

Representative Nelson T. Abbott proposes the following substitute bill:

NATIVE AMERICAN CHILD AND FAMILY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill addresses the protection of Indian children and families.

Highlighted Provisions:

This bill:

- ▶ enacts the Native American Child and Family Protection Act, including:
 - defining terms;
 - addressing effective date and severability;
 - explaining reconciliation with title;
 - addressing jurisdiction over child custody proceedings;
 - providing for actions related to pending court proceedings;
 - stating parental rights;
 - providing for voluntary termination;
 - establishing how consent or other actions are invalidated;
 - addressing placement of Indian children;
 - creating a process to return custody of an Indian child;
 - addressing information related to tribal affiliation;
 - authorizing agreements between the state and Indian tribes under certain

circumstances;



- 26 • addressing improper removal of an Indian child;
- 27 • explaining the application of state or federal standards;
- 28 • providing for emergency removal or placement of an Indian child; and
- 29 • addressing recordkeeping and information availability;
- 30 ▶ replaces cites to the federal Indian Child Welfare Act with cites to the Native
- 31 American Child and Family Protection Act;
- 32 ▶ addresses right to counsel;
- 33 ▶ addresses sharing of information by agreements;
- 34 ▶ exempts from certain time frames preferences under the Native American Child and
- 35 Family Protection Act; and
- 36 ▶ makes technical and conforming changes.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 AMENDS:

- 43 **26B-1a-101**, as enacted by Laws of Utah 2022, Chapter 245
- 44 **26B-1a-104**, as enacted by Laws of Utah 2022, Chapter 245
- 45 **26B-1a-106**, as enacted by Laws of Utah 2022, Chapter 245 and last amended by
- 46 Coordination Clause, Laws of Utah 2022, Chapter 245
- 47 **26B-1a-107**, as enacted by Laws of Utah 2022, Chapter 245
- 48 **62A-2-101**, as last amended by Laws of Utah 2022, Chapters 334, 468
- 49 **62A-2-117**, as last amended by Laws of Utah 2017, Chapter 209
- 50 **78B-6-102**, as last amended by Laws of Utah 2019, Chapter 335
- 51 **78B-6-103**, as last amended by Laws of Utah 2022, Chapter 335
- 52 **78B-6-107**, as last amended by Laws of Utah 2022, Chapter 335
- 53 **78B-6-117**, as last amended by Laws of Utah 2022, Chapters 185, 430
- 54 **78B-13-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 55 **78B-22-201**, as last amended by Laws of Utah 2022, Chapter 281
- 56 **78B-24-102**, as enacted by Laws of Utah 2022, Chapter 326

57 [78B-24-202](#), as enacted by Laws of Utah 2022, Chapter 326
58 [80-1-102](#), as last amended by Laws of Utah 2022, Chapters 155, 185, 217, 255, 326,
59 334, and 430
60 [80-2-802](#), as enacted by Laws of Utah 2022, Chapter 334
61 [80-2-1006](#), as enacted by Laws of Utah 2022, Chapter 334
62 [80-2a-101](#), as enacted by Laws of Utah 2022, Chapter 334 and last amended by
63 Coordination Clause, Laws of Utah 2022, Chapter 334
64 [80-2a-304](#), as last amended by Laws of Utah 2022, Chapter 287 and renumbered and
65 amended by Laws of Utah 2022, Chapter 334
66 [80-3-102](#), as last amended by Laws of Utah 2022, Chapters 287, 334
67 [80-3-302](#), as last amended by Laws of Utah 2022, Chapters 287, 334
68 [80-3-502](#), as renumbered and amended by Laws of Utah 2021, Chapter 261
69 [80-4-305](#), as last amended by Laws of Utah 2022, Chapters 287, 334

70 ENACTS:

71 [80-2c-101](#), Utah Code Annotated 1953
72 [80-2c-102](#), Utah Code Annotated 1953
73 [80-2c-103](#), Utah Code Annotated 1953
74 [80-2c-104](#), Utah Code Annotated 1953
75 [80-2c-201](#), Utah Code Annotated 1953
76 [80-2c-202](#), Utah Code Annotated 1953
77 [80-2c-203](#), Utah Code Annotated 1953
78 [80-2c-204](#), Utah Code Annotated 1953
79 [80-2c-205](#), Utah Code Annotated 1953
80 [80-2c-206](#), Utah Code Annotated 1953
81 [80-2c-207](#), Utah Code Annotated 1953
82 [80-2c-208](#), Utah Code Annotated 1953
83 [80-2c-209](#), Utah Code Annotated 1953
84 [80-2c-210](#), Utah Code Annotated 1953
85 [80-2c-211](#), Utah Code Annotated 1953
86 [80-2c-301](#), Utah Code Annotated 1953

87

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

89 Section 1. Section **26B-1a-101** is amended to read:

90 **26B-1a-101. Definitions.**

91 As used in this part:

92 (1) "Director" means the director of the office appointed under Section [26B-1a-103](#).

93 (2) "Health care" means care, treatment, service, or a procedure to improve, maintain,
94 diagnose, or otherwise affect an individual's physical or mental condition.

95 (3) "Health liaison" means the American Indian-Alaska Native Health Liaison
96 appointed under Section [26B-1a-105](#).

97 (4) [~~ICWA~~] "Native American child and family liaison" means the [~~Indian Child~~
98 ~~Welfare Act Liaison~~] Native American child and family liaison appointed under Section
99 [26B-1a-106](#).

100 (5) "Office" means the Office of American Indian-Alaska Native Health and Family
101 Services created in Section [26B-1a-102](#).

102 Section 2. Section **26B-1a-104** is amended to read:

103 **26B-1a-104. Duties of the office.**

104 The office shall:

105 (1) oversee and coordinate department services for Utah's American Indian-Alaska
106 Native populations;

107 (2) conduct regular and meaningful consultation with Indian tribes when there is a
108 proposed department action that has an impact on an Indian tribe as a sovereign entity;

109 (3) monitor agreements between the department and Utah's American Indian-Alaska
110 Native populations; and

111 (4) oversee the health liaison and [~~ICWA~~] Native American child and family liaison.

112 Section 3. Section **26B-1a-106** is amended to read:

113 **26B-1a-106. Native American child and family liaison -- Appointment --**

114 **Qualifications -- Duties.**

115 (1) (a) The executive director shall appoint an individual as the [~~Indian Child Welfare~~
116 ~~Act Liaison~~] Native American child and family liaison who:

117 (i) has a bachelor's degree from an accredited university or college; and

118 (ii) is knowledgeable about the areas of child and family services and Indian tribal

119 child rearing practices.

120 (b) The [~~ICWA~~] Native American child and family liaison shall serve under the
121 supervision of the director.

122 (2) The [~~ICWA~~] Native American child and family liaison shall:

123 (a) act as a liaison between the department and Utah's American Indian populations
124 regarding child and family services;

125 (b) provide training to department employees regarding the requirements and
126 implementation of [~~the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963~~] Title 80,
127 Chapter 2c, Native American Child and Family Protection Act;

128 (c) develop and facilitate education and technical assistance programs for Utah's
129 American Indian populations regarding available child and family services;

130 (d) promote and coordinate collaborative efforts between the department and Utah's
131 American Indian population to improve the availability and accessibility of quality child and
132 family services for Utah's American Indian populations; and

133 (e) interact with the following to improve delivery and accessibility of child and family
134 services for Utah's American Indian populations:

135 (i) state agencies and officials; and

136 (ii) providers of child and family services in the public and private sector.

137 Section 4. Section **26B-1a-107** is amended to read:

138 **26B-1a-107. Liaison reporting.**

139 The health liaison and the [~~ICWA~~] Native American child and family liaison shall
140 annually report the liaisons' respective activities and accomplishments to the Native American
141 Legislative Liaison Committee created in Section 36-22-1.

142 Section 5. Section **62A-2-101** is amended to read:

143 **62A-2-101. Definitions.**

144 As used in this chapter:

145 (1) "Adoption services" means the same as that term is defined in Section 80-2-801.

146 (2) "Adult day care" means nonresidential care and supervision:

147 (a) for three or more adults for at least four but less than 24 hours a day; and

148 (b) that meets the needs of functionally impaired adults through a comprehensive
149 program that provides a variety of health, social, recreational, and related support services in a

150 protective setting.

151 (3) "Applicant" means a person that applies for an initial license or a license renewal
152 under this chapter.

153 (4) (a) "Associated with the licensee" means that an individual is:

154 (i) affiliated with a licensee as an owner, director, member of the governing body,
155 employee, agent, provider of care, department contractor, or volunteer; or

156 (ii) applying to become affiliated with a licensee in a capacity described in Subsection
157 (4)(a)(i).

158 (b) "Associated with the licensee" does not include:

159 (i) service on the following bodies, unless that service includes direct access to a child
160 or a vulnerable adult:

161 (A) a local mental health authority described in Section 17-43-301;

162 (B) a local substance abuse authority described in Section 17-43-201; or

163 (C) a board of an organization operating under a contract to provide mental health or
164 substance abuse programs, or services for the local mental health authority or substance abuse
165 authority; or

166 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
167 at all times.

168 (5) (a) "Boarding school" means a private school that:

169 (i) uses a regionally accredited education program;

170 (ii) provides a residence to the school's students:

171 (A) for the purpose of enabling the school's students to attend classes at the school; and

172 (B) as an ancillary service to educating the students at the school;

173 (iii) has the primary purpose of providing the school's students with an education, as
174 defined in Subsection (5)(b)(i); and

175 (iv) (A) does not provide the treatment or services described in Subsection (38)(a); or

176 (B) provides the treatment or services described in Subsection (38)(a) on a limited
177 basis, as described in Subsection (5)(b)(ii).

178 (b) (i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for
179 one or more of grades kindergarten through 12th grade.

180 (ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or

181 services described in Subsection (38)(a) on a limited basis if:

182 (A) the treatment or services described in Subsection (38)(a) are provided only as an
183 incidental service to a student; and

184 (B) the school does not:

185 (I) specifically solicit a student for the purpose of providing the treatment or services
186 described in Subsection (38)(a); or

187 (II) have a primary purpose of providing the treatment or services described in
188 Subsection (38)(a).

189 (c) "Boarding school" does not include a therapeutic school.

190 (6) "Child" means an individual under 18 years old.

191 (7) "Child placing" means receiving, accepting, or providing custody or care for any
192 child, temporarily or permanently, for the purpose of:

193 (a) finding a person to adopt the child;

194 (b) placing the child in a home for adoption; or

195 (c) foster home placement.

196 (8) "Child-placing agency" means a person that engages in child placing.

197 (9) "Client" means an individual who receives or has received services from a licensee.

198 (10) (a) "Congregate care program" means any of the following that provide services to
199 a child:

200 (i) an outdoor youth program;

201 (ii) a residential support program;

202 (iii) a residential treatment program; or

203 (iv) a therapeutic school.

204 (b) "Congregate care program" does not include a human services program that:

205 (i) is licensed to serve adults; and

206 (ii) is approved by the office to service a child for a limited time.

207 (11) "Day treatment" means specialized treatment that is provided to:

208 (a) a client less than 24 hours a day; and

209 (b) four or more persons who:

210 (i) are unrelated to the owner or provider; and

211 (ii) have emotional, psychological, developmental, physical, or behavioral

212 dysfunctions, impairments, or chemical dependencies.

213 (12) "Department" means the Department of Human Services.

214 (13) "Department contractor" means an individual who:

215 (a) provides services under a contract with the department; and

216 (b) due to the contract with the department, has or will likely have direct access to a
217 child or vulnerable adult.

218 (14) "Direct access" means that an individual has, or likely will have:

219 (a) contact with or access to a child or vulnerable adult that provides the individual
220 with an opportunity for personal communication or touch; or

221 (b) an opportunity to view medical, financial, or other confidential personal identifying
222 information of the child, the child's parents or legal guardians, or the vulnerable adult.

223 (15) "Directly supervised" means that an individual is being supervised under the
224 uninterrupted visual and auditory surveillance of another individual who has a current
225 background screening approval issued by the office.

226 (16) "Director" means the director of the office.

227 (17) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

228 (18) "Domestic violence treatment program" means a nonresidential program designed
229 to provide psychological treatment and educational services to perpetrators and victims of
230 domestic violence.

231 (19) "Elder adult" means a person 65 years old or older.

232 (20) "Executive director" means the executive director of the department.

233 (21) "Foster home" means a residence that is licensed or certified by the office for the
234 full-time substitute care of a child.

235 (22) "Health benefit plan" means the same as that term is defined in Section
236 [31A-1-301](#).

237 (23) "Health care provider" means the same as that term is defined in Section
238 [78B-3-403](#).

239 (24) "Health insurer" means the same as that term is defined in Section [31A-22-615.5](#).

240 (25) (a) "Human services program" means:

241 (i) a foster home;

242 (ii) a therapeutic school;

- 243 (iii) a youth program;
- 244 (iv) an outdoor youth program;
- 245 (v) a residential treatment program;
- 246 (vi) a residential support program;
- 247 (vii) a resource family home;
- 248 (viii) a recovery residence; or
- 249 (ix) a facility or program that provides:
 - 250 (A) adult day care;
 - 251 (B) day treatment;
 - 252 (C) outpatient treatment;
 - 253 (D) domestic violence treatment;
 - 254 (E) child-placing services;
 - 255 (F) social detoxification; or
 - 256 (G) any other human services that are required by contract with the department to be
 - 257 licensed with the department.
- 258 (b) "Human services program" does not include:
 - 259 (i) a boarding school; or
 - 260 (ii) a residential, vocational and life skills program, as defined in Section [13-53-102](#).
- 261 (26) "Indian child" means the same as that term is defined in [~~25 U.S.C. Sec. 1903~~]
- 262 Section [80-2c-101](#).
- 263 (27) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- 264 (28) "Indian tribe" means the same as that term is defined in [~~25 U.S.C. Sec. 1903~~]
- 265 Section [80-2c-101](#).
- 266 (29) "Intermediate secure treatment" means 24-hour specialized residential treatment or
- 267 care for an individual who:
 - 268 (a) cannot live independently or in a less restrictive environment; and
 - 269 (b) requires, without the individual's consent or control, the use of locked doors to care
 - 270 for the individual.
- 271 (30) "Licensee" means an individual or a human services program licensed by the
- 272 office.
- 273 (31) "Local government" means a city, town, metro township, or county.

- 274 (32) "Minor" means child.
- 275 (33) "Office" means the Office of Licensing within the Department of Human Services.
- 276 (34) "Outdoor youth program" means a program that provides:
- 277 (a) services to a child that has:
- 278 (i) a chemical dependency; or
- 279 (ii) a dysfunction or impairment that is emotional, psychological, developmental,
- 280 physical, or behavioral;
- 281 (b) a 24-hour outdoor group living environment; and
- 282 (c) (i) regular therapy, including group, individual, or supportive family therapy; or
- 283 (ii) informal therapy or similar services, including wilderness therapy, adventure
- 284 therapy, or outdoor behavioral healthcare.
- 285 (35) "Outpatient treatment" means individual, family, or group therapy or counseling
- 286 designed to improve and enhance social or psychological functioning for those whose physical
- 287 and emotional status allows them to continue functioning in their usual living environment.
- 288 (36) "Practice group" or "group practice" means two or more health care providers
- 289 legally organized as a partnership, professional corporation, or similar association, for which:
- 290 (a) substantially all of the services of the health care providers who are members of the
- 291 group are provided through the group and are billed in the name of the group and amounts
- 292 received are treated as receipts of the group; and
- 293 (b) the overhead expenses of and the income from the practice are distributed in
- 294 accordance with methods previously determined by members of the group.
- 295 (37) "Private-placement child" means a child whose parent or guardian enters into a
- 296 contract with a congregate care program for the child to receive services.
- 297 (38) (a) "Recovery residence" means a home, residence, or facility that meets at least
- 298 two of the following requirements:
- 299 (i) provides a supervised living environment for individuals recovering from a
- 300 substance use disorder;
- 301 (ii) provides a living environment in which more than half of the individuals in the
- 302 residence are recovering from a substance use disorder;
- 303 (iii) provides or arranges for residents to receive services related to their recovery from
- 304 a substance use disorder, either on or off site;

305 (iv) is held out as a living environment in which individuals recovering from substance
306 abuse disorders live together to encourage continued sobriety; or

307 (v) (A) receives public funding; or

308 (B) is run as a business venture, either for-profit or not-for-profit.

309 (b) "Recovery residence" does not mean:

310 (i) a residential treatment program;

311 (ii) residential support program; or

312 (iii) a home, residence, or facility, in which:

313 (A) residents, by their majority vote, establish, implement, and enforce policies
314 governing the living environment, including the manner in which applications for residence are
315 approved and the manner in which residents are expelled;

316 (B) residents equitably share rent and housing-related expenses; and

317 (C) a landlord, owner, or operator does not receive compensation, other than fair
318 market rental income, for establishing, implementing, or enforcing policies governing the
319 living environment.

320 (39) "Regular business hours" means:

321 (a) the hours during which services of any kind are provided to a client; or

322 (b) the hours during which a client is present at the facility of a licensee.

323 (40) (a) "Residential support program" means a program that arranges for or provides
324 the necessities of life as a protective service to individuals or families who have a disability or
325 who are experiencing a dislocation or emergency that prevents them from providing these
326 services for themselves or their families.

327 (b) "Residential support program" includes a program that provides a supervised living
328 environment for individuals with dysfunctions or impairments that are:

329 (i) emotional;

330 (ii) psychological;

331 (iii) developmental; or

332 (iv) behavioral.

333 (c) Treatment is not a necessary component of a residential support program.

334 (d) "Residential support program" does not include:

335 (i) a recovery residence; or

- 336 (ii) a program that provides residential services that are performed:
- 337 (A) exclusively under contract with the department and provided to individuals through
- 338 the Division of Services for People with Disabilities; or
- 339 (B) in a facility that serves fewer than four individuals.
- 340 (41) (a) "Residential treatment" means a 24-hour group living environment for four or
- 341 more individuals unrelated to the owner or provider that offers room or board and specialized
- 342 treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation
- 343 services for persons with emotional, psychological, developmental, or behavioral dysfunctions,
- 344 impairments, or chemical dependencies.
- 345 (b) "Residential treatment" does not include a:
- 346 (i) boarding school;
- 347 (ii) foster home; or
- 348 (iii) recovery residence.
- 349 (42) "Residential treatment program" means a program or facility that provides:
- 350 (a) residential treatment; or
- 351 (b) intermediate secure treatment.
- 352 (43) "Seclusion" means the involuntary confinement of an individual in a room or an
- 353 area:
- 354 (a) away from the individual's peers; and
- 355 (b) in a manner that physically prevents the individual from leaving the room or area.
- 356 (44) "Social detoxification" means short-term residential services for persons who are
- 357 experiencing or have recently experienced drug or alcohol intoxication, that are provided
- 358 outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility
- 359 Licensing and Inspection Act, and that include:
- 360 (a) room and board for persons who are unrelated to the owner or manager of the
- 361 facility;
- 362 (b) specialized rehabilitation to acquire sobriety; and
- 363 (c) aftercare services.
- 364 (45) "Substance abuse disorder" or "substance use disorder" mean the same as
- 365 "substance use disorder" is defined in Section [62A-15-1202](#).
- 366 (46) "Substance abuse treatment program" or "substance use disorder treatment

367 program" means a program:

368 (a) designed to provide:

369 (i) specialized drug or alcohol treatment;

370 (ii) rehabilitation; or

371 (iii) habilitation services; and

372 (b) that provides the treatment or services described in Subsection (46)(a) to persons

373 with:

374 (i) a diagnosed substance use disorder; or

375 (ii) chemical dependency disorder.

376 (47) "Therapeutic school" means a residential group living facility:

377 (a) for four or more individuals that are not related to:

378 (i) the owner of the facility; or

379 (ii) the primary service provider of the facility;

380 (b) that serves students who have a history of failing to function:

381 (i) at home;

382 (ii) in a public school; or

383 (iii) in a nonresidential private school; and

384 (c) that offers:

385 (i) room and board; and

386 (ii) an academic education integrated with:

387 (A) specialized structure and supervision; or

388 (B) services or treatment related to:

389 (I) a disability;

390 (II) emotional development;

391 (III) behavioral development;

392 (IV) familial development; or

393 (V) social development.

394 (48) "Unrelated persons" means persons other than parents, legal guardians,

395 grandparents, brothers, sisters, uncles, or aunts.

396 (49) "Vulnerable adult" means an elder adult or an adult who has a temporary or

397 permanent mental or physical impairment that substantially affects the person's ability to:

- 398 (a) provide personal protection;
- 399 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 400 (c) obtain services necessary for health, safety, or welfare;
- 401 (d) carry out the activities of daily living;
- 402 (e) manage the adult's own resources; or
- 403 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 404 neglect, or exploitation.

405 (50) (a) "Youth program" means a program designed to provide behavioral, substance
406 abuse, or mental health services to minors that:

- 407 (i) serves adjudicated or nonadjudicated youth;
- 408 (ii) charges a fee for its services;
- 409 (iii) may provide host homes or other arrangements for overnight accommodation of
410 the youth;
- 411 (iv) may provide all or part of its services in the outdoors;
- 412 (v) may limit or censor access to parents or guardians; and
- 413 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
414 minor's own free will.

415 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
416 Scouts, 4-H, and other such organizations.

417 (51) (a) "Youth transportation company" means any person that transports a child for
418 payment to or from a congregate care program in Utah.

419 (b) "Youth transportation company" does not include:

- 420 (i) a relative of the child;
- 421 (ii) a state agency; or
- 422 (iii) a congregate care program's employee who transports the child from the
423 congregate care program that employs the employee and returns the child to the same
424 congregate care program.

425 Section 6. Section **62A-2-117** is amended to read:

426 **62A-2-117. Licensure of tribal foster homes.**

427 (1) [~~The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963;~~] Title 80, Chapter 2c,
428 Native American Child and Family Protection Act, provides that Indian tribes may develop and

429 implement tribal foster home standards.

430 (2) The office shall give full faith and credit to an Indian tribe's certification or
431 licensure of a tribal foster home for an Indian child and siblings of that Indian child, both on
432 and off Indian country, according to standards developed and approved by the Indian tribe,
433 pursuant to [~~the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963~~] Title 80, Chapter 2c,
434 Native American Child and Family Protection Act.

435 (3) If the Indian tribe has not developed standards, the office shall license tribal foster
436 homes pursuant to this chapter.

437 Section 7. Section **78B-6-102** is amended to read:

438 **78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of**
439 **each party.**

440 (1) It is the intent and desire of the Legislature that in every adoption the best interest
441 of the child should govern and be of foremost concern in the court's determination.

442 (2) The court shall make a specific finding regarding the best interest of the child,
443 taking into consideration information provided to the court pursuant to the requirements of this
444 chapter relating to the health, safety, and welfare of the child and the moral climate of the
445 potential adoptive placement.

446 (3) The Legislature finds that the rights and interests of all parties affected by an
447 adoption proceeding must be considered and balanced in determining what constitutional
448 protections and processes are necessary and appropriate.

449 (4) The Legislature specifically finds that it is not in a child's best interest to be adopted
450 by a person or persons who are cohabiting in a relationship that is not a legally valid and
451 binding marriage under the laws of this state. Nothing in this section limits or prohibits the
452 court's placement of a child with a single adult who is not cohabiting or a person who is a
453 relative of the child or a recognized placement under [~~the Indian Child Welfare Act, 25 U.S.C.~~
454 ~~Sec. 1901 et seq.~~] Title 80, Chapter 2c, Native American Child and Family Protection Act.

455 (5) The Legislature also finds that:

456 (a) the state has a compelling interest in providing stable and permanent homes for
457 adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and
458 in holding parents accountable for meeting the needs of children;

459 (b) an unmarried mother, faced with the responsibility of making crucial decisions

460 about the future of a newborn child, is entitled to privacy, and has the right to make timely and
461 appropriate decisions regarding her future and the future of the child, and is entitled to
462 assurance regarding the permanence of an adoptive placement;

463 (c) adoptive children have a right to permanence and stability in adoptive placements;

464 (d) adoptive parents have a constitutionally protected liberty and privacy interest in
465 retaining custody of an adopted child;

466 (e) an unmarried biological father has an inchoate interest that acquires constitutional
467 protection only when he demonstrates a timely and full commitment to the responsibilities of
468 parenthood, both during pregnancy and upon the child's birth; and

469 (f) the state has a compelling interest in requiring unmarried biological fathers to
470 demonstrate commitment by providing appropriate medical care and financial support and by
471 establishing legal paternity, in accordance with the requirements of this chapter.

472 (6) (a) In enacting this chapter, the Legislature has prescribed the conditions for
473 determining whether an unmarried biological father's action is sufficiently prompt and
474 substantial to require constitutional protection.

475 (b) If an unmarried biological father fails to grasp the opportunities to establish a
476 relationship with his child that are available to him, his biological parental interest may be lost
477 entirely, or greatly diminished in constitutional significance by his failure to timely exercise it,
478 or by his failure to strictly comply with the available legal steps to substantiate it.

479 (c) A certain degree of finality is necessary in order to facilitate the state's compelling
480 interest. The Legislature finds that the interests of the state, the mother, the child, and the
481 adoptive parents described in this section outweigh the interest of an unmarried biological
482 father who does not timely grasp the opportunity to establish and demonstrate a relationship
483 with his child in accordance with the requirements of this chapter.

484 (d) The Legislature finds no practical way to remove all risk of fraud or
485 misrepresentation in adoption proceedings, and has provided a method for absolute protection
486 of an unmarried biological father's rights by compliance with the provisions of this chapter. In
487 balancing the rights and interests of the state, and of all parties affected by fraud, specifically
488 the child, the adoptive parents, and the unmarried biological father, the Legislature has
489 determined that the unmarried biological father is in the best position to prevent or ameliorate
490 the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

491 (e) An unmarried biological father has the primary responsibility to protect his rights.

492 (f) An unmarried biological father is presumed to know that the child may be adopted
493 without his consent unless he strictly complies with the provisions of this chapter, manifests a
494 prompt and full commitment to his parental responsibilities, and establishes paternity.

495 (7) The Legislature finds that an unmarried mother has a right of privacy with regard to
496 her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity
497 of an unmarried biological father prior to or during an adoption proceeding, and has no
498 obligation to volunteer information to the court with respect to the father.

499 Section 8. Section **78B-6-103** is amended to read:

500 **78B-6-103. Definitions.**

501 As used in this part:

502 (1) "Adoptee" means a person who:

503 (a) is the subject of an adoption proceeding; or

504 (b) has been legally adopted.

505 (2) "Adoption" means the judicial act that:

506 (a) creates the relationship of parent and child where it did not previously exist; and

507 (b) except as provided in Subsections **78B-6-138**(2) and (4), terminates the parental
508 rights of any other person with respect to the child.

509 (3) "Adoption document" means an adoption-related document filed with the office, a
510 petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted
511 in support of a supplementary birth certificate.

512 (4) "Adoption service provider" means:

513 (a) a child-placing agency;

514 (b) a licensed counselor who has at least one year of experience providing professional
515 social work services to:

516 (i) adoptive parents;

517 (ii) prospective adoptive parents; or

518 (iii) birth parents; or

519 (c) the Office of Licensing within the Department of Human Services.

520 (5) "Adoptive parent" means an individual who has legally adopted an adoptee.

521 (6) "Adult" means an individual who is 18 years [~~of age~~] old or older.

522 (7) "Adult adoptee" means an adoptee who is 18 years [~~of age~~] old or older and was
523 adopted as a minor.

524 (8) "Adult sibling" means an adoptee's brother or sister, who is 18 years [~~of age~~] old or
525 older and whose birth mother or father is the same as that of the adoptee.

526 (9) "Birth mother" means the biological mother of a child.

527 (10) "Birth parent" means:

528 (a) a birth mother;

529 (b) a man whose paternity of a child is established;

530 (c) a man who:

531 (i) has been identified as the father of a child by the child's birth mother; and

532 (ii) has not denied paternity; or

533 (d) an unmarried biological father.

534 (11) "Child-placing agency" means an agency licensed to place children for adoption
535 under Title 62A, Chapter 2, Licensure of Programs and Facilities.

536 (12) "Cohabiting" means residing with another person and being involved in a sexual
537 relationship with that person.

538 (13) "Division" means the Division of Child and Family Services, within the
539 Department of Human Services, created in Section [80-2-201](#).

540 (14) "Extra-jurisdictional child-placing agency" means an agency licensed to place
541 children for adoption by a district, territory, or state of the United States, other than Utah.

542 (15) "Genetic and social history" means a comprehensive report, when obtainable, that
543 contains the following information on an adoptee's birth parents, aunts, uncles, and
544 grandparents:

545 (a) medical history;

546 (b) health status;

547 (c) cause of and age at death;

548 (d) height, weight, and eye and hair color;

549 (e) ethnic origins;

550 (f) where appropriate, levels of education and professional achievement; and

551 (g) religion, if any.

552 (16) "Health history" means a comprehensive report of the adoptee's health status at the

553 time of placement for adoption, and medical history, including neonatal, psychological,
554 physiological, and medical care history.

555 (17) "Identifying information" means information that is in the possession of the office
556 and that contains the name and address of a pre-existing parent or an adult adoptee, or other
557 specific information that by itself or in reasonable conjunction with other information may be
558 used to identify a pre-existing parent or an adult adoptee, including information on a birth
559 certificate or in an adoption document.

560 (18) "Licensed counselor" means an individual who is licensed by the state, or another
561 state, district, or territory of the United States as a:

- 562 (a) certified social worker;
- 563 (b) clinical social worker;
- 564 (c) psychologist;
- 565 (d) marriage and family therapist;
- 566 (e) clinical mental health counselor; or
- 567 (f) an equivalent licensed professional of another state, district, or territory of the
568 United States.

569 (19) "Man" means a male individual, regardless of age.

570 (20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

571 (21) "Office" means the Office of Vital Records and Statistics within the Department
572 of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

573 (22) "Parent," for purposes of Section 78B-6-119, means any person described in
574 Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment
575 for adoption is required under Sections 78B-6-120 through 78B-6-122.

576 (23) "Potential birth father" means a man who:

577 (a) is identified by a birth mother as a potential biological father of the birth mother's
578 child, but whose genetic paternity has not been established; and

579 (b) was not married to the biological mother of the child described in Subsection
580 (23)(a) at the time of the child's conception or birth.

581 (24) "Pre-existing parent" means:

582 (a) a birth parent; or

583 (b) an individual who, before an adoption decree is entered, is, due to an earlier

584 adoption decree, legally the parent of the child being adopted.

585 (25) "Prospective adoptive parent" means an individual who seeks to adopt an adoptee.

586 (26) "Relative" means:

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

590 (b) in the case of a child defined as an "Indian child" under [~~the Indian Child Welfare~~
591 ~~Act, 25 U.S.C. Sec. 1903,~~] Section 80-2c-101, an "extended family member" as defined by
592 [~~that statute~~] Section 80-2c-101.

593 (27) "Unmarried biological father" means a man who:

594 (a) is the biological father of a child; and

595 (b) was not married to the biological mother of the child described in Subsection
596 (27)(a) at the time of the child's conception or birth.

597 Section 9. Section **78B-6-107** is amended to read:

598 **78B-6-107. Compliance with the Interstate Compact on Placement of Children --**
599 **Compliance with state law.**

600 (1) (a) Subject to Subsection (1)(b), in any adoption proceeding the petition for
601 adoption shall state whether the child was born in another state and, if so, both the petition and
602 the court's final decree of adoption shall state that the requirements of Title 80, Chapter 2, Part
603 9, Interstate Compact on Placement of Children, have been complied with.

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

606 (2) In any adoption proceeding involving an "Indian child," as defined in [~~25 U.S.C.~~
607 ~~Sec. 1903,~~] Section 80-2c-101, a child-placing agency and the petitioners shall comply with the
608 [~~Indian Child Welfare Act, Title 25, Chapter 21, of the United States Code~~] Title 80, Chapter
609 2c, Native American Child and Family Protection Act.

610 Section 10. Section **78B-6-117** is amended to read:

611 **78B-6-117. Who may adopt -- Adoption of minor.**

612 (1) A minor child may be adopted by an adult individual, in accordance with this
613 section and this part.

614 (2) A child may be adopted by:

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

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

618 (3) A child may not be adopted by an individual who is cohabiting in a relationship that
619 is not a legally valid and binding marriage under the laws of this state unless the individual is a
620 relative of the child or a recognized placement under [~~the Indian Child Welfare Act, 25 U.S.C.~~
621 ~~Sec. 1901 et seq.~~] Title 80, Chapter 2c, Native American Child and Family Protection Act.

622 (4) To provide a child who is in the custody of the division with the most beneficial
623 family structure, when a child in the custody of the division is placed for adoption, the division
624 or child-placing agency shall place the child with a married couple, unless:

625 (a) there are no qualified married couples who:

626 (i) have applied to adopt a child;

627 (ii) are willing to adopt the child; and

628 (iii) are an appropriate placement for the child;

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

630 (c) the child is placed with an individual who has already developed a substantial
631 relationship with the child;

632 (d) the child is placed with an individual who:

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

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

636 (A) knew the individual with whom the child is placed before the parent consented to
637 the adoption; or

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

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

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

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

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

- 646 (c) child kidnapping, as described in Section 76-5-301.1;
- 647 (d) human trafficking of a child, as described in Section 76-5-308.5;
- 648 (e) sexual abuse of a minor, as described in Section 76-5-401.1;
- 649 (f) rape of a child, as described in Section 76-5-402.1;
- 650 (g) object rape of a child, as described in Section 76-5-402.3;
- 651 (h) sodomy on a child, as described in Section 76-5-403.1;
- 652 (i) sexual abuse of a child, as described in Section 76-5-404.1, or aggravated sexual
653 abuse of a child, as described in Section 76-5-404.3;
- 654 (j) sexual exploitation of a minor, as described in Section 76-5b-201;
- 655 (k) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1;
- 656 (l) aggravated child abuse, as described in Section 76-5-109.2;
- 657 (m) child abandonment, as described in Section 76-5-109.3;
- 658 (n) commission of domestic violence in the presence of a child, as described in Section
659 76-5-114; or
- 660 (o) an offense in another state that, if committed in this state, would constitute an
661 offense described in this Subsection (5).
- 662 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense
663 listed in Subsection (5) that prevents a court from considering an individual for adoption of a
664 child except as provided in this Subsection (6).
- 665 (b) An individual described in Subsection (5) may only be considered for adoption of a
666 child if the following criteria are met by clear and convincing evidence:
 - 667 (i) at least 10 years have elapsed from the day on which the individual is successfully
668 released from prison, jail, parole, or probation related to a disqualifying offense;
 - 669 (ii) during the 10 years before the day on which the individual files a petition with the
670 court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no
671 contest to an offense greater than an infraction or traffic violation that would likely impact the
672 health, safety, or well-being of the child;
 - 673 (iii) the individual can provide evidence of successful treatment or rehabilitation
674 directly related to the disqualifying offense;
 - 675 (iv) the court determines that the risk related to the disqualifying offense is unlikely to
676 cause harm, as defined in Section 80-1-102, or potential harm to the child currently or at any

677 time in the future when considering all of the following:

678 (A) the child's age;

679 (B) the child's gender;

680 (C) the child's development;

681 (D) the nature and seriousness of the disqualifying offense;

682 (E) the preferences of a child 12 years old or older;

683 (F) any available assessments, including custody evaluations, home studies,

684 pre-placement adoptive evaluations, parenting assessments, psychological or mental health

685 assessments, and bonding assessments; and

686 (G) any other relevant information;

687 (v) the individual can provide evidence of all of the following:

688 (A) the relationship with the child is of long duration;

689 (B) that an emotional bond exists with the child; and

690 (C) that adoption by the individual who has committed the disqualifying offense

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

692 (vi) the adoption is by:

693 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or

694 (B) subject to Subsection (6)(d), a relative of the child as defined in Section [80-3-102](#)

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

696 (c) The individual with the disqualifying offense bears the burden of proof regarding

697 why adoption with that individual is in the best interest of the child over another responsible

698 relative or equally situated individual who does not have a disqualifying offense.

699 (d) If there is an alternative responsible relative who does not have a disqualifying

700 offense filing an adoption petition, the following applies:

701 (i) preference for adoption shall be given to a relative who does not have a

702 disqualifying offense; and

703 (ii) before the court may grant adoption to the individual who has the disqualifying

704 offense over another responsible, willing, and able relative:

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

706 (B) a guardian ad litem shall be assigned.

707 (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a

708 final decision on adoption has not been made and to a case filed on or after March 25, 2017.

709 Section 11. Section **78B-13-104** is amended to read:

710 **78B-13-104. Application to Indian tribes.**

711 (1) A child custody proceeding that pertains to an Indian child as defined in [~~the Indian~~
712 ~~Child Welfare Act, 25 U.S.C. 1901 et seq.,~~] Section 80-2c-101, is not subject to this chapter to
713 the extent that it is governed by [~~the Indian Child Welfare Act~~] Title 80, Chapter 2c, Native
714 American Child and Family Protection Act.

715 (2) A court of this state shall treat a tribe as a state of the United States for purposes of
716 Part 1, General Provisions, and Part 2, Jurisdiction.

717 (3) A child custody determination made by a tribe under factual circumstances in
718 substantial conformity with the jurisdictional standards of this chapter shall be recognized and
719 enforced under [~~the provisions of~~] Part 3, Enforcement.

720 Section 12. Section **78B-22-201** is amended to read:

721 **78B-22-201. Right to counsel.**

722 (1) A court shall advise the following of the individual's right to counsel no later than
723 the individual's first court appearance:

724 (a) an adult charged with a criminal offense the penalty for which includes the
725 possibility of incarceration regardless of whether actually imposed;

726 (b) a parent or legal guardian facing an action initiated by the state under:

727 (i) Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;

728 (ii) Title 80, Chapter 2c, Native American Child and Family Protection Act, to the
729 extent provided in that chapter;

730 [~~(ii)~~] (iii) Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings; or

731 [~~(iii)~~] (iv) Title 80, Chapter 4, Termination and Restoration of Parental Rights;

732 (c) a parent or legal guardian facing an action initiated by any party under:

733 (i) Section 78B-6-112; [~~or~~]

734 (ii) Title 80, Chapter 2c, Native American Child and Family Protection Act, to the
735 extent provided in that chapter; or

736 [~~(ii)~~] (iii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or

737 (d) an individual described in this Subsection (1), who is appealing a conviction or
738 other final court action.

739 (2) If an individual described in Subsection (1) does not knowingly and voluntarily
740 waive the right to counsel, the court shall determine whether the individual is indigent under
741 Section [78B-22-202](#).

742 Section 13. Section **78B-24-102** is amended to read:

743 **78B-24-102. Limitations on applicability.**

744 This chapter does not apply to custody of an Indian child, as defined in [~~the Indian~~
745 ~~Child Welfare Act, 25 U.S.C. Sec. 1903,~~] [Section 80-2c-101](#) to the extent governed by [~~the~~
746 ~~Indian Child Welfare Act, 25 U.S.C. Sec. 1901 through 1963~~] Title 80, Chapter 2c, Native
747 American Child and Family Protection Act.

748 Section 14. Section **78B-24-202** is amended to read:

749 **78B-24-202. Applicability.**

750 This part does not apply to a transfer of custody of a child by a parent or guardian of the
751 child to:

- 752 (1) a parent of the child;
- 753 (2) a stepparent of the child;
- 754 (3) an adult who is related to the child by blood, marriage, or adoption;
- 755 (4) an adult who, at the time of the transfer, had a close relationship with the child or
756 the parent or guardian of the child for a substantial period, and whom the parent or guardian
757 reasonably believed, at the time of the transfer, to be a fit custodian of the child;
- 758 (5) an Indian custodian, as defined in [~~the Indian Child Welfare Act, 25 U.S.C. Sec.~~
759 ~~1903~~] [Section 80-2c-101](#), of the child; or
- 760 (6) a member of the child's customary family unit recognized by the child's indigenous
761 group.

762 Section 15. Section **80-1-102** is amended to read:

763 **80-1-102. Juvenile Code definitions.**

764 Except as provided in Section [80-6-1103](#), as used in this title:

- 765 (1) (a) "Abuse" means:
 - 766 (i) (A) nonaccidental harm of a child;
 - 767 (B) threatened harm of a child;
 - 768 (C) sexual exploitation;
 - 769 (D) sexual abuse; or

770 (E) human trafficking of a child in violation of Section 76-5-308.5; or
771 (ii) that a child's natural parent:
772 (A) intentionally, knowingly, or recklessly causes the death of another parent of the
773 child;
774 (B) is identified by a law enforcement agency as the primary suspect in an investigation
775 for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
776 (C) is being prosecuted for or has been convicted of intentionally, knowingly, or
777 recklessly causing the death of another parent of the child.
778 (b) "Abuse" does not include:
779 (i) reasonable discipline or management of a child, including withholding privileges;
780 (ii) conduct described in Section 76-2-401; or
781 (iii) the use of reasonable and necessary physical restraint or force on a child:
782 (A) in self-defense;
783 (B) in defense of others;
784 (C) to protect the child; or
785 (D) to remove a weapon in the possession of a child for any of the reasons described in
786 Subsections (1)(b)(iii)(A) through (C).
787 (2) "Abused child" means a child who has been subjected to abuse.
788 (3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the
789 facts alleged in the petition have been proved.
790 (b) "Adjudication" does not mean a finding of not competent to proceed in accordance
791 with Section 80-6-402.
792 (4) (a) "Adult" means an individual who is 18 years old or older.
793 (b) "Adult" does not include an individual:
794 (i) who is 18 years old or older; and
795 (ii) who is a minor.
796 (5) "Attorney guardian ad litem" means the same as that term is defined in Section
797 78A-2-801.
798 (6) "Board" means the Board of Juvenile Court Judges.
799 (7) "Child" means, except as provided in Section 80-2-905, an individual who is under
800 18 years old.

801 (8) "Child and family plan" means a written agreement between a child's parents or
802 guardian and the Division of Child and Family Services as described in Section 80-3-307.

803 (9) "Child placing" means the same as that term is defined in Section 62A-2-101.

804 (10) "Child-placing agency" means the same as that term is defined in Section
805 62A-2-101.

806 (11) "Child protection team" means a team consisting of:

807 (a) the child welfare caseworker assigned to the case;

808 (b) if applicable, the child welfare caseworker who made the decision to remove the
809 child;

810 (c) a representative of the school or school district where the child attends school;

811 (d) if applicable, the law enforcement officer who removed the child from the home;

812 (e) a representative of the appropriate Children's Justice Center, if one is established
813 within the county where the child resides;

814 (f) if appropriate, and known to the division, a therapist or counselor who is familiar
815 with the child's circumstances;

816 (g) if appropriate, a representative of law enforcement selected by the chief of police or
817 sheriff in the city or county where the child resides; and

818 (h) any other individuals determined appropriate and necessary by the team coordinator
819 and chair.

820 (12) (a) "Chronic abuse" means repeated or patterned abuse.

821 (b) "Chronic abuse" does not mean an isolated incident of abuse.

822 (13) (a) "Chronic neglect" means repeated or patterned neglect.

823 (b) "Chronic neglect" does not mean an isolated incident of neglect.

824 (14) "Clandestine laboratory operation" means the same as that term is defined in
825 Section 58-37d-3.

826 (15) "Commit" or "committed" means, unless specified otherwise:

827 (a) with respect to a child, to transfer legal custody; and

828 (b) with respect to a minor who is at least 18 years old, to transfer custody.

829 (16) "Community-based program" means a nonsecure residential or nonresidential
830 program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least
831 restrictive setting, consistent with public safety, and operated by or under contract with the

832 Division of Juvenile Justice Services.

833 (17) "Community placement" means placement of a minor in a community-based
834 program described in Section 80-5-402.

835 (18) "Correctional facility" means:

836 (a) a county jail; or

837 (b) a secure correctional facility as defined in Section 64-13-1.

838 (19) "Criminogenic risk factors" means evidence-based factors that are associated with
839 a minor's likelihood of reoffending.

840 (20) "Department" means the Department of Health and Human Services created in
841 Section 26B-1-201.

842 (21) "Dependent child" or "dependency" means a child who is without proper care
843 through no fault of the child's parent, guardian, or custodian.

844 (22) "Deprivation of custody" means transfer of legal custody by the juvenile court
845 from a parent or a previous custodian to another person, agency, or institution.

846 (23) "Detention" means home detention or secure detention.

847 (24) "Detention facility" means a facility, established by the Division of Juvenile
848 Justice Services in accordance with Section 80-5-501, for minors held in detention.

849 (25) "Detention risk assessment tool" means an evidence-based tool established under
850 Section 80-5-203 that:

851 (a) assesses a minor's risk of failing to appear in court or reoffending before
852 adjudication; and

853 (b) is designed to assist in making a determination of whether a minor shall be held in
854 detention.

855 (26) "Developmental immaturity" means incomplete development in one or more
856 domains that manifests as a functional limitation in the minor's present ability to:

857 (a) consult with counsel with a reasonable degree of rational understanding; and

858 (b) have a rational as well as factual understanding of the proceedings.

859 (27) "Disposition" means an order by a juvenile court, after the adjudication of a
860 minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.

861 (28) "Educational neglect" means that, after receiving a notice of compulsory education
862 violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to

863 ensure that the child receives an appropriate education.

864 (29) "Educational series" means an evidence-based instructional series:

865 (a) obtained at a substance abuse program that is approved by the Division of
866 Integrated Healthcare in accordance with Section [62A-15-105](#); and

867 (b) designed to prevent substance use or the onset of a mental health disorder.

868 (30) "Emancipated" means the same as that term is defined in Section [80-7-102](#).

869 (31) "Evidence-based" means a program or practice that has had multiple randomized
870 control studies or a meta-analysis demonstrating that the program or practice is effective for a
871 specific population or has been rated as effective by a standardized program evaluation tool.

872 (32) "Forensic evaluator" means the same as that term is defined in Section [77-15-2](#).

873 (33) "Formal probation" means a minor is:

874 (a) supervised in the community by, and reports to, a juvenile probation officer or an
875 agency designated by the juvenile court; and

876 (b) subject to return to the juvenile court in accordance with Section [80-6-607](#).

877 (34) "Group rehabilitation therapy" means psychological and social counseling of one
878 or more individuals in the group, depending upon the recommendation of the therapist.

879 (35) "Guardian" means a person appointed by a court to make decisions regarding a
880 minor, including the authority to consent to:

881 (a) marriage;

882 (b) enlistment in the armed forces;

883 (c) major medical, surgical, or psychiatric treatment; or

884 (d) legal custody, if legal custody is not vested in another individual, agency, or
885 institution.

886 (36) "Guardian ad litem" means the same as that term is defined in Section [78A-2-801](#).

887 (37) "Harm" means:

888 (a) physical or developmental injury or damage;

889 (b) emotional damage that results in a serious impairment in the child's growth,
890 development, behavior, or psychological functioning;

891 (c) sexual abuse; or

892 (d) sexual exploitation.

893 (38) "Home detention" means placement of a minor:

894 (a) if prior to a disposition, in the minor's home, or in a surrogate home with the
895 consent of the minor's parent, guardian, or custodian, under terms and conditions established by
896 the Division of Juvenile Justice Services or the juvenile court; or

897 (b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the
898 minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or
899 custodian, under terms and conditions established by the Division of Juvenile Justice Services
900 or the juvenile court.

901 (39) (a) "Incest" means engaging in sexual intercourse with an individual whom the
902 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
903 nephew, niece, or first cousin.

904 (b) "Incest" includes:

905 (i) blood relationships of the whole or half blood, regardless of whether the
906 relationship is legally recognized;

907 (ii) relationships of parent and child by adoption; and

908 (iii) relationships of stepparent and stepchild while the marriage creating the
909 relationship of a stepparent and stepchild exists.

910 (40) "Indian child" means the same as that term is defined in [~~25 U.S.C. Sec. 1903~~]
911 Section 80-2c-101.

912 (41) "Indian tribe" means the same as that term is defined in [~~25 U.S.C. Sec. 1903~~]
913 Section 80-2c-101.

914 (42) "Indigent defense service provider" means the same as that term is defined in
915 Section 78B-22-102.

916 (43) "Indigent defense services" means the same as that term is defined in Section
917 78B-22-102.

918 (44) "Indigent individual" means the same as that term is defined in Section
919 78B-22-102.

920 (45) (a) "Intake probation" means a minor is:

921 (i) monitored by a juvenile probation officer; and

922 (ii) subject to return to the juvenile court in accordance with Section 80-6-607.

923 (b) "Intake probation" does not include formal probation.

924 (46) "Intellectual disability" means a significant subaverage general intellectual

925 functioning existing concurrently with deficits in adaptive behavior that constitutes a
926 substantial limitation to the individual's ability to function in society.

927 (47) "Juvenile offender" means:

928 (a) a serious youth offender; or

929 (b) a youth offender.

930 (48) "Juvenile probation officer" means a probation officer appointed under Section
931 [78A-6-205](#).

932 (49) "Juvenile receiving center" means a nonsecure, nonresidential program established
933 by the Division of Juvenile Justice Services, or under contract with the Division of Juvenile
934 Justice Services, that is responsible for minors taken into temporary custody under Section
935 [80-6-201](#).

936 (50) "Legal custody" means a relationship embodying:

937 (a) the right to physical custody of the minor;

938 (b) the right and duty to protect, train, and discipline the minor;

939 (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary
940 medical care;

941 (d) the right to determine where and with whom the minor shall live; and

942 (e) the right, in an emergency, to authorize surgery or other extraordinary care.

943 (51) "Licensing Information System" means the Licensing Information System
944 maintained by the Division of Child and Family Services under Section [80-2-1002](#).

945 (52) "Management Information System" means the Management Information System
946 developed by the Division of Child and Family Services under Section [80-2-1001](#).

947 (53) "Mental illness" means:

948 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
949 behavioral, or related functioning; or

950 (b) the same as that term is defined in:

951 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
952 published by the American Psychiatric Association; or

953 (ii) the current edition of the International Statistical Classification of Diseases and
954 Related Health Problems.

955 (54) "Minor" means, except as provided in Sections [80-6-501](#), [80-6-901](#), and [80-7-102](#):

- 956 (a) a child; or
- 957 (b) an individual:
 - 958 (i) (A) who is at least 18 years old and younger than 21 years old; and
 - 959 (B) for whom the Division of Child and Family Services has been specifically ordered
 - 960 by the juvenile court to provide services because the individual was an abused, neglected, or
 - 961 dependent child or because the individual was adjudicated for an offense;
 - 962 (ii) (A) who is at least 18 years old and younger than 25 years old; and
 - 963 (B) whose case is under the jurisdiction of the juvenile court in accordance with
 - 964 Subsection [78A-6-103\(1\)\(b\)](#); or
 - 965 (iii) (A) who is at least 18 years old and younger than 21 years old; and
 - 966 (B) whose case is under the jurisdiction of the juvenile court in accordance with
 - 967 Subsection [78A-6-103\(1\)\(c\)](#).
- 968 (55) "Mobile crisis outreach team" means the same as that term is defined in Section
- 969 [62A-15-102](#).
- 970 (56) "Molestation" means that an individual, with the intent to arouse or gratify the
- 971 sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child,
- 972 or the breast of a female child, or takes indecent liberties with a child as defined in Section
- 973 [76-5-401.1](#).
- 974 (57) (a) "Natural parent" means, except as provided in Section [80-3-302](#), a minor's
- 975 biological or adoptive parent.
- 976 (b) "Natural parent" includes the minor's noncustodial parent.
- 977 (58) (a) "Neglect" means action or inaction causing:
 - 978 (i) abandonment of a child, except as provided in Chapter 4, Part 5, Safe
 - 979 Relinquishment of a Newborn Child;
 - 980 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
 - 981 guardian, or custodian;
 - 982 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
 - 983 subsistence or medical care, or any other care necessary for the child's health, safety, morals, or
 - 984 well-being;
 - 985 (iv) a child to be at risk of being neglected or abused because another child in the same
 - 986 home is neglected or abused;

- 987 (v) abandonment of a child through an unregulated child custody transfer under Section
988 [78B-24-203](#); or
- 989 (vi) educational neglect.
- 990 (b) "Neglect" does not include:
- 991 (i) a parent or guardian legitimately practicing religious beliefs and who, for that
992 reason, does not provide specified medical treatment for a child;
- 993 (ii) a health care decision made for a child by the child's parent or guardian, unless the
994 state or other party to a proceeding shows, by clear and convincing evidence, that the health
995 care decision is not reasonable and informed;
- 996 (iii) a parent or guardian exercising the right described in Section [80-3-304](#); or
- 997 (iv) permitting a child, whose basic needs are met and who is of sufficient age and
998 maturity to avoid harm or unreasonable risk of harm, to engage in independent activities,
999 including:
- 1000 (A) traveling to and from school, including by walking, running, or bicycling;
- 1001 (B) traveling to and from nearby commercial or recreational facilities;
- 1002 (C) engaging in outdoor play;
- 1003 (D) remaining in a vehicle unattended, except under the conditions described in
1004 Subsection [76-10-2202](#)(2);
- 1005 (E) remaining at home unattended; or
- 1006 (F) engaging in a similar independent activity.
- 1007 (59) "Neglected child" means a child who has been subjected to neglect.
- 1008 (60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile
1009 probation officer, without an adjudication of the minor's case under Section [80-6-701](#), upon the
1010 consent in writing of:
- 1011 (a) the assigned juvenile probation officer; and
- 1012 (b) (i) the minor; or
- 1013 (ii) the minor and the minor's parent, guardian, or custodian.
- 1014 (61) "Not competent to proceed" means that a minor, due to a mental illness,
1015 intellectual disability or related condition, or developmental immaturity, lacks the ability to:
- 1016 (a) understand the nature of the proceedings against the minor or of the potential
1017 disposition for the offense charged; or

1018 (b) consult with counsel and participate in the proceedings against the minor with a
1019 reasonable degree of rational understanding.

1020 (62) "Parole" means a conditional release of a juvenile offender from residency in
1021 secure care to live outside of secure care under the supervision of the Division of Juvenile
1022 Justice Services, or another person designated by the Division of Juvenile Justice Services.

1023 (63) "Physical abuse" means abuse that results in physical injury or damage to a child.

1024 (64) (a) "Probation" means a legal status created by court order, following an
1025 adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's
1026 home under prescribed conditions.

1027 (b) "Probation" includes intake probation or formal probation.

1028 (65) "Prosecuting attorney" means:

1029 (a) the attorney general and any assistant attorney general;

1030 (b) any district attorney or deputy district attorney;

1031 (c) any county attorney or assistant county attorney; and

1032 (d) any other attorney authorized to commence an action on behalf of the state.

1033 (66) "Protective custody" means the shelter of a child by the Division of Child and
1034 Family Services from the time the child is removed from the home until the earlier of:

1035 (a) the day on which the shelter hearing is held under Section 80-3-301; or

1036 (b) the day on which the child is returned home.

1037 (67) "Protective services" means expedited services that are provided:

1038 (a) in response to evidence of neglect, abuse, or dependency of a child;

1039 (b) to a cohabitant who is neglecting or abusing a child, in order to:

1040 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
1041 causes of neglect or abuse; and

1042 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

1043 (c) in cases where the child's welfare is endangered:

1044 (i) to bring the situation to the attention of the appropriate juvenile court and law
1045 enforcement agency;

1046 (ii) to cause a protective order to be issued for the protection of the child, when
1047 appropriate; and

1048 (iii) to protect the child from the circumstances that endanger the child's welfare

1049 including, when appropriate:

1050 (A) removal from the child's home;

1051 (B) placement in substitute care; and

1052 (C) petitioning the court for termination of parental rights.

1053 (68) "Protective supervision" means a legal status created by court order, following an
1054 adjudication on the ground of abuse, neglect, or dependency, whereby:

1055 (a) the minor is permitted to remain in the minor's home; and

1056 (b) supervision and assistance to correct the abuse, neglect, or dependency is provided
1057 by an agency designated by the juvenile court.

1058 (69) (a) "Related condition" means a condition that:

1059 (i) is found to be closely related to intellectual disability;

1060 (ii) results in impairment of general intellectual functioning or adaptive behavior

1061 similar to that of an intellectually disabled individual;

1062 (iii) is likely to continue indefinitely; and

1063 (iv) constitutes a substantial limitation to the individual's ability to function in society.

1064 (b) "Related condition" does not include mental illness, psychiatric impairment, or
1065 serious emotional or behavioral disturbance.

1066 (70) (a) "Residual parental rights and duties" means the rights and duties remaining
1067 with a parent after legal custody or guardianship, or both, have been vested in another person or
1068 agency, including:

1069 (i) the responsibility for support;

1070 (ii) the right to consent to adoption;

1071 (iii) the right to determine the child's religious affiliation; and

1072 (iv) the right to reasonable parent-time unless restricted by the court.

1073 (b) If no guardian has been appointed, "residual parental rights and duties" includes the
1074 right to consent to:

1075 (i) marriage;

1076 (ii) enlistment; and

1077 (iii) major medical, surgical, or psychiatric treatment.

1078 (71) "Runaway" means a child, other than an emancipated child, who willfully leaves
1079 the home of the child's parent or guardian, or the lawfully prescribed residence of the child,

1080 without permission.

1081 (72) "Secure care" means placement of a minor, who is committed to the Division of
1082 Juvenile Justice Services for rehabilitation, in a facility operated by, or under contract with, the
1083 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement of the
1084 minor.

1085 (73) "Secure care facility" means a facility, established in accordance with Section
1086 80-5-503, for juvenile offenders in secure care.

1087 (74) "Secure detention" means temporary care of a minor who requires secure custody
1088 in a physically restricting facility operated by, or under contract with, the Division of Juvenile
1089 Justice Services:

1090 (a) before disposition of an offense that is alleged to have been committed by the
1091 minor; or

1092 (b) under Section 80-6-704.

1093 (75) "Serious youth offender" means an individual who:

1094 (a) is at least 14 years old, but under 25 years old;

1095 (b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction
1096 of the juvenile court was extended over the individual's case until the individual was 25 years
1097 old in accordance with Section 80-6-605; and

1098 (c) is committed by the juvenile court to the Division of Juvenile Justice Services for
1099 secure care under Sections 80-6-703 and 80-6-705.

1100 (76) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
1101 child.

1102 (77) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
1103 child.

1104 (78) (a) "Severe type of child abuse or neglect" means, except as provided in
1105 Subsection (78)(b):

1106 (i) if committed by an individual who is 18 years old or older:

1107 (A) chronic abuse;

1108 (B) severe abuse;

1109 (C) sexual abuse;

1110 (D) sexual exploitation;

- 1111 (E) abandonment;
- 1112 (F) chronic neglect; or
- 1113 (G) severe neglect; or
- 1114 (ii) if committed by an individual who is under 18 years old:
- 1115 (A) causing serious physical injury, as defined in Subsection 76-5-109(1), to another
- 1116 child that indicates a significant risk to other children; or
- 1117 (B) sexual behavior with or upon another child that indicates a significant risk to other
- 1118 children.
- 1119 (b) "Severe type of child abuse or neglect" does not include:
- 1120 (i) the use of reasonable and necessary physical restraint by an educator in accordance
- 1121 with Subsection 53G-8-302(2) or Section 76-2-401;
- 1122 (ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the
- 1123 use of reasonable and necessary physical restraint or force in self-defense or otherwise
- 1124 appropriate to the circumstances to obtain possession of a weapon or other dangerous object in
- 1125 the possession or under the control of a child or to protect the child or another individual from
- 1126 physical injury; or
- 1127 (iii) a health care decision made for a child by a child's parent or guardian, unless,
- 1128 subject to Subsection (78)(c), the state or other party to the proceeding shows, by clear and
- 1129 convincing evidence, that the health care decision is not reasonable and informed.
- 1130 (c) Subsection (78)(b)(iii) does not prohibit a parent or guardian from exercising the
- 1131 right to obtain a second health care opinion.
- 1132 (79) "Sexual abuse" means:
- 1133 (a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an
- 1134 adult directed towards a child;
- 1135 (b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation
- 1136 committed by a child towards another child if:
- 1137 (i) there is an indication of force or coercion;
- 1138 (ii) the children are related, as described in Subsection (39), including siblings by
- 1139 marriage while the marriage exists or by adoption;
- 1140 (iii) there have been repeated incidents of sexual contact between the two children,
- 1141 unless the children are 14 years old or older; or

1142 (iv) there is a disparity in chronological age of four or more years between the two
1143 children;

1144 (c) engaging in any conduct with a child that would constitute an offense under any of
1145 the following, regardless of whether the individual who engages in the conduct is actually
1146 charged with, or convicted of, the offense:

1147 (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the
1148 alleged perpetrator of an offense described in Section 76-5-401 is a minor;

1149 (ii) child bigamy, Section 76-7-101.5;

1150 (iii) incest, Section 76-7-102;

1151 (iv) lewdness, Section 76-9-702;

1152 (v) sexual battery, Section 76-9-702.1;

1153 (vi) lewdness involving a child, Section 76-9-702.5; or

1154 (vii) voyeurism, Section 76-9-702.7; or

1155 (d) subjecting a child to participate in or threatening to subject a child to participate in
1156 a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural
1157 marriage.

1158 (80) "Sexual exploitation" means knowingly:

1159 (a) employing, using, persuading, inducing, enticing, or coercing any child to:

1160 (i) pose in the nude for the purpose of sexual arousal of any individual; or

1161 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
1162 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

1163 (b) displaying, distributing, possessing for the purpose of distribution, or selling
1164 material depicting a child:

1165 (i) in the nude, for the purpose of sexual arousal of any individual; or

1166 (ii) engaging in sexual or simulated sexual conduct; or

1167 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
1168 sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual exploitation of a
1169 minor, regardless of whether the individual who engages in the conduct is actually charged
1170 with, or convicted of, the offense.

1171 (81) "Shelter" means the temporary care of a child in a physically unrestricted facility
1172 pending a disposition or transfer to another jurisdiction.

1173 (82) "Shelter facility" means a nonsecure facility that provides shelter for a minor.

1174 (83) "Significant risk" means a risk of harm that is determined to be significant in
1175 accordance with risk assessment tools and rules established by the Division of Child and
1176 Family Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1177 Act, that focus on:

1178 (a) age;

1179 (b) social factors;

1180 (c) emotional factors;

1181 (d) sexual factors;

1182 (e) intellectual factors;

1183 (f) family risk factors; and

1184 (g) other related considerations.

1185 (84) "Single criminal episode" means the same as that term is defined in Section
1186 [76-1-401](#).

1187 (85) "Status offense" means an offense that would not be an offense but for the age of
1188 the offender.

1189 (86) "Substance abuse" means, except as provided in Section [80-2-603](#), the misuse or
1190 excessive use of alcohol or other drugs or substances.

1191 (87) "Substantiated" or "substantiation" means a judicial finding based on a
1192 preponderance of the evidence, and separate consideration of each allegation made or identified
1193 in the case, that abuse, neglect, or dependency occurred.

1194 (88) "Substitute care" means:

1195 (a) the placement of a minor in a family home, group care facility, or other placement
1196 outside the minor's own home, either at the request of a parent or other responsible relative, or
1197 upon court order, when it is determined that continuation of care in the minor's own home
1198 would be contrary to the minor's welfare;

1199 (b) services provided for a minor in the protective custody of the Division of Child and
1200 Family Services, or a minor in the temporary custody or custody of the Division of Child and
1201 Family Services, as those terms are defined in Section [80-2-102](#); or

1202 (c) the licensing and supervision of a substitute care facility.

1203 (89) "Supported" means a finding by the Division of Child and Family Services based

1204 on the evidence available at the completion of an investigation, and separate consideration of
1205 each allegation made or identified during the investigation, that there is a reasonable basis to
1206 conclude that abuse, neglect, or dependency occurred.

1207 (90) "Termination of parental rights" means the permanent elimination of all parental
1208 rights and duties, including residual parental rights and duties, by court order.

1209 (91) "Therapist" means:

1210 (a) an individual employed by a state division or agency for the purpose of conducting
1211 psychological treatment and counseling of a minor in the division's or agency's custody; or

1212 (b) any other individual licensed or approved by the state for the purpose of conducting
1213 psychological treatment and counseling.

1214 (92) "Threatened harm" means actions, inactions, or credible verbal threats, indicating
1215 that the child is at an unreasonable risk of harm or neglect.

1216 (93) "Ungovernable" means a child in conflict with a parent or guardian, and the
1217 conflict:

1218 (a) results in behavior that is beyond the control or ability of the child, or the parent or
1219 guardian, to manage effectively;

1220 (b) poses a threat to the safety or well-being of the child, the child's family, or others;
1221 or

1222 (c) results in the situations described in Subsections (93)(a) and (b).

1223 (94) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
1224 conclude that abuse, neglect, or dependency occurred.

1225 (95) "Unsupported" means a finding by the Division of Child and Family Services at
1226 the completion of an investigation, after the day on which the Division of Child and Family
1227 Services concludes the alleged abuse, neglect, or dependency is not without merit, that there is
1228 insufficient evidence to conclude that abuse, neglect, or dependency occurred.

1229 (96) "Validated risk and needs assessment" means an evidence-based tool that assesses
1230 a minor's risk of reoffending and a minor's criminogenic needs.

1231 (97) "Without merit" means a finding at the completion of an investigation by the
1232 Division of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or
1233 dependency did not occur, or that the alleged perpetrator was not responsible for the abuse,
1234 neglect, or dependency.

1235 (98) "Youth offender" means an individual who is:

1236 (a) at least 12 years old, but under 21 years old; and

1237 (b) committed by the juvenile court to the Division of Juvenile Justice Services for
1238 secure care under Sections 80-6-703 and 80-6-705.

1239 Section 16. Section 80-2-802 is amended to read:

1240 **80-2-802. Division child placing and adoption services -- Restrictions on**
1241 **placement of a child.**

1242 (1) Except as provided in Subsection (3), the division may provide adoption services
1243 and, as a licensed child-placing agency under Title 62A, Chapter 2, Licensure of Programs and
1244 Facilities, engage in child placing in accordance with this chapter, Chapter 2a, Removal and
1245 Protective Custody of a Child, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and
1246 Chapter 4, Termination and Restoration of Parental Rights.

1247 (2) The division shall base the division's decision for placement of an adoptable child
1248 for adoption on the best interest of the adoptable child.

1249 (3) The division may not:

1250 (a) in accordance with Subsection 62A-2-108.6(6), place a child for adoption, either
1251 temporarily or permanently, with an individual who does not qualify for adoptive placement
1252 under Sections 78B-6-102, 78B-6-117, and 78B-6-137;

1253 (b) consider a potential adoptive parent's willingness or unwillingness to enter a
1254 postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with
1255 a potential adoptive parent; or

1256 (c) except as required under [~~the Indian Child Welfare Act, 25 U.S.C. Secs. 1901~~
1257 ~~through 1963;~~] Chapter 2c, Native American Child and Family Protection Act, base the
1258 division's decision for placement of an adoptable child on the race, color, ethnicity, or national
1259 origin of either the child or the potential adoptive parent.

1260 (4) The division shall establish a rule in accordance with Title 63G, Chapter 3, Utah
1261 Administrative Rulemaking Act, providing that, subject to Subsection (3) and Section
1262 78B-6-117, priority of placement shall be provided to a family in which a couple is legally
1263 married under the laws of the state.

1264 (5) Subsections (3) and (4) do not limit the placement of a child with the child's
1265 biological or adoptive parent, a relative, or in accordance with [~~the Indian Child Welfare Act,~~

1266 ~~25 U.S.C. Sec. 1901 et seq.]~~ Chapter 2c, Native American Child and Family Protection Act.

1267 Section 17. Section **80-2-1006** is amended to read:

1268 **80-2-1006. Sharing of records with Indian tribe under agreement.**

1269 [H] Subject to Chapter 2c, Native American Child and Family Protection Act, if the
1270 division has a privacy agreement with an Indian tribe to protect the confidentiality of division
1271 records regarding an Indian child to the same extent that the division is required to protect
1272 other division records, the division shall cooperate with and share all appropriate information
1273 in the division's possession regarding an Indian child, the Indian child's parent or guardian, or a
1274 proposed placement for the Indian child with the Indian tribe that is affiliated with the Indian
1275 child.

1276 Section 18. Section **80-2a-101** is amended to read:

1277 **80-2a-101. Definitions.**

1278 (1) "Custody" means the same as that term is defined in Section [80-2-102](#).

1279 (2) "Division" means the Division of Child and Family Services created in Section
1280 [80-2-201](#).

1281 (3) "Friend" means an adult who:

1282 (a) has an established relationship with the child or a family member of the child; and

1283 (b) is not the natural parent of the child.

1284 (4) "Nonrelative" means an individual who is not a noncustodial parent or relative.

1285 (5) "Relative" means an adult who:

1286 (a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle,
1287 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling;

1288 (b) is the first cousin of the child's parent;

1289 (c) is a permanent guardian or natural parent of the child's sibling; or

1290 (d) in the case of a child who is an Indian child, is an extended family member as
1291 defined in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903]~~ Section [80-2c-101](#).

1292 (6) "Sibling" means the same as that term is defined in Section [80-2-102](#).

1293 (7) "Temporary custody" means the same as that term is defined in Section [80-2-102](#).

1294 Section 19. Section **80-2a-304** is amended to read:

1295 **80-2a-304. Removal of a child from foster family placement -- Procedural due**
1296 **process.**

1297 (1) (a) The Legislature finds that, except with regard to a child's natural parent or
1298 guardian, a foster family has a very limited but recognized interest in the foster family's
1299 familial relationship with a foster child who has been in the care and custody of the foster
1300 family and in making determinations regarding removal of a child from a foster home, the
1301 division may not dismiss the foster family as a mere collection of unrelated individuals.

1302 (b) The Legislature finds that children in the temporary custody and custody of the
1303 division are experiencing multiple changes in foster care placements with little or no
1304 documentation, and that numerous studies of child growth and development emphasize the
1305 importance of stability in foster care living arrangements.

1306 (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide
1307 procedural due process for a foster family before removal of a foster child from the foster
1308 family's home, regardless of the length of time the child has been in the foster family's home,
1309 unless removal is for the purpose of:

1310 (i) returning the child to the child's natural parent or guardian;

1311 (ii) immediately placing the child in an approved adoptive home;

1312 (iii) placing the child with a relative who obtained custody or asserted an interest in the
1313 child within the preference period described in Subsection [80-3-302\(7\)](#); or

1314 (iv) placing an Indian child in accordance with placement preferences and other
1315 requirements described in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1915~~] Section
1316 [80-2c-205](#).

1317 (2) (a) The division shall maintain and utilize due process procedures for removal of a
1318 foster child from a foster home, in accordance with the procedures and requirements of Title
1319 63G, Chapter 4, Administrative Procedures Act.

1320 (b) The procedures described in Subsection (2)(a) shall include requirements for:

1321 (i) personal communication with, and a written explanation of the reasons for the
1322 removal to, the foster parents before removal of the child; and

1323 (ii) an opportunity for foster parents to:

1324 (A) present the foster parents' information and concerns to the division; and

1325 (B) request a review, to be held before removal of the child, by a third party neutral
1326 fact finder or if the child is placed with the foster parents for a period of at least two years,
1327 request a review, to be held before removal of the child, by the juvenile court judge currently

1328 assigned to the child's case or, if the juvenile court judge currently assigned to the child's case
1329 is not available, another juvenile court judge.

1330 (c) If the division determines that there is a reasonable basis to believe that the child is
1331 in danger or that there is a substantial threat of danger to the health or welfare of the child, the
1332 division shall place the child in emergency foster care during the pendency of the procedures
1333 described in this Subsection (2), instead of making another foster care placement.

1334 (3) (a) If the division removes a child from a foster home based on the child's statement
1335 alone, the division shall initiate and expedite the processes described in Subsection (2).

1336 (b) The division may not take formal action with regard to the foster parent's license
1337 until after the processes described in Subsection (2), in addition to any other procedure or
1338 hearing required by law, are completed.

1339 (4) If a complaint is made to the division by a foster child against a foster parent, the
1340 division shall, within 30 business days after the day on which the complaint is received,
1341 provide the foster parent with information regarding the specific nature of the complaint, the
1342 time and place of the alleged incident, and who was alleged to have been involved.

1343 (5) If the division places a child in a foster home, the division shall provide the foster
1344 parents with:

1345 (a) notification of the requirements of this section;

1346 (b) a written description of the procedures enacted by the division under Subsection (2)
1347 and how to access the procedures; and

1348 (c) written notification of the foster parents' ability to petition the juvenile court
1349 directly for review of a decision to remove a foster child who, subject to Section [80-3-502](#), has
1350 been in the foster parents' custody for 12 months or longer.

1351 (6) This section does not apply to the removal of a child based on a foster parent's
1352 request for the removal.

1353 (7) It is unlawful for a person, with the intent to avoid compliance with the
1354 requirements of this section, to:

1355 (a) take action, or encourage another to take action, against the license of a foster
1356 parent; or

1357 (b) remove a child from a foster home before the child is placed with the foster parents
1358 for two years.

1359 (8) The division may not remove a foster child from a foster parent who is a relative of
1360 the child on the basis of the age or health of the foster parent without determining:

1361 (a) by clear and convincing evidence that the foster parent is incapable of caring for the
1362 foster child, if the alternative foster parent would not be another relative of the child; or

1363 (b) by a preponderance of the evidence that the foster parent is incapable of caring for
1364 the foster child, if the alternative foster parent would be another relative of the child.

1365 Section 20. Section **80-2c-101** is enacted to read:

1366 **CHAPTER 2c. NATIVE AMERICAN CHILD AND FAMILY PROTECTION ACT**

1367 **Part 1. General Provisions**

1368 **80-2c-101. Definitions.**

1369 As used in this chapter, except as may be specifically provided otherwise:

1370 (1) "Adoptive placement" means the permanent placement of an Indian child for
1371 adoption, including an action resulting in a final decree of adoption.

1372 (2) (a) "Child custody proceeding" means the following:

1373 (i) adoptive placement;

1374 (ii) foster care placement;

1375 (iii) preadoptive placement; and

1376 (iv) termination of parental rights.

1377 (b) "Child custody proceeding" does not include a placement based upon:

1378 (i) an act that, if committed by an adult, would be considered a crime; or

1379 (ii) an award, in a divorce proceeding, of custody to one of the parents.

1380 (3) "Extended family member" is a person who is:

1381 (a) 18 years old or older; and

1382 (b) the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or
1383 sister-in-law, niece or nephew, first or second cousin, or stepparent.

1384 (4) "Foster care placement" means an action removing an Indian child from the Indian
1385 child's parent or Indian custodian for temporary placement in a foster home or institution or the
1386 home of a guardian or conservator when the parent or Indian custodian cannot have the Indian
1387 child returned upon demand, but when parental rights have not been terminated.

1388 (5) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska
1389 Native and a member of a Regional Corporation as defined in 43 U.S.C. Sec. 1606.

- 1390 (6) "Indian child" means an unmarried person who is:
1391 (a) less than 18 years old;
1392 (b) the biological child when both biological parents are members of an Indian tribe;
1393 and
1394 (c) is either:
1395 (i) a member of an Indian tribe; or
1396 (ii) eligible for membership in an Indian tribe.
1397 (7) "Indian child's tribe" means:
1398 (a) the Indian tribe in which an Indian child is a member or eligible for membership; or
1399 (b) in the case of an Indian child who is a member of or eligible for membership in
1400 more than one Indian tribe, the Indian tribe with which the Indian child has the more significant
1401 contacts.
1402 (8) "Indian custodian" means any Indian person:
1403 (a) who has legal custody of an Indian child under tribal law or under state law; or
1404 (b) to whom temporary physical care, custody, and control has been transferred by the
1405 parent of the Indian child.
1406 (9) "Indian organization" means a group, association, partnership, corporation, or other
1407 legal entity owned or controlled by Indians, or a majority of whose members are Indians.
1408 (10) "Indian tribe" means an Indian tribe, band, nation, or other organized group or
1409 community of Indians recognized as eligible for the services provided to Indians by the
1410 Secretary of the Interior because of their status as Indians, including any Alaska Native village
1411 as defined in 43 U.S.C. Sec. 1602(c).
1412 (11) (a) "Parent" means a biological parent or parents of an Indian child or any Indian
1413 person who has lawfully adopted an Indian child, including adoptions under tribal law.
1414 (b) "Parent" does not include the unwed father when paternity has not been established.
1415 (12) "Preadoptive placement" means the temporary placement of an Indian child in a
1416 foster home or institution after the termination of parental rights, but before or in lieu of
1417 adoptive placement.
1418 (13) "Reservation" means Indian country as defined in 18 U.S.C. Sec. 1151 and any
1419 land, not covered under Indian country, title to which is either held by:
1420 (a) the United States in trust for the benefit of any Indian tribe or individual; or

1421 (b) any Indian tribe or individual subject to a restriction by the United States against
1422 alienation.

1423 (14) "Termination of parental rights" means an action resulting in the termination of the
1424 parent-child relationship.

1425 (15) "Tribal court" means a court:

1426 (a) with jurisdiction over a child custody proceeding; and

1427 (b) that is:

1428 (i) a Court of Indian Offenses;

1429 (ii) a court established and operated under the code or custom of an Indian tribe; or

1430 (iii) another administrative body of an Indian tribe that is vested with authority over a
1431 child custody proceeding.

1432 Section 21. Section **80-2c-102** is enacted to read:

1433 **80-2c-102. Effective date implementation.**

1434 This chapter, except Section [80-2c-202](#), may not affect a proceeding under state law for
1435 foster care placement, termination of parental rights, preadoptive placement, or adoptive
1436 placement that was initiated or completed before June 1, 2023, but shall apply to any
1437 subsequent proceeding in the same matter or subsequent proceedings affecting the custody or
1438 placement of the same Indian child.

1439 Section 22. Section **80-2c-103** is enacted to read:

1440 **80-2c-103. Severability.**

1441 If a provision of this chapter or the application of the provision to any person or
1442 circumstances is held invalid, the invalidity does not affect other provisions or applications of
1443 the chapter that can be given effect without the invalid provision or application, and to this end
1444 the provisions of this chapter are declared to be severable.

1445 Section 23. Section **80-2c-104** is enacted to read:

1446 **80-2c-104. Reconciliation with title.**

1447 (1) This title shall apply to actions brought under this chapter in state court.

1448 (2) This chapter shall be construed to give tribal parents and Indian children additional
1449 rights not expressly stated in the other chapters to this title, however, when this chapter is silent
1450 on an issue, the other chapters of this title shall apply.

1451 (3) The best interest of the child shall be applied at every stage in the child custody

1452 proceeding brought under this chapter and nothing in this chapter shall be construed to override
1453 the best interests of the child.

1454 Section 24. Section **80-2c-201** is enacted to read:

1455 **Part 2. Child Custody Proceeding**

1456 **80-2c-201. Indian tribe jurisdiction over child custody proceedings.**

1457 (1) (a) An Indian tribe has exclusive jurisdiction over a child custody proceeding
1458 involving an Indian child who resides or is domiciled within the reservation of the Indian tribe,
1459 except when jurisdiction is otherwise vested in the state by existing federal law.

1460 (b) When an Indian child is a ward of a tribal court, the Indian tribe retains exclusive
1461 jurisdiction, notwithstanding the residence or domicile of the Indian child.

1462 (2) In a state court proceeding for the foster care placement of, or termination of
1463 parental rights to, an Indian child, the Indian custodian of the Indian child and the Indian child's
1464 tribe have a right to intervene at any point in the proceeding.

1465 (3) The state shall give full faith and credit to the public acts, records, and judicial
1466 proceedings of any Indian tribe applicable to Indian child custody proceedings to the same
1467 extent that the state gives full faith and credit to the public acts, records, and judicial
1468 proceedings of any other entity.

1469 Section 25. Section **80-2c-202** is enacted to read:

1470 **80-2c-202. Pending court proceedings.**

1471 (1) (a) In an involuntary proceeding in a state court, when the court knows or has
1472 reason to know that an Indian child is involved, the party seeking the foster care placement of,
1473 or termination of parental rights to, an Indian child shall notify the parent or Indian custodian
1474 and the Indian child's tribe, by registered mail with return receipt requested, of the pending
1475 proceedings and of their right of intervention.

1476 (b) A state court may not hold a foster care placement or termination of parental rights
1477 proceeding until at least 10 days after receipt of notice by the parent or Indian custodian and the
1478 Indian tribe, except that the court shall, upon request grant up to 20 additional days to the
1479 parent, the Indian custodian, or the Indian tribe to prepare for the proceeding.

1480 (2) If the court determines that a parent or Indian custodian is an indigent individual as
1481 defined in Section [78B-22-102](#), the parent or Indian custodian has the right to court-appointed
1482 counsel in a removal, placement, or termination proceeding. The court may appoint counsel for

1483 the Indian child upon a finding that the appointment is in the best interest of the Indian child.

1484 (3) A party to a foster care placement or termination of parental rights proceeding
1485 under state law involving an Indian child has the right to examine a report or other document
1486 filed with the court upon which a decision with respect to the action may be based.

1487 (4) A party seeking to effect a foster care placement of, or termination of parental
1488 rights to, an Indian child under state law shall satisfy the court that active efforts have been
1489 made to provide remedial services and rehabilitative programs designed to prevent the breakup
1490 of the Indian family and that these efforts have proved unsuccessful.

1491 (5) A court may not order a foster care placement in a foster care proceeding in the
1492 absence of a determination, supported by clear and convincing evidence, including testimony
1493 of qualified expert witnesses, that the continued custody of the Indian child by the parent or
1494 Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

1495 (6) A court may not order termination of parental rights in a termination of parental
1496 rights proceeding in the absence of a determination, supported by evidence beyond a reasonable
1497 doubt, including testimony of qualified expert witnesses, that the continued custody of the
1498 Indian child by the parent or Indian custodian is likely to result in serious emotional or physical
1499 damage to the Indian child.

1500 Section 26. Section **80-2c-203** is enacted to read:

1501 **80-2c-203. Parental rights -- Voluntary termination.**

1502 (1) (a) When a parent or Indian custodian voluntarily consents to a foster care
1503 placement or to termination of parental rights, the consent is not valid unless the consent is:

1504 (i) executed in writing;

1505 (ii) recorded before a judge of a court of competent jurisdiction; and

1506 (iii) accompanied by the presiding judge's certificate that the terms and consequences
1507 of the consent were fully explained in detail and were fully understood by the parent or Indian
1508 custodian.

1509 (b) In addition to the certification under Subsection (1)(a), the court shall certify that
1510 either the parent or Indian custodian fully understood the explanation in English or that it was
1511 interpreted into a language that the parent or Indian custodian understood.

1512 (c) Consent given before, or within 10 days after, birth of the Indian child is not valid.

1513 (2) A parent or Indian custodian may withdraw consent to a foster care placement

1514 under state law at any time and, upon the withdrawal, the Indian child shall be returned to the
1515 parent or Indian custodian.

1516 (3) In a voluntary proceeding for termination of parental rights to an Indian child, a
1517 parent may withdraw the consent of the parent for any reason at any time before the entry of a
1518 final decree of termination and the Indian child shall be returned to the parent.

1519 (4) (a) After the entry of a final decree of adoption of an Indian child in a state court,
1520 the parent may withdraw consent to the adoption upon the grounds that consent was obtained
1521 through fraud or duress and may petition the court to vacate the final decree.

1522 (b) Upon a finding that consent to the adoption was obtained through fraud or duress,
1523 the court shall vacate the decree and return the Indian child to the parent.

1524 (c) An adoption that has been effective for at least two years may not be invalidated
1525 under this Subsection (4).

1526 Section 27. Section **80-2c-204** is enacted to read:

1527 **80-2c-204. Petition to court of competent jurisdiction to invalidate action upon**
1528 **showing of certain violations.**

1529 An Indian child who is the subject of an action for foster care placement or termination
1530 of parental rights under state law, any parent or Indian custodian from whose custody the
1531 Indian child was removed, and the Indian child's tribe may petition a court of competent
1532 jurisdiction to invalidate the action upon a showing that the action violated Section [80-2c-201](#),
1533 [80-2c-202](#), or [80-2c-203](#). The petition shall be filed no later than two years from the date of the
1534 violation of Section [80-2c-201](#), [80-2c-202](#), or [80-2c-203](#).

1535 Section 28. Section **80-2c-205** is enacted to read:

1536 **80-2c-205. Placement of Indian children.**

1537 (1) In an adoptive placement of an Indian child under state law, the court or agency
1538 effecting the placement shall give a preference, in the absence of good cause to the contrary, to
1539 a placement with:

1540 (a) a member of the Indian child's extended family as defined in Section [80-2c-101](#); or

1541 (b) the Indian child's extended family as defined by law or custom of the Indian child's
1542 tribe.

1543 (2) (a) A court or agency effecting the placement shall place an Indian child accepted
1544 for foster care or preadoptive placement in the least restrictive setting;

1545 (i) that most approximates a family; and
1546 (ii) in which the Indian child's special needs, if any, may be met.
1547 (b) In a foster care or preadoptive placement, a court or agency effecting the placement
1548 shall prefer, in the absence of good cause to the contrary, a placement with:
1549 (i) a member of the Indian child's extended family as defined in Section [80-2c-101](#);
1550 (ii) the Indian child's extended family as defined by law or custom of the Indian child's
1551 tribe;
1552 (iii) a foster home licensed by the Indian child's tribe;
1553 (iv) an Indian foster home licensed by an authorized non-Indian licensing authority; or
1554 (v) an institution for children approved by an Indian tribe or operated by an Indian
1555 organization that has a program suitable to meet the Indian child's needs.

1556 (3) When appropriate, the preference of the Indian child or parent shall be considered,
1557 except that when a consenting parent evidences a desire for anonymity, the court or agency
1558 shall give weight to the desire in applying the preferences.

1559 Section 29. Section **80-2c-206** is enacted to read:

1560 **80-2c-206. Return to custody.**

1561 (1) (a) Subject to Subsection (1)(b), when a final decree of adoption of an Indian child
1562 is vacated or set aside or the adoptive parents voluntarily consent to the termination of their
1563 parental rights to the Indian child, a biological parent or prior Indian custodian may petition for
1564 return of custody and the court shall grant the petition unless there is a showing that the return
1565 of custody is not in the best interests of the Indian child.

1566 (b) The return of custody shall occur no later than eight months from the day on which
1567 the Indian child is placed with the adoptive parents.

1568 (2) Whenever an Indian child is removed from a foster care home or institution for the
1569 purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in
1570 accordance with this chapter, except in the case when an Indian child is being returned to the
1571 parent or Indian custodian from whose custody the Indian child was originally removed.

1572 Section 30. Section **80-2c-207** is enacted to read:

1573 **80-2c-207. Tribal affiliation information and other information for protection of**
1574 **rights from tribal relationship -- Application of subject of adoptive placement --**
1575 **Disclosure by court.**

1576 Upon application by an Indian individual who is 18 years old or older and who was the
1577 subject of an adoptive placement, the court that entered the final decree shall inform the
1578 individual of the tribal affiliation, if any, of the individual's biological parents and provide such
1579 other information as may be necessary to protect any rights flowing from the individual's tribal
1580 relationship.

1581 Section 31. Section **80-2c-208** is enacted to read:

1582 **80-2c-208. Agreements between the state and Indian tribes.**

1583 (1) The state, through the state's executive branch, and Indian tribes are authorized to
1584 enter into agreements with each other respecting care and custody of Indian children and
1585 jurisdiction over child custody proceedings, including agreements that provide for:

1586 (a) the orderly transfer of jurisdiction on a case-by-case basis; or

1587 (b) concurrent jurisdiction between the state and Indian tribes.

1588 (2) An agreement under this section may be revoked by either party upon 180 days
1589 written notice to the other party. The revocation does not affect any action or proceeding over
1590 which a court has already assumed jurisdiction, unless the agreement provides otherwise.

1591 (3) An agreement under this section shall be consistent with this chapter. If there is a
1592 conflict between an agreement and this chapter, this chapter governs.

1593 Section 32. Section **80-2c-209** is enacted to read:

1594 **80-2c-209. Improper removal of Indian child from custody -- Declination of**
1595 **jurisdiction -- Forthwith return of Indian child -- Danger exception.**

1596 When a petitioner in an Indian child custody proceeding before a state court has
1597 improperly removed the Indian child from custody of the parent or Indian custodian or has
1598 improperly retained custody after a visit or other temporary relinquishment of custody, the
1599 court shall decline jurisdiction over the petition, and forthwith return the Indian child to the
1600 Indian child's parent or Indian custodian unless returning the Indian child to the Indian child's
1601 parent or Indian custodian would subject the Indian child to a substantial and immediate danger
1602 or threat of danger.

1603 Section 33. Section **80-2c-210** is enacted to read:

1604 **80-2c-210. State or federal standard applicable to protect rights of parent or**
1605 **Indian custodian of Indian child.**

1606 The state, the state's courts, and the state's agencies shall comply with a valid federal

1607 statute, rule, or regulation governing a child custody proceeding of Indian children that
1608 preempts state law.

1609 Section 34. Section **80-2c-211** is enacted to read:

1610 **80-2c-211. Emergency removal or placement of Indian child -- Termination --**
1611 **Appropriate action.**

1612 (1) This chapter may not be construed to prevent the emergency removal of an Indian
1613 child who is a resident of or is domiciled on a reservation, but temporarily located off the
1614 reservation, from the Indian child's parent or Indian custodian or the emergency placement of
1615 the Indian child in a foster home or institution, under applicable state law, to prevent imminent
1616 physical or emotional damage or harm to the Indian child.

1617 (2) A state authority, official, or agency involved in an emergency action under this
1618 section shall:

1619 (a) ensure that the emergency removal or placement terminates immediately when the
1620 removal or placement is no longer necessary to prevent imminent physical or emotional
1621 damage or harm to the Indian child; and

1622 (b) expeditiously initiate a child custody proceeding, subject to this part.

1623 Section 35. Section **80-2c-301** is enacted to read:

1624 **Part 3. Recordkeeping and Information Availability**

1625 **80-2c-301. Information maintenance and availability.**

1626 (1) A state court entering a final decree or order in an Indian child adoptive placement
1627 after June 1, 2023, shall maintain a copy of the decree or order together with other information
1628 as may be necessary to show:

1629 (a) the name and tribal affiliation of the Indian child;

1630 (b) the names and addresses of the biological parents;

1631 (c) the names and addresses of the adoptive parents; and

1632 (d) the identity of any agency having files or information relating to the adoptive
1633 placement.

1634 (2) (a) When the court records contain an affidavit of the biological parent or parents
1635 that their identity remain confidential, the court shall include the affidavit with the information
1636 listed in Subsection (1).

1637 (b) The courts shall ensure that the confidentiality of the information described in

1638 Subsection (2)(a) is maintained.

1639 (3) (a) Upon the request of the adopted Indian individual who is 18 years old or older,
1640 the adoptive or foster parents of the Indian individual, or an Indian tribe, the state shall disclose
1641 information as may be necessary for:

1642 (i) the enrollment of the Indian individual in the Indian tribe in which the Indian
1643 individual may be eligible for enrollment; or

1644 (ii) determining any rights or benefits associated with that membership.

1645 (b) A state court, an agency, or individual participating in the adoption or placement
1646 shall provide to an Indian tribe information about the Indian child's parentage:

1647 (i) upon a request from the Indian tribe who is seeking to determine enrollment
1648 eligibility; and

1649 (ii) when the documents relating to an Indian child contain an affidavit from the
1650 biological parent or parents requesting anonymity.

1651 (4) An entity or individual who provides confidential information under this section
1652 shall inform the individual or group receiving the information that the information received is
1653 to remain confidential.

1654 Section 36. Section **80-3-102** is amended to read:

1655 **80-3-102. Definitions.**

1656 As used in this chapter:

1657 (1) "Abuse, neglect, or dependency petition" means a petition filed in accordance with
1658 this chapter to commence proceedings in a juvenile court alleging that a child is:

1659 (a) abused;

1660 (b) neglected; or

1661 (c) dependent.

1662 (2) "Custody" means the same as that term is defined in Section [80-2-102](#).

1663 (3) "Division" means the Division of Child and Family Services created in Section
1664 [80-2-201](#).

1665 (4) "Friend" means an adult who:

1666 (a) has an established relationship with the child or a family member of the child; and

1667 (b) is not the natural parent of the child.

1668 (5) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or

1669 grandchild.

1670 (6) "Relative" means an adult who:

1671 (a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle,
1672 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling;

1673 (b) is a first cousin of the child's parent;

1674 (c) is a permanent guardian or natural parent of the child's sibling; or

1675 (d) in the case of a child who is an Indian child, is an extended family member as
1676 defined in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903~~] [Section 80-2c-101](#).

1677 (7) "Sibling" means the same as that term is defined in [Section 80-2-102](#).

1678 (8) "Sibling visitation" means the same as that term is defined in [Section 80-2-102](#).

1679 (9) "Temporary custody" means the same as that term is defined in [Section 80-2-102](#).

1680 Section 37. Section **80-3-302** is amended to read:

1681 **80-3-302. Shelter hearing -- Placement of a child.**

1682 (1) As used in this section:

1683 (a) "Natural parent," notwithstanding [Section 80-1-102](#), means:

1684 (i) a biological or adoptive mother of the child;

1685 (ii) an adoptive father of the child; or

1686 (iii) a biological father of the child who:

1687 (A) was married to the child's biological mother at the time the child was conceived or
1688 born; or

1689 (B) has strictly complied with [Sections 78B-6-120](#) through [78B-6-122](#), before removal
1690 of the child or voluntary surrender of the child by the custodial parent.

1691 (b) "Natural parent" includes the individuals described in Subsection (1)(a) regardless
1692 of whether the child has been or will be placed with adoptive parents or whether adoption has
1693 been or will be considered as a long-term goal for the child.

1694 (2) (a) At the shelter hearing, if the juvenile court orders that a child be removed from
1695 the custody of the child's parent in accordance with [Section 80-3-301](#), the juvenile court shall
1696 first determine whether there is another natural parent with whom the child was not residing at
1697 the time the events or conditions that brought the child within the juvenile court's jurisdiction
1698 occurred, who desires to assume custody of the child.

1699 (b) Subject to Subsection (7), if another natural parent requests custody under

1700 Subsection (2)(a), the juvenile court shall place the child with that parent unless the juvenile
1701 court finds that the placement would be unsafe or otherwise detrimental to the child.

1702 (c) The juvenile court:

1703 (i) shall make a specific finding regarding the fitness of the parent described in
1704 Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement;

1705 (ii) shall, at a minimum, order the division to visit the parent's home, comply with the
1706 criminal background check provisions described in Section 80-3-305, and check the
1707 Management Information System for any previous reports of abuse or neglect received by the
1708 division regarding the parent at issue;

1709 (iii) may order the division to conduct any further investigation regarding the safety
1710 and appropriateness of the placement; and

1711 (iv) may place the child in the temporary custody of the division, pending the juvenile
1712 court's determination regarding the placement.

1713 (d) The division shall report the division's findings from an investigation under
1714 Subsection (2)(c), regarding the child in writing to the juvenile court.

1715 (3) If the juvenile court orders placement with a parent under Subsection (2):

1716 (a) the child and the parent are under the continuing jurisdiction of the juvenile court;

1717 (b) the juvenile court may order:

1718 (i) that the parent take custody subject to the supervision of the juvenile court; and

1719 (ii) that services be provided to the parent from whose custody the child was removed,
1720 the parent who has assumed custody, or both; and

1721 (c) the juvenile court shall order reasonable parent-time with the parent from whose
1722 custody the child was removed, unless parent-time is not in the best interest of the child.

1723 (4) The juvenile court shall periodically review an order described in Subsection (3) to
1724 determine whether:

1725 (a) placement with the parent continues to be in the child's best interest;

1726 (b) the child should be returned to the original custodial parent;

1727 (c) the child should be placed with a relative under Subsections (6) through (9); or

1728 (d) the child should be placed in the temporary custody of the division.

1729 (5) (a) Legal custody of the child is not affected by an order entered under Subsection
1730 (2) or (3).

1731 (b) To affect a previous court order regarding legal custody, the party shall petition the
1732 court for modification of legal custody.

1733 (6) Subject to Subsection (7), if, at the time of the shelter hearing, a child is removed
1734 from the custody of the child's parent and is not placed in the custody of the child's other
1735 parent, the juvenile court:

1736 (a) shall, at that time, determine whether there is a relative or a friend who is able and
1737 willing to care for the child, which may include asking a child, who is of sufficient maturity to
1738 articulate the child's wishes in relation to a placement, if there is a relative or friend with whom
1739 the child would prefer to reside;

1740 (b) may order the division to conduct a reasonable search to determine whether there
1741 are relatives or friends who are willing and appropriate, in accordance with the requirements of
1742 this chapter, Chapter 2, Child Welfare Services, and Chapter 2a, Removal and Protective
1743 Custody of a Child, for placement of the child;

1744 (c) shall order the parents to cooperate with the division, within five working days, to
1745 provide information regarding relatives or friends who may be able and willing to care for the
1746 child; and

1747 (d) may order that the child be placed in the temporary custody of the division pending
1748 the determination under Subsection (6)(a).

1749 (7) (a) (i) Subject to Subsections (7)(b) through (d) and if the provisions of this section
1750 are satisfied, the division and the juvenile court shall give preferential consideration to a
1751 relative's or a friend's request for placement of the child, if the placement is in the best interest
1752 of the child.

1753 (ii) For purposes of the preferential consideration under Subsection (7)(a)(i), there is a
1754 rebuttable presumption that placement of the child with a relative is in the best interest of the
1755 child.

1756 (b) (i) The preferential consideration that the juvenile court or division initially grants a
1757 relative or friend under Subsection (7)(a)(i) expires 120 days after the day on which the shelter
1758 hearing occurs.

1759 (ii) After the day on which the time period described in Subsection (7)(b)(i) expires,
1760 the division or the juvenile court may not grant preferential consideration to a relative or friend,
1761 who has not obtained custody or asserted an interest in the child.

1762 (iii) This Subsection (7)(b) does not apply to a preference made under Chapter 2c,
1763 Native American Child and Family Protection Act.

1764 (c) (i) The preferential consideration that the juvenile court initially grants a natural
1765 parent under Subsection (2) is limited after 120 days after the day on which the shelter hearing
1766 occurs.

1767 (ii) After the time period described in Subsection (7)(c)(i), the juvenile court shall base
1768 the juvenile court's custody decision on the best interest of the child.

1769 (d) Before the day on which the time period described in Subsection (7)(c)(i) expires,
1770 the following order of preference shall be applied when determining the individual with whom
1771 a child will be placed, provided that the individual is willing and able to care for the child:

1772 (i) a noncustodial parent of the child;

1773 (ii) a relative of the child;

1774 (iii) subject to Subsection (7)(e), a friend if the friend is a licensed foster parent; and

1775 (iv) other placements that are consistent with the requirements of law.

1776 (e) In determining whether a friend is a willing, able, and appropriate placement for a
1777 child, the juvenile court or the division:

1778 (i) subject to Subsections (7)(e)(ii) through (iv), shall consider the child's preferences
1779 or level of comfort with the friend;

1780 (ii) is required to consider no more than one friend designated by each parent of the
1781 child and one friend designated by the child if the child is of sufficient maturity to articulate the
1782 child's wishes in relation to a placement;

1783 (iii) may limit the number of designated friends to two, one of whom shall be a friend
1784 designated by the child if the child is of sufficient maturity to articulate the child's wishes in
1785 relation to a placement; and

1786 (iv) shall give preference to a friend designated by the child if:

1787 (A) the child is of sufficient maturity to articulate the child's wishes; and

1788 (B) the basis for removing the child under Section 80-3-301 is sexual abuse of the
1789 child.

1790 (f) (i) If a parent of the child or the child, if the child is of sufficient maturity to
1791 articulate the child's wishes in relation to a placement, is not able to designate a friend who is a
1792 licensed foster parent for placement of the child, but is able to identify a friend who is willing

1793 to become licensed as a foster parent, the department shall fully cooperate to expedite the
1794 licensing process for the friend.

1795 (ii) If the friend described in Subsection (7)(f)(i) becomes licensed as a foster parent
1796 within the time frame described in Subsection (7)(b), the juvenile court shall determine
1797 whether it is in the best interest of the child to place the child with the friend.

1798 (8) (a) If a relative or friend who is willing to cooperate with the child's permanency
1799 goal is identified under Subsection (6)(a), the juvenile court:

1800 (i) shall make a specific finding regarding:

1801 (A) the fitness of that relative or friend as a placement for the child; and

1802 (B) the safety and appropriateness of placement with the relative or friend; and

1803 (ii) may not consider a request for guardianship or adoption of the child by an
1804 individual who is not a relative of the child, or prevent the division from placing the child in
1805 the custody of a relative of the child in accordance with this part, until after the day on which
1806 the juvenile court makes the findings under Subsection (8)(a)(i).

1807 (b) In making the finding described in Subsection (8)(a), the juvenile court shall, at a
1808 minimum, order the division to:

1809 (i) if the child may be placed with a relative, conduct a background check that includes:

1810 (A) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
1811 background check of the relative;

1812 (B) a completed search, relating to the relative, of the Management Information
1813 System; and

1814 (C) a background check that complies with the criminal background check provisions
1815 described in Section 80-3-305, of each nonrelative of the child who resides in the household
1816 where the child may be placed;

1817 (ii) if the child will be placed with a noncustodial parent, complete a background check
1818 that includes:

1819 (A) the background check requirements applicable to an emergency placement with a
1820 noncustodial parent that are described in Subsections 80-2a-301(4) and (6);

1821 (B) a completed search, relating to the noncustodial parent of the child, of the
1822 Management Information System; and

1823 (C) a background check that complies with the criminal background check provisions

1824 described in Section 80-3-305, of each nonrelative of the child who resides in the household
1825 where the child may be placed;

1826 (iii) if the child may be placed with an individual other than a noncustodial parent or a
1827 relative, conduct a criminal background check of the individual, and each adult that resides in
1828 the household where the child may be placed, that complies with the criminal background
1829 check provisions described in Section 80-3-305;

1830 (iv) visit the relative's or friend's home;

1831 (v) check the Management Information System for any previous reports of abuse or
1832 neglect regarding the relative or friend at issue;

1833 (vi) report the division's findings in writing to the juvenile court; and

1834 (vii) provide sufficient information so that the juvenile court may determine whether:

1835 (A) the relative or friend has any history of abusive or neglectful behavior toward other
1836 children that may indicate or present a danger to this child;

1837 (B) the child is comfortable with the relative or friend;

1838 (C) the relative or friend recognizes the parent's history of abuse and is committed to
1839 protect the child;

1840 (D) the relative or friend is strong enough to resist inappropriate requests by the parent
1841 for access to the child, in accordance with court orders;

1842 (E) the relative or friend is committed to caring for the child as long as necessary; and

1843 (F) the relative or friend can provide a secure and stable environment for the child.

1844 (c) The division may determine to conduct, or the juvenile court may order the division
1845 to conduct, any further investigation regarding the safety and appropriateness of the placement
1846 described in Subsection (8)(a).

1847 (d) The division shall complete and file the division's assessment regarding placement
1848 with a relative or friend under Subsections (8)(a) and (b) as soon as practicable, in an effort to
1849 facilitate placement of the child with a relative or friend.

1850 (9) (a) The juvenile court may place a child described in Subsection (2)(a) in the
1851 temporary custody of the division, pending the division's investigation under Subsection (8),
1852 and the juvenile court's determination regarding the appropriateness of the placement.

1853 (b) The juvenile court shall ultimately base the juvenile court's determination regarding
1854 the appropriateness of a placement with a relative or friend on the best interest of the child.

1855 (10) If a juvenile court places a child described in Subsection (6) with the child's
1856 relative or friend:

1857 (a) the juvenile court shall:

1858 (i) order the relative or friend take custody, subject to the continuing supervision of the
1859 juvenile court;

1860 (ii) provide for reasonable parent-time with the parent or parents from whose custody
1861 the child is removed, unless parent-time is not in the best interest of the child; and

1862 (iii) conduct a periodic review no less often than every six months, to determine
1863 whether:

1864 (A) placement with a relative or friend continues to be in the child's best interest;

1865 (B) the child should be returned home; or

1866 (C) the child should be placed in the custody of the division;

1867 (b) the juvenile court may enter an order:

1868 (i) requiring the division to provide necessary services to the child and the child's
1869 relative or friend, including the monitoring of the child's safety and well-being; or

1870 (ii) that the juvenile court considers necessary for the protection and best interest of the
1871 child; and

1872 (c) the child and the relative or friend in whose custody the child is placed are under
1873 the continuing jurisdiction of the juvenile court;

1874 (11) No later than 12 months after the day on which the child is removed from the
1875 home, the juvenile court shall schedule a hearing for the purpose of entering a permanent order
1876 in accordance with the best interest of the child.

1877 (12) The time limitations described in Section 80-3-406, with regard to reunification
1878 efforts, apply to a child placed with a previously noncustodial parent under Subsection (2) or
1879 with a relative or friend under Subsection (6).

1880 (13) (a) If the juvenile court awards temporary custody of a child to the division, and
1881 the division places the child with a relative, the division shall:

1882 (i) conduct a criminal background check of the relative that complies with the criminal
1883 background check provisions described in Section 80-3-305; and

1884 (ii) if the results of the criminal background check described in Subsection (13)(a)(i)
1885 would prohibit the relative from having direct access to the child under Section 62A-2-120, the

1886 division shall:

1887 (A) take the child into physical custody; and

1888 (B) within three days, excluding weekends and holidays, after the day on which the
1889 child is taken into physical custody under Subsection (13)(a)(ii)(A), give written notice to the
1890 juvenile court, and all parties to the proceedings, of the division's action.

1891 (b) Subsection (13)(a) does not prohibit the division from placing a child with a
1892 relative, pending the results of the background check described in Subsection (13)(a) on the
1893 relative.

1894 (14) If the juvenile court orders that a child be removed from the custody of the child's
1895 parent and does not award custody and guardianship to another parent, relative, or friend under
1896 this section, the juvenile court shall order that the child be placed in the temporary custody of
1897 the division, to proceed to adjudication and disposition and to be provided with care and
1898 services in accordance with this chapter, Chapter 2, Child Welfare Services, and Chapter 2a,
1899 Removal and Protective Custody of a Child.

1900 (15) (a) If a child reenters the temporary custody or the custody of the division and is
1901 placed in foster care, the division shall:

1902 (i) notify the child's former foster parents; and

1903 (ii) upon a determination of the former foster parents' willingness and ability to safely
1904 and appropriately care for the child, give the former foster parents preference for placement of
1905 the child.

1906 (b) If, after the shelter hearing, the child is placed with an individual who is not a
1907 parent, a relative, a friend, or a former foster parent of the child, priority shall be given to a
1908 foster placement with a married couple, unless it is in the best interests of the child to place the
1909 child with a single foster parent.

1910 (16) In determining the placement of a child, the juvenile court and the division may
1911 not take into account, or discriminate against, the religion of an individual with whom the child
1912 may be placed, unless the purpose of taking religion into account is to place the child with an
1913 individual or family of the same religion as the child.

1914 (17) If the juvenile court's decision differs from a child's express wishes if the child is
1915 of sufficient maturity to articulate the wishes in relation to the child's placement, the juvenile
1916 court shall make findings explaining why the juvenile court's decision differs from the child's

1917 wishes.

1918 (18) This section does not guarantee that an identified relative or friend will receive
1919 custody of the child.

1920 Section 38. Section **80-3-502** is amended to read:

1921 **80-3-502. Review of foster care removal -- Foster parent's standing.**

1922 (1) With regard to a minor in the custody of the division who is the subject of a petition
1923 alleging abuse, neglect, or dependency, and who has been placed in foster care with a foster
1924 family, the Legislature finds that:

1925 (a) except with regard to the minor's natural parents, a foster family has a very limited
1926 but recognized interest in its familial relationship with the minor; and

1927 (b) minors in the custody of the division are experiencing multiple changes in foster
1928 care placements with little or no documentation, and that numerous studies of child growth and
1929 development emphasize the importance of stability in foster care living arrangements.

1930 (2) For the reasons described in Subsection (1), the Legislature finds that, except with
1931 regard to the minor's natural parents, procedural due process protections must be provided to a
1932 foster family prior to removal of a foster minor from the foster home.

1933 (3) (a) A foster parent who has had a foster minor in the foster parent's home for 12
1934 months or longer may petition the juvenile court for a review and determination of the
1935 appropriateness of a decision by the division to remove the minor from the foster home, unless
1936 the removal was for the purpose of:

1937 (i) returning the minor to the minor's natural parent or legal guardian;

1938 (ii) immediately placing the minor in an approved adoptive home;

1939 (iii) placing the minor with a relative who obtained custody or asserted an interest in
1940 the minor within the preference period described in Subsection [80-3-302\(8\)](#); or

1941 (iv) placing an Indian child in accordance with placement preferences and other
1942 requirements described in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1915~~] Section
1943 [80-2c-205](#).

1944 (b) The foster parent may petition the juvenile court under this section without
1945 exhausting administrative remedies within the division.

1946 (c) The juvenile court may order the division to place the minor in a specified home,
1947 and shall base the juvenile court's determination on the best interest of the minor.

1948 (4) The requirements of this section do not apply to the removal of a minor based on a
1949 foster parent's request for that removal.

1950 Section 39. Section **80-4-305** is amended to read:

1951 **80-4-305. Court disposition of child upon termination of parental rights --**

1952 **Posttermination reunification.**

1953 (1) Except as provided in Subsection (7), as used in this section, "relative" means:

1954 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
1955 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;
1956 and

1957 (b) in the case of a child who is an Indian child, an extended family member as defined
1958 in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903~~] [Section 80-2c-101](#).

1959 (2) Upon entry of an order under this chapter, the juvenile court may:

1960 (a) place the child in the legal custody and guardianship of a child-placing agency or
1961 the division for adoption; or

1962 (b) make any other disposition of the child authorized under Section [80-3-405](#) .

1963 (3) Subject to Subsections (4) and (6), the division shall place all adoptable children
1964 placed in the custody of the division for adoption.

1965 (4) If the parental rights of all parents of an adoptable child placed in the custody of the
1966 division are terminated and a suitable adoptive placement is not already available, the juvenile
1967 court:

1968 (a) shall determine whether there is a relative who desires to adopt the child;

1969 (b) may order the division to conduct a reasonable search to determine whether there is
1970 a relative who is willing to adopt the child; and

1971 (c) shall, if a relative desires to adopt the child:

1972 (i) make a specific finding regarding the fitness of the relative to adopt the child; and

1973 (ii) place the child for adoption with the relative unless the juvenile court finds that
1974 adoption by the relative is not in the best interest of the child.

1975 (5) If an individual who is not a relative of the child desires to adopt the child, the
1976 juvenile court shall, before entering an order for adoption of the child, determine whether due
1977 weight was given to the relative's preferential consideration under Subsection

1978 [80-3-302\(7\)\(a\)\(i\)](#).

1979 (6) This section does not guarantee that a relative will be permitted to adopt the child.

1980 (7) A parent whose rights are terminated under this chapter, or a relative of the child, as
1981 defined by Section 80-3-102, may petition for guardianship of the child if:

1982 (a) (i) following an adoptive placement, the child's adoptive parent returns the child to
1983 the custody of the division; or

1984 (ii) the child is in the custody of the division for one year following the day on which
1985 the parent's rights were terminated, and no permanent placement has been found or is likely to
1986 be found; and

1987 (b) reunification with the child's parent, or guardianship by the child's relative, is in the
1988 best interest of the child.