H.B. 237
2nd Sub. (Gray)

Representative Wayne A. Harper proposes the following substitute bill:

1   # CHILD WELFARE AMENDMENTS

2   ## 2012 GENERAL SESSION

3   ## STATE OF UTAH

4   **Chief Sponsor: Wayne A. Harper**

5   Senate Sponsor: Margaret Dayton

6

7   **LONG TITLE**

8   **General Description:**

9   This bill amends Title 62A, Utah Human Services Code, Title 78A, Judiciary and

10 Judicial Administration, and Title 78B, Judicial Code, relating to child welfare.

11 **Highlighted Provisions:**

12   This bill:

13   ‣   defines the term "relative";

14   ‣   amends Division of Child and Family Services caseworker training requirements;

15   ‣   requires a caseworker to file a report explaining why a particular placement is in the

16 child's best interest when a child is removed from the child's immediate family but

17 not placed with kin;

18   ‣   requires a licensee under the Medical Practice or Nurse Practice Act to report a

19 determination of fetal alcohol spectrum disorder to the Division of Child and

20 Family Services;

20a   **Ŝ→ [Ŝ→ ~~requires an appellate court to apply de novo review to issues presented in an appeal~~**

20b **~~of a juvenile court's finding of abuse, neglect, or an order to terminate parental rights;~~ ←Ŝ] ←Ŝ**

21   ‣   prohibits taking a child into protective custody solely on the basis of educational

22 neglect, truancy, or failure to comply with a court order to attend school;

23   ‣   requires a fingerprint-based background check on any adult residing in the home of

24 a foster parent or potential foster parent;

25   ‣   creates a presumption that reunification services not be provided to:

2nd Sub. H.B. 237

57   **62A-4a-202.6**, as last amended by Laws of Utah 2010, Chapter 239

58   **62A-4a-209**, as last amended by Laws of Utah 2008, Chapters 3 and 17

59   **62A-4a-404**, as renumbered and amended by Laws of Utah 1994, Chapter 260

60   **78A-6-302**, as renumbered and amended by Laws of Utah 2008, Chapter 3

61   **78A-6-306**, as last amended by Laws of Utah 2010, Chapter 368

62   **78A-6-308**, as last amended by Laws of Utah 2009, Chapter 32

63   **78A-6-312**, as last amended by Laws of Utah 2011, Chapters 98 and 167

64   **78A-6-511**, as renumbered and amended by Laws of Utah 2008, Chapter 3

65   **78A-6-902**, as last amended by Laws of Utah 2011, Chapter 158

66   **78B-6-131**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of

67   Utah 2008, Chapter 17

67a   Ŝ➔ **ENACTS:**

67b   **78A-4-201, Utah Code Annotated 1953** ⬅Ŝ

68   ═══

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

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

71   **62A-2-120.   Criminal background checks -- Direct access to children or**

72   **vulnerable adults.**

73   (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a

74   license renewal under this chapter shall submit to the office the names and other identifying

75   information, which may include fingerprints, of all persons associated with the licensee, as

76   defined in Section 62A-2-101, with direct access to children or vulnerable adults.

77   (b) The Criminal Investigations and Technical Services Division of the Department of

78   Public Safety, or the office as authorized under Section 53-10-108, shall process the

79   information described in Subsection (1)(a) to determine whether the [individual] applicant has

80   been convicted of any crime.

81   (c) Except as provided in Subsection (1)(d), if an [individual] applicant has not

82   continuously lived in Utah for the five years immediately preceding the day on which the

83   information referred to in Subsection (1)(a) is submitted to the office, the [individual] applicant

84   shall submit fingerprints for a FBI national criminal history record check. The fingerprints

85   shall be submitted to the FBI through the Criminal Investigations and Technical Services

86   Division.

87   (d) An [individual] applicant is not required to comply with Subsection (1)(c) if:

584   or fetal drug dependency, [he] the individual shall report that determination to the division as

585   soon as possible.

585a   Ŝ→ [Ŝ→ ~~Section 8. Section 78A-4-201 is enacted to read:~~

585b   ~~78A-4-201. Appellate review of juvenile courts.~~

585c   ~~(1) The court shall apply nondeferential de novo review to issues of fact and law raised~~

585d   ~~in an appeal of a juvenile court's:~~

585e   ~~(a) finding of abuse;~~

585f   ~~(b) finding of neglect; or~~

585g   ~~(c) order terminating parental rights.~~

585h   ~~(2) The issue of whether the evidence presented in a juvenile court, taken as a whole,~~

585i   ~~constitutes clear and convincing evidence shall be a matter of law subject to review by the~~

585j   ~~court.~~ ←Ŝ] ←Ŝ

586   Section Ŝ→ [8] 9 ←Ŝ . Section **78A-6-302** is amended to read:

587   **78A-6-302. Court-ordered protective custody of a child following petition filing --**

588   **Grounds.**

589   (1) After a petition has been filed under Section 78A-6-304, if the child who is the

590   subject of the petition is not in the protective custody of the division, a court may order that the

591   child be removed from the child's home or otherwise taken into protective custody if the court

592   finds, by a preponderance of the evidence, that any one or more of the following circumstances

593   exist:

594   (a) (i) there is an imminent danger to the physical health or safety of the child; and

595   (ii) the child's physical health or safety may not be protected without removing the

596   child from the custody of the child's parent or guardian;

597   (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct

598   that causes the child to suffer emotional damage; and

599   (ii) there are no reasonable means available by which the child's emotional health may

600   be protected without removing the child from the custody of the child's parent or guardian;

601   (c) the child or another child residing in the same household has been, or is considered

602   to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a

603   parent or guardian, a member of the parent's or guardian's household, or other person known to

604   the parent or guardian;

605   (d) the parent or guardian is unwilling to have physical custody of the child;

606   (e) the child is abandoned or left without any provision for the child's support;

607   (f) a parent or guardian who has been incarcerated or institutionalized has not arranged