

ADOPTIVE STUDIES AND EVALUATIONS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to adoptive evaluations.

Highlighted Provisions:

This bill:

- ▶ addresses who may conduct a home study as part of a preplacement adoptive evaluation;
- ▶ requires a home study to contain certain information; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-103, as last amended by Laws of Utah 2015, Chapters 137 and 194

78B-6-128, as last amended by Laws of Utah 2013, Chapter 458

78B-6-130, as enacted by Laws of Utah 2008, Chapter 3

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

Section 1. Section **78B-6-103** is amended to read:



28 **78B-6-103. Definitions.**

29 As used in this part:

30 (1) "Adoptee" means a person who:

31 (a) is the subject of an adoption proceeding; or

32 (b) has been legally adopted.

33 (2) "Adoption" means the judicial act that:

34 (a) creates the relationship of parent and child where it did not previously exist; and

35 (b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of

36 any other person with respect to the child.

37 (3) "Adoption document" means an adoption-related document filed with the office, a

38 petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted

39 in support of a supplementary birth certificate.

40 (4) "Adoption service provider" means [a]:

41 (a) a child-placing agency; [or]

42 (b) a licensed counselor who has at least one year of experience providing professional

43 social work services to:

44 (i) adoptive parents;

45 (ii) prospective adoptive parents; or

46 (iii) birth parents[-]; or

47 (c) the Office of Licensing within the Department of Human Services.

48 (5) "Adoptive parent" means a person who has legally adopted an adoptee.

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

50 (7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted

51 as a minor.

52 (8) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or

53 older and whose birth mother or father is the same as that of the adoptee.

54 (9) "Birth mother" means the biological mother of a child.

55 (10) "Birth parent" means:

56 (a) a birth mother;

57 (b) a man whose paternity of a child is established;

58 (c) a man who:

- 59 (i) has been identified as the father of a child by the child's birth mother; and
- 60 (ii) has not denied paternity; or
- 61 (d) an unmarried biological father.

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

64 (12) "Cohabiting" means residing with another person and being involved in a sexual
65 relationship with that person.

66 (13) "Division" means the Division of Child and Family Services, within the
67 Department of Human Services, created in Section [62A-4a-103](#).

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

70 (15) "Genetic and social history" means a comprehensive report, when obtainable, on
71 an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following
72 information:

- 73 (a) medical history;
- 74 (b) health status;
- 75 (c) cause of and age at death;
- 76 (d) height, weight, and eye and hair color;
- 77 (e) ethnic origins;
- 78 (f) where appropriate, levels of education and professional achievement; and
- 79 (g) religion, if any.

80 (16) "Health history" means a comprehensive report of the adoptee's health status at the
81 time of placement for adoption, and medical history, including neonatal, psychological,
82 physiological, and medical care history.

83 (17) "Identifying information" means information in the possession of the office, which
84 contains the name and address of a pre-existing parent or adult adoptee, or other specific
85 information that by itself or in reasonable conjunction with other information may be used to
86 identify that person, including information on a birth certificate or in an adoption document.

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

- 89 (a) certified social worker;

90 (b) clinical social worker;
91 (c) psychologist;
92 (d) marriage and family therapist;
93 (e) professional counselor; or
94 (f) an equivalent licensed professional of another state, district, or territory of the
95 United States.

96 (19) "Man" means a male individual, regardless of age.

97 (20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

98 (21) "Office" means the Office of Vital Records and Statistics within the Department
99 of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

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

103 (23) "Potential birth father" means a man who:

104 (a) is identified by a birth mother as a potential biological father of the birth mother's
105 child, but whose genetic paternity has not been established; and

106 (b) was not married to the biological mother of the child described in Subsection
107 (23)(a) at the time of the child's conception or birth.

108 (24) "Pre-existing parent" means:

109 (a) a birth parent; or

110 (b) a person who, before an adoption decree is entered, is, due to an earlier adoption
111 decree, legally the parent of the child being adopted.

112 (25) "Prospective adoptive parent" means a person who seeks to adopt an adoptee.

113 (26) "Relative" means:

114 (a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great
115 uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or
116 first cousin of the child's parent; and

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

119 (27) "Unmarried biological father" means a person who:

120 (a) is the biological father of a child; and

121 (b) was not married to the biological mother of the child described in Subsection
122 (27)(a) at the time of the child's conception or birth.

123 Section 2. Section **78B-6-128** is amended to read:

124 **78B-6-128. Preplacement adoptive evaluations -- Exceptions.**

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

129 (b) Except as provided in Section **78B-6-131**, the court may, at any time, authorize
130 temporary placement of a child in a [~~potential~~] prospective adoptive home pending completion
131 of a preplacement adoptive evaluation described in this section.

132 (c) (i) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the
133 child to be adopted and the prospective adoptive parent is related to that child or the
134 pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent,
135 aunt, uncle, or first cousin, unless the preplacement adoptive evaluation is otherwise requested
136 by the court.

137 (ii) The prospective adoptive parent described in this Subsection (1)(c) shall obtain the
138 information described in Subsections (2)(a) and (b), and file that documentation with the court
139 prior to finalization of the adoption.

140 (d) (i) The [~~required~~] preplacement adoptive evaluation [~~must~~] shall be completed or
141 updated within the 12-month period immediately preceding the placement of a child with the
142 prospective adoptive parent.

143 (ii) If the prospective adoptive parent has previously received custody of a child for the
144 purpose of adoption, the preplacement adoptive evaluation [~~must~~] shall be completed or
145 updated within the 12-month period immediately preceding the placement of a child with the
146 prospective adoptive parent and after the placement of the previous child with the prospective
147 adoptive parent.

148 (2) The preplacement adoptive evaluation shall include:

149 (a) a criminal history [~~record information~~] background check regarding each
150 prospective adoptive parent and any other adult living in the prospective home, prepared no
151 earlier than 18 months immediately preceding placement of the child in accordance with the

152 following:

153 (i) if the child is in state custody, each prospective adoptive parent and any other adult
154 living in the prospective home shall[:] submit fingerprints to the Department of Human
155 Services, which shall perform a criminal history background check in accordance with Section
156 62A-2-120; or

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

160 [~~(B) submit to a fingerprint based Federal Bureau of Investigation national criminal~~
161 ~~history record check through a law enforcement agency in another state, district, or territory of~~
162 ~~the United States; or]~~

163 (ii) subject to Subsection (3), if the child is not in state custody, each prospective
164 adoptive parent and any other adult living in the prospective home shall[:~~(A)~~] submit
165 fingerprints for a Federal Bureau of Investigation national criminal ~~[history records check as a~~
166 ~~personal records check; or]~~ background check through the Criminal and Technical Services
167 Division of the Department of Public Safety;

168 [~~(B) complete a criminal records check, if available, for each state and country where~~
169 ~~the prospective adoptive parent and any adult living in the prospective adoptive home resided~~
170 ~~during the five years immediately preceding the day on which the adoption petition is to be~~
171 ~~finalized;]~~

172 (b) a report containing all information regarding reports and investigations of child
173 abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other
174 adult living in the prospective home, obtained no earlier than 18 months immediately preceding
175 the day on which the child is placed in the prospective home, pursuant to waivers executed by
176 each prospective adoptive parent and any other adult living in the prospective home, that:

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

180 (ii) if the prospective adoptive parent or the adult living in the prospective adoptive
181 parent's home is not a resident of Utah, prepared by the Department of Human Services, or a
182 similar agency in another state, district, or territory of the United States, where each

183 prospective adoptive parent and any other adult living in the prospective home resided in the
 184 five years immediately preceding the day on which the child is placed in the prospective
 185 adoptive home;

186 (c) in accordance with Subsection (6), ~~[an evaluation]~~ a home study conducted by an
 187 adoption service provider that is:

188 (i) an expert in family relations approved by the court;

189 (ii) a certified social worker;

190 (iii) a clinical social worker;

191 (iv) a marriage and family therapist;

192 (v) a psychologist;

193 (vi) a social service worker, if supervised by a certified or clinical social worker; ~~[or]~~

194 (vii) a professional counselor; ~~[and]~~ or

195 (viii) an Office of Licensing employee within the Department of Human Services who
 196 is trained to perform a home study; and

197 (d) in accordance with Subsection (7), if the child to be adopted is a child who is in the
 198 custody of any public child welfare agency, and is a child who has a special need as defined in
 199 Section [62A-4a-902](#), the preplacement adoptive evaluation shall be conducted by the
 200 Department of Human Services or a child-placing agency that has entered into a contract with
 201 the department to conduct the preplacement adoptive evaluations for children with special
 202 needs.

203 (3) For purposes of Subsection (2)(a)(ii) ~~[(a) if the adoption is being handled by a~~
 204 ~~human services program, as defined in Section [62A-2-101](#): (i) the criminal history check~~
 205 ~~described in Subsection (2)(a)(ii)(A) shall be submitted through the Criminal Investigations~~
 206 ~~and Technical Services Division of the Department of Public Safety, in accordance with the~~
 207 ~~provisions of Section [62A-2-120](#); and (ii)]~~, subject to Subsection (4), the criminal ~~[history]~~
 208 background check described in Subsection (2)(a)(ii) ~~[(B)]~~ shall be submitted in a manner
 209 acceptable to the court that will:

210 ~~[(A)]~~ (a) preserve the chain of custody of the results; and

211 ~~[(B)]~~ (b) not permit tampering with the results by a prospective adoptive parent or
 212 other interested party ~~[; and]~~.

213 ~~[(b) if the adoption is being handled by a private attorney, and not a human services~~

214 ~~program, the criminal history checks described in Subsection (2)(a)(ii) shall be:]~~

215 ~~[(i) submitted in accordance with procedures established by the Criminal Investigations~~
216 ~~and Technical Services Division of the Department of Public Safety; or]~~

217 ~~[(ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:]~~

218 ~~[(A) preserve the chain of custody of the results; and]~~

219 ~~[(B) not permit tampering with the results by a prospective adoptive parent or other~~
220 ~~interested party.]~~

221 (4) In order to comply with Subsection (3)~~[(a)(ii) or (b)(ii)]~~, the manner in which the
222 criminal ~~[history]~~ background check is submitted shall be approved by the court.

223 (5) Except as provided in Subsection 78B-6-131(2), in addition to the other
224 requirements of this section, before a child in state custody is placed with a prospective foster
225 parent or a prospective adoptive parent, the Department of Human Services shall comply with
226 Section 78B-6-131.

227 (6) (a) ~~[A person]~~ An individual described in ~~[Subsection (2)(c)]~~ Subsections (2)(c)(i)
228 through (vii) shall be licensed to practice under the laws of:

229 (i) this state; or

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

232 ~~[(b) The evaluation described in Subsection (2)(c) shall be in a form approved by the~~
233 ~~Department of Human Services.]~~

234 ~~[(c)]~~ (b) Neither the Department of Human Services nor any of its divisions may
235 proscribe who qualifies as an expert in family relations or who may conduct ~~[evaluations]~~ a
236 home study under Subsection (2)(c).

237 (c) The home study described in Subsection (2)(c) shall be a written document that
238 contains the following:

239 (i) a recommendation to the court regarding the suitability of the prospective adoptive
240 parent for placement of a child;

241 (ii) a description of in-person interviews with the prospective adoptive parent, the
242 prospective adoptive parent's children, and other individuals living in the home;

243 (iii) a description of in-person interviews with at least two individuals who are not
244 related to the prospective adoptive parent and from at least one individual who is related to the

245 prospective adoptive parent;

246 (iv) a medical history and a doctor's report, based upon a doctor's physical examination
247 of the prospective adoptive parent, made within two years prior to the date of the application;

248 and

249 (v) a description of an inspection of the home to determine whether sufficient space
250 and facilities to meet the needs of the child exist and whether basic health and safety standards
251 are maintained.

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

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

258 (a) the adoption process;

259 (b) developmental issues that may require early intervention; and

260 (c) community resources that are available to the prospective adoptive parent or
261 parents.

262 (9) A copy of the preplacement adoptive evaluation shall be filed with the court.

263 Section 3. Section **78B-6-130** is amended to read:

264 **78B-6-130. Preplacement and postplacement adoptive evaluations -- Review by**
265 **court.**

266 (1) (a) If the person [~~or agency~~] conducting the preplacement adoptive evaluation or
267 postplacement adoptive evaluation disapproves the adoptive placement, [~~either in the~~
268 ~~preplacement or postplacement adoptive evaluation,~~] the court may dismiss the petition for
269 adoption. [~~However,~~]

270 (b) Upon request [~~of~~] by a prospective adoptive parent, the court shall order that an
271 additional preplacement adoptive evaluation or postplacement adoptive evaluation be
272 conducted, and shall hold a hearing on the suitability of the adoption, including testimony of
273 interested parties.

274 (2) Prior to finalization of a petition for adoption the court shall review and consider
275 the information and recommendations contained in the preplacement adoptive evaluation and

276 postplacement adoptive [~~studies required by~~] evaluation described in Sections 78B-6-128 and
277 78B-6-129.

278 (3) With respect to the home study required as part of the preplacement adoptive
279 evaluation described in Subsection 78B-6-128(2)(c), a court may review and consider
280 information other than the information contained in the home study described in Subsection
281 78B-6-128(6)(c).

Legislative Review Note
Office of Legislative Research and General Counsel