

Representative Kera Birkeland proposes the following substitute bill:

CHILD WELFARE REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill concerns placement and adoption of a child who is involved in a child welfare case.

Highlighted Provisions:

This bill:

- ▶ prohibits preferential consideration of a relative for placement of the child in a child welfare case under certain circumstances;
- ▶ requires a court to consider whether a relative who desires to adopt a child demonstrated an interest in the child during the child welfare case; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-133, as last amended by Laws of Utah 2021, Chapter 262

80-3-302, as renumbered and amended by Laws of Utah 2021, Chapter 261



26 **80-4-305**, as renumbered and amended by Laws of Utah 2021, Chapter 261

27

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

29 Section 1. Section **78B-6-133** is amended to read:

30 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

31 (1) If a person whose consent for an adoption is required [~~pursuant to~~] under
32 Subsection **78B-6-120**(1)(b), (c), (d), (e), or (f) [~~refused~~] refuses to consent, the court shall
33 determine whether proper grounds exist for the termination of [~~that~~] the person's rights
34 [~~pursuant to the provisions of~~] under this chapter or Title 80, Chapter 4, Termination and
35 Restoration of Parental Rights.

36 (2) (a) If there are proper grounds to terminate the person's parental rights, the court
37 shall order that the person's rights [~~be~~] are terminated.

38 (b) If there are not proper grounds to terminate the person's parental rights, the court
39 shall:

40 (i) dismiss the adoption petition;

41 (ii) conduct an evidentiary hearing to determine who should have custody of the child;

42 and

43 (iii) award custody of the child in accordance with the child's best interest.

44 (c) Termination of a person's parental rights does not terminate the right of a relative of
45 the parent to seek adoption of the child.

46 (3) Evidence considered at the custody hearing may include:

47 (a) evidence of psychological or emotional bonds that the child has formed with a third
48 person, including the prospective adoptive parent; and

49 (b) any detriment that a change in custody may cause the child.

50 (4) If the court dismisses the adoption petition, the fact that a person relinquished a
51 child for adoption or consented to the adoption may not be considered [~~as evidence~~] in a
52 custody proceeding described in this section, or in any subsequent custody proceeding, as
53 evidence that it is not in the child's best interest for custody to be awarded to [~~such~~] the person
54 or that the person:

55 (a) [~~the person~~] is unfit or incompetent to be a parent;

56 (b) [~~the person~~] has neglected or abandoned the child;

- 57 (c) ~~[the person]~~ is not interested in having custody of the child; or
- 58 (d) ~~[the person]~~ has forfeited the person's parental presumption.
- 59 (5) Any custody order entered ~~[pursuant to]~~ under this section may also:
- 60 (a) include provisions for:
- 61 (i) parent-time; or
- 62 (ii) visitation by an interested third party; and
- 63 (b) provide for the financial support of the child.
- 64 (6) (a) If a person or entity whose consent is required for an adoption under Subsection
- 65 [78B-6-120](#)(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing
- 66 and award custody as set forth in Subsection (2).
- 67 (b) The court may also finalize the adoption if doing so is in the best interest of the
- 68 child.
- 69 (7) (a) A person may not contest an adoption after the final decree of adoption is
- 70 entered, if ~~[that]~~ the person:
- 71 (i) was a party to the adoption proceeding;
- 72 (ii) was served with notice of the adoption proceeding; or
- 73 (iii) executed a consent to the adoption or relinquishment for adoption.
- 74 (b) ~~[No person may]~~ A person may not contest an adoption after one year from the day
- 75 on which the final decree of adoption is entered.
- 76 (c) The limitations on contesting an adoption action, described in this Subsection (7),
- 77 apply to all attempts to contest an adoption:
- 78 (i) regardless of whether the adoption is contested directly or collaterally; and
- 79 (ii) regardless of the basis for contesting the adoption, including claims of fraud,
- 80 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of
- 81 jurisdiction.
- 82 (d) The limitations on contesting an adoption action, described in this Subsection (7),
- 83 do not prohibit a timely appeal of:
- 84 (i) a final decree of adoption; or
- 85 (ii) a decision in an action challenging an adoption, if the action was brought within the
- 86 time limitations described in Subsections (7)(a) and (b).
- 87 (8) A court that has jurisdiction over a child for whom more than one petition for

88 adoption is filed shall grant a hearing only under the following circumstances:

89 (a) to a petitioner:

90 (i) with whom the child is placed;

91 (ii) who has custody or guardianship of the child;

92 (iii) who has filed a written statement with the court within 120 days after the day on
93 which the shelter hearing is held:

94 (A) requesting immediate placement of the child with the petitioner; and

95 (B) expressing the petitioner's intention of adopting the child;

96 (iv) who is a relative with whom the child has a significant and substantial relationship
97 and who was unaware, within the first 120 days after the day on which the shelter hearing is
98 held, of the child's removal from the child's parent; or

99 (v) who is a relative with whom the child has a significant and substantial relationship
100 and, in a case where the child is not placed with a relative or is placed with a relative that is
101 unable or unwilling to adopt the child:

102 (A) was actively involved in the child's child welfare case with the division or the
103 juvenile court while the child's parent engaged in reunification services; and

104 (B) filed a written statement with the court that includes the information described in
105 Subsections (8)(a)(iii)(A) and (B) within 30 days after the day on which the court terminated
106 reunification services; or

107 (b) if the child:

108 (i) has been in the current placement for less than 180 days before the day on which the
109 petitioner files the petition for adoption; or

110 (ii) is placed with, or is in the custody or guardianship of, an individual who previously
111 informed the division or the court that the individual is unwilling or unable to adopt the child.

112 (9) (a) If the court grants a hearing on more than one petition for adoption, there is a
113 rebuttable presumption that it is in the best interest of a child to be placed for adoption with a
114 petitioner:

115 (i) who has fulfilled the requirements described in [~~Title 78B, Chapter 6, Part 1, Utah~~
116 ~~Adoption Act~~] this part; and

117 (ii) (A) with whom the child has continuously resided for six months;

118 (B) who has filed a written statement with the court within 120 days after the day on

119 which the shelter hearing is held, as described in Subsection (8)(a)(iii); or

120 (C) who is a relative described in Subsection (8)(a)(iv).

121 (b) (i) The court may consider other factors relevant to the best interest of the child to
122 determine whether the presumption is rebutted, including whether a petitioner who is a relative
123 of the child demonstrated an interest in the child after the day on which the petitioner received
124 notice from the division that the petitioner is a relative of the child.

125 (ii) A petitioner's interest in the child described in Subsection (9)(b)(i) may be shown
126 by the petitioner maintaining or attempting to maintain contact with the child.

127 (c) The court shall weigh the best interest of the child uniformly between petitioners if
128 more than one petitioner satisfies a rebuttable presumption condition described in Subsection
129 (9)(a).

130 (10) [~~Nothing in this section shall be construed to~~] This section does not prevent the
131 division or the child's guardian ad litem from appearing or participating in any proceeding for a
132 petition for adoption.

133 (11) The division shall use best efforts to provide a known relative with timely
134 information relating to the relative's rights or duties under this section.

135 Section 2. Section **80-3-302** is amended to read:

136 **80-3-302. Shelter hearing -- Placement of a child.**

137 (1) As used in this section:

138 (a) "Natural parent," notwithstanding Section 80-1-102, means:

139 (i) a biological or adoptive mother of the child;

140 (ii) an adoptive father of the child; or

141 (iii) a biological father of the child who:

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

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

146 (b) "Natural parent" includes the individuals described in Subsection (1)(a) regardless
147 of whether the child has been or will be placed with adoptive parents or whether adoption has
148 been or will be considered as a long-term goal for the child.

149 (2) (a) At the shelter hearing, when the juvenile court orders that a child be removed

150 from the custody of the child's parent in accordance with the requirements of Section 80-3-301,
151 the juvenile court shall first determine whether there is another natural parent with whom the
152 child was not residing at the time the events or conditions that brought the child within the
153 juvenile court's jurisdiction occurred, who desires to assume custody of the child.

154 (b) Subject to Subsection (8), if another natural parent requests custody under
155 Subsection (2)(a), the juvenile court shall place the child with that parent unless the juvenile
156 court finds that the placement would be unsafe or otherwise detrimental to the child.

157 (c) The juvenile court:

158 (i) shall make a specific finding regarding the fitness of the parent described in
159 Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement;

160 (ii) shall, at a minimum, order the division to visit the parent's home, comply with the
161 criminal background check provisions described in Section 80-3-305, and check the division's
162 management information system for any previous reports of abuse or neglect received by the
163 division regarding the parent at issue;

164 (iii) may order the division to conduct any further investigation regarding the safety
165 and appropriateness of the placement; and

166 (iv) may place the child in the temporary custody of the division, pending the juvenile
167 court's determination regarding the placement.

168 (d) The division shall report the division's findings from an investigation regarding the
169 child in writing to the juvenile court.

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

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

172 (b) the juvenile court may order:

173 (i) that the parent take custody subject to the supervision of the juvenile court; and

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

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

178 (4) The juvenile court shall periodically review an order described in Subsection (3) to
179 determine whether:

180 (a) placement with the parent continues to be in the child's best interest;

- 181 (b) the child should be returned to the original custodial parent;
- 182 (c) the child should be placed with a relative under Subsections (7) through (10); or
- 183 (d) the child should be placed in the temporary custody of the division.
- 184 (5) The time limitations described in Section 80-3-406 with regard to reunification
- 185 efforts apply to children placed with a previously noncustodial parent under Subsection (2).
- 186 (6) (a) Legal custody of the child is not affected by an order entered under Subsection
- 187 (2) or (3).
- 188 (b) To affect a previous court order regarding legal custody, the party shall petition the
- 189 court for modification of legal custody.
- 190 (7) Subject to Subsection (8), if, at the time of the shelter hearing, a child is removed
- 191 from the custody of the child's parent and is not placed in the custody of the child's other
- 192 parent, the juvenile court:
- 193 (a) shall, at that time, determine whether there is a relative or a friend who is able and
- 194 willing to care for the child, which may include asking a child, who is of sufficient maturity to
- 195 articulate the child's wishes in relation to a placement, if there is a relative or friend with whom
- 196 the child would prefer to reside;
- 197 (b) may order the division to conduct a reasonable search to determine whether there
- 198 are relatives or friends who are willing and appropriate, in accordance with the requirements of
- 199 this chapter and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the
- 200 child;
- 201 (c) shall order the parents to cooperate with the division, within five working days, to
- 202 provide information regarding relatives or friends who may be able and willing to care for the
- 203 child; and
- 204 (d) may order that the child be placed in the temporary custody of the division pending
- 205 the determination under Subsection (7)(a).
- 206 (8) (a) Subject to Subsections (8)(b) through (d), preferential consideration shall be
- 207 given to a relative's or a friend's request for placement of the child, if the placement is in the
- 208 best interest of the child, and the provisions of this section are satisfied.
- 209 (b) (i) The preferential consideration that a relative or friend is initially granted under
- 210 Subsection (8)(a) expires 120 days after the day on which the shelter hearing occurs.
- 211 (ii) After the day on which the time period described in Subsection (8)(b)(i) expires,

212 the division or the juvenile court may not grant preferential consideration to a relative or
213 friend[; who has not obtained custody or asserted an interest in a child, may not be granted
214 preferential consideration by the division or the juvenile court.] if the relative or friend has not:

215 (A) obtained custody of the child; or

216 (B) asserted an interest in the child by maintaining or attempting to maintain contact
217 with the child.

218 (c) (i) The preferential consideration that a natural parent is initially granted under
219 Subsection (2) is limited after 120 days after the day on which the shelter hearing occurs.

220 (ii) After the time period described in Subsection (8)(c)(i), the juvenile court shall base
221 the juvenile court's custody decision on the best interest of the child.

222 (iii) Before the day on which the time period described in Subsection (8)(c)(i) expires,
223 the following order of preference shall be applied when determining the individual with whom
224 a child will be placed, provided that the individual is willing and able to care for the child:

225 (A) a noncustodial parent of the child;

226 (B) a relative of the child;

227 (C) subject to Subsection (8)(d), a friend if the friend is a licensed foster parent; and

228 (D) other placements that are consistent with the requirements of law.

229 (d) In determining whether a friend is a willing, able, and appropriate placement for a
230 child, the juvenile court or the division:

231 (i) subject to Subsections (8)(d)(ii) through (iv), shall consider the child's preferences
232 or level of comfort with the friend;

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

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

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

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

241 (B) the basis for removing the child under Section 80-3-301 is sexual abuse of the
242 child.

243 (e) (i) If a parent of the child or the child, if the child is of sufficient maturity to
244 articulate the child's wishes in relation to a placement, is not able to designate a friend who is a
245 licensed foster parent for placement of the child, but is able to identify a friend who is willing
246 to become licensed as a foster parent, the department shall fully cooperate to expedite the
247 licensing process for the friend.

248 (ii) If the friend described in Subsection (8)(e)(i) becomes licensed as a foster parent
249 within the time frame described in Subsection (8)(b), the juvenile court shall determine
250 whether it is in the best interest of the child to place the child with the friend.

251 (9) (a) If a relative or friend who is willing to cooperate with the child's permanency
252 goal is identified under Subsection (7)(a), the juvenile court shall make a specific finding
253 regarding:

254 (i) the fitness of that relative or friend as a placement for the child; and

255 (ii) the safety and appropriateness of placement with the relative or friend.

256 (b) In making the finding described in Subsection (9)(a), the juvenile court shall, at a
257 minimum, order the division to:

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

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

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

263 (C) a background check that complies with the criminal background check provisions
264 described in Section [80-3-305](#), of each nonrelative, as defined in Section [62A-4a-209](#), of the
265 child who resides in the household where the child may be placed;

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

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

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

272 (C) a background check that complies with the criminal background check provisions
273 described in Section [80-3-305](#), of each nonrelative, as defined in Section [62A-4a-209](#), of the

274 child who resides in the household where the child may be placed;

275 (iii) if the child may be placed with an individual other than a noncustodial parent or a
276 relative, conduct a criminal background check of the individual, and each adult that resides in
277 the household where the child may be placed, that complies with the criminal background
278 check provisions described in Section 80-3-305;

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

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

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

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

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

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

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

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

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

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

293 (c) The division may determine to conduct, or the juvenile court may order the division
294 to conduct, any further investigation regarding the safety and appropriateness of the placement
295 described in Subsection (9)(a).

296 (d) The division shall complete and file the division's assessment regarding placement
297 with a relative or friend under Subsections (9)(a) and (b) as soon as practicable, in an effort to
298 facilitate placement of the child with a relative or friend.

299 (10) (a) The juvenile court may place a child described in Subsection (2)(a) in the
300 temporary custody of the division, pending the division's investigation under Subsection (9),
301 and the juvenile court's determination regarding the appropriateness of the placement.

302 (b) The juvenile court shall ultimately base the juvenile court's determination regarding
303 the appropriateness of a placement with a relative or friend on the best interest of the child.

304 (11) When a juvenile court places a child described in Subsection (7) with the child's

305 relative or friend:

306 (a) the juvenile court:

307 (i) shall order the relative or friend take custody, subject to the continuing supervision
308 of the juvenile court; and

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

311 (b) the child and the relative or friend in whose custody the child is placed are under
312 the continuing jurisdiction of the juvenile court;

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

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

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

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

321 (ii) the child should be returned home; or

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

323 (12) No later than 12 months after the day on which the child was removed from the
324 home, the juvenile court shall schedule a hearing for the purpose of entering a permanent order
325 in accordance with the best interest of the child.

326 (13) The time limitations described in Section 80-3-406, with regard to reunification
327 efforts, apply to children placed with a relative or friend under Subsection (7).

328 (14) (a) If the juvenile court awards temporary custody of a child to the division, and
329 the division places the child with a relative, the division shall:

330 (i) conduct a criminal background check of the relative that complies with the criminal
331 background check provisions described in Section 80-3-305; and

332 (ii) if the results of the criminal background check described in Subsection (14)(a)(i)
333 would prohibit the relative from having direct access to the child under Section 62A-2-120, the
334 division shall:

335 (A) take the child into physical custody; and

336 (B) within three days, excluding weekends and holidays, after the day on which the
337 child is taken into physical custody under Subsection (14)(a)(ii)(A), give written notice to the
338 juvenile court, and all parties to the proceedings, of the division's action.

339 (b) Subsection (14)(a) does not prohibit the division from placing a child with a
340 relative, pending the results of the background check described in Subsection (14)(a) on the
341 relative.

342 (15) If the juvenile court orders that a child be removed from the custody of the child's
343 parent and does not award custody and guardianship to another parent, relative, or friend under
344 this section, the juvenile court shall order that the child be placed in the temporary custody of
345 the division, to proceed to adjudication and disposition and to be provided with care and
346 services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

347 (16) If, following the shelter hearing, the child is placed with an individual who is not a
348 parent, a relative, a friend, or a former foster parent of the child, priority shall be given to a
349 foster placement with a married couple, unless it is in the best interests of the child to place the
350 child with a single foster parent.

351 (17) In determining the placement of a child, the juvenile court and the division may
352 not take into account, or discriminate against, the religion of an individual with whom the child
353 may be placed, unless the purpose of taking religion into account is to place the child with an
354 individual or family of the same religion as the child.

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

359 (19) This section does not guarantee that an identified relative or friend will receive
360 custody of the child.

361 Section 3. Section **80-4-305** is amended to read:

362 **80-4-305. Court disposition of child upon termination of parental rights --**
363 **Posttermination reunification.**

364 (1) [~~As~~] Except as provided in Subsection (6), as used in this section, "relative" means:

365 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
366 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;

367 and

368 (b) in the case of a child who is an Indian child, an extended family member as defined
369 in the Indian Child Welfare Act, 25 U.S.C. Sec. 1903.

370 (2) Upon entry of an order under this chapter, the juvenile court may:

371 (a) place the child in the legal custody and guardianship of a licensed child placement
372 agency or the division for adoption; or

373 (b) make any other disposition of the child authorized under Section 80-3-405.

374 (3) Subject to ~~[the requirements of]~~ Subsections (4) and (5), the division shall place all
375 adoptable children placed in the custody of the division [shall be placed] for adoption.

376 (4) (a) If the parental rights of all parents of an adoptable child placed in the custody of
377 the division ~~[have been]~~ are terminated and a suitable adoptive placement is not already
378 available, the juvenile court:

379 ~~[(a)]~~ (i) shall determine whether there is a relative who desires to adopt the child;

380 ~~[(b)]~~ (ii) may order the division to conduct a reasonable search to determine whether
381 there ~~[are relatives who are]~~ is a relative who is willing to adopt the child; and

382 ~~[(c)]~~ (iii) shall, if a relative desires to adopt the child:

383 ~~[(i)]~~ (A) make a specific finding regarding the fitness of the relative to adopt the child;
384 ~~[and]~~

385 (B) consider whether the relative demonstrated an interest in the child after the day on
386 which the relative received notice from the division that the relative is a relative of the child;

387 and

388 ~~[(i)]~~ (C) place the child for adoption with ~~[that]~~ the relative unless the juvenile court
389 finds that adoption by the relative is not in the best interest of the child.

390 (b) A relative's interest in the child under Subsection (4)(a)(iii)(B) may be shown by
391 the relative maintaining or attempting to maintain contact with the child.

392 (5) This section does not guarantee that a relative will be permitted to adopt the child.

393 (6) A parent whose rights ~~[were]~~ are terminated under this chapter, or a relative of the
394 child, as defined by Section 80-3-102, may petition for guardianship of the child if:

395 (a) (i) following an adoptive placement, the child's adoptive parent returns the child to
396 the custody of the division; or

397 (ii) the child is in the custody of the division for one year following the day on which

398 the parent's rights were terminated, and no permanent placement has been found or is likely to
399 be found; and
400 (b) reunification with the child's parent, or guardianship by the child's relative, is in the
401 best interest of the child.