

**Representative Timothy D. Hawkes** proposes the following substitute bill:

**CUSTODY AND ADOPTION AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Timothy D. Hawkes**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill addresses the grant of custody, adoption, or foster parent license to adults who commit certain offenses.

**Highlighted Provisions:**

This bill:

- ▶ prohibits custody being granted to a person who is not a biological or adoptive parent and has committed certain offenses unless certain conditions are met;
- ▶ addresses prospective foster parents and prospective adoptive parents;
- ▶ prohibits adoption by a person who has committed certain offenses unless certain conditions are met; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides revisor instructions.

**Utah Code Sections Affected:**

AMENDS:



26 **30-5a-103**, as enacted by Laws of Utah 2008, Chapter 272

27 **62A-2-120**, as last amended by Laws of Utah 2016, Chapter 122

28 **78B-6-117**, as enacted by Laws of Utah 2008, Chapter 3

29 **Utah Code Sections Affected by Revisor Instructions:**

30 **30-5a-103**, as enacted by Laws of Utah 2008, Chapter 272

31 **78B-6-117**, as enacted by Laws of Utah 2008, Chapter 3



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

34 Section 1. Section **30-5a-103** is amended to read:

35 **30-5a-103. Custody and visitation for persons other than a parent.**

36 (1) In accordance with Section **62A-4a-201**, it is the public policy of this state that  
37 parents retain the fundamental right and duty to exercise primary control over the care,  
38 supervision, upbringing, and education of their children. There is a rebuttable presumption that  
39 a parent's decisions are in the child's best interests.

40 (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or  
41 visitation rights to a person other than a parent who, by clear and convincing evidence, has  
42 established all of the following:

- 43 (a) the person has intentionally assumed the role and obligations of a parent;
- 44 (b) the person and the child have formed an emotional bond and created a parent-child  
45 type relationship;
- 46 (c) the person contributed emotionally or financially to the child's well being;
- 47 (d) assumption of the parental role is not the result of a financially compensated  
48 surrogate care arrangement;
- 49 (e) continuation of the relationship between the person and the child would be in the  
50 child's best interests;
- 51 (f) loss or cessation of the relationship between the person and the child would be  
52 detrimental to the child; and
- 53 (g) the parent:
  - 54 (i) is absent; or
  - 55 (ii) is found by a court to have abused or neglected the child.

56 (3) A proceeding under this chapter may be commenced by filing a verified petition, or

57 petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district  
58 court in the county in which the child:

59 (a) currently resides; or

60 (b) lived with a parent or a person other than a parent who acted as a parent within six  
61 months before the commencement of the action.

62 (4) A proceeding under this chapter may be filed in a pending divorce, parentage  
63 action, or other proceeding, including a proceeding in the juvenile court, involving custody of  
64 or visitation with a child.

65 (5) The petition shall include detailed facts supporting the petitioner's right to file the  
66 petition including the criteria set forth in Subsection (2) and residency information as set forth  
67 in Section [78B-13-209](#).

68 (6) A proceeding under this chapter may not be filed against a parent who is actively  
69 serving outside the state in any branch of the military.

70 (7) Notice of a petition filed pursuant to this chapter shall be served in accordance with  
71 the rules of civil procedure on all of the following:

72 (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

73 (b) any person who has court-ordered custody or visitation rights;

74 (c) the child's guardian;

75 (d) the guardian ad litem, if one has been appointed;

76 (e) a person or agency that has physical custody of the child or that claims to have  
77 custody or visitation rights; and

78 (f) any other person or agency that has previously appeared in any action regarding  
79 custody of or visitation with the child.

80 (8) The court may order a custody evaluation to be conducted in any action brought  
81 under this chapter.

82 (9) The court may enter temporary orders in an action brought under this chapter  
83 pending the entry of final orders.

84 (10) Except as provided in Subsection (11), a court may not grant custody of a child  
85 under this section to an individual who is not the biological or adoptive parent of the child and  
86 who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a  
87 felony or attempted felony involving conduct that constitutes any of the following:

- 88           (a) child abuse, as described in Section 76-5-109;  
89           (b) child abuse homicide, as described in Section 76-5-208;  
90           (c) child kidnapping, as described in Section 76-5-301.1;  
91           (d) human trafficking of a child, as described in Section 76-5-308.5;  
92           (e) sexual abuse of a minor, as described in Section 76-5-401.1;  
93           (f) rape of a child, as described in Section 76-5-402.1;  
94           (g) object rape of a child, as described in Section 76-5-402.3;  
95           (h) sodomy on a child, as described in Section 76-5-403.1;  
96           (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in  
97 Section 76-5-404.1;  
98           (j) sexual exploitation of a minor, as described in Section 76-5b-201; or  
99           (k) an offense in another state that, if committed in this state, would constitute an  
100 offense described in this Subsection (10).  
101           (11) (a) For purpose of this Subsection (11), "disqualifying offense" means an offense  
102 listed in Subsection (10) that prevents a court from granting custody except as provided in this  
103 Subsection (11).  
104           (b) A person described in Subsection (10) may only be considered for custody of a  
105 child if the following criteria are met by clear and convincing evidence:  
106           (i) the person is a relative, as defined in Section 78A-6-307, of the child;  
107           (ii) at least 10 years have elapsed from the day on which the person is successfully  
108 released from prison, jail, parole, or probation related to a disqualifying offense;  
109           (iii) during the 10 years before the day on which the person files a petition with the  
110 court seeking custody the person has not been convicted, plead guilty, or plead no contest to an  
111 offense greater than an infraction or traffic violation that would likely impact the health, safety,  
112 or well-being of the child;  
113           (iv) the person can provide evidence of successful treatment or rehabilitation directly  
114 related to the disqualifying offense;  
115           (v) the court determines that the risk related to the disqualifying offense is unlikely to  
116 cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any  
117 time in the future when considering all of the following:  
118           (A) the child's age;

- 119 (B) the child's gender;
- 120 (C) the child's development;
- 121 (D) the nature and seriousness of the disqualifying offense;
- 122 (E) the preferences of a child 12 years of age or older;
- 123 (F) any available assessments, including custody evaluations, parenting assessments,  
 124 psychological or mental health assessments, and bonding assessments; and
- 125 (G) any other relevant information;
- 126 (vi) the person can provide evidence of the following:
- 127 (A) the relationship with the child is of long duration;
- 128 (B) that an emotional bond exists with the child; and
- 129 (C) that custody by the person who has committed the disqualifying offense ensures the  
 130 best interests of the child are met;
- 131 (vii) (A) there is no other responsible relative known to the court who has or likely  
 132 could develop an emotional bond with the child and does not have a disqualifying offense; or
- 133 (B) if there is a responsible relative known to the court that does not have a  
 134 disqualifying offense, Subsection (11)(d) applies; and
- 135 (viii) that the continuation of the relationship between the person with the disqualifying  
 136 offense and the child could not be sufficiently maintained through any type of visitation if  
 137 custody were given to the relative with no disqualifying offense described in Subsection  
 138 (11)(d).
- 139 (c) The person with the disqualifying offense bears the burden of proof regarding why  
 140 placement with that person is in the best interest of the child over another responsible relative  
 141 or equally situated person who does not have a disqualifying offense.
- 142 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known  
 143 to the court who does not have a disqualifying ~~offense~~ offense :
- 144 (i) preference for custody is given to a relative who does not have a disqualifying  
 145 offense; and
- 146 (ii) before the court may place custody with the person who has the disqualifying  
 147 offense over another responsible, willing, and able relative:
- 148 (A) an impartial custody evaluation shall be completed; and
- 149 (B) a guardian ad litem shall be assigned.

150           (12) Subsection (10) and (11) apply to a case pending on the effective date of this bill  
151 for which a final decision on custody has not been made and to a case filed on or after the  
152 effective date of this bill.

153           Section 2. Section **62A-2-120** is amended to read:

154           **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

155           (1) As used in this section:

156           (a) "Applicant" means:

157           (i) a person described in Section [62A-2-101](#);

158           (ii) an individual who:

159           (A) is associated with a licensee; and

160           (B) has or will likely have direct access to a child or a vulnerable adult;

161           (iii) an individual who provides respite care to a foster parent or an adoptive parent on  
162 more than one occasion;

163           (iv) a department contractor; or

164           (v) a guardian submitting an application on behalf of an individual, other than the child  
165 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older  
166 and:

167           (A) resides in a home, that is licensed or certified by the office, with the child or  
168 vulnerable adult who is receiving services; or

169           (B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).

170           (b) "Application" means a background screening application to the office.

171           (c) "Bureau" means the Bureau of Criminal Identification within the Department of  
172 Public Safety, created in Section [53-10-201](#).

173           (d) "Personal identifying information" means:

174           (i) current name, former names, nicknames, and aliases;

175           (ii) date of birth;

176           (iii) physical address and email address;

177           (iv) telephone number;

178           (v) driver license number or other government-issued identification number;

179           (vi) social security number;

180           (vii) only for applicants who are 18 years of age or older, fingerprints, in a form

181 specified by the office; and

182 (viii) other information specified by the office by rule made in accordance with Title  
183 63G, Chapter 3, Utah Administrative Rulemaking Act.

184 (2) (a) Except as provided in Subsection (14), an applicant shall submit the following  
185 to the office:

186 (i) personal identifying information;

187 (ii) a fee established by the office under Section 63J-1-504; and

188 (iii) a form, specified by the office, for consent for:

189 (A) an initial background check upon submission of the information described under  
190 Subsection (2)(a);

191 (B) a background check at the applicant's annual renewal;

192 (C) a background check when the office determines that reasonable cause exists; and

193 (D) retention of personal identifying information, including fingerprints, for

194 monitoring and notification as described in Subsections (3)(d) and (4).

195 (b) In addition to the requirements described in Subsection (2)(a), if an applicant spent  
196 time outside of the United States and its territories during the five years immediately preceding  
197 the day on which the information described in Subsection (2)(a) is submitted to the office, the  
198 office may require the applicant to submit documentation establishing whether the applicant  
199 was convicted of a crime during the time that the applicant spent outside of the United States or  
200 its territories.

201 (3) The office:

202 (a) shall perform the following duties as part of a background check of an applicant:

203 (i) check state and regional criminal background databases for the applicant's criminal  
204 history by:

205 (A) submitting personal identifying information to the Bureau for a search; or

206 (B) using the applicant's personal identifying information to search state and regional  
207 criminal background databases as authorized under Section 53-10-108;

208 (ii) submit the applicant's personal identifying information and fingerprints to the  
209 Bureau for a criminal history search of applicable national criminal background databases;

210 (iii) search the Department of Human Services, Division of Child and Family Services'  
211 Licensing Information System described in Section 62A-4a-1006;

212 (iv) search the Department of Human Services, Division of Aging and Adult Services'  
213 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

214 (v) search the juvenile court records for substantiated findings of severe child abuse or  
215 neglect described in Section 78A-6-323; and

216 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided  
217 under Section 78A-6-209;

218 (b) shall conduct a background check of an applicant for an initial background check  
219 upon submission of the information described under Subsection (2)(a);

220 (c) may conduct all or portions of a background check of an applicant, as provided by  
221 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative  
222 Rulemaking Act:

223 (i) for an annual renewal; or

224 (ii) when the office determines that reasonable cause exists;

225 (d) may submit an applicant's personal identifying information, including fingerprints,  
226 to the Bureau for checking, retaining, and monitoring of state and national criminal background  
227 databases and for notifying the office of new criminal activity associated with the applicant;

228 (e) shall track the status of an approved applicant under this section to ensure that an  
229 approved applicant is not required to duplicate the submission of the applicant's fingerprints if  
230 the applicant applies for:

231 (i) more than one license;

232 (ii) direct access to a child or a vulnerable adult in more than one human services  
233 program; or

234 (iii) direct access to a child or a vulnerable adult under a contract with the department;

235 (f) shall track the status of each license and each individual with direct access to a child  
236 or a vulnerable adult and notify the Bureau when the license has expired or the individual's  
237 direct access to a child or a vulnerable adult has ceased;

238 (g) shall adopt measures to strictly limit access to personal identifying information  
239 solely to the office employees responsible for processing the applications for background  
240 checks and to protect the security of the personal identifying information the office reviews  
241 under this Subsection (3); and

242 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative



243 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background  
244 checks.

245 (4) (a) With the personal identifying information the office submits to the Bureau  
246 under Subsection (3), the Bureau shall check against state and regional criminal background  
247 databases for the applicant's criminal history.

248 (b) With the personal identifying information and fingerprints the office submits to the  
249 Bureau under Subsection (3), the Bureau shall check against national criminal background  
250 databases for the applicant's criminal history.

251 (c) Upon direction from the office, and with the personal identifying information and  
252 fingerprints the office submits to the Bureau under Subsection (3)(d), the Bureau shall:

253 (i) maintain a separate file of the fingerprints for search by future submissions to the  
254 local and regional criminal records databases, including latent prints; and

255 (ii) monitor state and regional criminal background databases and identify criminal  
256 activity associated with the applicant.

257 (d) The Bureau is authorized to submit the fingerprints to the Federal Bureau of  
258 Investigation Next Generation Identification System, to be retained in the Federal Bureau of  
259 Investigation Next Generation Identification System for the purpose of:

260 (i) being searched by future submissions to the national criminal records databases,  
261 including the Federal Bureau of Investigation Next Generation Identification System and latent  
262 prints; and

263 (ii) monitoring national criminal background databases and identifying criminal  
264 activity associated with the applicant.

265 (e) The Bureau shall notify and release to the office all information of criminal activity  
266 associated with the applicant.

267 (f) Upon notice from the office that a license has expired or an individual's direct  
268 access to a child or a vulnerable adult has ceased, the Bureau shall:

269 (i) discard and destroy any retained fingerprints; and

270 (ii) notify the Federal Bureau of Investigation when the license has expired or an  
271 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau  
272 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of  
273 Investigation Next Generation Identification System.

274 (5) (a) After conducting the background check described in Subsections (3) and (4), the  
275 office shall deny an application to an applicant who, within 10 years before the day on which  
276 the applicant submits information to the office under Subsection (2) for a background check,  
277 has been convicted of any of the following, regardless of whether the offense is a felony, a  
278 misdemeanor, or an infraction:

279 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to  
280 animals, or bestiality;

281 (ii) a violation of any pornography law, including sexual exploitation of a minor;

282 (iii) prostitution;

283 (iv) an offense included in:

284 (A) Title 76, Chapter 5, Offenses Against the Person;

285 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

286 (C) Title 76, Chapter 7, Offenses Against the Family;

287 (v) aggravated arson, as described in Section 76-6-103;

288 (vi) aggravated burglary, as described in Section 76-6-203;

289 (vii) aggravated robbery, as described in Section 76-6-302;

290 (viii) identity fraud crime, as described in Section 76-6-1102; or

291 (ix) a conviction for a felony or misdemeanor offense committed outside of the state  
292 that, if committed in the state, would constitute a violation of an offense described in  
293 Subsections (5)(a)(i) through (viii).

294 (b) If the office denies an application to an applicant based on a conviction described in  
295 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in  
296 Subsection (6).

297 (6) (a) The office shall conduct a comprehensive review of an applicant's background  
298 check if the applicant has:

299 (i) a conviction for any felony offense, not described in Subsection (5)(a), regardless of  
300 the date of the conviction;

301 (ii) a conviction for a misdemeanor offense, not described in Subsection (5)(a), and  
302 designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative  
303 Rulemaking Act, if the conviction is within five years before the day on which the applicant  
304 submits information to the office under Subsection (2) for a background check;

305 (iii) a conviction for any offense described in Subsection (5)(a) that occurred more than  
306 10 years before the day on which the applicant submitted information under Subsection (2)(a);

307 (iv) pleaded no contest to or is currently subject to a plea in abeyance or diversion  
308 agreement for any offense described in Subsection (5)(a);

309 (v) a listing in the Department of Human Services, Division of Child and Family  
310 Services' Licensing Information System described in Section 62A-4a-1006;

311 (vi) a listing in the Department of Human Services, Division of Aging and Adult  
312 Services' vulnerable adult abuse, neglect, or exploitation database described in Section  
313 62A-3-311.1;

314 (vii) a record in the juvenile court of a substantiated finding of severe child abuse or  
315 neglect described in Section 78A-6-323;

316 (viii) a record of an adjudication in juvenile court for an act that, if committed by an  
317 adult, would be a felony or misdemeanor, if the applicant is:

318 (A) under 28 years of age; or

319 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is  
320 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor  
321 offense described in Subsection (5)(a); or

322 (ix) a pending charge for an offense described in Subsection (5)(a).

323 (b) The comprehensive review described in Subsection (6)(a) shall include an  
324 examination of:

325 (i) the date of the offense or incident;

326 (ii) the nature and seriousness of the offense or incident;

327 (iii) the circumstances under which the offense or incident occurred;

328 (iv) the age of the perpetrator when the offense or incident occurred;

329 (v) whether the offense or incident was an isolated or repeated incident;

330 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable  
331 adult, including:

332 (A) actual or threatened, nonaccidental physical or mental harm;

333 (B) sexual abuse;

334 (C) sexual exploitation; or

335 (D) negligent treatment;

336 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric  
337 treatment received, or additional academic or vocational schooling completed; and

338 (viii) any other pertinent information.

339 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the  
340 office shall deny an application to an applicant if the office finds that approval would likely  
341 create a risk of harm to a child or a vulnerable adult.

342 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
343 office may make rules, consistent with this chapter, to establish procedures for the  
344 comprehensive review described in this Subsection (6).

345 (7) Subject to Subsection (10), the office shall approve an application to an applicant  
346 who is not denied under Subsection (5), (6), or (13).

347 (8) (a) The office may conditionally approve an application of an applicant, for a  
348 maximum of 60 days after the day on which the office sends written notice to the applicant  
349 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

350 (i) is awaiting the results of the criminal history search of national criminal background  
351 databases; and

352 (ii) would otherwise approve an application of the applicant under Subsection (7).

353 (b) Upon receiving the results of the criminal history search of national criminal  
354 background databases, the office shall approve or deny the application of the applicant in  
355 accordance with Subsections (5) through (7).

356 (9) A licensee or department contractor may not permit an individual to have direct  
357 access to a child or a vulnerable adult unless, subject to Subsection (10):

358 (a) the individual is associated with the licensee or department contractor and:

359 (i) the individual's application is approved by the office under this section;

360 (ii) the individual's application is conditionally approved by the office under

361 Subsection (8); or

362 (iii) (A) the individual has submitted the background check information described in  
363 Subsection (2) to the office;

364 (B) the office has not determined whether to approve the applicant's application; and

365 (C) the individual is directly supervised by an individual who has a current background  
366 screening approval issued by the office under this section and is associated with the licensee or

367 department contractor;

368 (b) (i) the individual is associated with the licensee or department contractor;

369 (ii) the individual has a current background screening approval issued by the office  
370 under this section;

371 (iii) one of the following circumstances, that the office has not yet reviewed under  
372 Subsection (6), applies to the individual:

373 (A) the individual was charged with an offense described in Subsection (5)(a);

374 (B) the individual is listed in the Licensing Information System, described in Section  
375 [62A-4a-1006](#);

376 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation  
377 database, described in Section [62A-3-311.1](#);

378 (D) the individual has a record in the juvenile court of a substantiated finding of severe  
379 child abuse or neglect, described in Section [78A-6-323](#); or

380 (E) the individual has a record of an adjudication in juvenile court for an act that, if  
381 committed by an adult, would be a felony or a misdemeanor; and

382 (iv) the individual is directly supervised by an individual who:

383 (A) has a current background screening approval issued by the office under this  
384 section; and

385 (B) is associated with the licensee or department contractor;

386 (c) the individual:

387 (i) is not associated with the licensee or department contractor; and

388 (ii) is directly supervised by an individual who:

389 (A) has a current background screening approval issued by the office under this  
390 section; and

391 (B) is associated with the licensee or department contractor;

392 (d) the individual is the parent or guardian of the child, or the guardian of the  
393 vulnerable adult;

394 (e) the individual is approved by the parent or guardian of the child, or the guardian of  
395 the vulnerable adult, to have direct access to the child or the vulnerable adult; or

396 (f) the individual is only permitted to have direct access to a vulnerable adult who  
397 voluntarily invites the individual to visit.

398 (10) An individual may not have direct access to a child or a vulnerable adult if the  
399 individual is prohibited by court order from having that access.

400 (11) Notwithstanding any other provision of this section, an individual for whom the  
401 office denies an application may not have supervised or unsupervised direct access to a child or  
402 vulnerable adult unless the office approves a subsequent application by the individual.

403 (12) (a) Within 30 days after the day on which the office receives the background  
404 check information for an applicant, the office shall give written notice to:

405 (i) the applicant, and the licensee or department contractor, of the office's decision  
406 regarding the background check and findings; and

407 (ii) the applicant of any convictions and potentially disqualifying charges and  
408 adjudications found in the search.

409 (b) With the notice described in Subsection (12)(a), the office shall also give the  
410 applicant the details of any comprehensive review conducted under Subsection (6).

411 (c) If the notice under Subsection (12)(a) states that the applicant's application is  
412 denied, the notice shall further advise the applicant that the applicant may, under Subsection  
413 [62A-2-111\(2\)](#), request a hearing in the department's Office of Administrative Hearings, to  
414 challenge the office's decision.

415 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
416 office shall make rules, consistent with this chapter:

417 (i) defining procedures for the challenge of its background check decision described in  
418 Subsection (12)(c); and

419 (ii) expediting the process for renewal of a license under the requirements of this  
420 section and other applicable sections.

421 (13) This section does not apply to a department contractor, or an applicant for an  
422 initial license, or license renewal, regarding a substance abuse program that provides services  
423 to adults only.

424 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements  
425 of this section, if the background check of an applicant is being conducted for the purpose of  
426 licensing a prospective foster home or approving a prospective adoptive placement of a child in  
427 state custody, the office shall:

428 (i) check the child abuse and neglect registry in each state where each applicant resided

429 in the five years immediately preceding the day on which the applicant applied to be a foster  
430 parent or adoptive parent, to determine whether the prospective foster parent or prospective  
431 adoptive parent is listed in the registry as having a substantiated or supported finding of child  
432 abuse or neglect; and

433 (ii) check the child abuse and neglect registry in each state where each adult living in  
434 the home of the applicant described in Subsection (14)(a)(i) resided in the five years  
435 immediately preceding the day on which the applicant applied to be a foster parent or adoptive  
436 parent, to determine whether the adult is listed in the registry as having a substantiated or  
437 supported finding of child abuse or neglect.

438 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

439 (i) federal law or rule permits otherwise; or

440 (ii) the requirements would prohibit the Division of Child and Family Services or a  
441 court from placing a child with:

442 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

443 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,  
444 or 78A-6-307.5, pending completion of the background check described in Subsection (5).

445 (c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a  
446 license renewal to a prospective foster parent or a prospective adoptive parent if the applicant  
447 has been convicted of:

448 (i) a felony involving conduct that constitutes any of the following:

449 (A) child abuse, as described in Section 76-5-109;

450 (B) commission of domestic violence in the presence of a child, as described in Section  
451 76-5-109.1;

452 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

453 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

454 (E) aggravated murder, as described in Section 76-5-202;

455 (F) murder, as described in Section 76-5-203;

456 (G) manslaughter, as described in Section 76-5-205;

457 (H) child abuse homicide, as described in Section 76-5-208;

458 (I) homicide by assault, as described in Section 76-5-209;

459 (J) kidnapping, as described in Section 76-5-301;

460 (K) child kidnapping, as described in Section [76-5-301.1](#);

461 (L) aggravated kidnapping, as described in Section [76-5-302](#);

462 (M) human trafficking of a child, as described in Section [76-5-308.5](#);

463 [~~(M)~~] (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

464 [~~(N)~~] (O) sexual exploitation of a minor, as described in Section [76-5b-201](#);

465 [~~(O)~~] (P) aggravated arson, as described in Section [76-6-103](#);

466 [~~(P)~~] (Q) aggravated burglary, as described in Section [76-6-203](#);

467 [~~(Q)~~] (R) aggravated robbery, as described in Section [76-6-302](#); or

468 [~~(R)~~] (S) domestic violence, as described in Section [77-36-1](#); or

469 (ii) an offense committed outside the state that, if committed in the state, would

470 constitute a violation of an offense described in Subsection (14)(c)(i).

471 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or

472 license renewal to a prospective foster parent or a prospective adoptive parent if, within the

473 five years immediately preceding the day on which the individual's application or license would

474 otherwise be approved, the applicant was convicted of a felony involving conduct that

475 constitutes a violation of any of the following:

476 (i) aggravated assault, as described in Section [76-5-103](#);

477 (ii) aggravated assault by a prisoner, as described in Section [76-5-103.5](#);

478 (iii) mayhem, as described in Section [76-5-105](#);

479 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

480 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

481 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

482 Act;

483 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

484 Precursor Act; or

485 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

486 (e) In addition to the circumstances described in Subsection (6)(a), the office shall

487 conduct the comprehensive review of an applicant's background check pursuant to this section

488 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a

489 child abuse and neglect registry of another state as having a substantiated or supported finding

490 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).



491 Section 3. Section **78B-6-117** is amended to read:

492 **78B-6-117. Who may adopt -- Adoption of minor.**

493 (1) A minor child may be adopted by an adult person, in accordance with ~~[the~~  
494 ~~provisions and requirements of]~~ this section and this part.

495 (2) A child may be adopted by:

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

498 (b) subject to Subsection (4), ~~[any]~~ a single adult, except as provided in Subsection (3).

499 (3) A child may not be adopted by a person who is cohabiting in a relationship that is  
500 not a legally valid and binding marriage under the laws of this state.

501 (4) ~~[In order to]~~ To provide a child who is in the custody of the division with the most  
502 beneficial family structure, when a child in the custody of the division is placed for adoption,  
503 the division or child-placing agency shall place the child with a man and a woman who are  
504 married to each other, unless:

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

506 (i) have applied to adopt a child;

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

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

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

510 (c) the child is placed with a person who has already developed a substantial  
511 relationship with the child;

512 (d) the child is placed with a person who:

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

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

516 (A) knew the person with whom the child is placed before the parent consented to the  
517 adoption; or

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

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

521 (5) Notwithstanding Subsection (6), an adult may not adopt a child if, before adoption

522 is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony  
523 or attempted felony involving conduct that constitutes any of the following:

- 524 (a) child abuse, as described in Section [76-5-109](#);  
525 (b) child abuse homicide, as described in Section [76-5-208](#);  
526 (c) child kidnapping, as described in Section [76-5-301.1](#);  
527 (d) human trafficking of a child, as described in Section [76-5-308.5](#);  
528 (e) sexual abuse of a minor, as described in Section [76-5-401.1](#);  
529 (f) rape of a child, as described in Section [76-5-402.1](#);  
530 (g) object rape of a child, as described in Section [76-5-402.3](#);  
531 (h) sodomy on a child, as described in Section [76-5-403.1](#);  
532 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in  
533 Section [76-5-404.1](#);  
534 (j) sexual exploitation of a minor, as described in Section [76-5b-201](#); or  
535 (k) an offense in another state that, if committed in this state, would constitute an  
536 offense described in this Subsection (5).

537 (6) (a) For purpose of this Subsection (6), "disqualifying offense" means an offense  
538 listed in Subsection (5) that prevents a court from considering a person for adoption of a child  
539 except as provided in this Subsection (6).

540 (b) A person described in Subsection (5) may only be considered for adoption of a  
541 child if the following criteria are met by clear and convincing evidence:

542 (i) at least 10 years have elapsed from the day on which the person is successfully  
543 released from prison, jail, parole, or probation related to a disqualifying offense;

544 (ii) during the 10 years before the day on which the person files a petition with the  
545 court seeking adoption, the person has not been convicted, pleaded guilty, or pleaded no  
546 contest to an offense greater than an infraction or traffic violation that would likely impact the  
547 health, safety, or well-being of the child;

548 (iii) the person can provide evidence of successful treatment or rehabilitation directly  
549 related to the disqualifying offense;

550 (iv) the court determines that the risk related to the disqualifying offense is unlikely to  
551 cause harm, as defined in Section [78A-6-105](#), or potential harm to the child currently or at any  
552 time in the future when considering all of the following:

- 553           (A) the child's age;  
554           (B) the child's gender;  
555           (C) the child's development;  
556           (D) the nature and seriousness of the disqualifying offense;  
557           (E) the preferences of a child 12 years of age or older;  
558           (F) any available assessments, including custody evaluations, homes studies,  
559 pre-placement adoptive evaluations, parenting assessments, psychological or mental health  
560 assessments, and bonding assessments; and  
561           (G) any other relevant information;  
562           (v) the person can provide evidence of all of the following:  
563           (A) the relationship with the child is of long duration;  
564           (B) that an emotional bond exists with the child; and  
565           (C) that adoption by the person who has committed the disqualifying offense ensures  
566 the best interests of the child are met; and  
567           (vi) the adoption is by:  
568           (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption;  
569           (B) subject to Subsection (6)(d), a relative of the child as defined in Section [78A-6-307](#)  
570 and there is not another relative without a disqualifying offense filing an adoption petition.  
571           (c) The person with the disqualifying offense bears the burden of proof regarding why  
572 adoption with that person is in the best interest of the child over another responsible relative or  
573 equally situated person who does not have a disqualifying offense.  
574           (d) If there is an alternative responsible relative who does not have a disqualifying  
575 offense filing an adoption petition, the following applies:  
576           (i) preference for adoption shall be given to a relative who does not have a  
577 disqualifying offense; and  
578           (ii) before the court may grant adoption to the person who has the disqualifying offense  
579 over another responsible, willing, and able relative:  
580           (A) an impartial custody evaluation shall be completed; and  
581           (B) a guardian ad litem shall be assigned.  
582           (7) Subsections (5) and (6) apply to a case pending on the effective date of this bill for  
583 which a final decision on adoption has not been made and to a case filed on or after the

584 effective date of this bill.

585           Section 4. **Effective date.**

586           If approved by two-thirds of all the members elected to each house, this bill takes effect  
587 upon approval by the governor, or the day following the constitutional time limit of Utah  
588 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
589 the date of veto override.

590           Section 5. **Revisor instructions.**

591           It is the intent of the Legislature that, in preparing the Utah Code database for  
592 publication, the Office of Legislative Research and General Counsel shall replace the phrase  
593 "the effective date of this bill" in Subsection [30-5a-103\(12\)](#) and Subsection [78B-6-117\(7\)](#) with  
594 the bill's actual effective date.