

Representative Kera Birkeland proposes the following substitute bill:

CHILD WELFARE REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill concerns placement and adoption of a child who is involved in a child welfare case.

Highlighted Provisions:

This bill:

- ▶ limits preferential consideration of a relative for placement of the child in a child welfare case under certain circumstances;
- ▶ requires a court to consider whether a relative who desires to adopt a child filed an intent to adopt with the court or demonstrated an interest in the child during the child welfare case;
- ▶ clarifies that a foster parent may be considered a suitable adoptive placement after termination of parental rights; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **78B-6-133**, as last amended by Laws of Utah 2021, Chapter 262

28 **80-3-302**, as renumbered and amended by Laws of Utah 2021, Chapter 261

29 **80-4-305**, as renumbered and amended by Laws of Utah 2021, Chapter 261



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

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

33 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

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

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

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

- 43 (i) dismiss the adoption petition;
- 44 (ii) conduct an evidentiary hearing to determine who should have custody of the child;

45 and

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

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

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

- 50 (a) evidence of psychological or emotional bonds that the child has formed with a third
51 person, including the prospective adoptive parent; and

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

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

57 or that the person:

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

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

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

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

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

63 (a) include provisions for:

64 (i) parent-time; or

65 (ii) visitation by an interested third party; and

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

67 (6) (a) If a person or entity whose consent is required for an adoption under Subsection

68 [78B-6-120](#)(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing

69 and award custody as set forth in Subsection (2).

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

71 child.

72 (7) (a) A person may not contest an adoption after the final decree of adoption is

73 entered, if [~~that~~] the person:

74 (i) was a party to the adoption proceeding;

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

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

77 (b) [~~No person may~~] A person may not contest an adoption after one year from the day

78 on which the final decree of adoption is entered.

79 (c) The limitations on contesting an adoption action, described in this Subsection (7),

80 apply to all attempts to contest an adoption:

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

82 (ii) regardless of the basis for contesting the adoption, including claims of fraud,

83 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of

84 jurisdiction.

85 (d) The limitations on contesting an adoption action, described in this Subsection (7),

86 do not prohibit a timely appeal of:

87 (i) a final decree of adoption; or

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

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

92 (a) to a petitioner:

93 (i) with whom the child is placed;

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

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

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

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

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

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

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

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

110 (b) if the child:

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

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

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

118 (i) who has fulfilled the requirements described in [~~Title 78B, Chapter 6, Part 1, Utah~~

119 ~~Adoption Act]~~ this part; and

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

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

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

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

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

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

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

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

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

139 **80-3-302. Shelter hearing -- Placement of a child.**

140 (1) As used in this section:

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

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

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

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

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

147 (B) has strictly complied with Sections 78B-6-120 through 78B-6-122, before removal
148 of the child or voluntary surrender of the child by the custodial parent.

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

150 of whether the child has been or will be placed with adoptive parents or whether adoption has
151 been or will be considered as a long-term goal for the child.

152 (2) (a) At the shelter hearing, when the juvenile court orders that a child be removed
153 from the custody of the child's parent in accordance with the requirements of Section 80-3-301,
154 the juvenile court shall first determine whether there is another natural parent with whom the
155 child was not residing at the time the events or conditions that brought the child within the
156 juvenile court's jurisdiction occurred, who desires to assume custody of the child.

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

160 (c) The juvenile court:

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

163 (ii) shall, at a minimum, order the division to visit the parent's home, comply with the
164 criminal background check provisions described in Section 80-3-305, and check the division's
165 management information system for any previous reports of abuse or neglect received by the
166 division regarding the parent at issue;

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

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

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

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

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

175 (b) the juvenile court may order:

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

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

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

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

- 183 (a) placement with the parent continues to be in the child's best interest;
- 184 (b) the child should be returned to the original custodial parent;
- 185 (c) the child should be placed with a relative under Subsections (7) through (10); or
- 186 (d) the child should be placed in the temporary custody of the division.

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

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

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

193 (7) Subject to Subsection (8), if, at the time of the shelter hearing, a child is removed
194 from the custody of the child's parent and is not placed in the custody of the child's other
195 parent, the juvenile court:

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

200 (b) may order the division to conduct a reasonable search to determine whether there
201 are relatives or friends who are willing and appropriate, in accordance with the requirements of
202 this chapter and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the
203 child;

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

207 (d) may order that the child be placed in the temporary custody of the division pending
208 the determination under Subsection (7)(a).

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

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

214 (ii) After the day on which the time period described in Subsection (8)(b)(i) expires,
215 the division or the juvenile court may not grant preferential consideration to a relative [or
216 friend, who has not obtained custody or asserted an interest in a child, may not be granted
217 preferential consideration by the division or the juvenile court.] unless the relative:

218 (A) obtained custody of the child;

219 (B) filed a written statement under Subsection 78B-6-133(8)(a)(iii); or

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

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

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

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

230 (iii) Before the day on which the time period described in Subsection (8)(c)(i) expires,
231 the following order of preference shall be applied when determining the individual with whom
232 a child will be placed, provided that the individual is willing and able to care for the child:

233 (A) a noncustodial parent of the child;

234 (B) a relative of the child;

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

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

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

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

241 (ii) is required to consider no more than one friend designated by each parent of the
242 child and one friend designated by the child if the child is of sufficient maturity to articulate the

243 child's wishes in relation to a placement;

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

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

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

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

251 (e) (i) If a parent of the child or the child, if the child is of sufficient maturity to
252 articulate the child's wishes in relation to a placement, is not able to designate a friend who is a
253 licensed foster parent for placement of the child, but is able to identify a friend who is willing
254 to become licensed as a foster parent, the department shall fully cooperate to expedite the
255 licensing process for the friend.

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

259 (9) (a) If a relative or friend who is willing to cooperate with the child's permanency
260 goal is identified under Subsection (7)(a), the juvenile court shall make a specific finding
261 regarding:

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

263 (ii) the safety and appropriateness of placement with the relative or friend.

264 (b) In making the finding described in Subsection (9)(a), the juvenile court shall, at a
265 minimum, order the division to:

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

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

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

271 (C) a background check that complies with the criminal background check provisions
272 described in Section 80-3-305, of each nonrelative, as defined in Section 62A-4a-209, of the
273 child who resides in the household where the child may be placed;

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

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

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

280 (C) a background check that complies with the criminal background check provisions
281 described in Section 80-3-305, of each nonrelative, as defined in Section 62A-4a-209, of the
282 child who resides in the household where the child may be placed;

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

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

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

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

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

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

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

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

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

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

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

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

304 (d) The division shall complete and file the division's assessment regarding placement

305 with a relative or friend under Subsections (9)(a) and (b) as soon as practicable, in an effort to
306 facilitate placement of the child with a relative or friend.

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

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

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

314 (a) the juvenile court:

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

317 (ii) may order the division provide necessary services to the child and the child's
318 relative or friend, including the monitoring of the child's safety and well-being;

319 (b) the child and the relative or friend in whose custody the child is placed are under
320 the continuing jurisdiction of the juvenile court;

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

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

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

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

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

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

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

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

336 (14) (a) If the juvenile court awards temporary custody of a child to the division, and
337 the division places the child with a relative, the division shall:

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

340 (ii) if the results of the criminal background check described in Subsection (14)(a)(i)
341 would prohibit the relative from having direct access to the child under Section 62A-2-120, the
342 division shall:

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

344 (B) within three days, excluding weekends and holidays, after the day on which the
345 child is taken into physical custody under Subsection (14)(a)(ii)(A), give written notice to the
346 juvenile court, and all parties to the proceedings, of the division's action.

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

350 (15) If the juvenile court orders that a child be removed from the custody of the child's
351 parent and does not award custody and guardianship to another parent, relative, or friend under
352 this section, the juvenile court shall order that the child be placed in the temporary custody of
353 the division, to proceed to adjudication and disposition and to be provided with care and
354 services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

355 (16) If, following the shelter hearing, the child is placed with an individual who is not a
356 parent, a relative, a friend, or a former foster parent of the child, priority shall be given to a
357 foster placement with a married couple, unless it is in the best interests of the child to place the
358 child with a single foster parent.

359 (17) In determining the placement of a child, the juvenile court and the division may
360 not take into account, or discriminate against, the religion of an individual with whom the child
361 may be placed, unless the purpose of taking religion into account is to place the child with an
362 individual or family of the same religion as the child.

363 (18) If the juvenile court's decision differs from a child's express wishes if the child is
364 of sufficient maturity to articulate the wishes in relation to the child's placement, the juvenile
365 court shall make findings explaining why the juvenile court's decision differs from the child's
366 wishes.

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

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

370 **80-4-305. Court disposition of child upon termination of parental rights --**

371 **Posttermination reunification.**

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

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

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

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

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

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

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

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

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

388 ~~[(b)]~~ (ii) may order the division to conduct a reasonable search to determine whether
389 there [are relatives who are] is a relative who is willing to adopt the child; and

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

391 ~~[(i)]~~ (A) make a specific finding regarding the fitness of the relative to adopt the child;
392 [and]

393 (B) consider whether the relative filed a written statement under Subsection
394 78B-6-133(8)(a)(iii) or, if the statement was not filed, demonstrated an interest in the child
395 after the day on which the relative received notice from the division that the relative is a
396 relative of the child; and

397 ~~[(i)]~~ (C) place the child for adoption with [that] the relative unless the juvenile court

398 finds that adoption by the relative is not in the best interest of the child.

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

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

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

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

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

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