

**DIVORCE PROVISIONS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christine F. Watkins**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions regarding juvenile court modifications of district court orders.

**Highlighted Provisions:**

This bill:

- ▶ requires that a party, other than the Division of Child and Family Services, request a modification of a district court order before a juvenile court with jurisdiction over a child may change the terms of a district court order; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78A-6-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-6-307**, as last amended by Laws of Utah 2018, Chapters 235 and 285

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

Section 1. Section **78A-6-104** is amended to read:



28           **78A-6-104. Concurrent jurisdiction -- District court and juvenile court.**

29           (1) The district court or other court has concurrent jurisdiction with the juvenile court  
30 as follows:

31           (a) when ~~[a person]~~ an individual who is 18 years of age or older and who is under the  
32 continuing jurisdiction of the juvenile court under Section 78A-6-117 violates any federal,  
33 state, or local law or municipal ordinance; and

34           (b) in establishing paternity and ordering testing for the purposes of establishing  
35 paternity, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, with regard  
36 to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5,  
37 Termination of Parental Rights Act.

38           (2) The juvenile court has jurisdiction over petitions to modify a minor's birth  
39 certificate if the court otherwise has jurisdiction over the minor.

40           (3) This section does not deprive the district court of jurisdiction to appoint a guardian  
41 for a child, or to determine the support, custody, and parent-time of a child upon writ of habeas  
42 corpus or when the question of support, custody, and parent-time is incidental to the  
43 determination of a cause in the district court.

44           (4) (a) Where a support, custody, or parent-time award has been made by a district  
45 court in a divorce action or other proceeding, and the jurisdiction of the district court in the  
46 case is continuing, the juvenile court may acquire jurisdiction in a case involving the same  
47 child if the child is dependent, abused, neglected, or otherwise comes within the jurisdiction of  
48 the juvenile court under Section 78A-6-103.

49           (b) The juvenile court may, by order, change the custody, subject to Subsection  
50 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court;

51           (i) as necessary to implement the order of the juvenile court for the safety and welfare  
52 of the child[-]; and

53           (ii) only if a party to the juvenile court preceding petitions the juvenile court for a  
54 modification to the district court order.

55           (c) Notwithstanding Subsection (4)(b), the division may not petition the juvenile court  
56 for a modification to a district court order.

57           (d) The juvenile court order remains in effect so long as the jurisdiction of the juvenile  
58 court continues.

59           ~~[(e)]~~ (e) When a copy of the findings and order of the juvenile court has been filed with  
60 the district court, the findings and order of the juvenile court are binding on the parties to the  
61 divorce action as though entered in the district court.

62           (5) The juvenile court has jurisdiction over questions of custody, support, and  
63 parent-time of a minor who comes within the court's jurisdiction under this section or Section  
64 [78A-6-103](#).

65           Section 2. Section [78A-6-307](#) is amended to read:

66           **[78A-6-307](#). Shelter hearing -- Placement -- DCFS custody.**

67           (1) As used in this section:

68           (a) "Friend" means an adult the child knows and is comfortable with but who is not a  
69 natural parent or relative.

70           (b) (i) "Natural parent," notwithstanding the provisions of Section [78A-6-105](#), means:

71           (A) a biological or adoptive mother of the child;

72           (B) an adoptive father of the child; or

73           (C) a biological father of the child who:

74           (I) was married to the child's biological mother at the time the child was conceived or  
75 born; or

76           (II) has strictly complied with the provisions of Sections [78B-6-120](#) through  
77 [78B-6-122](#), prior to removal of the child or voluntary surrender of the child by the custodial  
78 parent.

79           (ii) The definition of "natural parent" described in Subsection (1)(b)(i) applies  
80 regardless of whether the child has been or will be placed with adoptive parents or whether  
81 adoption has been or will be considered as a long-term goal for the child.

82           (c) "Relative" means:

83           (i) an adult who is the child's grandparent, great grandparent, aunt, great aunt, uncle,  
84 great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling;

85           (ii) a first cousin of the child's parent;

86           (iii) an adult who is an adoptive parent of the child's sibling; or

87           (iv) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25  
88 U.S.C. Sec. 1903, "relative" also means an "extended family member" as defined by that  
89 statute.

90 (2) (a) At the shelter hearing, when the court orders that a child be removed from the  
91 custody of the child's parent in accordance with the requirements of Section 78A-6-306, the  
92 court shall first determine whether there is another natural parent with whom the child was not  
93 residing at the time the events or conditions that brought the child within the court's jurisdiction  
94 occurred, who desires to assume custody of the child.

95 (b) If another natural parent requests custody under Subsection (2)(a), the court shall:

96 (i) consider the terms of any existing court order regarding that natural parent and the  
97 child; and

98 (ii) place the child with that natural parent unless [it] the court finds that the placement  
99 would be unsafe or otherwise detrimental to the child.

100 (c) The provisions of this Subsection (2) are limited by the provisions of Subsection  
101 (18)(b).

102 (d) (i) The court shall make a specific finding regarding the fitness of the parent  
103 described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the  
104 placement.

105 (ii) The court shall, at a minimum, order the division to visit the parent's home, comply  
106 with the criminal background check provisions described in Section 78A-6-308, and check the  
107 division's management information system for any previous reports of abuse or neglect  
108 received by the division regarding the parent at issue.

109 (iii) The court may order the division to conduct any further investigation regarding the  
110 safety and appropriateness of the placement.

111 (iv) The division shall report its findings in writing to the court.

112 (v) The court may place the child in the temporary custody of the division, pending its  
113 determination regarding that placement.

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

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

116 (b) the court may order:

117 (i) that the parent assume custody subject to the supervision of the court; and

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

120 (c) the court shall order reasonable parent-time with the parent from whose custody the

121 child was removed, unless parent-time is not in the best interest of the child.

122 (4) The court shall periodically review an order described in Subsection (3) to  
123 determine whether:

124 (a) placement with the parent continues to be in the child's best interest;

125 (b) the child should be returned to the original custodial parent;

126 (c) the child should be placed in the custody of a relative, pursuant to Subsections (7)  
127 through (12); or

128 (d) the child should be placed in the custody of the division.

129 (5) The time limitations described in Section 78A-6-312 with regard to reunification  
130 efforts apply to children placed with a previously noncustodial parent in accordance with  
131 Subsection (2).

132 (6) Legal custody of the child is not affected by an order entered under Subsection (2)  
133 or (3). In order to affect a previous court order regarding legal custody, the party must petition  
134 that court for modification of the order.

135 (7) If, at the time of the shelter hearing, a child is removed from the custody of the  
136 child's parent and is not placed in the custody of the child's other parent, the court:

137 (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e),  
138 there is a relative or a friend who is able and willing to care for the child, which may include  
139 asking a child, who is of sufficient maturity to articulate the child's wishes in relation to a  
140 placement, if there is a relative or friend with whom the child would prefer to reside;

141 (b) may order the division to conduct a reasonable search to determine whether, subject  
142 to Subsections (18)(c) through (e), there are relatives or friends who are willing and  
143 appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2,  
144 Child Welfare Services, for placement of the child;

145 (c) shall order the parents to cooperate with the division, within five working days, to,  
146 subject to Subsections (18)(c) through (e), provide information regarding relatives or friends  
147 who may be able and willing to care for the child; and

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

150 (8) This section may not be construed as a guarantee that an identified relative or friend  
151 will receive custody of the child.

152 (9) Subject to Subsections (18)(c) through (e), preferential consideration shall be given  
153 to a relative's or a friend's request for placement of the child, if it is in the best interest of the  
154 child, and the provisions of this section are satisfied.

155 (10) (a) If a willing relative or friend is identified under Subsection (7)(a), the court  
156 shall make a specific finding regarding:

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

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

159 (b) In order to be considered a "willing relative or friend" under this section, the  
160 relative or friend shall be willing to cooperate with the child's permanency goal.

161 (11) (a) In making the finding described in Subsection (10)(a), the court shall, at a  
162 minimum, order the division to:

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

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

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

168 (C) a background check that complies with the criminal background check provisions  
169 described in Section 78A-6-308, of each nonrelative, as defined in Subsection

170 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;

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

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

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

177 (C) a background check that complies with the criminal background check provisions  
178 described in Section 78A-6-308, of each nonrelative, as defined in Subsection

179 62A-4a-209(1)(b), of the child who resides in the household where the child may be placed;

180 (iii) if the child may be placed with an individual other than a noncustodial parent or a  
181 relative, conduct a criminal background check of the individual, and each adult that resides in  
182 the household where the child may be placed, that complies with the criminal background

- 183 check provisions described in Section 78A-6-308;
- 184 (iv) visit the relative's or friend's home;
- 185 (v) check the division's management information system for any previous reports of  
186 abuse or neglect regarding the relative or friend at issue;
- 187 (vi) report the division's findings in writing to the court; and
- 188 (vii) provide sufficient information so that the court may determine whether:
- 189 (A) the relative or friend has any history of abusive or neglectful behavior toward other  
190 children that may indicate or present a danger to this child;
- 191 (B) the child is comfortable with the relative or friend;
- 192 (C) the relative or friend recognizes the parent's history of abuse and is committed to  
193 protect the child;
- 194 (D) the relative or friend is strong enough to resist inappropriate requests by the parent  
195 for access to the child, in accordance with court orders;
- 196 (E) the relative or friend is committed to caring for the child as long as necessary; and
- 197 (F) the relative or friend can provide a secure and stable environment for the child.
- 198 (b) The division may determine to conduct, or the court may order the division to  
199 conduct, any further investigation regarding the safety and appropriateness of the placement.
- 200 (c) The division shall complete and file its assessment regarding placement with a  
201 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a  
202 relative or friend.
- 203 (12) (a) The court may place a child described in Subsection (2)(a) in the temporary  
204 custody of the division, pending the division's investigation pursuant to Subsections (10) and  
205 (11), and the court's determination regarding the appropriateness of that placement.
- 206 (b) The court shall ultimately base its determination regarding the appropriateness of a  
207 placement with a relative or friend on the best interest of the child.
- 208 (13) When a court places a child described in Subsection (7) in the custody of the  
209 child's relative or friend:
- 210 (a) the court:
- 211 (i) shall order the relative or friend assume custody, subject to the continuing  
212 supervision of the court; and
- 213 (ii) may order the division provide necessary services to the child and the child's

214 relative or friend, including the monitoring of the child's safety and well-being;

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

217 (c) the court may enter any order that it considers necessary for the protection and best  
218 interest of the child;

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

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

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

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

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

227 (14) No later than 12 months after placement with a relative or friend, the court shall  
228 schedule a hearing for the purpose of entering a permanent order in accordance with the best  
229 interest of the child.

230 (15) The time limitations described in Section [78A-6-312](#), with regard to reunification  
231 efforts, apply to children placed with a relative or friend pursuant to Subsection (7).

232 (16) (a) If the court awards custody of a child to the division, and the division places  
233 the child with a relative, the division shall:

234 (i) conduct a criminal background check of the relative that complies with the criminal  
235 background check provisions described in Section [78A-6-308](#); and

236 (ii) if the results of the criminal background check described in Subsection (16)(a)(i)  
237 would prohibit the relative from having direct access to the child under Section [62A-2-120](#), the  
238 division shall:

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

240 (B) within three days, excluding weekends and holidays, after taking the child into  
241 physical custody under Subsection (16)(a)(ii)(A), give written notice to the court, and all  
242 parties to the proceedings, of the division's action.

243 (b) Nothing in Subsection (16)(a) prohibits the division from placing a child with a  
244 relative, pending the results of the background check described in Subsection (16)(a) on the



245 relative.

246 (17) When the court orders that a child be removed from the custody of the child's  
247 parent and does not award custody and guardianship to another parent, relative, or friend under  
248 this section, the court shall order that the child be placed in the temporary custody of the  
249 Division of Child and Family Services, to proceed to adjudication and disposition and to be  
250 provided with care and services in accordance with this chapter and Title 62A, Chapter 4a,  
251 Child and Family Services.

252 (18) (a) Any preferential consideration that a relative or friend is initially granted  
253 pursuant to Subsection (9) expires 120 days from the date of the shelter hearing. After that  
254 time period has expired, a relative or friend who has not obtained custody or asserted an  
255 interest in a child, may not be granted preferential consideration by the division or the court.

256 (b) When the time period described in Subsection (18)(a) has expired, the preferential  
257 consideration, which is initially granted to a natural parent in accordance with Subsection (2),  
258 is limited. After that time the court shall base its custody decision on the best interest of the  
259 child.

260 (c) Prior to the expiration of the 120-day period described in Subsection (18)(a), the  
261 following order of preference shall be applied when determining the person with whom a child  
262 will be placed, provided that the person is willing, and has the ability, to care for the child:

- 263 (i) a noncustodial parent of the child;  
264 (ii) a relative of the child;  
265 (iii) subject to Subsection (18)(d), a friend, if the friend is a licensed foster parent; and  
266 (iv) other placements that are consistent with the requirements of law.

267 (d) (i) In determining whether a friend is a willing and appropriate placement for a  
268 child, neither the court, nor the division, is required to consider more than one friend  
269 designated by each parent of the child and one friend designated by the child, if the child is of  
270 sufficient maturity to articulate the child's wishes in relation to a placement.

271 (ii) The court or the division may limit the number of designated friends to two, one of  
272 whom shall be a friend designated by the child, if the child is of sufficient maturity to articulate  
273 the child's wishes in relation to a placement.

274 (iii) The court and the division shall give preference to a friend designated by the child,  
275 if:

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

277 (B) the basis for removing the child under Section 78A-6-306 is sexual abuse of the  
278 child.

279 (e) If a parent of the child or the child, if the child is of sufficient maturity to articulate  
280 the child's wishes in relation to a placement, is not able to designate a friend who is a licensed  
281 foster parent for placement of the child, but is able to identify a friend who is willing to become  
282 licensed as a foster parent:

283 (i) the department shall fully cooperate to expedite the licensing process for the friend;  
284 and

285 (ii) if the friend becomes licensed as a foster parent within the time frame described in  
286 Subsection (18)(a), the court shall determine whether it is in the best interests of the child to  
287 place the child with the friend.

288 (19) If, following the shelter hearing, the child is placed with a person who is not a  
289 parent, a relative, a friend, or a former foster parent of the child, priority shall be given to a  
290 foster placement with a man and a woman who are married to each other, unless it is in the best  
291 interests of the child to place the child with a single foster parent.

292 (20) In determining the placement of a child, neither the court, nor the division, may  
293 take into account, or discriminate against, the religion of a person with whom the child may be  
294 placed, unless the purpose of taking religion into account is to place the child with a person or  
295 family of the same religion as the child.