

**TECHNICAL AMENDMENTS TO TITLES 78A  
AND 78B**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory S. Bell**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill makes amendments to Titles 78A and 78B that were missed in the recodification process.

**Highlighted Provisions:**

This bill:

- ▶ repeals provisions overlooked in the recodification process;
- ▶ coordinates with legislation already passed; and
- ▶ makes technical cross-reference changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill coordinates with S.B. 16, Exoneration and Innocence Assistance, providing for technical renumbering.

**Utah Code Sections Affected:**

AMENDS:

**78B-6-121**, as enacted by Laws of Utah 2008, Chapter 3

**78B-6-122**, as enacted by Laws of Utah 2008, Chapter 3

RENUMBERS AND AMENDS:

**78A-6-1220**, (Renumbered from 78-57-110, as enacted by Laws of Utah 1999, Chapter



28 94)

29 REPEALS:

30 **78-3a-115.1**, as last amended by Laws of Utah 2004, Chapter 324

31 **78-11-20.5**, as last amended by Laws of Utah 1997, Chapter 365

32 **78-11-21**, as enacted by Laws of Utah 1977, Chapter 181

33 **78-35-5**, as last amended by Laws of Utah 1991, Chapter 241

34 **78-45f-902**, as enacted by Laws of Utah 2000, Chapter 161



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

37 Section 1. Section **78A-6-1220**, which is renumbered from Section 78-57-110 is  
38 renumbered and amended to read:

39 ~~[78-57-110]~~. **78A-6-1220. School credit.**

40 Local school boards may provide school credit for participation as a member of a Youth  
41 Court.

42 Section 2. Section **78B-6-121** is amended to read:

43 **78B-6-121. Consent of unmarried biological father.**

44 (1) Except as provided in Subsections (2)(a) and ~~[76B-6-122]~~ 78B-6-122(1), and  
45 subject to Subsection (5), with regard to a child who is placed with adoptive parents more than  
46 six months after birth, consent of an unmarried biological father is not required unless the  
47 unmarried biological father:

48 (a) (i) developed a substantial relationship with the child by:

49 (A) visiting the child monthly, unless the unmarried biological father was physically or  
50 financially unable to visit the child on a monthly basis; or

51 (B) engaging in regular communication with the child or with the person or authorized  
52 agency that has lawful custody of the child;

53 (ii) took some measure of responsibility for the child and the child's future; and

54 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial  
55 support of the child of a fair and reasonable sum in accordance with the father's ability; or

56 (b) (i) openly lived with the child:

57 (A) (I) for a period of at least six months during the one-year period immediately  
58 preceding the day on which the child is placed with adoptive parents; or

59 (II) if the child is less than one year old, for a period of at least six months during the  
60 period of time beginning on the day on which the child is born and ending on the day on which  
61 the child is placed with adoptive parents; and

62 (B) immediately preceding placement of the child with adoptive parents; and

63 (ii) openly held himself out to be the father of the child during the six-month period  
64 described in Subsection (1)(b)(i)(A).

65 (2) (a) If an unmarried biological father was prevented from complying with a  
66 requirement of Subsection (1) by the person or authorized agency having lawful custody of the  
67 child, the unmarried biological father is not required to comply with that requirement.

68 (b) The subjective intent of an unmarried biological father, whether expressed or  
69 otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been  
70 met, shall not preclude a determination that the father failed to meet the requirements of  
71 Subsection (1).

72 (3) Except as provided in Subsection 78B-6-122(1), and subject to Subsection (5), with  
73 regard to a child who is six months of age or less at the time the child is placed with adoptive  
74 parents, consent of an unmarried biological father is not required unless, prior to the time the  
75 mother executes her consent for adoption or relinquishes the child for adoption, the unmarried  
76 biological father:

77 (a) initiates proceedings in a district court of the state to establish paternity under Title  
78 78B, Chapter 15, Utah Uniform Parentage Act;

79 (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

80 (i) stating that he is fully able and willing to have full custody of the child;

81 (ii) setting forth his plans for care of the child; and

82 (iii) agreeing to a court order of child support and the payment of expenses incurred in  
83 connection with the mother's pregnancy and the child's birth;

84 (c) consistent with Subsection (4), files notice of the commencement of paternity  
85 proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the  
86 Department of Health, in a confidential registry established by the department for that purpose;  
87 and

88 (d) offered to pay and paid a fair and reasonable amount of the expenses incurred in  
89 connection with the mother's pregnancy and the child's birth, in accordance with his financial

90 ability, unless:

91 (i) he did not have actual knowledge of the pregnancy;

92 (ii) he was prevented from paying the expenses by the person or authorized agency  
93 having lawful custody of the child; or

94 (iii) the mother refuses to accept the unmarried biological father's offer to pay the  
95 expenses described in this Subsection (3)(d).

96 (4) The notice described in Subsection (3)(c) is considered filed when it is entered into  
97 the registry described in Subsection (3)(c).

98 (5) Consent of an unmarried biological father is not required under this section if:

99 (a) the court determines, in accordance with the requirements and procedures of Title  
100 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological  
101 father's rights should be terminated, based on the petition of any interested party; or

102 (b) (i) a declaration of paternity declaring the unmarried biological father to be the  
103 father of the child is rescinded under Section 78B-15-306; and

104 (ii) the unmarried biological father fails to comply with Subsection (3) within ten  
105 business days after the day that notice of the rescission described in Subsection (5)(b)(i) is  
106 mailed by the Office of Vital Records within the Department of Health as provided in Section  
107 78B-15-306.

108 (6) Unless the adoptee is conceived or born within a marriage, the petitioner in an  
109 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a  
110 certificate from the state registrar of vital statistics within the Department of Health, stating:

111 (a) that a diligent search has been made of the registry of notices from unmarried  
112 biological fathers described in Subsection (3)(c); and

113 (b) (i) that no filing has been found pertaining to the father of the child in question; or

114 (ii) if a filing is found, the name of the putative father and the time and date of filing.

115 Section 3. Section **78B-6-122** is amended to read:

116 **78B-6-122. Qualifying circumstance.**

117 (1) (a) For purposes of this section, "qualifying circumstance" means that, at any point  
118 during the time period beginning at the conception of the child and ending at the time the  
119 mother executed a consent to adoption or relinquishment of the child for adoption:

120 (i) the child or the child's mother resided, on a permanent or temporary basis, in the

121 state;

122 (ii) the mother intended to give birth to the child in the state;

123 (iii) the child was born in the state; or

124 (iv) the mother intended to execute a consent to adoption or relinquishment of the child

125 for adoption:

126 (A) in the state; or

127 (B) under the laws of the state.

128 (b) For purposes of Subsection (1)(c)(i), a court shall consider the totality of the

129 circumstances when determining whether an unmarried biological father has demonstrated a

130 full commitment to his parental responsibilities, including, if applicable:

131 (i) efforts he has taken to discover the location of the child or the child's mother;

132 (ii) whether he has expressed or demonstrated an interest in taking responsibility for

133 the child;

134 (iii) whether, and to what extent, he has developed, or attempted to develop, a

135 relationship with the child;

136 (iv) whether he offered to provide and, if the offer was accepted, did provide, financial

137 support for the child or the child's mother;

138 (v) whether, and to what extent, he has communicated, or attempted to communicate,

139 with the child or the child's mother;

140 (vi) whether he has filed legal proceedings to establish his paternity of, and take

141 responsibility for, the child;

142 (vii) whether he has filed a notice with a public official or agency relating to:

143 (A) his paternity of the child; or

144 (B) legal proceedings to establish his paternity of the child; or

145 (viii) other evidence that demonstrates that he has demonstrated a full commitment to

146 his parental responsibilities.

147 (c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried

148 biological father is required with respect to an adoptee who is under the age of 18 if:

149 (i) (A) the unmarried biological father did not know, and through the exercise of

150 reasonable diligence could not have known, before the time the mother executed a consent to

151 adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;

152 (B) before the mother executed a consent to adoption or relinquishment of the child for  
153 adoption, the unmarried biological father fully complied with the requirements to establish  
154 parental rights in the child, and to preserve the right to notice of a proceeding in connection  
155 with the adoption of the child, imposed by:

156 (I) the last state where the unmarried biological father knew, or through the exercise of  
157 reasonable diligence should have known, that the mother resided in before the mother executed  
158 the consent to adoption or relinquishment of the child for adoption; or

159 (II) the state where the child was conceived; and

160 (C) the unmarried biological father has demonstrated, based on the totality of the  
161 circumstances, a full commitment to his parental responsibilities, as described in Subsection  
162 (1)(b); or

163 (ii) (A) the unmarried biological father knew, or through the exercise of reasonable  
164 diligence should have known, before the time the mother executed a consent to adoption or  
165 relinquishment of the child for adoption, that a qualifying circumstance existed; and

166 (B) the unmarried biological father complied with the requirements of Section  
167 78B-6-121 before the later of:

168 (I) 20 days after the day that the unmarried biological father knew, or through the  
169 exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

170 (II) the time that the mother executed a consent to adoption or relinquishment of the  
171 child for adoption.

172 (2) An unmarried biological father who does not fully and strictly comply with the  
173 requirements of Section 78B-6-121 and this section is considered to have waived and  
174 surrendered any right in relation to the child, including the right to:

175 (a) notice of any judicial proceeding in connection with the adoption of the child; and

176 (b) consent, or refuse to consent, to the adoption of the child.

177 **Section 4. Repealer.**

178 This bill repeals:

179 **Section 78-3a-115.1, Access to abuse, neglect, and dependency hearings.**

180 **Section 78-11-20.5, Criminal conviction for criminal mischief or criminal trespass**  
181 **not a prerequisite for civil action under chapter.**

182 **Section 78-11-21, Property damage caused by minor -- When parent or guardian**

183 **not liable.**

184 Section **78-35-5, Penalties for wrongful acts of defendant.**

185 Section **78-45f-902, Severability clause.**

186 Section 5. **Coordinating S.B. 278 with S.B. 16 -- Technical renumbering.**

187 If this S.B. 278 and S.B. 16, Exoneration and Innocence Assistance, both pass, it is the  
188 intent of the Legislature that the following sections in S.B. 16 be renumbered as follows:

189 (1) Section 78-35a-300.5 be renumbered to 78B-9-300;

190 (2) Section 78-35a-401 be renumbered to 78B-9-401;

191 (3) Section 78-35a-402 be renumbered to 78B-9-402;

192 (4) Section 78-35a-403 be renumbered to 78B-9-403;

193 (5) Section 78-35a-404 be renumbered to 78B-9-404; and

194 (6) Section 78-35a-405 be renumbered to 78B-9-405.

---

---

**Legislative Review Note**  
**as of 2-14-08 1:09 PM**

**Office of Legislative Research and General Counsel**