

1 **EMERGENCY PLACEMENT OF CHILDREN**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Johnny Anderson**

5 Senate Sponsor: Gene Davis

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to the emergency placement of a child who has been
10 removed by the Division of Child and Family Services.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ permits the Division of Child and Family Services (the division) to place a child in
14 an emergency placement with a friend, designated by the custodial parent or
15 guardian, who is not a licensed foster parent;

16 ▶ modifies the definition of "relative" as it relates to abuse, neglect, and dependency
17 proceedings;

18 ▶ permits the division to place a child in an emergency placement with an adult who
19 is an adoptive parent of the child's sibling; and

20 ▶ permits the court to award custody of a child with an adult who is an adoptive
21 parent of a child's sibling.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **62A-4a-209**, as last amended by Laws of Utah 2013, Chapter 416

29 [78A-6-307](#), as last amended by Laws of Utah 2013, Chapter 416

30

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

32 Section 1. Section **62A-4a-209** is amended to read:

33 **62A-4a-209. Emergency placement.**

34 (1) As used in this section:

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

36 ~~[(a)]~~ (b) "Nonrelative" means an individual, other than a noncustodial parent or a
37 relative.

38 ~~[(b)]~~ (c) "Relative" ~~[is as]~~ means the same as that term is defined in Subsection

39 [78A-6-307\(1\)](#)~~[(b)]~~(c).

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

41 [62A-4a-202.1\(4\)\(b\)\(ii\)](#) when:

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

43 (i) the child's home is unsafe;

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

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

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

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

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

54 (c) the person described in Subsection (2)(b) agrees to care for the child on an
55 emergency basis under the following conditions:

- 56 (i) the person meets the criteria for an emergency placement under Subsection (3);
- 57 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
- 58 with the child until after the shelter hearing unless authorized by the division in writing;
- 59 (iii) the person agrees to contact law enforcement and the division if the custodial
- 60 parent or guardian attempts to make unauthorized contact with the child;
- 61 (iv) the person agrees to allow the division and the child's guardian ad litem to have
- 62 access to the child;
- 63 (v) the person has been informed and understands that the division may continue to
- 64 search for other possible placements for long-term care, if needed;
- 65 (vi) the person is willing to assist the custodial parent or guardian in reunification
- 66 efforts at the request of the division, and to follow all court orders; and
- 67 (vii) the child is comfortable with the person.
- 68 (3) Except as otherwise provided in Subsection (5), before the division places a child
- 69 in an emergency placement, the division:
 - 70 (a) may request the name of a reference and may contact the reference to determine the
 - 71 answer to the following questions:
 - 72 (i) would the person identified as a reference place a child in the home of the
 - 73 emergency placement; and
 - 74 (ii) are there any other relatives or friends to consider as a possible emergency or
 - 75 long-term placement for the child;
 - 76 (b) shall have the custodial parent or guardian sign an emergency placement agreement
 - 77 form during the investigation;
 - 78 (c) (i) if the emergency placement will be with a relative of the child, shall comply with
 - 79 the background check provisions described in Subsection (7); or
 - 80 (ii) if the emergency placement will be with a person other than a noncustodial parent
 - 81 or a relative, shall comply with the criminal background check provisions described in Section
 - 82 [78A-6-308](#) for adults living in the household where the child will be placed;

83 (d) shall complete a limited home inspection of the home where the emergency
84 placement is made; and

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

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

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

90 (ii) a relative of the child;

91 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or
92 guardian of the child~~[, if the friend is a licensed foster parent]~~; and

93 (iv) a shelter facility, former foster placement, or other foster placement designated by
94 the division.

95 (b) Unless the division agrees otherwise, the custodial parent or guardian described in
96 Subsection (4)(a)(iii) may designate up to two friends as a potential emergency placement.

97 (5) (a) The division may, pending the outcome of the investigation described in
98 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial
99 parent if, based on a limited investigation, prior to making the emergency placement, the
100 division:

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

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

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

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

109 (c) Before, or within one day, excluding weekends and holidays, after a child is placed

110 in an emergency placement with the noncustodial parent of the child, the division shall conduct
111 a limited:

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

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

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

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

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

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

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

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

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

124 (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
125 background check; and

126 (ii) a completed search of the Management Information System described in Section
127 62A-4a-1003.

128 (b) The division shall determine whether a person passes the background check
129 described in this Subsection (7) pursuant to the provisions of Subsections 62A-2-120(2), (3),
130 and (8).

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

133 Section 2. Section 78A-6-307 is amended to read:

134 **78A-6-307. Shelter hearing -- Placement -- DCFS custody.**

135 (1) As used in this section:

136 (a) "Friend" means an adult the child knows and is comfortable with.

137 ~~[(a)]~~ (b) (i) "Natural parent," notwithstanding the provisions of Section 78A-6-105,

138 means:

139 (A) a biological or adoptive mother;

140 (B) an adoptive father; or

141 (C) a biological father who:

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

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

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

150 ~~[(b)]~~ (c) "Relative" means:

151 (i) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle,
152 brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or a first
153 cousin of the child's parent; ~~[and]~~

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

155 ~~[(ii)]~~ (iii) in the case of a child defined as an "Indian" under the Indian Child Welfare
156 Act, 25 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by
157 that statute.

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

163 (b) If another natural parent requests custody under Subsection (2)(a), the court shall

164 place the child with that parent unless it finds that the placement would be unsafe or otherwise
165 detrimental to the child.

166 (c) The provisions of this Subsection (2) are limited by the provisions of Subsection
167 (18)(b).

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

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

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

177 (iv) The division shall report its findings in writing to the court.

178 (v) The court may place the child in the temporary custody of the division, pending its
179 determination regarding that placement.

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

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

182 (b) the court may order:

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

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

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

188 (4) The court shall periodically review an order described in Subsection (3) to
189 determine whether:

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

- 191 (b) the child should be returned to the original custodial parent;
- 192 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)
- 193 through (12); or
- 194 (d) the child should be placed in the custody of the division.
- 195 (5) The time limitations described in Section [78A-6-312](#) with regard to reunification
- 196 efforts, apply to children placed with a previously noncustodial parent in accordance with
- 197 Subsection (2).
- 198 (6) Legal custody of the child is not affected by an order entered under Subsection (2)
- 199 or (3). In order to affect a previous court order regarding legal custody, the party must petition
- 200 that court for modification of the order.
- 201 (7) If, at the time of the shelter hearing, a child is removed from the custody of the
- 202 child's parent and is not placed in the custody of the child's other parent, the court:
- 203 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),
- 204 there is a relative of the child or a friend of a parent of the child who is able and willing to care
- 205 for the child;
- 206 (b) may order the division to conduct a reasonable search to determine whether, subject
- 207 to Subsections (18)(c) through (e), there are relatives of the child or friends of a parent of the
- 208 child who are willing and appropriate, in accordance with the requirements of this part and
- 209 Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child;
- 210 (c) shall order the parents to cooperate with the division, within five working days, to,
- 211 subject to Subsections (18)(c) through (e), provide information regarding relatives of the child
- 212 or friends who may be able and willing to care for the child; and
- 213 (d) may order that the child be placed in the custody of the division pending the
- 214 determination under Subsection (7)(a).
- 215 (8) This section may not be construed as a guarantee that an identified relative or friend
- 216 will receive custody of the child.
- 217 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given

218 to a relative's or a friend's request for placement of the child, if it is in the best interest of the
 219 child, and the provisions of this section are satisfied.

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

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

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

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

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

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

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

234 (C) a background check that complies with the criminal background check provisions
 235 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
 236 62A-4a-209(1)(~~a~~)(b), of the child who resides in the household where the child may be
 237 placed;

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

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

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

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

245 described in Section 78A-6-308, of each nonrelative, as defined in Subsection
246 62A-4a-209(1)(~~a~~)(b), of the child who resides in the household where the child may be
247 placed;

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

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

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

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

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

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

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

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

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

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

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

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

268 (c) The division shall complete and file its assessment regarding placement with a
269 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
270 relative or friend.

271 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary

272 custody of the division, pending the division's investigation pursuant to Subsections (10) and
273 (11), and the court's determination regarding the appropriateness of that placement.

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

276 (13) When the court awards custody and guardianship of a child with a relative or
277 friend:

278 (a) the court shall order that:

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

281 (ii) any necessary services be provided to the child and the relative or friend;

282 (b) the child and any relative or friend with whom the child is placed are under the
283 continuing jurisdiction of the court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

313 (17) When the court orders that a child be removed from the custody of the child's
314 parent and does not award custody and guardianship to another parent, relative, or friend under
315 this section, the court shall order that the child be placed in the temporary custody of the
316 Division of Child and Family Services, to proceed to adjudication and disposition and to be
317 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,
318 Child and Family Services.

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

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

326 child.

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

330 (i) a noncustodial parent of the child;

331 (ii) a relative of the child;

332 (iii) subject to Subsection (18)(d), a friend of a parent of the child, if the friend is a
333 licensed foster parent; and

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

335 (d) In determining whether a friend is a willing and appropriate placement for a child,
336 neither the court, nor the division, is required to consider more than one friend designated by
337 each parent of the child.

338 (e) If a parent of the child is not able to designate a friend who is a licensed foster
339 parent for placement of the child, but is able to identify a friend who is willing to become
340 licensed as a foster parent:

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

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

346 (19) If, following the shelter hearing, the child is placed with a person who is not a
347 parent of the child, a relative of the child, a friend of a parent of the child, or a former foster
348 parent of the child, priority shall be given to a foster placement with a man and a woman who
349 are married to each other, unless it is in the best interests of the child to place the child with a
350 single foster parent.

351 (20) In determining the placement of a child, neither the court, nor the division, may
352 take into account, or discriminate against, the religion of a person with whom the child may be

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353 placed, unless the purpose of taking religion into account is to place the child with a person or
354 family of the same religion as the child.