

HB0237S01 compared with HB0237

~~text~~ shows text that was in HB0237 but was deleted in HB0237S01.

inserted text shows text that was not in HB0237 but was inserted into HB0237S01.

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Representative Wayne A. Harper proposes the following substitute bill:

CHILD WELFARE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 62A, Utah Human Services Code, Title 78A, Judiciary and Judicial Administration, and Title 78B, Judicial Code, relating to child welfare.

Highlighted Provisions:

This bill:

- ▶ defines the term "relative";
- ▶ amends Division of Child and Family Services caseworker training requirements;
- ▶ requires a caseworker to file a report explaining why a particular placement is in the child's best interest when a child is removed from the child's immediate family but not placed with kin;
- ▶ requires a licensee under the Medical Practice or Nurse Practice Act to report a determination of fetal alcohol spectrum disorder to the Division of Child and

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Family Services;

~~{ → requires that appellate courts apply de novo review to legal issues raised in an appeal of a lower court's decision to terminate parental rights;~~

- ‡ ▶ prohibits taking a child into protective custody solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school;
- ▶ requires a fingerprint-based background check on any adult residing in the home of a foster parent or potential foster parent;
- ▶ creates a presumption that reunification services not be provided to:
 - a parent who commits sexual abuse of a child;
 - a parent who is a registered sex offender; or
 - a birth mother whose child is born with fetal alcohol spectrum disorder, unless she enrolls in a substance abuse program;
- ▶ requires a court to consider costs already borne by a parent or legal guardian before assessing guardian ad litem attorney fees, court costs, or expenses against a parent or legal guardian;
- ▶ permits a parent or legal guardian to appeal a court's determination of guardian ad litem attorney fees, costs, and expenses;
- ▶ requires a guardian ad litem to:
 - disclose in certain cases the minor's wishes to the court;
 - conduct an independent investigation regarding a minor client, the minor's family, and what constitutes the best interest of the minor;
 - keep records regarding how many times the guardian ad litem has had contact with each minor client and make those records available when making a recommendation regarding the client's welfare; and
 - ~~{file a memorandum with the court before recommending that a child be removed from a parent's custody or that a parent's rights be terminated explaining why that action is in}~~ disclose to the court the basis for any recommendation regarding the best interest of the child;

~~{ → permits a parent to file a memorandum in response to a guardian ad litem's memorandum;~~

- ‡ ▶ creates a preference for the adoption of a child by a relative following a termination

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of parental rights; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-2-120, as last amended by Laws of Utah 2011, Chapters 320 and 366

62A-4a-102, as last amended by Laws of Utah 2009, Chapter 75

62A-4a-107, as last amended by Laws of Utah 2007, Chapter 306

62A-4a-202.1, as last amended by Laws of Utah 2008, Chapters 3 and 17

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

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

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

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

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

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

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

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

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

78B-6-131, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of Utah 2008, Chapter 17

~~{ENACTS:~~

~~———— **78A-4-201**, Utah Code Annotated 1953~~

~~———— **78A-6-902.1**, Utah Code Annotated 1953~~

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

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

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

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

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

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

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

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

(ii) the background check of the ~~[individual]~~ applicant is being conducted for a purpose other than a purpose described in Subsection (1)(f).

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

(f) Notwithstanding Subsections (1)(a) through (e), and except as provided in Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an FBI national criminal history records check, through the Criminal Investigations and Technical Services Division, if the background check of the applicant is being conducted for the purpose of:

(i) licensing a prospective foster home; or

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

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

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

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

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

(i) federal law or rule permits otherwise; or

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

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

(B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f) and (g).

(i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to background checks.

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

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- (a) (i) the ~~[person]~~ applicant is found to have no criminal history record; or
 - (ii) (A) the only convictions in the ~~[person's]~~ applicant's criminal history record are misdemeanors or infractions not involving any of the offenses described in Subsection (3); and
 - (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years before the date of the search;
 - (b) the ~~[person]~~ applicant is not listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;
 - (c) juvenile court records do not show that a court made a substantiated finding, under Section 78A-6-323, that the ~~[person]~~ applicant committed a severe type of child abuse or neglect;
 - (d) the ~~[person]~~ applicant is not listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006;
 - (e) the ~~[person]~~ applicant has not pled guilty or no contest to a pending charge for any:
 - (i) felony;
 - (ii) misdemeanor listed in Subsection (3); or
 - (iii) infraction listed in Subsection (3); and
 - (f) for ~~[a person]~~ an applicant described in Subsection (1)(g), the registry check described in Subsection (1)(g) does not indicate that the ~~[person]~~ applicant is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.
- (3) Except as provided in Subsection (8), unless at least 10 years have passed since the date of conviction, the office may not approve ~~[a person]~~ an applicant to have direct access to children or vulnerable adults in the licensee's human services program if ~~[that person]~~ the applicant has been convicted of an offense, whether a felony, misdemeanor, or infraction, that is:
- (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;
 - (b) a violation of any pornography law, including sexual exploitation of a minor;
 - (c) prostitution;
 - (d) included in:
 - (i) Title 76, Chapter 5, Offenses Against the Person;
 - (ii) Section 76-5b-201, Sexual Exploitation of a Minor; or

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(iii) Title 76, Chapter 7, Offenses Against the Family;

(e) a violation of Section 76-6-103, aggravated arson;

(f) a violation of Section 76-6-203, aggravated burglary;

(g) a violation of Section 76-6-302, aggravated robbery; or

(h) a conviction for an offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

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

(i) a conviction for:

(A) any felony not listed in Subsection (3);

(B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the date of the search;

(C) a protective order or ex parte protective order violation under Section 76-5-108 or a similar statute in another state; or

(D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years have passed since the date of conviction;

(ii) a plea of guilty or no contest to a pending:

(A) felony;

(B) misdemeanor listed in Subsection (3); or

(C) infraction listed in Subsection (3);

(iii) the [~~person~~] applicant is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;

(iv) juvenile court records show that a court made a substantiated finding, under Section 78A-6-323, that the [~~person~~] applicant committed a severe type of child abuse or neglect;

(v) the [~~person~~] applicant is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006; or

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

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

(i) the date of the offense or incident;

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

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

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

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

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

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

(B) sexual abuse;

(C) sexual exploitation; and

(D) negligent treatment;

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

(viii) any other pertinent information.

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

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, defining procedures for the comprehensive review described in this Subsection (4).

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

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

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(i) associated with the licensee and:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(N) an offense described in Section 76-5b-201, Sexual Exploitation of a Minor;

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

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

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

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

(ii) an offense committed outside the state that, if committed in the state, would

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constitute a violation of an offense described in Subsection (8)(a)(i).

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

- (i) aggravated assault, as described in Section 76-5-103;
 - (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
 - (iii) mayhem, as described in Section 76-5-105;
 - (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
 - (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
 - (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
 - (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
 - (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5, the conflicting provision of Section 62A-2-120.5 shall govern.

Section 2. Section **62A-4a-102** is amended to read:

62A-4a-102. Policy responsibilities of division.

(1) The Division of Child and Family Services, created in Section 62A-4a-103, is responsible for establishing policies for the division, by rule, under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996, regarding abuse, neglect, and dependency proceedings, and domestic violence services. The division is responsible to see that the legislative purposes for the division are carried out.

- (2) The division shall:
 - (a) approve fee schedules for programs within the division;
 - (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish, by rule, policies to ensure that private citizens, consumers, foster parents, private contract providers, allied state and local agencies, and others are provided with an opportunity

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to comment and provide input regarding any new policy or proposed revision of an existing policy; and

(c) provide a mechanism for:

(i) systematic and regular review of existing ~~[policy]~~ policies, including an annual review of all division policies to ensure that policies comply with the Utah Code; and

(ii) consideration of policy changes proposed by the persons and agencies described in Subsection (2)(b).

(3) (a) The division shall establish rules for the determination of eligibility for services offered by the division in accordance with this chapter.

(b) The division may, by rule, establish eligibility standards for consumers.

(4) The division shall adopt and maintain rules regarding placement for adoption or foster care that are consistent with, and no more restrictive than, applicable statutory provisions.

Section 3. Section **62A-4a-107** is amended to read:

62A-4a-107. Mandatory education and training of caseworkers -- Development of curriculum.

(1) There is created within the division a full-time position of Child Welfare Training Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee in that position is not responsible for direct casework services or the supervision of those services, but is required to:

(a) develop child welfare curriculum that:

(i) is current and effective, consistent with the division's mission and purpose for child welfare; and

(ii) utilizes curriculum and resources from a variety of sources including those from:

(A) the public sector;

(B) the private sector; and

(C) inside and outside of the state;

(b) recruit, select, and supervise child welfare trainers;

(c) develop a statewide training program, including a budget and identification of sources of funding to support that training;

(d) evaluate the efficacy of training in improving job performance;

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(e) assist child protective services and foster care workers in developing and fulfilling their individual training plans;

(f) monitor staff compliance with division training requirements and individual training plans; and

(g) expand the collaboration between the division and schools of social work within institutions of higher education in developing child welfare services curriculum, and in providing and evaluating training.

(2) (a) The director shall, with the assistance of the child welfare training coordinator, establish a core curriculum for child welfare services that is substantially equivalent to the Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

(b) Any child welfare caseworker who is employed by the division for the first time after July 1, 1999, shall, before assuming significant independent casework responsibilities, successfully complete:

(i) the core curriculum; and

(ii) except as provided in Subsection (2)(c), on-the-job training that consists of observing and accompanying at least two capable and experienced child welfare caseworkers as they perform work-related functions:

(A) for three months if the caseworker has less than six months of on-the-job experience as a child welfare caseworker; or

(B) for two months if the caseworker has six months or more but less than 24 months of on-the-job experience as a child welfare caseworker.

(c) A child welfare caseworker with at least 24 months of on-the-job experience is not required to receive on-the-job training under Subsection (2)(b)(ii).

(3) Child welfare caseworkers shall complete training in:

(a) the legal duties of a child welfare caseworker;

(b) the responsibility of a child welfare caseworker to protect the safety and legal rights of children, parents, and families at all stages of a case, including:

(i) initial contact;

(ii) investigation; and

(iii) treatment;

(c) recognizing situations involving:

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- (i) substance abuse;
- (ii) domestic violence;
- (iii) abuse; and
- (iv) neglect; and
- (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of

the United States to the child welfare caseworker's job, including:

- (i) search and seizure of evidence;
- (ii) the warrant requirement;
- (iii) exceptions to the warrant requirement; and
- (iv) removing a child from the custody of the child's parent or guardian.

(4) The division shall train its child welfare caseworkers to apply the risk assessment tools and rules described in Subsection 62A-4a-1002(2).

(5) The division shall use the training of child welfare caseworkers to emphasize:

(a) the importance of maintaining the parent-child relationship whenever possible;

(b) the preference for providing in-home services over taking a child into protective custody, both for the emotional well-being of the child and the efficient allocation of resources;
and

(c) the importance and priority of kinship placement in the event a child must be taken into protective custody.

~~(5)~~ (6) When a child welfare caseworker is hired, before assuming significant independent casework responsibilities, the child welfare caseworker shall complete the training described in Subsections (3) ~~and (4)~~ through (5).

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

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

(1) A peace officer or child welfare worker may not:

(a) enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless authorized under Subsection 78A-6-106(2)[-]; or

(b) remove a child from the child's home or take a child into custody under this section

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solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school.

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

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

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

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

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

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

(i) a shelter facility; or

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

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

(d) If the child is not placed with a noncustodial parent, a relative, or a designated friend, the caseworker assigned to the child shall file a report with the caseworker's supervisor explaining why a different placement was in the child's best interest.

Section 5. Section **62A-4a-202.6** is amended to read:

62A-4a-202.6. Conflict child protective services investigations -- Authority of investigators.

(1) (a) The division shall contract with an independent child protective service

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investigator from the private sector to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(b) The executive director shall designate an entity within the department, other than the division, to monitor the contract for the investigators described in Subsection (1)(a).

(c) [~~When~~] Subject to Subsection (4), when a report is made that a child is abused or neglected while in the custody of the division:

(i) the attorney general may, in accordance with Section 67-5-16, and with the consent of the division, employ a child protective services investigator to conduct a conflict investigation of the report; or

(ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent of the division, conduct a conflict investigation of the report.

(d) Subsection (1)(c)(ii) does not prevent a law enforcement officer from, without the consent of the division, conducting a criminal investigation of abuse or neglect under Title 53, Public Safety Code.

(2) The investigators described in Subsections (1)(c) and (d) may also investigate allegations of abuse or neglect of a child by a department employee or a licensed substitute care provider.

(3) The investigators described in Subsection (1), if not peace officers, shall have the same rights, duties, and authority of a child protective services investigator employed by the division to:

(a) make a thorough investigation upon receiving either an oral or written report of alleged abuse or neglect of a child, with the primary purpose of that investigation being the protection of the child;

(b) make an inquiry into the child's home environment, emotional, or mental health, the nature and extent of the child's injuries, and the child's physical safety;

(c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division; and

(d) immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or

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includes an allegation of educational neglect.

(4) If there is a lapse in the contract with a private child protective service investigator and no other investigator is available under Subsection (1)(a) or (c), the department may conduct an independent investigation.

Section 6. Section **62A-4a-209** is amended to read:

62A-4a-209. Emergency placement.

(1) As used in this section:

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

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

(2) The division may use an emergency placement under Subsection 62A-4a-202.1(4)(b)(ii) when:

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

(i) the child's home is unsafe;

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

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

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

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

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

(c) the person described in Subsection (2)(b) agrees to care for the child on an emergency basis under the following conditions:

(i) the person meets the criteria for an emergency placement under Subsection (3);

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

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

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

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access to the child;

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

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

(vii) the child is comfortable with the person.

(3) Except as otherwise provided in Subsection (5), before the division places a child in an emergency placement, the division:

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

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

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

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

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

(ii) if the emergency placement will be with a person other than a noncustodial parent or a relative, shall comply with the criminal background check provisions described in Section 78A-6-308 for adults living in the household where the child will be placed;

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

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

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

(i) a noncustodial parent of the child in accordance with Section 78A-6-307;

(ii) a relative of the child;

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

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

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

(c) Before placing the child with a shelter facility, former foster placement, or other foster placement under Subsection (4)(a)(iv), the caseworker assigned to the child shall submit a report to the division:

(i) explaining why placement with a noncustodial parent, family member, or friend designated under Subsection (4)(a)(iii) is not possible; and

(ii) that shall be made available upon request to the child's parent or family member.

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

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

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

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

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

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

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

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

(6) After an emergency placement, the division caseworker must:

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

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- (b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78A-6-306;
- (c) contact the attorney general to schedule a shelter hearing;
- (d) complete the placement procedures required in Section 78A-6-307; and
- (e) continue to search for other relatives as a possible long-term placement, if needed.

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

- (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification background check; and
- (ii) a completed search of the Management Information System described in Section 62A-4a-1003.

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

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

Section 7. Section ~~62A-4a-404~~ is amended to read:

62A-4a-404. Fetal alcohol syndrome and drug dependency -- Reporting requirements.

When [~~any person~~] an individual, including a licensee under the Medical Practice Act or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that the child, at the time of birth, has fetal alcohol syndrome [~~or~~], fetal alcohol spectrum disorder, or fetal drug dependency, [~~he~~] the individual shall report that determination to the division as soon as possible.

Section 8. Section ~~{78A-4-201}~~ 78A-6-302 is ~~{enacted}~~ amended to read:

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

~~_____~~ ~~The court shall apply de novo review to legal issues raised in an appeal of a lower court's decision to terminate parental rights.~~

~~_____~~ Section 9. Section ~~78A-6-302~~ is amended to read:

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

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

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subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

- (a) (i) there is an imminent danger to the physical health or safety of the child; and
- (ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;
- (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer emotional damage; and
- (ii) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
- (c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;
- (d) the parent or guardian is unwilling to have physical custody of the child;
- (e) the child is abandoned or left without any provision for the child's support;
- (f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;
- (g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
- (ii) the whereabouts of the parent or guardian are unknown; and
- (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- (h) the child is in immediate need of medical care;
- (i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the child's health or safety; or
- (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;
- (j) the child or another child residing in the same household has been neglected;
- (k) an infant has been abandoned, as defined in Section 78A-6-316;
- (l) (i) the parent or guardian, or an adult residing in the same household as the parent or

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guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(m) the child's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

(3) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect, truancy, or failure to comply with a court order to attend school;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

(4) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(5) This section does not preclude removal of a child from the child's home without a

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warrant or court order under Section 62A-4a-202.1.

(6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

- (i) the administration of a psychotropic medication to a child;
- (ii) a psychiatric, psychological, or behavioral treatment for a child; or
- (iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Section ~~10~~9. Section **78A-6-306** is amended to read:

78A-6-306. Shelter hearing.

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

- (a) removal of the child from the child's home by the division;
- (b) placement of the child in the protective custody of the division;
- (c) emergency placement under Subsection 62A-4a-202.1(4);
- (d) as an alternative to removal of the child, a parent enters a domestic violence shelter

at the request of the division; or

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

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

- (a) the name and address of the person to whom the notice is directed;
- (b) the date, time, and place of the shelter hearing;
- (c) the name of the child on whose behalf a petition is being brought;
- (d) a concise statement regarding:
 - (i) the reasons for removal or other action of the division under Subsection (1); and
 - (ii) the allegations and code sections under which the proceeding has been instituted;
- (e) a statement that the parent or guardian to whom notice is given, and the child, are

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entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with the provisions of Section 78A-6-1111; and

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

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

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the child, unless the parents or guardians cannot be located.

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

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

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

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

(d) the child's guardian ad litem;

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

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

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

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

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

(B) any other person having relevant knowledge; and

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

(b) The court:

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

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian,

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the requesting party, or their counsel; and

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

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

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

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

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

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

(e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.

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

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

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

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

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

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

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

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is

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not removed from the custody of the child's parents;

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

(A) parent;

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

(C) person known to the parent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact

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constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

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

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

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

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

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78A-6-105(25)(b) truancy, or failure to comply with a court order to attend school.

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

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

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

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

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

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

Section ~~44~~10. Section **78A-6-308** is amended to read:

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

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

(2) (a) Except as provided in Subsection (4), the division and the Office of Guardian ad Litem may request, or the court upon the court's own motion may order, the Department of Public Safety to conduct a complete Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC).

(b) Except as provided in Subsection (4), upon request by the division or the Office of Guardian ad Litem, or upon the court's order, persons subject to the requirements of Subsection (1) shall submit fingerprints and shall be subject to an FBI fingerprint background check. The child may be temporarily placed, pending the outcome of that background check.

(c) The cost of those investigations shall be borne by whoever is to receive placement of the child, except that the Division of Child and Family Services may pay all or part of the cost of those investigations.

(3) Except as provided in Subsection (5), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:

(a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent or prospective adoptive parent and any other adult residing in the household;

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

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

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

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

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

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

(a) federal law or rule permits otherwise; or

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

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

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

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

Section ~~{12}~~11. Section **78A-6-312** is amended to read:

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

(a) make any of the dispositions described in Section 78A-6-117;

(b) place the minor in the custody or guardianship of any:

(i) individual; or

(ii) public or private entity or agency; or

(c) order:

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- (i) protective supervision;
- (ii) family preservation;
- (iii) subject to Subsection 78A-6-117(2)(n)(iii), medical or mental health treatment; or
- (iv) other services.

(2) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:

(a) establish a primary permanency goal for the minor; and

(b) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

(3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.

(4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

(5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

(a) protect the physical safety of the minor;

(b) protect the life of the minor; or

(c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:

(a) prove that the parent has not used legal or illegal substances; or

(b) comply with an aspect of the child and family plan that is ordered by the court.

(8) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal that shall include:

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(a) a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal; and

(b) an explanation of the effect of abandoning or modifying the primary permanency goal.

(9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency goal.

(10) (a) The court may amend a minor's primary permanency goal before the establishment of a final permanency plan under Section 78A-6-314.

(b) The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned.

(c) If, at any time, the court determines that reunification is no longer a minor's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

(i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or

(ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends.

(11) (a) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

(b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(12) The court shall:

(a) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

(b) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

(c) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)(b), for the purpose of assisting in any future

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determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(8).

(b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(14) (a) If reunification services are ordered, the court may terminate those services at any time.

(b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

- (i) place the minor in accordance with the permanency plan; and
- (ii) complete whatever steps are necessary to finalize the permanent placement of the minor.

(15) Any physical custody of the minor by the parent or a relative during the period described in Subsections (11) through (14) does not interrupt the running of the period.

(16) (a) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.

(b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.

(c) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

(17) With regard to a minor who is 36 months of age or younger at the time the minor is initially removed from the home, the court shall:

(a) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78A-6-314; and

(b) order the discontinuance of those services after eight months from the initial removal of the minor from the home if the parent or parents have not made substantial efforts to comply with the child and family plan.

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(18) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

- (a) the court shall terminate reunification services; and
- (b) the division shall petition the court for termination of parental rights.

(19) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

- (a) practicable; and
- (b) in accordance with the best interest of the minor.

(20) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.

(b) The court may determine that:

(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

(ii) reunification services should not be provided.

(c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.

(21) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(b) subject to Subsection (22)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

(c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

- (i) was removed from the custody of the minor's parent;
- (ii) was subsequently returned to the custody of the parent; and

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(iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

(d) the parent:

(i) caused the death of another minor through abuse or neglect; ~~[or]~~

(ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

(A) murder or manslaughter of a child; or

(B) child abuse homicide;

(iii) committed sexual abuse against the child; or

(iv) is a registered sex offender or required to register as a sex offender;

(e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(f) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;

(g) the parent's rights are terminated with regard to any other minor;

(h) the minor is removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;

(i) the parent has abandoned the minor for a period of six months or longer;

(j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located;

(k) except as provided in Subsection (22)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or

(l) any other circumstance that the court determines should preclude reunification efforts or services.

(22) (a) The finding under Subsection (21)(b) shall be based on competent evidence

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from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

(b) A judge may disregard the provisions of Subsection (21)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection (21)(k) is not warranted.

(23) In determining whether reunification services are appropriate, the court shall take into consideration:

(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

(c) any history of violent behavior directed at the child or an immediate family member;

(d) whether a parent continues to live with an individual who abused the minor;

(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

(g) whether the parent has expressed an interest in reunification with the minor.

(24) (a) If reunification services are not ordered pursuant to Subsections (20) through (22), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

(b) The time limits described in Subsections (2) through (19) are not tolled by the parent's absence.

(25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection (25)(a), the court shall consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

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- (iii) the length of the sentence;
 - (iv) the nature of the treatment;
 - (v) the nature of the crime or illness;
 - (vi) the degree of detriment to the minor if services are not offered;
 - (vii) for a minor 10 years of age or older, the minor's attitude toward the implementation of family reunification services; and
 - (viii) any other appropriate factors.
- (c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (19).
- (d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (19), unless the court determines that continued reunification services would be in the minor's best interest.

(26) If, pursuant to Subsections (21)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

Section ~~13~~12. Section **78A-6-511** is amended to read:

78A-6-511. Court disposition of child upon termination.

(1) As used in this section, "relative" means:

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

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

~~(1)~~ (2) Upon entry of an order under this part the court may:

(a) place the child in the legal custody and guardianship of a licensed child placement agency or the division for adoption; or

(b) make any other disposition of the child authorized under Section 78A-6-117.

~~(2) AH~~ (3) Subject to the requirements of Subsections (4) through (7), all adoptable children shall be placed for adoption.

(4) If the parental rights of all parents of an adoptable child have been terminated, the

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court:

(a) shall determine whether there is a relative who desires to adopt the child; and

(b) may order the division to conduct a reasonable search to determine whether there are relatives who are willing to adopt the child.

(5) A relative of an adoptable child shall receive preference in adoption placement, unless the placement is not in the best interest of the child. If a relative desires to adopt the child, the court shall:

(a) make a specific finding regarding the fitness of the relative to adopt the child; and

(b) place the child for adoption with that relative unless it finds that adoption by the relative is not in the best interest of the child.

(6) This section does not guarantee that a relative will be permitted to adopt the child.

(7) If the court does not place the child with a relative, the court shall make a specific finding, on the record, explaining why the relative was not a suitable adoptive parent.

(8) If no suitable relative is found to adopt the child, the court shall consider the child's foster parents, in accordance with Section 78B-6-132, or any other adult in accordance with Section 78B-6-117.

Section ~~{14}~~13. Section **78A-6-902** is amended to read:

78A-6-902. Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.

(1) (a) The court:

(i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and

(ii) shall consider the best interest of a minor, consistent with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

(b) In all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment.

(2) An attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that:

(a) the child is removed from the child's home by the division; or

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(b) the petition is filed.

(3) The director shall ensure that each attorney guardian ad litem employed by the office:

(a) represents the best interest of each client of the office in all venues, including:

(i) court proceedings; and

(ii) meetings to develop, review, or modify the child and family plan with the Division of Child and Family Services in accordance with Section 62A-4a-205;

(b) prior to representing any minor before the court, be trained in:

(i) applicable statutory, regulatory, and case law; and

(ii) nationally recognized standards for an attorney guardian ad litem;

(c) conducts or supervises an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;

(d) (i) personally meets with the minor, unless:

(A) the minor is outside of the state; or

(B) meeting with the minor would be detrimental to the minor;

(ii) personally interviews the minor, unless:

(A) the minor is not old enough to communicate;

(B) the minor lacks the capacity to participate in a meaningful interview; or

(C) the interview would be detrimental to the minor; and

(iii) if the minor is placed in an out-of-home placement, or is being considered for placement in an out-of-home placement, unless it would be detrimental to the minor:

(A) to the extent possible, determines the minor's goals and concerns regarding placement; and

(B) personally assesses or supervises an assessment of the appropriateness and safety of the minor's environment in each placement;

(e) personally attends all review hearings pertaining to the minor's case;

(f) participates in all appeals, unless excused by order of the court;

(g) is familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to:

(i) maintain a minor in the minor's home; or

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(ii) reunify a child with the child's parent;

(h) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

(i) the status of the minor's case;

(ii) all court and administrative proceedings;

(iii) discussions with, and proposals made by, other parties;

(iv) court action; and

(v) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor; and

(i) in cases where a child and family plan is required, personally or through a trained volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and family plan and any dispositional orders to:

(i) determine whether services ordered by the court:

(A) are actually provided; and

(B) are provided in a timely manner; and

(ii) attempt to assess whether services ordered by the court are accomplishing the intended goal of the services.

(4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court.

(b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court.

(6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

(i) all costs resulting from the appointment of an attorney guardian ad litem; and

(ii) the costs of volunteer, paralegal, and other staff appointment and training.

(b) The court shall use funds appropriated by the Legislature for the guardian ad litem program to cover the costs described in Subsection (6)(a).

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(c) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer expenses against the child's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate~~[-]~~, taking into consideration costs already borne by the parents, parent, or legal guardian, including:

(A) private attorney fees;

(B) counseling for the child;

(C) counseling for the parent, if mandated by the court or recommended by the Division of Child and Family Services; and

(D) any other cost the court determines to be relevant.

(ii) The court may not assess those fees or costs against:

(A) a legal guardian, when that guardian is the state; or

(B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

(d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the court shall:

(i) require that person to submit an affidavit of impecuniosity as provided in Section 78A-2-302; and

(ii) follow the procedures and make the determinations as provided in Section 78A-2-304.

(e) The child's parents, parent, or legal guardian may appeal the court's determination, under Subsection (6)(c), of fees, costs, and expenses.

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

(b) If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest.

(c) A difference between the minor's wishes and the attorney's determination of best interest~~[-]~~

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~~(i)~~ may not be considered a conflict of interest for the attorney ~~{[.]: and~~

~~(ii) shall be disclosed by the attorney to the court.~~

~~(d)}~~;

(d) the guardian ad litem shall disclose the wishes of the child unless the child:

(i) instructs the guardian ad litem to not disclose the child's wishes; or

(ii) has not expressed any wishes.

~~[(d)] (e)~~ The court may appoint one attorney guardian ad litem to represent the best interests of more than one child of a marriage.

~~{(9)}~~ (9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family. ~~{(9)}~~

~~{(9)} 10~~ (a) An attorney guardian ad litem shall conduct an independent investigation regarding the minor at issue, the minor's family, and what constitutes the best interest of the minor.

(b) An attorney guardian ad litem may interview the minor's Division of Child and Family Services caseworker, but may not:

(i) rely exclusively on the conclusions and findings of the Division of Child and Family Services;

~~(ii) have access to Division of Child and Family Services records;~~ or

{(iii)} (ii) conduct a visit with the client in conjunction with the visit of a Division of Child and Family Services caseworker.

~~[(10)] 11~~ (a) An attorney guardian ad litem shall maintain current and accurate records regarding:

~~[(a)] (i)~~ the number of times the attorney has had contact with each minor; and

~~[(b)] (ii)~~ the actions the attorney has taken in representation of the minor's best interest.

(b) ~~{Whenever an attorney}~~ In every hearing where the guardian ad litem makes a recommendation regarding the ~~{client's welfare to the court, the attorney shall make the records described in Subsection (10)(a) available to:~~

~~(i) the court; and~~

~~(ii) an attorney representing the minor's parent.~~

~~(11)}~~ best interest of the child, the court shall require the guardian ad litem to disclose the factors that form the basis of the recommendation.

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~~[(11)](12)~~ (a) Except as provided in [~~Subsection (11)(b)] Subsections ~~(10)~~(11) and ~~(11)~~(12)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter 2, Government Records Access and Management Act.~~

(b) Consistent with Subsection ~~[(11)](12)~~(d), all records of an attorney guardian ad litem:

(i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and

(ii) shall be released to the Legislature.

(c) (i) Except as provided in Subsection ~~[(11)](12)~~(c)(ii), records released in accordance with Subsection ~~[(11)](12)~~(b) shall be maintained as confidential by the Legislature.

(ii) Notwithstanding Subsection ~~[(11)](12)~~(c)(i), the Office of the Legislative Auditor General may include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) (i) Subsection ~~[(11)](12)~~(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

(A) the unique role of an attorney guardian ad litem described in Subsection (8); and

(B) the state's role and responsibility:

(I) to provide a guardian ad litem program; and

(II) as parens patriae, to protect minors.

(ii) A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

Section ~~{15}~~14. Section ~~{78A-6-902.1}~~78B-6-131 is ~~{enacted}~~amended to read:

~~{~~ 78A-6-902.1. Placement findings.

~~_____~~ (1) Before a guardian ad litem recommends that a child be removed from a parent's custody or that a parent's parental rights be terminated, the guardian ad litem shall file a memorandum with the court explaining why the action is in the best interest of the child.

~~_____~~ (2) The child's parent shall have an opportunity to file a memorandum in response to the attorney guardian ad litem's memorandum.

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~~_____ (3) The court shall consider all memoranda filed under Subsection (1) before making a ruling in a child's custody case.~~

~~_____ Section 16. Section 78B-6-131 is amended to read:~~

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

(1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in Subsection (2), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:

(a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent ~~[or]~~, prospective adoptive parent, and any other adult residing in the household;

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

(c) the Department of Human Services conducts a check of the child abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (1)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

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

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

(a) federal law or rule permits otherwise; or

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

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

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

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

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Legislative Review Note

~~as of 1-30-12 9:18 AM~~

~~Office of Legislative Research and General Counsel}~~