

**FOSTER CARE REVISIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kerry W. Gibson**

Senate Sponsor: \_\_\_\_\_

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**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:

- ▶ makes legislative findings regarding the interests of long-term foster parents in foster children;
- ▶ prohibits the Division of Child and Family Services (DCFS) or a peace officer from removing a child from a foster placement of at least two years, without the voluntary consent of the child's foster parents, unless:
  - the child is removed in order to be returned to the child's parent, placed with a relative, or placed for adoption; or
  - the division and the peace officer comply with the requirements for removal of the child, as if the foster parents were the legal parents of the child;
- ▶ makes it unlawful for a person, with the intent to avoid compliance with the requirements of 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 foster parents for two years; and



28           ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30           None

31 **Other Special Clauses:**

32           None

33 **Utah Code Sections Affected:**

34 AMENDS:

35           **62A-4a-206**, as last amended by Laws of Utah 2008, Chapters 3, 17, and 382



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

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

39           **62A-4a-206. Process for removal of a child from foster family -- Procedural due**  
40 **process.**

41           (1) (a) The Legislature finds that, except with regard to a child's ~~natural~~ parent or  
42 legal guardian, a foster family has a very limited but recognized interest in its familial  
43 relationship with a foster child who has been in the care and custody of that family. In making  
44 determinations regarding removal of a child from a foster home, the division may not dismiss  
45 the foster family as a mere collection of unrelated individuals.

46           (b) The Legislature further finds that, except with regard to a child's parent or legal  
47 guardian, a foster family that has provided care to a child for an extended period of time has a  
48 limited, but significant, interest in its familial relationship with the child, especially if the child  
49 does not have a memory of living with any other family. Except for circumstances where the  
50 child is returning to the home of the child's parent or legal guardian, in making determinations  
51 regarding removal of the child from the foster family that has provided care to a child for an  
52 extended period of time, the division shall recognize and respect this significant interest.

53           ~~(b)~~ (c) The Legislature finds that children in the temporary custody and custody of the  
54 division are experiencing multiple changes in foster care placements with little or no  
55 documentation, and that numerous studies of child growth and development emphasize the  
56 importance of stability in foster care living arrangements.

57           ~~(c)~~ (2) For the reasons described in ~~[Subsections (1)(a) and (b)]~~ Subsection (1), the  
58 division shall provide procedural due process for a foster family prior to removal of a foster

59 child from their home, regardless of the length of time the child has been in that home, unless  
60 removal is for the purpose of:

61        ~~[(i)]~~ (a) returning the child to the child's natural parent or legal guardian;

62        ~~[(ii)]~~ (b) immediately placing the child in an approved adoptive home;

63        ~~[(iii)]~~ (c) placing the child with a relative, as defined in Subsection 78A-6-307(1)(b),  
64 who obtained custody or asserted an interest in the child within the preference period described  
65 in Subsection 78A-6-307(18)(a); or

66        ~~[(iv)]~~ (d) placing an Indian child in accordance with preplacement preferences and  
67 other requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

68        ~~[(2)]~~ (3) (a) The division shall maintain and utilize due process procedures for removal  
69 of a foster child from a foster home, in accordance with the procedures and requirements of  
70 Title 63G, Chapter 4, Administrative Procedures Act.

71        (b) Those procedures shall include requirements for:

72        (i) personal communication with and explanation to foster parents prior to removal of  
73 the child; and

74        (ii) an opportunity for foster parents to present their information and concerns to the  
75 division and to request a review by a third party neutral fact finder prior to removal of the  
76 child.

77        (c) If the division determines that there is a reasonable basis to believe that the child is  
78 in danger or that there is a substantial threat of danger to the health or welfare of the child, it  
79 shall place the child in emergency foster care during the pendency of the procedures described  
80 in this subsection, instead of making another foster care placement.

81        ~~[(3)]~~ (4) If the division removes a child from a foster home based upon the child's  
82 statement alone, the division shall initiate and expedite the processes described in Subsection  
83 ~~[(2)]~~ (3). The division may take no formal action with regard to that foster parent's license  
84 until after those processes, in addition to any other procedure or hearing required by law, have  
85 been completed.

86        ~~[(4)]~~ (5) When a complaint is made to the division by a foster child against a foster  
87 parent, the division shall, within 30 business days, provide the foster parent with information  
88 regarding the specific nature of the complaint, the time and place of the alleged incident, and  
89 who was alleged to have been involved.

90           ~~[(5)]~~ (6) Whenever the division places a child in a foster home, it shall provide the  
91 foster parents with:

- 92           (a) notification of the requirements of this section;
- 93           (b) a written description of the procedures enacted by the division pursuant to  
94 Subsection ~~[(2)]~~ (3) and how to access those processes; and
- 95           (c) written notification of the foster parents' ability to petition the juvenile court  
96 directly for review of a decision to remove a foster child who has been in their custody for 12  
97 months or longer, in accordance with the limitations and requirements of Section 78A-6-318.

98           ~~[(6)]~~ (7) The requirements of this section do not apply to the removal of a child based  
99 on a foster parent's request for that removal.

100           (8) The division or a peace officer may not, without the voluntary consent of a child's  
101 foster parents, remove the child from a foster home where the child has been placed for at least  
102 two years, unless:

- 103           (a) the child is removed for a purpose described in Subsection (2); or
- 104           (b) the division and the peace officer comply with the requirements of Sections  
105 78a-6-106 and 78A-6-306 with respect to the child and the foster parents of the child, as if the  
106 foster parents were the legal parents of the child.

107           (9) It is unlawful for a person, with the intent to avoid compliance with the  
108 requirements of this section, to:

- 109           (a) take action, or encourage another to take action, against the license of a foster  
110 parent; or
- 111           (b) remove a child from a foster home before the child has been placed with the foster  
112 parents for two years.

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**Legislative Review Note**  
**as of 2-15-10 12:11 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 170 - Foster Care Revisions**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require appropriations of \$5,800 from the General Fund to the Courts.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$5,800	\$5,800	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$5,800</b>	<b>\$5,800</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.