureau of  
1047 Investigation national criminal history record check through the Criminal and Technical  
1048 Services Division of the Department of Public Safety in accordance with the provisions of

1049 Section 62A-2-120; or  
1050 (ii) subject to Subsection (2), if the child is not in state custody:  
1051 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history  
1052 records check as a personal records check; or  
1053 (B) complete a criminal records check and child abuse database check for each state  
1054 and, if available, country, where the potential adoptive parent resided during the five years  
1055 immediately preceding the day on which the adoption petition is to be finalized.  
1056 (2) For purposes of Subsection (1)(b)(ii):  
1057 (a) if the adoption is being handled by a human services program, as defined in Section  
1058 62A-2-101:  
1059 (i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted  
1060 in accordance with procedures established by the Criminal Investigations and Technical  
1061 Services Division of the Department of Public Safety; and  
1062 (ii) subject to Subsection (3), the criminal history check described in Subsection  
1063 (1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:  
1064 (A) preserve the chain of custody of the results; and  
1065 (B) not permit tampering with the results by a prospective adoptive parent or other  
1066 interested party; and  
1067 (b) if the adoption is being handled by a private attorney, and not a human services  
1068 program, the criminal history checks described in Subsection (1)(b)(ii), shall be:  
1069 (i) submitted in accordance with procedures established by the Criminal Investigations  
1070 and Technical Services Division of the Department of Public Safety; or  
1071 (ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:  
1072 (A) preserve the chain of custody of the results; and  
1073 (B) not permit tampering with the results by a prospective adoptive parent or other  
1074 interested party.  
1075 (3) In order to comply with Subsection (2)(a)(ii) of (b)(ii), the manner in which the  
1076 criminal history check is submitted shall be approved by the court.  
1077 (4) [In] Except as provided in Subsection 78B-6-131(2), in addition to the other  
1078 requirements of this section, before a child in state custody is placed with a prospective foster  
1079 parent or a prospective adoptive parent, the Department of Human Services shall comply with

1080 Section 78B-6-131.

1081 Section 12. Section **78B-6-131** is amended to read:

1082 **78B-6-131. Child in custody of state -- Placement.**

1083 (1) Notwithstanding [~~any other provision of this section, except as otherwise permitted~~  
1084 ~~by federal law or rule~~] Sections 78B-6-128 through 78B-6-130, and except as provided in  
1085 Subsection (2), a child who is in the legal custody of the state may not be placed with a  
1086 prospective foster parent or a prospective adoptive parent, unless, before the child is placed  
1087 with the prospective foster parent or the prospective adoptive parent:

1088 [~~(1)~~] (a) a fingerprint based FBI national criminal history records check is conducted  
1089 on the prospective foster parent or prospective adoptive parent [~~and each adult living in the~~  
1090 ~~home of the prospective foster parent or prospective adoptive parent~~];

1091 [~~(2)~~] (b) the Department of Human Services conducts a check of the child abuse and  
1092 neglect registry in each state where the prospective foster parent or prospective adoptive parent  
1093 resided in the five years immediately preceding the day on which the prospective foster parent  
1094 or 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 [~~(3)~~] (c) the Department of Human Services conducts a check of the child abuse and  
1098 neglect registry of each state where each adult living in the home of the prospective foster  
1099 parent or prospective adoptive parent described in Subsection [~~(2)~~] (1)(b) resided in the five  
1100 years immediately preceding the day on which the prospective foster parent or prospective  
1101 adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult  
1102 is listed in the registry as having a substantiated or supported finding of child abuse or neglect;  
1103 and

1104 [~~(4)~~] (d) each person required to undergo a background check described in this section  
1105 passes the background check, pursuant to the provisions of Section 62A-2-120.

1106 (2) The requirements under Subsection (1) do not apply to the extent that:

1107 (a) federal law or rule permits otherwise; or

1108 (b) the requirements would prohibit the division or a court from placing a child with:

1109 (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

1110 (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending

1111 completion of the background check described in Subsection (1).

1112           Section 13. **Effective date.**

1113           If approved by two-thirds of all the members elected to each house, this bill takes effect

1114 upon approval by the governor, or the day following the constitutional time limit of Utah

1115 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

1116 the date of veto override.

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**H.B. 36 1st Sub. (Buff) - Child Welfare Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Passage of this legislation will result in a loss in federal Title IVE funding of \$49,100 for FY 2008 and \$147,400 for FY 2009 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 \$49,100 for FY 2008 (supplemental) and \$147,400 for FY 2009 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
General Fund, One-Time	\$49,100	\$0	\$0	\$0	\$0	\$0
Federal Funds	(\$49,100)	(\$147,400)	(\$147,400)	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**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.