

SHELTER HEARING AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill provides that when making a placement of a child with a noncustodial parent or relative that the court consider whether the noncustodial parent or relative is a member of a gang that engages in a pattern of criminal activity.

11 Highlighted Provisions:

12 This bill:

- 13 ▶ requires the court to order the Division of Family Services to provide sufficient
- 14 information so the court can determine whether the noncustodial parent or relative
- 15 with whom a child placement is being considered belongs to a gang whose members
- 16 engage in a pattern of criminal activity; and
- 17 ▶ provides a definition of a gang.

18 Monies Appropriated in this Bill:

19 None

20 Other Special Clauses:

21 None

22 Utah Code Sections Affected:

23 AMENDS:

24 **78-3a-307**, as last amended by Chapter 356, Laws of Utah 2004

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

27 Section 1. Section **78-3a-307** is amended to read:



28 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
29 **DCFS custody.**

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

38 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
39 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a
40 biological father who was married to the child's biological mother at the time the child was
41 conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior
42 to removal of the child or voluntary surrender of the child by the custodial parent. This
43 definition applies regardless of whether the child has been or will be placed with adoptive
44 parents or whether adoption has been or will be considered as a long term goal for the child.

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

47 (ii) The court shall, at a minimum, order the division to:

48 (A) visit the parent's home[;];

49 (B) perform criminal background checks described in Sections 78-3a-307.1 and
50 62A-4a-202.4[~~, and~~];

51 (C) check the division's management information system for any previous reports of
52 abuse or neglect received by the division regarding the parent at issue; and

53 (D) provide sufficient information so that the court may determine whether the parent
54 associates with a gang as defined in Subsection (9).

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

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

58 (v) The court may place the child in the temporary custody of the division, pending its

59 determination regarding that placement.

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

- 67 (a) placement with the parent continues to be in the child's best interest;
68 (b) the child should be returned to the original custodial parent;
69 (c) the child should be placed with a relative, pursuant to Subsection (5); or
70 (d) the child should be placed in the custody of the division.

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

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

77 (5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of
78 his parent and is not placed in the custody of his other parent, the court shall, at that time,
79 determine whether there is a relative who is able and willing to care for the child.

80 (ii) The court may order the Division of Child and Family Services to conduct a
81 reasonable search to determine whether there are relatives of the child who are willing and
82 appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2,
83 Child Welfare Services, for placement of the child. The court shall order the parents to
84 cooperate with the division, within five working days, to provide information regarding
85 relatives who may be able and willing to care for the child.

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

88 (iv) This section may not be construed as a guarantee that an identified relative will
89 receive custody of the child. However, preferential consideration shall be given to a relative's

90 request for placement of the child, if it is in the best interest of the child, and the provisions of
91 this section are satisfied.

92 (b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall
93 make a specific finding regarding the fitness of that relative to assume custody, and the safety
94 and appropriateness of placement with that relative. In order to be considered a "willing
95 relative" under this section, the relative shall be willing to cooperate if the child's permanency
96 goal is reunification with his parent or parents, and be willing to adopt or take permanent
97 custody of the child if that is determined to be in the best interest of the child.

98 (ii) The court shall, at a minimum, order the division to conduct criminal background
99 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check
100 the division's management information system for any previous reports of abuse or neglect
101 regarding the relative at issue, report its findings in writing to the court, and provide sufficient
102 information so that the court may determine whether:

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

105 (B) the relative associates with a gang as defined in Subsection (9);

106 [~~B~~] (~~C~~) the child is comfortable with the relative;

107 [~~E~~] (~~D~~) the relative recognizes the parent's history of abuse and is determined to
108 protect the child;

109 [~~D~~] (~~E~~) the relative is strong enough to resist inappropriate requests by the parent for
110 access to the child, in accordance with court orders;

111 [~~E~~] (~~F~~) the relative is committed to caring for the child as long as necessary; and

112 [~~F~~] (~~G~~) the relative can provide a secure and stable environment for the child.

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

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

117 (c) The court may place the child in the temporary custody of the division, pending the
118 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding
119 that placement. The court shall ultimately base its determination regarding placement with a
120 relative on the best interest of the child.

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

126 (6) (a) When the court vests physical custody of a child with a relative pursuant to
127 Subsection (5), it shall order that the relative assume custody subject to the continuing
128 supervision of the court, and shall order that any necessary services be provided to the minor
129 and the relative. That child is not within the temporary custody or custody of the Division of
130 Child and Family Services. The child and any relative with whom the child is placed are under
131 the continuing jurisdiction of the court. The court may enter any order that it considers
132 necessary for the protection and best interest of the child. The court shall provide for
133 reasonable parent-time with the parent or parents from whose custody the child was removed
134 unless parent-time is not in the best interest of the child.

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

- 137 (A) placement with the relative continues to be in the child's best interest;
- 138 (B) the child should be returned home; or
- 139 (C) the child should be placed in the custody of the division.

140 (ii) No later than 12 months after placement with a relative the court shall schedule a
141 hearing for the purpose of entering a permanent order in accordance with the best interest of the
142 child.

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

145 (7) When the court orders that a child be removed from the custody of his parent and
146 does not vest custody in another parent or relative under this section, the court shall order that
147 the child be placed in the temporary custody of the Division of Child and Family Services, to
148 proceed to adjudication and disposition and to be provided with care and services in
149 accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

150 (8) (a) Any preferential consideration that a relative is initially granted pursuant to
151 Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has

152 expired, a relative who has not obtained custody or asserted an interest in a child, may not be
153 granted preferential consideration by the division or the court.

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

158 (9) As used in this section, "gang" means a group or association, whether formal or
159 informal in organization, which has a common identifying sign, symbol, or name, and whose
160 members individually or collectively engage in a pattern of criminal activity, creating an
161 atmosphere of fear and intimidation within the community.

Legislative Review Note**as of 2-9-05 10:05 AM**

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

The effort required by this bill can be handled within existing budgets.

Individual and Business Impact

Any fiscal impact to the individual will be determined by the court.

Office of the Legislative Fiscal Analyst