

1 **CUSTODY AND ADOPTION AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Timothy D. Hawkes**

5 Senate Sponsor: Todd Weiler

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides a special effective date.

23 This bill provides revisor instructions.

24 **Utah Code Sections Affected:**

25 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

32

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 action,
63 or other proceeding, including a proceeding in the juvenile court, involving custody of or
64 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 in
67 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 Section
97 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 child
105 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 (11)(d).
138 (c) The person with the disqualifying offense bears the burden of proof regarding why
139 placement with that person is in the best interest of the child over another responsible relative or
140 equally situated person who does not have a disqualifying offense.
141 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to

142 the court who does not have a disqualifying offense:

143 (i) preference for custody is given to a relative who does not have a disqualifying
144 offense; and

145 (ii) before the court may place custody with the person who has the disqualifying
146 offense over another responsible, willing, and able relative:

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

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

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

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

153 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

154 (1) As used in this section:

155 (a) "Applicant" means:

156 (i) a person described in Section **62A-2-101**;

157 (ii) an individual who:

158 (A) is associated with a licensee; and

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

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

162 (iv) a department contractor; or

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

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

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

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

169 (c) "Bureau" means the Bureau of Criminal Identification within the Department of

170 Public Safety, created in Section [53-10-201](#).

171 (d) "Personal identifying information" means:

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

173 (ii) date of birth;

174 (iii) physical address and email address;

175 (iv) telephone number;

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

177 (vi) social security number;

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

179 specified by the office; and

180 (viii) other information specified by the office by rule made in accordance with Title

181 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

184 (i) personal identifying information;

185 (ii) a fee established by the office under Section [63J-1-504](#); and

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

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

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

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

191 (D) retention of personal identifying information, including fingerprints, for monitoring
192 and notification as described in Subsections (3)(d) and (4).

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

198 territories.

199 (3) The office:

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

201 (i) check state and regional criminal background databases for the applicant's criminal

202 history by:

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

204 (B) using the applicant's personal identifying information to search state and regional

205 criminal background databases as authorized under Section [53-10-108](#);

206 (ii) submit the applicant's personal identifying information and fingerprints to the

207 Bureau for a criminal history search of applicable national criminal background databases;

208 (iii) search the Department of Human Services, Division of Child and Family Services'

209 Licensing Information System described in Section [62A-4a-1006](#);

210 (iv) search the Department of Human Services, Division of Aging and Adult Services'

211 vulnerable adult abuse, neglect, or exploitation database described in Section [62A-3-311.1](#);

212 (v) search the juvenile court records for substantiated findings of severe child abuse or

213 neglect described in Section [78A-6-323](#); and

214 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided

215 under Section [78A-6-209](#);

216 (b) shall conduct a background check of an applicant for an initial background check

217 upon submission of the information described under Subsection (2)(a);

218 (c) may conduct all or portions of a background check of an applicant, as provided by

219 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative

220 Rulemaking Act:

221 (i) for an annual renewal; or

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

223 (d) may submit an applicant's personal identifying information, including fingerprints, to

224 the Bureau for checking, retaining, and monitoring of state and national criminal background

225 databases and for notifying the office of new criminal activity associated with the applicant;

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

229 (i) more than one license;

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

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

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

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

240 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
241 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
242 checks.

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

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

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

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

253 (ii) monitor state and regional criminal background databases and identify criminal

254 activity associated with the applicant.

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

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

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

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

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

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

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

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

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

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

280 (iii) prostitution;

281 (iv) an offense included in:

282 (A) Title 76, Chapter 5, Offenses Against the Person;
283 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or
284 (C) Title 76, Chapter 7, Offenses Against the Family;
285 (v) aggravated arson, as described in Section 76-6-103;
286 (vi) aggravated burglary, as described in Section 76-6-203;
287 (vii) aggravated robbery, as described in Section 76-6-302;
288 (viii) identity fraud crime, as described in Section 76-6-1102; or
289 (ix) a conviction for a felony or misdemeanor offense committed outside of the state
290 that, if committed in the state, would constitute a violation of an offense described in
291 Subsections (5)(a)(i) through (viii).

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

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

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

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

303 (iii) a conviction for any offense described in Subsection (5)(a) that occurred more than
304 10 years before the day on which the applicant submitted information under Subsection (2)(a);

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

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

309 (vi) a listing in the Department of Human Services, Division of Aging and Adult

310 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
311 [62A-3-311.1](#);

312 (vii) a record in the juvenile court of a substantiated finding of severe child abuse or
313 neglect described in Section [78A-6-323](#);

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

316 (A) under 28 years of age; or
317 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is
318 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
319 offense described in Subsection (5)(a); or
320 (ix) a pending charge for an offense described in Subsection (5)(a).

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

323 (i) the date of the offense or incident;
324 (ii) the nature and seriousness of the offense or incident;
325 (iii) the circumstances under which the offense or incident occurred;
326 (iv) the age of the perpetrator when the offense or incident occurred;
327 (v) whether the offense or incident was an isolated or repeated incident;
328 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
329 adult, including:

330 (A) actual or threatened, nonaccidental physical or mental harm;
331 (B) sexual abuse;
332 (C) sexual exploitation; or
333 (D) negligent treatment;

334 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
335 treatment received, or additional academic or vocational schooling completed; and
336 (viii) any other pertinent information.

337 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the

338 office shall deny an application to an applicant if the office finds that approval would likely
339 create a risk of harm to a child or a vulnerable adult.

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

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

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

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

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

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

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

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

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

358 (ii) the individual's application is conditionally approved by the office under Subsection
359 (8); or

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

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

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

- 366 (b) (i) the individual is associated with the licensee or department contractor;
- 367 (ii) the individual has a current background screening approval issued by the office
- 368 under this section;
- 369 (iii) one of the following circumstances, that the office has not yet reviewed under
- 370 Subsection (6), applies to the individual:
- 371 (A) the individual was charged with an offense described in Subsection (5)(a);
- 372 (B) the individual is listed in the Licensing Information System, described in Section
- 373 [62A-4a-1006](#);
- 374 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
- 375 database, described in Section [62A-3-311.1](#);
- 376 (D) the individual has a record in the juvenile court of a substantiated finding of severe
- 377 child abuse or neglect, described in Section [78A-6-323](#); or
- 378 (E) the individual has a record of an adjudication in juvenile court for an act that, if
- 379 committed by an adult, would be a felony or a misdemeanor; and
- 380 (iv) the individual is directly supervised by an individual who:
- 381 (A) has a current background screening approval issued by the office under this section;
- 382 and
- 383 (B) is associated with the licensee or department contractor;
- 384 (c) the individual:
- 385 (i) is not associated with the licensee or department contractor; and
- 386 (ii) is directly supervised by an individual who:
- 387 (A) has a current background screening approval issued by the office under this section;
- 388 and
- 389 (B) is associated with the licensee or department contractor;
- 390 (d) the individual is the parent or guardian of the child, or the guardian of the vulnerable
- 391 adult;
- 392 (e) the individual is approved by the parent or guardian of the child, or the guardian of
- 393 the vulnerable adult, to have direct access to the child or the vulnerable adult; or

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

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

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

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

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

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

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

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

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

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

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

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

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

426 (i) check the child abuse and neglect registry in each state where each applicant resided
427 in the five years immediately preceding the day on which the applicant applied to be a foster
428 parent or adoptive parent, to determine whether the prospective foster parent or prospective
429 adoptive parent is listed in the registry as having a substantiated or supported finding of child
430 abuse or neglect; and

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

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

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

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

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

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

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

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

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

448 (B) commission of domestic violence in the presence of a child, as described in Section
449 76-5-109.1;

- 450 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
- 451 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
- 452 (E) aggravated murder, as described in Section 76-5-202;
- 453 (F) murder, as described in Section 76-5-203;
- 454 (G) manslaughter, as described in Section 76-5-205;
- 455 (H) child abuse homicide, as described in Section 76-5-208;
- 456 (I) homicide by assault, as described in Section 76-5-209;
- 457 (J) kidnapping, as described in Section 76-5-301;
- 458 (K) child kidnapping, as described in Section 76-5-301.1;
- 459 (L) aggravated kidnapping, as described in Section 76-5-302;
- 460 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 461 [~~(M)~~] (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 462 [~~(N)~~] (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 463 [~~(O)~~] (P) aggravated arson, as described in Section 76-6-103;
- 464 [~~(P)~~] (Q) aggravated burglary, as described in Section 76-6-203;
- 465 [~~(Q)~~] (R) aggravated robbery, as described in Section 76-6-302; or
- 466 [~~(R)~~] (S) domestic violence, as described in Section 77-36-1; or
- 467 (ii) an offense committed outside the state that, if committed in the state, would
- 468 constitute a violation of an offense described in Subsection (14)(c)(i).
- 469 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 470 license renewal to a prospective foster parent or a prospective adoptive parent if, within the five
- 471 years immediately preceding the day on which the individual's application or license would
- 472 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 473 constitutes a violation of any of the following:
- 474 (i) aggravated assault, as described in Section 76-5-103;
- 475 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 476 (iii) mayhem, as described in Section 76-5-105;
- 477 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

- 478 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 479 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
- 480 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 481 Precursor Act; or
- 482 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 483 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
- 484 conduct the comprehensive review of an applicant's background check pursuant to this section if
- 485 the registry check described in Subsection (14)(a) indicates that the individual is listed in a child
- 486 abuse and neglect registry of another state as having a substantiated or supported finding of a
- 487 severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

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

489 **78B-6-117. Who may adopt -- Adoption of minor.**

- 490 (1) A minor child may be adopted by an adult person, in accordance with ~~the~~
- 491 ~~provisions and requirements of~~ this section and this part.
- 492 (2) A child may be adopted by:
 - 493 (a) adults who are legally married to each other in accordance with the laws of this
 - 494 state, including adoption by a stepparent; or
 - 495 (b) subject to Subsection (4), ~~any~~ a single adult, except as provided in Subsection (3).
- 496 (3) A child may not be adopted by a person who is cohabiting in a relationship that is
- 497 not a legally valid and binding marriage under the laws of this state.
- 498 (4) ~~In order to~~ To provide a child who is in the custody of the division with the most
- 499 beneficial family structure, when a child in the custody of the division is placed for adoption, the
- 500 division or child-placing agency shall place the child with a man and a woman who are married
- 501 to each other, unless:
 - 502 (a) there are no qualified married couples who:
 - 503 (i) have applied to adopt a child;
 - 504 (ii) are willing to adopt the child; and
 - 505 (iii) are an appropriate placement for the child;

- 506 (b) the child is placed with a relative of the child;
- 507 (c) the child is placed with a person who has already developed a substantial
- 508 relationship with the child;
- 509 (d) the child is placed with a person who:
- 510 (i) is selected by a parent or former parent of the child, if the parent or former parent
- 511 consented to the adoption of the child; and
- 512 (ii) the parent or former parent described in Subsection (4)(d)(i):
- 513 (A) knew the person with whom the child is placed before the parent consented to the
- 514 adoption; or
- 515 (B) became aware of the person with whom the child is placed through a source other
- 516 than the division or the child-placing agency that assists with the adoption of the child; or
- 517 (e) it is in the best interests of the child to place the child with a single person.
- 518 (5) Notwithstanding Subsection (6), an adult may not adopt a child if, before adoption
- 519 is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony
- 520 or attempted felony involving conduct that constitutes any of the following:
- 521 (a) child abuse, as described in Section [76-5-109](#);
- 522 (b) child abuse homicide, as described in Section [76-5-208](#);
- 523 (c) child kidnapping, as described in Section [76-5-301.1](#);
- 524 (d) human trafficking of a child, as described in Section [76-5-308.5](#);
- 525 (e) sexual abuse of a minor, as described in Section [76-5-401.1](#);
- 526 (f) rape of a child, as described in Section [76-5-402.1](#);
- 527 (g) object rape of a child, as described in Section [76-5-402.3](#);
- 528 (h) sodomy on a child, as described in Section [76-5-403.1](#);
- 529 (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section
- 530 [76-5-404.1](#);
- 531 (j) sexual exploitation of a minor, as described in Section [76-5b-201](#); or
- 532 (k) an offense in another state that, if committed in this state, would constitute an
- 533 offense described in this Subsection (5).

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

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

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

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

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

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

550 (A) the child's age;

551 (B) the child's gender;

552 (C) the child's development;

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

554 (E) the preferences of a child 12 years of age or older;

555 (F) any available assessments, including custody evaluations, homes studies,
556 pre-placement adoptive evaluations, parenting assessments, psychological or mental health
557 assessments, and bonding assessments; and

558 (G) any other relevant information;

559 (v) the person can provide evidence of all of the following:

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

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

562 (C) that adoption by the person who has committed the disqualifying offense ensures
563 the best interests of the child are met; and

564 (vi) the adoption is by:

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

566 (B) subject to Subsection (6)(d), a relative of the child as defined in Section [78A-6-307](#)
567 and there is not another relative without a disqualifying offense filing an adoption petition.

568 (c) The person with the disqualifying offense bears the burden of proof regarding why
569 adoption with that person is in the best interest of the child over another responsible relative or
570 equally situated person who does not have a disqualifying offense.

571 (d) If there is an alternative responsible relative who does not have a disqualifying
572 offense filing an adoption petition, the following applies:

573 (i) preference for adoption shall be given to a relative who does not have a disqualifying
574 offense; and

575 (ii) before the court may grant adoption to the person who has the disqualifying offense
576 over another responsible, willing, and able relative:

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

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

579 (7) Subsections (5) and (6) apply to a case pending on the effective date of this bill for
580 which a final decision on adoption has not been made and to a case filed on or after the effective
581 date of this bill.

582 **Section 4. Effective date.**

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

587 **Section 5. Revisor instructions.**

588 It is the intent of the Legislature that, in preparing the Utah Code database for
589 publication, the Office of Legislative Research and General Counsel shall replace the phrase "the

590 effective date of this bill" in Subsection [30-5a-103](#)(12) and Subsection [78B-6-117](#)(7) with the
591 bill's actual effective date.