

# **Adoption 101**

**Presented by:**

**Larry S. Jenkins  
WOOD CRAPO LLC  
500 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone (801) 366-6060**

**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 as defined in this part.
- (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.

**78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.**

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) in the district where the person adopting resides, or if the person adopting is not a resident of this state, in the district where the child was born or in which the child-placing agency that has custody of the child is located; or

(b) with the juvenile court as provided in Subsection 78A-6-103(1).

(2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1).

(3) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

(a) the time for filing has been extended by the court; or

(b) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.

(4) (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

(b) The notice may not include the name of:

(i) the person or persons seeking to adopt the adoptee; or

(ii) an unmarried mother without her consent.

(5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.

(6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served, shall be sufficient to confer jurisdiction.

(7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

**78B-6-106. Responsibility of each party for own actions -- Fraud or misrepresentation.**

(1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.

(2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party. Custody determinations shall be based on the best interest of the child, in accordance with the provisions of Section 78B-6-133.

**78B-6-107. Compliance with the Interstate Compact on Placement of Children -- Compliance with the Indian Child Welfare Act.**

- (1) 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 62A, Chapter 4a, Part 7, Interstate Compact on Placement of Children, have been complied with.
- (2) In any adoption proceeding involving an "Indian child," as defined in 25 U.S.C. Sec. 1903, a child-placing agency and the petitioners shall comply with the Indian Child Welfare Act, Title 25, Chapter 21, of the United States Code.

**78B-6-108. Alien child -- Evidence of lawful admission to United States required.**

- (1) As used in this section, "alien child" means a child under 16 years of age who is not considered a citizen or national of the United States by the United States Immigration and Naturalization Service.
- (2) Any person adopting an alien child shall file with the petition for adoption written evidence from the United States Immigration and Naturalization Service that the child was inspected and:
  - (a) admitted into the United States for permanent residence;
  - (b) admitted into the United States temporarily in one of the lawful nonimmigrant categories specified in 8 U.S.C. Section 1101(a)(15); or
  - (c) paroled into the United States pursuant to 8 U.S.C. Section 1182(d)(5).
- (3) The 1992 amendments to this section are retroactive to September 1, 1984. Any adoption decree entered after September 1, 1984, is considered valid if the requirements of Subsection (2), as amended, were met.

**78B-6-109. Determination of rights prior to adoption petition.**

Any interested person may petition a court having jurisdiction over adoption proceedings for a determination of the rights and interests of any person who may claim an interest in a child under this chapter, at any time prior to the finalization of the adoption, including any time prior to the child's birth.

**78B-6-110. Notice of adoption proceedings.**

- (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:
  - (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and
  - (ii) has a duty to protect his own rights and interests.
- (b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section.
- (2) Notice of an adoption proceeding shall be served on each of the following persons:
  - (a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121, unless that right has been terminated by:
    - (i) waiver;
    - (ii) relinquishment;
    - (iii) consent; or
    - (iv) judicial action;
  - (b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);
  - (c) any legally appointed custodian or guardian of the adoptee;
  - (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;
  - (e) the adoptee's spouse, if any;

- (f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;
- (g) a person who is:
  - (i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and
  - (ii) holding himself out to be the child's father; and
- (h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.
- (3) (a) In order to preserve any right to notice and consent, an unmarried, biological father may, consistent with Subsection (3)(d):
  - (i) initiate proceedings in a district court of the state of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and
  - (ii) file a notice of the initiation of the proceedings described in Subsection (3)(a)(i) with the state registrar of vital statistics within the Department of Health.
- (b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3-307.
- (c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.
- (d) The action and notice described in Subsection (3)(a):
  - (i) may be filed before or after the child's birth; and
  - (ii) shall be filed prior to the mother's:
    - (A) execution of consent to adoption of the child; or
    - (B) relinquishment of the child for adoption.
- (4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.
- (5) The notice required by this section:
  - (a) may be served immediately after relinquishment or execution of consent;
  - (b) shall be served at least 30 days prior to the final dispositional hearing;
  - (c) shall specifically state that the person served must respond to the petition within 30 days of service if he intends to intervene in or contest the adoption;
  - (d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;
  - (e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption; and
  - (f) shall state where the person may obtain a copy of the petition for adoption.
- (6) (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion in the adoption proceeding:
  - (i) within 30 days after the day on which the person was served with notice of the adoption proceeding;
  - (ii) setting forth specific relief sought; and
  - (iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.
- (b) A person who fails to file a motion for relief within 30 days after the day on which the person was served with notice of the adoption proceeding:
  - (i) waives any right to further notice in connection with the adoption;
  - (ii) forfeits all rights in relation to the adoptee; and
  - (iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

- (7) Service of notice under this section shall be made as follows:
- (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.
  - (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.
  - (iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.
  - (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.
  - (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.
  - (c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.
- (8) The notice required by this section may be waived in writing by the person entitled to receive notice.
- (9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.
- (10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.
- (11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:
- (a) intervene in the adoption; and
  - (b) present evidence to the court relevant to the best interest of the child.

**78B-6-112. District court jurisdiction over certain termination of parental rights proceedings.**

- (1) A district court has jurisdiction to hear and decide a petition to terminate parental rights in a child if the party who filed the petition is seeking to terminate parental rights in a child for the purpose of facilitating the adoption of the child.
- (2) A petition to terminate parental rights under this section may:
  - (a) be joined with a proceeding on an adoption petition; or
  - (b) be filed as a separate proceeding.
- (3) A court may enter a final order terminating parental rights before a final decree of adoption is entered.
- (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to proceedings to terminate parental rights as described in Section 78A-6-103.
- (b) This section does not grant jurisdiction to a district court to terminate parental rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse, neglect, dependency, or termination of parental rights proceeding.
- (5) The district court may terminate a person's parental rights in a child if:
  - (a) the person executes a voluntary consent to adoption, or relinquishment for adoption, of the child, in accordance with:
    - (i) the requirements of this chapter; or
    - (ii) the laws of another state or country, if the consent is valid and irrevocable;
  - (b) the person is an unmarried biological father who is not entitled to consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;
  - (c) the person:
    - (i) received notice of the adoption proceeding relating to the child under Section 78B-6-110; and

- (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days after the day on which the person was served with notice of the adoption proceeding;
- (d) the court finds, under Section 78B-15-607, that the person is not a parent of the child; or
- (e) the person's parental rights are terminated on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

**78B-6-114. Adoption by married persons -- Consent.**

- (1) A married man who is not lawfully separated from his wife may not adopt a child without the consent of his wife, if his wife is capable of giving consent.
- (2) A married woman who is not lawfully separated from her husband may not adopt a child without his consent, if he is capable of giving his consent.

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

- (1) A minor child may be adopted by an adult person, in accordance with the provisions and requirements of this section and this part.
- (2) A child may be adopted by:
  - (a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or
  - (b) subject to Subsection (4), any single adult, except as provided in Subsection (3).
- (3) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.

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**78B-6-119. Counseling for parents.**

- (1) Subject to Subsection (2)(a), before relinquishing a child to a child-placing agency, or consenting to the adoption of a child, a parent of the child has the right to participate in counseling:
  - (a) by a licensed counselor or an adoption service provider selected by the parent participating in the counseling;
  - (b) for up to three sessions of at least 50 minutes per session; and
  - (c) subject to Subsection (2)(b), at the expense of the:
    - (i) child-placing agency; or
    - (ii) prospective adoptive parents.
- (2) (a) Notwithstanding Subsection (1), a parent who has the right to participate in the counseling described in this section may waive that right.
- (b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a child-placing agency or the prospective adoptive parents for the counseling described in Subsection (1) may not exceed \$250.
- (3) Before a parent relinquishes a child to a child-placing agency, or consents to the adoption of a child, the parent shall be informed of the right described in Subsection (1) by the:
  - (a) child-placing agency;
  - (b) prospective adoptive parents; or
  - (c) representative of a person described in Subsection (3)(a) or (b).
- (4) (a) Subject to Subsections (4)(b) and (c), before the day on which a final decree of adoption is entered, a statement shall be filed with the court that:
  - (i) is signed by each parent who:
    - (A) relinquishes the parent's parental rights; or
    - (B) consents to the adoption; and
  - (ii) states that, before the parent took the action described in Subsection (4)(a)(i)(A) or (B), the parent was advised of the parent's right to participate in the counseling described in this section at the expense of the:
    - (A) child-placing agency; or

(B) prospective adoptive parents.

(b) The statement described in Subsection (4)(a) may be included in the document that:

(i) relinquishes the parent's parental rights; or

(ii) consents to the adoption.

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**78B-6-120. Necessary consent to adoption or relinquishment for adoption.**

(1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:

(a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent;

(b) both parents or the surviving parent of an adoptee who was conceived or born within a marriage;

(c) the mother of an adoptee born outside of marriage;

(d) a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(e) consistent with Subsection (3), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(f) an unmarried biological father of an adoptee, only if he strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and

(g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years of age or older.

(b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.

(3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:

(a) can be accessed by the Department of Health; and

(b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

**78B-6-121. Consent of unmarried biological father.**

(1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is placed with adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:

(a) (i) developed a substantial relationship with the child by:

(A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or

(B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;

(ii) took some measure of responsibility for the child and the child's future; and

(iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability; or

(b) (i) openly lived with the child:

(A) (I) for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with adoptive parents; or

(II) if the child is less than one year old, for a period of at least six months during the period of time

beginning on the day on which the child is born and ending on the day on which the child is placed with adoptive parents; and

(B) immediately preceding placement of the child with adoptive parents; and

(ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).

(2) (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.

(b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).

(3) Except as provided in Subsection 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:

(a) initiates proceedings in a district court of the state to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act;

(b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

(i) stating that he is fully able and willing to have full custody of the child;

(ii) setting forth his plans for care of the child; and

(iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

(d) offered to pay and paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:

(i) he did not have actual knowledge of the pregnancy;

(ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or

(iii) the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).

(4) The notice described in Subsection (3)(c) is considered filed when it is entered into the registry described in Subsection (3)(c).

(5) Consent of an unmarried biological father is not required under this section if:

(a) the court determines, in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological father's rights should be terminated, based on the petition of any interested party; or

(b) (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and

(ii) the unmarried biological father fails to comply with Subsection (3) within ten business days after the day that notice of the rescission described in Subsection (5)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306.

(6) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:

(a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3)(c); and

- (b) (i) that no filing has been found pertaining to the father of the child in question; or
- (ii) if a filing is found, the name of the putative father and the time and date of filing.

**78B-6-122. Qualifying circumstance.**

(1) (a) For purposes of this section, "qualifying circumstance" means that, at any point during the time period beginning at the conception of the child and ending at the time the mother executed a consent to adoption or relinquishment of the child for adoption:

- (i) the child or the child's mother resided, on a permanent or temporary basis, in the state;
- (ii) the mother intended to give birth to the child in the state;
- (iii) the child was born in the state; or
- (iv) the mother intended to execute a consent to adoption or relinquishment of the child for adoption:
  - (A) in the state; or
  - (B) under the laws of the state.

(b) For purposes of Subsection (1)(c)(i), a court shall consider the totality of the circumstances when determining whether an unmarried biological father has demonstrated a full commitment to his parental responsibilities, including, if applicable:

- (i) efforts he has taken to discover the location of the child or the child's mother;
- (ii) whether he has expressed or demonstrated an interest in taking responsibility for the child;
- (iii) whether, and to what extent, he has developed, or attempted to develop, a relationship with the child;
- (iv) whether he offered to provide and, if the offer was accepted, did provide, financial support for the child or the child's mother;
- (v) whether, and to what extent, he has communicated, or attempted to communicate, with the child or the child's mother;
- (vi) whether he has filed legal proceedings to establish his paternity of, and take responsibility for, the child;
- (vii) whether he has filed a notice with a public official or agency relating to:
  - (A) his paternity of the child; or
  - (B) legal proceedings to establish his paternity of the child; or
- (viii) other evidence that demonstrates that he has demonstrated a full commitment to his parental responsibilities.

(c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried biological father is required with respect to an adoptee who is under the age of 18 if:

- (i) (A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;
  - (B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:
    - (I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed the consent to adoption or relinquishment of the child for adoption; or
    - (II) the state where the child was conceived; and
  - (C) the unmarried biological father has demonstrated, based on the totality of the circumstances, a full commitment to his parental responsibilities, as described in Subsection (1)(b); or
- (ii) (A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and
  - (B) the unmarried biological father complied with the requirements of Section 78B-6-121 before the later of:
    - (I) 20 days after the day that the unmarried biological father knew, or through the exercise of reasonable

- diligence should have known, that a qualifying circumstance existed; or
- (II) the time that the mother executed a consent to adoption or relinquishment of the child for adoption.
- (2) An unmarried biological father who does not fully and strictly comply with the requirements of Section 78B-6-121 and this section is considered to have waived and surrendered any right in relation to the child, including the right to:
- (a) notice of any judicial proceeding in connection with the adoption of the child; and
  - (b) consent, or refuse to consent, to the adoption of the child.

**78B-6-123. Power of a minor to consent or relinquish.**

- (1) A minor parent has the power to:
  - (a) consent to the adoption of the minor's child; and
  - (b) relinquish the minor's control or custody of the child for adoption.
- (2) The consent or relinquishment described in Subsection (1) is valid and has the same force and effect as a consent or relinquishment executed by an adult parent.
- (3) A minor parent, having executed a consent or relinquishment, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated

**78B-6-124. Persons who may take consents and relinquishments.**

- (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:
  - (a) a judge of any court that has jurisdiction over adoption proceedings;
  - (b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to take consents or relinquishments; or
  - (c) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency.
- (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:
  - (a) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency;
  - (b) subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;
  - (c) a court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken; or
  - (d) a person authorized, under the laws of the state where the consent or relinquishment is taken, to take consents or relinquishments of a birth mother or adoptee.
- (3) The consent or relinquishment of any other person or agency as required by Section 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).
- (4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.
- (5) A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.
- (6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:
  - (a) notarized; or
  - (b) witnessed by two individuals who are not members of the birth mother's or the signatory's immediate family.

**78B-6-125. Time period prior to birth mother's consent.**

- (1) A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child.
- (2) The consent or relinquishment of any other person as required by Section Sections 78B-6-120 and 78B-6-121 may be executed at any time, including prior to the birth of the child.

**78B-6-126. When consent or relinquishment effective.**

A consent or relinquishment is effective when it is signed and may not be revoked.

**78B-6-128. Preplacement adoptive evaluations -- Exceptions.**

- (1) (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.
- (b) Except as provided in Section 78B-6-131, the court may, at any time, authorize temporary placement of a child in a potential adoptive home pending completion of a preplacement adoptive evaluation described in this section.
- (c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the evaluation is otherwise requested by the court. The prospective adoptive parent described in this Subsection (1)(c) shall, however, obtain the information described in Subsections (2)(a) and (b), and file that documentation with the court prior to finalization of the adoption.
- (d) The required preplacement adoptive evaluation must be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent. If the prospective adoptive parent has previously received custody of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent and after the placement of the previous child with the prospective adoptive parent. \* \* \*

**78B-6-129. Postplacement adoptive evaluations.**

- (1) Except as provided in Subsections (2) and (3), a postplacement evaluation shall be conducted and submitted to the court prior to the final hearing in an adoption proceeding. The postplacement evaluation shall include:
    - (a) verification of the allegations of fact contained in the petition for adoption;
    - (b) an evaluation of the progress of the child's placement in the adoptive home; and
    - (c) a recommendation regarding whether the adoption is in the best interest of the child.
  - (2) The exemptions from and requirements for evaluations, described in Subsections 78B-6-128(1)(c), (2)(c), and (3), also apply to postplacement adoptive evaluations.
- \* \* \*

**78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

- (1) If a person whose consent for an adoption is required pursuant to Subsection 78B-6-120(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.
- (2) (a) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated.
- (b) If there are not proper grounds to terminate the person's parental rights, the court shall:
  - (i) dismiss the adoption petition;
  - (ii) conduct an evidentiary hearing to determine who should have custody of the child; and

- (iii) award custody of the child in accordance with the child's best interest.
- (3) Evidence considered at the custody hearing may include:
  - (a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and
  - (b) any detriment that a change in custody may cause the child.
- (4) The fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence that it is not in the child's best interest for custody to be awarded to such person or that:
  - (a) the person is unfit or incompetent to be a parent;
  - (b) the person has neglected or abandoned the child; or
  - (c) the person is not interested in having custody of the child.
- (5) Any custody order entered pursuant to this section may also:
  - (a) include provisions for:
    - (i) parent-time by a biological parent; or
    - (ii) visitation by an interested third party; and
  - (b) provide for the financial support of the child.
- (6) (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).
  - (b) The court may also finalize the adoption if doing so is in the best interest of the child.
- (7) (a) A person may not contest an adoption after the final decree of adoption is entered, if that person:
  - (i) was a party to the adoption proceeding;
  - (ii) was served with notice of the adoption proceeding; or
  - (iii) executed a consent to the adoption or relinquishment for adoption.
- (b) No person may contest an adoption after one year from the day on which the final decree of adoption is entered.
- (c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:
  - (i) regardless of whether the adoption is contested directly or collaterally; and
  - (ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.
- (d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:
  - (i) a final decree of adoption; or
  - (ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).

**78B-6-134. Custody pending final decree.**

- (1) Except as otherwise provided by the court, once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court.
- (2) Once a child has been placed with, relinquished to, or ordered into the custody of a child-placing agency for purposes of adoption, the agency shall have custody and control of the child and is responsible for his care, maintenance, and support. The agency may delegate the responsibility for care, maintenance, and support, including any necessary medical or surgical treatment, to the petitioner once the petitioner has received the child into his home. However, until the final decree of adoption is entered by the court, the agency has the right to the custody and control of the child.

**78B-6-135. Division of Child and Family Services -- Duties -- Report -- Fee.**

\* \* \*

(7) (a) Except as provided in Subsection (7)(b), a final decree of adoption may not be entered until the child has lived in the home of the adoptive parent or parents for six months, unless, based on a finding of good cause, the court orders that the final decree of adoption may be entered at an earlier time.

(b) If the adoptive parent is the spouse of the birth parent, a final decree of adoption may not be entered until the child has lived in the home of that adoptive parent for one year, unless, based on a finding of good cause, the court orders that the final decree of adoption may be entered at an earlier time.

\* \* \*

**78B-6-136. Final decree of adoption -- Agreement by adoptive parent or parents.**

(1) Except as provided in Subsection (2), before the court enters a final decree of adoption:

(a) the adoptive parent or parents and the child being adopted shall appear before the appropriate court; and

(b) the adoptive parent or parents shall execute an agreement stating that the child shall be adopted and treated in all respects as the adoptive parent's or parents' own lawful child.

(2) Except as provided in Subsection 78B-6-115(4), a court may waive the requirement described in Subsection (1)(a) if:

(a) the adoption is not contested;

(b) the adoptive parent or parents:

(i) execute an agreement stating that the child shall be adopted and treated in all respects as the parent's or parents' own lawful child;

(ii) have the agreement described in Subsection (2)(b)(i) notarized; and

(iii) file the agreement described in Subsection (2)(b)(i) with the court; and

(c) all requirements of this chapter to obtain a final decree of adoption are otherwise complied with.

**78B-6-137. Decree of adoption -- Best interest of child -- Legislative findings.**

The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.

**78B-6-138. Birth parent's rights and duties dissolved.**

A birth parent of an adopted child is released from all parental duties toward and all responsibilities for the adopted child, and has no further rights with regard to that child at the earlier of:

(1) the time the parent's parental rights are terminated; or

(2) the time the final decree of adoption is entered.

**78B-6-139. Name and status of adopted child.**

When a final decree of adoption is entered under Section 78B-6-137, a child may take the family name of the adoptive parent or parents. After that decree of adoption is entered, the adoptive parent or parents and the child shall sustain the legal relationship of parent and child, and have all the rights and be subject to all the duties of that relationship.

**78B-6-140. Itemization of fees and expenses.**

(1) Except as provided in Subsection (4), prior to the date that a final decree of adoption is entered, an affidavit regarding fees and expenses, signed by the adoptive parent or parents and the person or agency placing the child, shall be filed with the court.

(2) The affidavit described in Subsection (1) shall itemize the following items in connection with the adoption:

\* \* \*

(4) This section does not apply if the adoptive parent is the legal spouse of the birth parent.

**78B-6-142. Adoption order from foreign country.**

(1) Except as otherwise provided by federal law, an adoption order rendered to a resident of this state that is made by a foreign country shall be recognized by the courts of this state and enforced as if the order were rendered by a court in this state.

(2) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (1), the court shall order the state registrar to:

(a) file the order pursuant to Section 78B-6-137; and

(b) file a certificate of birth for the child pursuant to Section 26-2-28.

(3) If a clerk of the court is unable to establish the fact, time, and place of birth from the documentation provided, a person holding a direct, tangible, and legitimate interest as described in Subsection 26-2-22(2)(a) or (b) may petition for a court order establishing the fact, time, and place of a birth pursuant to Subsection 26-2-15(1).