

## SB0065S01 compared with SB0065

~~text~~ shows text that was in SB0065 but was deleted in SB0065S01.

text shows text that was not in SB0065 but was inserted into SB0065S01.

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Senator Wayne A. Harper proposes the following substitute bill:

### CHILD WELFARE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions relating to child welfare.

##### Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ modifies provisions relating to a background check of an individual working in a congregate care program that serves children;
- ▶ deletes provisions requiring the Division of Child and Family Services to conduct certain assessments for in-home family services;
- ▶ modifies provisions relating to the circumstances under which the attorney general is required to represent the Division of Child and Family Services;
- ▶ deletes provisions requiring the Division of Child and Family Services to provide

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- certain services to a delinquent, ungovernable, or runaway child;
- ▶ requires the Division of Juvenile Justice Services to, upon court order, conduct an assessment to determine whether provision of certain youth services to an ungovernable or runaway child is appropriate;
  - ▶ modifies provisions relating to the juvenile court's jurisdiction over an ungovernable or runaway child;
  - ▶ modifies the circumstances under which a child may be temporarily detained;
  - ▶ requires the Division of Child and Family Services to report to the Social Services Appropriations Subcommittee regarding reimbursement rates for foster parents;
  - ▶ modifies the circumstances under which the Department of Human Services is required to investigate reports of abuse or neglect;
  - ▶ modifies provisions relating to the order of priority, qualifications, and considerations that apply to individuals with whom a child may be placed in an emergency placement, foster placement, or adoptive placement;
  - ▶ clarifies provisions relating to who may file a legal action to prevent a person from engaging in child placing without a license;
  - ▶ modifies notice requirements relating to certain information electronically filed with the court in an abuse, neglect, or dependency proceeding;
  - ▶ clarifies the circumstances under which the court is required to review a placement decision for a child in a qualified residential treatment program; and
  - ▶ makes technical changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

**62A-2-120**, as last amended by Laws of Utah 2019, Chapter 335

**62A-4a-105**, as last amended by Laws of Utah 2018, Chapter 281

**62A-4a-113**, as last amended by Laws of Utah 2018, Chapter 359

**62A-4a-202**, as last amended by Laws of Utah 2017, Chapter 330

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**62A-4a-202.6**, as last amended by Laws of Utah 2019, Chapters 139 and 335

**62A-4a-209**, as last amended by Laws of Utah 2018, Chapters 235 and 285

**62A-4a-602**, as last amended by Laws of Utah 2019, Chapters 335 and 354

**62A-4a-603**, as last amended by Laws of Utah 2019, Chapter 354

**78A-6-103**, as last amended by Laws of Utah 2019, Chapter 300

**78A-6-113**, as last amended by Laws of Utah 2018, Chapter 285

**78A-6-115**, as last amended by Laws of Utah 2019, First Special Session, Chapter 5

**78A-6-117.5**, as last amended by Laws of Utah 2019, Chapter 162

**78A-6-307**, as last amended by Laws of Utah 2019, Chapter 71

**78A-6-311.5**, as enacted by Laws of Utah 2019, Chapter 335

**78B-6-117**, as last amended by Laws of Utah 2019, Chapter 335

### REPEALS:

**62A-4a-250**, as last amended by Laws of Utah 2017, Chapter 330

**78A-6-401**, as last amended by Laws of Utah 2017, Chapter 330

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

Section 1. Section **62A-2-120** is amended to read:

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

(1) As used in this section:

(a) (i) "Applicant" means:

(A) the same as that term is defined in Section 62A-2-101;

(B) an individual who is associated with a licensee and has or will likely have direct access to a child or a vulnerable adult;

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

(D) a department contractor;

(E) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or

(F) a guardian submitting an application on behalf of an individual, other than the child

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or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

(ii) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.

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

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

(d) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.

(e) "Personal identifying information" means:

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

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

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

(vi) social security number;

(vii) only for applicants who are 18 years of age or older, fingerprints, in a form specified by the office; and

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

(2) (a) Except as provided in Subsection (13), an applicant shall submit the following to the office:

(i) personal identifying information;

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

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

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

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

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

(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).

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

(3) The office:

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

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

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

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

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

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

(iv) search the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(v) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 78A-6-323; and

(vi) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

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

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

(i) for an annual renewal; or

(ii) when the office determines that reasonable cause exists;

(d) may submit an applicant's personal identifying information, including fingerprints,

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to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;

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

(i) more than one license;

(ii) direct access to a child or a vulnerable adult in more than one human services program; or

(iii) direct access to a child or a vulnerable adult under a contract with the department;

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

(g) shall adopt measures to strictly limit access to personal identifying information solely to the office employees responsible for processing the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);

(h) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any individual working in a [~~program under this section~~] congregate care setting that serves children, shall:

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

(ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the applicant submits the information described in Subsection (2)(a) to the office; and

(i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

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

(b) With the personal identifying information and fingerprints the office submits to the

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bureau under Subsection (3), the bureau shall check against national criminal background databases for the applicant's criminal history.

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

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

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

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

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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

(i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to

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animals, or bestiality;

- (ii) a violation of any pornography law, including sexual exploitation of a minor;
- (iii) prostitution;
- (iv) an offense included in:
  - (A) Title 76, Chapter 5, Offenses Against the Person;
  - (B) Section 76-5b-201, Sexual Exploitation of a Minor; or
  - (C) Title 76, Chapter 7, Offenses Against the Family;
- (v) aggravated arson, as described in Section 76-6-103;
- (vi) aggravated burglary, as described in Section 76-6-203;
- (vii) aggravated robbery, as described in Section 76-6-302;
- (viii) identity fraud crime, as described in Section 76-6-1102; or
- (ix) a conviction for a felony or misdemeanor offense committed outside of the state

that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).

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

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

- (i) has a conviction for any felony offense, not described in Subsection (5)(a), regardless of the date of the conviction;
- (ii) has a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within five years before the day on which the applicant submits information to the office under Subsection (2) for a background check;
- (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more than three years before the day on which the applicant submitted information under Subsection (2)(a);
- (iv) is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a);
- (v) has a listing in the Department of Human Services, Division of Child and Family



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Services' Licensing Information System described in Section 62A-4a-1006;

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

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

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

(A) under 28 years of age; or

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

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

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

(i) the date of the offense or incident;

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

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

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

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

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

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

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

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

(viii) any other pertinent information.

(c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely

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create a risk of harm to a child or a vulnerable adult.

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

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

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

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

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

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

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

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

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

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

Subsection (8); or

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

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

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

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

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

(iii) one of the following circumstances, that the office has not yet reviewed under

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Subsection (6), applies to the individual:

- (A) the individual was charged with an offense described in Subsection (5)(a);
- (B) the individual is listed in the Licensing Information System, described in Section 62A-4a-1006;
- (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;
- (D) the individual has a record in the juvenile court of a substantiated finding of severe child abuse or neglect, described in Section 78A-6-323; or
- (E) the individual has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or a misdemeanor; and
  - (iv) the individual is directly supervised by an individual who:
    - (A) has a current background screening approval issued by the office under this section; and
    - (B) is associated with the licensee or department contractor;
  - (c) the individual:
    - (i) is not associated with the licensee or department contractor; and
    - (ii) is directly supervised by an individual who:
      - (A) has a current background screening approval issued by the office under this section; and
      - (B) is associated with the licensee or department contractor;
    - (d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
    - (e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;
    - (f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or
    - (g) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.
- (10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.

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

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

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

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

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

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

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

(i) defining procedures for the challenge of [its] the office's background check decision described in Subsection (12)(c); and

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

(13) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule, is exempt from this section. This exemption does not extend to a program director or a member, as defined by Section 62A-2-108, of the program.

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

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster

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parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

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

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

(i) federal law or rule permits otherwise; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(K) child kidnapping, as described in Section 76-5-301.1;

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(L) aggravated kidnapping, as described in Section 76-5-302;  
(M) human trafficking of a child, as described in Section 76-5-308.5;  
(N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;  
(O) sexual exploitation of a minor, as described in Section 76-5b-201;  
(P) aggravated arson, as described in Section 76-6-103;  
(Q) aggravated burglary, as described in Section 76-6-203;  
(R) aggravated robbery, as described in Section 76-6-302; or  
(S) domestic violence, as described in Section 77-36-1; or  
(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).

(d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;  
(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;  
(iii) mayhem, as described in Section 76-5-105;  
(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;  
(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;  
(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;  
(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or  
(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

Section 2. Section **62A-4a-105** is amended to read:

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### 62A-4a-105. Division responsibilities.

(1) The division shall:

(a) administer services to minors and families, including:

(i) child welfare services;

(ii) domestic violence services; and

(iii) all other responsibilities that the Legislature or the executive director may assign to the division;

(b) provide the following services:

(i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;

(ii) non-custodial and in-home services, including:

(A) services designed to prevent family break-up; and

(B) family preservation services;

(iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

(iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;

(v) shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

(vi) domestic violence services, in accordance with the requirements of federal law;

(vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

(viii) substitute care for dependent, abused, and neglected[, ~~and delinquent~~] children;

(ix) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302; and

(x) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(c) establish standards for all:

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- (i) contract providers of out-of-home care for minors and families;
- (ii) facilities that provide substitute care for dependent, abused, and neglected~~[, and delinquent]~~ children placed in the custody of the division; and
- (iii) direct or contract providers of domestic violence services described in Subsection (1)(b)(vi);
- (d) have authority to:
  - (i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and
  - (ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, and neglected~~[, and delinquent]~~ children placed in the custody of the division;
- (e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;
- (f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of division records to the same extent that the division is required to protect division records, cooperate with and share all appropriate information in the division's possession regarding an Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child with the Indian tribe that is affiliated with the Indian child;
- (g) in accordance with Subsection (2)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, and dependent~~[, delinquent, ungovernable, and runaway children, and status offenders]~~ children, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state;
- (h) cooperate with the Workforce Development Division ~~in~~ within the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;
- (i) compile relevant information, statistics, and reports on child and family service matters in the state;
- (j) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;
- ~~(k) provide social studies and reports for the juvenile court in accordance with Section~~



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~~78A-6-605;~~

~~(k)~~ (k) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods;

~~(l)~~ (l) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who:

(i) have a permanency goal of adoption; or

(ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314, and promote adoption of those children;

~~(m)~~ (m) subject to Subsection (2)(b), refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for a court-ordered drug screening test; ~~and~~

(n) report before November 30, 2020, and every third year thereafter, to the Social Services Appropriations Subcommittee regarding:

(i) the ~~type of services for which a licensed foster parent may receive financial reimbursement;~~

~~(ii) the } daily reimbursement rate {for each type of service identified under Subsection (1)(n)(i);~~

~~(iii) the total financial reimbursement provided to} that is provided to licensed foster parents based on level of care;~~

(ii) the amount of money spent on daily reimbursements for licensed foster parents in the state during the previous fiscal year; and

~~(~~iv~~) iii~~ any recommended changes to the division's budget to support the ~~financial} daily reimbursement rates described in Subsection (1)(n)(~~iii~~)i; and~~

(o) perform other duties and functions required by law.

(2) (a) In carrying out the requirements of Subsection (1)(g), the division shall:

(i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions to develop and administer a broad range of services and support;

(ii) take the initiative in all matters involving the protection of abused or neglected children, if adequate provisions have not been made or are not likely to be made; and

(iii) make expenditures necessary for the care and protection of the children described

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in this Subsection (2)(a), within the division's budget.

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)~~(n)~~(m), the court shall order the individual to pay all costs of the tests unless:

(i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(ii) the individual is a participant in a drug court; or

(iii) the court finds that the individual is impecunious.

(3) Except to the extent provided by rule, the division is not responsible for investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

(4) The division may not require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo.

Section 3. Section **62A-4a-113** is amended to read:

**62A-4a-113. Division's enforcement authority -- Responsibility of attorney general to represent division.**

(1) The division shall take legal action that is necessary to enforce the provisions of this chapter.

(2) (a) Subject to Section 67-5-17 and the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all provisions of this chapter, in addition to the requirements of Title 78A, Chapter 6, Juvenile Court Act of 1996, relating to protection, custody, and parental rights termination for abused, neglected, or dependent minors.

(b) The attorney general may contract with the local county attorney to enforce the provisions of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996.

~~(b)~~ (c) It is the responsibility of the attorney general's office to:

(i) advise the division regarding decisions to remove a minor from the minor's home;

(ii) represent the division in all court and administrative proceedings related to abuse, neglect, and dependency including, but not limited to, shelter hearings, dispositional hearings, dispositional review hearings, periodic review hearings, and petitions for termination of parental rights; and

(iii) be available to and advise caseworkers on an ongoing basis.

~~(c)~~ (d)(i) The attorney general shall designate no less than 16 full-time attorneys to

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advise and represent the division in abuse, neglect, and dependency proceedings, including petitions for termination of parental rights. [~~Those~~]

(ii) The attorneys described in Subsection (2)(d)(i) shall devote their full time and attention to [~~that~~] the representation described in Subsection (2)(d)(i) and, insofar as it is practicable, shall be housed in or near various offices of the division statewide.

(3) (a) [~~As of July 1, 1998, the~~] The attorney general's office shall represent the division with regard to actions involving minors who have not been adjudicated as abused or neglected, but who are otherwise committed to the custody of the division by the juvenile court, and who are [~~classified in the division's management information system as having been~~] placed in custody of the division primarily on the basis of delinquent behavior or a status offense.

(b) Nothing in this section may be construed to affect the responsibility of the county attorney or district attorney to represent the state in [~~those matters,~~] the matters described in Subsection (3)(a) in accordance with Section 78A-6-115.

Section 4. Section **62A-4a-202** is amended to read:

### **62A-4a-202. In-home services for the preservation of families.**

(1) (a) Within appropriations from the Legislature and money obtained under Subsection (5), the division shall provide in-home services for the purpose of family preservation to any family with a child whose health and safety is not immediately endangered, when:

(i) (A) the child is at risk of being removed from the home; or

(B) the family is in crisis; and

(ii) the division determines that [~~it is~~] in-home services are reasonable and appropriate.

(b) In determining whether in-home services are reasonable and appropriate, in keeping with Subsection 62A-4a-201(1), the child's health, safety, and welfare shall be the paramount concern.

(c) The division shall consider whether the services described in Subsection (1)(b):

(i) will be effective within a six-month period; and

(ii) are likely to prevent continued abuse or neglect of the child.

(2) (a) The division shall maintain a statewide inventory of in-home services available through public and private agencies or individuals for use by caseworkers.

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(b) The inventory described in Subsection (2)(a) shall include:

- (i) the method of accessing each service;
- (ii) eligibility requirements for each service;
- (iii) the geographic areas and the number of families that can be served by each

service; and

- (iv) information regarding waiting lists for each service.

(3) (a) As part of [~~its~~] the division's in-home services for the preservation of families, the division shall provide in-home services in varying degrees of intensity and contact that are specific to the needs of each individual family.

(b) As part of [~~its~~] the division's in-home services, the division shall:

- (i) provide customized assistance;
- (ii) provide support or interventions that are tailored to the needs of the family;
- (iii) discuss the family's needs with the parent;
- (iv) discuss an assistance plan for the family with the parent; and

(v) address:

(A) the safety of children;

(B) the needs of the family; and

(C) services necessary to aid in the preservation of the family and a child's ability to remain in the home.

(c) In-home services shall be, as practicable, provided within the region that the family resides, using existing division staff.

(4) (a) The division may use specially trained caseworkers, private providers, or other persons to provide the in-home services described in Subsection (3).

(b) The division shall allow a caseworker to be flexible in responding to the needs of each individual family, including:

- (i) limiting the number of families assigned; and
- (ii) being available to respond to assigned families within 24 hours.

(5) To provide, expand, and improve the delivery of in-home services to prevent the removal of children from their homes and promote the preservation of families, the division shall make substantial effort to obtain funding, including:

- (a) federal grants;

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(b) federal waivers; and

(c) private money.

~~[(6) The division shall provide in-home family services pursuant to an order under Section 78A-6-117.5.]~~

Section 5. Section **62A-4a-202.6** is amended to read:

**62A-4a-202.6. Conflict child protective services investigations -- Authority of investigators.**

(1) (a) The department, through the Office of Quality and Design, shall conduct an independent child protective service investigation to investigate reports of abuse or neglect ~~[of a child that occur]~~ if:

(i) the report occurs while the child is in the custody of the division~~[-];~~ or

(ii) the executive director determines that, if the division conducts the investigation, the division would have an actual or potential conflict of interest in the results of the investigation.

(b) When a report is made ~~[that a child is abused or neglected]~~ while a child is in the custody of the division that indicates the child is abused or neglected:

(i) the attorney general may, in accordance with Section 67-5-16, and with the consent of the ~~[division]~~ department, employ a child protective services investigator to conduct a conflict investigation of the report; or

(ii) a law enforcement officer, as defined in Section 53-13-103, may, with the consent of the ~~[division]~~ department, conduct a conflict investigation of the report.

(c) Subsection (1)(b)(ii) does not prevent a law enforcement officer from, without the consent of the ~~[division]~~ department, conducting a criminal investigation of abuse or neglect under Title 53, Public Safety Code.

(2) The investigators described in ~~[Subsections (1)(b) and (c)]~~ Subsection (1) may also investigate allegations of abuse or neglect of a child by a department employee or a licensed substitute care provider.

(3) The investigators described in Subsection (1), if not law enforcement officers, shall have the same rights, duties, and authority of a child protective services investigator employed by the division to:

(a) make a thorough investigation upon receiving either an oral or written report of alleged abuse or neglect of a child, with the primary purpose of that investigation being the

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protection of the child;

(b) make an inquiry into the child's home environment, emotional, or mental health, the nature and extent of the child's injuries, and the child's physical safety;

(c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was supported, unsupported, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division; and

(d) immediately consult with school authorities to verify the child's status in accordance with Sections 53G-6-201 through 53G-6-206 when a report is based upon or includes an allegation of educational neglect.

Section 6. Section **62A-4a-209** is amended to read:

### **62A-4a-209. Emergency placement.**

(1) As used in this section:

(a) "Friend" means the same as that term is defined in Subsection 78A-6-307(1).

(b) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

(c) "Relative" means the same as that term is defined in Subsection 78A-6-307(1).

(2) The division may use an emergency placement under Subsection

62A-4a-202.1(4)(b)(ii) when:

(a) the case worker has made the determination that:

(i) the child's home is unsafe;

(ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

(iii) the child's custodial parent or guardian will agree to not remove the child from the home of the ~~[person]~~ individual that serves as the placement and not have any contact with the child until after the shelter hearing required by Section 78A-6-306;

(b) ~~[a person]~~ an individual, with preference being given in accordance with Subsection (4), can be identified who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:

(i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and

(ii) making the child available to division services and the guardian ad litem; and

(c) the ~~[person]~~ individual described in Subsection (2)(b) agrees to care for the child on

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an emergency basis under the following conditions:

(i) the [~~person~~] individual meets the criteria for an emergency placement under Subsection (3);

(ii) the [~~person~~] individual agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;

(iii) the [~~person~~] individual agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;

(iv) the [~~person~~] individual agrees to allow the division and the child's guardian ad litem to have access to the child;

(v) the [~~person~~] individual has been informed and understands that the division may continue to search for other possible placements for long-term care, if needed;

(vi) the [~~person~~] individual is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and

(vii) the child is comfortable with the [~~person~~] individual.

(3) Except as otherwise provided in Subsection (5), before the division places a child in an emergency placement, the division:

(a) may request the name of a reference and may contact the reference to determine the answer to the following questions:

(i) would the [~~person~~] individual identified as a reference place a child in the home of the emergency placement; and

(ii) are there any other relatives or friends to consider as a possible emergency or long-term placement for the child;

(b) shall have the custodial parent or guardian sign an emergency placement agreement form during the investigation;

(c) (i) if the emergency placement will be with a relative, shall comply with the background check provisions described in Subsection (7); or

(ii) if the emergency placement will be with [~~a person~~] an individual other than a noncustodial parent or a relative, shall comply with the background check provisions described in Subsection (8) for adults living in the household where the child will be placed;

(d) shall complete a limited home inspection of the home where the emergency

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placement is made; and

(e) shall have the emergency placement approved by a family service specialist.

(4) (a) The following order of preference shall be applied when determining the ~~[person]~~ individual with whom a child will be placed in an emergency placement described in this section, provided that the ~~[person]~~ individual is willing, and has the ability, to care for the child:

(i) a noncustodial parent of the child in accordance with Section 78A-6-307;

(ii) a relative;

(iii) subject to Subsection (4)(b), a friend designated by the custodial parent, guardian, or the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement; ~~[and]~~

(iv) a former foster placement designated by the division;

(v) a foster placement, that is not a former foster placement, designated by the division;

and

~~[(iv)]~~ (vi) a shelter facility~~[-former foster placement, or other foster placement]~~ designated by the division.

(b) In determining whether a friend is a willing and appropriate temporary emergency placement for a child, the division:

(i) subject to Subsections (4)(b)(ii) through (iv), shall consider the child's preferences or level of comfort with the friend;

~~[(i)]~~ (ii) is required to consider no more than one friend designated by each parent or legal guardian of the child and one friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement;

~~[(ii)]~~ (iii) may limit the number of designated friends to two, one of whom shall be a friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement; and

~~[(iii)]~~ (iv) shall give preference to a friend designated by the child, if:

(A) the child is of sufficient maturity to articulate the child's wishes; and

(B) the division's basis for removing the child under Section 62A-4a-202.1 is sexual abuse of the child.

(5) (a) The division may, pending the outcome of the investigation described in



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Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial parent if, based on a limited investigation, prior to making the emergency placement, the division:

(i) determines that the noncustodial parent has regular, unsupervised visitation with the child that is not prohibited by law or court order;

(ii) determines that there is not reason to believe that the child's health or safety will be endangered during the emergency placement; and

(iii) has the custodial parent or guardian sign an emergency placement agreement.

(b) Either before or after making an emergency placement with the noncustodial parent of the child, the division may conduct the investigation described in Subsection (3)(a) in relation to the noncustodial parent.

(c) Before, or within one day, excluding weekends and holidays, after a child is placed in an emergency placement with the noncustodial parent of the child, the division shall conduct a limited:

(i) background check of the noncustodial parent, pursuant to Subsection (7); and

(ii) inspection of the home where the emergency placement is made.

(6) After an emergency placement, the division caseworker must:

(a) respond to the emergency placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78A-6-306;

(c) contact the attorney general to schedule a shelter hearing;

(d) complete the placement procedures required in Section 78A-6-307; and

(e) continue to search for other relatives as a possible long-term placement, if needed.

(7) (a) The background check described in Subsection (3)(c)(i) shall include completion of:

(i) a name-based, Utah Bureau of Criminal Identification background check; and

(ii) a search of the Management Information System described in Section 62A-4a-1003.

(b) The division shall determine whether [~~a person~~] an individual passes the

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background check described in this Subsection (7) pursuant to the provisions of Subsection 62A-2-120(14).

(c) Notwithstanding Subsection (7)(b), the division may not place a child with an individual who is prohibited by court order from having access to that child.

(8) (a) The background check described in Subsection (3)(c)(ii) shall include completion of:

(i) a name-based, Utah Bureau of Criminal Identification background check;

(ii) a federal name-based criminal background check; and

(iii) a search of the Management Information System described in Section 62A-4a-1003.

(b) The division shall determine whether [~~a person~~] an individual passes the background checks described in this Subsection (8) pursuant to the provisions of Subsection 62A-2-120.

(c) If the division denies placement of a child as a result of a name-based criminal background check described in Subsection (8)(a), and the [~~person~~] individual contests that denial, the [~~person~~] individual shall submit a complete set of fingerprints with written permission to the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

(d) (i) Within 15 calendar days of the name-based background checks, the division shall require [~~a person~~] an individual to provide a complete set of fingerprints with written permission to the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

(ii) If [~~a person~~] an individual fails to provide the fingerprints and written permission described in Subsection (8)(d)(i), the child shall immediately be removed from the home.

Section 7. Section **62A-4a-602** is amended to read:

### **62A-4a-602. Licensure requirements -- Prohibited acts.**

(1) As used in this section:

(a) (i) "Advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business.

(ii) "Advertisement" includes a statement or representation described in Subsection (1)(a)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer,

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circular, billboard, banner, Internet website, social media, or sign.

(b) "Clearly and conspicuously disclose" means the same as that term is defined in Section 13-11a-2.

~~[(b)]~~ (c) (i) "Matching advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business to provide the assistance described in Subsection (3)(a)(i), regardless of whether there is or will be an exchange described in Subsection (3)(a)(ii).

(ii) "Matching advertisement" includes a statement or representation described in Subsection (1)~~[(b)]~~(c)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.

~~[(c) "Clearly and conspicuously disclose" means the same as that term is defined in Section 13-11a-2.]~~

(2) (a) A person may not engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the Office of Licensing, in accordance with Chapter 2, Licensure of Programs and Facilities.

(b) When a child-placing agency's license is suspended or revoked in accordance with that chapter, the care, control, or custody of any child who has been in the care, control, or custody of that agency shall be transferred to the division.

(3) (a) (i) An attorney, physician, or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted.

(ii) No payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for the assistance described in Subsection (3)(a)(i).

(b) An attorney, physician, or other person may not:

(i) issue or cause to be issued to any person a card, sign, or device indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i);

(ii) cause, permit, or allow any sign or marking indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), on or in any building or structure;

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(iii) announce, cause, permit, or allow an announcement indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), to appear in any newspaper, magazine, directory, on radio or television, or an Internet website relating to a business;

(iv) announce, cause, permit, or allow a matching advertisement; or

(v) announce, cause, permit, or allow an advertisement that indicates or implies the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i) as part of, or related to, other adoption-related services by using any of the following terms:

(A) "comprehensive";

(B) "complete";

(C) "one-stop";

(D) "all-inclusive"; or

(E) any other term similar to the terms described in Subsections (3)(b)(v)(A) through (D).

(c) An attorney, physician, or other person who is not licensed by the Office of Licensing within the department shall clearly and conspicuously disclose in any print media advertisement or written contract regarding adoption services or adoption-related services that the attorney, physician, or other person is not licensed to provide adoption services by the Office of Licensing within the department.

(4) Nothing in this part:

(a) precludes payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings; or

(b) abrogates the right of procedures for independent adoption as provided by law.

(5) In accordance with federal law, only agents or employees of the division and of licensed child placing agencies may certify to the United States Immigration and Naturalization Service that a family meets the division's preadoption requirements.

(6) (a) Neither a licensed child-placing agency nor any attorney practicing in this state may place a child for adoption, either temporarily or permanently, with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of

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Sections 78B-6-117, 78B-6-102, and 78B-6-137.

(b) The division, as a licensed child-placing agency, may not place a child in foster care with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137. However, nothing in this Subsection (6)(b) limits the placement of a child in foster care with the child's biological or adoptive parent, a relative, or in accordance with the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

(c) With regard to children who are in the custody of the state, the division shall establish a rule providing that priority for placement shall be provided to families in which ~~[both a man and a woman are]~~ a couple is legally married under the laws of this state. However, nothing in this Subsection (6)(c) limits the placement of a child with the child's biological or adoptive parent, a relative, or in accordance with the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

Section 8. Section **62A-4a-603** is amended to read:

**62A-4a-603. Injunction -- Enforcement by county attorney or attorney general.**

(1) The ~~[division,]~~ Office of Licensing within the department~~[-]~~ or any interested person may commence an action in district court to enjoin any person, agency, firm, corporation, or association violating Section 62A-4a-602.

(2) The Office of Licensing shall:

(a) solicit information from the public relating to violations of Section 62A-4a-602;

and

(b) upon identifying a violation of Section 62A-4a-602:

(i) send a written notice to the person who violated Section 62A-4a-602 that describes the alleged violation; and

(ii) notify the following persons of the alleged violation:

(A) the local county attorney; and

(B) the Division of Occupational and Professional Licensing.

(3) (a) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 62A-4a-602 after being informed of an alleged violation.

(b) If a county attorney does not take action within 30 days after the day on which the county attorney is informed of an alleged violation of Section 62A-4a-602, the attorney general

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may be requested to take action, and shall then institute legal proceedings in place of the county attorney.

(4) (a) In addition to the remedies provided in Subsections (1) and (3), any person, agency, firm, corporation, or association found to be in violation of Section 62A-4a-602 shall forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Each act in violation of Section 62A-4a-602, including each placement or attempted placement of a child, is a separate violation.

(5) (a) All amounts recovered as penalties under Subsection (4) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.

(b) If two or more governmental entities are involved in the prosecution, the penalty amounts recovered shall be apportioned by the court among the entities, according to their involvement.

(6) A judgment ordering the payment of any penalty or forfeiture under Subsection (4) is a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Section 9. Section **78A-6-103** is amended to read:

### **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or [~~a person~~] an individual younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses:

(i) in Section 53G-8-211 until such time that the child is referred to the courts under Section 53G-8-211; and

(ii) in Subsection 78A-7-106(2);

(b) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

(c) a protective order for a child pursuant to Title 78B, Chapter 7, Part 2, Child

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Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(d) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(e) the emancipation of a minor in accordance with Part 8, Emancipation;

(f) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a minor who has an intellectual disability;

(h) the judicial consent to the marriage of a minor 16 or 17 years old upon a determination of voluntariness or where otherwise required by law;

(i) any parent or parents of a child committed to a secure youth facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

(j) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

(k) subject to Subsection (8), the treatment or commitment of a child with a mental illness;

(l) the commitment of a child to a secure drug or alcohol facility in accordance with Section 62A-15-301;

(m) a minor found not competent to proceed pursuant to Section 78A-6-1301;

(n) de novo review of final agency actions resulting from an informal adjudicative

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proceeding as provided in Section 63G-4-402; and

(o) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

(2) (a) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) Section 73-18-12, reckless operation; and

(iii) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(b) A juvenile court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated assessment.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to ~~[it]~~ the juvenile court by the Division of ~~[Child and Family]~~ Juvenile Justice Services ~~[or by public or private agencies that contract with the {} division {}]~~ Division of Juvenile Justice Services ~~to provide services to that child]~~ when, despite earnest and persistent efforts by the ~~[division or agency]~~ Division of Juvenile Justice Services ~~{or agency}~~, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, or lawful custodian to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court



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pursuant to Subsection 78A-7-106(5) and subject to Section 53G-8-211.

(8) The court may commit a child to the physical custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital.

Section 10. Section **78A-6-113** is amended to read:

**78A-6-113. Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement for criminal proceedings -- Bail laws inapplicable -- Exception.**

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings except in accordance with Section 78A-6-112.

(b) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

~~[(c) (i) A court may temporarily place in a detention facility, as provided in Subsection (4), a child who is taken into custody based upon a warrant issued under Subsection 78A-6-106(6), if the court finds that detention is the least restrictive placement available to ensure the immediate safety of the child.]~~

~~[(ii) A child placed in detention under Subsection (1)(c)(i) may not be held in detention longer than is necessary for the division to identify a less restrictive, available, and appropriate placement for the child.]~~

(2) After admission of a child to a detention facility pursuant to Section 78A-6-112 and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the child to the child's parents, guardian, or custodian if it is found the child can be safely returned to their care, either upon written promise to bring the child to the court at a time set or without restriction.

(a) If a child's parent, guardian, or custodian fails to retrieve the child from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the child remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the Division of Juvenile Justice Services to recover the cost of care for the time the child remains in the

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facility.

(3) (a) When a child is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that the parent's or guardian's child has the right to a prompt hearing in court to determine whether the child is to be further detained or released.

(b) When a minor is detained in a detention facility, the minor shall be informed by the person in charge of the facility that the minor has the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(c) Detention hearings shall be held by the judge or by a commissioner.

(d) The court may, at any time, order the release of the minor, whether a detention hearing is held or not.

(e) If a child is released, and the child remains in the facility, because the parents, guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours before a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A child may not be held in a shelter facility longer than 48 hours before a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section 78A-6-306.

(c) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

(d) The judge or commissioner may only order a minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court, if the court finds at a detention hearing that:

(i) releasing the minor to the minor's parent, guardian, or custodian presents an unreasonable risk to public safety;

(ii) less restrictive nonresidential alternatives to detention have been considered and, where appropriate, attempted; and

(iii) the minor is eligible for detention under the division guidelines for detention

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admissions established by the Division of Juvenile Justice Services, under Section 62A-7-202 and under Section 78A-6-112.

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

(ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of its decision, including any disposition, order, or no contact orders, be provided to designated persons in the appropriate local law enforcement agency and district superintendent or the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency, school district, and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63G-2-801.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101.

(6) (a) Except as otherwise provided in this section, a minor may not be held in a detention facility following a disposition order of the court for longer than 72 hours, excluding weekends and holidays.

(b) The period of detention may be extended by the court for a cumulative total of seven calendar days if:

(i) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

(ii) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

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(c) The court may extend the period of detention beyond the seven calendar days if the court finds by clear and convincing evidence that:

(i) the Division of Juvenile Justice Services or another agency responsible for placement does not have space for the minor; and

(ii) the safety of the minor and community requires an extension of the period of detention.

(d) The Division of Juvenile Justice Services shall report to the court every 48 hours, excluding weekends and holidays, regarding the status of whether the Division of Juvenile Justice Services or another agency responsible for placement has space for the minor.

(7) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

(8) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

(9) (a) A child under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section 78A-6-703. Section 62A-7-201 regarding confinement facilities applies to this Subsection (9).

(b) A child 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for children may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure facility is not an appropriate place of confinement for detention purposes under this section.

(10) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a person who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the person to a detention facility, unless otherwise ordered by the juvenile court.

(11) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section 78A-6-701 or by order of the juvenile court to be held for criminal proceedings in the district court under Section 78A-6-702 or 78A-6-703.

(12) A minor held for criminal proceedings under Section 78A-6-701, 78A-6-702, or

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78A-6-703 may be detained in a jail or other place of detention used for adults charged with crime.

(13) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in Subsection 78A-6-603(11).

(14) Section 76-8-418 is applicable to a child who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

Section 11. Section **78A-6-115** is amended to read:

**78A-6-115. Hearings -- Record -- County attorney or district attorney responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of evidence -- Medical cannabis.**

(1) (a) A verbatim record of the proceedings shall be taken in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

~~(b) (i)~~ (b) (i) For purposes of this Subsection (1)(b):

(A) "Record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a).

(B) "Subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

~~(b) (i)~~ (ii) Notwithstanding any other provision, including Title 63G, Chapter 2, Government Records Access and Management Act, the court shall release a record of a proceeding made under Subsection (1)(a) ~~[shall be released by the court]~~ to any person upon a finding on the record for good cause.

~~(ii)~~ (iii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record

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has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

~~[(iii)]~~ (iv) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months before the day on which the request is made.

~~[(iv) For purposes of this Subsection (1)(b):]~~

~~[(A) "record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a), and]~~

~~[(B) "subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.]~~

(2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) Subject to the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and this chapter, relating to:

- (i) protection or custody of an abused, neglected, or dependent child; and
- (ii) petitions for termination of parental rights.

~~[(c) The attorney general shall represent the Division of Child and Family Services in actions involving a minor who is not adjudicated as abused or neglected, but who is receiving in-home family services under Section 78A-6-117.5. Nothing in this Subsection (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with Subsection (2)(a).]~~

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.

(4) (a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and

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in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the [person] individual who wrote the report or prepared the material appear as a witness if the [person] individual is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division under Section 78A-6-315 may be received in evidence and may be considered by the court along with other evidence. The court may require any [person] individual who participated in preparing the dispositional report to appear as a witness, if the [person] individual is reasonably available.

(5) (a) ~~[It]~~ Except as provided in Subsections (5)(c) through (e), in an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

(i) plans to report to the court at the proceeding; or

(ii) could reasonably expect would be requested of the party by the court at the proceeding.

(b) The disclosure required under Subsection (5)(a) shall be made:

(i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than five days before the day on which the proceeding is held;

(ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

(iii) for all other proceedings, no less than five days before the day on which the proceeding is held.

(c) A party is not required to provide the information described in Subsection (5)(a) to each party to the proceeding if:

(i) the information is electronically filed with the court; and

(ii) each party to the proceeding has access to the electronically filed information.

~~(c)~~ (d) If a party to a proceeding obtains information after the deadline in Subsection

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(5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the party certifies to the court that the information was obtained after the deadline.

~~(d)~~ (e) Subsection (5)(a) does not apply to:

(i) pretrial hearings; and

(ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance use disorder treatment.

(6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court may, in ~~its~~ the court's discretion, consider evidence of statements made by a child under eight years of age to ~~a person~~ an individual in a trust relationship.

(7) (a) As used in this Subsection (7):

(i) "Cannabis product" means the same as that term is defined in Section 26-61a-102.

(ii) "Dosing parameters" means the same as that term is defined in Section 26-61a-102.

(iii) "Medical cannabis" means the same as that term is defined in Section 26-61a-102.

(iv) "Medical cannabis cardholder" means the same as that term is defined in Section 26-61a-102.

(v) "Qualified medical provider" means the same as that term is defined in Section 26-61a-102.

(b) In any child welfare proceeding in which the court makes a finding, determination, or otherwise considers an individual's possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the court may not consider or treat the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance if the individual's use or possession complies with:

(i) Title 4, Chapter 41a, Cannabis Production Establishments;

(ii) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

(iii) (A) the individual's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(B) the individual reasonably complies with the dosing parameters determined by the individual's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5).

(c) A parent's or guardian's use of medical cannabis or a cannabis product is not abuse or neglect of a child under Section 78A-6-105, nor is it contrary to the best interests of a child,



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if:

(i) (A) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates from the dosing parameters determined by the parent's or guardian's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5); or

(B) before January 1, 2021, the parent's or guardian's possession or use complies with Subsection 58-37-3.7(2) or (3); and

(ii) (A) there is no evidence showing that the child has inhaled, ingested, or otherwise had cannabis introduced to the child's body; or

(B) there is no evidence showing a nexus between the parent's or guardian's use of medical cannabis or a cannabis product and behavior that would separately constitute abuse or neglect of the child.

Section 12. Section **78A-6-117.5** is amended to read:

**78A-6-117.5. Custody in Division of Child and Family Services or in the Division of Juvenile Justice Services -- Assessment of an ungovernable or runaway youth for services.**

(1) Notwithstanding Subsections 78A-6-117(2)(c) and (d), the court may not vest custody in the Division of Child and Family Services except pursuant to Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

~~[(2) If the court finds that a child is at risk of being removed from the home or that the family is in crisis, the court may order the Division of Child and Family Services to conduct an assessment to determine if provision of in-home family preservation services is appropriate. If considered appropriate by the Division of Child and Family Services, services shall be provided pursuant to Section 62A-4a-202.]~~

~~[(3)]~~ (2) Notwithstanding Section 78A-6-117, a court may not place a minor on a ranch, forestry camp, or other residential work program for care or work.

~~[(4)]~~ (3) Notwithstanding Section 78A-6-117, a court may not commit a minor to the temporary custody of the Division of Juvenile Justice Services for residential observation and evaluation or residential observation and assessment.

(4) (a) If the court finds that a child is ungovernable or a runaway, as those terms are

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defined in Section 62A-7-101, or that the family is in crisis, the court may order the Division of Juvenile Justice Services to conduct an assessment to determine if provision of prevention and early intervention youth services, as described in Section 62A-7-601, is appropriate.

(b) If the Division of Juvenile Justice Services determines that provision of prevention and early intervention youth services is appropriate under Subsection (4)(a), the Division of Juvenile Justice Services shall provide the services to the ungovernable or runaway child.

Section 13. Section **78A-6-307** is amended to read:

### **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

(1) As used in this section:

(a) "Friend" means an adult [~~the child knows and is comfortable with but who is not a natural parent or relative.~~] who:

(i) has an established relationship with the child or a family member of the child; and

(ii) is not a natural parent of the child.

(b) (i) "Natural parent," notwithstanding Section 78A-6-105, means:

(A) a biological or adoptive mother of the child;

(B) an adoptive father of the child; or

(C) a biological father of the child who:

(I) was married to the child's biological mother at the time the child was conceived or born; or

(II) has strictly complied with Sections 78B-6-120 through 78B-6-122, before removal of the child or voluntary surrender of the child by the custodial parent.

(ii) The definition of "natural parent" described in Subsection (1)(b)(i) applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long-term goal for the child.

(c) "Relative" means:

(i) an adult who is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling;

(ii) a first cousin of the child's parent;

(iii) an adult who is an adoptive parent of the child's sibling; or

(iv) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that

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statute.

(2) (a) At the shelter hearing, when the court orders that a child be removed from the custody of the child's parent in accordance with the requirements of Section 78A-6-306, the court shall first determine whether there is another natural parent with whom the child was not residing at the time the events or conditions that brought the child within the court's jurisdiction occurred, who desires to assume custody of the child.

(b) If another natural parent requests custody under Subsection (2)(a), the court shall place the child with that parent unless [~~it~~] the court finds that the placement would be unsafe or otherwise detrimental to the child.

(c) This Subsection (2) is limited by Subsection (18)(b).

(d) (i) The court shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement.

(ii) The court shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 78A-6-308, and check the division's management information system for any previous reports of abuse or neglect received by the division regarding the parent at issue.

(iii) The court may order the division to conduct any further investigation regarding the safety and appropriateness of the placement.

(iv) The division shall report [~~its~~] the division's findings in writing to the court.

(v) The court may place the child in the temporary custody of the division, pending [~~its~~] the court's determination regarding that placement.

(3) If the court orders placement with a parent under Subsection (2):

(a) the child and the parent are under the continuing jurisdiction of the court;

(b) the court may order:

(i) that the parent assume custody subject to the supervision of the court; and

(ii) that services be provided to the parent from whose custody the child was removed, the parent who has assumed custody, or both; and

(c) the court shall order reasonable parent-time with the parent from whose custody the child was removed, unless parent-time is not in the best interest of the child.

(4) The court shall periodically review an order described in Subsection (3) to

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determine whether:

- (a) placement with the parent continues to be in the child's best interest;
- (b) the child should be returned to the original custodial parent;
- (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)

through (12); or

- (d) the child should be placed in the custody of the division.

(5) The time limitations described in Section 78A-6-312 with regard to reunification efforts apply to children placed with a previously noncustodial parent in accordance with Subsection (2).

(6) Legal custody of the child is not affected by an order entered under Subsection (2) or (3). To affect a previous court order regarding legal custody, the party shall petition that court for modification of the order.

(7) If, at the time of the shelter hearing, a child is removed from the custody of the child's parent and is not placed in the custody of the child's other parent, the court:

(a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e), there is a relative or a friend who is able and willing to care for the child, which may include asking a child, who is of sufficient maturity to articulate the child's wishes in relation to a placement, if there is a relative or friend with whom the child would prefer to reside;

(b) may order the division to conduct a reasonable search to determine whether, subject to Subsections (18)(c) through (e), there are relatives or friends who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;

(c) shall order the parents to cooperate with the division, within five working days, to, subject to Subsections (18)(c) through (e), provide information regarding relatives or friends who may be able and willing to care for the child; and

(d) may order that the child be placed in the custody of the division pending the determination under Subsection (7)(a).

(8) This section may not be construed as a guarantee that an identified relative or friend will receive custody of the child.

(9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given to a relative's or a friend's request for placement of the child, if it is in the best interest of the

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child, and the provisions of this section are satisfied.

(10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court shall make a specific finding regarding:

- (i) the fitness of that relative or friend as a placement for the child; and
- (ii) the safety and appropriateness of placement with that relative or friend.

(b) To be considered a "willing relative or friend" under this section, the relative or friend shall be willing to cooperate with the child's permanency goal.

(11) (a) In making the finding described in Subsection (10)(a), the court shall, at a minimum, order the division to:

- (i) if the child may be placed with a relative, conduct a background check that includes:

(A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification background check of the relative;

(B) a completed search, relating to the relative, of the Management Information System described in Section 62A-4a-1003; and

(C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Section 62A-4a-209, of the child who resides in the household where the child may be placed;

(ii) if the child will be placed with a noncustodial parent, complete a background check that includes:

(A) the background check requirements applicable to an emergency placement with a noncustodial parent that are described in Subsections 62A-4a-209(5) and (7);

(B) a completed search, relating to the noncustodial parent of the child, of the Management Information System described in Section 62A-4a-1003; and

(C) a background check that complies with the criminal background check provisions described in Section 78A-6-308, of each nonrelative, as defined in Section 62A-4a-209, of the child who resides in the household where the child may be placed;

(iii) if the child may be placed with an individual other than a noncustodial parent or a relative, conduct a criminal background check of the individual, and each adult that resides in the household where the child may be placed, that complies with the criminal background check provisions described in Section 78A-6-308;

- (iv) visit the relative's or friend's home;

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(v) check the division's management information system for any previous reports of abuse or neglect regarding the relative or friend at issue;

(vi) report the division's findings in writing to the court; and

(vii) provide sufficient information so that the court may determine whether:

(A) the relative or friend has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

(B) the child is comfortable with the relative or friend;

(C) the relative or friend recognizes the parent's history of abuse and is committed to protect the child;

(D) the relative or friend is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(E) the relative or friend is committed to caring for the child as long as necessary; and

(F) the relative or friend can provide a secure and stable environment for the child.

(b) The division may determine to conduct, or the court may order the division to conduct, any further investigation regarding the safety and appropriateness of the placement.

(c) The division shall complete and file [~~its~~] the division's assessment regarding placement with a relative or friend as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.

(12) (a) The court may place a child described in Subsection (2)(a) in the temporary custody of the division, pending the division's investigation pursuant to Subsections (10) and (11), and the court's determination regarding the appropriateness of that placement.

(b) The court shall ultimately base [~~its~~] the court's determination regarding the appropriateness of a placement with a relative or friend on the best interest of the child.

(13) When a court places a child described in Subsection (7) in the custody of the child's relative or friend:

(a) the court:

(i) shall order the relative or friend assume custody, subject to the continuing supervision of the court; and

(ii) may order the division provide necessary services to the child and the child's relative or friend, including the monitoring of the child's safety and well-being;

(b) the child and the relative or friend in whose custody the child is placed are under

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the continuing jurisdiction of the court;

(c) the court may enter any order that it considers necessary for the protection and best interest of the child;

(d) the court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed, unless parent-time is not in the best interest of the child; and

(e) the court shall conduct a periodic review no less often than every six months, to determine whether:

(i) placement with the relative or friend continues to be in the child's best interest;

(ii) the child should be returned home; or

(iii) the child should be placed in the custody of the division.

(14) No later than 12 months after placement with a relative or friend, the court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(15) The time limitations described in Section 78A-6-312, with regard to reunification efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

(16) (a) If the court awards custody of a child to the division, and the division places the child with a relative, the division shall:

(i) conduct a criminal background check of the relative that complies with the criminal background check provisions described in Section 78A-6-308; and

(ii) if the results of the criminal background check described in Subsection (16)(a)(i) would prohibit the relative from having direct access to the child under Section 62A-2-120, the division shall:

(A) take the child into physical custody; and

(B) within three days, excluding weekends and holidays, after taking the child into physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all parties to the proceedings, of the division's action.

(b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a relative, pending the results of the background check described in Subsection (16)(a) on the relative.

(17) When the court orders that a child be removed from the custody of the child's

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parent and does not award custody and guardianship to another parent, relative, or friend under this section, the court shall order that the child be placed in the temporary custody of the division, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

(18) (a) Any preferential consideration that a relative or friend is initially granted pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend who has not obtained custody or asserted an interest in a child, may not be granted preferential consideration by the division or the court.

(b) When the time period described in Subsection (18)(a) has expired, the preferential consideration, which is initially granted to a natural parent in accordance with Subsection (2), is limited. After that time, the court shall base ~~[its]~~ the court's custody decision on the best interest of the child.

(c) Before the expiration of the 120-day period described in Subsection (18)(a), the following order of preference shall be applied when determining the individual with whom a child will be placed, provided that the individual is willing, and has the ability, to care for the child:

- (i) a noncustodial parent of the child;
- (ii) a relative of the child;
- (iii) subject to Subsection (18)(d), a friend, if the friend is a licensed foster parent; and
- (iv) other placements that are consistent with the requirements of law.

(d) ~~[(i)]~~ In determining whether a friend is a willing and appropriate placement for a child, ~~[neither]~~ the court~~[-nor]~~ or the division~~[-]~~:

(i) subject to Subsections (18)(d)(ii) through (iv), shall consider the child's preferences or level of comfort with the friend; and

(ii) is required to consider no more than one friend designated by each parent of the child and one friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement~~[-]~~;

~~[(ii) The court or the division]~~

(iii) may limit the number of designated friends to two, one of whom shall be a friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement~~[-]~~; and



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~~[(iii) The court and the division]~~

(iv) shall give preference to a friend designated by the child, if:

(A) the child is of sufficient maturity to articulate the child's wishes; and

(B) the basis for removing the child under Section 78A-6-306 is sexual abuse of the child.

(e) If a parent of the child or the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement, is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent:

(i) the department shall fully cooperate to expedite the licensing process for the friend; and

(ii) if the friend becomes licensed as a foster parent within the time frame described in Subsection (18)(a), the court shall determine whether it is in the best interests of the child to place the child with the friend.

(19) If, following the shelter hearing, the child is placed with an individual who is not a parent, a relative, a friend, or a former foster parent of the child, priority shall be given to a foster placement with a ~~[man and a woman who are married to each other]~~ married couple, unless it is in the best interests of the child to place the child with a single foster parent.

(20) In determining the placement of a child, neither the court, nor the division, may take into account, or discriminate against, the religion of an individual with whom the child may be placed, unless the purpose of taking religion into account is to place the child with an individual or family of the same religion as the child.

(21) If the court's decision differs from a child's express wishes if the child is of sufficient maturity to articulate the wishes in relation to the child's placement, the court shall make findings explaining why the court's decision differs from the child's wishes.

Section 14. Section **78A-6-311.5** is amended to read:

**78A-6-311.5. Placement in a qualified residential treatment program -- Review hearings.**

(1) As used in this section:

(a) "Qualified individual" means the same as that term is defined in 42 U.S.C. Sec. 675a.

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(b) "Qualified residential treatment program" means the same as that term is defined in 42 U.S.C. Sec. 672.

(2) Within 60 days of the date when a child is placed in a qualified residential treatment program, the court shall:

(a) review the assessment, determination, and documentation made by a qualified individual regarding the child;

(b) determine whether the needs of the child can be met through placement in a foster home;

(c) if the child's needs cannot be met through placement in a foster home, determine whether:

(i) placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment; and

(ii) placement in a qualified residential treatment program is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child; and

(d) approve or disapprove of the child's placement in a qualified residential treatment program.

(3) As long as a child remains placed in a qualified residential treatment program, the court shall review the placement decision at each subsequent review and permanency hearing held with respect to the child.

(4) When the court conducts a review described in Subsection (3), the court shall review evidence submitted by the custodial division to:

(a) demonstrate an ongoing assessment of the strengths and needs of the child such that the child's needs cannot be met through placement in a foster home;

(b) demonstrate that placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment;

(c) demonstrate that placement in the qualified residential treatment program is consistent with the short-term and long-term goals for the child, as specified by the permanency plan for the child;

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(d) document the specific treatment or service needs that will be met for the child in the placement;

(e) document the length of time the child is expected to need the treatment or services; and

(f) document the efforts made by the custodial division to prepare the child to return home or transition to another setting, such as with a relative, with a friend of the child, with a legal guardian, with an adoptive parent, a foster home, or independent living.

Section 15. 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~~] individual, in accordance with this section and this part.

(2) A child may be adopted by:

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

(b) subject to Subsections (3) and (4), a single adult.

(3) A child may not be adopted by [~~a person~~] an individual who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state unless the [~~person~~] individual is a relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.

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

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

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

(c) the child is placed with [~~a person~~] an individual who has already developed a substantial relationship with the child;

(d) the child is placed with [~~a person~~] an individual who:

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

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

(A) knew the [~~person~~] individual with whom the child is placed before the parent consented to the adoption; or

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

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

(5) Except as provided in Subsection (6), an adult may not adopt a child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony or attempted felony involving conduct that constitutes any of the following:

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

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

(c) child kidnapping, as described in Section 76-5-301.1;

(d) human trafficking of a child, as described in Section 76-5-308.5;

(e) sexual abuse of a minor, as described in Section 76-5-401.1;

(f) rape of a child, as described in Section 76-5-402.1;

(g) object rape of a child, as described in Section 76-5-402.3;

(h) sodomy on a child, as described in Section 76-5-403.1;

(i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;

(j) sexual exploitation of a minor, as described in Section 76-5b-201; or

(k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (5).

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

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

(i) at least 10 years have elapsed from the day on which the [~~person~~] individual is

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successfully released from prison, jail, parole, or probation related to a disqualifying offense;

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

(iii) the [person] individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

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

- (A) the child's age;
- (B) the child's gender;
- (C) the child's development;
- (D) the nature and seriousness of the disqualifying offense;
- (E) the preferences of a child 12 years of age or older;
- (F) any available assessments, including custody evaluations, home studies,

pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(v) the [person] individual can provide evidence of all of the following:

- (A) the relationship with the child is of long duration;
- (B) that an emotional bond exists with the child; and
- (C) that adoption by the [person] individual who has committed the disqualifying

offense ensures the best interests of the child are met; and

(vi) the adoption is by:

- (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
- (B) subject to Subsection (6)(d), a relative of the child as defined in Section 78A-6-307

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

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

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disqualifying offense.

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

(i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and

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

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

(B) a guardian ad litem shall be assigned.

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

### Section 16. **Repealer.**

This bill repeals:

Section **62A-4a-250, Attorney general responsibility.**

Section **78A-6-401, Attorney general responsibility.**