

Representative Timothy D. Hawkes proposes the following substitute bill:

CUSTODY AND ADOPTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:



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

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

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

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

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

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

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

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

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

- (a) the person has intentionally assumed the role and obligations of a parent;
 - (b) the person and the child have formed an emotional bond and created a parent-child type relationship;
 - (c) the person contributed emotionally or financially to the child's well being;
 - (d) assumption of the parental role is not the result of a financially compensated surrogate care arrangement;
 - (e) continuation of the relationship between the person and the child would be in the child's best interests;
 - (f) loss or cessation of the relationship between the person and the child would be detrimental to the child; and
 - (g) the parent:
 - (i) is absent; or
 - (ii) is found by a court to have abused or neglected the child.
- (3) A proceeding under this chapter may be commenced by filing a verified petition, or

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

(a) currently resides; or

(b) lived with a parent or a person other than a parent who acted as a parent within six 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) Except as provided in Subsection (11), a court may not grant custody of a child under this section to an individual who is not the biological or adoptive 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:

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

119 (B) the child's gender;

120 (C) the child's development;

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

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

123 (F) any available assessments, including custody evaluations, parenting assessments,
124 psychological or mental health assessments, and bonding assessments; and

125 (G) any other relevant information;

126 (vi) the person can provide evidence of the following:

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

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

129 (C) that custody by the person who has committed the disqualifying offense ensures the
130 best interests of the child are met;

131 (vii) (A) there is no other responsible relative known to the court who has or likely
132 could develop an emotional bond with the child and does not have a disqualifying offense; or

133 (B) if there is a responsible relative known to the court that does not have a
134 disqualifying offense, Subsection (11)(d) applies; and

135 (viii) that the continuation of the relationship between the person with the disqualifying
136 offense and the child could not be sufficiently maintained through any type of visitation if
137 custody were given to the relative with no disqualifying offense described in Subsection
138 (11)(d).

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

142 (d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known
143 to the court who does not have a disqualifying offence:

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

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

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

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

(12) Subsection (10) and (11) apply 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 **62A-2-120** is amended to read:

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

(1) As used in this section:

(a) "Applicant" means:

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

(ii) an individual who:

(A) is associated with a licensee; and

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

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

(iv) a department contractor; or

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

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

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

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

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

(d) "Personal identifying information" means:

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

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

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

(vi) social security number;

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

specified by the office; and

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

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

(i) personal identifying information;

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

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

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

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

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

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

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

(3) The office:

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

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

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

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

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

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

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

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

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

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

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

(i) for an annual renewal; or

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

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

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

(i) more than one license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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

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

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

(iii) prostitution;

(iv) an offense included in:

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

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

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

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

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

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

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

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

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

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

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

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

- 305 (iii) a conviction for any offense described in Subsection (5)(a) that occurred more than
306 10 years before the day on which the applicant submitted information under Subsection (2)(a);
- 307 (iv) pleaded no contest to or is currently subject to a plea in abeyance or diversion
308 agreement for any offense described in Subsection (5)(a);
- 309 (v) a listing in the Department of Human Services, Division of Child and Family
310 Services' Licensing Information System described in Section 62A-4a-1006;
- 311 (vi) a listing in the Department of Human Services, Division of Aging and Adult
312 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
313 62A-3-311.1;
- 314 (vii) a record in the juvenile court of a substantiated finding of severe child abuse or
315 neglect described in Section 78A-6-323;
- 316 (viii) a record of an adjudication in juvenile court for an act that, if committed by an
317 adult, would be a felony or misdemeanor, if the applicant is:
- 318 (A) under 28 years of age; or
- 319 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is
320 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
321 offense described in Subsection (5)(a); or
- 322 (ix) a pending charge for an offense described in Subsection (5)(a).
- 323 (b) The comprehensive review described in Subsection (6)(a) shall include an
324 examination of:
- 325 (i) the date of the offense or incident;
- 326 (ii) the nature and seriousness of the offense or incident;
- 327 (iii) the circumstances under which the offense or incident occurred;
- 328 (iv) the age of the perpetrator when the offense or incident occurred;
- 329 (v) whether the offense or incident was an isolated or repeated incident;
- 330 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
331 adult, including:
- 332 (A) actual or threatened, nonaccidental physical or mental harm;
- 333 (B) sexual abuse;
- 334 (C) sexual exploitation; or
- 335 (D) negligent treatment;

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

(viii) any other pertinent information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

department contractor;

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

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

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

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

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

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

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

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

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

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

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

(c) the individual:

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

(ii) is directly supervised by an individual who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) federal law or rule permits otherwise; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

460 (K) child kidnapping, as described in Section 76-5-301.1;
461 (L) aggravated kidnapping, as described in Section 76-5-302;
462 (M) human trafficking of a child, as described in Section 76-5-308.5;
463 ~~[(M)]~~ (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
464 ~~[(N)]~~ (O) sexual exploitation of a minor, as described in Section 76-5b-201;
465 ~~[(O)]~~ (P) aggravated arson, as described in Section 76-6-103;
466 ~~[(P)]~~ (Q) aggravated burglary, as described in Section 76-6-203;
467 ~~[(Q)]~~ (R) aggravated robbery, as described in Section 76-6-302; or
468 ~~[(R)]~~ (S) domestic violence, as described in Section 77-36-1; or
469 (ii) an offense committed outside the state that, if committed in the state, would
470 constitute a violation of an offense described in Subsection (14)(c)(i).
471 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
472 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
473 five years immediately preceding the day on which the individual's application or license would
474 otherwise be approved, the applicant was convicted of a felony involving conduct that
475 constitutes a violation of any of the following:
476 (i) aggravated assault, as described in Section 76-5-103;
477 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
478 (iii) mayhem, as described in Section 76-5-105;
479 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
480 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
481 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
482 Act;
483 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
484 Precursor Act; or
485 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
486 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
487 conduct the comprehensive review of an applicant's background check pursuant to this section
488 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
489 child abuse and neglect registry of another state as having a substantiated or supported finding
490 of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

Section 3. 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;

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

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

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

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

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

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

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

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

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

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

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

(c) child kidnapping, as described in Section 76-5-301.1;

(d) human trafficking of a child, as described in Section 76-5-308.5;

(e) sexual abuse of a minor, as described in Section 76-5-401.1;

(f) rape of a child, as described in Section 76-5-402.1;

(g) object rape of a child, as described in Section 76-5-402.3;

(h) sodomy on a child, as described in Section 76-5-403.1;

(i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;

(j) sexual exploitation of a minor, as described in Section 76-5b-201; or

(k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (5).

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

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

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

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

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

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

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

584 effective date of this bill.

585 Section 4. **Effective date.**

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

590 Section 5. **Revisor instructions.**

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