

1 **ADOPTION AND CHILD CUSTODY**
2 **AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Sheryl L. Allen**

6 Senate Sponsor: Daniel R. Liljenquist

8 **LONG TITLE**

9 **General Description:**

10 This bill amends adoption and child custody provisions in the portion of the Utah Code
11 relating to divorce, ~~H→ [the portion of the Utah Code relating to visitation for persons other~~
12 ~~than a parent;]~~ ←H the Utah Human Services Code, the Utah Adoption Act, and the Utah
13 Uniform Parentage Act.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ defines terms;
17 ▶ removes the requirement that, when making a child custody determination in a
18 separation or divorce proceeding, the court take into consideration that a parent has
19 attempted to permanently relinquish custody of the child to a third party;

20 ~~H→ [→ amends provisions relating to custody and visitation for persons other than a parent;]~~ ←H

21 ▶ amends race, color, and ethnicity requirements of the Utah Human Services Code to
22 conform with the language of the federal Multiethnic Placement Act;
23 ▶ describes when a petition for adoption may be filed;
24 ▶ describes the time and manner in which a person may file a petition or motion to
25 determine the rights and interests of a person who may claim an interest in a child;
26 ▶ amends provisions relating to background checks;
27 ▶ amends provisions relating to contesting an adoption;



- 28 ▶ describes when a petition for termination of parental rights may be filed under the
- 29 Utah Adoption Act;
- 30 ▶ enacts and clarifies provisions relating to the preservation of rights by an unmarried
- 31 biological father;
- 32 ▶ describes the affect that a court's dismissal of an adoption petition has in a custody
- 33 proceeding;
- 34 ▶ requires a court to dismiss a paternity petition filed by an unmarried biological
- 35 father, without adjudicating paternity, if the unmarried biological father is not
- 36 entitled to consent to the adoption of the child; and
- 37 ▶ makes technical changes.

38 Monies Appropriated in this Bill:

39 None

40 Other Special Clauses:

41 None

42 Utah Code Sections Affected:

43 AMENDS:

44 **30-3-10**, as last amended by Laws of Utah 2009, Chapter 179

45 ~~Ĥ→ [—30-5a-102, as enacted by Laws of Utah 2008, Chapter 272~~

46 ~~——30-5a-103, as enacted by Laws of Utah 2008, Chapter 272] ←Ĥ~~

47 **62A-4a-205.5**, as last amended by Laws of Utah 2008, Chapter 3

48 **78B-6-103**, as last amended by Laws of Utah 2009, Chapter 159

49 **78B-6-104**, as enacted by Laws of Utah 2008, Chapter 3

50 **78B-6-105**, as last amended by Laws of Utah 2009, Chapter 159

51 **78B-6-109**, as renumbered and amended by Laws of Utah 2008, Chapter 3

52 **78B-6-110**, as last amended by Laws of Utah 2009, Chapter 159

53 **78B-6-112**, as renumbered and amended by Laws of Utah 2008, Chapter 3

54 **78B-6-113**, as last amended by Laws of Utah 2008, Chapter 17 and renumbered and

55 amended by Laws of Utah 2008, Chapter 3

56 **78B-6-122**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of

57 Utah 2008, Chapter 123

58 **78B-6-128**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of

59 Utah 2008, Chapter 137

60 **78B-6-129**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of
61 Utah 2008, Chapter 137

62 **78B-6-133**, as renumbered and amended by Laws of Utah 2008, Chapter 3

63 **78B-6-135**, as renumbered and amended by Laws of Utah 2008, Chapter 3

64 **78B-6-138**, as last amended by Laws of Utah 2009, Chapter 159

65 **78B-6-140**, as renumbered and amended by Laws of Utah 2008, Chapter 3

66 **78B-15-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3

67 ENACTS:

68 **78B-6-122.5**, Utah Code Annotated 1953

69 **78B-6-136.5**, Utah Code Annotated 1953



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

72 Section 1. Section **30-3-10** is amended to read:

73 **30-3-10. Custody of children in case of separation or divorce -- Custody**
74 **consideration.**

75 (1) If a husband and wife having minor children are separated, or their marriage is
76 declared void or dissolved, the court shall make an order for the future care and custody of the
77 minor children as it considers appropriate.

78 (a) In determining any form of custody, the court shall consider the best interests of the
79 child and, among other factors the court finds relevant, the following:

80 (i) the past conduct and demonstrated moral standards of each of the parties;

81 (ii) which parent is most likely to act in the best interest of the child, including
82 allowing the child frequent and continuing contact with the noncustodial parent;

83 (iii) the extent of bonding between the parent and child, meaning the depth, quality,
84 and nature of the relationship between a parent and child; and

85 (iv) those factors outlined in Section 30-3-10.2.

86 (b) The court shall, in every case, consider joint custody but may award any form of
87 custody which is determined to be in the best interest of the child.

88 (c) The children may not be required by either party to testify unless the trier of fact
89 determines that extenuating circumstances exist that would necessitate the testimony of the

90 children be heard and there is no other reasonable method to present their testimony.

91 (d) The court may inquire of the children and take into consideration the children's
92 desires regarding future custody or parent-time schedules, but the expressed desires are not
93 controlling and the court may determine the children's custody or parent-time otherwise. The
94 desires of a child 16 years of age or older shall be given added weight, but is not the single
95 controlling factor.

96 (e) If interviews with the children are conducted by the court pursuant to Subsection
97 (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be
98 obtained but is not necessary if the court finds that an interview with the children is the only
99 method to ascertain the child's desires regarding custody.

100 (2) In awarding custody, the court shall consider, among other factors the court finds
101 relevant, which parent is most likely to act in the best interests of the child, including allowing
102 the child frequent and continuing contact with the noncustodial parent as the court finds
103 appropriate.

104 (3) If the court finds that one parent does not desire custody of the child, [~~or has~~
105 ~~attempted to permanently relinquish custody to a third party, it]~~ the court shall take that
106 evidence into consideration in determining whether to award custody to the other parent.

107 (4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a
108 parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining
109 whether a substantial change has occurred for the purpose of modifying an award of custody.

110 (b) If a court takes a parent's disability into account in awarding custody or determining
111 whether a substantial change has occurred for the purpose of modifying an award of custody,
112 the parent with a disability may rebut any evidence, presumption, or inference arising from the
113 disability by showing that:

114 (i) the disability does not significantly or substantially inhibit the parent's ability to
115 provide for the physical and emotional needs of the child at issue; or

116 (ii) the parent with a disability has sufficient human, monetary, or other resources
117 available to supplement the parent's ability to provide for the physical and emotional needs of
118 the child at issue.

119 (c) Nothing in this section may be construed to apply to adoption proceedings under
120 Title 78B, Chapter 6, Part 1, Utah Adoption Act.

121 (5) This section establishes neither a preference nor a presumption for or against joint
 122 legal custody, joint physical custody or sole custody, but allows the court and the family the
 123 widest discretion to choose a parenting plan that is in the best interest of the child.

124 ~~H→ [Section 2. Section 30-5a-102 is amended to read:~~

125 ~~—— 30-5a-102. Definitions:~~

126 ~~—— As used in this chapter:~~

127 ~~—— (1) "Non-relative" means a person who:~~

128 ~~—— (a) previously filed a petition to adopt the child;~~

129 ~~—— (b) is permitted to adopt the child under Section 78B-6-117; and~~

130 ~~—— (c) (i) has physical custody of the child; or~~

131 ~~—— (ii) had physical custody of the child for a period of six consecutive months, including~~
 132 ~~any temporary absence, within one year immediately before the day on which the person files a~~
 133 ~~petition for visitation of the child.~~

134 ~~—— [(1)] (2) "Parent" means a biological or adoptive parent.~~

135 ~~—— [(2)] (3) "Relative other than a parent" means a person related to the child by~~
 136 ~~marriage or blood, including:~~

137 ~~—— (a) siblings;~~

138 ~~—— (b) aunts;~~

139 ~~—— (c) uncles;~~

140 ~~—— (d) grandparents; or~~

141 ~~—— (e) current or former step-parents, or any of the persons in Subsections [(2)] (3)(a)~~
 142 ~~through (d) in a step relationship to the child.~~

143 ~~Section 3. Section 30-5a-103 is amended to read:~~

144 ~~—— 30-5a-103. Custody and visitation for persons other than a parent.~~

145 ~~—— (1) In accordance with Section 62A-4a-201, it is the public policy of this state that~~
 146 ~~parents retain the fundamental right and duty to exercise primary control over the care,~~
 147 ~~supervision, upbringing, and education of their children. There is a rebuttable presumption that~~
 148 ~~a parent's decisions are in the child's best interests.~~

149 ~~—— (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or~~
 150 ~~visitation rights to a [person] relative other than a parent who, by clear and convincing~~
 151 ~~evidence, has established all of the following:~~

152 ~~H→~~ (a) the [person] relative has intentionally assumed the role and obligations of a parent;
 153 ——— (b) the [person] relative and the child have formed an emotional bond and created a
 154 parent-child type relationship;
 155 ——— (c) the [person] relative contributed emotionally or financially to the child's well being;
 156 ——— (d) assumption of the parental role is not the result of a financially compensated
 157 surrogate care arrangement;
 158 ——— (e) continuation of the relationship between the [person] relative and the child would
 159 be in the child's best interests;
 160 ——— (f) loss or cessation of the relationship between the [person] relative and the child
 161 would be detrimental to the child; and
 162 ——— (g) the parent:
 163 ——— (i) is absent; or
 164 ——— (ii) is found by a court to have abused or neglected the child.
 165 ——— (3) A court may find the presumption in Subsection (1) rebutted and grant custodial or
 166 visitation rights to a non-relative who, by clear and convincing evidence, has established all of
 167 the following:
 168 ——— (a) the non-relative has intentionally assumed the role and obligations of a parent;
 169 ——— (b) the non-relative and the child have formed an emotional bond and created a
 170 parent-child type relationship;
 171 ——— (c) the non-relative contributed emotionally or financially to the child's well being;
 172 ——— (d) assumption of the parental role is not the result of a financially compensated
 173 surrogate care arrangement;
 174 ——— (e) continuation of the relationship between the non-relative and the child would be in
 175 the child's best interests; and
 176 ——— (f) loss or cessation of the relationship between the non-relative and the child would be
 177 detrimental to the child.
 178 ——— ~~[(3)]~~ (4) A proceeding under this chapter may be commenced by filing a verified
 179 petition, or petition supported by an affidavit, in the juvenile court if a matter is pending, or in
 180 the district court in the county in which the child:
 181 ——— (a) currently resides; [or]
 182 ——— (b) lived with a parent or a [person] relative other than a parent who acted as a parent ←H

183 ~~within six months before the commencement of the action[.]; or~~
 184 ~~—— (c) lived with a non-relative for a period of six consecutive months, including any~~
 185 ~~temporary absence, within one year immediately before the day on which the non-relative files~~
 186 ~~a petition for visitation of the child.~~

187 ~~—— [(4)] (5) A proceeding under this chapter may be filed in a pending divorce, parentage~~
 188 ~~action, or other proceeding, including a proceeding in the juvenile court, involving custody of~~
 189 ~~or visitation with a child.~~

190 ~~—— [(5)] (6) The petition shall include detailed facts supporting the petitioner's right to file~~
 191 ~~the petition including the criteria set forth in Subsection (2) or (3) and residency information as~~
 192 ~~set forth in Section 78B-13-209.~~

193 ~~—— [(6)] (7) A proceeding under this chapter may not be filed against a parent who is~~
 194 ~~actively serving outside the state in any branch of the military.~~

195 ~~—— [(7)] (8) Notice of a petition filed pursuant to this chapter shall be served in accordance~~
 196 ~~with the rules of civil procedure on all of the following:~~

197 ~~—— (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;~~

198 ~~—— (b) any person who has court-ordered custody or visitation rights;~~

199 ~~—— (c) the child's guardian;~~

200 ~~—— (d) the guardian ad litem, if one has been appointed;~~

201 ~~—— (e) a person or agency that has physical custody of the child or that claims to have~~
 202 ~~custody or visitation rights; and~~

203 ~~—— (f) any other person or agency that has previously appeared in any action regarding~~
 204 ~~custody of or visitation with the child.~~

205 ~~—— [(8)] (9) The court may order a custody evaluation to be conducted in any action~~
 206 ~~brought under this chapter.~~

207 ~~—— [(9)] (10) The court may enter temporary orders in an action brought under this chapter~~
 208 ~~pending the entry of final orders.] ←Ĥ~~

209 Section Ĥ→ [4] 2 ←Ĥ . Section 62A-4a-205.5 is amended to read:

210 **62A-4a-205.5. Prohibition of discrimination based on race, color, or ethnicity.**

211 [With regard to children]

212 (1) As used in this section, "adoptable children" means children:

213 (a) who are in the custody of the division [whø]; and

214 (b) (i) who have permanency goals of adoption; or
 215 (ii) for whom a final plan for pursuing termination of parental rights has been approved
 216 in accordance with Section 78A-6-314~~[, the]~~.

217 (2) ~~H~~→ ~~[The]~~ **Except as required under the Indian Child Welfare Act, 25 U.S.C. Secs.**
 217a **1901-1963, the** ~~←H~~ division may not base its decision for placement of ~~[those]~~ adoptable children
 218 ~~[solely]~~ on the race, color, ethnicity, or ~~[cultural heritage]~~ national origin of either the child or
 219 the prospective adoptive parents.

220 (3) The basis of a decision for placement of an adoptable child shall be the best interest
 221 of the child.

222 Section ~~H~~→ ~~[5]~~ **3** ~~←H~~ . Section **78B-6-103** is amended to read:

223 **78B-6-103. Definitions.**

224 As used in this part:

225 (1) "Adoptee" means a person who has been legally adopted.

226 (2) "Adoption" means the judicial act ~~[which]~~ that:

227 (a) creates the relationship of parent and child where it did not previously exist [and
 228 which permanently deprives a birth parent of parental rights.]; and

229 (b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of
 230 any other person with respect to the child.

231 (3) "Adoption service provider" means a:

232 (a) child-placing agency; or

233 (b) licensed counselor who has at least one year of experience providing professional
 234 social work services to:

235 (i) adoptive parents; or

236 (ii) birth parents.

237 (4) "Adult" means a person who is 18 years of age or older.

238 (5) "Adult adoptee" means an adoptee who is 18 years of age or older.

239 (6) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or
 240 older and whose birth mother or father is the same as that of the adoptee.

241 (7) "Birth parent" means:

242 (a) a biological mother~~[;]~~;

243 (b) a person whose paternity of a child is established~~[;]~~; or

244 (c) an alleged father~~[;]~~ who;

245 (i) has been identified as the father of a child by the child's birth mother~~[, and who]~~;
246 and

247 (ii) has not denied paternity.

248 (8) "Bureau" means the Bureau of Vital Statistics within the Department of Health
249 operating under Title 26, Chapter 2, Utah Vital Statistics Act.

250 (9) "Child-placing agency" means an agency licensed to place children for adoption
251 under Title 62A, Chapter 4a, Part 6, Child Placing.

252 (10) "Cohabiting" means residing with another person and being involved in a sexual
253 relationship with that person.

254 (11) "Division" means the Division of Child and Family Services, within the
255 Department of Human Services, created in Section 62A-4a-103.

256 (12) "Extra-jurisdictional child-placing agency" means an agency licensed to place
257 children for adoption by a district, territory, or state of the United States, other than Utah.

258 (13) "Genetic and social history" means a comprehensive report, when obtainable, on
259 an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following
260 information:

261 (a) medical history;

262 (b) health status;

263 (c) cause of and age at death;

264 (d) height, weight, and eye and hair color;

265 (e) ethnic origins;

266 (f) where appropriate, levels of education and professional achievement; and

267 (g) religion, if any.

268 (14) "Health history" means a comprehensive report of the adoptee's health status at the
269 time of placement for adoption, and medical history, including neonatal, psychological,
270 physiological, and medical care history.

271 (15) "Identifying information" means the name and address of a ~~[birth]~~ pre-existing
272 parent or adult adoptee, or other specific information which by itself or in reasonable
273 conjunction with other information may be used to identify that person.

274 (16) "Licensed counselor" means a person who is licensed by the state, or another state,
275 district, or territory of the United States as a:

- 276 (a) certified social worker;
- 277 (b) clinical social worker;
- 278 (c) psychologist;
- 279 (d) marriage and family therapist;
- 280 (e) professional counselor; or
- 281 (f) an equivalent licensed professional of another state, district, or territory of the
- 282 United States.

283 (17) "Parent," for purposes of Section 78B-6-119, means any person described in
 284 Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment
 285 for adoption is required under Sections 78B-6-120 through 78B-6-122.

286 (18) "Pre-existing parent" means:

- 287 (a) a birth parent; or
- 288 (b) a person who, before an adoption decree is entered, is, due to an earlier adoption
 289 decree, legally the parent of the child being adopted.

290 [~~18~~] (19) "Unmarried biological father" means a person who:

- 291 (a) is the biological father of a child; and
- 292 (b) was not married to the biological mother of the child described in Subsection [~~18~~]
- 293 (19)(a) at the time of the child's:
- 294 (i) conception; or
- 295 (ii) birth.

296 Section ~~H~~→ [6] 4 ←~~H~~ . Section 78B-6-104 is amended to read:

297 **78B-6-104. Limitations.**

298 (1) Sections 78B-6-143 through 78B-6-145 do not apply to adoptions by a stepparent
 299 whose spouse is the adoptee's [~~birth~~] parent.

300 (2) Sections 78B-6-143 through 78B-6-145 apply only to adoptions of adoptees born in
 301 this state.

302 Section ~~H~~→ [7] 5 ←~~H~~ . Section 78B-6-105 is amended to read:

303 **78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction**
 304 **over nonresidents -- Time for filing.**

305 (1) Adoption proceedings shall be commenced by filing a petition with the clerk of the
 306 district court either:

- 307 (a) in the district where the person adopting resides;
- 308 (b) if the person adopting is not a resident of this state, in the district where:
- 309 (i) the proposed adoptee was born;
- 310 (ii) the proposed adoptee resides on the day on which the petition is filed; or
- 311 (iii) a parent of the proposed adoptee resides on the day on which the petition is filed;

312 or

313 (c) with the juvenile court as provided in Subsection 78A-6-103(1).

314 (2) All orders, decrees, agreements, and notices in the proceedings shall be filed with
315 the clerk of the court where the adoption proceedings were commenced under Subsection (1).

316 (3) A petition for adoption:

317 (a) may be filed before or after the adoptee is placed in the home of the petitioner for
318 the purpose of adoption; and

319 (b) shall be filed [~~within 30 days of the date~~] no later than 30 days after the day on
320 which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

321 [~~(a)~~] (i) the time for filing has been extended by the court; or

322 [~~(b)~~] (ii) the adoption is arranged by a child-placing agency in which case the agency
323 may extend the filing time.

324 (4) (a) If a person whose consent for the adoption is required under Section 78B-6-120
325 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state
326 shall confer jurisdiction on the court in proceedings under this chapter as to such absent person,
327 provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

328 (b) The notice may not include the name of:

329 (i) the person or persons seeking to adopt the adoptee; or

330 (ii) an unmarried mother without her consent.

331 (5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction
332 over the person served in the same manner and to the same extent as if the person served was
333 served personally within the state.

334 (6) In the case of service outside the state, service completed not less than five days
335 before the time set in the notice for appearance of the person served, shall be sufficient to
336 confer jurisdiction.

337 (7) Computation of periods of time not otherwise set forth in this section shall be made

338 in accordance with the Utah Rules of Civil Procedure.

339 Section ~~H~~→ [8] 6 ←~~H~~ . Section 78B-6-109 is amended to read:

340 **78B-6-109. Determination of rights prior to adoption petition.**

341 (1) (a) Any interested person may petition a court having jurisdiction over adoption
342 proceedings for a determination of the rights and interests of any person who may claim an
343 interest in a child under this [chapter, at any time prior to] part.

344 (b) The petition described in Subsection (1) may be filed at any time before the
345 finalization of the adoption, including [any time prior to] before:

346 (i) the child's birth[-];

347 (ii) a petition for adoption is filed; or

348 (iii) a petition to terminate parental rights is filed.

349 (2) If a petition for adoption or a petition to terminate parental rights has been filed in
350 district court, the petitioner or any interested person may, without filing a separate petition,
351 move the court for a determination of the rights and interests of any person who may claim an
352 interest in a child under this part.

353 Section ~~H~~→ [9] 7 ←~~H~~ . Section 78B-6-110 is amended to read:

354 **78B-6-110. Notice of adoption proceedings.**

355 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
356 sexual relationship with a woman:

357 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
358 the child may occur; and

359 (ii) has a duty to protect his own rights and interests.

360 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
361 proceeding with regard to his child only as provided in this section.

362 (2) Notice of an adoption proceeding shall be served on each of the following persons:

363 (a) any person or agency whose consent or relinquishment is required under Section
364 78B-6-120 or 78B-6-121, unless that right has been terminated by:

365 (i) waiver;

366 (ii) relinquishment;

367 (iii) consent; or

368 (iv) judicial action;

369 (b) any person who has initiated a paternity proceeding and filed notice of that action
370 with the state registrar of vital statistics within the Department of Health, in accordance with
371 Subsection (3);

372 (c) any legally appointed custodian or guardian of the adoptee;

373 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
374 petition;

375 (e) the adoptee's spouse, if any;

376 (f) any person who, prior to the time the mother executes her consent for adoption or
377 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
378 the knowledge and consent of the mother;

379 (g) a person who is:

380 (i) openly living in the same household with the child at the time the consent is
381 executed or relinquishment made; and

382 (ii) holding himself out to be the child's father; and

383 (h) any person who is married to the child's mother at the time she executes her consent
384 to the adoption or relinquishes the child for adoption.

385 (3) (a) In order to preserve any right to notice, an unmarried, biological father may,
386 consistent with Subsection (3)(d):

387 (i) initiate proceedings in a district court of the state of Utah to establish paternity
388 under Title 78B, Chapter 15, Utah Uniform Parentage Act; and

389 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
390 with the state registrar of vital statistics within the Department of Health.

391 (b) If the unmarried, biological father does not know the county in which the birth
392 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
393 Section 78B-3-307.

394 (c) The Department of Health shall provide forms for the purpose of filing the notice
395 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
396 health department in each county.

397 (d) The action and notice described in Subsection (3)(a):

398 (i) may be filed before or after the child's birth; and

399 (ii) shall be filed prior to the mother's:

400 (A) execution of consent to adoption of the child; or
401 (B) relinquishment of the child for adoption.
402 (4) Notice provided in accordance with this section need not disclose the name of the
403 mother of the child who is the subject of an adoption proceeding.
404 (5) The notice required by this section:
405 (a) may be served at any time after the petition for adoption is filed;
406 (b) shall be served at least 30 days prior to the final dispositional hearing;
407 (c) shall specifically state that the person served must respond to the petition within 30
408 days of service if he intends to intervene in or contest the adoption;
409 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
410 to file a motion for relief within 30 days after the day on which the person is served with notice
411 of an adoption proceeding;
412 (e) is not required to include, nor be accompanied by, a summons or a copy of the
413 petition for adoption; and
414 (f) shall state where the person may obtain a copy of the petition for adoption.
415 (6) (a) A person who has been served with notice of an adoption proceeding and who
416 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:
417 (i) within 30 days after the day on which the person was served with notice of the
418 adoption proceeding;
419 (ii) setting forth specific relief sought; and
420 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
421 which the motion is based.
422 (b) A person who fails to ~~file a motion for relief~~ fully and strictly comply with all of
423 the requirements described in Subsection (6)(a) within 30 days after the day on which the
424 person was served with notice of the adoption proceeding:
425 (i) waives any right to further notice in connection with the adoption;
426 (ii) forfeits all rights in relation to the adoptee; and
427 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
428 the adoptee.
429 (7) Service of notice under this section shall be made as follows:
430 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary

431 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
432 Rules of Civil Procedure.

433 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
434 shall designate the content of the notice regarding the identity of the parties.

435 (iii) The notice described in this Subsection (7)(a) may not include the name of a
436 person seeking to adopt the adoptee.

437 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
438 is required under this section, service by certified mail, return receipt requested, is sufficient.

439 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
440 attempts, the court may issue an order providing for service by publication, posting, or by any
441 other manner of service.

442 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
443 action with the state registrar of vital statistics in the Department of Health in accordance with
444 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
445 the last address filed with the registrar.

446 (8) The notice required by this section may be waived in writing by the person entitled
447 to receive notice.

448 (9) Proof of service of notice on all persons for whom notice is required by this section
449 shall be filed with the court before the final dispositional hearing on the adoption.

450 (10) Notwithstanding any other provision of law, neither the notice of an adoption
451 proceeding nor any process in that proceeding is required to contain the name of the person or
452 persons seeking to adopt the adoptee.

453 (11) Except as to those persons whose consent to an adoption is required under Section
454 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
455 served to:

456 (a) intervene in the adoption; and

457 (b) present evidence to the court relevant to the best interest of the child.

458 Section ~~Ĥ~~ → [10] § ← ~~Ĥ~~ . Section 78B-6-112 is amended to read:

459 **78B-6-112. District court jurisdiction over certain termination of parental rights**
460 **proceedings.**

461 (1) A district court has jurisdiction to hear and decide a petition to terminate parental

462 rights in a child if the party who filed the petition is seeking to terminate parental rights in [a]
463 the child for the purpose of facilitating the adoption of the child.

464 (2) A petition to terminate parental rights under this section may be:

465 (a) [~~be~~] joined with a proceeding on an adoption petition; or

466 (b) [~~be~~] filed as a separate proceeding before or after a petition to adopt the child is
467 filed.

468 (3) A court may enter a final order terminating parental rights before a final decree of
469 adoption is entered.

470 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
471 proceedings to terminate parental rights as described in Section 78A-6-103.

472 (b) This section does not grant jurisdiction to a district court to terminate parental
473 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
474 neglect, dependency, or termination of parental rights proceeding.

475 (5) The district court may terminate a person's parental rights in a child if:

476 (a) the person executes a voluntary consent to adoption, or relinquishment for
477 adoption, of the child, in accordance with:

478 (i) the requirements of this chapter; or

479 (ii) the laws of another state or country, if the consent is valid and irrevocable;

480 (b) the person is an unmarried biological father who is not entitled to consent to
481 adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;

482 (c) the person:

483 (i) received notice of the adoption proceeding relating to the child under Section
484 78B-6-110; and

485 (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days
486 after the day on which the person was served with notice of the adoption proceeding;

487 (d) the court finds, under Section 78B-15-607, that the person is not a parent of the
488 child; or

489 (e) the person's parental rights are terminated on grounds described in Title 78A,
490 Chapter 6, Part 5, Termination of Parental Rights Act.

491 Section ~~Ĥ~~ → [11] 9 ← ~~Ĥ~~ . Section 78B-6-113 is amended to read:

492 **78B-6-113. Prospective parent not a resident -- Preplacement requirements.**

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

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

497 (b) (i) if the child is in state custody[;]:

498 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
499 record check through the Criminal and Technical Services Division of the Department of
500 Public Safety in accordance with the provisions of Section 62A-2-120; or

501 (B) submit to a fingerprint based Federal Bureau of Investigation national criminal
502 history record check through a law enforcement agency in another state, district, or territory of
503 the United States; or

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

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

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

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

511 (a) if the adoption is being handled by a human services program, as defined in Section
512 62A-2-101:

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

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

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

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

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

523 (i) submitted in accordance with procedures established by the Criminal Investigations

524 and Technical Services Division of the Department of Public Safety; or

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

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

527 (B) not permit tampering with the results by a prospective adoptive parent or other

528 interested party.

529 (3) In order to comply with Subsection (2)(a)(ii) or (b)(ii), the manner in which the

530 criminal history check is submitted shall be approved by the court.

531 (4) Except as provided in Subsection 78B-6-131(2), in addition to the other

532 requirements of this section, before a child in state custody is placed with a prospective foster

533 parent or a prospective adoptive parent, the Department of Human Services shall comply with

534 Section 78B-6-131.

535 Section ~~H~~→ [12] 10 ←~~H~~ . Section 78B-6-122 is amended to read:

536 **78B-6-122. Qualifying circumstance.**

537 (1) (a) For purposes of this section, "qualifying circumstance" means that, at any point

538 during the time period beginning at the conception of the child and ending at the time the

539 mother executed a consent to adoption or relinquishment of the child for adoption:

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

541 state;

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

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

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

545 for adoption:

546 (A) in the state; or

547 (B) under the laws of the state.

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

549 ~~circumstances]~~ (1)(c)(i)(C) only, when determining whether an unmarried biological father has

550 demonstrated a full commitment to his parental responsibilities, a court shall consider the

551 totality of the circumstances, including, if applicable:

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

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

554 the child;

555 (iii) whether, and to what extent, he has developed, or attempted to develop, a
556 relationship with the child;

557 (iv) whether he offered to provide and, if the offer was accepted, did provide, financial
558 support for the child or the child's mother;

559 (v) whether, and to what extent, he has communicated, or attempted to communicate,
560 with the child or the child's mother;

561 (vi) whether he has filed legal proceedings to establish his paternity of, and take
562 responsibility for, the child;

563 (vii) whether he has filed a notice with a public official or agency relating to:
564 (A) his paternity of the child; or
565 (B) legal proceedings to establish his paternity of the child; or
566 (viii) other evidence that demonstrates that he has demonstrated a full commitment to
567 his parental responsibilities.

568 (c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried
569 biological father is required with respect to an adoptee who is under the age of 18 if:

570 (i) (A) the unmarried biological father did not know, and through the exercise of
571 reasonable diligence could not have known, before the time the mother executed a consent to
572 adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;

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

577 (I) the last state where the unmarried biological father knew, or through the exercise of
578 reasonable diligence should have known, that the mother resided in before the mother executed
579 the consent to adoption or relinquishment of the child for adoption; or
580 (II) the state where the child was conceived; and
581 (C) the unmarried biological father has demonstrated, based on the totality of the
582 circumstances, a full commitment to his parental responsibilities, as described in Subsection
583 (1)(b); or

584 (ii) (A) the unmarried biological father knew, or through the exercise of reasonable
585 diligence should have known, before the time the mother executed a consent to adoption or

586 relinquishment of the child for adoption, that a qualifying circumstance existed; and

587 (B) the unmarried biological father complied with the requirements of Section
588 78B-6-121 before the later of:

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

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

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

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

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

598 Section ~~H~~→ [13] 11 ←~~H~~ . Section 78B-6-122.5 is enacted to read:

599 **78B-6-122.5. Effect of out-of-state paternity adjudication, declaration, or**
600 **acknowledgment.**

601 Unless a person who is an unmarried biological father has fully and strictly complied
602 with the requirements of Sections 78B-6-120 through 78B-6-122, an out-of state order that
603 adjudicates paternity, or an out-of-state declaration or acknowledgment of paternity:

604 (1) only has the effect of establishing that the person is an unmarried biological father
605 of the child to whom the order, declaration, or acknowledgment relates; and

606 (2) does not entitle the person to:

607 (a) notice of any judicial proceeding related to the adoption of the child;

608 (b) the right to consent, or refuse to consent, to the adoption of the child; or

609 (c) the right to custody of, control over, or visitation with the child.

610 Section ~~H~~→ [14] 12 ←~~H~~ . Section 78B-6-128 is amended to read:

611 **78B-6-128. Placement adoptive evaluations -- Exceptions.**

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

616 (b) Except as provided in Section 78B-6-131, the court may, at any time, authorize

617 temporary placement of a child in a potential adoptive home pending completion of a
618 preplacement adoptive evaluation described in this section.

619 (c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be
620 adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by
621 half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the
622 evaluation is otherwise requested by the court. The prospective adoptive parent described in
623 this Subsection (1)(c) shall~~[-, however,]~~ obtain the information described in Subsections (2)(a)
624 and (b), and file that documentation with the court prior to finalization of the adoption.

625 (d) The required preplacement adoptive evaluation must be completed or updated
626 within the 12-month period immediately preceding the placement of a child with the
627 prospective adoptive parent. If the prospective adoptive parent has previously received custody
628 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed
629 or updated within the 12-month period immediately preceding the placement of a child with the
630 prospective adoptive parent and after the placement of the previous child with the prospective
631 adoptive parent.

632 (2) The preplacement adoptive evaluation shall include:

633 (a) criminal history record information regarding each prospective adoptive parent and
634 any other adult living in the prospective home, prepared ~~[by a law enforcement agency based~~
635 ~~on a fingerprint criminal history check,]~~ no earlier than 18 months immediately preceding
636 placement of the child~~;~~ in accordance with the following:

637 (i) if the child is in state custody, each prospective adoptive parent and any other adult
638 living in the prospective home shall:

639 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
640 record check through the Criminal and Technical Services Division of the Department of
641 Public Safety in accordance with the provisions of Section 62A-2-120; or

642 (B) submit to a fingerprint based Federal Bureau of Investigation national criminal
643 history record check through a law enforcement agency in another state, district, or territory of
644 the United States; or

645 (ii) subject to Subsection (3), if the child is not in state custody, each prospective
646 adoptive parent and any other adult living in the prospective home shall:

647 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history

648 records check as a personal records check; or

649 (B) complete a criminal records check, if available, for each state and country where
650 the potential adoptive parent and any adult living in the prospective adoptive home resided
651 during the five years immediately preceding the day on which the adoption petition is to be
652 finalized;

653 (b) a report [~~prepared by the Department of Human Services~~] containing all
654 information regarding reports and [~~investigation~~] investigations of child abuse, neglect, and
655 dependency, with respect to each prospective adoptive parent and any other adult living in the
656 prospective home, obtained no earlier than 18 months immediately preceding [~~placement of the~~
657 child] the day on which the child is placed in the prospective home, pursuant to waivers
658 executed by [~~those parties;~~] each prospective adoptive parent and any other adult living in the
659 prospective home, that:

660 (i) if the prospective adoptive parent or the adult living in the prospective adoptive
661 parent's home is a resident of Utah, is prepared by the Department of Human Services from the
662 records of the Department of Human Services; or

663 (ii) if the prospective adoptive parent or the adult living in the prospective adoptive
664 parent's home is not a resident of Utah, prepared by the Department of Human Services, or a
665 similar agency in another state, district, or territory of the United States, where each
666 prospective adoptive parent and any other adult living in the prospective home resided in the
667 five years immediately preceding the day on which the child is placed in the prospective
668 adoptive home;

669 (c) in accordance with Subsection (6), an evaluation conducted by:

670 (i) an expert in family relations approved by the court [~~or~~];

671 (ii) a certified social worker[~~;~~];

672 (iii) a clinical social worker[~~;~~];

673 (iv) a marriage and family therapist[~~;~~];

674 (v) a psychologist[~~;~~]; or

675 (vi) a professional counselor[~~, or other court-determined expert in family relations,~~

676 who is licensed to practice under the laws of this state or under the laws of the state where the
677 prospective adoptive parent or other person living in the prospective adoptive home resides.

678 The evaluation shall be in a form approved by the Department of Human Services. Neither the

679 Department of Human Services nor any of its divisions may proscribe who qualifies as an
680 expert in family relations or who may conduct evaluations pursuant to this Subsection (2)]; and

681 (d) in accordance with Subsection (7), if the child to be adopted is a child who is in the
682 custody of any public child welfare agency, and is a child who has a special need as defined in
683 Section 62A-4a-902, the preplacement evaluation [must] shall be conducted by the Department
684 of Human Services or a child-placing agency [which] that has entered into a contract with the
685 department to conduct the preplacement evaluations for children with special needs. [Any fee
686 assessed by the evaluating agency is the responsibility of the adopting parent or parents.]

687 (3) For purposes of Subsection (2)(a)(ii):

688 (a) if the adoption is being handled by a human services program, as defined in Section
689 62A-2-101:

690 (i) the criminal history check described in Subsection (2)(a)(ii)(A) shall be submitted
691 through the Criminal Investigations and Technical Services Division of the Department of
692 Public Safety, in accordance with the provisions of Section 62A-2-120; and

693 (ii) subject to Subsection (4), the criminal history check described in Subsection
694 (2)(a)(ii)(B) shall be submitted in a manner acceptable to the court that will:

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

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

698 (b) if the adoption is being handled by a private attorney, and not a human services
699 program, the criminal history checks described in Subsection (2)(a)(ii) shall be:

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

702 (ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:

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

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

706 (4) In order to comply with Subsection (3)(a)(ii) or (b)(ii), the manner in which the
707 criminal history check is submitted shall be approved by the court.

708 (5) Except as provided in Subsection 78B-6-131(2), in addition to the other
709 requirements of this section, before a child in state custody is placed with a prospective foster

710 parent or a prospective adoptive parent, the Department of Human Services shall comply with
 711 Section 78B-6-131.

712 (6) (a) A person described in Subsection (2)(c) shall be licensed to practice under the
 713 laws of:

714 (i) this state; or

715 (ii) the state, district, or territory of the United States where the prospective adoptive
 716 parent or other person living in the prospective adoptive home resides.

717 (b) The evaluation described in Subsection (2)(c) shall be in a form approved by the
 718 Department of Human Services.

719 (c) Neither the Department of Human Services nor any of its divisions may proscribe
 720 who qualifies as an expert in family relations or who may conduct evaluations under
 721 Subsection (2)(c).

722 (7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the
 723 responsibility of the adopting parent or parents.

724 ~~[(3)]~~ (8) The person or agency conducting the preplacement adoptive evaluation shall,
 725 in connection with the evaluation, provide the prospective adoptive parent or parents with
 726 literature approved by the Division of Child and Family Services relating to adoption, ~~[and]~~
 727 including information relating to:

728 (a) the adoption process~~[-];~~

729 (b) developmental issues that may require early intervention~~[-];~~ and

730 (c) community resources that are available to the adoptive parent or parents.

731 ~~[(4)]~~ (9) A copy of the preplacement adoptive evaluation shall be filed with the court.

732 Section ~~H~~→ [15] 13 ←~~H~~ . Section 78B-6-129 is amended to read:

733 **78B-6-129. Postplacement adoptive evaluations.**

734 (1) Except as provided in Subsections (2) and (3), a postplacement evaluation shall be
 735 conducted and submitted to the court prior to the final hearing in an adoption proceeding. The
 736 postplacement evaluation shall include:

737 (a) verification of the allegations of fact contained in the petition for adoption;

738 (b) an evaluation of the progress of the child's placement in the adoptive home; and

739 (c) a recommendation regarding whether the adoption is in the best interest of the
 740 child.

741 (2) The exemptions from and requirements for evaluations, described in Subsections
742 78B-6-128(1)(c), (2)(c), ~~(6)~~, and ~~[(3)]~~ (8), also apply to postplacement adoptive evaluations.

743 (3) Upon the request of the petitioner, the court may waive the postplacement adoptive
744 evaluation, unless it determines that it is in the best interest of the child to require the
745 postplacement evaluation. Except where the child to be adopted and the prospective parent are
746 related as set forth in Subsection 78B-6-128(1)(c), the court may waive the postplacement
747 adoptive evaluation for a child who has a special need as defined in Section 62A-4a-902.

748 Section ~~H~~→ [16] 14 ←~~H~~ . Section 78B-6-133 is amended to read:

749 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

750 (1) If a person whose consent for an adoption is required pursuant to Subsection
751 78B-6-120(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether
752 proper grounds exist for the termination of that person's rights pursuant to the provisions of this
753 chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

754 (2) (a) If there are proper grounds to terminate the person's parental rights, the court
755 shall order that the person's rights be terminated.

756 (b) If there are not proper grounds to terminate the person's parental rights, the court
757 shall:

758 (i) dismiss the adoption petition;

759 (ii) conduct an evidentiary hearing to determine who should have custody of the child;

760 and

761 (iii) award custody of the child in accordance with the child's best interest.

762 (3) Evidence considered at the custody hearing may include:

763 (a) evidence of psychological or emotional bonds that the child has formed with a third
764 person, including the prospective adoptive parent; and

765 (b) any detriment that a change in custody may cause the child.

766 (4) ~~[The]~~ If the court dismisses the adoption petition, the fact that a person relinquished
767 a child for adoption or consented to the adoption may not be considered as evidence in a
768 custody proceeding described in this section, or in any subsequent custody proceeding, that it is
769 not in the child's best interest for custody to be awarded to such person or that:

770 (a) the person is unfit or incompetent to be a parent;

771 (b) the person has neglected or abandoned the child; ~~[or]~~

772 (c) the person is not interested in having custody of the child[-]; or

773 (d) the person has forfeited the person's parental presumption.

774 (5) Any custody order entered pursuant to this section may also:

775 (a) include provisions for:

776 (i) parent-time [~~by a biological parent~~]; or

777 (ii) visitation by an interested third party; and

778 (b) provide for the financial support of the child.

779 (6) (a) If a person or entity whose consent is required for an adoption under Subsection
780 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing
781 and award custody as set forth in Subsection (2).

782 (b) The court may also finalize the adoption if doing so is in the best interest of the
783 child.

784 (7) (a) A person may not contest an adoption after the final decree of adoption is
785 entered, if that person:

786 (i) was a party to the adoption proceeding;

787 (ii) was served with notice of the adoption proceeding; or

788 (iii) executed a consent to the adoption or relinquishment for adoption.

789 (b) No person may contest an adoption after one year from the day on which the final
790 decree of adoption is entered.

791 (c) The limitations on contesting an adoption action, described in this Subsection (7),
792 apply to all attempts to contest an adoption:

793 (i) regardless of whether the adoption is contested directly or collaterally; and

794 (ii) regardless of the basis for contesting the adoption, including claims of fraud,
795 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of
796 jurisdiction.

797 (d) The limitations on contesting an adoption action, described in this Subsection (7),
798 do not prohibit a timely appeal of:

799 (i) a final decree of adoption; or

800 (ii) a decision in an action challenging an adoption, if the action was brought within the
801 time limitations described in Subsections (7)(a) and (b).

802 Section ~~H~~→ [17] 15 ←~~H~~ . Section **78B-6-135** is amended to read:

803 **78B-6-135. Division of Child and Family Services -- Duties -- Report -- Fee.**

804 (1) At the request of the court, the division, through its field agents, persons licensed
805 by the division for the care and placement of children, or through the probation officer of the
806 juvenile court or court of like jurisdiction of the county, under the division's supervision, shall:

- 807 (a) verify the allegations of the petition for adoption of a minor child;
- 808 (b) make a thorough investigation of the matter; and
- 809 (c) report the division's findings in writing to the court.

810 (2) (a) When the court requests an investigation under Subsection (1), the court shall
811 serve a copy of the petition, together with a statement containing the names and addresses of
812 the child and petitioners, on the division by certified mail.

813 (b) The division, or the person appointed by the division, shall complete the
814 investigation described in Subsection (2)(a) and submit a written report to the court within 60
815 days after the day that the petition is served on the division.

816 (3) (a) The division shall charge the petitioner a reasonable fee for the services
817 provided under this section.

818 (b) Fees collected shall be deposited in the General Fund.

819 (4) The written report submitted to the court under this section shall state:

820 (a) why the birth parents, if living, desire to be released from the care, support, and
821 guardianship of the child;

822 (b) whether the birth parents have abandoned the child or are morally unfit for custody;

823 (c) whether the proposed adoptive parent or parents are financially able and morally fit
824 to have the care, supervision, and training of the child;

825 (d) the physical and mental condition of the child, so far as that may be determined;

826 and

827 (e) any other facts and circumstances pertaining to the child and the child's welfare.

828 (5) (a) The court shall conduct a full hearing on the petition for adoption and examine
829 the parties in interest under oath.

830 (b) The court may adjourn the hearing from time to time as the nature of the case
831 requires.

832 (6) If the report submitted by the division under Subsection (2) disapproves of the
833 adoption of the child by the petitioner, the court may dismiss the petition.

834 ~~[(7) (a) Except as provided in Subsection (7)(b), a final decree of adoption may not be~~
835 ~~entered until the child has lived in the home of the adoptive parent or parents for six months,~~
836 ~~unless, based on a finding of good cause, the court orders that the final decree of adoption may~~
837 ~~be entered at an earlier time.]~~

838 ~~[(b) If the adoptive parent is the spouse of the birth parent, a final decree of adoption~~
839 ~~may not be entered until the child has lived in the home of that adoptive parent for one year,~~
840 ~~unless, based on a finding of good cause, the court orders that the final decree of adoption may~~
841 ~~be entered at an earlier time.]~~

842 ~~[(c) In the event the child dies during the time that the child is placed in the home of an~~
843 ~~adoptive parent or parents for the purpose of adoption, the court has authority to enter a final~~
844 ~~decree of adoption after the child's death upon the request of the adoptive parents.]~~

845 ~~[(d) The court may enter a final decree of adoption declaring that a child is adopted by~~
846 ~~both a deceased and a surviving adoptive parent if, after the child is placed in the home of the~~
847 ~~child's adoptive parents:]~~

848 ~~[(i) one of the adoptive parents dies;]~~

849 ~~[(ii) the surviving adoptive parent requests that the court enter the decree; and]~~

850 ~~[(iii) the decree is entered after the child has lived in the home of the surviving~~
851 ~~adoptive parent for at least six months.]~~

852 ~~[(e) Upon request of a surviving birth parent, or a surviving parent for whom adoption~~
853 ~~of a child has been finalized, the court may enter a final decree of adoption declaring that a~~
854 ~~child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at~~
855 ~~the time of the adoptive parent's death.]~~

856 ~~[(f) The court may enter a final decree of adoption declaring that a child is adopted by~~
857 ~~both deceased adoptive parents if:]~~

858 ~~[(i) both of the adoptive parents die after the child is placed in the adoptive parent's~~
859 ~~home; and]~~

860 ~~[(ii) it is in the best interests of the child to enter the decree.]~~

861 ~~[(8) Nothing in this section shall be construed to grant any rights to the birth parents of~~
862 ~~a child to assert any interest in the child during the six-month or one-year periods described in~~
863 ~~this section.]~~

864 Section ~~H~~→ [18] 16 ←~~H~~ . Section ~~78B-6-136.5~~ is enacted to read:

865 **78B-6-136.5. Timing of entry of final decree of adoption -- Posthumous adoption.**

866 (1) Except as provided in Subsection (2), a final decree of adoption may not be entered
867 until the child has lived in the home of the adoptive parent or parents for six months, unless,
868 based on a finding of good cause, the court orders that the final decree of adoption may be
869 entered at an earlier time.

870 (2) If the adoptive parent is the spouse of the birth parent, a final decree of adoption
871 may not be entered until the child has lived in the home of that adoptive parent for one year,
872 unless, based on a finding of good cause, the court orders that the final decree of adoption may
873 be entered at an earlier time.

874 (3) If the child dies during the time that the child is placed in the home of an adoptive
875 parent or parents for the purpose of adoption, the court has authority to enter a final decree of
876 adoption after the child's death upon the request of the adoptive parents.

877 (4) The court may enter a final decree of adoption declaring that a child is adopted by
878 both a deceased and a surviving adoptive parent if, after the child is placed in the home of the
879 child's adoptive parents:

880 (a) one of the adoptive parents dies;

881 (b) the surviving adoptive parent requests that the court enter the decree; and

882 (c) the decree is entered after the child has lived in the home of the surviving adoptive
883 parent for at least six months.

884 (5) Upon request of a surviving birth parent, or a surviving parent for whom adoption
885 of a child has been finalized, the court may enter a final decree of adoption declaring that a
886 child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at
887 the time of the adoptive parent's death.

888 (6) The court may enter a final decree of adoption declaring that a child is adopted by
889 both deceased adoptive parents if:

890 (a) both of the adoptive parents die after the child is placed in the adoptive parent's
891 home; and

892 (b) it is in the best interests of the child to enter the decree.

893 (7) Nothing in this section shall be construed to grant any rights to the pre-existing
894 parents of a child to assert any interest in the child during the six-month or one-year periods
895 described in this section.

896 Section ~~H~~→ [19] 17 ←~~H~~ . Section 78B-6-138 is amended to read:

897 **78B-6-138. Pre-existing parent's rights and duties dissolved.**

898 (1) A [~~biological~~] pre-existing parent of an adopted child is released from all parental
899 duties toward and all responsibilities for the adopted child, including residual rights, and has no
900 further rights with regard to that child at the earlier of:

901 (a) the time the pre-existing parent's parental rights are terminated; or

902 (b) except as provided in Subsection (2), and subject to Subsection (3), the time the
903 final decree of adoption is entered.

904 (2) The rights and duties of a [~~biological~~] pre-existing parent described in Subsection
905 (1) who, at the time the child is adopted, is lawfully married to the person adopting the child
906 are not released or terminated under Subsection (1)(b).

907 (3) The rights and duties of a [~~biological~~] pre-existing parent described in Subsection
908 (1) who, at the time the child is adopted, is not lawfully married to the person adopting the
909 child are terminated as provided in Subsection (1)(b).

910 Section ~~H~~→ [20] 18 ←~~H~~ . Section 78B-6-140 is amended to read:

911 **78B-6-140. Itemization of fees and expenses.**

912 (1) Except as provided in Subsection (4), prior to the date that a final decree of
913 adoption is entered, an affidavit regarding fees and expenses, signed by the adoptive parent or
914 parents and the person or agency placing the child, shall be filed with the court.

915 (2) The affidavit described in Subsection (1) shall itemize the following items in
916 connection with the adoption:

917 (a) all legal expenses, maternity expenses, medical or hospital expenses, and living
918 expenses that have been or will be paid to or on behalf of the [~~birth mother or biological father~~]
919 pre-existing parents of the child, including the source of payment;

920 (b) fees paid by the prospective adoptive parent or parents in connection with the
921 adoption;

922 (c) all gifts, property, or other items that have been or will be provided to the [~~birth~~
923 ~~mother or biological father~~] pre-existing parents, including the source of the gifts, property, or
924 other items;

925 (d) all public funds used for any medical or hospital costs in connection with the:

926 (i) pregnancy;

- 927 (ii) delivery of the child; or
- 928 (iii) care of the child;
- 929 (e) the state of residence of the:
- 930 (i) birth mother or the pre-existing parents; and
- 931 (ii) prospective adoptive parent or parents;
- 932 (f) a description of services provided to the prospective adoptive [~~parent or~~] parents or
- 933 [~~biological~~] pre-existing parents in connection with the adoption; and
- 934 (g) that Section 76-7-203 has not been violated.

935 (3) A copy of the affidavit described in Subsection (1) shall be provided to the Office
 936 of Licensing within the Department of Human Services.

937 (4) This section does not apply if the adoptive parent is the legal spouse of the birth
 938 parent.

939 Section ~~H~~→ [21] 19 ←~~H~~ . Section 78B-15-104 is amended to read:

940 **78B-15-104. Adjudication -- Jurisdiction.**

941 (1) The district court, the juvenile court, and the Office of Recovery Services in
 942 accordance with Section 62A-11-304.2 and Title 63G, Chapter 4, Administrative Procedures
 943 Act, are authorized to adjudicate parentage under Parts 1 through 6, and Part 9 of this chapter.

944 (2) The district court and the juvenile court have jurisdiction over proceedings under
 945 Parts 7 and 8.

946 (3) The court shall, without adjudicating paternity, dismiss a petition that is filed under
 947 this chapter by an unmarried biological father if he is not entitled to consent to the adoption of
 948 the child under Sections 78B-6-121 and 78B-6-122.

Legislative Review Note
 as of 12-18-09 7:43 AM

Office of Legislative Research and General Counsel

H.B. 74 - Adoption and Child Custody Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
