

HB0191S01 compared with HB0191

~~{deleted text}~~ shows text that was in HB0191 but was deleted in HB0191S01.

inserted text shows text that was not in HB0191 but was inserted into HB0191S01.

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Representative Merrill F. Nelson proposes the following substitute bill:

ADOPTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill amends and enacts provisions relating to adoption.

Highlighted Provisions:

This bill:

- ▶ clarifies that a new birth certificate may be issued after the adoption of an adult;
- ▶ allows an attorney in the adoption or the child-placing agency to be provided the adoption report;
- ▶ allows the attorney in the adoption or the child-placing agency to take the adoption report to the state registrar;
- ▶ clarifies that a new birth certificate may be issued for a foreign-born individual who is adopted as an adult;

~~{~~ → defines a term regarding a prospective adoptive parent;

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- requires the Division of Child and Family Services to follow the wishes of a natural parent who has created a voluntary adoption plan;
- requires a peace officer or a caseworker to inform certain individuals that a parent of a child taken into protective custody may create a voluntary adoption plan;
- requires the juvenile court, at a shelter hearing, to allow a proposed adoptive placement to proceed, grant preferential consideration to a prospective adoptive parent, and dismiss an abuse, neglect, and dependency petition, if the parent has created a voluntary adoption plan and a preplacement adoptive evaluation has been conducted and recommends the adoptive placement;
- ‡
 - ▶ amends venue provisions for adoption proceedings;
 - ▶ allows the spouse of a preexisting parent to adopt a child after the child's death;
 - ▶ if a child-placing agency placed a child for adoption, provides that the child-placing agency file an affidavit regarding fees and expenses with the Office of Licensing within the Department of Human Services; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-2-10, as last amended by Laws of Utah 2015, Chapter 137

26-2-25, as last amended by Laws of Utah 1995, Chapter 202

26-2-28, as last amended by Laws of Utah 2008, Chapter 3

~~{ **62A-4a-101**, as last amended by Laws of Utah 2019, Chapters 259 and 335~~

~~— **62A-4a-105**, as last amended by Laws of Utah 2020, Chapters 108 and 250~~

~~— **62A-4a-202.2**, as last amended by Laws of Utah 2008, Chapter 3~~

~~— **78A-6-306**, as last amended by Laws of Utah 2020, Chapters 158 and 214~~

‡ **78B-6-105**, as last amended by Laws of Utah 2020, Chapter 214

78B-6-115, as last amended by Laws of Utah 2015, Chapter 137

78B-6-120.1, as enacted by Laws of Utah 2013, Chapter 458

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78B-6-136.5, as last amended by Laws of Utah 2012, Chapter 340

78B-6-140, as last amended by Laws of Utah 2012, Chapter 340

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

Section 1. Section **26-2-10** is amended to read:

26-2-10. Supplementary certificate of birth.

~~[(1) Any person born in this state who is legitimized by the subsequent marriage of the person's natural parents, or whose parentage has been determined by any U.S. state court or Canadian provincial court having jurisdiction, or who has been legally adopted under the law of this or any other state or any province of Canada, may request the state registrar to register a supplementary birth certificate on the basis of that status.]~~

(1) An individual born in this state may request the state registrar to register a supplementary birth certificate for the individual if:

(a) the individual is legitimized by the subsequent marriage of the individual's natural parents;

(b) the individual's parentage has been determined by a state court of the United States or a Canadian provincial court with jurisdiction; or

(c) the individual has been legally adopted, as a child or as an adult, under the law of this state, any other state, or any province of Canada.

(2) The application for registration of a supplementary birth certificate may be made by:

(a) the [person] individual requesting registration[;] under Subsection (1) if the [person] individual is of legal age[; by];

(b) a legal representative[; or by]; or

(c) any agency authorized to receive children for placement or adoption under the laws of this or any other state.

(3) (a) The state registrar shall require that an applicant submit identification and proof according to department rules.

(b) In the case of an adopted [person] individual, that proof may be established by order of the court in which the adoption proceedings were held.

(4) (a) After the supplementary birth certificate is registered, any information disclosed

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from the record shall be from the supplementary birth certificate.

(b) Access to the original birth certificate and to the evidence submitted in support of the supplementary birth certificate are not open to inspection except upon the order of a Utah district court or ~~[as provided under]~~ as described in Section 78B-6-141 or Section 78B-6-144.

Section 2. Section **26-2-25** is amended to read:

26-2-25. Divorce or adoption -- Duty of court clerk to file certificates or reports.

(1) ~~[(a)]~~ For each adoption, annulment of adoption, divorce, and annulment of marriage ordered or decreed in this state, the clerk of the court shall prepare a divorce certificate or report of adoption on a form furnished by the state registrar.

(2) The petitioner shall provide the information necessary to prepare the certificate or report ~~[when he files the petition with the clerk]~~ under Subsection (1).

~~[(b)]~~ (3) The clerk shall:

(a) prepare the certificate or report ~~[and, immediately after the decree or order becomes final, shall]~~ under Subsection (1); and

(b) complete the remaining entries for the certificate or report immediately after the decree or order becomes final.

(4) On or before the 15th day of each month, the clerk shall forward the divorce certificates and reports of adoption under Subsection (1) completed by ~~[him]~~ the clerk during the preceding month to the state registrar.

~~[(2) If there is filed with the clerk of the court in an adoption proceeding a written consent to adoption by an agency licensed under the laws of the state to receive children for placement or adoption, the agency by its authorized representative shall prepare and complete the report of adoption and forward it to the state registrar immediately after entry of the decree of adoption.]~~

(5) (a) A report of adoption under Subsection (1) may be provided to the attorney who is providing representation of a party to the adoption or the child-placing agency, as defined in Section 78B-6-103, that is placing the child.

(b) If a report of adoption is provided to the attorney or the child-placing agency, as defined in Section 78B-6-103, the attorney or the child-placing agency shall immediately provide the report of adoption to the state registrar.

Section 3. Section **26-2-28** is amended to read:

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26-2-28. Birth certificate for foreign adoptees.

Upon presentation of a court order of adoption and an order establishing the fact, time, and place of birth under Section 26-2-15, the department shall prepare a birth certificate for ~~[any person]~~ an individual who:

- (1) was adopted under the laws of this state; and
- (2) was at the time of adoption, as a child or as an adult, considered an alien child or adult for whom the court received documentary evidence of ~~[legal residence]~~ lawful admission under Section 78B-6-108.

Section 4. Section ~~{62A-4a-101}~~ 78B-6-105 is amended to read:

~~{~~ ~~62A-4a-101. Definitions.~~

~~As used in this chapter:~~

- ~~(1) "Abuse" means the same as that term is defined in Section 78A-6-105.~~
- ~~(2) "Adoption services" means:~~
 - ~~(a) placing children for adoption;~~
 - ~~(b) subsidizing adoptions under Section 62A-4a-105;~~
 - ~~(c) supervising adoption placements until the adoption is finalized by the court;~~
 - ~~(d) conducting adoption studies;~~
 - ~~(e) preparing adoption reports upon request of the court; and~~
 - ~~(f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.~~
- ~~(3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of age.~~
- ~~(4) "Child protection team" means a team consisting of:~~
 - ~~(a) the caseworker assigned to the case;~~
 - ~~(b) the caseworker who made the decision to remove the child;~~
 - ~~(c) a representative of the school or school district where the child attends school;~~
 - ~~(d) the peace officer who removed the child from the home;~~
 - ~~(e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;~~
 - ~~(f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;~~

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- ~~_____ (g) members of a child protection unit; and~~
- ~~_____ (h) any other individuals determined appropriate and necessary by the team coordinator and chair.~~
- ~~_____ (5) "Child protection unit" means any unit created by a chief of police or a sheriff of a city, town, metro township, or county that is composed of at least the following individuals who are trained in the prevention, identification, and treatment of abuse or neglect:~~
 - ~~_____ (a) a law enforcement officer, as defined in Section 53-13-103; and~~
 - ~~_____ (b) a child advocate selected by the chief of police or a sheriff.~~
- ~~_____ (6) (a) "Chronic abuse" means repeated or patterned abuse.~~
- ~~_____ (b) "Chronic abuse" does not mean an isolated incident of abuse.~~
- ~~_____ (7) (a) "Chronic neglect" means repeated or patterned neglect.~~
- ~~_____ (b) "Chronic neglect" does not mean an isolated incident of neglect.~~
- ~~_____ (8) "Consult" means an interaction between two persons in which the initiating person:~~
 - ~~_____ (a) provides information to another person;~~
 - ~~_____ (b) provides the other person an opportunity to respond; and~~
 - ~~_____ (c) takes the other person's response, if any, into consideration.~~
- ~~_____ (9) "Consumer" means a person who receives services offered by the division in accordance with this chapter.~~
- ~~_____ (10) "Custody," with regard to the division, means the custody of a minor in the division as of the date of disposition.~~
- ~~_____ (11) "Day-care services" means care of a child for a portion of the day which is less than 24 hours:~~
 - ~~_____ (a) in the child's own home by a responsible person; or~~
 - ~~_____ (b) outside of the child's home in a:~~
 - ~~_____ (i) day-care center;~~
 - ~~_____ (ii) family group home; or~~
 - ~~_____ (iii) family child care home.~~
- ~~_____ (12) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.~~
- ~~_____ (13) "Director" means the director of the Division of Child and Family Services.~~
- ~~_____ (14) "Division" means the Division of Child and Family Services.~~

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- ~~(15) "Domestic violence services" means:~~
- ~~(a) temporary shelter, treatment, and related services to:~~
- ~~(i) a person who is a victim of abuse, as defined in Section 78B-7-102; and~~
- ~~(ii) the dependent children of a person who is a victim of abuse, as defined in Section 78B-7-102; and~~
- ~~(b) treatment services for a person who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.~~
- ~~(16) "Harm" means the same as that term is defined in Section 78A-6-105.~~
- ~~(17) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.~~
- ~~(18) "Incest" means the same as that term is defined in Section 78A-6-105.~~
- ~~(19) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.~~
- ~~(20) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.~~
- ~~(21) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of Children:~~
- ~~(a) a child; or~~
- ~~(b) a person:~~
- ~~(i) who is at least 18 years of age and younger than 21 years of age; and~~
- ~~(ii) for whom the division has been specifically ordered by the juvenile court to provide services:~~
- ~~(22) "Molestation" means the same as that term is defined in Section 78A-6-105.~~
- ~~(23) "Mutual case" means a case that has been:~~
- ~~(a) opened by the division under the division's discretion and procedures;~~
- ~~(b) opened by the law enforcement agency with jurisdiction over the case; and~~
- ~~(c) accepted for investigation by the child protection unit established by the chief of police or sheriff, as applicable.~~
- ~~(24) "Natural parent" means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.~~
- ~~(25) "Neglect" means the same as that term is defined in Section 78A-6-105.~~
- ~~(26) "Prospective adoptive parent" means the same as that term is defined in Section~~

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~~78B-6-103:~~

~~—— [(26)] (27) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:~~

~~—— (a) the shelter hearing; or~~

~~—— (b) the child's return home.~~

~~—— [(27)] (28) "Protective services" means expedited services that are provided:~~

~~—— (a) in response to evidence of neglect, abuse, or dependency of a child;~~

~~—— (b) to a cohabitant who is neglecting or abusing a child, in order to:~~

~~—— (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and~~

~~—— (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and~~

~~—— (c) in cases where the child's welfare is endangered:~~

~~—— (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;~~

~~—— (ii) to cause a protective order to be issued for the protection of the child, when appropriate; and~~

~~—— (iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:~~

~~—— (A) removal from the child's home;~~

~~—— (B) placement in substitute care; and~~

~~—— (C) petitioning the court for termination of parental rights.~~

~~—— [(28)] (29) "Severe abuse" means the same as that term is defined in Section 78A-6-105:~~

~~—— [(29)] (30) "Severe neglect" means the same as that term is defined in Section 78A-6-105:~~

~~—— [(30)] (31) "Sexual abuse" means the same as that term is defined in Section 78A-6-105:~~

~~—— [(31)] (32) "Sexual exploitation" means the same as that term is defined in Section 78A-6-105:~~

~~—— [(32)] (33) "Shelter care" means the temporary care of a minor in a nonsecure facility.~~

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~~[(33)] (34) "Sibling" means a child who shares or has shared at least one parent in common either by blood or adoption.~~

~~[(34)] (35) "Sibling visitation" means services provided by the division to facilitate the interaction between a child in division custody with a sibling of that child.~~

~~[(35)] (36) "State" means:~~

~~(a) a state of the United States;~~

~~(b) the District of Columbia;~~

~~(c) the Commonwealth of Puerto Rico;~~

~~(d) the Virgin Islands;~~

~~(e) Guam;~~

~~(f) the Commonwealth of the Northern Mariana Islands; or~~

~~(g) a territory or possession administered by the United States.~~

~~[(36)] (37) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.~~

~~[(37)] (38) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.~~

~~[(38)] (39) "Substance abuse" means the same as that term is defined in Section 78A-6-105.~~

~~[(39)] (40) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.~~

~~[(40)] (41) "Substitute care" means:~~

~~(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;~~

~~(b) services provided for a minor awaiting placement; and~~

~~(c) the licensing and supervision of a substitute care facility.~~

~~[(41)] (42) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that~~

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~~abuse, neglect, or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.~~

~~——— [(42)] (43) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.~~

~~——— [(43)] (44) "Threatened harm" means the same as that term is defined in Section 78A-6-105.~~

~~——— [(44)] (45) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.~~

~~——— [(45)] (46) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.~~

~~——— [(46)] (47) "Unsupported" means a finding by the division at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division did not conclude that the allegation was without merit.~~

~~——— [(47)] (48) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.~~

~~——— Section 5. Section 62A-4a-105 is amended to read:~~

~~——— **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;~~

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- ~~—— (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 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 Sections 76-10-1302 and 76-10-1313; 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:~~
- ~~—— (i) contract providers of out-of-home care for minors and families;~~
- ~~—— (ii) facilities that provide substitute care for dependent, abused, and neglected 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 children placed in the custody of the division;~~

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- ~~—— (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 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 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) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods;~~
- ~~—— (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) 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;~~
- ~~—— (n) report before November 30, 2020, and every third year thereafter, to the Social Services Appropriations Subcommittee regarding:~~

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- ~~—— (i) the daily reimbursement rate 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~~
- ~~—— (iii) any recommended changes to the division's budget to support the daily reimbursement rates described in Subsection (1)(n)(i); [and]~~
- ~~—— (o) if a natural parent creates a voluntary adoption plan under Subsection 62A-4a-202.2(1)(a)(viii) and agrees to terminate the natural parent's parental rights, follow the wishes of the natural parent regarding the proposed adoptive placement of the child; and~~
- ~~—— [(o)] (p) 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 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)(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 6. Section 62A-4a-202.2 is amended to read:~~
- ~~—— 62A-4a-202.2. Notice upon removal of child == Locating noncustodial parent ==~~

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~~Written statement of procedural rights and preliminary proceedings:~~

~~—— (1) (a) Any peace officer or caseworker who takes a child into protective custody [pursuant to] in accordance with Section 62A-4a-202.1 shall immediately use reasonable efforts to locate and inform, through the most efficient means available, the parents, including a noncustodial parent, the guardian, or responsible relative:~~

~~—— (i) that the child has been taken into protective custody;~~

~~—— (ii) the reasons for removal and placement of the child in protective custody;~~

~~—— (iii) that a written statement is available that explains:~~

~~—— (A) the parent's or guardian's procedural rights; and~~

~~—— (B) the preliminary stages of the investigation and shelter hearing;~~

~~—— (iv) of a telephone number where the parent or guardian may access further information;~~

~~—— (v) that the child and the child's parent or guardian are entitled to have an attorney present at the shelter hearing;~~

~~—— (vi) that if the child's parent or guardian is impecunious and desires to have an attorney, one will be provided; [and]~~

~~—— (vii) that resources are available to assist the child's parent or guardian, including:~~

~~—— (A) a parent advocate;~~

~~—— (B) a qualified attorney; or~~

~~—— (C) potential expert witnesses to testify on behalf of the:~~

~~—— (I) child;~~

~~—— (II) child's parent;~~

~~—— (III) child's guardian; or~~

~~—— (IV) child's family[.]; and~~

~~—— (viii) that a natural parent of the child may create a voluntary adoption plan for the child.~~

~~—— (b) For purposes of locating and informing the noncustodial parent as required in Subsection (1)(a), the division shall search for the noncustodial parent through the national parent locator database if the division is unable to locate the noncustodial parent through other reasonable efforts:~~

~~—— (2) (a) The Office of the Attorney General shall adopt, print, and distribute a form for~~

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~~the written statement described in Subsection (1)(a)(iii):~~

~~— (b) The statement described in Subsections (1)(a)(iii) and (2)(a) shall:~~

~~— (i) be made available to the division and for distribution in:~~

~~— (A) schools;~~

~~— (B) health care facilities;~~

~~— (C) local police and sheriff's offices;~~

~~— (D) the division; and~~

~~— (E) any other appropriate office within the Department of Human Services;~~

~~— (ii) be in simple language; and~~

~~— (iii) include at least the following information:~~

~~— (A) the conditions under which a child may be released;~~

~~— (B) hearings that may be required;~~

~~— (C) the means by which the parent or guardian may access further specific information about a child's case and conditions of protective and temporary custody; and~~

~~— (D) the rights of a child and of the parent or guardian to legal counsel and to appeal.~~

~~— (3) If reasonable efforts are made by the peace officer or caseworker to notify the parent or guardian or a responsible relative in accordance with the requirements of Subsection (1), failure to notify:~~

~~— (a) shall be considered to be due to circumstances beyond the control of the peace officer or caseworker; and~~

~~— (b) may not be construed to:~~

~~— (i) permit a new defense to any juvenile or judicial proceeding; or~~

~~— (ii) interfere with any rights, procedures, or investigations provided for by this chapter or Title 78A, Chapter 6, Juvenile Court Act of 1996.~~

~~— Section 7. Section **78A-6-306** is amended to read:~~

~~— **78A-6-306. Shelter hearing.**~~

~~— (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:~~

~~— (a) removal of the child from the child's home by the division;~~

~~— (b) placement of the child in the protective custody of the division;~~

~~— (c) emergency placement under Subsection 62A-4a-202.1(4);~~

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~~—— (d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or~~

~~—— (e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).~~

~~—— (2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:~~

~~—— (a) the name and address of the person to whom the notice is directed;~~

~~—— (b) the date, time, and place of the shelter hearing;~~

~~—— (c) the name of the child on whose behalf a petition is being brought;~~

~~—— (d) a concise statement regarding:~~

~~—— (i) the reasons for removal or other action of the division under Subsection (1); and~~

~~—— (ii) the allegations and code sections under which the proceeding has been instituted;~~

~~—— (e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with Title 78B, Chapter 22, Indigent Defense Act; and~~

~~—— (f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.~~

~~—— (3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:~~

~~—— (a) the appropriate guardian ad litem; and~~

~~—— (b) both parents and any guardian of the child, unless the parents or guardians cannot be located.~~

~~—— (4) The following persons shall be present at the shelter hearing:~~

~~—— (a) the child, unless it would be detrimental for the child;~~

~~—— (b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;~~

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- ~~—— (c) counsel for the parents, if one is requested;~~
- ~~—— (d) the child's guardian ad litem;~~
- ~~—— (e) the caseworker from the division who is assigned to the case; and~~
- ~~—— (f) the attorney from the attorney general's office who is representing the division.~~
- ~~—— (5) (a) At the shelter hearing, the court shall:~~
 - ~~—— (i) provide an opportunity to provide relevant testimony to:~~
 - ~~—— (A) the child's parent or guardian, if present; and~~
 - ~~—— (B) any other person having relevant knowledge;~~
 - ~~—— (ii) subject to Section 78A-6-305, provide an opportunity for the child to testify; [and]~~
 - ~~—— (iii) in accordance with Subsections 78A-6-307(18)(c) through (e) and except as provided by Subsection (5)(a)(iv), grant preferential consideration to a relative or friend for the temporary placement of the child~~[-]; and~~~~
 - ~~—— (iv) if the natural parent of the child has created a voluntary adoption plan under Subsection 62A-4a-202.2(1)(a)(viii), a preplacement adoptive evaluation has been conducted for the prospective adoptive parent of the child in accordance with Section 78B-6-128, and the preplacement adoptive evaluation recommends the suitability of the prospective adoptive parent for placement of a child:~~
 - ~~—— (A) allow the proposed adoptive placement to proceed;~~
 - ~~—— (B) grant preferential consideration to the prospective adoptive parent for the temporary placement of the child; and~~
 - ~~—— (C) dismiss the petition filed under Section 78A-6-304;~~
- ~~—— (b) The court:~~
 - ~~—— (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;~~
 - ~~—— (ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and~~
 - ~~—— (iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.~~
- ~~—— (6) If the child is in the protective custody of the division, the division shall report to the court:~~
 - ~~—— (a) the reason why the child was removed from the parent's or guardian's custody;~~

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- ~~—— (b) any services provided to the child and the child's family in an effort to prevent removal;~~
- ~~—— (c) the need, if any, for continued shelter;~~
- ~~—— (d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and~~
- ~~—— (e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.~~
- ~~—— (7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.~~
- ~~—— (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.~~
 - ~~—— (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).~~
 - ~~—— (c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice described in Subsection (2) within the time described in Subsection (3), the court may grant the request of a parent or guardian for a continuance, not to exceed five judicial days.~~
- ~~—— (9) (a) If the child is in the protective custody of the division, the court shall order that the child be returned to the custody of the parent or guardian unless it finds, by a preponderance of the evidence, consistent with the protections and requirements provided in Subsection 62A-4a-201(1), that any one of the following exists:~~
 - ~~—— (i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;~~
 - ~~—— (ii) (A) the child is suffering emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;~~
 - ~~—— (B) the parent or guardian is unwilling or unable to make reasonable changes that would sufficiently prevent future damage; and~~
 - ~~—— (C) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;~~

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- ~~—— (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parent or guardian;~~
- ~~—— (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:~~
 - ~~—— (A) parent or guardian;~~
 - ~~—— (B) member of the parent's household or the guardian's household; or~~
 - ~~—— (C) person known to the parent or guardian;~~
- ~~—— (v) the parent or guardian is unwilling to have physical custody of the child;~~
- ~~—— (vi) the child is without any provision for the child's support;~~
- ~~—— (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;~~
- ~~—— (viii) (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;~~
 - ~~—— (B) the whereabouts of the parent or guardian are unknown; and~~
 - ~~—— (C) reasonable efforts to locate the parent or guardian are unsuccessful;~~
- ~~—— (ix) subject to Subsections 78A-6-105(40)(b) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;~~
- ~~—— (x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and~~
 - ~~—— (B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;~~
- ~~—— (xi) (A) the child or a minor residing in the same household has been neglected; and~~
 - ~~—— (B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;~~
- ~~—— (xii) the parent, guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;~~
- ~~—— (xiii) (A) the child's welfare is substantially endangered; and~~
 - ~~—— (B) the parent or guardian is unwilling or unable to make reasonable changes that~~

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~~would remove the danger; or~~

~~—— (xiv) the child's natural parent:~~

~~—— (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;~~

~~—— (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or~~

~~—— (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.~~

~~—— (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:~~

~~—— (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and~~

~~—— (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.~~

~~—— (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.~~

~~—— (10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal:~~

~~—— (ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.~~

~~—— (b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law:~~

~~—— (11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.~~

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~~———— (12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.~~

~~———— (13) The court may not order continued removal of a child solely on the basis of educational neglect as defined in Section 78A-6-105, truancy, or failure to comply with a court order to attend school.~~

~~———— (14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.~~

~~———— (b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.~~

~~———— (15) If the court finds that continued removal and temporary custody are necessary for the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal regardless of:~~

~~———— (a) any error in the initial removal of the child;~~

~~———— (b) the failure of a party to comply with notice provisions; or~~

~~———— (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.~~

~~———— Section 8. Section 78B-6-105 is amended to read:~~

~~‡~~ **78B-6-105. Venue -- Jurisdiction over nonresidents -- Time for filing.**

~~[(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:]~~

~~[(a) in the district where the prospective adoptive parent resides;]~~

~~[(b) if the prospective adoptive parent is not a resident of this state, in the district where:]~~

~~[(i) the adoptee was born;]~~

~~[(ii) the adoptee resides on the day on which the petition is filed; or]~~

~~[(iii) a parent of the proposed adoptee resides on the day on which the petition is filed; or]~~

~~[(c) with the juvenile court as provided in Subsection 78A-6-103(2).]~~

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(1) (a) Notwithstanding Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, an adoption proceeding shall be commenced by filing a petition for adoption:

(i) in the juvenile court in accordance with Section 78A-6-110 if the juvenile court has jurisdiction over the proceeding under Subsection 78A-6-103(2); or

(ii) in the district court where:

(A) the prospective adoptive parent resides;

(B) a child-placing agency with custody of the adoptee conducts the child-placing agency's business;

(C) the adoptee was born;

(D) the adoptee resides on the day on which petition is filed; or

(E) a parent of the proposed adoptee resides on the day on which the petition is filed.

(b) If a petition is filed in a district court that is not the proper court for the adoption proceeding, the district court may transfer the adoption proceeding to the proper court in accordance with the Utah Rules of Civil Procedure, Rule 42.

(2) All petitions, orders, decrees, agreements, and notices in [~~the proceedings~~] an adoption proceeding shall be filed with the clerk of the court [~~where the adoption proceedings were commenced under Subsection (1)] where the adoption proceeding is held.~~

(3) A petition for adoption:

(a) may be filed before the birth of a child;

(b) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and

(c) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

(i) the time for filing has been extended by the court; or

(ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.

(4) (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

(b) The notice may not include the name of:

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- (i) a prospective adoptive parent; or
- (ii) an unmarried mother without her consent.

(5) Service of notice [~~as provided~~] described in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.

(6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served shall be sufficient to confer jurisdiction.

(7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

Section ~~9~~5. Section **78B-6-115** is amended to read:

78B-6-115. Who may adopt -- Adoption of minor -- Adoption of adult.

(1) [~~For purposes of~~] As used in this section, "vulnerable adult" means:

- (a) [~~a person 65 years of age~~] an individual who is 65 years old or older; or
- (b) an adult[~~, 18 years of age~~] who is 18 years old or older, and who has a mental or

physical impairment [~~which~~] that substantially affects that [~~person's~~] adult's ability to:

- (i) provide personal protection;
- (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
- (iii) obtain services necessary for health, safety, or welfare;
- (iv) carry out the activities of daily living;
- (v) manage the adult's own resources; or
- (vi) comprehend the nature and consequences of remaining in a situation of abuse,

neglect, or exploitation.

(2) Subject to this section and Section 78B-6-117, any adult may be adopted by another adult.

(3) The following provisions of this part apply to the adoption of an adult just as though the [~~person~~] individual being adopted were a minor:

- (a) (i) Section 78B-6-108;
- (ii) Section 78B-6-114;
- (iii) Section 78B-6-116;
- (iv) Section 78B-6-118;

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- (v) Section 78B-6-124;
- (vi) Section 78B-6-136;
- (vii) Section 78B-6-137;
- (viii) Section 78B-6-138;
- (ix) Section 78B-6-139;
- (x) Section 78B-6-141; and
- (xi) Section 78B-6-142;

(b) Subsections [~~78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7)~~] 78B-6-105(1)(a)(i), (1)(a)(ii)(A), (1)(a)(ii)(C), (1)(a)(ii)(D), (1)(b), (2), and (7), except that the juvenile court does not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises from a case where the juvenile court has continuing jurisdiction over the mature adoptee; and

(c) if the mature adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131, regardless of whether the mature adoptee resides, or will reside, with the [~~adoptors~~] adopters, unless the court, based on a finding of good cause, waives the requirements of those sections.

(4) Before a court enters a final decree of adoption of a mature adoptee, the mature adoptee and the prospective adoptive parent or parents shall appear before the court presiding over the adoption [~~proceedings~~] proceeding and execute consent to the adoption.

(5) No provision of this part, other than those listed or described in this section or Section 78B-6-117, apply to the adoption of an adult.

Section ~~10~~6. Section **78B-6-120.1** is amended to read:

78B-6-120.1. Implied consent.

(1) [~~(a)~~] As used in this section [~~,"abandonment"~~]:

(a) "Abandonment" means failure of a father, with reasonable knowledge of the pregnancy, to offer and provide financial and emotional support to the birth mother for a period of six months before the day on which the adoptee is born.

(b) "Emotional support" means a pattern of statements or actions that indicate to a reasonable person that a father intends to provide for the physical and emotional well-being of an unborn child.

[~~(b)~~] (2) (a) A court may not determine that a father abandoned the birth mother if the father failed to provide financial or emotional support because the birth mother refused to accept support.

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~~[(2)(a) As used in this section, "emotional support" means a pattern of statements or actions that indicate to a reasonable person that a father intends to provide for the physical and emotional well-being of an unborn child.]~~

(b) A court may not find that a father failed to provide emotional support if the father's failure was due to impossibility of performance.

(3) Consent or relinquishment, as required by Subsection 78B-6-120(1), may be implied by any of the following acts:

(a) abandonment;

(b) leaving the adoptee with a third party, without providing the third party with the parent's identification, for 30 consecutive days;

(c) knowingly leaving the adoptee with another person, without providing for support, communicating, or otherwise maintaining a substantial relationship with the adoptee, for six consecutive months; or

(d) receiving notification of a pending adoption proceeding under Subsection 78B-6-110(6) or of a termination proceeding under Section 78B-6-112 and failing to respond as required.

(4) Implied consent under Subsection (3)~~(a)~~ may not be withdrawn.

(5) Nothing in this section negates the requirements of Section 78B-6-121 or 78B-6-122 for an unmarried biological father.

Section ~~{11}~~7. Section **78B-6-136.5** is amended to read:

78B-6-136.5. Timing of entry of final decree of adoption -- Posthumous adoption.

(1) Except as provided in Subsection (2), a final decree of adoption may not be entered until the earlier of:

(a) when the child has lived in the home of the prospective adoptive parent for six months; or

(b) when the child has been placed for adoption with the prospective adoptive parent for six months.

(2) (a) If the prospective adoptive parent is the spouse of the ~~[pre-existing]~~ preexisting parent, a final decree of adoption may not be entered until the child has lived in the home of that prospective adoptive parent for one year, unless, based on a finding of good cause, the court orders that the final decree of adoption may be entered at an earlier time.

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(b) The court may, based on a finding of good cause, order that the final decree of adoption be entered at an earlier time than described in Subsection (1).

~~(3) [If the child dies during the time that the child is placed in the home of a prospective adoptive parent or parents for the purpose of adoption, the]~~ The court has authority to enter a final decree of adoption after [the] a child's death upon the request of the prospective adoptive parent or parents[.] of the child if:

(a) the child dies during the time that the child is placed in the home of a prospective adoptive parent or parents for the purpose of adoption; or

(b) the prospective adoptive parent is the spouse of a preexisting parent of the child and the child lived with the prospective adoptive parent before the child's death.

~~[(4) The court may enter a final decree of adoption declaring that a child is adopted by both a deceased and a surviving adoptive parent if, after the child is placed in the home of the child's prospective adoptive parents:]~~

~~[(a) one of the prospective adoptive parents dies;]~~

~~[(b) the surviving prospective adoptive parent requests that the court enter the decree; and]~~

~~[(c) the decree is entered after the child has lived in the home of the surviving prospective adoptive parent for at least six months:]~~

(4) The court may enter a final decree of adoption declaring that a child is adopted by:

(a) both a deceased and a surviving adoptive parent if after the child is placed in the home of the child's prospective adoptive parents:

(i) one of the prospective adoptive parents dies;

(ii) the surviving prospective adoptive parent requests that the court enter the decree; and

(iii) the decree is entered after the child has lived in the home of the surviving prospective adoptive parent for at least six months; or

(b) a spouse of a preexisting parent if after the child has lived with the spouse of the preexisting parent:

(i) the preexisting parent, or the spouse of preexisting parent, dies;

(ii) the preexisting parent, or the spouse of the preexisting parent, requests that the court enter the decree; and

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(iii) the child has lived in the same home as the spouse of the preexisting parent for at least one year.

(5) Upon request of a surviving [~~pre-existing~~] preexisting parent, or a surviving parent for whom adoption of a child has been finalized, the court may enter a final decree of adoption declaring that a child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at the time of the prospective adoptive parent's death.

(6) The court may enter a final decree of adoption declaring that a child is adopted by both deceased prospective adoptive parents if:

(a) both of the prospective adoptive parents die after the child is placed in the prospective adoptive parents' home; and

(b) it is in the best interests of the child to enter the decree.

(7) Nothing in this section shall be construed to grant any rights to the [~~pre-existing~~] preexisting parents of a child to assert any interest in the child during the six-month or one-year periods described in this section.

Section ~~{12}8~~. Section **78B-6-140** is amended to read:

78B-6-140. Itemization of fees and expenses.

(1) Except as provided in Subsection (4), [~~prior to~~] before the date that a final decree of adoption is entered, an affidavit regarding fees and expenses, signed by the prospective adoptive parent or parents and the person or agency placing the child, shall be filed with the court.

(2) The affidavit described in Subsection (1) shall itemize the following items in connection with the adoption:

(a) all legal expenses, maternity expenses, medical or hospital expenses, and living expenses that have been or will be paid to or on behalf of the [~~pre-existing~~] preexisting parents of the child, including the source of payment;

(b) fees paid by the prospective adoptive parent or parents in connection with the adoption;

(c) all gifts, property, or other items that have been or will be provided to the [~~pre-existing~~] preexisting parents, including the source of the gifts, property, or other items;

(d) all public funds used for any medical or hospital costs in connection with the:

(i) pregnancy;

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- (ii) delivery of the child; or
- (iii) care of the child;
- (e) the state of residence of the:
 - (i) birth mother or the [~~pre-existing~~] preexisting parents; and
 - (ii) prospective adoptive parent or parents;
 - (f) a description of services provided to the prospective adoptive parents or [~~pre-existing~~] preexisting parents in connection with the adoption; and
 - (g) that Section 76-7-203 has not been violated.
- (3) [A] If a child-placing agency, that is licensed by this state, placed the child, a copy of the affidavit described in Subsection (1) shall be provided to the Office of Licensing within the Department of Human Services.
- (4) This section does not apply if the prospective adoptive parent is the legal spouse of a [~~pre-existing~~] preexisting parent.