

CUSTODY AND ADOPTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: _____

LONG TITLE**General Description:**

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

Highlighted Provisions:

This bill:

- ▶ prohibits custody being granted to a person who is not a biological parent and has committed certain offenses;
- ▶ prohibits adoption by a person who has committed certain offenses; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

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

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

Utah Code Sections Affected by Revisor Instructions:

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



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

29
30 *Be it enacted by the Legislature of the state of Utah:*

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

32 **30-5a-103. Custody and visitation for persons other than a parent.**

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

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

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

53 (3) A proceeding under this chapter may be commenced by filing a verified petition, or
54 petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district
55 court in the county in which the child:

- 56 (a) currently resides; or
- 57 (b) lived with a parent or a person other than a parent who acted as a parent within six
58 months before the commencement of the action.

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

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

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

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

- (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;
- (b) any person who has court-ordered custody or visitation rights;
- (c) the child's guardian;
- (d) the guardian ad litem, if one has been appointed;
- (e) a person or agency that has physical custody of the child or that claims to have custody or visitation rights; and
- (f) any other person or agency that has previously appeared in any action regarding custody of or visitation with the child.

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

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

(10) (a) Notwithstanding the other provisions of this section, a court may not grant custody of a child under this section to an individual who is not the biological parent of the child and who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony involving conduct that constitutes any of the following:

- (i) child abuse, as described in Section [76-5-109](#);
- (ii) child abuse homicide, as described in Section [76-5-208](#);
- (iii) child kidnapping, as described in Section [76-5-301.1](#);
- (iv) human trafficking of a child, as described in Section [76-5-308.5](#);
- (v) unlawful sexual activity with a minor, as described in Section [76-5-401](#);

(vi) sexual abuse of a minor, as described in Section 76-5-401.1;
(vii) rape of a child, as described in Section 76-5-402.1;
(viii) object rape of a child, as described in Section 76-5-402.3;
(ix) sodomy on a child, as described in Section 76-5-403.1;
(x) sexual abuse of a child or aggravated sexual abuse of a child, as described in
Section 76-5-404.1;
(xi) sexual exploitation of a minor, as described in Section 76-5b-201; or
(xii) an offense in another state that, if committed in this state, would constitute an
offense described in this Subsection (10).
(b) This Subsection (10) applies to a case pending on the effective date of this bill for
which a final decision on custody has not been made and to a case filed on or after the effective
date of this bill.

Section 2. Section **78B-6-117** is amended to read:

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

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

(2) A child may be adopted by:

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

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

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

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

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

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

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

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

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

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

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

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

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

132 (5) (a) Notwithstanding the other provisions of this section, an adult who is not the
133 biological parent of the child may not adopt a child if, before adoption is finalized, the adult
134 has been convicted of, pled guilty to, or plead no contest to a felony or attempted felony
135 involving conduct that constitutes any of the following:

136 (i) child abuse, as described in Section 76-5-109;
137 (ii) child abuse homicide, as described in Section 76-5-208;
138 (iii) child kidnapping, as described in Section 76-5-301.1;
139 (iv) human trafficking of a child, as described in Section 76-5-308.5;
140 (v) unlawful sexual activity with a minor, as described in Section 76-5-401;
141 (vi) sexual abuse of a minor, as described in Section 76-5-401.1;
142 (vii) rape of a child, as described in Section 76-5-402.1;
143 (viii) object rape of a child, as described in Section 76-5-402.3;
144 (ix) sodomy on a child, as described in Section 76-5-403.1;
145 (x) sexual abuse of a child or aggravated sexual abuse of a child, as described in
146 Section 76-5-404.1;

147 (xi) sexual exploitation of a minor, as described in Section 76-5b-201; or
148 (xii) an offense in another state that, if committed in this state, would constitute an
149 offense described in this Subsection (5).

150 (b) This Subsection (5) applies to a case pending on the effective date of this bill for
151 which a final decision on adoption has not been made and to a case filed on or after the

152 effective date of this bill.

153 Section 3. **Effective date.**

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

158 Section 4. **Revisor instructions.**

159 It is the intent of the Legislature that, in preparing the Utah Code database for
160 publication, the Office of Legislative Research and General Counsel shall replace the phrase
161 "the effective date of this bill" in Subsection [30-5a-103\(10\)\(b\)](#) and Subsection [78B-6-117\(5\)\(b\)](#)
162 with the bill's actual effective date.

Legislative Review Note
Office of Legislative Research and General Counsel