

Representative Kay J. Christofferson proposes the following substitute bill:

CHILD PLACEMENT REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends provisions relating to the placement of a child in division custody and the adoption of a child from division custody.

Highlighted Provisions:

This bill:

- ▶ requires the division to make an ongoing child placement that is in the child's best interests without the division giving undue preference to the child's emergency placement;
- ▶ creates a review process of an ongoing placement decision;
- ▶ gives placement preference to married couples over an unmarried individual; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-4-102, as last amended by Laws of Utah 2015, Chapter 441



26 [78A-6-307.5](#), as enacted by Laws of Utah 2008, Chapter 17



27
28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **63G-4-102** is amended to read:

30 **63G-4-102. Scope and applicability of chapter.**

31 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
32 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
33 this chapter apply to every agency of the state and govern:

34 (a) state agency action that determines the legal rights, duties, privileges, immunities,
35 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,
36 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

37 (b) judicial review of the action.

38 (2) This chapter does not govern:

39 (a) the procedure for making agency rules, or judicial review of the procedure or rules;

40 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
41 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the
42 issuance of a tax assessment, except that this chapter governs an agency action commenced by
43 a taxpayer or by another person authorized by law to contest the validity or correctness of the
44 action;

45 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
46 commutation or termination of a sentence, or to the rescission, termination, or revocation of
47 parole or probation, to the discipline of, resolution of a grievance of, supervision of,
48 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah
49 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction
50 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or
51 judicial review of the action;

52 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
53 student or teacher in a school or educational institution, or judicial review of the action;

54 (e) an application for employment and internal personnel action within an agency
55 concerning its own employees, or judicial review of the action;

56 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah

57 Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that
58 this chapter governs an agency action commenced by the employer, licensee, or other person
59 authorized by law to contest the validity or correctness of the citation or assessment;

60 (g) state agency action relating to management of state funds, the management and
61 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
62 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
63 the state, except as provided in those contracts, or judicial review of the action;

64 (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of
65 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
66 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
67 Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or
68 judicial review of the action;

69 (i) the initial determination of a person's eligibility for unemployment benefits, the
70 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'
71 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
72 determination of a person's unemployment tax liability;

73 (j) state agency action relating to the distribution or award of a monetary grant to or
74 between governmental units, or for research, development, or the arts, or judicial review of the
75 action;

76 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
77 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
78 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
79 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
80 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used
81 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except
82 that this chapter governs an agency action commenced by a person authorized by law to contest
83 the validity or correctness of the notice or order;

84 (l) state agency action, to the extent required by federal statute or regulation, to be
85 conducted according to federal procedures;

86 (m) the initial determination of a person's eligibility for government or public
87 assistance benefits;

88 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of
89 registration;

90 (o) a license for use of state recreational facilities;

91 (p) state agency action under Title 63G, Chapter 2, Government Records Access and
92 Management Act, except as provided in Section [63G-2-603](#);

93 (q) state agency action relating to the collection of water commissioner fees and
94 delinquency penalties, or judicial review of the action;

95 (r) state agency action relating to the installation, maintenance, and repair of headgates,
96 caps, valves, or other water controlling works and weirs, flumes, meters, or other water
97 measuring devices, or judicial review of the action;

98 (s) the issuance and enforcement of an initial order under Section [73-2-25](#);

99 (t) (i) a hearing conducted by the Division of Securities under Section [61-1-11.1](#); and

100 (ii) an action taken by the Division of Securities under a hearing conducted under
101 Section [61-1-11.1](#), including a determination regarding the fairness of an issuance or exchange
102 of securities described in Subsection [61-1-11.1\(1\)](#); ~~and~~

103 (u) state agency action relating to water well driller licenses, water well drilling
104 permits, water well driller registration, or water well drilling construction standards, or judicial
105 review of the action[-]; or

106 (v) except as provided in Section [62A-4a-206](#), review of an ongoing child placement
107 decision made by the Division of Child and Family Services within the Department of Human
108 Services under Section [78A-6-307.5](#).

109 (3) This chapter does not affect a legal remedy otherwise available to:

110 (a) compel an agency to take action; or

111 (b) challenge an agency's rule.

112 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
113 proceeding, or the presiding officer during an adjudicative proceeding from:

114 (a) requesting or ordering a conference with parties and interested persons to:

115 (i) encourage settlement;

116 (ii) clarify the issues;

117 (iii) simplify the evidence;

118 (iv) facilitate discovery; or

119 (v) expedite the proceeding; or
120 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
121 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
122 except to the extent that the requirements of those rules are modified by this chapter.

123 (5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by
124 this chapter, except as explicitly provided in that section.

125 (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is
126 governed by this chapter.

127 (6) This chapter does not preclude an agency from enacting a rule affecting or
128 governing an adjudicative proceeding or from following the rule, if the rule is enacted
129 according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking
130 Act, and if the rule conforms to the requirements of this chapter.

131 (7) (a) If the attorney general issues a written determination that a provision of this
132 chapter would result in the denial of funds or services to an agency of the state from the federal
133 government, the applicability of the provision to that agency shall be suspended to the extent
134 necessary to prevent the denial.

135 (b) The attorney general shall report the suspension to the Legislature at its next
136 session.

137 (8) Nothing in this chapter may be interpreted to provide an independent basis for
138 jurisdiction to review final agency action.

139 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
140 cause shown, from lengthening or shortening a time period prescribed in this chapter, except
141 the time period established for judicial review.

142 (10) Notwithstanding any other provision of this section, this chapter does not apply to
143 a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent
144 expressly provided in Section 19-1-301.5.

145 Section 2. Section 78A-6-307.5 is amended to read:

146 **78A-6-307.5. Post-shelter hearing placement of a child who is in division custody.**

147 (1) If the court awards custody of a child to the division under Section 78A-6-307, or
148 as otherwise permitted by law, the division shall determine ongoing placement of the child.

149 (2) In placing a child under Subsection (1), the division:

150 (a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable
151 background check provisions described in Section 78A-6-307;

152 (b) is not required to receive approval from the court prior to making the placement;

153 (c) shall[;] within three days, excluding weekends and holidays, after making the
154 placement, give written notice that the placement has been made to the court[;] and all parties
155 to the proceedings[~~that the placement has been made~~]; and

156 (d) may place the child with a noncustodial parent or relative of the child, using the
157 same criteria established for an emergency placement under Section 62A-4a-209, pending the
158 results of:

159 (i) the background check described in Subsection 78A-6-307(16)(a); and

160 (ii) evaluation with the noncustodial parent or relative to determine the noncustodial
161 parent's or relative's capacity to provide ongoing care to the child.

162 (3) When determining an ongoing placement under Subsection (1), the division:

163 (a) may not give undue preference to keeping a child in the location of an emergency
164 placement made under Section 62A-4a-209 if another placement option that better serves the
165 best interests of the child is available; and

166 (b) shall give preferential consideration to a married couple over an unmarried
167 individual when both placement options would satisfy the child's best interests.

168 (4) A noncustodial parent or a relative of the child may request the division to
169 reconsider the division's ongoing placement determination if:

170 (a) (i) before the division made the ongoing placement determination, the individual
171 expressed willingness to the division to have the child placed in the individual's home; or

172 (ii) before the division made the ongoing placement decision, the individual did not
173 express willingness to have the child placed in the individual's home because the individual did
174 not receive notice that the child was in need of an ongoing placement;

175 (b) the individual demonstrates in the request that the individual is a willing and
176 appropriate placement for the child; and

177 (c) the individual communicates the request:

178 (i) no less than 30 days after receipt of a denial letter from the division informing the
179 individual that the child was placed elsewhere, if the individual had previously expressed
180 willingness to the division to have the child placed in the individual's home; or

181 (ii) no less than 30 days after the child is placed into an ongoing placement, if the
182 individual did not have an opportunity to express willingness to have the child placed in the
183 individual's home because the individual did not receive notice, before the division made the
184 ongoing placement decision, that the child was in need of an ongoing placement.

185 (5) When the division receives a timely request for reconsideration described in
186 Subsection (4), the division shall:

187 (a) review the ongoing placement determination;

188 (b) review the qualifications of the relative making the request for reconsideration;

189 (c) make a determination regarding whether to maintain or change the ongoing
190 placement for the child based upon the best interests of the child and the child placement
191 requirements and procedures required by law or rule;

192 (d) make a determination within 15 working days after the day on which the division
193 receives the request for reconsideration; and

194 (e) send to the relative who made the request for reconsideration and to the current
195 placement for the child, by certified mail:

196 (i) the final decision of the division;

197 (ii) a statement of the factors relied upon by the decision to support the division's
198 placement determination; and

199 (iii) citations for the policies, rules, or statutes that were considered in making the
200 decision.

201 (6) If the relative who made a request for reconsideration disagrees with the division's
202 final decision, the relative may, within 15 days after the day on which the division sends the
203 certified letter, file a petition with the juvenile court that has jurisdiction over the child to
204 review the division's final decision, as described in Subsection (5)(e), to determine if the
205 decision was reached in an arbitrary, capricious, or illegal manner. The petition shall include:

206 (a) a statement describing the petitioner's relationship to the child;

207 (b) a statement of the petitioner's ongoing willingness to have the child placed in the
208 petitioner's home;

209 (c) a demonstration that the petitioner met the requirements of Subsection (4);

210 (d) the final division decision described in Subsection (5); and

211 (e) the basis of the petitioner's belief that the division's decision was arbitrary,

212 capricious, or illegal.

213 (7) Upon receipt of notice of the filing of the petition with the court, the division shall
214 file the summary reports relating to the placement decision with the juvenile court and provide
215 the summary reports to the parties to the proceeding.

216 (8) After reviewing the petition described in Subsection (6), the placement decision
217 summary reports, and any response from the division, the juvenile court shall:

218 (a) make a finding regarding whether the placement decision was arbitrary, capricious,
219 or illegal and specify the reasons for the finding; and

220 (b) (i) affirm the division's ongoing placement determination; or

221 (ii) order the division to reconsider the division's placement determination.

222 (9) When ordered to reconsider a placement determination, the division shall make a
223 subsequent placement determination that is in accordance with:

224 (a) all legal requirements;

225 (b) the findings of the juvenile court; and

226 (c) the best interests of the child.