

ADOPTION CODE REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies Title 78B, Chapter 6, Particular Proceedings, by amending procedures related to adoption.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ specifies that a petition for adoption may be filed before the child's birth;
- ▶ states that in order for a person to be excused from providing notice of an adoption proceeding on the grounds of prior consent, the consent may not be implied consent;
- ▶ states that consent to an adoption may be implied by:
 - a father failing to provide a birth mother with financial or emotional support for a period of six months before the day on which the adoptee is born;
 - leaving an adoptee without knowledge of the parent's whereabouts for 30 consecutive days;
 - leaving the adoptee with others, without providing for support and maintaining a substantial relationship with the adoptee, for six consecutive months; and
 - receiving notice of a pending adoption proceeding and failing to respond as required;
- ▶ states that in certain circumstances, implied consent may not be withdrawn;
- ▶ states that an unmarried biological father's submission to the putative father registry



28 is considered filed when it is received by the Office of Vital Records and Statistics;

29 ▶ clarifies that a preplacement adoptive evaluation is not necessary if the prospective
30 adoptive parent is related to the child or pre-existing parent as a stepparent, sibling,
31 half sibling, grandparent, aunt, uncle, or first cousin; and

32 ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **78B-6-105**, as last amended by Laws of Utah 2012, Chapter 340

40 **78B-6-110**, as last amended by Laws of Utah 2012, Chapter 340

41 **78B-6-120**, as last amended by Laws of Utah 2009, Chapter 159

42 **78B-6-121**, as last amended by Laws of Utah 2012, Chapter 340

43 **78B-6-128**, as last amended by Laws of Utah 2012, Chapter 340

44 **78B-6-134**, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and
45 amended by Laws of Utah 2008, Chapter 3

46 ENACTS:

47 **78B-6-120.1**, Utah Code Annotated 1953



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

50 Section 1. Section **78B-6-105** is amended to read:

51 **78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction**
52 **over nonresidents -- Time for filing.**

53 (1) Adoption proceedings shall be commenced by filing a petition with the clerk of the
54 district court either:

55 (a) in the district where the prospective adoptive parent resides;

56 (b) if the prospective adoptive parent is not a resident of this state, in the district where:

57 (i) the adoptee was born;

58 (ii) the adoptee resides on the day on which the petition is filed; or

59 (iii) a parent of the proposed adoptee resides on the day on which the petition is filed;

60 or

61 (c) with the juvenile court as provided in Subsection 78A-6-103(1).

62 (2) All orders, decrees, agreements, and notices in the proceedings shall be filed with
63 the clerk of the court where the adoption proceedings were commenced under Subsection (1).

64 (3) A petition for adoption:

65 (a) may be filed before the birth of a child;

66 [~~(a)~~] (b) may be filed before or after the adoptee is placed in the home of the petitioner
67 for the purpose of adoption; and

68 [~~(b)~~] (c) shall be filed no later than 30 days after the day on which the adoptee is placed
69 in the home of the petitioners for the purpose of adoption, unless:

70 (i) the time for filing has been extended by the court; or

71 (ii) the adoption is arranged by a child-placing agency in which case the agency may
72 extend the filing time.

73 (4) (a) If a person whose consent for the adoption is required under Section 78B-6-120
74 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state
75 shall confer jurisdiction on the court in proceedings under this chapter as to such absent person,
76 provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

77 (b) The notice may not include the name of:

78 (i) a prospective adoptive parent; or

79 (ii) an unmarried mother without her consent.

80 (5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction
81 over the person served in the same manner and to the same extent as if the person served was
82 served personally within the state.

83 (6) In the case of service outside the state, service completed not less than five days
84 before the time set in the notice for appearance of the person served shall be sufficient to confer
85 jurisdiction.

86 (7) Computation of periods of time not otherwise set forth in this section shall be made
87 in accordance with the Utah Rules of Civil Procedure.

88 Section 2. Section **78B-6-110** is amended to read:

89 **78B-6-110. Notice of adoption proceedings.**

90 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
91 sexual relationship with a woman:

92 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
93 the child may occur; and

94 (ii) has a duty to protect his own rights and interests.

95 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
96 proceeding with regard to his child only as provided in this section.

97 (2) Notice of an adoption proceeding shall be served on each of the following persons:

98 (a) any person or agency whose consent or relinquishment is required under Section
99 78B-6-120 or 78B-6-121, unless that right has been terminated by:

100 (i) waiver;

101 (ii) relinquishment;

102 (iii) actual consent, as described in Subsection (12); or

103 (iv) judicial action;

104 (b) any person who has initiated a paternity proceeding and filed notice of that action
105 with the state registrar of vital statistics within the Department of Health, in accordance with
106 Subsection (3);

107 (c) any legally appointed custodian or guardian of the adoptee;

108 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
109 petition;

110 (e) the adoptee's spouse, if any;

111 (f) any person who, prior to the time the mother executes her consent for adoption or
112 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
113 the knowledge and consent of the mother;

114 (g) a person who is:

115 (i) openly living in the same household with the child at the time the consent is
116 executed or relinquishment made; and

117 (ii) holding himself out to be the child's father; and

118 (h) any person who is married to the child's mother at the time she executes her consent
119 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
120 spouse is not the child's father under Section 78B-15-607.

121 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
122 consistent with Subsection (3)(d):

123 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
124 Chapter 15, Utah Uniform Parentage Act; and

125 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
126 with the office of vital statistics within the Department of Health.

127 (b) If the unmarried, biological father does not know the county in which the birth
128 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
129 Section 78B-3-307.

130 (c) The Department of Health shall provide forms for the purpose of filing the notice
131 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
132 health department in each county.

133 (d) When the state registrar of vital statistics receives a completed form, the registrar
134 shall:

135 (i) record the date and time the form was received; and

136 (ii) immediately enter the information provided by the unmarried biological father in
137 the confidential registry established by Subsection 78B-6-121(3)(c).

138 [~~(d)~~] (e) The action and notice described in Subsection (3)(a):

139 (i) may be filed before or after the child's birth; and

140 (ii) shall be filed prior to the mother's:

141 (A) execution of consent to adoption of the child; or

142 (B) relinquishment of the child for adoption.

143 (4) Notice provided in accordance with this section need not disclose the name of the
144 mother of the child who is the subject of an adoption proceeding.

145 (5) The notice required by this section:

146 (a) may be served at any time after the petition for adoption is filed, but may not be
147 served on a birth mother before she has given birth to the child who is the subject of the
148 petition for adoption;

149 (b) shall be served at least 30 days prior to the final dispositional hearing;

150 (c) shall specifically state that the person served shall fulfill the requirements of
151 Subsection (6)(a), within 30 days after the day on which the person receives service if the

152 person intends to intervene in or contest the adoption;

153 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
154 to file a motion for relief within 30 days after the day on which the person is served with notice
155 of an adoption proceeding;

156 (e) is not required to include, nor be accompanied by, a summons or a copy of the
157 petition for adoption; and

158 (f) shall state where the person may obtain a copy of the petition for adoption.

159 (6) (a) A person who has been served with notice of an adoption proceeding and who
160 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

161 (i) within 30 days after the day on which the person was served with notice of the
162 adoption proceeding;

163 (ii) setting forth specific relief sought; and

164 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
165 which the motion is based.

166 (b) A person who fails to fully and strictly comply with all of the requirements
167 described in Subsection (6)(a) within 30 days after the day on which the person was served
168 with notice of the adoption proceeding:

169 (i) waives any right to further notice in connection with the adoption;

170 (ii) forfeits all rights in relation to the adoptee; and

171 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
172 the adoptee.

173 (7) Service of notice under this section shall be made as follows:

174 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
175 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
176 Rules of Civil Procedure.

177 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
178 shall designate the content of the notice regarding the identity of the parties.

179 (iii) The notice described in this Subsection (7)(a) may not include the name of a
180 person seeking to adopt the adoptee.

181 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
182 is required under this section, service by certified mail, return receipt requested, is sufficient.

183 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
184 attempts, the court may issue an order providing for service by publication, posting, or by any
185 other manner of service.

186 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
187 action with the state registrar of vital statistics in the Department of Health in accordance with
188 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
189 the last address filed with the registrar.

190 (8) The notice required by this section may be waived in writing by the person entitled
191 to receive notice.

192 (9) Proof of service of notice on all persons for whom notice is required by this section
193 shall be filed with the court before the final dispositional hearing on the adoption.

194 (10) Notwithstanding any other provision of law, neither the notice of an adoption
195 proceeding nor any process in that proceeding is required to contain the name of the person or
196 persons seeking to adopt the adoptee.

197 (11) Except as to those persons whose consent to an adoption is required under Section
198 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
199 served to:

200 (a) intervene in the adoption; and

201 (b) present evidence to the court relevant to the best interest of the child.

202 (12) In order to be excused from the requirement to provide notice as described in
203 Subsection (2)(a) on the grounds that the person has provided consent to the adoption
204 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described
205 in Section 78B-6-120.1.

206 Section 3. Section **78B-6-120** is amended to read:

207 **78B-6-120. Necessary consent to adoption or relinquishment for adoption.**

208 (1) Except as provided in Subsection (2), consent to adoption of a child, or
209 relinquishment of a child for adoption, is required from:

210 (a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not
211 have the mental capacity to consent;

212 (b) a man who:

213 (i) by operation of law under Section 78B-15-204, is recognized as the father of the

214 proposed adoptee, unless:

215 (A) the presumption is rebutted under Section 78B-15-607; or

216 (B) the man was not married to the mother of the proposed adoptee until after the
217 mother consented to adoption, or relinquishment for adoption, of the proposed adoptee; or

218 (ii) is the father of the adoptee by a previous legal adoption;

219 (c) the mother of the adoptee;

220 (d) a biological parent who has been adjudicated to be the child's biological father by a
221 court of competent jurisdiction prior to the mother's execution of consent to adoption or her
222 relinquishment of the child for adoption;

223 (e) consistent with Subsection (3), a biological parent who has executed and filed a
224 voluntary declaration of paternity with the state registrar of vital statistics within the
225 Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act,
226 prior to the mother's execution of consent to adoption or her relinquishment of the child for
227 adoption;

228 (f) an unmarried biological father, of an adoptee, whose consent is not required under
229 Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of
230 Sections 78B-6-121 and 78B-6-122; and

231 (g) the person or agency to whom an adoptee has been relinquished and that is placing
232 the child for adoption.

233 (2) (a) The consent of a person described in Subsections (1)(b) through (g) is not
234 required if the adoptee is 18 years of age or older.

235 (b) The consent of a person described in Subsections (1)(b) through (f) is not required
236 if the person's parental rights relating to the adoptee have been terminated.

237 (3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered
238 filed when it is entered into a database that:

239 (a) can be accessed by the Department of Health; and

240 (b) is designated by the state registrar of vital statistics as the official database for
241 voluntary declarations of paternity.

242 Section 4. Section **78B-6-120.1** is enacted to read:

243 **78B-6-120.1. Implied consent.**

244 (1) (a) As used in this section, "abandonment" means failure of a father, with

245 reasonable knowledge of the pregnancy, to offer and provide financial and emotional support to
246 the birth mother for a period of six months before the day on which the adoptee is born.

247 (b) A court shall not determine that a father abandoned the birth mother if the father
248 failed to provide financial or emotional support because the birth mother refused to accept
249 support.

250 (2) Consent or relinquishment, as required by Subsection 78B-6-120(1), may be
251 implied by any of the following acts:

252 (a) abandonment;

253 (b) leaving the adoptee without knowledge of the parent's whereabouts for 30
254 consecutive days;

255 (c) knowingly leaving the adoptee with another person, without providing for support,
256 communicating, or otherwise maintaining a substantial relationship with the adoptee, for six
257 consecutive months; or

258 (d) receiving notification of a pending adoption proceeding under Subsection
259 78B-6-110(6) or of a termination proceeding under Section 78B-6-112 and failing to respond
260 as required.

261 (3) Implied consent under Subsection (2)(a) may not be withdrawn.

262 (4) Nothing in this section negates the requirements of Section 78B-6-121 or
263 78B-6-122 for an unmarried biological father.

264 Section 5. Section **78B-6-121** is amended to read:

265 **78B-6-121. Consent of unmarried biological father.**

266 (1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to
267 Subsection (5), with regard to a child who is placed with prospective adoptive parents more
268 than six months after birth, consent of an unmarried biological father is not required unless the
269 unmarried biological father:

270 (a) (i) developed a substantial relationship with the child by:

271 (A) visiting the child monthly, unless the unmarried biological father was physically or
272 financially unable to visit the child on a monthly basis; or

273 (B) engaging in regular communication with the child or with the person or authorized
274 agency that has lawful custody of the child;

275 (ii) took some measure of responsibility for the child and the child's future; and

276 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial
277 support of the child of a fair and reasonable sum in accordance with the father's ability; or

278 (b) (i) openly lived with the child:

279 (A) (I) for a period of at least six months during the one-year period immediately
280 preceding the day on which the child is placed with prospective adoptive parents; or

281 (II) if the child is less than one year old, for a period of at least six months during the
282 period of time beginning on the day on which the child is born and ending on the day on which
283 the child is placed with prospective adoptive parents; and

284 (B) immediately preceding placement of the child with prospective adoptive parents;
285 and

286 (ii) openly held himself out to be the father of the child during the six-month period
287 described in Subsection (1)(b)(i)(A).

288 (2) (a) If an unmarried biological father was prevented from complying with a
289 requirement of Subsection (1) by the person or authorized agency having lawful custody of the
290 child, the unmarried biological father is not required to comply with that requirement.

291 (b) The subjective intent of an unmarried biological father, whether expressed or
292 otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been
293 met, shall not preclude a determination that the father failed to meet the requirements of
294 Subsection (1).

295 (3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection
296 (5), with regard to a child who is six months of age or less at the time the child is placed with
297 prospective adoptive parents, consent of an unmarried biological father is not required unless,
298 prior to the time the mother executes her consent for adoption or relinquishes the child for
299 adoption, the unmarried biological father:

300 (a) initiates proceedings in a district court of Utah to establish paternity under Title
301 78B, Chapter 15, Utah Uniform Parentage Act;

302 (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

303 (i) stating that he is fully able and willing to have full custody of the child;

304 (ii) setting forth his plans for care of the child; and

305 (iii) agreeing to a court order of child support and the payment of expenses incurred in
306 connection with the mother's pregnancy and the child's birth;

307 (c) consistent with Subsection (4), files notice of the commencement of paternity
308 proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the
309 Department of Health, in a confidential registry established by the department for that purpose;
310 and

311 (d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and
312 reasonable amount of the expenses incurred in connection with the mother's pregnancy and the
313 child's birth, in accordance with his financial ability, unless:

314 (i) he did not have actual knowledge of the pregnancy;

315 (ii) he was prevented from paying the expenses by the person or authorized agency
316 having lawful custody of the child; or

317 (iii) the mother refuses to accept the unmarried biological father's offer to pay the
318 expenses described in this Subsection (3)(d).

319 (4) The notice described in Subsection (3)(c) is considered filed when ~~[it is entered into~~
320 ~~the registry described in Subsection (3)(c)]~~ received by the state registrar of vital statistics.

321 (5) Unless his ability to assert the right to consent has been lost for failure to comply
322 with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological
323 father shall have at least one business day after the child's birth to fully and strictly comply with
324 the requirements of Subsection (3).

325 (6) Consent of an unmarried biological father is not required under this section if:

326 (a) the court determines, in accordance with the requirements and procedures of Title
327 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological
328 father's rights should be terminated, based on the petition of any interested party;

329 (b) (i) a declaration of paternity declaring the unmarried biological father to be the
330 father of the child is rescinded under Section 78B-15-306; and

331 (ii) the unmarried biological father fails to comply with Subsection (3) within 10
332 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is
333 mailed by the Office of Vital Records within the Department of Health as provided in Section
334 78B-15-306; or

335 (c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to
336 preserve his rights in accordance with the requirements of that section.

337 (7) Unless the adoptee is conceived or born within a marriage, the petitioner in an

338 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a
339 certificate from the state registrar of vital statistics within the Department of Health, stating:

340 (a) that a diligent search has been made of the registry of notices from unmarried
341 biological fathers described in Subsection (3)(c); and

342 (b) (i) that no filing has been found pertaining to the father of the child in question; or
343 (ii) if a filing is found, the name of the putative father and the time and date of filing.

344 Section 6. Section **78B-6-128** is amended to read:

345 **78B-6-128. Preplacement adoptive evaluations -- Exceptions.**

346 (1) (a) Except as otherwise provided in this section, a child may not be placed in an
347 adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive
348 parent and the prospective adoptive home, has been conducted in accordance with the
349 requirements of this section.

350 (b) Except as provided in Section 78B-6-131, the court may, at any time, authorize
351 temporary placement of a child in a potential adoptive home pending completion of a
352 preplacement adoptive evaluation described in this section.

353 (c) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the
354 child to be adopted and the prospective adoptive parent is related to that child or the
355 pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent,
356 aunt, uncle, or first cousin, unless the evaluation is otherwise requested by the court. The
357 prospective adoptive parent described in this Subsection (1)(c) shall obtain the information
358 described in Subsections (2)(a) and (b), and file that documentation with the court prior to
359 finalization of the adoption.

360 (d) The required preplacement adoptive evaluation must be completed or updated
361 within the 12-month period immediately preceding the placement of a child with the
362 prospective adoptive parent. If the prospective adoptive parent has previously received custody
363 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed
364 or updated within the 12-month period immediately preceding the placement of a child with the
365 prospective adoptive parent and after the placement of the previous child with the prospective
366 adoptive parent.

367 (2) The preplacement adoptive evaluation shall include:

368 (a) criminal history record information regarding each prospective adoptive parent and

369 any other adult living in the prospective home, prepared no earlier than 18 months immediately
370 preceding placement of the child in accordance with the following:

371 (i) if the child is in state custody, each prospective adoptive parent and any other adult
372 living in the prospective home shall:

373 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
374 record check through the Criminal and Technical Services Division of the Department of
375 Public Safety in accordance with the provisions of Section 62A-2-120; or

376 (B) submit to a fingerprint based Federal Bureau of Investigation national criminal
377 history record check through a law enforcement agency in another state, district, or territory of
378 the United States; or

379 (ii) subject to Subsection (3), if the child is not in state custody, each prospective
380 adoptive parent and any other adult living in the prospective home shall:

381 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
382 records check as a personal records check; or

383 (B) complete a criminal records check, if available, for each state and country where
384 the prospective adoptive parent and any adult living in the prospective adoptive home resided
385 during the five years immediately preceding the day on which the adoption petition is to be
386 finalized;

387 (b) a report containing all information regarding reports and investigations of child
388 abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other
389 adult living in the prospective home, obtained no earlier than 18 months immediately preceding
390 the day on which the child is placed in the prospective home, pursuant to waivers executed by
391 each prospective adoptive parent and any other adult living in the prospective home, that:

392 (i) if the prospective adoptive parent or the adult living in the prospective adoptive
393 parent's home is a resident of Utah, is prepared by the Department of Human Services from the
394 records of the Department of Human Services; or

395 (ii) if the prospective adoptive parent or the adult living in the prospective adoptive
396 parent's home is not a resident of Utah, prepared by the Department of Human Services, or a
397 similar agency in another state, district, or territory of the United States, where each
398 prospective adoptive parent and any other adult living in the prospective home resided in the
399 five years immediately preceding the day on which the child is placed in the prospective

400 adoptive home;

401 (c) in accordance with Subsection (6), an evaluation conducted by:

402 (i) an expert in family relations approved by the court;

403 (ii) a certified social worker;

404 (iii) a clinical social worker;

405 (iv) a marriage and family therapist;

406 (v) a psychologist;

407 (vi) a social service worker, if supervised by a certified or clinical social worker; or

408 (vii) a professional counselor; and

409 (d) in accordance with Subsection (7), if the child to be adopted is a child who is in the
410 custody of any public child welfare agency, and is a child who has a special need as defined in
411 Section 62A-4a-902, the preplacement evaluation shall be conducted by the Department of
412 Human Services or a child-placing agency that has entered into a contract with the department
413 to conduct the preplacement evaluations for children with special needs.

414 (3) For purposes of Subsection (2)(a)(ii):

415 (a) if the adoption is being handled by a human services program, as defined in Section
416 62A-2-101:

417 (i) the criminal history check described in Subsection (2)(a)(ii)(A) shall be submitted
418 through the Criminal Investigations and Technical Services Division of the Department of
419 Public Safety, in accordance with the provisions of Section 62A-2-120; and

420 (ii) subject to Subsection (4), the criminal history check described in Subsection
421 (2)(a)(ii)(B) shall be submitted in a manner acceptable to the court that will:

422 (A) preserve the chain of custody of the results; and

423 (B) not permit tampering with the results by a prospective adoptive parent or other
424 interested party; and

425 (b) if the adoption is being handled by a private attorney, and not a human services
426 program, the criminal history checks described in Subsection (2)(a)(ii) shall be:

427 (i) submitted in accordance with procedures established by the Criminal Investigations
428 and Technical Services Division of the Department of Public Safety; or

429 (ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:

430 (A) preserve the chain of custody of the results; and

431 (B) not permit tampering with the results by a prospective adoptive parent or other
432 interested party.

433 (4) In order to comply with Subsection (3)(a)(ii) or (b)(ii), the manner in which the
434 criminal history check is submitted shall be approved by the court.

435 (5) Except as provided in Subsection 78B-6-131(2), in addition to the other
436 requirements of this section, before a child in state custody is placed with a prospective foster
437 parent or a prospective adoptive parent, the Department of Human Services shall comply with
438 Section 78B-6-131.

439 (6) (a) A person described in Subsection (2)(c) shall be licensed to practice under the
440 laws of:

441 (i) this state; or

442 (ii) the state, district, or territory of the United States where the prospective adoptive
443 parent or other person living in the prospective adoptive home resides.

444 (b) The evaluation described in Subsection (2)(c) shall be in a form approved by the
445 Department of Human Services.

446 (c) Neither the Department of Human Services nor any of its divisions may proscribe
447 who qualifies as an expert in family relations or who may conduct evaluations under
448 Subsection (2)(c).

449 (7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the
450 responsibility of the adopting parent or parents.

451 (8) The person or agency conducting the preplacement adoptive evaluation shall, in
452 connection with the evaluation, provide the prospective adoptive parent or parents with
453 literature approved by the Division of Child and Family Services relating to adoption, including
454 information relating to:

455 (a) the adoption process;

456 (b) developmental issues that may require early intervention; and

457 (c) community resources that are available to the prospective adoptive parent or
458 parents.

459 (9) A copy of the preplacement adoptive evaluation shall be filed with the court.
460 Section 7. Section **78B-6-134** is amended to read:

461 **78B-6-134. Custody pending final decree.**

462 (1) (a) A licensed child placing adoption agency, or a petitioner if the petition for
463 adoption is filed before a child's birth, may seek an order establishing that the agency or
464 petitioner shall have temporary custody of the child from the time of birth.

465 (b) The court shall grant an order for temporary custody under Subsection (1)(a) upon
466 determining that:

467 (i) the birth mother or both birth parents consent to the order;

468 (ii) the agency or petitioner is willing and able to take custody of the child; and

469 (iii) an order will be in the best interest of the child.

470 (c) The court shall vacate an order if, prior to the child's birth, the birth mother or birth
471 parents withdraw their consent.

472 ~~[(1)]~~ (2) Except as otherwise provided by the court, once a petitioner has received the
473 adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the
474 custody and control of the adoptee and is responsible for the care, maintenance, and support of
475 the adoptee, including any necessary medical or surgical treatment, pending further order of the
476 court.

477 ~~[(2)]~~ (3) Once a child has been placed with, relinquished to, or ordered into the custody
478 of a child-placing agency for purposes of adoption, the agency shall have custody and control
479 of the child and is responsible for his care, maintenance, and support. The agency may
480 delegate the responsibility for care, maintenance, and support, including any necessary medical
481 or surgical treatment, to the petitioner once the petitioner has received the child into his home.
482 However, until the final decree of adoption is entered by the court, the agency has the right to
483 the custody and control of the child.

Legislative Review Note
as of 2-20-13 7:00 PM

Office of Legislative Research and General Counsel