

1 **FOSTER CARE AND KINSHIP PLACEMENT AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Christine F. Watkins**

5 Senate Sponsor: Luz Robles

6

LONG TITLE

7 **General Description:**

8 This bill amends Title 62A, Chapter 4a, Child and Family Services by amending the
9 procedure for taking a foster child away from a foster parent who is that child's relative.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ prohibits the Division of Child and Family services from removing a foster child
13 from a foster parent who is the child's relative without **§→ determining by:**

14a **• ←-§ §→ Ĥ→ [clear and convincing []**

14a1 **determining by a**

14a **preponderance of the ←-Ĥ] ←-§**

15 evidence that the relative is incapable of caring for the child **§→ if the alternative foster parent**
15a **would be an individual who is not related to the child; or**

15b **• a preponderance of the evidence if the alternative foster parent would be another relative of**
15c **the child ←-§ ; and**

16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **62A-4a-206**, as last amended by Laws of Utah 2010, Chapter 56

24

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



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

27 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**

28 **process.**

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

34 (b) The Legislature finds that children in the temporary custody and custody of the
35 division are experiencing multiple changes in foster care placements with little or no
36 documentation, and that numerous studies of child growth and development emphasize the
37 importance of stability in foster care living arrangements.

38 (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide
39 procedural due process for a foster family prior to removal of a foster child from their home,
40 regardless of the length of time the child has been in that home, unless removal is for the
41 purpose of:

- 42 (i) returning the child to the child's natural parent or legal guardian;
- 43 (ii) immediately placing the child in an approved adoptive home;
- 44 (iii) placing the child with a relative, as defined in Subsection 78A-6-307(1)(b), who
45 obtained custody or asserted an interest in the child within the preference period described in
46 Subsection 78A-6-307(18)(a); or
- 47 (iv) placing an Indian child in accordance with preplacement preferences and other
48 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

49 (2) (a) The division shall maintain and utilize due process procedures for removal of a
50 foster child from a foster home, in accordance with the procedures and requirements of Title
51 63G, Chapter 4, Administrative Procedures Act.

52 (b) Those procedures shall include requirements for:

- 53 (i) personal communication with, and a written explanation of the reasons for the
54 removal to, the foster parents prior to removal of the child; and
- 55 (ii) an opportunity for foster parents to present their information and concerns to the
56 division and to:

57 (A) request a review, to be held before removal of the child, by a third party neutral
58 fact finder; or

59 (B) if the child has been placed with the foster parents for a period of at least two years,
60 request a review, to be held before removal of the child, by:

61 (I) the juvenile court judge currently assigned to the child's case; or

62 (II) if the juvenile court judge currently assigned to the child's case is not available,
63 another juvenile court judge.

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

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

72 (4) When a complaint is made to the division by a foster child against a foster parent,
73 the division shall, within 30 business days, provide the foster parent with information regarding
74 the specific nature of the complaint, the time and place of the alleged incident, and who was
75 alleged to have been involved.

76 (5) Whenever the division places a child in a foster home, it shall provide the foster
77 parents with:

78 (a) notification of the requirements of this section;

79 (b) a written description of the procedures enacted by the division pursuant to
80 Subsection (2) and how to access those processes; and

81 (c) written notification of the foster parents' ability to petition the juvenile court
82 directly for review of a decision to remove a foster child who has been in their custody for 12
83 months or longer, in accordance with the limitations and requirements of Section 78A-6-318.

84 (6) The requirements of this section do not apply to the removal of a child based on a
85 foster parent's request for that removal.

86 (7) It is unlawful for a person, with the intent to avoid compliance with the
87 requirements of this section, to:

88 (a) take action, or encourage another to take action, against the license of a foster
89 parent; or

90 (b) remove a child from a foster home before the child has been placed with the foster
91 parents for two years.

92 (8) The division may not remove a foster child from a foster parent who is a relative, as
93 defined in Subsection 78A-6-307(1)(b), of the child on the basis of the age or health of the
94 foster parent without ~~§~~ **determining by:**

94a (a) ~~←§~~ ~~§→~~ ~~¶→~~ [**clear and convincing**] ~~†~~ **determining by a preponderance**
94a1 **of the ~~←¶~~ ~~←§~~**
94a evidence that the foster parent is incapable of caring
95 for the foster child ~~§→~~ , **if the alternative foster parent would not be another relative of the**
95a **child; or**
95b **(b) a preponderance of the evidence that the foster parent is incapable of caring for the**
95c **foster child, if the alternative foster parent would be another relative of the child ~~←§~~ .**

Legislative Review Note
as of 11-22-11 3:38 PM

Office of Legislative Research and General Counsel