

Representative Edward H. Redd proposes the following substitute bill:

ADOPTIVE STUDIES AND EVALUATIONS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: Wayne A. Harper

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-6-113, as last amended by Laws of Utah 2012, Chapter 340

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



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

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

78B-6-103. Definitions.

As used in this part:

(1) "Adoptee" means a person who:

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

(b) has been legally adopted.

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

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

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

(3) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

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

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

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

(i) adoptive parents;

(ii) prospective adoptive parents; or

(iii) birth parents[-]; or

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

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

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

(7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted as a minor.

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

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

(10) "Birth parent" means:

- 57 (a) a birth mother;
- 58 (b) a man whose paternity of a child is established;
- 59 (c) a man who:
 - 60 (i) has been identified as the father of a child by the child's birth mother; and
 - 61 (ii) has not denied paternity; or
 - 62 (d) an unmarried biological father.

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

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

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

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

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

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

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

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

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

90 (a) certified social worker;

91 (b) clinical social worker;

92 (c) psychologist;

93 (d) marriage and family therapist;

94 (e) ~~licensed~~ **professional counselor** **clinical mental health counselor** ; or

95 (f) an equivalent licensed professional of another state, district, or territory of the
96 United States.

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

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

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

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

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

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

107 (b) was not married to the biological mother of the child described in Subsection

108 (23)(a) at the time of the child's conception or birth.

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

110 (a) a birth parent; or

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

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

114 (26) "Relative" means:

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

118 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25

119 U.S.C. Sec. 1903, an "extended family member" as defined by that statute.

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

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

122 (b) was not married to the biological mother of the child described in Subsection

123 (27)(a) at the time of the child's conception or birth.

124 Section 2. Section **78B-6-113** is amended to read:

125 **78B-6-113. Prospective adoptive parent not a resident -- Preplacement**
126 **requirements.**

127 (1) When an adoption petition is to be finalized in this state with regard to any
128 prospective adoptive parent who is not a resident of this state at the time a child is placed in
129 that person's home, the prospective adoptive parent shall~~[-(a)]~~ comply with the provisions of
130 Sections **78B-6-128** and **78B-6-130**~~[-and]~~.

131 ~~[(b) (i) if the child is in state custody:]~~

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

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

138 ~~[(ii) subject to Subsection (2), if the child is not in state custody:]~~

139 ~~[(A) submit fingerprints for a Federal Bureau of Investigation national criminal history~~
140 ~~records check as a personal records check; or]~~

141 ~~[(B) complete a criminal records check and child abuse database check for each state~~
142 ~~and, if available, country, where the prospective adoptive parent resided during the five years~~
143 ~~immediately preceding the day on which the adoption petition is to be finalized.]~~

144 ~~[(2) For purposes of Subsection (1)(b)(ii):]~~

145 ~~[(a) if the adoption is being handled by a human services program, as defined in~~
146 ~~Section **62A-2-101**;~~

147 ~~[(i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted~~
148 ~~in accordance with procedures established by the Criminal Investigations and Technical~~
149 ~~Services Division of the Department of Public Safety; and]~~

150 ~~[(ii) subject to Subsection (3), the criminal history check described in Subsection~~
151 ~~(1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:]~~
152 ~~[(A) preserve the chain of custody of the results; and]~~
153 ~~[(B) not permit tampering with the results by a prospective adoptive parent or other~~
154 ~~interested party; and]~~
155 ~~[(b) if the adoption is being handled by a private attorney, and not a human services~~
156 ~~program, the criminal history checks described in Subsection (1)(b)(ii), shall be:]~~
157 ~~[(i) submitted in accordance with procedures established by the Criminal Investigations~~
158 ~~and Technical Services Division of the Department of Public Safety; or]~~
159 ~~[(ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:]~~
160 ~~[(A) preserve the chain of custody of the results; and]~~
161 ~~[(B) not permit tampering with the results by a prospective adoptive parent or other~~
162 ~~interested party.]~~
163 ~~[(3) In order to comply with Subsection (2)(a)(ii) or (b)(ii), the manner in which the~~
164 ~~criminal history check is submitted shall be approved by the court.]~~

165 ~~[(4)]~~ (2) Except as provided in Subsection 78B-6-131(2), in addition to the other
166 requirements of this section, before a child in state custody is placed with a prospective foster
167 parent or a prospective adoptive parent, the Department of Human Services shall comply with
168 Section 78B-6-131.

169 Section 3. Section 78B-6-128 is amended to read:

170 **78B-6-128. Preplacement adoptive evaluations -- Exceptions.**

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

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

178 (c) (i) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the
179 child to be adopted and the prospective adoptive parent is related to that child or the
180 pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent,

181 aunt, uncle, or first cousin, unless the ~~[evaluation is otherwise requested by the]~~ court
182 otherwise requests the preplacement adoption.

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

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

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

194 (2) The preplacement adoptive evaluation shall include:

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

199 (i) if the child is in state custody, each prospective adoptive parent and any other adult
200 living in the prospective home shall~~[:]~~ submit fingerprints to the Department of Human
201 Services, which shall perform a criminal history background check in accordance with Section
202 62A-2-120; or

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

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

209 (ii) subject to Subsection (3), if the child is not in state custody, ~~[each prospective~~
210 ~~adoptive parent and any other adult living in the prospective home shall: (A) submit~~
211 ~~fingerprints for a Federal Bureau of Investigation national criminal history records check as a~~

212 ~~personal records check; or~~ an adoption service provider ~~H→~~ **or an attorney representing a**
 212a **prospective adoptive parent** ~~←H~~ shall submit fingerprints from the
 213 prospective adoptive ~~H→~~ ~~[parents]~~ **parent** ~~←H~~ and any other adult living in the prospective home
 213a to the Criminal
 214 and Technical Services Division of Public Safety for ~~H→~~ ~~[a regional or]~~ ~~←H~~ a regional and
 214a nationwide
 215 background check ~~H→~~ ~~[, based upon the requirements of the court]~~ **, or to the Office of Licensing**
 215a **within the Department of Human Services for a background check in accordance**
 215b **with 62A-2-120** ~~←H~~ .

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

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

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

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

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

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

237 (ii) a certified social worker;

238 (iii) a clinical social worker;

239 (iv) a marriage and family therapist;

240 (v) a psychologist;

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

242 (vii) a ~~S→~~ ~~[professional counselor]~~ **clinical mental health counselor** ~~←S~~ ; ~~[and]~~ or

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

245 (d) in accordance with Subsection (7), if the child to be adopted is a child who is in the
246 custody of any public child welfare agency, and is a child who has a special need as defined in
247 Section 62A-4a-902, the preplacement adoptive evaluation shall be conducted by the
248 Department of Human Services or a child-placing agency that has entered into a contract with
249 the department to conduct the preplacement adoptive evaluations for children with special
250 needs.

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

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

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

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

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

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

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

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

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

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

274 Section 78B-6-131.

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

277 (i) this state; or

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

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

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

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

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

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

291 (iii) a description of character and suitability references from at least two individuals
292 who are not related to the prospective adoptive parent and with at least one individual who is
293 related to the prospective adoptive parent;

294 (iv) a medical history and a doctor's report, based upon a doctor's physical examination
295 of the prospective adoptive parent, made within two years before the date of the application;
296 and

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

300 (7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the
301 responsibility of the adopting parent [~~or parents~~].

302 (8) The person [~~or agency~~] conducting the preplacement adoptive evaluation shall, in
303 connection with the preplacement adoptive evaluation, provide the prospective adoptive parent
304 [~~or parents~~] with literature approved by the Division of Child and Family Services relating to

305 adoption, including information relating to:

- 306 (a) the adoption process;
- 307 (b) developmental issues that may require early intervention; and
- 308 (c) community resources that are available to the prospective adoptive parent [~~or~~
- 309 ~~parents~~].

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

311 Section 4. Section **78B-6-130** is amended to read:

312 **78B-6-130. Preplacement and postplacement adoptive evaluations -- Review by**
313 **court.**

314 (1) (a) If the person [~~or agency~~] conducting the preplacement adoptive evaluation or
315 postplacement adoptive evaluation disapproves the adoptive placement, [~~either in the~~
316 ~~preplacement or postplacement adoptive evaluation;~~] the court may dismiss the petition[
317 ~~However, upon~~] for adoption.

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

322 (2) [~~Prior to~~] Before finalization of a petition for adoption the court shall review and
323 consider the information and recommendations contained in the preplacement adoptive
324 evaluation and postplacement adoptive [~~studies required by~~] evaluation described in Sections
325 78B-6-128 and 78B-6-129.

326 (3) With respect to the home study required as part of the preplacement adoptive
327 evaluation described in Subsection 78B-6-128(2)(c), a court may review and consider
328 information other than the information contained in the home study described in Subsection
329 78B-6-128(6)(c).