

ADOPTION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Rex P. Shipp

LONG TITLE

General Description:

This bill modifies provisions relating to adoption.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "adoption related expenses" as the term is used in relation to the criminal offense of sale of a child;
- ▶ modifies provisions relating to:
 - termination of parental rights;
 - compliance with the Interstate Compact on Placement of Children;
 - required notice in an adoption proceeding; and
 - procedural requirements for a petition to terminate parental rights; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-7-203, as last amended by Laws of Utah 2008, Chapter 137

78A-6-507, as last amended by Laws of Utah 2012, Chapter 281



28 **78B-6-107**, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and
29 amended by Laws of Utah 2008, Chapter 3

30 **78B-6-110**, as last amended by Laws of Utah 2018, Chapter 359

31 **78B-6-110.5**, as last amended by Laws of Utah 2017, Chapter 417

32 **78B-6-112**, as last amended by Laws of Utah 2018, Chapter 359

33 **78B-6-128**, as last amended by Laws of Utah 2017, Chapters 110 and 280

34

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

36 Section 1. Section **76-7-203** is amended to read:

37 **76-7-203. Sale of child -- Felony -- Payment of adoption related expenses.**

38 (1) For purposes of this section:

39 (a) "Adoption related expenses" means expenses that:

40 (i) are reasonably related to the adoption of a child;

41 (ii) are incurred for a reasonable amount; and

42 (iii) may include expenses:

43 (A) of the mother or father of the child being adopted, including:

44 (I) legal expenses;

45 (II) maternity expenses;

46 (III) medical expenses;

47 (IV) hospital expenses;

48 (V) counseling expenses;

49 (VI) temporary living expenses during the pregnancy [~~or confinement~~] of the mother

50 for up to eight weeks after the day on which the mother delivers the child; or

51 (VII) expenses for travel between the mother's or father's home and the location where
52 the child will be born or placed for adoption;

53 (B) of a directly affected person for:

54 (I) travel between the directly affected person's home and the location where the child
55 will be born or placed for adoption; or

56 (II) temporary living expenses during the pregnancy or confinement of the mother; or

57 (C) other than those included in Subsection (1)(a)(iii)(A) or (B), that are not made for
58 the purpose of inducing the mother, parent, or legal guardian of a child to:

- 59 (I) place the child for adoption;
- 60 (II) consent to an adoption; or
- 61 (III) cooperate in the completion of an adoption.
- 62 (b) "Directly affected person" means a person who is:
- 63 (i) a parent or guardian of a minor when the minor is the mother or father of the child
- 64 being adopted;
- 65 (ii) a [~~dependant~~] dependent of:
- 66 (A) the mother or father of the child being adopted; or
- 67 (B) the parent or guardian described in Subsection (1)(b)(i); or
- 68 (iii) the spouse or partner of the mother or father of the child being adopted.

69 (2) Except as provided in Subsection (3), a person is guilty of a third degree felony if
 70 the person:

71 (a) while having custody, care, control, or possession of a child, sells, or disposes of
 72 the child, or attempts or offers to sell or dispose of the child, for and in consideration of the
 73 payment of money or another thing of value; or

74 (b) offers, gives, or attempts to give money or another thing of value to a person, with
 75 the intent to induce or encourage a person to violate Subsection (2)(a).

76 (3) A person does not violate this section by paying or receiving payment for adoption
 77 related expenses, if:

78 (a) the expenses are paid as an act of charity; and

79 (b) the payment is not made for the purpose of inducing the mother, parent, or legal
 80 guardian of a child to:

- 81 (i) place the child for adoption;
- 82 (ii) consent to an adoption; or
- 83 (iii) cooperate in the completion of an adoption.

84 Section 2. Section **78A-6-507** is amended to read:

85 **78A-6-507. Grounds for termination of parental rights -- Findings regarding**
 86 **reasonable efforts.**

87 (1) Subject to the protections and requirements of Section **78A-6-503**, and if the court
 88 finds [~~strictly necessary~~] it is in the child's best interests, the court may terminate all parental
 89 rights with respect to a parent if the court finds any one of the following:

- 90 (a) that the parent has abandoned the child;
- 91 (b) that the parent has neglected or abused the child;
- 92 (c) that the parent is unfit or incompetent;
- 93 (d) (i) that the child is being cared for in an out-of-home placement under the
- 94 supervision of the court or the division;
- 95 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or
- 96 unwilling to remedy the circumstances that cause the child to be in an out-of-home placement;
- 97 and
- 98 (iii) that there is a substantial likelihood that the parent will not be capable of
- 99 exercising proper and effective parental care in the near future;
- 100 (e) failure of parental adjustment, as defined in this chapter;
- 101 (f) that only token efforts have been made by the parent:
- 102 (i) to support or communicate with the child;
- 103 (ii) to prevent neglect of the child;
- 104 (iii) to eliminate the risk of serious harm to the child; or
- 105 (iv) to avoid being an unfit parent;
- 106 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the
- 107 child; and
- 108 (ii) that termination is in the child's best interest;
- 109 (h) that, after a period of trial during which the child was returned to live in the child's
- 110 own home, the parent substantially and continuously or repeatedly refused or failed to give the
- 111 child proper parental care and protection; or
- 112 (i) the terms and conditions of safe relinquishment of a newborn child have been
- 113 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
- 114 Child.
- 115 (2) The court may not terminate the parental rights of a parent because the parent has
- 116 failed to complete the requirements of a child and family plan.
- 117 (3) (a) Except as provided in Subsection (3)(b), in any case in which the court has
- 118 directed the division to provide reunification services to a parent, the court must find that the
- 119 division made reasonable efforts to provide those services before the court may terminate the
- 120 parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).

121 (b) Notwithstanding Subsection (3)(a), the court is not required to make the finding
122 under Subsection (3)(a) before terminating a parent's rights:

123 (i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred
124 subsequent to adjudication; or

125 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not
126 required under federal law, and federal law is not inconsistent with Utah law.

127 Section 3. Section **78B-6-107** is amended to read:

128 **78B-6-107. Compliance with the Interstate Compact on Placement of Children --**
129 **Compliance with the Indian Child Welfare Act.**

130 (1) (a) ~~[In]~~ Subject to Subsection (1)(b), in any adoption proceeding the petition for
131 adoption shall state whether the child was born in another state and, if so, both the petition and
132 the court's final decree of adoption shall state that the requirements of Title 62A, Chapter 4a,
133 Part 7, Interstate Compact on Placement of Children, have been complied with.

134 (b) Subsection (1)(a) does not apply if the prospective adoptive parent is not required
135 to complete a preplacement adoptive evaluation under Section [78B-6-128](#).

136 (2) In any adoption proceeding involving an "Indian child," as defined in 25 U.S.C.
137 Sec. 1903, a child-placing agency and the petitioners shall comply with the Indian Child
138 Welfare Act, Title 25, Chapter 21, of the United States Code.

139 Section 4. Section **78B-6-110** is amended to read:

140 **78B-6-110. Notice of adoption proceedings.**

141 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
142 sexual relationship with a woman:

143 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
144 the child may occur; and

145 (ii) has a duty to protect his own rights and interests.

146 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
147 proceeding with regard to his child only as provided in this section or Section [78B-6-110.5](#).

148 (2) Notice of an adoption proceeding shall be served on each of the following persons:

149 (a) any person or agency whose consent or relinquishment is required under Section
150 [78B-6-120](#) or [78B-6-121](#), unless that right has been terminated by:

151 (i) waiver;

- 152 (ii) relinquishment;
- 153 [~~(iii) actual consent, as described in Subsection (12); or~~]
- 154 (iii) actual or implied consent; or
- 155 (iv) judicial action;
- 156 (b) any person who has initiated a paternity proceeding and filed notice of that action
- 157 with the state registrar of vital statistics within the Department of Health, in accordance with
- 158 Subsection (3);
- 159 (c) any legally appointed custodian or guardian of the adoptee;
- 160 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
- 161 petition;
- 162 (e) the adoptee's spouse, if any;
- 163 (f) any person who, prior to the time the mother executes her consent for adoption or
- 164 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
- 165 the knowledge and consent of the mother;
- 166 (g) a person who is:
- 167 (i) openly living in the same household with the child at the time the consent is
- 168 executed or relinquishment made; and
- 169 (ii) holding himself out to be the child's father; and
- 170 (h) any person who is married to the child's mother at the time she executes her consent
- 171 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
- 172 spouse is not the child's father under Section [78B-15-607](#).
- 173 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
- 174 consistent with Subsection (3)(d):
- 175 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
- 176 Chapter 15, Utah Uniform Parentage Act; and
- 177 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
- 178 with the office of vital statistics within the Department of Health.
- 179 (b) If the unmarried, biological father does not know the county in which the birth
- 180 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
- 181 Section [78B-3-307](#).
- 182 (c) The Department of Health shall provide forms for the purpose of filing the notice

183 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
184 health department in each county.

185 (d) When the state registrar of vital statistics receives a completed form, the registrar
186 shall:

187 (i) record the date and time the form was received; and

188 (ii) immediately enter the information provided by the unmarried biological father in
189 the confidential registry established by Subsection 78B-6-121(3)(c).

190 (e) The action and notice described in Subsection (3)(a):

191 (i) may be filed before or after the child's birth; and

192 (ii) shall be filed prior to the mother's:

193 (A) execution of consent to adoption of the child; or

194 (B) relinquishment of the child for adoption.

195 (4) Notice provided in accordance with this section need not disclose the name of the
196 mother of the child who is the subject of an adoption proceeding.

197 (5) The notice required by this section:

198 (a) may be served at any time after the petition for adoption is filed, but may not be
199 served on a birth mother before she has given birth to the child who is the subject of the
200 petition for adoption;

201 (b) shall be served at least 30 days prior to the final dispositional hearing;

202 (c) shall specifically state that the person served shall fulfill the requirements of
203 Subsection (6)(a) within 30 days after the day on which the person receives service if the
204 person intends to intervene in or contest the adoption;

205 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
206 to file a motion for relief within 30 days after the day on which the person is served with notice
207 of an adoption proceeding;

208 (e) is not required to include, nor be accompanied by, a summons or a copy of the
209 petition for adoption;

210 (f) shall state where the person may obtain a copy of the petition for adoption; and

211 (g) shall indicate the right to the appointment of counsel for a party whom the court
212 determines is indigent and at risk of losing the party's parental rights.

213 (6) (a) A person who has been served with notice of an adoption proceeding and who

214 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

215 (i) within 30 days after the day on which the person was served with notice of the
216 adoption proceeding;

217 (ii) setting forth specific relief sought; and

218 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
219 which the motion is based.

220 (b) A person who fails to fully and strictly comply with all of the requirements
221 described in Subsection (6)(a) within 30 days after the day on which the person was served
222 with notice of the adoption proceeding:

223 (i) waives any right to further notice in connection with the adoption;

224 (ii) forfeits all rights in relation to the adoptee; and

225 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
226 the adoptee.

227 (7) Service of notice under this section shall be made as follows:

228 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
229 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
230 Rules of Civil Procedure.

231 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
232 shall designate the content of the notice regarding the identity of the parties.

233 (iii) The notice described in this Subsection (7)(a) may not include the name of a
234 person seeking to adopt the adoptee.

235 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
236 is required under this section, service by certified mail, return receipt requested, is sufficient.

237 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
238 attempts, the court may issue an order providing for service by publication, posting, or by any
239 other manner of service.

240 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
241 action with the state registrar of vital statistics in the Department of Health in accordance with
242 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
243 the last address filed with the registrar.

244 (8) The notice required by this section may be waived in writing by the person entitled

245 to receive notice.

246 (9) Proof of service of notice on all persons for whom notice is required by this section
247 shall be filed with the court before the final dispositional hearing on the adoption.

248 (10) Notwithstanding any other provision of law, neither the notice of an adoption
249 proceeding nor any process in that proceeding is required to contain the name of the person or
250 persons seeking to adopt the adoptee.

251 (11) Except as to those persons whose consent to an adoption is required under Section
252 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
253 served to:

254 (a) intervene in the adoption; and

255 (b) present evidence to the court relevant to the best interest of the child.

256 ~~[(12) In order to be excused from the requirement to provide notice as described in~~
257 ~~Subsection (2)(a) on the grounds that the person has provided consent to the adoption~~
258 ~~proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described~~
259 ~~in Section 78B-6-120.1.]~~

260 Section 5. Section 78B-6-110.5 is amended to read:

261 **78B-6-110.5. Out-of-state birth mothers and adoptive parents -- Declaration**
262 **regarding potential birth fathers.**

263 The procedural and substantive requirements of this section shall be required only to the
264 extent that they do not exceed the requirements of the state of conception or the birth mother's
265 state of residence.

266 (1) (a) For a child who is six months of age or less at the time the child is placed with
267 prospective adoptive parents, the birth mother shall sign, and the adoptive parents shall file
268 with the court, a declaration regarding each potential birth father, in accordance with this
269 section, before or at the time a petition for adoption is filed with the court, if, at any point
270 during the time period beginning at the conception of the child and ending at the time the
271 mother executes consent to adoption or relinquishment of the child for adoption, neither the
272 birth mother nor at least one of the adoptive parents has resided in the state for 90 total days or
273 more, as described in Subsection (1)(c).

274 (b) The child-placing agency or prospective adoptive parents shall search the putative
275 father registry of each state where the birth mother believes the child may have been conceived

276 and each state where the birth mother lived during her pregnancy, if the state has a putative
277 father registry, to determine whether a potential birth father registered with the state's putative
278 father registry.

279 (c) In determining whether the 90-day requirement is satisfied, the following apply:

280 (i) the 90 days are not required to be consecutive;

281 (ii) no absence from the state may be for more than seven consecutive days;

282 (iii) any day on which the individual is absent from the state does not count toward the
283 total 90-day period; and

284 (iv) the 90-day period begins and ends during a period that is no more than 120
285 consecutive days.

286 (2) The declaration filed under Subsection (1) regarding a potential birth father shall
287 include, for each potential birth father, the following information:

288 (a) if known, the potential birth father's name, date of birth, social security number, and
289 address;

290 (b) with regard to a state's putative father registry in each state described in Subsection
291 (1)(b):

292 (i) whether the state has a putative father registry; and

293 (ii) for each state that has a putative father registry, with the declaration, a certificate or
294 written statement from the state's putative father registry that a search of the state's putative
295 father registry was made and disclosing the results of the search;

296 (c) whether the potential birth father was notified of:

297 (i) the birth mother's pregnancy;

298 (ii) the fact that he is a potential birth father; or

299 (iii) the fact that the birth mother intends to consent to adoption or relinquishment of
300 the child for adoption, in Utah;

301 (d) each state where the birth mother lived during the pregnancy;

302 (e) if known, the state in which the child was conceived;

303 (f) whether the birth mother informed the potential birth father that she was traveling to
304 or planning to reside in Utah;

305 (g) whether the birth mother has contacted the potential birth father while she was
306 located in Utah;

307 (h) whether, and for how long, the potential birth father has ever lived with the child;

308 (i) whether the potential birth father has given the birth mother money or offered to pay
309 for any of her expenses during pregnancy or the child's birth;

310 (j) whether the potential birth father has offered to pay child support;

311 (k) if known, whether the potential birth father has taken any legal action to establish
312 paternity of the child, either in Utah or in any other state, and, if known, what action he has
313 taken; and

314 (l) whether the birth mother has ever been involved in a domestic violence matter with
315 the potential birth father.

316 (3) Except as provided in Subsection (5), based on the declaration regarding the
317 potential birth father, the court shall order the birth mother to serve a potential birth father
318 notice that she intends to consent or has consented to adoption or relinquishment of the child
319 for adoption, if the court finds that the potential birth father:

320 (a) has taken sufficient action to demonstrate an interest in the child;

321 (b) has taken sufficient action to attempt to preserve his legal rights as a birth father,
322 including by filing a legal action to establish paternity or filing with a state's putative father
323 registry; or

324 (c) does not know, and does not have a reason to know, that:

325 (i) the mother or child are present in Utah;

326 (ii) the mother intended to give birth to the child in Utah;

327 (iii) the child was born in Utah; or

328 (iv) the mother intends to consent to adoption or relinquishment of the child for
329 adoption in Utah.

330 (4) Notice under this section shall be made in accordance with Subsections
331 [78B-6-110](#)(7) through ~~[(12)]~~ [\(11\)](#).

332 (5) A court may only order the notice requirements in Subsection (3) to the extent that
333 they do not exceed the notice requirements of:

334 (a) the state of conception; or

335 (b) the birth mother's state of residence.

336 Section 6. Section **78B-6-112** is amended to read:

337 **78B-6-112. District court jurisdiction over termination of parental rights**

338 **proceedings.**

339 (1) A district court has jurisdiction to terminate parental rights in a child if the party
340 who filed the petition is seeking to terminate parental rights in the child for the purpose of
341 facilitating the adoption of the child.

342 (2) A petition to terminate parental rights under this section may be:

343 (a) joined with a proceeding on an adoption petition; or

344 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.

345 (3) A court may enter a final order terminating parental rights before a final decree of
346 adoption is entered.

347 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
348 proceedings to terminate parental rights as described in Section [78A-6-103](#).

349 (b) This section does not grant jurisdiction to a district court to terminate parental
350 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
351 neglect, dependency, or termination of parental rights proceeding.

352 (5) The district court may terminate an individual's parental rights in a child if:

353 (a) the individual executes a voluntary consent to adoption, or relinquishment for
354 adoption, of the child, in accordance with:

355 (i) the requirements of this chapter; or

356 (ii) the laws of another state or country, if the consent is valid and irrevocable;

357 (b) the individual is an unmarried biological father who is not entitled to consent to
358 adoption, or relinquishment for adoption, under Section [78B-6-120](#) or [78B-6-121](#);

359 (c) the individual:

360 (i) received notice of the adoption proceeding relating to the child under Section
361 [78B-6-110](#); and

362 (ii) failed to file a motion for relief, under Subsection [78B-6-110\(6\)](#), within 30 days
363 after the day on which the individual was served with notice of the adoption proceeding;

364 (d) the court finds, under Section [78B-15-607](#), that the individual is not a parent of the
365 child; or

366 (e) the individual's parental rights are terminated on grounds described in Title 78A,
367 Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental
368 rights is in the best interests of the child.

369 (6) The court shall appoint counsel designated by the county where the petition is filed
370 to represent a party who faces any action initiated by a private party under Title 78A, Chapter
371 6, Part 5, Termination of Parental Rights Act or whose parental rights are subject to
372 termination under this section, if:

373 (a) the court determines that the party is indigent under Section 77-32-202; and

374 (b) the party does not, after being fully advised of the right to counsel, knowingly,
375 intelligently and voluntarily waive the right to counsel.

376 (7) If a county incurs expenses in providing defense services to indigent individuals
377 facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of
378 Parental Rights Act or termination of parental rights under this section, the county may apply
379 for a grant for reimbursement from the Utah Indigent Defense Commission under Section
380 77-32-806.

381 (8) A petition filed under this section is subject to the procedural requirements of this
382 chapter.

383 Section 7. Section 78B-6-128 is amended to read:

384 **78B-6-128. Preplacement adoptive evaluations -- Exceptions.**

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

389 (b) Except as provided in Section 78B-6-131, the court may, at any time, authorize
390 temporary placement of a child in a prospective adoptive home pending completion of a
391 preplacement adoptive evaluation described in this section.

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

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

399 (d) (i) The preplacement adoptive evaluation shall be completed or updated within the

400 12-month period immediately preceding the placement of a child with the prospective adoptive
401 parent.

402 (ii) If the prospective adoptive parent has previously received custody of a child for the
403 purpose of adoption, the preplacement adoptive evaluation shall be completed or updated
404 within the 12-month period immediately preceding the placement of a child with the
405 prospective adoptive parent and after the placement of the previous child with the prospective
406 adoptive parent.

407 (2) The preplacement adoptive evaluation shall include:

408 (a) a criminal history background check regarding each prospective adoptive parent
409 and any other adult living in the prospective home, prepared no earlier than 18 months
410 immediately preceding placement of the child in accordance with the following:

411 (i) if the child is in state custody, each prospective adoptive parent and any other adult
412 living in the prospective home shall submit fingerprints to the Department of Human Services,
413 which shall perform a criminal history background check in accordance with Section
414 [62A-2-120](#); or

415 (ii) subject to Subsection (3), if the child is not in state custody, an adoption service
416 provider or an attorney representing a prospective adoptive parent shall submit fingerprints
417 from the prospective adoptive parent and any other adult living in the prospective home to the
418 Criminal and Technical Services Division of Public Safety for a regional [~~and~~] or nationwide
419 background check, [~~or~~] to the Office of Licensing within the Department of Human Services
420 for a background check in accordance with [62A-2-120](#), or to the Federal Bureau of
421 Investigation.

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

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

430 (ii) if the prospective adoptive parent or the adult living in the prospective adoptive

431 parent's home is not a resident of Utah, prepared by the Department of Human Services, or a
432 similar agency in another state, district, or territory of the United States, where each
433 prospective adoptive parent and any other adult living in the prospective home resided in the
434 five years immediately preceding the day on which the child is placed in the prospective
435 adoptive home;

436 (c) in accordance with Subsection (6), a home study conducted by an adoption service
437 provider that is:

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

439 (ii) a certified social worker;

440 (iii) a clinical social worker;

441 (iv) a marriage and family therapist;

442 (v) a psychologist;

443 (vi) a social service worker, if supervised by a certified or clinical social worker;

444 (vii) a clinical mental health counselor; or

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

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

453 (3) For purposes of Subsection (2)(a)(ii), subject to Subsection (4), the criminal history
454 background check described in Subsection (2)(a)(ii) shall be submitted in a manner acceptable
455 to the court that will:

456 (a) preserve the chain of custody of the results; and

457 (b) not permit tampering with the results by a prospective adoptive parent or other
458 interested party.

459 (4) In order to comply with Subsection (3), the manner in which the criminal history
460 background check is submitted shall be approved by the court.

461 (5) Except as provided in Subsection [78B-6-131\(2\)](#), in addition to the other

462 requirements of this section, before a child in state custody is placed with a prospective foster
463 parent or a prospective adoptive parent, the Department of Human Services shall comply with
464 Section 78B-6-131.

465 (6) (a) An individual described in Subsections (2)(c)(i) through (vii) shall be licensed to
466 practice under the laws of:

467 (i) this state; or

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

470 (b) Neither the Department of Human Services nor any of the department's divisions
471 may proscribe who qualifies as an expert in family relations or who may conduct a home study
472 under Subsection (2)(c).

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

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

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

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

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

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

488 (7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the
489 responsibility of the adopting parent.

490 (8) The person conducting the preplacement adoptive evaluation shall, in connection
491 with the preplacement adoptive evaluation, provide the prospective adoptive parent with
492 literature approved by the Division of Child and Family Services relating to adoption, including

493 information relating to:

494 (a) the adoption process;

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

496 (c) community resources that are available to the prospective adoptive parent.

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