

Representative Timothy D. Hawkes proposes the following substitute bill:

CUSTODY AND ADOPTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill addresses the grant of custody, adoption, or foster parent license to adults who commit certain offenses.

Highlighted Provisions:

This bill:

- ▶ prohibits custody being granted to a person who is not a biological or adoptive parent and has committed certain offenses unless certain conditions are met;
- ▶ addresses prospective foster parents and prospective adoptive parents;
- ▶ prohibits adoption by a person who has committed certain offenses unless certain conditions are met; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:



26 **30-5a-103**, as enacted by Laws of Utah 2008, Chapter 272

27 **62A-2-120**, as last amended by Laws of Utah 2016, Chapter 122

28 **78B-6-117**, as enacted by Laws of Utah 2008, Chapter 3

29 **Utah Code Sections Affected by Revisor Instructions:**

30 **30-5a-103**, as enacted by Laws of Utah 2008, Chapter 272

31 **78B-6-117**, as enacted by Laws of Utah 2008, Chapter 3



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

34 Section 1. Section **30-5a-103** is amended to read:

35 **30-5a-103. Custody and visitation for persons other than a parent.**

36 (1) In accordance with Section **62A-4a-201**, it is the public policy of this state that
37 parents retain the fundamental right and duty to exercise primary control over the care,
38 supervision, upbringing, and education of their children. There is a rebuttable presumption that
39 a parent's decisions are in the child's best interests.

40 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or
41 visitation rights to a person other than a parent who, by clear and convincing evidence, has
42 established all of the following:

- 43 (a) the person has intentionally assumed the role and obligations of a parent;
- 44 (b) the person and the child have formed an emotional bond and created a parent-child
45 type relationship;
- 46 (c) the person contributed emotionally or financially to the child's well being;
- 47 (d) assumption of the parental role is not the result of a financially compensated
48 surrogate care arrangement;
- 49 (e) continuation of the relationship between the person and the child would be in the
50 child's best interests;
- 51 (f) loss or cessation of the relationship between the person and the child would be
52 detrimental to the child; and
- 53 (g) the parent:
 - 54 (i) is absent; or
 - 55 (ii) is found by a court to have abused or neglected the child.

56 (3) A proceeding under this chapter may be commenced by filing a verified petition, or

57 petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district
58 court in the county in which the child:

59 (a) currently resides; or

60 (b) lived with a parent or a person other than a parent who acted as a parent within six
61 months before the commencement of the action.

62 (4) A proceeding under this chapter may be filed in a pending divorce, parentage
63 action, or other proceeding, including a proceeding in the juvenile court, involving custody of
64 or visitation with a child.

65 (5) The petition shall include detailed facts supporting the petitioner's right to file the
66 petition including the criteria set forth in Subsection (2) and residency information as set forth
67 in Section [78B-13-209](#).

68 (6) A proceeding under this chapter may not be filed against a parent who is actively
69 serving outside the state in any branch of the military.

70 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with
71 the rules of civil procedure on all of the following:

72 (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

73 (b) any person who has court-ordered custody or visitation rights;

74 (c) the child's guardian;

75 (d) the guardian ad litem, if one has been appointed;

76 (e) a person or agency that has physical custody of the child or that claims to have
77 custody or visitation rights; and

78 (f) any other person or agency that has previously appeared in any action regarding
79 custody of or visitation with the child.

80 (8) The court may order a custody evaluation to be conducted in any action brought
81 under this chapter.

82 (9) The court may enter temporary orders in an action brought under this chapter
83 pending the entry of final orders.

84 (10) Except as provided in Subsection (11), a court may not grant custody of a child
85 under this section to an individual who is not the biological or adoptive parent of the child and
86 who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a
87 felony or attempted felony involving conduct that constitutes any of the following:

- 88 (a) child abuse, as described in Section 76-5-109;
- 89 (b) child abuse homicide, as described in Section 76-5-208;
- 90 (c) child kidnapping, as described in Section 76-5-301.1;
- 91 (d) human trafficking of a child, as described in Section 76-5-308.5;
- 92 (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- 93 (f) rape of a child, as described in Section 76-5-402.1;
- 94 (g) object rape of a child, as described in Section 76-5-402.3;
- 95 (h) sodomy on a child, as described in Section 76-5-403.1;
- 96 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
- 97 Section 76-5-404.1;
- 98 (j) sexual exploitation of a minor, as described in Section 76-5b-201; or
- 99 (k) an offense in another state that, if committed in this state, would constitute an
- 100 offense described in this Subsection (10).
- 101 (11) (a) For purpose of this Subsection (11), "disqualifying offense" means an offense
- 102 listed in Subsection (10) that prevents a court from granting custody except as provided in this
- 103 Subsection (11).
- 104 (b) A person described in Subsection (10) may only be considered for custody of a
- 105 child if the following criteria are met by clear and convincing evidence:
- 106 (i) the person is a relative, as defined in Section 78A-6-307, of the child;
- 107 (ii) at least 10 years have elapsed from the day on which the person is successfully
- 108 released from prison, jail, parole, or probation related to a disqualifying offense;
- 109 (iii) during the 10 years before the day on which the person files a petition with the
- 110 court seeking custody the person has not been convicted, plead guilty, or plead no contest to an
- 111 offense greater than an infraction or traffic violation that would likely impact the health, safety,
- 112 or well-being of the child;
- 113 (iv) the person can provide evidence of successful treatment or rehabilitation directly
- 114 related to the disqualifying offense;
- 115 (v) the court determines that the risk related to the disqualifying offense is unlikely to
- 116 cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any
- 117 time in the future when considering all of the following:
- 118 (A) the child's age;

- 119 (B) the child's gender;
120 (C) the child's development;
121 (D) the nature and seriousness of the disqualifying offense;
122 (E) the preferences of a child 12 years of age or older;
123 (F) any available assessments, including custody evaluations, parenting assessments,
124 psychological or mental health assessments, and bonding assessments; and
125 (G) any other relevant information;
126 (vi) the person can provide evidence of the following:
127 (A) the relationship with the child is of long duration;
128 (B) that an emotional bond exists with the child; and
129 (C) that custody by the person who has committed the disqualifying offense ensures the
130 best interests of the child are met;
131 (vii) (A) there is no other responsible relative known to the court who has or likely
132 could develop an emotional bond with the child and does not have a disqualifying offense; or
133 (B) if there is a responsible relative known to the court that does not have a
134 disqualifying offense, Subsection (11)(d) applies; and
135 (viii) that the continuation of the relationship between the person with the disqualifying
136 offense and the child could not be sufficiently maintained through any type of visitation if
137 custody were given to the relative with no disqualifying offense described in Subsection
138 (11)(d).
139 (c) The person with the disqualifying offense bears the burden of proof regarding why
140 placement with that person is in the best interest of the child over another responsible relative
141 or equally situated person who does not have a disqualifying offense.
142 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known
143 to the court who does not have a disqualifying offense:
144 (i) preference for custody is given to a relative who does not have a disqualifying
145 offense; and
146 (ii) before the court may place custody with the person who has the disqualifying
147 offense over another responsible, willing, and able relative:
148 (A) an impartial custody evaluation shall be completed; and
149 (B) a guardian ad litem shall be assigned.

150 (12) Subsection (10) and (11) apply to a case pending on the effective date of this bill
151 for which a final decision on custody has not been made and to a case filed on or after the
152 effective date of this bill.

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

154 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

155 (1) As used in this section:

156 (a) "Applicant" means:

157 (i) a person described in Section [62A-2-101](#);

158 (ii) an individual who:

159 (A) is associated with a licensee; and

160 (B) has or will likely have direct access to a child or a vulnerable adult;

161 (iii) an individual who provides respite care to a foster parent or an adoptive parent on
162 more than one occasion;

163 (iv) a department contractor; or

164 (v) a guardian submitting an application on behalf of an individual, other than the child
165 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older
166 and:

167 (A) resides in a home, that is licensed or certified by the office, with the child or
168 vulnerable adult who is receiving services; or

169 (B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).

170 (b) "Application" means a background screening application to the office.

171 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
172 Public Safety, created in Section [53-10-201](#).

173 (d) "Personal identifying information" means:

174 (i) current name, former names, nicknames, and aliases;

175 (ii) date of birth;

176 (iii) physical address and email address;

177 (iv) telephone number;

178 (v) driver license number or other government-issued identification number;

179 (vi) social security number;

180 (vii) only for applicants who are 18 years of age or older, fingerprints, in a form

181 specified by the office; and

182 (viii) other information specified by the office by rule made in accordance with Title
183 63G, Chapter 3, Utah Administrative Rulemaking Act.

184 (2) (a) Except as provided in Subsection (14), an applicant shall submit the following
185 to the office:

186 (i) personal identifying information;

187 (ii) a fee established by the office under Section 63J-1-504; and

188 (iii) a form, specified by the office, for consent for:

189 (A) an initial background check upon submission of the information described under
190 Subsection (2)(a);

191 (B) a background check at the applicant's annual renewal;

192 (C) a background check when the office determines that reasonable cause exists; and

193 (D) retention of personal identifying information, including fingerprints, for

194 monitoring and notification as described in Subsections (3)(d) and (4).

195 (b) In addition to the requirements described in Subsection (2)(a), if an applicant spent
196 time outside of the United States and its territories during the five years immediately preceding
197 the day on which the information described in Subsection (2)(a) is submitted to the office, the
198 office may require the applicant to submit documentation establishing whether the applicant
199 was convicted of a crime during the time that the applicant spent outside of the United States or
200 its territories.

201 (3) The office:

202 (a) shall perform the following duties as part of a background check of an applicant:

203 (i) check state and regional criminal background databases for the applicant's criminal
204 history by:

205 (A) submitting personal identifying information to the Bureau for a search; or

206 (B) using the applicant's personal identifying information to search state and regional
207 criminal background databases as authorized under Section 53-10-108;

208 (ii) submit the applicant's personal identifying information and fingerprints to the
209 Bureau for a criminal history search of applicable national criminal background databases;

210 (iii) search the Department of Human Services, Division of Child and Family Services'
211 Licensing Information System described in Section 62A-4a-1006;

212 (iv) search the Department of Human Services, Division of Aging and Adult Services'
213 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
214 (v) search the juvenile court records for substantiated findings of severe child abuse or
215 neglect described in Section 78A-6-323; and
216 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided
217 under Section 78A-6-209;

218 (b) shall conduct a background check of an applicant for an initial background check
219 upon submission of the information described under Subsection (2)(a);

220 (c) may conduct all or portions of a background check of an applicant, as provided by
221 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative
222 Rulemaking Act:

223 (i) for an annual renewal; or
224 (ii) when the office determines that reasonable cause exists;

225 (d) may submit an applicant's personal identifying information, including fingerprints,
226 to the Bureau for checking, retaining, and monitoring of state and national criminal background
227 databases and for notifying the office of new criminal activity associated with the applicant;

228 (e) shall track the status of an approved applicant under this section to ensure that an
229 approved applicant is not required to duplicate the submission of the applicant's fingerprints if
230 the applicant applies for:

231 (i) more than one license;
232 (ii) direct access to a child or a vulnerable adult in more than one human services
233 program; or
234 (iii) direct access to a child or a vulnerable adult under a contract with the department;

235 (f) shall track the status of each license and each individual with direct access to a child
236 or a vulnerable adult and notify the Bureau when the license has expired or the individual's
237 direct access to a child or a vulnerable adult has ceased;

238 (g) shall adopt measures to strictly limit access to personal identifying information
239 solely to the office employees responsible for processing the applications for background
240 checks and to protect the security of the personal identifying information the office reviews
241 under this Subsection (3); and
242 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

243 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
244 checks.

245 (4) (a) With the personal identifying information the office submits to the Bureau
246 under Subsection (3), the Bureau shall check against state and regional criminal background
247 databases for the applicant's criminal history.

248 (b) With the personal identifying information and fingerprints the office submits to the
249 Bureau under Subsection (3), the Bureau shall check against national criminal background
250 databases for the applicant's criminal history.

251 (c) Upon direction from the office, and with the personal identifying information and
252 fingerprints the office submits to the Bureau under Subsection (3)(d), the Bureau shall:

253 (i) maintain a separate file of the fingerprints for search by future submissions to the
254 local and regional criminal records databases, including latent prints; and

255 (ii) monitor state and regional criminal background databases and identify criminal
256 activity associated with the applicant.

257 (d) The Bureau is authorized to submit the fingerprints to the Federal Bureau of
258 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
259 Investigation Next Generation Identification System for the purpose of:

260 (i) being searched by future submissions to the national criminal records databases,
261 including the Federal Bureau of Investigation Next Generation Identification System and latent
262 prints; and

263 (ii) monitoring national criminal background databases and identifying criminal
264 activity associated with the applicant.

265 (e) The Bureau shall notify and release to the office all information of criminal activity
266 associated with the applicant.

267 (f) Upon notice from the office that a license has expired or an individual's direct
268 access to a child or a vulnerable adult has ceased, the Bureau shall:

269 (i) discard and destroy any retained fingerprints; and

270 (ii) notify the Federal Bureau of Investigation when the license has expired or an
271 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
272 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
273 Investigation Next Generation Identification System.

274 (5) (a) After conducting the background check described in Subsections (3) and (4), the
275 office shall deny an application to an applicant who, within 10 years before the day on which
276 the applicant submits information to the office under Subsection (2) for a background check,
277 has been convicted of any of the following, regardless of whether the offense is a felony, a
278 misdemeanor, or an infraction:

279 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
280 animals, or bestiality;

281 (ii) a violation of any pornography law, including sexual exploitation of a minor;

282 (iii) prostitution;

283 (iv) an offense included in:

284 (A) Title 76, Chapter 5, Offenses Against the Person;

285 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

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

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

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

289 (vii) aggravated robbery, as described in Section 76-6-302;

290 (viii) identity fraud crime, as described in Section 76-6-1102; or

291 (ix) a conviction for a felony or misdemeanor offense committed outside of the state
292 that, if committed in the state, would constitute a violation of an offense described in
293 Subsections (5)(a)(i) through (viii).

294 (b) If the office denies an application to an applicant based on a conviction described in
295 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
296 Subsection (6).

297 (6) (a) The office shall conduct a comprehensive review of an applicant's background
298 check if the applicant has:

299 (i) a conviction for any felony offense, not described in Subsection (5)(a), regardless of
300 the date of the conviction;

301 (ii) a conviction for a misdemeanor offense, not described in Subsection (5)(a), and
302 designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
303 Rulemaking Act, if the conviction is within five years before the day on which the applicant
304 submits information to the office under Subsection (2) for a background check;

305 (iii) a conviction for any offense described in Subsection (5)(a) that occurred more than
306 10 years before the day on which the applicant submitted information under Subsection (2)(a);

307 (iv) pleaded no contest to or is currently subject to a plea in abeyance or diversion
308 agreement for any offense described in Subsection (5)(a);

309 (v) a listing in the Department of Human Services, Division of Child and Family
310 Services' Licensing Information System described in Section [62A-4a-1006](#);

311 (vi) a listing in the Department of Human Services, Division of Aging and Adult
312 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
313 [62A-3-311.1](#);

314 (vii) a record in the juvenile court of a substantiated finding of severe child abuse or
315 neglect described in Section [78A-6-323](#);

316 (viii) a record of an adjudication in juvenile court for an act that, if committed by an
317 adult, would be a felony or misdemeanor, if the applicant is:

318 (A) under 28 years of age; or

319 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is
320 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
321 offense described in Subsection (5)(a); or

322 (ix) a pending charge for an offense described in Subsection (5)(a).

323 (b) The comprehensive review described in Subsection (6)(a) shall include an
324 examination of:

325 (i) the date of the offense or incident;

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

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

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

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

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

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

333 (B) sexual abuse;

334 (C) sexual exploitation; or

335 (D) negligent treatment;

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

338 (viii) any other pertinent information.

339 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
340 office shall deny an application to an applicant if the office finds that approval would likely
341 create a risk of harm to a child or a vulnerable adult.

342 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
343 office may make rules, consistent with this chapter, to establish procedures for the
344 comprehensive review described in this Subsection (6).

345 (7) Subject to Subsection (10), the office shall approve an application to an applicant
346 who is not denied under Subsection (5), (6), or (13).

347 (8) (a) The office may conditionally approve an application of an applicant, for a
348 maximum of 60 days after the day on which the office sends written notice to the applicant
349 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

350 (i) is awaiting the results of the criminal history search of national criminal background
351 databases; and

352 (ii) would otherwise approve an application of the applicant under Subsection (7).

353 (b) Upon receiving the results of the criminal history search of national criminal
354 background databases, the office shall approve or deny the application of the applicant in
355 accordance with Subsections (5) through (7).

356 (9) A licensee or department contractor may not permit an individual to have direct
357 access to a child or a vulnerable adult unless, subject to Subsection (10):

358 (a) the individual is associated with the licensee or department contractor and:

359 (i) the individual's application is approved by the office under this section;

360 (ii) the individual's application is conditionally approved by the office under

361 Subsection (8); or

362 (iii) (A) the individual has submitted the background check information described in
363 Subsection (2) to the office;

364 (B) the office has not determined whether to approve the applicant's application; and

365 (C) the individual is directly supervised by an individual who has a current background
366 screening approval issued by the office under this section and is associated with the licensee or

367 department contractor;

368 (b) (i) the individual is associated with the licensee or department contractor;

369 (ii) the individual has a current background screening approval issued by the office
370 under this section;

371 (iii) one of the following circumstances, that the office has not yet reviewed under
372 Subsection (6), applies to the individual:

373 (A) the individual was charged with an offense described in Subsection (5)(a);

374 (B) the individual is listed in the Licensing Information System, described in Section
375 [62A-4a-1006](#);

376 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
377 database, described in Section [62A-3-311.1](#);

378 (D) the individual has a record in the juvenile court of a substantiated finding of severe
379 child abuse or neglect, described in Section [78A-6-323](#); or

380 (E) the individual has a record of an adjudication in juvenile court for an act that, if
381 committed by an adult, would be a felony or a misdemeanor; and

382 (iv) the individual is directly supervised by an individual who:

383 (A) has a current background screening approval issued by the office under this
384 section; and

385 (B) is associated with the licensee or department contractor;

386 (c) the individual:

387 (i) is not associated with the licensee or department contractor; and

388 (ii) is directly supervised by an individual who:

389 (A) has a current background screening approval issued by the office under this
390 section; and

391 (B) is associated with the licensee or department contractor;

392 (d) the individual is the parent or guardian of the child, or the guardian of the
393 vulnerable adult;

394 (e) the individual is approved by the parent or guardian of the child, or the guardian of
395 the vulnerable adult, to have direct access to the child or the vulnerable adult; or

396 (f) the individual is only permitted to have direct access to a vulnerable adult who
397 voluntarily invites the individual to visit.

398 (10) An individual may not have direct access to a child or a vulnerable adult if the
399 individual is prohibited by court order from having that access.

400 (11) Notwithstanding any other provision of this section, an individual for whom the
401 office denies an application may not have supervised or unsupervised direct access to a child or
402 vulnerable adult unless the office approves a subsequent application by the individual.

403 (12) (a) Within 30 days after the day on which the office receives the background
404 check information for an applicant, the office shall give written notice to:

405 (i) the applicant, and the licensee or department contractor, of the office's decision
406 regarding the background check and findings; and

407 (ii) the applicant of any convictions and potentially disqualifying charges and
408 adjudications found in the search.

409 (b) With the notice described in Subsection (12)(a), the office shall also give the
410 applicant the details of any comprehensive review conducted under Subsection (6).

411 (c) If the notice under Subsection (12)(a) states that the applicant's application is
412 denied, the notice shall further advise the applicant that the applicant may, under Subsection
413 [62A-2-111\(2\)](#), request a hearing in the department's Office of Administrative Hearings, to
414 challenge the office's decision.

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

417 (i) defining procedures for the challenge of its background check decision described in
418 Subsection (12)(c); and

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

421 (13) This section does not apply to a department contractor, or an applicant for an
422 initial license, or license renewal, regarding a substance abuse program that provides services
423 to adults only.

424 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
425 of this section, if the background check of an applicant is being conducted for the purpose of
426 licensing a prospective foster home or approving a prospective adoptive placement of a child in
427 state custody, the office shall:

428 (i) check the child abuse and neglect registry in each state where each applicant resided

429 in the five years immediately preceding the day on which the applicant applied to be a foster
430 parent or adoptive parent, to determine whether the prospective foster parent or prospective
431 adoptive parent is listed in the registry as having a substantiated or supported finding of child
432 abuse or neglect; and

433 (ii) check the child abuse and neglect registry in each state where each adult living in
434 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
435 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
436 parent, to determine whether the adult is listed in the registry as having a substantiated or
437 supported finding of child abuse or neglect.

438 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

439 (i) federal law or rule permits otherwise; or

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

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

443 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
444 or 78A-6-307.5, pending completion of the background check described in Subsection (5).

445 (c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a
446 license renewal to a prospective foster parent or a prospective adoptive parent if the applicant
447 has been convicted of:

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

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

450 (B) commission of domestic violence in the presence of a child, as described in Section
451 76-5-109.1;

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

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

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

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

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

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

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

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

460 (K) child kidnapping, as described in Section [76-5-301.1](#);

461 (L) aggravated kidnapping, as described in Section [76-5-302](#);

462 (M) human trafficking of a child, as described in Section [76-5-308.5](#);

463 [~~(M)~~] (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

464 [~~(N)~~] (O) sexual exploitation of a minor, as described in Section [76-5b-201](#);

465 [~~(O)~~] (P) aggravated arson, as described in Section [76-6-103](#);

466 [~~(P)~~] (Q) aggravated burglary, as described in Section [76-6-203](#);

467 [~~(Q)~~] (R) aggravated robbery, as described in Section [76-6-302](#); or

468 [~~(R)~~] (S) domestic violence, as described in Section [77-36-1](#); or

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

470 constitute a violation of an offense described in Subsection (14)(c)(i).

471 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or

472 license renewal to a prospective foster parent or a prospective adoptive parent if, within the

473 five years immediately preceding the day on which the individual's application or license would

474 otherwise be approved, the applicant was convicted of a felony involving conduct that

475 constitutes a violation of any of the following:

476 (i) aggravated assault, as described in Section [76-5-103](#);

477 (ii) aggravated assault by a prisoner, as described in Section [76-5-103.5](#);

478 (iii) mayhem, as described in Section [76-5-105](#);

479 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

480 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

481 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

482 Act;

483 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

484 Precursor Act; or

485 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

486 (e) In addition to the circumstances described in Subsection (6)(a), the office shall

487 conduct the comprehensive review of an applicant's background check pursuant to this section

488 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a

489 child abuse and neglect registry of another state as having a substantiated or supported finding

490 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

491 Section 3. Section **78B-6-117** is amended to read:

492 **78B-6-117. Who may adopt -- Adoption of minor.**

493 (1) A minor child may be adopted by an adult person, in accordance with ~~the~~
494 ~~provisions and requirements of~~ this section and this part.

495 (2) A child may be adopted by:

496 (a) adults who are legally married to each other in accordance with the laws of this
497 state, including adoption by a stepparent; or

498 (b) subject to Subsection (4), ~~any~~ a single adult, except as provided in Subsection (3).

499 (3) A child may not be adopted by a person who is cohabiting in a relationship that is
500 not a legally valid and binding marriage under the laws of this state.

501 (4) ~~In order to~~ To provide a child who is in the custody of the division with the most
502 beneficial family structure, when a child in the custody of the division is placed for adoption,
503 the division or child-placing agency shall place the child with a man and a woman who are
504 married to each other, unless:

505 (a) there are no qualified married couples who:

506 (i) have applied to adopt a child;

507 (ii) are willing to adopt the child; and

508 (iii) are an appropriate placement for the child;

509 (b) the child is placed with a relative of the child;

510 (c) the child is placed with a person who has already developed a substantial
511 relationship with the child;

512 (d) the child is placed with a person who:

513 (i) is selected by a parent or former parent of the child, if the parent or former parent
514 consented to the adoption of the child; and

515 (ii) the parent or former parent described in Subsection (4)(d)(i):

516 (A) knew the person with whom the child is placed before the parent consented to the
517 adoption; or

518 (B) became aware of the person with whom the child is placed through a source other
519 than the division or the child-placing agency that assists with the adoption of the child; or

520 (e) it is in the best interests of the child to place the child with a single person.

521 (5) Notwithstanding Subsection (6), an adult may not adopt a child if, before adoption

522 is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony
523 or attempted felony involving conduct that constitutes any of the following:

- 524 (a) child abuse, as described in Section 76-5-109;
- 525 (b) child abuse homicide, as described in Section 76-5-208;
- 526 (c) child kidnapping, as described in Section 76-5-301.1;
- 527 (d) human trafficking of a child, as described in Section 76-5-308.5;
- 528 (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- 529 (f) rape of a child, as described in Section 76-5-402.1;
- 530 (g) object rape of a child, as described in Section 76-5-402.3;
- 531 (h) sodomy on a child, as described in Section 76-5-403.1;
- 532 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
533 Section 76-5-404.1;

- 534 (j) sexual exploitation of a minor, as described in Section 76-5b-201; or
- 535 (k) an offense in another state that, if committed in this state, would constitute an
536 offense described in this Subsection (5).

537 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense
538 listed in Subsection (5) that prevents a court from considering a person for adoption of a child
539 except as provided in this Subsection (6).

540 (b) A person described in Subsection (5) may only be considered for adoption of a
541 child if the following criteria are met by clear and convincing evidence:

542 (i) at least 10 years have elapsed from the day on which the person is successfully
543 released from prison, jail, parole, or probation related to a disqualifying offense;

544 (ii) during the 10 years before the day on which the person files a petition with the
545 court seeking adoption, the person has not been convicted, pleaded guilty, or pleaded no
546 contest to an offense greater than an infraction or traffic violation that would likely impact the
547 health, safety, or well-being of the child;

548 (iii) the person can provide evidence of successful treatment or rehabilitation directly
549 related to the disqualifying offense;

550 (iv) the court determines that the risk related to the disqualifying offense is unlikely to
551 cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any
552 time in the future when considering all of the following:

- 553 (A) the child's age;
554 (B) the child's gender;
555 (C) the child's development;
556 (D) the nature and seriousness of the disqualifying offense;
557 (E) the preferences of a child 12 years of age or older;
558 (F) any available assessments, including custody evaluations, homes studies,
559 pre-placement adoptive evaluations, parenting assessments, psychological or mental health
560 assessments, and bonding assessments; and
561 (G) any other relevant information;
562 (v) the person can provide evidence of all of the following:
563 (A) the relationship with the child is of long duration;
564 (B) that an emotional bond exists with the child; and
565 (C) that adoption by the person who has committed the disqualifying offense ensures
566 the best interests of the child are met; and
567 (vi) the adoption is by:
568 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption;
569 (B) subject to Subsection (6)(d), a relative of the child as defined in Section [78A-6-307](#)
570 and there is not another relative without a disqualifying offense filing an adoption petition.
571 (c) The person with the disqualifying offense bears the burden of proof regarding why
572 adoption with that person is in the best interest of the child over another responsible relative or
573 equally situated person who does not have a disqualifying offense.
574 (d) If there is an alternative responsible relative who does not have a disqualifying
575 offense filing an adoption petition, the following applies:
576 (i) preference for adoption shall be given to a relative who does not have a
577 disqualifying offense; and
578 (ii) before the court may grant adoption to the person who has the disqualifying offense
579 over another responsible, willing, and able relative:
580 (A) an impartial custody evaluation shall be completed; and
581 (B) a guardian ad litem shall be assigned.
582 (7) Subsections (5) and (6) apply to a case pending on the effective date of this bill for
583 which a final decision on adoption has not been made and to a case filed on or after the

584 effective date of this bill.

585 Section 4. **Effective date.**

586 If approved by two-thirds of all the members elected to each house, this bill takes effect
587 upon approval by the governor, or the day following the constitutional time limit of Utah
588 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
589 the date of veto override.

590 Section 5. **Revisor instructions.**

591 It is the intent of the Legislature that, in preparing the Utah Code database for
592 publication, the Office of Legislative Research and General Counsel shall replace the phrase
593 "the effective date of this bill" in Subsection [30-5a-103\(12\)](#) and Subsection [78B-6-117\(7\)](#) with
594 the bill's actual effective date.