

Representative Kerry W. Gibson proposes the following substitute bill:

FOSTER CARE REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kerry W. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Human Services Code relating to removing a foster child from a foster home.

Highlighted Provisions:

This bill:

- describes due process procedures that, subject to certain exceptions, must be taken before a child, who has been placed with a foster family for at least one year, may be removed from the foster home;
- provides that it is unlawful for a person, with the intent to avoid compliance with the requirements described in this bill, to:
 - take action, or encourage another to take action, against the license of a foster parent; or
 - remove a child from a foster home before the child has been placed with the foster parents for one year; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

AMENDS:

62A-4a-206, as last amended by Laws of Utah 2008, Chapters 3, 17, and 382

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

Section 1. Section **62A-4a-206** is amended to read:

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)(b), 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 explanation to 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 request a review by a third party neutral fact finder prior to removal of the child.

(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) If a child has been placed in a foster home for at least one year, a peace officer or child welfare worker may not, without a warrant, enter the foster home, remove the child from

the foster home or from school, or take the child into custody, unless:

(a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;

(b) the peace officer or child welfare worker obtains a court order under Subsection (9)(a); or

(c) the peace officer or child welfare worker obtains the consent of one of the child's foster parents.

(8) (a) The court may issue a warrant authorizing a child protective services worker or peace officer to search for a child described in Subsection (7) and take the child into custody if it appears to the court upon a verified petition, recorded sworn testimony, or an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses, if required by the judge, that there is probable cause to believe that:

(i) there is a threat of substantial harm to the child's health or safety;

(ii) it is necessary to take the child into custody to avoid the harm described in Subsection (8)(a)(i); and

(iii) it is likely that the child will suffer substantial harm if a foster parent of the child is given notice and an opportunity to be heard before the child is taken into custody.

(b) Pursuant to Section 77-23-210, a peace officer making the search may enter a house or premises by force, if necessary, in order to remove the child.

(c) The person executing the warrant shall take the child to the place of shelter designated by the court or the division.

(9) (a) The court with jurisdiction over the foster child shall hold an expedited hearing to determine whether a child described in Subsection (7) should be removed from a foster home, if the peace officer or child welfare worker files a motion to remove the child from the child's foster home.

(b) A foster parent of the child described in Subsection (9)(a) shall be given notice and an opportunity to be heard at the hearing described in Subsection (9)(a).

(c) The hearing described in Subsection (9)(a) shall be held within 72 hours, excluding weekends and holidays, of the filing of the motion described in Subsection (9)(a).

(d) After the hearing described in Subsection (9)(a), a court may order that the foster child be removed from the foster home.

119 (10) It is unlawful for a person, with the intent to avoid compliance with the
120 requirements of this section, to:
121 (a) take action, or encourage another to take action, against the license of a foster
122 parent; or
123 (b) remove a child from a foster home before the child has been placed with the foster
124 parents for one year.