HIGH NEEDS CHILDREN ADOPTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill enacts provisions related to the adoption and placement of high needs children.

Highlighted Provisions:

This bill:

- defines terms;
- modifies terms;
- requires a child placing agency to provide certain information and training for a prospective adoptive parent of a high needs child;
- prohibits a person from engaging in an unregulated custody transfer; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-208, as last amended by Laws of Utah 2009, Chapter 75

62A-4a-601, as last amended by Laws of Utah 2006, Chapter 281

78A-6-105, as last amended by Laws of Utah 2016, Chapters 109 and 351

ENACTS:

62A-4a-609, Utah Code Annotated 1953

62A-4a-711, Utah Code Annotated 1953

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

Section 1. Section **62A-4a-208** is amended to read:

62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.

(1) As used in this section:

(a) "Complainant" means a person who initiates a complaint with the ombudsman.

(b) "Ombudsman" means the child protection ombudsman appointed pursuant to this section.

(2) (a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.

(b) The ombudsman shall be:

(i) an individual of recognized executive and administrative capacity;

(ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and

(iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.

(c) The ombudsman shall devote full time to the duties of office.

(3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:

(i) is contrary to statute, rule, or policy;

(ii) places a child's health or safety at risk;

(iii) is made without an adequate statement of reason; or

(iv) is based on irrelevant, immaterial, or erroneous grounds.

(b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.

(c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

(4) The ombudsman shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:

(i) receiving and processing complaints;

(ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;

(iii) prioritizing workload;

(iv) maximum time within which investigations shall be completed;

(v) conducting investigations;

(vi) notifying complainants and the division regarding the results of investigations; and

(vii) making recommendations based on the findings and results of recommendations;

(b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;

(c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;

(d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;

(e) annually report to the:

(i) Child Welfare Legislative Oversight Panel;

(ii) governor;

(iii) Division of Child and Family Services;

(iv) executive director of the department; and

(v) director of the division; and

(f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.

(5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

(c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.

(d) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody[~~, as that term is defined in Section 78A-6-105~~].

(e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6) (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.

(7) (a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.

(b) The ombudsman shall make recommendations to the division if the ombudsman finds that:

(i) a matter should be further considered by the division;

(ii) an administrative act should be addressed, modified, or canceled;

(iii) action should be taken by the division with regard to one of its employees; or

(iv) any other action should be taken by the division.

Section 2. Section **62A-4a-601** is amended to read:

62A-4a-601. Definitions.

For purposes of this part:

(1) "Child placing" means:

(a) receiving, accepting, or providing custody or care for a child, temporarily or permanently, for the purpose of finding a person to adopt the child; or

(b) placing a child, temporarily or permanently, in a home for adoption or substitute care.

(2) "Child placing agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing.

(3) "High needs child" means a child:

(a) with an attachment or trauma-related disorder;

(b) who suffered from prenatal exposure to alcohol or drugs;

(c) who is the subject of an intercountry adoption;

(d) who was previously adopted; or

(e) who is in foster care.

Section 3. Section **62A-4a-609** is enacted to read:

62A-4a-609. Preplacement disclosure and training before high needs child adoption.

Before referring a high needs child for adoption or entering into a contract to provide adoption services to a prospective adoptive parent of a high needs child, the child placing agency shall ensure that the prospective adoptive parent receives:

(1) at a minimum, to the extent available, the following information:

(a) a social history of the high needs child to be adopted, including:

(i) a history of the high needs child's cultural, racial, religious, ethnic, linguistic, and

educational background; and

(ii) any conditions in the high needs child's country of origin, if applicable, to which the child may have been exposed and that may have an impact on the child's physical or mental health; and

(b) a record, if available, of the high needs child's:

(i) physical health, mental health, behavioral issues, or exposure to trauma, including whether the child placing agency knows or suspects that the high needs child has been exposed to alcohol or drugs in utero; and

(ii) history of institutionalization or previous adoptive or foster placements and, if applicable, the reason a previous placement was terminated; and

(2) at a minimum, training on the following issues:

(a) the impact leaving familiar ties and surroundings may have on a high needs child, and the grief, loss, and identity issues that a high needs child may experience in adoption;

(b) the potential impact of an institutional setting on a high needs child;

(c) attachment disorders, trauma-related disorders, fetal alcohol spectrum disorders, and other emotional problems that a high needs child may suffer, particularly when the high needs child has been institutionalized, traumatized, or cared for by multiple caregivers;

(d) the general characteristics of a successful adoption placement, including information on the financial resources, time, and insurance coverage necessary for handling the adoptive family's and the high needs child's adjustment following placement;

(e) the medical, therapeutic, and educational needs a high needs child may require, including language acquisition training;

(f) how to access post-placement and post-adoption services that may assist the family to respond effectively to adjustment, behavioral, and other difficulties that may arise after the high needs child is placed or adopted;

(g) issues that may lead to the disruption of an adoptive placement or the dissolution of an adoption, including how an adoptive parent may access resources to avoid disruption or dissolution;

(h) the long-term implications for a family that becomes multicultural through adoption;

(i) for a prospective adoptive parent who is seeking to adopt two or more unrelated children, the differing needs of children based on their respective ages, backgrounds, length of time outside of family care, and the time management requirements and other challenges that may be presented in a multi-child adoption; and

(j) the prohibition against an unregulated custody transfer of a child.

Section 4. Section **62A-4a-711** is enacted to read:

62A-4a-711. Penalty.

An individual or entity that knowingly engages in an unregulated custody transfer, as defined in Subsection 78A-6-105(48), is guilty of a class B misdemeanor.

Section 5. Section **78A-6-105** is amended to read:

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

(i) nonaccidental harm of a child;

(ii) threatened harm of a child;

(iii) sexual exploitation;

(iv) sexual abuse; or

(v) human trafficking of a child in violation of Section 76-5-308.5.

(b) that a child's natural parent:

(i) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(c) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means a person under 18 years of age.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(13) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(14) "Division" means the Division of Child and Family Services.

(15) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(16) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(17) "Guardianship of the person" includes the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another person, agency, or institution.

(18) "Habitual truant" means the same as that term is defined in Section 53A-11-101.

(19) "Harm" means:

(a) physical or developmental injury or damage;

(b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(c) sexual abuse; or

(d) sexual exploitation.

(20) (a) "Incest" means engaging in sexual intercourse with a person whom the

perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (20)(a) include:

(i) blood relationships of the whole or half blood, without regard to legitimacy;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(21) "Intellectual disability" means:

(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

(22) "Legal custody" means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(23) "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

(24) "Minor" means:

(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

(25) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

(26) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(27) (a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; [~~or~~]

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused[~~.~~]; or

(v) abandonment of a child through an unregulated custody transfer.

(b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that

reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion and from pursuing care and treatment pursuant to the second health care opinion, as described in Section 78A-6-301.5.

(28) "Neglected child" means a child who has been subjected to neglect.

(29) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

(30) "Not competent to proceed" means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

(31) "Physical abuse" means abuse that results in physical injury or damage to a child.

(32) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(33) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to

remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(34) "Related condition" means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

(35) (a) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child's religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.

(36) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(39) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation

committed by a child towards another child if:

(i) there is an indication of force or coercion;

(ii) the children are related, as defined in Subsections (20)(a) and (20)(b);

(iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years of age or older; or

(iv) there is a disparity in chronological age of four or more years between the two children; or

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7.

(40) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201,

sexual exploitation of a minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

(41) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(42) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(44) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

(45) "Supported" means the same as that term is defined in Section 62A-4a-101.

(46) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(47) "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(48) "Unregulated custody transfer" means the placement of a child:

(a) with a person who is not the child's parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom the child is familiar, or a member of the child's federally recognized tribe;

(b) with the intent of severing the child's existing parent-child or guardian-child relationship; and

(c) without taking:

(i) reasonable steps to ensure the safety of the child and permanency of the placement; and

(ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or

guardianship to the person taking custody of the child.

[~~(48)~~] (49) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

[~~(49)~~] (50) "Without merit" means the same as that term is defined in Section 62A-4a-101.