

Effective 5/13/2014

Superseded 5/12/2015

78A-6-302 Court-ordered protective custody of a child following petition filing -- Grounds.

- (1) After a petition has been filed under Section 78A-6-304, if the child who is the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:
- (a)
 - (i) there is an imminent danger to the physical health or safety of the child; and
 - (ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;
 - (b)
 - (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer emotional damage; and
 - (ii) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
 - (c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;
 - (d) the parent or guardian is unwilling to have physical custody of the child;
 - (e) the child is abandoned or left without any provision for the child's support;
 - (f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;
 - (g)
 - (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
 - (ii) the whereabouts of the parent or guardian are unknown; and
 - (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
 - (h) the child is in immediate need of medical care;
 - (i)
 - (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the child's health or safety; or
 - (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;
 - (j) the child or another child residing in the same household has been neglected;
 - (k) the child's natural parent:
 - (i) intentionally, knowingly, or recklessly causes the death of another parent of the child;
 - (ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or
 - (iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;
 - (l) an infant has been abandoned, as defined in Section 78A-6-316;
 - (m)
 - (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and
 - (ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

- (n) the child's welfare is otherwise endangered.
- (2)
 - (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.
 - (b) For purposes of Subsection (1)(c):
 - (i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and
 - (ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.
- (3) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:
 - (a) educational neglect, truancy, or failure to comply with a court order to attend school;
 - (b) mental illness or poverty of the parent or guardian; or
 - (c) disability of the parent or guardian, as defined in Section 57-21-2.
- (4) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.
- (5) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.
- (6)
 - (a) Except as provided in Subsection (6)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:
 - (i) the administration of a psychotropic medication to a child;
 - (ii) a psychiatric, psychological, or behavioral treatment for a child; or
 - (iii) a psychiatric or behavioral health evaluation of a child.
 - (b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.