

62A-4a-206 Process for removal of a child from foster family -- Procedural due process.

- (1)
 - (a) The Legislature finds that, except with regard to a child's natural parent or legal guardian, a foster family has a very limited but recognized interest in its familial relationship with a foster child who has been in the care and custody of that family. 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 prior to removal of a foster child from their home, regardless of the length of time the child has been in that home, unless removal is for the purpose of:
 - (i) returning the child to the child's natural parent or legal guardian;
 - (ii) immediately placing the child in an approved adoptive home;
 - (iii) placing the child with a relative, as defined in Subsection 78A-6-307(1)(c), who obtained custody or asserted an interest in the child within the preference period described in Subsection 78A-6-307(18)(a); or
 - (iv) placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.
- (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) Those procedures shall include requirements for:
 - (i) personal communication with, and a written explanation of the reasons for the removal to, the foster parents prior to removal of the child; and
 - (ii) an opportunity for foster parents to present their information and concerns to the division and to:
 - (A) request a review, to be held before removal of the child, by a third party neutral fact finder; or
 - (B) if the child has been 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:
 - (I) the juvenile court judge currently assigned to the child's case; or
 - (II) 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, it shall place the child in emergency foster care during the pendency of the procedures described in this subsection, instead of making another foster care placement.
- (3) If the division removes a child from a foster home based upon the child's statement alone, the division shall initiate and expedite the processes described in Subsection (2). The division may take no formal action with regard to that foster parent's license until after those processes, in addition to any other procedure or hearing required by law, have been completed.
- (4) When a complaint is made to the division by a foster child against a foster parent, the division shall, within 30 business days, 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) Whenever the division places a child in a foster home, it 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 pursuant to Subsection (2) and how to access those processes; 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 has been in their custody for 12 months or longer, in accordance with the limitations and requirements of Section 78A-6-318.
- (6) The requirements of this section do not apply to the removal of a child based on a foster parent's request for that 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 has been 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, as defined in Subsection 78A-6-307(1)(c), of the child on the basis of the age or health of the foster parent without determining by:
 - (a) 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) 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.

Amended by Chapter 214, 2012 General Session