

HB0458S03 compared with HB0458S01

~~deleted text~~ shows text that was in HB0458S01 but was deleted in HB0458S03.

inserted text shows text that was not in HB0458S01 but was inserted into HB0458S03.

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Representative Kera Birkeland proposes the following substitute bill:

CHILD WELFARE REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: _____

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~~limits 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 filed an intent to adopt with the court or demonstrated an interest in the child during the child welfare case;
- ▶ clarifies that a foster parent may be considered a suitable adoptive placement after termination of parental rights; and

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- ▶ 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

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

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

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

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

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

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

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

(i) dismiss the adoption petition;

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

and

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

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

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

(a) evidence of psychological or emotional bonds that the child has formed with a third

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person, including the prospective adoptive parent; and

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

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

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

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

(c) [~~the person~~] is not interested in having custody of the child; or

(d) [~~the person~~] has forfeited the person's parental presumption.

(5) Any custody order entered [~~pursuant to~~] under this section may also:

(a) include provisions for:

(i) parent-time; or

(ii) visitation by an interested third party; and

(b) provide for the financial support of the child.

(6) (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).

(b) The court may also finalize the adoption if doing so is in the best interest of the child.

(7) (a) A person may not contest an adoption after the final decree of adoption is entered, if [~~that~~] the person:

(i) was a party to the adoption proceeding;

(ii) was served with notice of the adoption proceeding; or

(iii) executed a consent to the adoption or relinquishment for adoption.

(b) [~~No person may~~] A person may not contest an adoption after one year from the day on which the final decree of adoption is entered.

(c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:

(i) regardless of whether the adoption is contested directly or collaterally; and

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(ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.

(d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:

(i) a final decree of adoption; or

(ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).

(8) A court that has jurisdiction over a child for whom more than one petition for adoption is filed shall grant a hearing only under the following circumstances:

(a) to a petitioner:

(i) with whom the child is placed;

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

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

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

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

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

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

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

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

(b) if the child:

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

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

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

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

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

(B) who has filed a written statement with the court within 120 days after the day on which the shelter hearing is held, as described in Subsection (8)(a)(iii); or

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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(ii) an adoptive father of the child; or

(iii) a biological father of the child who:

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

(B) 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.

(b) "Natural parent" includes the individuals described in Subsection (1)(a) 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.

(2) (a) At the shelter hearing, when the juvenile court orders that a child be removed from the custody of the child's parent in accordance with the requirements of Section 80-3-301, the juvenile 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 juvenile court's jurisdiction occurred, who desires to assume custody of the child.

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

(c) The juvenile court:

(i) 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) shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 80-3-305, 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) may order the division to conduct any further investigation regarding the safety and appropriateness of the placement; and

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

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

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

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

(b) the juvenile court may order:

(i) that the parent take custody subject to the supervision of the juvenile 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 juvenile 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 juvenile court shall periodically review an order described in Subsection (3) to 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 with a relative under Subsections (7) through (10); or
- (d) the child should be placed in the temporary custody of the division.

(5) The time limitations described in Section 80-3-406 with regard to reunification efforts apply to children placed with a previously noncustodial parent under Subsection (2).

(6) (a) Legal custody of the child is not affected by an order entered under Subsection (2) or (3).

(b) To affect a previous court order regarding legal custody, the party shall petition the court for modification of legal custody.

(7) Subject to Subsection (8), 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 juvenile court:

(a) shall, at that time, determine whether 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 there are relatives or friends who are willing and appropriate, in accordance with the requirements of this chapter 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

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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 temporary custody of the division pending the determination under Subsection (7)(a).

(8) (a) Subject to Subsections (8)(b) through (d), preferential consideration shall be given to a relative's or a friend's request for placement of the child, if the placement is in the best interest of the child, and the provisions of this section are satisfied.

(b) (i) The preferential consideration that a relative or friend is initially granted under Subsection (8)(a) expires 120 days after the day on which the shelter hearing occurs.

(ii) After the day on which the time period described in Subsection (8)(b)(i) expires, the division or the juvenile court may not grant preferential consideration to 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 juvenile court. ~~]~~ ~~{if}~~ unless the relative ~~or~~ friend has not:

(A) obtained custody of the child; ~~or~~

(B) ~~asserted an interest in the child by maintaining or attempting to maintain contact with the child~~; filed a written statement under Subsection 78B-6-133(8)(a)(iii); or

(C) has a significant and substantial relationship with the child and was unaware, within the time period described in Subsection (8)(b)(i), of the child's removal, and the preferential consideration is in the best interest of the child.

(iii) After the day on which the time period described in Subsection (8)(b)(i) expires, the division or the juvenile court may not grant preferential consideration to a friend who has not met the requirements described in Subsection (8)(b)(ii)(A) or (B).

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

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

(iii) Before the day on which the time period described in Subsection (8)(c)(i) expires, 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 able to care for the child:

(A) a noncustodial parent of the child;

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(B) a relative of the child;

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

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

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

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

(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;

(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

(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 80-3-301 is sexual abuse of the child.

(e) (i) 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, the department shall fully cooperate to expedite the licensing process for the friend.

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

(9) (a) If a relative or friend who is willing to cooperate with the child's permanency goal is identified under Subsection (7)(a), the juvenile 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 the relative or friend.

(b) In making the finding described in Subsection (9)(a), the juvenile court shall, at a

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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 80-3-305, 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 80-3-305, 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 80-3-305;

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

(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 juvenile court; and

(vii) provide sufficient information so that the juvenile 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

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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.

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

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

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

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

(11) When a juvenile court places a child described in Subsection (7) with the child's relative or friend:

(a) the juvenile court:

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

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

(d) the juvenile 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 juvenile court shall conduct a periodic review no less often than every six

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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.

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

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

(14) (a) If the juvenile court awards temporary 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 80-3-305; and

(ii) if the results of the criminal background check described in Subsection (14)(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 the day on which the child is taken into physical custody under Subsection (14)(a)(ii)(A), give written notice to the juvenile court, and all parties to the proceedings, of the division's action.

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

(15) If the juvenile court orders that a child be removed from the custody of the child's parent and does not award custody and guardianship to another parent, relative, or friend under this section, the juvenile 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.

(16) 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 married couple, unless it is in the best interests of the child to place the

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child with a single foster parent.

(17) In determining the placement of a child, the juvenile court and the division may not 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.

(18) If the juvenile 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 juvenile court shall make findings explaining why the juvenile court's decision differs from the child's wishes.

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

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

80-4-305. Court disposition of child upon termination of parental rights --

Posttermination reunification.

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

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

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

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

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

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

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

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

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

~~(b)~~ (ii) may order the division to conduct a reasonable search to determine whether

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there ~~[are relatives who are]~~ is a relative who is willing to adopt the child; and

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

~~[(+)]~~ (A) make a specific finding regarding the fitness of the relative to adopt the child;

~~[and]~~

(B) consider whether the relative ~~filed a written statement under Subsection 78B-6-133(8)(a)(iii) or, if the statement was not filed,~~ demonstrated an interest in the child after the day on which the relative received notice from the division that the relative is a relative of the child; and

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

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

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

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

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

(ii) the child is in the custody of the division for one year following the day on which the parent's rights were terminated, and no permanent placement has been found or is likely to be found; and

(b) reunification with the child's parent, or guardianship by the child's relative, is in the best interest of the child.