

EMERGENCY PLACEMENT OF CHILDREN

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: Gene Davis

LONG TITLE

Committee Note:

The Child Welfare Legislative Oversight Panel recommended this bill.

General Description:

This bill amends provisions related to the emergency placement of a child who has been removed by the Division of Child and Family Services.

Highlighted Provisions:

This bill:

- ▶ permits the Division of Child and Family Services (the division) to place a child in an emergency placement with a friend, designated by the custodial parent or guardian, who is not a licensed foster parent;
- ▶ modifies the definition of "relative" as it relates to abuse, neglect, and dependency proceedings;
- ▶ permits the division to place a child in an emergency placement with an adult who is an adoptive parent of the child's sibling;
- ▶ permits the court to award custody of a child with a friend who is not a licensed foster parent; and
- ▶ permits the court to award custody of a child with an adult who is an adoptive parent of a child's sibling.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **62A-4a-209**, as last amended by Laws of Utah 2013, Chapter 416

33 **78A-6-307**, as last amended by Laws of Utah 2013, Chapter 416



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

36 Section 1. Section **62A-4a-209** is amended to read:

37 **62A-4a-209. Emergency placement.**

38 (1) As used in this section:

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

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

41 (2) The division may use an emergency placement under Subsection

42 **62A-4a-202.1(4)(b)(ii)** when:

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

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

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

46 (iii) the child's custodial parent or guardian will agree to not remove the child from the

47 home of the person that serves as the placement and not have any contact with the child until

48 after the shelter hearing required by Section **78A-6-306**;

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

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

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

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

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

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

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

60 (iii) the person agrees to contact law enforcement and the division if the custodial

61 parent or guardian attempts to make unauthorized contact with the child;

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

63 access to the child;

64 (v) the person has been informed and understands that the division may continue to

65 search for other possible placements for long-term care, if needed;

66 (vi) the person is willing to assist the custodial parent or guardian in reunification

67 efforts at the request of the division, and to follow all court orders; and

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

69 (3) Except as otherwise provided in Subsection (5), before the division places a child

70 in an emergency placement, the division:

71 (a) may request the name of a reference and may contact the reference to determine the

72 answer to the following questions:

73 (i) would the person identified as a reference place a child in the home of the

74 emergency placement; and

75 (ii) are there any other relatives or friends to consider as a possible emergency or

76 long-term placement for the child;

77 (b) shall have the custodial parent or guardian sign an emergency placement agreement

78 form during the investigation;

79 (c) (i) if the emergency placement will be with a relative of the child, shall comply with

80 the background check provisions described in Subsection (7); or

81 (ii) if the emergency placement will be with a person other than a noncustodial parent

82 or a relative, shall comply with the criminal background check provisions described in Section

83 [78A-6-308](#) for adults living in the household where the child will be placed;

84 (d) shall complete a limited home inspection of the home where the emergency

85 placement is made; and

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

87 (4) (a) The following order of preference shall be applied when determining the person

88 with whom a child will be placed in an emergency placement described in this section,

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

- 90 (i) a noncustodial parent of the child in accordance with Section [78A-6-307](#);
- 91 (ii) a relative of the child;
- 92 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or
- 93 guardian of the child~~[, if the friend is a licensed foster parent]~~; and
- 94 (iv) a shelter facility, former foster placement, or other foster placement designated by
- 95 the division.

96 (b) Unless the division agrees otherwise, the custodial parent or guardian described in

97 Subsection (4)(a)(iii) may designate up to two friends as a potential emergency placement.

98 (5) (a) The division may, pending the outcome of the investigation described in

99 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial

100 parent if, based on a limited investigation, prior to making the emergency placement, the

101 division:

102 (i) determines that the noncustodial parent has regular, unsupervised visitation with the

103 child that is not prohibited by law or court order;

104 (ii) determines that there is not reason to believe that the child's health or safety will be

105 endangered during the emergency placement; and

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

107 (b) Either before or after making an emergency placement with the noncustodial parent

108 of the child, the division may conduct the investigation described in Subsection (3)(a) in

109 relation to the noncustodial parent.

110 (c) Before, or within one day, excluding weekends and holidays, after a child is placed

111 in an emergency placement with the noncustodial parent of the child, the division shall conduct

112 a limited:

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

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

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

116 (a) respond to the emergency placement's calls within one hour if the custodial parents

117 or guardians attempt to make unauthorized contact with the child or attempt to remove the

118 child;

119 (b) complete all removal paperwork, including the notice provided to the custodial

120 parents and guardians under Section [78A-6-306](#);

- 121 (c) contact the attorney general to schedule a shelter hearing;
122 (d) complete the placement procedures required in Section 78A-6-307; and
123 (e) continue to search for other relatives as a possible long-term placement, if needed.

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

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

127 (ii) a completed search of the Management Information System described in Section
128 62A-4a-1003.

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

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

134 Section 2. Section 78A-6-307 is amended to read:

135 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

136 (1) As used in this section:

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

138 (A) a biological or adoptive mother;

139 (B) an adoptive father; or

140 (C) a biological father who:

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

143 (II) has strictly complied with the provisions of Sections 78B-6-120 through
144 78B-6-122, prior to removal of the child or voluntary surrender of the child by the custodial
145 parent.

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

149 (b) "Relative" means:

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

152 cousin of the child's parent; ~~[and]~~

153 (ii) an adult who is an adoptive parent of the child's sibling; or

154 ~~[(ii)]~~ (iii) in the case of a child defined as an "Indian" under the Indian Child Welfare
155 Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by
156 that statute.

157 (2) (a) At the shelter hearing, when the court orders that a child be removed from the
158 custody of the child's parent in accordance with the requirements of Section 78A-6-306, the
159 court shall first determine whether there is another natural parent with whom the child was not
160 residing at the time the events or conditions that brought the child within the court's jurisdiction
161 occurred, who desires to assume custody of the child.

162 (b) If another natural parent requests custody under Subsection (2)(a), the court shall
163 place the child with that parent unless it finds that the placement would be unsafe or otherwise
164 detrimental to the child.

165 (c) The provisions of this Subsection (2) are limited by the provisions of Subsection
166 (18)(b).

167 (d) (i) The court shall make a specific finding regarding the fitness of the parent
168 described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the
169 placement.

170 (ii) The court shall, at a minimum, order the division to visit the parent's home, comply
171 with the criminal background check provisions described in Section 78A-6-308, and check the
172 division's management information system for any previous reports of abuse or neglect
173 received by the division regarding the parent at issue.

174 (iii) The court may order the division to conduct any further investigation regarding the
175 safety and appropriateness of the placement.

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

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

179 (3) If the court orders placement with a parent under Subsection (2):

180 (a) the child and the parent are under the continuing jurisdiction of the court;

181 (b) the court may order:

182 (i) that the parent assume custody subject to the supervision of the court; and

183 (ii) that services be provided to the parent from whose custody the child was removed,
184 the parent who has assumed custody, or both; and

185 (c) the court shall order reasonable parent-time with the parent from whose custody the
186 child was removed, unless parent-time is not in the best interest of the child.

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

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

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

191 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)
192 through (12); or

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

194 (5) The time limitations described in Section 78A-6-312 with regard to reunification
195 efforts, apply to children placed with a previously noncustodial parent in accordance with
196 Subsection (2).

197 (6) Legal custody of the child is not affected by an order entered under Subsection (2)
198 or (3). In order to affect a previous court order regarding legal custody, the party must petition
199 that court for modification of the order.

200 (7) If, at the time of the shelter hearing, a child is removed from the custody of the
201 child's parent and is not placed in the custody of the child's other parent, the court:

202 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),
203 there is a relative of the child or a friend of a parent of the child who is able and willing to care
204 for the child;

205 (b) may order the division to conduct a reasonable search to determine whether, subject
206 to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the
207 child who are willing and appropriate, in accordance with the requirements of this part and
208 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

209 (c) shall order the parents to cooperate with the division, within five working days, to,
210 subject to Subsections (18)(c) through (e), provide information regarding relatives of the child
211 or friends who may be able and willing to care for the child; and

212 (d) may order that the child be placed in the custody of the division pending the
213 determination under Subsection (7)(a).

214 (8) This section may not be construed as a guarantee that an identified relative or friend
215 will receive custody of the child.

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

219 (10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court
220 shall make a specific finding regarding:

221 (i) the fitness of that relative or friend as a placement for the child; and

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

223 (b) In order to be considered a "willing relative or friend" under this section, the
224 relative or friend shall be willing to cooperate with the child's permanency goal.

225 (11) (a) In making the finding described in Subsection (10)(a), the court shall, at a
226 minimum, order the division to:

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

229 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
230 background check of the relative;

231 (B) a completed search, relating to the relative, of the Management Information System
232 described in Section [62A-4a-1003](#); and

233 (C) a background check that complies with the criminal background check provisions
234 described in Section [78A-6-308](#), of each nonrelative, as defined in Subsection
235 [62A-4a-209\(1\)\(a\)](#), of the child who resides in the household where the child may be placed;

236 (ii) if the child will be placed with a noncustodial parent of the child, complete a
237 background check that includes:

238 (A) the background check requirements applicable to an emergency placement with a
239 noncustodial parent that are described in Subsections [62A-4a-209\(5\)](#) and (7);

240 (B) a completed search, relating to the noncustodial parent of the child, of the
241 Management Information System described in Section [62A-4a-1003](#); and

242 (C) a background check that complies with the criminal background check provisions
243 described in Section [78A-6-308](#), of each nonrelative, as defined in Subsection
244 [62A-4a-209\(1\)\(a\)](#), of the child who resides in the household where the child may be placed;

245 (iii) if the child may be placed with an individual other than a noncustodial parent or a
246 relative of the child, conduct a criminal background check of the individual, and each adult that
247 resides in the household where the child may be placed, that complies with the criminal
248 background check provisions described in Section 78A-6-308;

249 (iv) visit the relative's or friend's home;

250 (v) check the division's management information system for any previous reports of
251 abuse or neglect regarding the relative or friend at issue;

252 (vi) report the division's findings in writing to the court; and

253 (vii) provide sufficient information so that the court may determine whether:

254 (A) the relative or friend has any history of abusive or neglectful behavior toward other
255 children that may indicate or present a danger to this child;

256 (B) the child is comfortable with the relative or friend;

257 (C) the relative or friend recognizes the parent's history of abuse and is committed to
258 protect the child;

259 (D) the relative or friend is strong enough to resist inappropriate requests by the parent
260 for access to the child, in accordance with court orders;

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

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

263 (b) The division may determine to conduct, or the court may order the division to
264 conduct, any further investigation regarding the safety and appropriateness of the placement.

265 (c) The division shall complete and file its assessment regarding placement with a
266 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
267 relative or friend.

268 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary
269 custody of the division, pending the division's investigation pursuant to Subsections (10) and
270 (11), and the court's determination regarding the appropriateness of that placement.

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

273 (13) When the court awards custody and guardianship of a child with a relative or
274 friend:

275 (a) the court shall order that:

276 (i) the relative or friend assume custody, subject to the continuing supervision of the
277 court; and

278 (ii) any necessary services be provided to the child and the relative or friend;

279 (b) the child and any relative or friend with whom the child is placed are under the
280 continuing jurisdiction of the court;

281 (c) the court may enter any order that it considers necessary for the protection and best
282 interest of the child;

283 (d) the court shall provide for reasonable parent-time with the parent or parents from
284 whose custody the child was removed, unless parent-time is not in the best interest of the child;
285 and

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

288 (i) placement with the relative or friend continues to be in the child's best interest;

289 (ii) the child should be returned home; or

290 (iii) the child should be placed in the custody of the division.

291 (14) No later than 12 months after placement with a relative or friend, the court shall
292 schedule a hearing for the purpose of entering a permanent order in accordance with the best
293 interest of the child.

294 (15) The time limitations described in Section [78A-6-312](#), with regard to reunification
295 efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

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

298 (i) conduct a criminal background check of the relative that complies with the criminal
299 background check provisions described in Section [78A-6-308](#); and

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

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

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

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

310 (17) When the court orders that a child be removed from the custody of the child's
311 parent and does not award custody and guardianship to another parent, relative, or friend under
312 this section, the court shall order that the child be placed in the temporary custody of the
313 Division of Child and Family Services, to proceed to adjudication and disposition and to be
314 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,
315 Child and Family Services.

316 (18) (a) Any preferential consideration that a relative or friend is initially granted
317 pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that
318 time period has expired, a relative or friend who has not obtained custody or asserted an
319 interest in a child, may not be granted preferential consideration by the division or the court.

320 (b) When the time period described in Subsection (18)(a) has expired, the preferential
321 consideration, which is initially granted to a natural parent in accordance with Subsection (2),
322 is limited. After that time the court shall base its custody decision on the best interest of the
323 child.

324 (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the
325 following order of preference shall be applied when determining the person with whom a child
326 will be placed, provided that the person is willing, and has the ability, to care for the child:

327 (i) a noncustodial parent of the child;

328 (ii) a relative of the child;

329 (iii) subject to Subsection (18)(d), a friend of a parent of the child~~[- if the friend is a
330 licensed foster parent];~~ and

331 (iv) other placements that are consistent with the requirements of law.

332 (d) In determining whether a friend is a willing and appropriate placement for a child,
333 neither the court, nor the division, is required to consider more than one friend designated by
334 each parent of the child.

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

338 ~~[(i) the department shall fully cooperate to expedite the licensing process for the friend;~~
339 ~~and]~~

340 ~~[(ii) if the friend becomes licensed as a foster parent within the time frame described in~~
341 ~~Subsection (18)(a), the court shall determine whether it is in the best interests of the child to~~
342 ~~place the child with the friend.]~~

343 (19) If, following the shelter hearing, the child is placed with a person who is not a
344 parent of the child, a relative of the child, a friend of a parent of the child, or a former foster
345 parent of the child, priority shall be given to a foster placement with a man and a woman who
346 are married to each other, unless it is in the best interests of the child to place the child with a
347 single foster parent.

348 (20) In determining the placement of a child, neither the court, nor the division, may
349 take into account, or discriminate against, the religion of a person with whom the child may be
350 placed, unless the purpose of taking religion into account is to place the child with a person or
351 family of the same religion as the child.

Legislative Review Note
as of 12-15-14 9:57 AM

Office of Legislative Research and General Counsel