

**CHILD PROTECTION AND PARENTAL
RIGHTS AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires reporting on the prescription of drugs used for the treatment of mental illness to minors who are in the custody of the Division of Child and Family Services and amends provisions related to placements for children in protective custody.

Highlighted Provisions:

This bill:

- ▶ requires the Division of Child and Family Services, within the Department of Human Services, to prepare a report regarding the prescription of psychotropic drugs, and other drugs for the treatment of mental illness, to children in the division's custody;
- ▶ requires that a copy of the prescription report described in the previous paragraph be forwarded to certain employees of the Division of Child and Family Services and to the parents or guardian of the minor;
- ▶ provides that a parent or guardian of a minor may obtain, at the expense of the parent or guardian, a second medical opinion regarding the prescription of a drug described in the preceding paragraphs;
- ▶ requires the Division of Child and Family Services to submit to the Health and Human Services Interim Committee, on an annual basis beginning in 2008, a statistical summary of the prescription reports described in the preceding



28 paragraphs;

29 ▶ provides that a minor in protective custody may not be placed in a shelter facility if
30 an emergency kinship placement can be arranged;

31 ▶ expands the definition of an emergency kinship placement to include a friend of a
32 minor's parent or guardian with whom the parent or guardian requests that the minor
33 be placed, if practicable;

34 ▶ provides that a parent may only designate one friend as a possible placement for a
35 minor under this bill;

36 ▶ provides that a friend described in the preceding paragraphs is subject to the same
37 requirements, including screening requirements, as a relative being considered for a
38 kinship placement;

39 ▶ provides that a determination by the Division of Child and Family Services that a
40 person who is willing to take temporary custody of a minor lacks the ability to
41 provide care for the minor may not be based solely on the person's poverty or
42 crowded living conditions;

43 ▶ requires that, when a child is in the protective custody of the Division of Child and
44 Family Services, the division shall report, for the court's consideration, whether a
45 relative of the child, or, if practicable, a friend requested by a parent or guardian of
46 the child, may be able and willing to take temporary custody of the child;

47 ▶ provides that a court may order the Division of Child and Family Services to
48 investigate whether a person described in the preceding paragraph may be able and
49 willing to take temporary custody of a child;

50 ▶ requires a court to place a minor who is in the custody of the Division of Child and
51 Family Services with a relative or, if practicable, a friend of a parent of the minor, if
52 the minor is not placed with the minor's other parent, unless the court determines
53 that the placement is not in the best interest of the minor; and

54 ▶ makes technical changes.

55 **Monies Appropriated in this Bill:**

56 None

57 **Other Special Clauses:**

58 None

59 **Utah Code Sections Affected:**

60 AMENDS:

61 **62A-4a-202.1**, as last amended by Chapter 180, Laws of Utah 2004

62 **62A-4a-209**, as last amended by Chapter 71, Laws of Utah 2005

63 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003

64 **78-3a-307**, as last amended by Chapter 356, Laws of Utah 2004

65 ENACTS:

66 **62A-4a-121**, Utah Code Annotated 1953



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

69 Section 1. Section **62A-4a-121** is enacted to read:

70 **62A-4a-121. Report on psychotropic drug prescriptions.**

71 (1) If a minor who is in the custody of the division is prescribed a psychotropic drug, or
72 any other drug for the treatment of a mental illness, the division shall prepare a report that
73 includes:

- 74 (a) the minor's name and date of birth;
- 75 (b) the name and prescribed dosage of the prescribed drug;
- 76 (c) the diagnosis for which the drug is prescribed; and
- 77 (d) the name of the physician that prescribed the drug.

78 (2) A copy of the report described in Subsection (1) shall be forwarded to:

- 79 (a) the division's child protective services program manager;
- 80 (b) the regional director of the region where the child is placed; and
- 81 (c) the parents or guardian of the minor.

82 (3) A parent or guardian of a minor described in Subsection (1) may, at the expense of
83 the parent or guardian, obtain a second medical opinion regarding the prescription of a
84 psychotropic drug, or other drug for the treatment of mental illness, to the minor.

85 (4) (a) Beginning in 2008, before September 30 of each year, the division shall make a
86 summary report to the Health and Human Services Interim Committee of the reports described
87 in Subsection (1).

88 (b) The summary report described in Subsection (4)(a):

- 89 (i) may not include the identifying information of any person; and

90 (ii) shall include statistical information regarding:

91 (A) the number of minors to whom prescriptions were made in the previous calendar
92 year;

93 (B) the total number of prescriptions that were made during the previous calendar year,
94 broken down by:

95 (I) the number of prescriptions for each drug prescribed; and

96 (II) the number of prescriptions made by each doctor; and

97 (C) the number of minors who were in the custody of the division during the previous
98 calendar year.

99 (c) The information described in Subsection (4)(b)(ii)(B)(II) shall refer to each doctor
100 by an anonymous designation.

101 Section 2. Section **62A-4a-202.1** is amended to read:

102 **62A-4a-202.1. Entering home of a minor -- Taking a minor into protective**
103 **custody -- Caseworker accompanied by peace officer -- Preventive services -- Shelter care**
104 **or emergency kinship.**

105 (1) A state officer, peace officer, or child welfare worker may not enter the home of a
106 minor who is not under the jurisdiction of the court, remove a minor from the minor's home or
107 school, or take a minor into protective custody unless:

108 (a) the state officer, peace officer, or child welfare worker has obtained:

109 (i) the consent of the minor's parent or guardian; or

110 (ii) a court order issued under Section 78-3a-106; or

111 (b) there exist exigent circumstances.

112 (2) A child welfare worker within the division may take action under Subsection (1)
113 accompanied by a peace officer, or without a peace officer when a peace officer is not
114 reasonably available.

115 (3) If possible, consistent with the minor's safety and welfare, before taking a minor
116 into protective custody, the worker shall also determine whether there are services reasonably
117 available to the worker which, if provided to the minor's parent or to the minor, would
118 eliminate the need to remove the minor from the custody of the minor's parent or guardian. If
119 those services are reasonably available, they shall be utilized. In determining whether services
120 are reasonably available, and in making reasonable efforts to provide those services, the

121 minor's health, safety, and welfare shall be the worker's paramount concern.

122 (4) (a) A minor removed or taken into custody under this section may not be placed or
123 kept in a secure detention facility pending court proceedings unless the minor is detainable
124 based on guidelines promulgated by the Division of Juvenile Justice Services.

125 (b) ~~[A]~~ Subject to Subsection (4)(c), a minor removed from the custody of the minor's
126 parent or guardian but who does not require physical restriction shall be given temporary care
127 in:

128 (i) a shelter facility; or

129 (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

130 (c) A minor described in Subsection (4)(b) may not be placed in foster care or a shelter
131 facility if an emergency kinship placement can be arranged in accordance with Section
132 62A-4a-209.

133 (d) As used in this Subsection (4), "emergency kinship placement" means placement of
134 a minor with:

135 (i) a relative of the minor; or

136 (ii) subject to Subsection (4)(e), a friend of a parent or guardian of the minor, with
137 whom the parent or guardian requests that the minor be placed, if practicable.

138 (e) A parent or guardian of a minor may only request one friend as a possible
139 placement for a minor described in Subsection (4)(d)(ii).

140 Section 3. Section **62A-4a-209** is amended to read:

141 **62A-4a-209. Emergency kinship placement.**

142 (1) The division ~~[may]~~ shall use an emergency kinship placement ~~[under]~~ described in
143 Subsection 62A-4a-202.1(4)~~(b)~~(ii)] and this section when:

144 (a) the case worker has made the determination that:

145 (i) the child's home is unsafe;

146 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

147 (iii) the child's custodial parent or guardian will agree to not remove the child from the
148 ~~[relative's]~~ home of the relative or friend who serves as the kinship placement and not have any
149 contact with the child until after the shelter hearing required by Section 78-3a-306;

150 (b) consistent with Subsection (3), a relative, or, if practicable, a friend described in
151 Subsection 62A-4a-202.1(4)(d)(ii), with preference being given to a noncustodial parent in

152 accordance with Section 78-3a-307, can be identified who has the ability and is willing to
153 provide care for the child who would otherwise be placed in shelter care, including:

154 (i) taking the child to medical, mental health, dental, and educational appointments at
155 the request of the division; and

156 (ii) [~~the relative has~~] the ability to make the child available to division services and the
157 guardian ad litem; and

158 (c) the relative or friend agrees to care for the child on an emergency basis under the
159 following conditions:

160 (i) the relative or friend meets the criteria for an emergency kinship placement under
161 Subsection (2);

162 (ii) the relative or friend agrees to not allow the custodial parent or guardian to have
163 any contact with the child until after the shelter hearing unless authorized by the division in
164 writing;

165 (iii) the relative or friend agrees to contact law enforcement and the division if the
166 custodial parent or guardian attempts to make unauthorized contact with the child;

167 (iv) the relative or friend agrees to allow the division and the child's guardian ad litem
168 to have access to the child;

169 (v) the relative or friend has been informed and understands that the division may
170 continue to search for other possible kinship placements for long-term care, if needed;

171 (vi) the relative or friend is willing to assist the custodial parent or guardian in
172 reunification efforts at the request of the division, and to follow all court orders; and

173 (vii) the child is comfortable with the relative or friend.

174 (2) Before the division places a child in an emergency kinship placement, the division
175 must:

176 (a) request the name of a reference and when possible, contact the reference and
177 determine the answer to the following questions:

178 (i) would the person identified as a reference place a child in the home of the
179 emergency kinship placement; and

180 (ii) are there any other relatives or friends to consider as a possible emergency or
181 long-term placement for the child;

182 (b) have the custodial parent or guardian sign an emergency kinship placement

183 agreement form during the investigation;

184 (c) complete a criminal background check described in Sections 62A-4a-202.4 and
185 78-3a-307.1 on all persons living in the relative's or friend's household;

186 (d) complete a home inspection of the relative's or friend's home; and

187 (e) have the emergency kinship placement approved by a family service specialist.

188 (3) The division may not determine, under Subsection (1)(b), that a relative or friend
189 lacks the ability to provide care for a child, if that determination is based solely on the relative's
190 or friend's:

191 (a) poverty; or

192 (b) crowded living conditions.

193 [~~3~~] (4) As soon as possible after the emergency placement and prior to the shelter
194 hearing required by Section 78-3a-306, the division shall convene a family unity meeting.

195 [~~4~~] (5) After an emergency kinship placement, the division caseworker must:

196 (a) respond to the emergency kinship placement's calls within one hour if the custodial
197 parents or guardians attempt to make unauthorized contact with the child or attempt to remove
198 the child;

199 (b) complete all removal paperwork, including the notice provided to the custodial
200 parents and guardians under Section 78-3a-306;

201 (c) contact the attorney general to schedule a shelter hearing;

202 (d) complete the kinship procedures required in Section 78-3a-307, including, within
203 five days after placement, the criminal history record check described in Subsection [~~5~~] (6);
204 and

205 (e) continue to search for other relatives as a possible long-term placement, if needed.

206 [~~5~~] (6) (a) In order to determine the suitability of the kinship placement and to
207 conduct a background screening and investigation of individuals living in the household in
208 which a child is placed, each individual living in the household in which the child is placed
209 who has not lived in the state substantially year round for the most recent five consecutive
210 years ending on the date the investigation is commenced shall be fingerprinted.

211 (b) If, in conducting the background screening investigation described in Subsection
212 (6)(a), no disqualifying record is identified at the state level, the fingerprints shall be forwarded
213 by the division to the Federal Bureau of Investigation for a national criminal history record

214 check.

215 ~~[(b)]~~ (c) The cost of ~~[those]~~ the investigations described in this Subsection (6) shall be
216 borne by ~~[whomever]~~ the persons who received placement of the child, except that the division
217 may pay all or part of the cost of ~~[those]~~ the investigations if the person with whom the child is
218 placed is unable to pay.

219 Section 4. Section **78-3a-306** is amended to read:

220 **78-3a-306. Shelter hearing.**

221 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
222 after any one or all of the following occur:

223 (a) removal of the child from his home by the Division of Child and Family Services;

224 (b) placement of the child in the protective custody of the Division of Child and Family
225 Services;

226 (c) emergency kinship placement under Subsection 62A-4a-202.1(4); or

227 (d) as an alternative to removal of the child, a parent has entered a domestic violence
228 shelter at the request of the Division of Child and Family Services.

229 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
230 through (1)(d), the division shall issue a notice that contains all of the following:

231 (a) the name and address of the person to whom the notice is directed;

232 (b) the date, time, and place of the shelter hearing;

233 (c) the name of the minor on whose behalf a petition is being brought;

234 (d) a concise statement regarding:

235 (i) the reasons for removal or other action of the division under Subsection (1); and

236 (ii) the allegations and code sections under which the proceeding has been instituted;

237 (e) a statement that the parent or guardian to whom notice is given, and the minor, are
238 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
239 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
240 provided; and

241 (f) a statement that the parent or guardian is liable for the cost of support of the minor
242 in the protective custody, temporary custody, and custody of the division, and the cost for legal
243 counsel appointed for the parent or guardian under Subsection (2)(e), according to ~~[his]~~ the
244 parent's or guardian's financial ability.

245 (3) [~~That~~] The notice described in Subsection (2) shall be personally served as soon as
246 possible, but no later than one business day after removal of a child from his home, on:

247 (a) the appropriate guardian ad litem; and

248 (b) both parents and any guardian of the minor, unless they cannot be located.

249 (4) The following persons shall be present at the shelter hearing:

250 (a) the child, unless it would be detrimental for the child;

251 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
252 response to the notice;

253 (c) counsel for the parents, if one has been requested;

254 (d) the child's guardian ad litem;

255 (e) the caseworker from the Division of Child and Family Services who has been
256 assigned to the case; and

257 (f) the attorney from the attorney general's office who is representing the division.

258 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's
259 parent or guardian, if present, and any other person having relevant knowledge, to provide
260 relevant testimony. The court may also provide an opportunity for the minor to testify.

261 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
262 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent
263 or guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
264 evidence to only that which goes to the issues of removal and the child's need for continued
265 protection.

266 (6) (a) If the child is in the protective custody of the division, the division shall report
267 to the court:

268 [~~(a)~~] (i) the reasons why the minor was removed from the parent's or guardian's
269 custody;

270 [~~(b)~~] (ii) any services provided to the child and his family in an effort to prevent
271 removal;

272 [~~(c)~~] (iii) the need, if any, for continued shelter;

273 [~~(d)~~] (iv) the available services that could facilitate the return of the minor to the
274 custody of his parent or guardian; [~~and~~]

275 [~~(e)~~] (v) whether [~~the child has any relatives who~~] a relative of the child may be able

276 and willing to take temporary custody[-] of the child; and

277 (vi) if practicable, subject to Subsection (6)(b), whether a friend of a parent or guardian
278 of the child with whom the parent or guardian requests that the child be placed may be able and
279 willing to take temporary custody of the child.

280 (b) A parent or guardian of a child may only request one friend as a possible placement
281 for a child who is in protective custody.

282 (c) The division may not determine, under Subsection (6)(a)(v) or (vi), that a relative or
283 friend lacks the ability to provide care for a child, if that determination is based solely on the
284 relative's or friend's:

285 (i) poverty; or

286 (ii) crowded living conditions.

287 (7) The court shall consider all relevant evidence provided by persons or entities
288 authorized to present relevant evidence pursuant to this section.

289 (8) If necessary to protect the child, preserve the rights of a party, or for other good
290 cause shown, the court may grant no more than one time-limited continuance, not to exceed
291 five judicial days.

292 (9) If the child is in the protective custody of the division, the court shall order that the
293 minor be released from the protective custody of the division unless it finds, by a
294 preponderance of the evidence, that any one of the following exist:

295 (a) there is a substantial danger to the physical health or safety of the minor and the
296 minor's physical health or safety may not be protected without removing him from his parent's
297 custody. If a minor has previously been adjudicated as abused, neglected, or dependent and a
298 subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie
299 evidence that the child cannot safely remain in the custody of his parent;

300 (b) the minor is suffering emotional damage, as may be indicated by, but is not limited
301 to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or
302 others, and there are no reasonable means available by which the minor's emotional health may
303 be protected without removing the minor from the custody of his parent;

304 (c) the minor or another minor residing in the same household has been physically or
305 sexually abused, or is considered to be at substantial risk of being physically or sexually
306 abused, by a parent, a member of the parent's household, or other person known to the parent.

307 If a parent has received actual notice that physical or sexual abuse by a person known to the
308 parent has occurred, and there is evidence that the parent has allowed the child to be in the
309 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child
310 is at substantial risk of being physically or sexually abused;

311 (d) the parent is unwilling to have physical custody of the child;

312 (e) the minor has been left without any provision for his support;

313 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange for
314 safe and appropriate care for the minor;

315 (g) a relative or other adult custodian with whom the minor has been left by the parent
316 is unwilling or unable to provide care or support for the minor, the whereabouts of the parent
317 are unknown, and reasonable efforts to locate him have been unsuccessful;

318 (h) the minor is in immediate need of medical care;

319 (i) the physical environment or the fact that the child is left unattended poses a threat to
320 the child's health or safety;

321 (j) the minor or another minor residing in the same household has been neglected;

322 (k) the parent, or an adult residing in the same household as the parent, has been
323 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any
324 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence
325 or on the property where the child resided; or

326 (l) the child's welfare is otherwise endangered.

327 (10) (a) The court shall also make a determination on the record as to whether
328 reasonable efforts were made to prevent or eliminate the need for removal of the minor from
329 his home and whether there are available services that would prevent the need for continued
330 removal. If the court finds that the minor can be safely returned to the custody of his parent or
331 guardian through the provision of those services, [it] the court shall place the minor with his
332 parent or guardian and order that those services be provided by the division.

333 (b) In making that determination, and in ordering and providing services, the child's
334 health, safety, and welfare shall be the paramount concern, in accordance with federal law.

335 (11) Where the division's first contact with the family occurred during an emergency
336 situation in which the child could not safely remain at home, the court shall make a finding that
337 any lack of preplacement preventive efforts was appropriate.

338 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or
339 neglect are involved, neither the division nor the court has any duty to make "reasonable
340 efforts" or to, in any other way, attempt to maintain a child in his home, return a child to his
341 home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

342 (13) The court may not order continued removal of a minor solely on the basis of
343 educational neglect as described in Subsection 78-3a-103(1)(s)(ii).

344 (14) (a) Whenever a court orders continued removal of a minor under this section, it
345 shall state the facts on which that decision is based.

346 (b) If no continued removal is ordered and the minor is returned home, the court shall
347 state the facts on which that decision is based.

348 (15) If the court finds that continued removal and temporary custody are necessary for
349 the protection of a child because harm may result to the child if he were returned home, it shall
350 order continued removal regardless of any error in the initial removal of the child, or the failure
351 of a party to comply with notice provisions, or any other procedural requirement of this chapter
352 or Title 62A, Chapter 4a, Child and Family Services.

353 Section 5. Section **78-3a-307** is amended to read:

354 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
355 **DCFS custody.**

356 (1) (a) At the shelter hearing, when the court orders that a child be removed from the
357 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
358 first determine whether there is another natural parent as defined in Subsection (1)(b), with
359 whom the child was not residing at the time the events or conditions that brought him within
360 the court's jurisdiction occurred, who desires to assume custody of the child. If that parent
361 requests custody, the court shall place the minor with that parent unless it finds that the
362 placement would be unsafe or otherwise detrimental to the child. The provisions of this
363 Subsection (1) are limited by the provisions of Subsection (8)(b).

364 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
365 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a
366 biological father who was married to the child's biological mother at the time the child was
367 conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior
368 to removal of the child or voluntary surrender of the child by the custodial parent. This

369 definition applies regardless of whether the child has been or will be placed with adoptive
370 parents or whether adoption has been or will be considered as a long term goal for the child.

371 (c) (i) The court shall make a specific finding regarding the fitness of that parent to
372 assume custody, and the safety and appropriateness of the placement.

373 (ii) The court shall, at a minimum, order the division to visit the parent's home,
374 perform criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and
375 check the division's management information system for any previous reports of abuse or
376 neglect received by the division regarding the parent at issue.

377 (iii) The court may order the Division of Child and Family Services to conduct any
378 further investigation regarding the safety and appropriateness of the placement.

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

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

382 (2) If the court orders placement with a parent under Subsection (1), the child and the
383 parent are under the continuing jurisdiction of the court. The court may order that the parent
384 assume custody subject to the supervision of the court, and order that services be provided to
385 the parent from whose custody the child was removed, the parent who has assumed custody, or
386 both. The court shall also provide for reasonable parent-time with the parent from whose
387 custody the child was removed, unless parent-time is not in the best interest of the child. The
388 court's order shall be periodically reviewed to determine whether:

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

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

391 (c) the child should be placed with a relative or a friend, pursuant to Subsection (5); or

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

393 (3) The time limitations described in Section 78-3a-311 with regard to reunification
394 efforts, apply to children placed with a previously noncustodial parent in accordance with
395 Subsection (1).

396 (4) Legal custody of the child is not affected by an order entered under Subsection (1)
397 or (2). In order to affect a previous court order regarding legal custody, the party must petition
398 that court for modification of the order.

399 (5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of

400 his parent and is not placed in the custody of his other parent, the court shall, at that time,
401 determine whether [~~there is a relative who~~] a person described in Subsection
402 78-3a-306(6)(a)(v) or, if practicable, a person described in Subsection 78-3a-306(6)(a)(vi), is
403 able and willing to care for the child.

404 (ii) The court may order the Division of Child and Family Services to conduct a
405 reasonable search to determine whether [~~there are relatives of the child who are~~] a person
406 described in Subsection 78-3a-306(6)(a)(v) or, if practicable, a person described in Subsection
407 78-3a-306(6)(a)(vi), is willing and appropriate, in accordance with the requirements of this part
408 and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The
409 court shall order the parents to cooperate with the division, within five working days, to
410 provide information regarding relatives or a friend who may be able and willing to care for the
411 child.

412 (iii) The child may be placed in the temporary custody of the division pending the
413 determination under Subsection (5)(a)(ii).

414 (iv) This section may not be construed as a guarantee that an identified relative or
415 friend will receive custody of the child. However, preferential consideration shall be given [~~to~~
416 ~~a relative's request~~] for placement of the child with a person described in Subsection
417 78-3a-306(6)(a)(v) or, if practicable, a person described in Subsection 78-3a-306(6)(a)(vi), if
418 [~~it is in the best interest of the child, and~~] the provisions of this section are satisfied, unless the
419 court finds that placement with a relative or friend is not in the best interest of the child.

420 (b) (i) If a willing relative or friend is identified pursuant to Subsection (5)(a), the court
421 shall make a specific finding regarding the fitness of that relative or friend to assume custody,
422 and the safety and appropriateness of placement with that relative or friend. In order to be
423 considered a [^u]willing relative[^u] or friend under this section, the relative or friend shall be
424 willing to cooperate if the child's permanency goal is reunification with his parent or parents,
425 and be willing to adopt or take permanent custody of the child if that is determined to be in the
426 best interest of the child.

427 (ii) The court shall, at a minimum, order the division to conduct criminal background
428 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's or friend's
429 home, check the division's management information system for any previous reports of abuse
430 or neglect regarding the relative at issue, report its findings in writing to the court, and provide

431 sufficient information so that the court may determine whether:

432 (A) the relative or friend has any history of abusive or neglectful behavior toward other
433 children that may indicate or present a danger to this child;

434 (B) the child is comfortable with the relative;

435 (C) the relative or friend recognizes the parent's history of abuse and is determined to
436 protect the child;

437 (D) the relative or friend is strong enough to resist inappropriate requests by the parent
438 for access to the child, in accordance with court orders;

439 (E) the relative or friend is committed to caring for the child as long as necessary; and

440 (F) the relative or friend can provide a secure and stable environment for the child.

441 (iii) The court may order the Division of Child and Family Services to conduct any
442 further investigation regarding the safety and appropriateness of the placement.

443 (iv) The division shall complete and file its assessment regarding placement with a
444 relative or friend as soon as practicable, in an effort to facilitate placement of the child with a
445 relative or friend.

446 (c) The court may place the child in the temporary custody of the division, pending the
447 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding
448 that placement. The court shall ~~[ultimately base its determination regarding placement]~~ place
449 the child with a relative ~~[or]~~ or, if practicable, a friend described in Subsection
450 78-3a-306(6)(a)(vi), unless the court determines that placing the child with the relative or
451 friend is not in the best interest of the child.

452 (d) For purposes of this section, "relative" means an adult who is a grandparent, great
453 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first
454 cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under
455 the Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended
456 family member" as defined by that statute.

457 (6) (a) When the court vests physical custody of a child with a relative or friend
458 pursuant to Subsection (5), it shall order that the relative or friend assume custody subject to
459 the continuing supervision of the court, and shall order that any necessary services be provided
460 to the minor and the relative or friend. That child is not within the temporary custody or
461 custody of the Division of Child and Family Services. The child and any relative or friend with

462 whom the child is placed are under the continuing jurisdiction of the court. The court may
463 enter any order that it considers necessary for the protection and best interest of the child. The
464 court shall provide for reasonable parent-time with the parent or parents from whose custody
465 the child was removed unless parent-time is not in the best interest of the child.

466 (b) (i) Placement with a relative or friend pursuant to Subsection (5) shall be
467 periodically reviewed by the court, no less often than every six months, to determine whether:

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

469 (B) the child should be returned home; or

470 (C) the child should be placed in the custody of the division.

471 (ii) No later than 12 months after placement with a relative or friend the court shall
472 schedule a hearing for the purpose of entering a permanent order in accordance with the best
473 interest of the child.

474 (iii) The time limitations described in Section 78-3a-311, with regard to reunification
475 efforts, apply to children placed with a relative or friend pursuant to Subsection (5).

476 (7) When the court orders that a child be removed from the custody of his parent and
477 does not vest custody in another parent [~~or~~], a relative or friend under this section, the court
478 shall order that the child be placed in the temporary custody of the Division of Child and
479 Family Services, to proceed to adjudication and disposition and to be provided with care and
480 services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

481 (8) (a) Any preferential consideration that a relative or friend is initially granted
482 pursuant to Subsection (5) expires 120 days from the date of the shelter hearing. After that
483 time period has expired, a relative or friend who has not obtained custody or asserted an
484 interest in a child, may not be granted preferential consideration by the division or the court.

485 (b) When the time period described in Subsection (8)(a) has expired, the preferential
486 consideration which is initially granted to a natural parent in accordance with Subsection (1), is
487 limited. After that time the court shall base its custody decision on the best interest of the
488 child.

Legislative Review Note

as of 2-3-06 3:43 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Passage of this bill will require 6 additional FTEs for the reporting requirements and additional lease space. In addition, one-time funding will be needed to reprogram the SAFE case management system to meet the new reporting requirements.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$235,400	\$235,400	\$0	\$0
General Fund, One-Time	\$48,000	\$0	\$0	\$0
Federal Funds	\$22,000	\$10,000	\$0	\$0
TOTAL	\$305,400	\$245,400	\$0	\$0

Individual and Business Impact

No fiscal impact.