# Indian Family Preservation Act Amendments

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Angela Romero**

**LONG TITLE**

**General Description:**

This bill addresses the preservation of Indian families.

**Highlighted Provisions:**

This bill:

- enacts the Indian Family Preservation Act (state act), including:
  - defining terms;
  - addressing effective date and severability;
  - requiring inquiry into Indian status;
  - providing for what constitutes best interests of an Indian child;
  - addressing jurisdiction over child custody proceedings;
  - providing for actions related to pending court proceedings;
  - stating parental rights;
  - providing for voluntary termination of rights;
  - establishing how consent or other actions are invalidated;
  - addressing placement of Indian children;
  - creating a process to return custody of an Indian child;
  - addressing information related to tribal affiliation and protection of rights;
  - authorizing agreements between the state and Indian tribes under certain circumstances;
  - addressing improper removal of an Indian child;
  - explaining the application of state or federal standards;
  - providing for emergency removal or placement of an Indian child; and
  - addressing recordkeeping and information availability;
- replaces cites to the federal Indian Child Welfare Act with cites to the state act;
- addresses right to counsel;
- addresses sharing of information by agreement;
- exempts certain time frame preferences under the state act; and
- makes technical and conforming amendments.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**26B-1-231**, as renumbered and amended by Laws of Utah 2023, Chapter 305

**26B-1-233**, as renumbered and amended by Laws of Utah 2023, Chapter 305

**26B-2-101**, as last amended by Laws of Utah 2024, Chapters 240, 267, 307, and 438

**26B-2-129**, as renumbered and amended by Laws of Utah 2023, Chapter 305

**78B-6-102**, as last amended by Laws of Utah 2019, Chapter 335

**78B-6-103**, as last amended by Laws of Utah 2024, Chapter 261

**78B-6-107**, as last amended by Laws of Utah 2022, Chapter 335

**78B-6-117**, as last amended by Laws of Utah 2022, Chapters 185, 430

**78B-13-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-22-201**, as last amended by Laws of Utah 2022, Chapter 281

**78B-24-102**, as enacted by Laws of Utah 2022, Chapter 326

**78B-24-202**, as enacted by Laws of Utah 2022, Chapter 326

**80-1-102**, as last amended by Laws of Utah 2024, Chapter 256

**80-2-802**, as last amended by Laws of Utah 2023, Chapter 330

**80-2-1006**, as enacted by Laws of Utah 2022, Chapter 334

**80-2a-101**, as enacted by Laws of Utah 2022, Chapter 334 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 334

**80-2a-304**, as last amended by Laws of Utah 2022, Chapter 287 and renumbered and amended by Laws of Utah 2022, Chapter 334

**80-3-102**, as last amended by Laws of Utah 2022, Chapters 287, 334

**80-3-302**, as last amended by Laws of Utah 2023, Chapters 309, 330

**80-3-502**, as renumbered and amended by Laws of Utah 2021, Chapter 261

**80-4-305**, as last amended by Laws of Utah 2022, Chapters 287, 334

ENACTS:

**80-2b-101**, Utah Code Annotated 1953

**80-2b-102**, Utah Code Annotated 1953

**80-2b-103**, Utah Code Annotated 1953

**80-2b-104**, Utah Code Annotated 1953

**80-2b-105**, Utah Code Annotated 1953
**80-2b-201**, Utah Code Annotated 1953
**80-2b-202**, Utah Code Annotated 1953
**80-2b-203**, Utah Code Annotated 1953
**80-2b-204**, Utah Code Annotated 1953
**80-2b-205**, Utah Code Annotated 1953
**80-2b-206**, Utah Code Annotated 1953
**80-2b-207**, Utah Code Annotated 1953
**80-2b-208**, Utah Code Annotated 1953
**80-2b-209**, Utah Code Annotated 1953
**80-2b-210**, Utah Code Annotated 1953
**80-2b-211**, Utah Code Annotated 1953
**80-2b-301**, Utah Code Annotated 1953

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

Section 1. Section **26B-1-231** is amended to read:

**26B-1-231 . Office of American Indian-Alaska Native Health and Family Services -- Creation -- Director -- Purpose -- Duties.**

(1)(a) "Director" means the director of the office appointed under Subsection (3).

(b) "Office" means the Office of American Indian-Alaska Native Health and Family Services created in Subsection (2).

(2) There is created within the department the Office of American Indian-Alaska Native Health and Family Services.

(3) The executive director shall appoint a director of the office who:

(a) has a bachelor's degree from an accredited university or college;

(b) is experienced in administration; and

(c) is knowledgeable about the areas of American Indian-Alaska Native practices.

(4)(a) The director is the administrative head of the office and shall serve under the supervision of the executive director.

(b) The executive director may hire staff as necessary to carry out the duties of the office described in Subsection (5)(b).

(5)(a) The purpose of the office is to oversee and coordinate department services for Utah's American Indian-Alaska Native populations.

(b) The office shall:

(i) oversee and coordinate department services for Utah's American Indian-Alaska Native populations;

(ii) conduct regular and meaningful consultation with Indian tribes when there is a proposed department action that has an impact on an Indian tribe as a sovereign entity;

(iii) monitor agreements between the department and Utah's American Indian-Alaska Native populations; and

(iv) oversee the health liaison appointed under Section 26B-1-232 and [~~ICWA~~] Indian family preservation liaison appointed under Section 26B-1-233.

Section 2. Section **26B-1-233** is amended to read:

**26B-1-233 . Indian family preservation liaison -- Appointment -- Qualifications -- Duties.**

(1) As used in this section:

(a) "Director" means the director of the Office of American Indian-Alaska Native Health and Family Services appointed under Section 26B-1-231.

(b) "[~~ICWA~~] Indian family preservation liaison" means the [~~Indian Child Welfare Act Liaison~~] Indian family preservation liaison appointed under Subsection (2).

(2)(a) The executive director shall appoint an individual as the [~~Indian Child Welfare Act Liaison~~] Indian family preservation liaison who:

(i) has a bachelor's degree from an accredited university or college; and

(ii) is knowledgeable about the areas of child and family services and Indian tribal child rearing practices.

(b) The [~~ICWA~~] Indian family preservation liaison shall serve under the supervision of the director.

(3) The [~~ICWA~~] Indian family preservation liaison shall:

(a) act as a liaison between the department and Utah's American Indian populations regarding child and family services;

(b) provide training to department employees regarding the requirements and implementation of [~~the~~] :

(i) Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963; and

(ii) Title 80, Chapter 2b, Indian Family Preservation Act;

(c) develop and facilitate education and technical assistance programs for Utah's American Indian populations regarding available child and family services;

(d) promote and coordinate collaborative efforts between the department and Utah's

American Indian population to improve the availability and accessibility of quality child and family services for Utah's American Indian populations; and

(e) interact with the following to improve delivery and accessibility of child and family services for Utah's American Indian populations:

(i) state agencies and officials; and

(ii) providers of child and family services in the public and private sector.

(4) The [~~ICWA~~] Indian family preservation liaison shall annually report the liaison's activities and accomplishments to the Native American Legislative Liaison Committee created in Section 36-22-1.

Section 3. Section **26B-2-101** is amended to read:

**26B-2-101 . Definitions.**

As used in this part:

(1) "Adoption services" means the same as that term is defined in Section 80-2-801.

(2) "Adult day care" means nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day; and

(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(3) "Applicant" means a person that applies for an initial license or a license renewal under this part.

(4)(a) "Associated with the licensee" means that an individual is:

(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or

(ii) applying to become affiliated with a licensee in a capacity described in Subsection (4)(a)(i).

(b) "Associated with the licensee" does not include:

(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:

(A) a local mental health authority described in Section 17-43-301;

(B) a local substance abuse authority described in Section 17-43-201; or

(C) a board of an organization operating under a contract to provide mental health or substance use programs, or services for the local mental health authority or substance abuse authority; or

(ii) a guest or visitor whose access to a child or a vulnerable adult is directly

supervised at all times.

(5)(a) "Boarding school" means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school's students:

(A) for the purpose of enabling the school's students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (5)(b)(i); and

(iv)(A) does not provide the treatment or services described in Subsection (40)(a); or

(B) provides the treatment or services described in Subsection (40)(a) on a limited basis, as described in Subsection (5)(b)(ii).

(b)(i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for one or more grades from kindergarten through grade 12.

(ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or services described in Subsection (40)(a) on a limited basis if:

(A) the treatment or services described in Subsection (40)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (40)(a); or

(II) have a primary purpose of providing the treatment or services described in Subsection (40)(a).

(c) "Boarding school" does not include a therapeutic school.

(6) "Certification" means a less restrictive level of licensure issued by the department.

(7) "Child" means an individual under 18 years old.

(8) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

(b) placing the child in a home for adoption; or

(c) foster home placement.

(9) "Child-placing agency" means a person that engages in child placing.

(10) "Client" means an individual who receives or has received services from a licensee.

(11)(a) "Congregate care program" means any of the following that provide services to a child:

(i) an outdoor youth program;

(ii) a residential support program;

(iii) a residential treatment program; or

(iv) a therapeutic school.

(b) "Congregate care program" does not include a human services program that:

(i) is licensed to serve adults; and

(ii) is approved by the office to service a child for a limited time.

(12) "Day treatment" means specialized treatment that is provided to:

(a) a client less than 24 hours a day; and

(b) four or more persons who:

(i) are unrelated to the owner or provider; and

(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

(13) "Department contractor" means an individual who:

(a) provides services under a contract with the department; and

(b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.

(14) "Direct access" means that an individual has, or likely will have:

(a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or

(b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.

(15) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background check approval issued by the office.

(16) "Director" means the director of the office.

(17) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(18) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

(19) "Elder adult" means a person 65 years old or older.

(20) "Emergency safety intervention" means a tactic used to protect staff or a client from

being physically injured, utilized by an appropriately trained direct care staff and only performed in accordance with a nationally or regionally recognized curriculum in the least restrictive manner to restore staff or client safety.

(21) "Foster home" means a residence that is licensed or certified by the office for the full-time substitute care of a child.

(22) "Health benefit plan" means the same as that term is defined in Section 31A-22-634.

(23) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(24) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.

(25)(a) "Human services program" means:

(i) a foster home;

(ii) a therapeutic school;

(iii) a youth program;

(iv) an outdoor youth program;

(v) a residential treatment program;

(vi) a residential support program;

(vii) a resource family home;

(viii) a recovery residence; or

(ix) a facility or program that provides:

(A) adult day care;

(B) day treatment;

(C) outpatient treatment;

(D) domestic violence treatment;

(E) child-placing services;

(F) social detoxification; or

(G) any other human services that are required by contract with the department to be licensed with the department.

(b) "Human services program" does not include:

(i) a boarding school;

(ii) a residential, vocational and life skills program, as defined in Section 13-53-102; or

(iii) a short-term relief care provider.

(26) "Indian child" means the same as that term is defined in [~~25 U.S.C. Sec. 1903~~] Section 80-2b-101.

(27) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.

(28) "Indian tribe" means the same as that term is defined in [~~25 U.S.C. Sec. 1903~~] Section 80-2b-101.

(29) "Intermediate secure treatment" means 24-hour specialized residential treatment or care for an individual who:

(a) cannot live independently or in a less restrictive environment; and

(b) requires, without the individual's consent or control, the use of locked doors to care for the individual.

(30) "Licensee" means an individual or a human services program licensed by the office.

(31) "Local government" means a city, town, or county.

(32) "Minor" means child.

(33) "Office" means the Office of Licensing within the department.

(34) "Outdoor youth program" means a program that provides:

(a) services to a child that has:

(i) a chemical dependency; or

(ii) a dysfunction or impairment that is emotional, psychological, developmental, physical, or behavioral;

(b) a 24-hour outdoor group living environment; and

(c)(i) regular therapy, including group, individual, or supportive family therapy; or

(ii) informal therapy or similar services, including wilderness therapy, adventure therapy, or outdoor behavioral healthcare.

(35) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.

(36) "Practice group" or "group practice" means two or more health care providers legally organized as a partnership, professional corporation, or similar association, for which:

(a) substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts received are treated as receipts of the group; and

(b) the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

(37) "Private-placement child" means a child whose parent or guardian enters into a contract with a congregate care program for the child to receive services.

(38)(a) "Recovery residence" means a home, residence, or facility that meets at least

two of the following requirements:

(i) provides a supervised living environment for individuals recovering from a substance use disorder;

(ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance use disorder;

(iii) provides or arranges for residents to receive services related to the resident's recovery from a substance use disorder, either on or off site;

(iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or

(v)(A) receives public funding; or

(B) is run as a business venture, either for-profit or not-for-profit.

(b) "Recovery residence" does not mean:

(i) a residential treatment program;

(ii) residential support program; or

(iii) a home, residence, or facility, in which:

(A) residents, by a majority vote of the residents, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;

(B) residents equitably share rent and housing-related expenses; and

(C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.

(39) "Regular business hours" means:

(a) the hours during which services of any kind are provided to a client; or

(b) the hours during which a client is present at the facility of a licensee.

(40)(a) "Residential support program" means a program that arranges for or provides the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support program" includes a program that provides a supervised living environment for individuals with dysfunctions or impairments that are:

(i) emotional;

(ii) psychological;

(iii) developmental; or

(iv) behavioral.

(c) Treatment is not a necessary component of a residential support program.

(d) "Residential support program" does not include:

(i) a recovery residence; or

(ii) a program that provides residential services that are performed:

(A) exclusively under contract with the department and provided to individuals through the Division of Services for People with Disabilities; or

(B) in a facility that serves fewer than four individuals.

(41)(a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

(42) "Residential treatment program" means a program or facility that provides:

(a) residential treatment; or

(b) intermediate secure treatment.

(43) "Seclusion" means the involuntary confinement of an individual in a room or an area:

(a) away from the individual's peers; and

(b) in a manner that physically prevents the individual from leaving the room or area.

(44) "Short-term relief care provider" means an individual who:

(a) provides short-term and temporary relief care to a foster parent:

(i) for less than six consecutive nights; and

(ii) in the short-term relief care provider's home;

(b) is an immediate family member or relative, as those terms are defined in Section 80-3-102, of the foster parent;

(c) is direct access qualified, as that term is defined in Section 26B-2-120;

(d) has been approved to provide short-term relief care by the department;

(e) is not reimbursed by the department for the temporary relief care provided; and

(f) is not an immediate family member or relative, as those terms are defined in Section

80-3-102, of the foster child.

(45) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Part 2, Health Care Facility Licensing and Inspection, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

(46) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section 26B-5-501.

(47) "Substance abuse treatment program" or "substance use disorder treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

(b) that provides the treatment or services described in Subsection (47)(a) to persons with:

(i) a diagnosed substance use disorder; or

(ii) chemical dependency disorder.

(48) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals that are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to:

(I) a disability;

(II) emotional development;

(III) behavioral development;

(IV) familial development; or

(V) social development.

(49) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

(50) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental or other health care;

(c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;

(e) manage the adult's own resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(51)(a) "Youth program" means a program designed to provide behavioral, substance use, or mental health services to minors that:

(i) serves adjudicated or nonadjudicated youth;

(ii) charges a fee for the program's services;

(iii) may provide host homes or other arrangements for overnight accommodation of the youth;

(iv) may provide all or part of the program's services in the outdoors;

(v) may limit or censor access to parents or guardians; and

(vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.

(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

(52)(a) "Youth transportation company" means any person that transports a child for payment to or from a congregate care program in Utah.

(b) "Youth transportation company" does not include:

(i) a relative of the child;

(ii) a state agency; or

(iii) a congregate care program's employee who transports the child from the congregate care program that employs the employee and returns the child to the

same congregate care program.

Section 4. Section **26B-2-129** is amended to read:

**26B-2-129 . Licensure of tribal foster homes.**

(1) [~~The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963,~~] Title 80, Chapter 2b, Indian Family Preservation Act, provides that Indian tribes may develop and implement tribal foster home standards.

(2) The office shall give full faith and credit to an Indian tribe's certification or licensure of a tribal foster home for an Indian child and siblings of that Indian child, both on and off Indian country, according to standards developed and approved by the Indian tribe, pursuant to [~~the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963~~] Title 80, Chapter 2b, Indian Family Preservation Act.

(3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this part.

Section 5. Section **78B-6-102** is amended to read:

**78B-6-102 . Legislative intent and findings -- Best interest of child -- Interests of each party.**

(1) It is the intent and desire of the Legislature that in every adoption the best interest of the child should govern and be of foremost concern in the court's determination.

(2) The court shall make a specific finding regarding the best interest of the child, taking into consideration information provided to the court pursuant to the requirements of this chapter relating to the health, safety, and welfare of the child and the moral climate of the potential adoptive placement.

(3) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(4) The Legislature specifically finds that it is not in a child's best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. Nothing in this section limits or prohibits the court's placement of a child with a single adult who is not cohabiting or a person who is a relative of the child or a recognized placement under [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq~~] Title 80, Chapter 2b, Indian Family Preservation Act.

(5) The Legislature also finds that:

(a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive

placements, and in holding parents accountable for meeting the needs of children;

(b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) adoptive children have a right to permanence and stability in adoptive placements;

(d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child;

(e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth; and

(f) the state has a compelling interest in requiring unmarried biological fathers to demonstrate commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

(6)(a) In enacting this chapter, the Legislature has prescribed the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the

unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

(e) An unmarried biological father has the primary responsibility to protect his rights.

(f) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

(7) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

Section 6. Section **78B-6-103** is amended to read:

**78B-6-103 . Definitions.**

As used in this part:

(1) "Adoptee" means a person who:

(a) is the subject of an adoption proceeding; or

(b) has been legally adopted.

(2) "Adoption" means the judicial act that:

(a) creates the relationship of parent and child where it did not previously exist; and

(b) except as provided in Subsections 78B-6-138(2) and (4), terminates the parental rights of any other person with respect to the child.

(3) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

(4) "Adoption proceeding" means any proceeding under this part.

(5) "Adoption service provider" means:

(a) a child-placing agency;

(b) a licensed counselor who has at least one year of experience providing professional social work services to:

(i) adoptive parents;

(ii) prospective adoptive parents; or

(iii) birth parents; or

(c) the Office of Licensing within the Department of Health and Human Services.

(6) "Adoptive parent" means an individual who has legally adopted an adoptee.

(7) "Adult" means an individual who is 18 years old or older.

(8) "Adult adoptee" means an adoptee who is 18 years old or older and was adopted as a minor.

(9) "Adult sibling" means an adoptee's brother or sister, who is 18 years old or older and whose birth mother or father is the same as that of the adoptee.

(10) "Birth mother" means the biological mother of a child.

(11) "Birth parent" means:

(a) a birth mother;

(b) a man whose paternity of a child is established;

(c) a man who:

(i) has been identified as the father of a child by the child's birth mother; and

(ii) has not denied paternity; or

(d) an unmarried biological father.

(12) "Child-placing agency" means an agency licensed to place children for adoption under Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities.

(13) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.

(14) "Division" means the Division of Child and Family Services, within the Department of Health and Human Services, created in Section 80-2-201.

(15) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.

(16) "Genetic and social history" means a comprehensive report, when obtainable, that contains the following information on an adoptee's birth parents, aunts, uncles, and grandparents:

(a) medical history;

(b) health status;

(c) cause of and age at death;

(d) height, weight, and eye and hair color;

(e) ethnic origins;

(f) where appropriate, levels of education and professional achievement; and

(g) religion, if any.

(17) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological,

physiological, and medical care history.

(18) "Identifying information" means information that is in the possession of the office and that contains the name and address of a pre-existing parent or an adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify a pre-existing parent or an adult adoptee, including information on a birth certificate or in an adoption document.

(19) "Licensed counselor" means an individual who is licensed by the state, or another state, district, or territory of the United States as a:

(a) certified social worker;

(b) clinical social worker;

(c) psychologist;

(d) marriage and family therapist;

(e) clinical mental health counselor; or

(f) an equivalent licensed professional of another state, district, or territory of the United States.

(20) "Man" means a male individual, regardless of age.

(21) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

(22) "Office" means the Office of Vital Records and Statistics within the Department of Health and Human Services operating under Title 26B, Chapter 8, Part 1, Vital Statistics.

(23) "Parent," for purposes of Subsection 78B-6-112(6) and Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(24) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (24)(a) at the time of the child's conception or birth.

(25) "Pre-existing parent" means:

(a) a birth parent; or

(b) an individual who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(26) "Prospective adoptive parent" means an individual who seeks to adopt an adoptee.

(27) "Relative" means:

(a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or first cousin of a child's parent; and

(b) in the case of a child defined as an "Indian child" under [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903~~] Section 80-2b-101, an "extended family member" as defined by [~~that statute~~] Section 80-2b-101.

(28) "Unmarried biological father" means a man who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection (28)(a) at the time of the child's conception or birth.

Section 7. Section **78B-6-107** is amended to read:

**78B-6-107 . Compliance with the Interstate Compact on Placement of Children -- Compliance with state law.**

(1)(a) Subject to Subsection (1)(b), in any adoption proceeding the petition for adoption shall state whether the child was born in another state and, if so, both the petition and the court's final decree of adoption shall state that the requirements of Title 80, Chapter 2, Part 9, Interstate Compact on Placement of Children, have been complied with.

(b) Subsection (1)(a) does not apply if the prospective adoptive parent is not required to complete a preplacement adoptive evaluation under Section 78B-6-128.

(2) In any adoption proceeding involving an "Indian child," as defined in [~~25 U.S.C. Sec. 1903~~] Section 80-2b-101, a child-placing agency and the petitioners shall comply with [~~the Indian Child Welfare Act, Title 25, Chapter 21, of the United States Code~~] Title 80, Chapter 2b, Indian Family Preservation Act.

Section 8. 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 individual, in accordance with 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 Subsections (3) and (4), a single adult.

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

is a relative of the child or a recognized placement under [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq~~] Title 80, Chapter 2b, Indian Family Preservation Act.

(4) 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 married couple, 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 an individual who has already developed a substantial relationship with the child;

(d) the child is placed with an individual 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 individual with whom the child is placed before the parent consented to the adoption; or

(B) became aware of the individual 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 adult.

(5) Except as provided in 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, as described in Section 76-5-404.1, or aggravated sexual

abuse of a child, as described in Section 76-5-404.3;

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

(k) aggravated sexual exploitation of a minor, as described in Section 76-5b-201.1;

(l) aggravated child abuse, as described in Section 76-5-109.2;

(m) child abandonment, as described in Section 76-5-109.3;

(n) commission of domestic violence in the presence of a child, as described in Section 76-5-114; or

(o) 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 an individual for adoption of a child except as provided in this Subsection (6).

(b) An individual 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 individual 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 individual files a petition with the court seeking adoption, the individual 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 individual 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 80-1-102, or potential harm to the child currently or at any time in the future when considering all of the following:

(A) the child's age;

(B) the child's gender;

(C) the child's development;

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

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

(F) any available assessments, including custody evaluations, home studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(v) the individual can provide evidence of all of the following:

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

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

(C) that adoption by the individual who has committed the disqualifying offense ensures the best interests of the child are met; and

(vi) the adoption is by:

(A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or

(B) subject to Subsection (6)(d), a relative of the child as defined in Section 80-3-102 and there is not another relative without a disqualifying offense filing an adoption petition.

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

(d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition, the following applies:

(i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and

(ii) before the court may grant adoption to the individual who has the disqualifying offense over another responsible, willing, and able relative:

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

(B) a guardian ad litem shall be assigned.

(7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a final decision on adoption has not been made and to a case filed on or after March 25, 2017.

Section 9. Section **78B-13-104** is amended to read:

**78B-13-104 . Application to Indian tribes.**

(1) A child custody proceeding that pertains to an Indian child as defined in [~~the Indian Child Welfare Act, 25 U.S.C. 1901 et seq.~~] Section 80-2b-101, is not subject to this chapter to the extent that it is governed by [~~the Indian Child Welfare Act~~] Title 80, Chapter 2b, Indian Family Preservation Act.

(2) A court of this state shall treat a tribe as a state of the United States for purposes of Part 1, General Provisions, and Part 2, Jurisdiction.

(3) A child custody determination made by a tribe under factual circumstances in

substantial conformity with the jurisdictional standards of this chapter shall be recognized and enforced under [~~the provisions of~~] Part 3, Enforcement.

Section 10. Section **78B-22-201** is amended to read:

**78B-22-201 . Right to counsel.**

(1) A court shall advise the following of the individual's right to counsel no later than the individual's first court appearance:

(a) an adult charged with a criminal offense the penalty for which includes the possibility of incarceration regardless of whether actually imposed;

(b) a parent or legal guardian facing an action initiated by the state under:

(i) Title 78A, Chapter 6, Part 4a, Adult Criminal Proceedings;

(ii) Title 80, Chapter 2b, Indian Family Preservation Act, to the extent provided for in that chapter;

[~~(ii)~~] (iii) Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings; or

[~~(iii)~~] (iv) Title 80, Chapter 4, Termination and Restoration of Parental Rights;

(c) a parent or legal guardian facing an action initiated by any party under:

(i) Section 78B-6-112; [~~or~~]

(ii) Title 80, Chapter 2b, Indian Family Preservation Act, to the extent provided for in that chapter; or

[~~(ii)~~] (iii) Title 80, Chapter 4, Termination and Restoration of Parental Rights; or

(d) an individual described in this Subsection (1), who is appealing a conviction or other final court action.

(2) If an individual described in Subsection (1) does not knowingly and voluntarily waive the right to counsel, the court shall determine whether the individual is indigent under Section 78B-22-202.

Section 11. Section **78B-24-102** is amended to read:

**78B-24-102 . Limitations on applicability.**

This chapter does not apply to custody of an Indian child, as defined in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903~~] Section 80-2b-101, to the extent governed by [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 through 1963~~] Title 80, Chapter 2b, Indian Family Preservation Act.

Section 12. Section **78B-24-202** is amended to read:

**78B-24-202 . Applicability.**

This part does not apply to a transfer of custody of a child by a parent or guardian of the child to:

(1) a parent of the child;

(2) a stepparent of the child;

(3) an adult who is related to the child by blood, marriage, or adoption;

(4) an adult who, at the time of the transfer, had a close relationship with the child or the parent or guardian of the child for a substantial period, and whom the parent or guardian reasonably believed, at the time of the transfer, to be a fit custodian of the child;

(5) an Indian custodian, as defined in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903~~] Section 80-2b-101, of the child; or

(6) a member of the child's customary family unit recognized by the child's indigenous group.

Section 13. Section **80-1-102** is amended to read:

**80-1-102 . Juvenile Code definitions.**

Except as provided in Section 80-6-1103, as used in this title:

(1)(a) "Abuse" means:

(i)(A) nonaccidental harm of a child;

(B) threatened harm of a child;

(C) sexual exploitation;

(D) sexual abuse; or

(E) human trafficking of a child in violation of Section 76-5-308.5; or

(ii) that a child's natural parent:

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

(B) 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

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

(b) "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)(a) "Adjudication" means, except as provided in Subsection (3)(b):

(i) for a delinquency petition or criminal information under Chapter 6, Juvenile Justice:

(A) a finding by the juvenile court that the facts alleged in a delinquency petition or criminal information alleging that a minor committed an offense have been proved;

(B) an admission by a minor in the juvenile court as described in Section 80-6-306; or

(C) a plea of no contest by minor in the juvenile court; or

(ii) for all other proceedings under this title, a finding by the juvenile court that the facts alleged in the petition have been proved.

(b) "Adjudication" does not include:

(i) an admission by a minor described in Section 80-6-306 until the juvenile court enters the minor's admission; or

(ii) a finding of not competent to proceed in accordance with Section 80-6-402.

(4)(a) "Adult" means an individual who is 18 years old or older.

(b) "Adult" does not include an individual:

(i) who is 18 years old or older; and

(ii) who is a minor.

(5) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-801.

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

(7) "Child" means, except as provided in Section 80-2-905, an individual who is under 18 years old.

(8) "Child and family plan" means a written agreement between a child's parents or guardian and the Division of Child and Family Services as described in Section 80-3-307.

(9) "Child placing" means the same as that term is defined in Section 26B-2-101.

(10) "Child-placing agency" means the same as that term is defined in Section 26B-2-101.

(11) "Child protection team" means a team consisting of:

(a) the child welfare caseworker assigned to the case;

(b) if applicable, the child welfare caseworker who made the decision to remove the

child;

(c) a representative of the school or school district where the child attends school;

(d) if applicable, the law enforcement officer who removed the child from the home;

(e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;

(g) if appropriate, a representative of law enforcement selected by the chief of police or sheriff in the city or county where the child resides; and

(h) any other individuals determined appropriate and necessary by the team coordinator and chair.

(12)(a) "Chronic abuse" means repeated or patterned abuse.

(b) "Chronic abuse" does not mean an isolated incident of abuse.

(13)(a) "Chronic neglect" means repeated or patterned neglect.

(b) "Chronic neglect" does not mean an isolated incident of neglect.

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

(15) "Commit" or "committed" 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 old, to transfer custody.

(16) "Community-based program" means a nonsecure residential or nonresidential program, designated to supervise and rehabilitate juvenile offenders, that prioritizes the least restrictive setting, consistent with public safety, and operated by or under contract with the Division of Juvenile Justice and Youth Services.

(17) "Community placement" means placement of a minor in a community-based program described in Section 80-5-402.

(18) "Correctional facility" means:

(a) a county jail; or

(b) a secure correctional facility as defined in Section 64-13-1.

(19) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's likelihood of reoffending.

(20) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(21) "Dependent child" or "dependency" means a child who is without proper care through

no fault of the child's parent, guardian, or custodian.

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

(23) "Detention" means home detention or secure detention.

(24) "Detention facility" means a facility, established by the Division of Juvenile Justice and Youth Services in accordance with Section 80-5-501, for minors held in detention.

(25) "Detention risk assessment tool" means an evidence-based tool established under Section 80-5-203 that:

(a) assesses a minor's risk of failing to appear in court or reoffending before adjudication; and

(b) is designed to assist in making a determination of whether a minor shall be held in detention.

(26) "Developmental immaturity" means incomplete development in one or more domains that manifests as a functional limitation in the minor's present ability to:

(a) consult with counsel with a reasonable degree of rational understanding; and

(b) have a rational as well as factual understanding of the proceedings.

(27) "Disposition" means an order by a juvenile court, after the adjudication of a minor, under Section 80-3-405 or 80-4-305 or Chapter 6, Part 7, Adjudication and Disposition.

(28) "Educational neglect" means that, after receiving a notice of compulsory education violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(29) "Educational series" means an evidence-based instructional series:

(a) obtained at a substance abuse program that is approved by the Division of Integrated Healthcare in accordance with Section 26B-5-104; and

(b) designed to prevent substance use or the onset of a mental health disorder.

(30) "Emancipated" means the same as that term is defined in Section 80-7-102.

(31) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

(32) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

(33) "Formal probation" means a minor is:

(a) supervised in the community by, and reports to, a juvenile probation officer or an agency designated by the juvenile court; and

(b) subject to return to the juvenile court in accordance with Section 80-6-607.

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

(35) "Guardian" means a person appointed by a court to make decisions regarding a minor, including 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 individual, agency, or institution.

(36) "Guardian ad litem" means the same as that term is defined in Section 78A-2-801.

(37) "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.

(38) "Home detention" means placement of a minor:

(a) if prior to a disposition, in the minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms and conditions established by the Division of Juvenile Justice and Youth Services or the juvenile court; or

(b) if after a disposition, and in accordance with Section 78A-6-353 or 80-6-704, in the minor's home, or in a surrogate home with the consent of the minor's parent, guardian, or custodian, under terms and conditions established by the Division of Juvenile Justice and Youth Services or the juvenile court.

(39)(a) "Incest" means engaging in sexual intercourse with an individual whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) "Incest" includes:

(i) blood relationships of the whole or half blood, regardless of whether the relationship is legally recognized;

(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.

(40) "Indian child" means the same as that term is defined in [~~25 U.S.C. Sec. 1903~~] Section 80-2b-101.

(41) "Indian tribe" means the same as that term is defined in [~~25 U.S.C. Sec. 1903~~] Section 80-2b-101.

(42) "Indigent defense service provider" means the same as that term is defined in Section 78B-22-102.

(43) "Indigent defense services" means the same as that term is defined in Section 78B-22-102.

(44) "Indigent individual" means the same as that term is defined in Section 78B-22-102.

(45)(a) "Intake probation" means a minor is:

(i) monitored by a juvenile probation officer; and

(ii) subject to return to the juvenile court in accordance with Section 80-6-607.

(b) "Intake probation" does not include formal probation.

(46) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that constitutes a substantial limitation to the individual's ability to function in society.

(47) "Juvenile offender" means:

(a) a serious youth offender; or

(b) a youth offender.

(48) "Juvenile probation officer" means a probation officer appointed under Section 78A-6-205.

(49) "Juvenile receiving center" means a nonsecure, nonresidential program established by the Division of Juvenile Justice and Youth Services, or under contract with the Division of Juvenile Justice and Youth Services, that is responsible for minors taken into temporary custody under Section 80-6-201.

(50) "Legal custody" means a relationship embodying:

(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.

(51) "Licensing Information System" means the Licensing Information System maintained by the Division of Child and Family Services under Section 80-2-1002.

(52) "Management Information System" means the Management Information System developed by the Division of Child and Family Services under Section 80-2-1001.

(53) "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or

(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

(54) "Minor" means, except as provided in Sections 80-6-501, 80-6-901, and 80-7-102:

(a) a child; or

(b) an individual:

(i)(A) who is at least 18 years old and younger than 21 years old; and

(B) for whom the Division of Child and Family Services has been specifically ordered by the juvenile court to provide services because the individual was an abused, neglected, or dependent child or because the individual was adjudicated for an offense;

(ii)(A) who is at least 18 years old and younger than 25 years old; and

(B) whose case is under the jurisdiction of the juvenile court in accordance with Subsection 78A-6-103(1)(b); or

(iii)(A) who is at least 18 years old and younger than 21 years old; and

(B) whose case is under the jurisdiction of the juvenile court in accordance with Subsection 78A-6-103(1)(c).

(55) "Mobile crisis outreach team" means the same as that term is defined in Section 26B-5-101.

(56) "Molestation" means that an individual, with the intent to arouse or gratify the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child, or the breast of a female child, or takes indecent liberties with a child as defined in Section 76-5-401.1.

(57)(a) "Natural parent" means, except as provided in Section 80-3-302, a minor's biological or adoptive parent.

(b) "Natural parent" includes the minor's noncustodial parent.

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

(i) abandonment of a child, except as provided in Chapter 4, Part 5, 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 or medical care, or any other care necessary for the child's health, safety, morals, or well-being;

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

(v) abandonment of a child through an unregulated child custody transfer under Section 78B-24-203; or

(vi) educational neglect.

(b) "Neglect" does not include:

(i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child;

(ii) a health care decision made for a child by the child's parent or guardian, unless the state or other party to a proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed;

(iii) a parent or guardian exercising the right described in Section 80-3-304; or

(iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:

(A) traveling to and from school, including by walking, running, or bicycling;

(B) traveling to and from nearby commercial or recreational facilities;

(C) engaging in outdoor play;

(D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);

(E) remaining at home unattended; or

(F) engaging in a similar independent activity.

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

(60) "Nonjudicial adjustment" means closure of the case by the assigned juvenile probation officer, without an adjudication of the minor's case under Section 80-6-701, upon the consent in writing of:

(a) the assigned juvenile probation officer; and

(b)(i) the minor; or

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

(61) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:

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

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

(62) "Parole" means a conditional release of a juvenile offender from residency in secure care to live outside of secure care under the supervision of the Division of Juvenile Justice and Youth Services, or another person designated by the Division of Juvenile Justice and Youth Services.

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

(64)(a) "Probation" means a legal status created by court order, following an adjudication under Section 80-6-701, whereby the minor is permitted to remain in the minor's home under prescribed conditions.

(b) "Probation" includes intake probation or formal probation.

(65) "Prosecuting attorney" means:

(a) the attorney general and any assistant attorney general;

(b) any district attorney or deputy district attorney;

(c) any county attorney or assistant county attorney; and

(d) any other attorney authorized to commence an action on behalf of the state.

(66) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from the home until the earlier of:

(a) the day on which the shelter hearing is held under Section 80-3-301; or

(b) the day on which the child is returned home.

(67) "Protective services" means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a child;

(b) to a cohabitant who is neglecting or abusing a child, in order to:

(i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and

(ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

(c) in cases where the child's welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law

enforcement agency;

(ii) to cause a protective order to be issued for the protection of the child, when appropriate; and

(iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:

(A) removal from the child's home;

(B) placement in substitute care; and

(C) petitioning the court for termination of parental rights.

(68) "Protective supervision" means a legal status created by court order, following an adjudication on the ground of abuse, neglect, or dependency, whereby:

(a) the minor is permitted to remain in the minor's home; and

(b) supervision and assistance to correct the abuse, neglect, or dependency is provided by an agency designated by the juvenile court.

(69)(a) "Related condition" means a condition that:

(i) is found to be closely related to intellectual disability;

(ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;

(iii) is likely to continue indefinitely; and

(iv) constitutes a substantial limitation to the individual's ability to function in society.

(b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.

(70)(a) "Residual parental rights and duties" means the rights and duties remaining with a 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" includes the right to consent to:

(i) marriage;

(ii) enlistment; and

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

(71) "Runaway" means a child, other than an emancipated child, who willfully leaves the

home of the child's parent or guardian, or the lawfully prescribed residence of the child, without permission.

(72) "Secure care" means placement of a minor, who is committed to the Division of Juvenile Justice and Youth Services for rehabilitation, in a facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services, that provides 24-hour supervision and confinement of the minor.

(73) "Secure care facility" means a facility, established in accordance with Section 80-5-503, for juvenile offenders in secure care.

(74) "Secure detention" means temporary care of a minor who requires secure custody in a physically restricting facility operated by, or under contract with, the Division of Juvenile Justice and Youth Services:

(a) before disposition of an offense that is alleged to have been committed by the minor; or

(b) under Section 80-6-704.

(75) "Serious youth offender" means an individual who:

(a) is at least 14 years old, but under 25 years old;

(b) committed a felony listed in Subsection 80-6-503(1) and the continuing jurisdiction of the juvenile court was extended over the individual's case until the individual was 25 years old in accordance with Section 80-6-605; and

(c) is committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

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

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

(78)(a) "Severe type of child abuse or neglect" means, except as provided in Subsection (78)(b):

(i) if committed by an individual who is 18 years old or older:

(A) chronic abuse;

(B) severe abuse;

(C) sexual abuse;

(D) sexual exploitation;

(E) abandonment;

(F) chronic neglect; or

(G) severe neglect; or

(ii) if committed by an individual who is under 18 years old:

(A) causing serious physical injury, as defined in Subsection 76-5-109(1), to another child that indicates a significant risk to other children; or

(B) sexual behavior with or upon another child that indicates a significant risk to other children.

(b) "Severe type of child abuse or neglect" does not include:

(i) the use of reasonable and necessary physical restraint by an educator in accordance with Subsection 53G-8-302(2) or Section 76-2-401;

(ii) an individual's conduct that is justified under Section 76-2-401 or constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another individual from physical injury; or

(iii) a health care decision made for a child by a child's parent or guardian, unless, subject to Subsection (78)(c), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(c) Subsection (78)(b)(iii) does not prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

(79) "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 described in Subsection (39), including siblings by marriage while the marriage exists or by adoption;

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

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

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the individual 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; or

(d) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.

(80) "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 individual; 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 individual; 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, or Section 76-5b-201.1, aggravated sexual exploitation of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

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

(82) "Shelter facility" means a nonsecure facility that provides shelter for a minor.

(83) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the Division of Child and Family Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that focus on:

(a) age;

(b) social factors;

(c) emotional factors;

(d) sexual factors;

(e) intellectual factors;

(f) family risk factors; and

(g) other related considerations.

(84) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(85) "Status offense" means an offense that would not be an offense but for the age of the offender.

(86) "Substance abuse" means, except as provided in Section 80-2-603, the misuse or excessive use of alcohol or other drugs or substances.

(87) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence, and separate consideration of each allegation made or identified in the case, that abuse, neglect, or dependency occurred .

(88) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;

(b) services provided for a minor in the protective custody of the Division of Child and Family Services, or a minor in the temporary custody or custody of the Division of Child and Family Services, as those terms are defined in Section 80-2-102; or

(c) the licensing and supervision of a substitute care facility.

(89) "Supported" means a finding by the Division of Child and Family Services based on the evidence available at the completion of an investigation, and separate consideration of each allegation made or identified during the investigation, that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred.

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

(91) "Therapist" means:

(a) an individual employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in the division's or agency's custody; or

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

(92) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.

(93) "Ungovernable" means a child in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the child, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the child, the child's family, or others; or

(c) results in the situations described in Subsections (93)(a) and (b).

(94) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(95) "Unsupported" means a finding by the Division of Child and Family Services at the completion of an investigation, after the day on which the Division of Child and Family Services concludes the alleged abuse, neglect, or dependency is not without merit, that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(96) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

(97) "Without merit" means a finding at the completion of an investigation by the Division of Child and Family Services, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

(98) "Youth offender" means an individual who is:

(a) at least 12 years old, but under 21 years old; and

(b) committed by the juvenile court to the Division of Juvenile Justice and Youth Services for secure care under Sections 80-6-703 and 80-6-705.

Section 14. Section **80-2-802** is amended to read:

**80-2-802 . Division child placing and adoption services -- Restrictions on placement of a child.**

(1) Except as provided in Subsection (3), the division may provide adoption services and, as a licensed child-placing agency under Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities, engage in child placing in accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Chapter 4, Termination and Restoration of Parental Rights.

(2) The division shall base the division's decision for placement of an adoptable child for adoption on the best interest of the adoptable child.

(3) The division may not:

(a) in accordance with Subsection 26B-2-127(6), place a child for adoption, either temporarily or permanently, with an individual who does not qualify for adoptive placement under Sections 78B-6-102, 78B-6-117, and 78B-6-137;

(b) consider a potential adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with a potential adoptive parent; or

(c) except as required under [~~the Indian Child Welfare Act, 25 U.S.C. Secs. 1901 through 1963~~] Title 80, Chapter 2b, Indian Family Preservation Act, base the division's decision for placement of an adoptable child on the race, color, ethnicity, or national origin of either the child or the potential adoptive parent.

(4) The division shall establish a rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing that, subject to Subsection (3) and Section 78B-6-117, priority of placement shall be provided to a family in which a couple is legally married under the laws of the state.

(5) Subsections (3) and (4) do not limit the placement of a child with the child's biological or adoptive parent, a relative, or in accordance with [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq~~] Title 80, Chapter 2b, Indian Family Preservation Act.

Section 15. Section **80-2-1006** is amended to read:

**80-2-1006 . Sharing of records with Indian tribe under agreement.**

[~~If~~] Subject to Chapter 2b, Indian Family Preservation Act, if the division has a privacy agreement with an Indian tribe to protect the confidentiality of division records regarding an Indian child to the same extent that the division is required to protect other division records, the division shall cooperate with and share all appropriate information in the division's possession regarding an Indian child, the Indian child's parent[~~ or~~] , Indian custodian, or guardian, or a proposed placement for the Indian child with the Indian tribe that is affiliated with the Indian child.

Section 16. Section **80-2a-101** is amended to read:

**80-2a-101 . Definitions.**

(1) "Custody" means the same as that term is defined in Section 80-2-102.

(2) "Division" means the Division of Child and Family Services created in Section 80-2-201.

(3) "Friend" means an adult who:

(a) has an established relationship with the child or a family member of the child; and

(b) is not the natural parent of the child.

(4) "Nonrelative" means an individual who is not a noncustodial parent or relative.

(5) "Relative" means an adult who:

(a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling;

(b) is the first cousin of the child's parent;

(c) is a permanent guardian or natural parent of the child's sibling; or

(d) in the case of a child who is an Indian child, is an extended family member as defined in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903~~] Section 80-2b-101.

(6) "Sibling" means the same as that term is defined in Section 80-2-102.

(7) "Temporary custody" means the same as that term is defined in Section 80-2-102.

Section 17. Section **80-2a-304** is amended to read:

**80-2a-304 . Removal of a child from foster family placement -- Procedural due process.**

(1)(a) The Legislature finds that, except with regard to a child's natural parent or guardian, a foster family has a very limited but recognized interest in the foster family's familial relationship with a foster child who has been in the care and custody of the foster family and in making determinations regarding removal of a child from a foster home, the division may not dismiss the foster family as a mere collection of unrelated individuals.

(b) The Legislature finds that children in the temporary custody and custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

(c) For the reasons described in Subsections (1)(a) and (b), the division shall provide procedural due process for a foster family before removal of a foster child from the foster family's home, regardless of the length of time the child has been in the foster family's home, unless removal is for the purpose of:

(i) returning the child to the child's natural parent or guardian;

(ii) immediately placing the child in an approved adoptive home;

(iii) placing the child with a relative who obtained custody or asserted an interest in the child within the preference period described in Subsection 80-3-302(7); or

(iv) placing an Indian child in accordance with placement preferences and other requirements described in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1915~~] Section 80-2b-205.

(2)(a) The division shall maintain and utilize due process procedures for removal of a

foster child from a foster home, in accordance with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(b) The procedures described in Subsection (2)(a) shall include requirements for:

(i) personal communication with, and a written explanation of the reasons for the removal to, the foster parents before removal of the child; and

(ii) an opportunity for foster parents to:

(A) present the foster parents' information and concerns to the division; and

(B) request a review, to be held before removal of the child, by a third party neutral fact finder or if the child is placed with the foster parents for a period of at least two years, request a review, to be held before removal of the child, by the juvenile court judge currently assigned to the child's case or, if the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

(c) If the division determines that there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the division shall place the child in emergency foster care during the pendency of the procedures described in this Subsection (2), instead of making another foster care placement.

(3)(a) If the division removes a child from a foster home based on the child's statement alone, the division shall initiate and expedite the processes described in Subsection (2).

(b) The division may not take formal action with regard to the foster parent's license until after the processes described in Subsection (2), in addition to any other procedure or hearing required by law, are completed.

(4) If a complaint is made to the division by a foster child against a foster parent, the division shall, within 30 business days after the day on which the complaint is received, provide the foster parent with information regarding the specific nature of the complaint, the time and place of the alleged incident, and who was alleged to have been involved.

(5) If the division places a child in a foster home, the division shall provide the foster parents with:

(a) notification of the requirements of this section;

(b) a written description of the procedures enacted by the division under Subsection (2) and how to access the procedures; and

(c) written notification of the foster parents' ability to petition the juvenile court directly for review of a decision to remove a foster child who, subject to Section 80-3-502,

has been in the foster parents' custody for 12 months or longer.

(6) This section does not apply to the removal of a child based on a foster parent's request for the removal.

(7) It is unlawful for a person, with the intent to avoid compliance with the requirements of this section, to:

(a) take action, or encourage another to take action, against the license of a foster parent; or

(b) remove a child from a foster home before the child is placed with the foster parents for two years.

(8) The division may not remove a foster child from a foster parent who is a relative of the child on the basis of the age or health of the foster parent without determining:

(a) by clear and convincing evidence that the foster parent is incapable of caring for the foster child, if the alternative foster parent would not be another relative of the child; or

(b) by a preponderance of the evidence that the foster parent is incapable of caring for the foster child, if the alternative foster parent would be another relative of the child.

Section 18. Section **80-2b-101** is enacted to read:

## CHAPTER 2b. INDIAN FAMILY PRESERVATION ACT

### Part 1. General Provisions

**80-2b-101 . Definitions.**

As used in this chapter, except as may be specifically provided otherwise:

(1) "Active efforts" means, consistent with Subsection 80-2b-202(7), affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with the Indian child's family.

(2) "Adoptive placement" means the permanent placement of an Indian child for adoption, including an action resulting in a final decree of adoption.

(3)(a) "Child custody proceeding" means the following:

(i) adoptive placement;

(ii) foster care placement;

(iii) preadoptive placement; and

(iv) termination of parental rights.

(b) "Child custody proceeding" does not include a placement based upon:

(i) an act that, if committed by an adult, would be considered a crime; or

(ii) an award, in a divorce proceeding, of custody to one of the parents.

(4) "Extended family member":

(a) is defined by the law or custom of the Indian child's tribe; or

(b) in the absence of a law or custom of the Indian child's tribe, is a person who is:

(i) 18 years old or older; and

(ii) the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(5) "Foster care placement" means an action removing an Indian child from the Indian child's parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator when the parent or Indian custodian cannot have the Indian child returned upon demand, but when parental rights have not been terminated.

(6) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. Sec. 1606.

(7) "Indian child" means an unmarried person who is less than 18 years old and is either:

(a) a member of an Indian tribe; or

(b)(i) eligible for membership in an Indian tribe; and

(ii) the biological child of a member of an Indian tribe.

(8) "Indian child's tribe" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(9) "Indian custodian" means any Indian person:

(a) who has legal custody of an Indian child under tribal law or custom or under state law; or

(b) to whom temporary physical care, custody, and control has been transferred by the parent of the Indian child.

(10) "Indian organization" means a group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(11) "Indian tribe" means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. Sec. 1602(c).

(12)(a) "Parent" means a biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom.

(b) "Parent" does not include the unwed father when paternity has not been established.

(13) "Preadoptive placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but before or in lieu of adoptive placement.

(14) "Reservation" means Indian country as defined in 18 U.S.C. Sec. 1151 and any land, not covered under Indian country, title to which is either held by:

(a) the United States in trust for the benefit of any Indian tribe or individual; or

(b) any Indian tribe or individual subject to a restriction by the United States against alienation.

(15) "Termination of parental rights" means an action resulting in the termination of the parent-child relationship.

(16) "Tribal court" means a court:

(a) with jurisdiction over a child custody proceeding; and

(b) that is:

(i) a Court of Indian Offenses;

(ii) a court established and operated under the code or custom of an Indian tribe; or

(iii) another administrative body of an Indian tribe that is vested with authority over a child custody proceeding.

Section 19. Section **80-2b-102** is enacted to read:

**80-2b-102 . Effective date implementation.**

This chapter, except Section 80-2b-202, may not affect a proceeding under state law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement that was initiated or completed before November 1, 2025, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same Indian child.

Section 20. Section **80-2b-103** is enacted to read:

**80-2b-103 . Severability.**

If a provision of this chapter or the application of the provision to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or

application, and to this end the provisions of this chapter are declared to be severable.

Section 21. Section **80-2b-104** is enacted to read:

**80-2b-104 . Inquiry into Indian status.**

(1) As used in this section, "child placing agency" means a public, private, or nonprofit legal entity:

(a) providing assistance to a child and the child's parents or custodian; or

(b) placing a child in foster care or for adoption on a voluntary or involuntary basis.

(2) A child placing agency or an individual petitioner shall inquire of the child, the child's parents and custodians, and other appropriate persons whether there is a reason to believe that a child brought to the attention of the child placing agency or individual petitioner may have lineage to an Indian tribe.

(3) The inquiry required under this section shall occur at the time the child comes to the attention of the child placing agency or individual petitioner and shall continue throughout the involvement of the child placing agency or individual petitioner.

Section 22. Section **80-2b-105** is enacted to read:

**80-2b-105 . Best interests of an Indian child.**

Best interests of an Indian child means the use of practices in accordance with the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, federal regulations, and other applicable law that are designed to accomplish the following:

(1) protect the safety, well-being, development, and stability of the Indian child;

(2) prevent the unnecessary out-of-home placement of the Indian child;

(3) acknowledge the right of the Indian tribe to maintain the Indian tribe's existence and integrity as a sovereign tribal nation that has an inherent sovereign right to promote the stability and security of the Indian tribe's children and families;

(4) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the the Indian child's tribe and tribal community;

(5) in a child-welfare proceeding involving an Indian child when out-of-home placement is necessary, prioritize placement of the Indian child in accordance with the placement preferences of the Indian tribe and as provided in this chapter; and

(6) recognize the importance to the Indian tribe's ability to maintain the Indian tribe's existence and integrity in promotion of the stability and security of the Indian children and families.

Section 23. Section **80-2b-201** is enacted to read:

**Part 2. Child Custody Proceeding**

**80-2b-201 . Indian tribe jurisdiction over child custody proceedings.**

(1)(a) An Indian tribe has exclusive jurisdiction over a child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the Indian tribe, except when jurisdiction is otherwise vested in the state by existing federal law.

(b) When an Indian child is a ward of a tribal court, the Indian tribe retains exclusive jurisdiction, notwithstanding the residence or domicile of the Indian child.

(2)(a) In a state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer the state court proceeding to the jurisdiction of the Indian tribe:

(i) absent objection by either parent; and

(ii) upon the petition of:

(A) either parent;

(B) the Indian custodian; or

(C) the Indian child's tribe.

(b) A transfer under this Subsection (2) is subject to declination by the tribal court of the Indian child's tribe.

(3) In a state court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the Indian child and the Indian child's tribe have a right to intervene at any point in the proceeding.

(4) The state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Section 24. Section **80-2b-202** is enacted to read:

**80-2b-202 . Pending court proceedings.**

(1)(a) In an involuntary proceeding in a state court, when the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt

requested, of the pending proceedings and of their right of intervention.

(b) A state court may not hold a foster care placement or termination of parental rights proceeding until at least 10 days after receipt of notice by the parent or Indian custodian and the Indian tribe, except that the court shall, upon request grant up to 20 additional days to the parent, the Indian custodian, or the Indian tribe to prepare for the proceeding.

(2) If the court determines that a parent or Indian custodian is an indigent individual as defined in Section 78B-22-102, the parent or Indian custodian has the right to court-appointed counsel in a removal, placement, or termination proceeding. The court may appoint counsel for the Indian child upon a finding that the appointment is in the best interest of the Indian child.

(3) A party to a foster care placement or termination of parental rights proceeding under state law involving an Indian child has the right to examine a report or other document filed with the court upon which a decision with respect to the action may be based.

(4) A party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(5) A court may not order a foster care placement in a foster care proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(6) A court may not order termination of parental rights in a termination of parental rights proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

(7) For purposes of active efforts described in Subsection (4), to the maximum extent possible, active efforts shall be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and shall be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include:

(a) conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(b) identifying appropriate services and helping the parents, Indian custodians, or extended family members, as appropriate, to overcome barriers, including actively assisting the parents, Indian custodians, or extended family members in obtaining services beyond simply providing referrals to services;

(c) identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(d) conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents or Indian custodian;

(e) offering and employing available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe;

(f) taking steps to keep siblings together when possible;

(g) supporting and actively facilitating regular visits with parents or Indian custodians:

(i) in the most natural setting possible;

(ii) including when barriers exist or are discovered due to factors such as transportation or travel time issues for a parent or Indian custodian and placement; and

(iii) as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the Indian child;

(h) identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents, Indian custodian, or, when appropriate, the Indian child's family, in using and accessing those resources;

(i) monitoring progress and participation in services;

(j) considering alternative ways to address the needs of the Indian child's parents, Indian custodians, and, when appropriate, the Indian child's family, if the optimum services do not exist or are not available;

(k) providing post-reunification services and monitoring;

(l) initiating and maintaining contact with the Indian tribe's social worker for ongoing case management; and

(m) when an Indian child's safety requires out-of-home placement, seeking, facilitating, and monitoring the placement to assure the placement meets the Indian tribe's preferred placement and supports reunification efforts.

(8)(a) To be a qualified expert witness an individual shall be qualified to testify regarding:

(i) whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

(ii) the prevailing social and cultural standards of the Indian child's tribe.

(b) An Indian child's tribe may designate an individual as being qualified to testify to the prevailing social and cultural standards of the Indian child's tribe.

(c) The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs office serving the Indian child's tribe in locating an individual qualified to serve as an expert witness.

(d) A social worker regularly assigned to the Indian child may not serve as a qualified expert witness in a child custody proceeding concerning the Indian child.

(e) The petitioning party shall pay for the cost of the qualified expert witness.

Section 25. Section **80-2b-203** is enacted to read:

**80-2b-203 . Parental rights -- Voluntary termination.**

(1)(a) When a parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, the consent is not valid unless the consent is:

(i) executed in writing;

(ii) recorded before a judge of a court with jurisdiction; and

(iii) accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian.

(b) In addition to the certification under Subsection (1)(a), the court shall certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood.

(c) Consent given before, or within 10 days after, birth of the Indian child is not valid.

(2) A parent or Indian custodian may withdraw consent to a foster care placement under state law at any time and, upon the withdrawal, the Indian child shall be returned to the parent or Indian custodian.

(3) In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, a parent may withdraw the consent of the parent for any reason at any time before the entry of a final decree of termination or adoption, as the case may be, and the Indian child shall be returned to the parent.

(4)(a) After the entry of a final decree of adoption of an Indian child in a state court, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate the final decree.

(b) Upon a finding that consent to the adoption was obtained through fraud or duress, the court shall vacate the decree and return the Indian child to the parent.

(c) An adoption that has been effective for at least two years may not be invalidated under this Subsection (4).

Section 26. Section **80-2b-204** is enacted to read:

**80-2b-204 . Petition to court with jurisdiction to invalidate action upon showing of certain violations.**

An Indian child who is the subject of an action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody the Indian child was removed, and the Indian child's tribe may petition a court with jurisdiction to invalidate the action upon a showing that the action violated Section 80-2b-201, 80-2b-202, or 80-2b-203.

Section 27. Section **80-2b-205** is enacted to read:

**80-2b-205 . Placement of Indian children.**

(1) In an adoptive placement of an Indian child under state law, the court or agency effecting the placement shall give a preference, in the absence of good cause to the contrary, to a placement with:

(a) a member of the Indian child's extended family;

(b) other members of the Indian child's tribe; or

(c) other Indian families.

(2)(a) A court or agency effecting the placement shall place an Indian child accepted for foster care or preadoptive placement in the least restrictive setting:

(i) that most approximates a family;

(ii) in which the Indian child's special needs, if any, may be met; and

(iii) within reasonable proximity to the Indian child's home, taking into account any special needs of the Indian child.

(b) In a foster care or preadoptive placement, a court or agency effecting the placement

shall prefer, in the absence of good cause to the contrary, a placement with:

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

(3)(a) In the case of a placement under Subsection (1) or (2), if the Indian child's tribe establishes a different order of preference by resolution, the court or agency effecting the placement shall follow the order established by the Indian tribe so long as the placement is the least restrictive setting appropriate to the particular needs of the Indian child, as provided in Subsection (2).

(b) When appropriate, the preference of the Indian child, parent, or Indian custodian shall be considered, except that when a consenting parent evidences a desire for anonymity, the court or agency shall give weight to the desire in applying the preferences.

(c) The standards to be applied in meeting the preference requirements of this section are the prevailing social and cultural standards of the Indian community in which the parent, Indian custodian, or extended family resides or with which the parent, Indian custodian, or extended family members maintain social and cultural ties.

Section 28. Section **80-2b-206** is enacted to read:

**80-2b-206 . Return to custody.**

(1) When a final decree of adoption of an Indian child is vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the Indian child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant the petition unless there is a showing that the return of custody is not in the best interests of the Indian child.

(2) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with this chapter, except in the case when an Indian child is being returned to the parent or Indian custodian from whose custody the Indian child was originally removed.

Section 29. Section **80-2b-207** is enacted to read:

**80-2b-207 . Tribal affiliation information and other information for protection of**

**rights from tribal relationship -- Application of subject of adoptive placement -- Disclosure by court.**

Upon application by an Indian individual who is 18 years old or older and who was the subject of an adoptive placement, the court that entered the final decree shall inform the individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Section 30. Section **80-2b-208** is enacted to read:

**80-2b-208 . Agreements between the state and Indian tribes.**

(1) The state, through the state's executive branch, and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements that provide for:

(a) the orderly transfer of jurisdiction on a case-by-case basis; or

(b) concurrent jurisdiction between the state and Indian tribes.

(2) An agreement under this section may be revoked by either party upon 180 days written notice to the other party. The revocation does not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Section 31. Section **80-2b-209** is enacted to read:

**80-2b-209 . Improper removal of Indian child from custody -- Declination of jurisdiction -- Forthwith return of Indian child -- Danger exception.**

When a petitioner in an Indian child custody proceeding before a state court has improperly removed the Indian child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition, and forthwith return the Indian child to the Indian child's parent or Indian custodian unless returning the Indian child to the Indian child's parent or Indian custodian would subject the Indian child to a substantial and immediate danger or threat of danger.

Section 32. Section **80-2b-210** is enacted to read:

**80-2b-210 . Higher state or federal standard applicable to protect rights of parent or Indian custodian of Indian child.**

(1) The state, the state's courts, and the state's agencies shall comply with a valid federal statute, rule, or regulations governing a child custody proceeding of Indian children.

(2) If state or federal law applicable to a child custody proceeding provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child

than the rights provided under this chapter, the court shall apply the higher state or federal standard.

Section 33. Section **80-2b-211** is enacted to read:

**80-2b-211 . Emergency removal or placement of Indian child -- Termination -- Appropriate action.**

(1) This chapter may not be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from the Indian child's parent or Indian custodian or the emergency placement of the Indian child in a foster home or institution, under applicable state law, to prevent imminent physical damage or harm to the Indian child.

(2) A state authority, official, or agency involved in an emergency action under this section shall:

(a) ensure that the emergency removal or placement terminates immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the Indian child; and

(b) expeditiously initiate a child custody proceeding, subject to this part, to transfer the Indian child to the jurisdiction of the appropriate Indian tribe, or restore the Indian child to the parent or Indian custodian, as may be appropriate.

Section 34. Section **80-2b-301** is enacted to read:

**Part 3. Recordkeeping and Information Availability**

**80-2b-301 . Information maintenance and availability.**

(1) A state court entering a final decree or order in an Indian child adoptive placement after November 1, 2025, shall maintain a copy of the decree or order together with other information as may be necessary to show:

(a) the name and tribal affiliation of the Indian child;

(b) the names and addresses of the biological parents;

(c) the names and addresses of the adoptive parents; and

(d) the identity of any agency having files or information relating to the adoptive placement.

(2)(a) When the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include the affidavit with the information listed in Subsection (1).

(b) The courts shall ensure that the confidentiality of the information described in

Subsection (2)(a) is maintained.

(3)(a) Upon the request of the adopted Indian individual who is 18 years old or older, the adoptive or foster parents of the Indian individual, or an Indian tribe, the state shall disclose information as may be necessary for:

(i) the enrollment of the Indian individual in the Indian tribe in which the Indian individual may be eligible for enrollment; or

(ii) determining any rights or benefits associated with that membership.

(b) A state court, an agency, or individual participating in the adoption or placement shall provide to an Indian tribe information about the Indian child's parentage:

(i) upon a request from the Indian tribe who is seeking to determine enrollment eligibility; and

(ii) when the documents relating to an Indian child contain an affidavit from the biological parent or parents requesting anonymity.

(4) An entity or individual who provides confidential information under this section shall inform the individual or group receiving the information that the information received is to remain confidential.

Section 35. Section **80-3-102** is amended to read:

**80-3-102 . Definitions.**

As used in this chapter:

(1) "Abuse, neglect, or dependency petition" means a petition filed in accordance with this chapter to commence proceedings in a juvenile court alleging that a child is:

(a) abused;

(b) neglected; or

(c) dependent.

(2) "Custody" means the same as that term is defined in Section 80-2-102.

(3) "Division" means the Division of Child and Family Services created in Section 80-2-201.

(4) "Friend" means an adult who:

(a) has an established relationship with the child or a family member of the child; and

(b) is not the natural parent of the child.

(5) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.

(6) "Relative" means an adult who:

(a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling;

(b) is a first cousin of the child's parent;

(c) is a permanent guardian or natural parent of the child's sibling; or

(d) in the case of a child who is an Indian child, is an extended family member as defined in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903~~] Section 80-2b-101.

(7) "Sibling" means the same as that term is defined in Section 80-2-102.

(8) "Sibling visitation" means the same as that term is defined in Section 80-2-102.

(9) "Temporary custody" means the same as that term is defined in Section 80-2-102.

Section 36. Section **80-3-302** is amended to read:

**80-3-302 . Shelter hearing -- Placement of a child.**

(1) As used in this section:

(a) "Asserted an interest" means to communicate, verbally or in writing, to the division or the court, that the relative or friend is interested in becoming a placement for the child.

(b)(i) "Natural parent," notwithstanding Section 80-1-102, means:

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

(B) an adoptive father of the child; or

(C) a biological father of the child who:

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

(II) has strictly complied with Sections 78B-6-120 through 78B-6-122, before removal of the child or voluntary surrender of the child by the custodial parent.

(ii) "Natural parent" includes the individuals described in Subsection (1)(b) regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long-term goal for the child.

(2)(a) At the shelter hearing, if the juvenile court orders that a child be removed from the custody of the child's parent in accordance with Section 80-3-301, the juvenile court shall first determine whether there is another natural parent with whom the child was not residing at the time the events or conditions that brought the child within the juvenile court's jurisdiction occurred, who desires to assume custody of the child.

(b) Subject to Subsection (7), if another natural parent requests custody under Subsection (2)(a), the juvenile court shall place the child with that parent unless the juvenile court finds that the placement would be unsafe or otherwise detrimental to

the child.

(c) The juvenile court:

(i) shall make a specific finding regarding the fitness of the parent described in Subsection (2)(b) to assume custody, and the safety and appropriateness of the placement;

(ii) shall, at a minimum, order the division to visit the parent's home, comply with the criminal background check provisions described in Section 80-3-305, and check the Management Information System for any previous reports of abuse or neglect received by the division regarding the parent at issue;

(iii) may order the division to conduct any further investigation regarding the safety and appropriateness of the placement; and

(iv) may place the child in the temporary custody of the division, pending the juvenile court's determination regarding the placement.

(d) The division shall report the division's findings from an investigation under Subsection (2)(c), regarding the child in writing to the juvenile court.

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

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

(b) the juvenile court may order:

(i) that the parent take custody subject to the supervision of the juvenile court; and

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

(c) the juvenile court shall order reasonable parent-time with the parent from whose custody the child was removed, unless parent-time is not in the best interest of the child.

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

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

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

(c) the child should be placed with a relative under Subsections (6) through (9); or

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

(5)(a) Legal custody of the child is not affected by an order entered under Subsection (2) or (3).

(b) To affect a previous court order regarding legal custody, the party shall petition the court for modification of legal custody.

(6) Subject to Subsection (7), if, at the time of the shelter hearing, a child is removed from the custody of the child's parent and is not placed in the custody of the child's other parent, the juvenile court:

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

(b) may order the division to conduct a reasonable search to determine whether there are relatives or friends who are willing and appropriate, in accordance with the requirements of this chapter, Chapter 2, Child Welfare Services, and Chapter 2a, Removal and Protective Custody of a Child, for placement of the child;

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

(d) may order that the child be placed in the temporary custody of the division pending the determination under Subsection (6)(a).

(7)(a)(i) Subject to Subsection (7)(b), and if the provisions of this section are satisfied, the division and the juvenile court shall give preferential consideration to a relative's or a friend's request for placement of the child, if the placement is in the best interest of the child.

(ii) If a relative or friend verbally communicates to the division or court that the relative or friend is interested in becoming a placement for the child, the division or court shall make a written record of the communication and include that written record in the report the division submits at the initial dispositional hearing, a report the division submits under Section 80-3-408, or the court's legal file.

(b)(i)(A) The preferential consideration that the juvenile court or division initially grants a friend under Subsection (7)(a)(i) expires 120 days after the day on which the shelter hearing occurs.

(B) After the day on which the time period described in Subsection (7)(b)(i)(A) expires, the division or the juvenile court may not grant preferential consideration to a friend, who has not obtained custody or asserted an interest in the child.

(ii)(A) Until eight months after the day on which the shelter hearing occurs, the preferential consideration that the juvenile court or division grants a relative

under Subsection (7)(a)(i) is a rebuttable presumption that placement of the child with a relative is in the best interest of the child.

(B) After the rebuttable presumption described in Subsection (7)(b)(ii)(A) expires, the juvenile court or division shall give preferential consideration to a relative's request for placement of the child, if the placement is in the best interest of the child considering the totality of the circumstances.

(C) If a relative asserts an interest in becoming a placement for the child more than one year after the day on which the shelter hearing occurs, the juvenile court may not give the relative the preferential consideration described in Subsection (7)(b)(ii)(B).

(iii) This Subsection (7)(b) does not apply to a preference made under Chapter 2b, Indian Family Preservation Act.

(c) The following order of preference shall be applied when determining the individual with whom a child will be placed, provided that the individual is willing and able to care for the child:

(i) a noncustodial parent of the child;

(ii) a relative of the child;

(iii) subject to Subsection (7)(d), a friend if the friend is a licensed foster parent; and

(iv) other placements that are consistent with the requirements of law.

(d) In determining whether a friend is a willing, able, and appropriate placement for a child, the juvenile court or the division:

(i) subject to Subsections (7)(d)(ii) through (iv), shall consider the child's preferences or level of comfort with the friend;

(ii) is required to consider no more than one friend designated by each parent of the child and one friend designated by the child if the child is of sufficient maturity to articulate the child's wishes in relation to a placement;

(iii) may limit the number of designated friends to two, one of whom shall be a friend designated by the child if the child is of sufficient maturity to articulate the child's wishes in relation to a placement; and

(iv) shall give preference to a friend designated by the child if:

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

(B) the basis for removing the child under Section 80-3-301 is sexual abuse of the child.

(e)(i) If a parent of the child or the child, if the child is of sufficient maturity to

articulate the child's wishes in relation to a placement, is not able to designate a friend who is a licensed foster parent for placement of the child, but is able to identify a friend who is willing to become licensed as a foster parent, the department shall fully cooperate to expedite the licensing process for the friend.

(ii) If the friend described in Subsection (7)(e)(i) becomes licensed as a foster parent within the time frame described in Subsection (7)(b)(i), the juvenile court shall determine whether it is in the best interest of the child to place the child with the friend.

(8)(a) If a relative or friend who is willing to cooperate with the child's permanency goal is identified under Subsection (6)(a), the juvenile court:

(i) shall make a specific finding regarding:

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

(B) the safety and appropriateness of placement with the relative or friend; and

(ii) may not consider a request for guardianship or adoption of the child by an individual who is not a relative of the child, or prevent the division from placing the child in the custody of a relative of the child in accordance with this part, until after the day on which the juvenile court makes the findings under Subsection (8)(a)(i).

(b) In making the finding described in Subsection (8)(a), the juvenile court shall, at a minimum, order the division to:

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

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

(B) a completed search, relating to the relative, of the Management Information System; and

(C) a background check that complies with the criminal background check provisions described in Section 80-3-305, of each nonrelative of the child who resides in the household where the child may be placed;

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

(A) the background check requirements applicable to an emergency placement with a noncustodial parent that are described in Subsections 80-2a-301(4) and (6);

(B) a completed search, relating to the noncustodial parent of the child, of the Management Information System; and

(C) a background check that complies with the criminal background check provisions described in Section 80-3-305, of each nonrelative of the child who resides in the household where the child may be placed;

(iii) if the child may be placed with an individual other than a noncustodial parent or a relative, conduct a criminal background check of the individual, and each adult that resides in the household where the child may be placed, that complies with the criminal background check provisions described in Section 80-3-305;

(iv) visit the relative's or friend's home;

(v) check the Management Information System for any previous reports of abuse or neglect regarding the relative or friend at issue;

(vi) report the division's findings in writing to the juvenile court; and

(vii) provide sufficient information so that the juvenile court may determine whether:

(A) the relative or friend has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

(B) the child is comfortable with the relative or friend;

(C) the relative or friend recognizes the parent's history of abuse and is committed to protect the child;

(D) the relative or friend is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(E) the relative or friend is committed to caring for the child as long as necessary; and

(F) the relative or friend can provide a secure and stable environment for the child.

(c) The division may determine to conduct, or the juvenile court may order the division to conduct, any further investigation regarding the safety and appropriateness of the placement described in Subsection (8)(a).

(d) The division shall complete and file the division's assessment regarding placement with a relative or friend under Subsections (8)(a) and (b) as soon as practicable, in an effort to facilitate placement of the child with a relative or friend.

(9)(a) The juvenile court may place a child described in Subsection (2)(a) in the temporary custody of the division, pending the division's investigation under Subsection (8), and the juvenile court's determination regarding the appropriateness of the placement.

(b) The juvenile court shall ultimately base the juvenile court's determination regarding the appropriateness of a placement with a relative or friend on the best interest of the child.

(10) If a juvenile court places a child described in Subsection (6) with the child's relative or friend:

(a) the juvenile court shall:

(i) order the relative or friend take custody, subject to the continuing supervision of the juvenile court;

(ii) provide for reasonable parent-time with the parent or parents from whose custody the child is removed, unless parent-time is not in the best interest of the child; and

(iii) conduct a periodic review no less often than every six months, to determine whether:

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

(B) the child should be returned home; or

(C) the child should be placed in the custody of the division;

(b) the juvenile court may enter an order:

(i) requiring the division to provide necessary services to the child and the child's relative or friend, including the monitoring of the child's safety and well-being; or

(ii) that the juvenile court considers necessary for the protection and best interest of the child; and

(c) the child and the relative or friend in whose custody the child is placed are under the continuing jurisdiction of the juvenile court.

(11) No later than 12 months after the day on which the child is removed from the home, the juvenile court shall schedule a hearing for the purpose of entering a permanent order in accordance with the best interest of the child.

(12) The time limitations described in Section 80-3-406, with regard to reunification efforts, apply to a child placed with a previously noncustodial parent under Subsection (2) or with a relative or friend under Subsection (6).

(13)(a) If the juvenile court awards temporary custody of a child to the division, and the division places the child with a relative, the division shall:

(i) conduct a criminal background check of the relative that complies with the criminal background check provisions described in Section 80-3-305; and

(ii) if the results of the criminal background check described in Subsection (13)(a)(i) would prohibit the relative from having direct access to the child under Section

26B-2-120, the division shall:

(A) take the child into physical custody; and

(B) within three days, excluding weekends and holidays, after the day on which the child is taken into physical custody under Subsection (13)(a)(ii)(A), give written notice to the juvenile court, and all parties to the proceedings, of the division's action.

(b) Subsection (13)(a) does not prohibit the division from placing a child with a relative, pending the results of the background check described in Subsection (13)(a) on the relative.

(14) If the juvenile court orders that a child be removed from the custody of the child's parent and does not award custody and guardianship to another parent, relative, or friend under this section, the juvenile court shall order that the child be placed in the temporary custody of the division, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter, Chapter 2, Child Welfare Services, and Chapter 2a, Removal and Protective Custody of a Child.

(15)(a) If a child reenters the temporary custody or the custody of the division and the child is not placed with an individual who is a parent, relative, or friend, the division shall:

(i) notify the child's former foster parents; and

(ii) upon a determination of the former foster parents' willingness and ability to safely and appropriately care for the child, give the former foster parents preference for placement of the child.

(b) If, after the shelter hearing, the child is placed with an individual who is not a parent, a relative, a friend, or a former foster parent of the child, priority shall be given to a foster placement with a married couple, unless it is in the best interests of the child to place the child with a single foster parent.

(16) In determining the placement of a child, the juvenile court and the division may not take into account, or discriminate against, the religion of an individual with whom the child may be placed, unless the purpose of taking religion into account is to place the child with an individual or family of the same religion as the child.

(17) If the juvenile court's decision differs from a child's express wishes if the child is of sufficient maturity to articulate the wishes in relation to the child's placement, the juvenile court shall make findings explaining why the juvenile court's decision differs from the child's wishes.

(18) This section does not guarantee that an identified relative or friend will receive custody of the child.

(19)(a) If, for a relative placement, an interstate placement requested under the Interstate Compact on the Placement of Children has been initiated by the division or is ordered by or pending before the juvenile court, the court may not finalize a non-relative placement unless the court gives due weight to:

(i) the preferential consideration granted to a relative in [~~Section 80-3-302~~] this section;

(ii) the rebuttable presumption in [~~Section 80-3-302~~] this section; and

(iii) the division's placement authority under Subsections 80-1-102(50) and 80-3-303(1).

(b) Nothing in this section affects the ability of a foster parent to petition the juvenile court under Subsection 80-3-502(3).

Section 37. Section **80-3-502** is amended to read:

**80-3-502 . Review of foster care removal -- Foster parent's standing.**

(1) With regard to a minor in the custody of the division who is the subject of a petition alleging abuse, neglect, or dependency, and who has been placed in foster care with a foster family, the Legislature finds that:

(a) except with regard to the minor's natural parents, a foster family has a very limited but recognized interest in its familial relationship with the minor; and

(b) minors in the custody of the division are experiencing multiple changes in foster care placements with little or no documentation, and that numerous studies of child growth and development emphasize the importance of stability in foster care living arrangements.

(2) For the reasons described in Subsection (1), the Legislature finds that, except with regard to the minor's natural parents, procedural due process protections must be provided to a foster family prior to removal of a foster minor from the foster home.

(3)(a) A foster parent who has had a foster minor in the foster parent's home for 12 months or longer may petition the juvenile court for a review and determination of the appropriateness of a decision by the division to remove the minor from the foster home, unless the removal was for the purpose of:

(i) returning the minor to the minor's natural parent or legal guardian;

(ii) immediately placing the minor in an approved adoptive home;

(iii) placing the minor with a relative who obtained custody or asserted an interest in the minor within the preference period described in Subsection 80-3-302(8); or

(iv) placing an Indian child in accordance with placement preferences and other requirements described in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1915~~] Chapter 2b, Indian Family Preservation Act.

(b) The foster parent may petition the juvenile court under this section without exhausting administrative remedies within the division.

(c) The juvenile court may order the division to place the minor in a specified home, and shall base the juvenile court's determination on the best interest of the minor.

(4) The requirements of this section do not apply to the removal of a minor based on a foster parent's request for that removal.

Section 38. Section **80-4-305** is amended to read:

**80-4-305 . Court disposition of child upon termination of parental rights -- Posttermination reunification.**

(1) Except as provided in Subsection (7), as used in this section, "relative" means:

(a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child; and

(b) in the case of a child who is an Indian child, an extended family member as defined in [~~the Indian Child Welfare Act, 25 U.S.C. Sec. 1903~~] Section 80-2b-101.

(2) Upon entry of an order under this chapter, the juvenile court may:

(a) place the child in the legal custody and guardianship of a child-placing agency or the division for adoption; or

(b) make any other disposition of the child authorized under Section 80-3-405 .

(3) Subject to Subsections (4) and (6), the division shall place all adoptable children placed in the custody of the division for adoption.

(4) If the parental rights of all parents of an adoptable child placed in the custody of the division are terminated and a suitable adoptive placement is not already available, the juvenile court:

(a) shall determine whether there is a relative who desires to adopt the child;

(b) may order the division to conduct a reasonable search to determine whether there is a relative who is willing to adopt the child; and

(c) shall, if a relative desires to adopt the child:

(i) make a specific finding regarding the fitness of the relative to adopt the child; and

(ii) place the child for adoption with the relative unless the juvenile court finds that adoption by the relative is not in the best interest of the child.

(5) If an individual who is not a relative of the child desires to adopt the child, the juvenile court shall, before entering an order for adoption of the child, determine whether due weight was given to the relative's preferential consideration under Subsection 80-3-302(7)(a)(i).

(6) This section does not guarantee that a relative will be permitted to adopt the child.

(7) A parent whose rights are terminated under this chapter, or a relative of the child, as defined by Section 80-3-102 , may petition for guardianship of the child if:

(a)(i) following an adoptive placement, the child's adoptive parent returns the child to the custody of the division; or

(ii) the child is in the custody of the division for one year following the day on which the parent's rights were terminated, and no permanent placement has been found or is likely to be found; and

(b) reunification with the child's parent, or guardianship by the child's relative, is in the best interest of the child.

Section 39. **Effective Date.**

This bill takes effect on May 7, 2025.