

ADOPTION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies language related to adoptions.

Highlighted Provisions:

This bill:

- ▶ clarifies language regarding when an adult may adopt a child if the adult has been convicted of, pleaded guilty to, or pleaded no contest to certain felonies;
- ▶ addresses adoption and child support obligations; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-117, as last amended by Laws of Utah 2017, Chapter 400 and further amended by Revisor Instructions, Laws of Utah 2017, Chapter 400

78B-6-138, as last amended by Laws of Utah 2017, Chapter 417

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

Section 1. Section **78B-6-117** is amended to read:

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

(1) A minor child may be adopted by an adult person, in accordance with this section

30 and this part.

31 (2) A child may be adopted by:

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

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

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

37 (4) To provide a child who is in the custody of the division with the most beneficial
38 family structure, when a child in the custody of the division is placed for adoption, the division
39 or child-placing agency shall place the child with a man and a woman who are married to each
40 other, unless:

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

42 (i) have applied to adopt a child;

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

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

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

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

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

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

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

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

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

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

57 (5) [~~Notwithstanding~~] Except as provided in Subsection (6), an adult may not adopt a

58 child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or
59 pleaded no contest to a felony or attempted felony involving conduct that constitutes any of the
60 following:

- 61 (a) child abuse, as described in Section 76-5-109;
- 62 (b) child abuse homicide, as described in Section 76-5-208;
- 63 (c) child kidnapping, as described in Section 76-5-301.1;
- 64 (d) human trafficking of a child, as described in Section 76-5-308.5;
- 65 (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- 66 (f) rape of a child, as described in Section 76-5-402.1;
- 67 (g) object rape of a child, as described in Section 76-5-402.3;
- 68 (h) sodomy on a child, as described in Section 76-5-403.1;
- 69 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in
70 Section 76-5-404.1;

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

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

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

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

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

85 (iii) the person can provide evidence of successful treatment or rehabilitation directly

86 related to the disqualifying offense;

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

90 (A) the child's age;

91 (B) the child's gender;

92 (C) the child's development;

93 (D) the nature and seriousness of the disqualifying offense;

94 (E) the preferences of a child 12 years of age or older;

95 (F) any available assessments, including custody evaluations, homes studies,
96 pre-placement adoptive evaluations, parenting assessments, psychological or mental health
97 assessments, and bonding assessments; and

98 (G) any other relevant information;

99 (v) the person can provide evidence of all of the following:

100 (A) the relationship with the child is of long duration;

101 (B) that an emotional bond exists with the child; and

102 (C) that adoption by the person who has committed the disqualifying offense ensures
103 the best interests of the child are met; and

104 (vi) the adoption is by:

105 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption;

106 (B) subject to Subsection (6)(d), a relative of the child as defined in Section 78A-6-307

107 and there is not another relative without a disqualifying offense filing an adoption petition.

108 (c) The person with the disqualifying offense bears the burden of proof regarding why
109 adoption with that person is in the best interest of the child over another responsible relative or
110 equally situated person who does not have a disqualifying offense.

111 (d) If there is an alternative responsible relative who does not have a disqualifying
112 offense filing an adoption petition, the following applies:

113 (i) preference for adoption shall be given to a relative who does not have a

114 disqualifying offense; and

115 (ii) before the court may grant adoption to the person who has the disqualifying offense
116 over another responsible, willing, and able relative:

117 (A) an impartial custody evaluation shall be completed; and

118 (B) a guardian ad litem shall be assigned.

119 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017 for which a
120 final decision on adoption has not been made and to a case filed on or after March 25, 2017.

121 Section 2. Section **78B-6-138** is amended to read:

122 **78B-6-138. Pre-existing parent's rights and duties dissolved.**

123 (1) A pre-existing parent of an adopted child is released from all parental rights and
124 duties toward and all responsibilities for the adopted child, including residual parental rights
125 and duties as defined in Section **78A-6-105**, and has no further parental rights or duties with
126 regard to that adopted child at the earlier of:

127 (a) the time the pre-existing parent's parental rights are terminated; or

128 (b) except as provided in Subsection (2), and subject to Subsections (3) and (4), the
129 time the final decree of adoption is entered.

130 (2) The parental rights and duties of a pre-existing parent who, at the time the child is
131 adopted, is lawfully married to the person adopting the child are not released under Subsection
132 (1)(b).

133 (3) The parental rights and duties of a pre-existing parent who, at the time the child is
134 adopted, is not lawfully married to the person adopting the child are released under Subsection
135 (1)(b).

136 (4) (a) Notwithstanding the provisions of this section, the court may allow a
137 prospective adoptive parent to adopt a child without releasing the pre-existing parent from
138 parental rights and duties under Subsection (1)(b), if:

139 (i) the pre-existing parent and the prospective adoptive parent were lawfully married at
140 some time during the child's life;

141 (ii) the pre-existing parent consents to the prospective adoptive parent's adoption of the

142 child, or is unable to consent because the pre-existing parent is deceased or incapacitated;
143 (iii) notice of the adoption proceeding is provided in accordance with Section
144 [78B-6-110](#);
145 (iv) consent to the adoption is provided in accordance with Section [78B-6-120](#); and
146 (v) the court finds that it is in the best interest of the child to grant the adoption without
147 releasing the pre-existing parent from parental rights and duties.
148 (b) This Subsection (4) does not permit a child to have more than two natural parents,
149 as that term is defined in Section [78A-6-105](#).
150 (5) This section may not be construed as terminating any child support obligation of a
151 parent incurred before the adoption.