

COMPULSORY EDUCATION/TRUANCY

AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Duane E. Bourdeaux

AN ACT RELATING TO THE STATE SYSTEM OF PUBLIC EDUCATION; CLARIFYING THE COMPULSORY EDUCATION REQUIREMENTS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53A-11-101, as last amended by Chapter 78, Laws of Utah 1990

53A-11-102, as last amended by Chapter 302, Laws of Utah 1995

53A-11-103, as last amended by Chapter 1, Laws of Utah 1996

53A-11-105, as last amended by Chapter 329, Laws of Utah 1997

78-3a-103, as last amended by Chapters 274 and 298, Laws of Utah 1998

78-3a-104, as last amended by Chapters 274 and 315, Laws of Utah 1998

78-3a-306, as last amended by Chapters 13 and 274, Laws of Utah 1998

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

Section 1. Section **53A-11-101** is amended to read:

53A-11-101. Responsibility for minor required to attend school -- Penalty for violation.

(1) For purposes of this part:

(a) "Habitual truant" is a school-age minor who has received more than ~~h [three]~~ **TWO** h truanty citations within one school year from the school in which the minor is or should be enrolled ~~h~~ **AND EIGHT ABSENCES WITHOUT A LEGITIMATE OR VALID EXCUSE** ~~h~~ or who, in defiance of efforts on the part of school authorities to resolve a student's attendance problem as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

28 (b) "Minor" means a person under the age of eighteen years.

29 (c) "Parent" includes:

30 (i) a custodial parent of the minor;

31 (ii) a legally appointed guardian of a minor; or

32 (iii) any other person purporting to exercise any authority over the minor which could be
 33 exercised by persons listed under Subsections (1)(a)(i) and (ii) above.

34 (d) "School-age minor" means a minor who has reached the age of six years ~~h~~ **[and includes**
 35 **a person who has reached the age of eighteen, is living with a parent, and enrolled in a senior high**
 36 **school] BUT HAS NOT REACHED THE AGE OF EIGHTEEN YEARS ~~h~~ , but does not include a minor**
 36a emancipated by marriage ~~h~~ **[or other order of the court] ~~h~~ .**

37 (e) "Truancy citation" is an administrative notice to a truant minor requiring an appearance
 38 before the school truancy control officer or body from which the minor is truant.

39 (f) "Truant minor" is any school-age minor who is subject to the state's compulsory
 40 education law and who is absent from school without a legitimate or valid excuse.

41 ~~[(1)] (2)~~ A ~~[person having control of a minor between six and 18 years of age]~~ parent shall
 42 enroll and send [the] a school-age minor to a public or regularly established private school during
 43 the school year of the district in which the minor resides.

44 ~~[(2)] (3)~~ It is a class B misdemeanor for a ~~[person having control of a minor under~~
 45 Subsection (1) to willfully] parent to knowingly:

46 (a) fail to [comply with the requirements of this chapter] enroll a school-age minor in
 47 school; or

48 (b) refuse to ~~h~~ **[comply with] RESPOND TO ~~h~~ a written request which is delivered to the**
 48a parent pursuant to the
 49 provisions of Subsection 53A-11-103(1)(b) by a local school board or school district.

50 (4) The provisions of this section do not apply to a parent of a school-age minor who has
 51 been declared by the local school board to be exempt from school attendance in conformity with
 52 Section 53A-11-102.

53 ~~[(3)] (5)~~ A local board of education or school district shall report ~~[cases of willful~~
 54 noncompliance] violations of Subsection (3) to the appropriate [juvenile court] city, county, or
 55 district attorney.

56 ~~[(4) Officers of the juvenile court shall immediately take appropriate action.]~~

57 Section 2. Section **53A-11-102** is amended to read:

58 **53A-11-102. Minors exempt from school attendance.**

59 (1) A ~~[person having control of a minor between six and 18 years of age is exempt from~~
 60 ~~Section 53A-11-101 if the]~~ school-age minor [is] may be excused from attendance by the local
 61 board of education and a parent exempted from application of Subsections 53A-11-101(2) and (3)
 62 for ~~[one]~~ any of the following reasons:

63 (a) a minor over age 16 may receive a partial release from school to enter employment if
 64 the minor has completed the eighth grade. Minors excused under this subsection are required to
 65 attend part-time schooling or home schooling as prescribed by the board; or

66 (b) on an annual basis, a minor may receive a full release from attending a public, regularly
 67 established private, or part-time school or class if:

68 (i) the minor has already completed the work required for graduation from high school,
 69 or has demonstrated mastery of required skills and competencies in accordance with Subsection
 70 53A-15-102(1);

71 (ii) the minor is taught at home in the subjects prescribed by the State Board of Education
 72 in accordance with the law for the same length of time as minors are required by law to be taught
 73 in the district schools;

74 (iii) the minor is in a physical or mental condition, certified by a competent physician if
 75 required by the district board, which renders attendance inexpedient and impracticable;

76 (iv) proper influences and adequate opportunities for education are provided in
 77 connection with the minor's employment; or

78 (v) the district superintendent has determined that a minor over the age of 16 is unable to
 79 profit from attendance at school because of inability or a continuing negative attitude toward
 80 school regulations and discipline.

81 (2) In each case, evidence of reasons for granting an exemption must be sufficient to
 82 satisfy the local board.

83 (3) Boards excusing minors from attendance shall issue a certificate stating that the minor
 84 is excused from attendance during the time specified on the certificate.

85 Section 3. Section **53A-11-103** is amended to read:

86 **53A-11-103. Duties of boards of education in resolving child's attendance problems**
 87 **-- Parental involvement -- Issuance of truancy citations -- Procedure for contesting citations**
 88 **-- Liability not imposed.**

89 (1) [Each] For each school-age minor who is or should be enrolled within that school

90 district, the local school board or school district shall make [~~earnest and persistent~~] efforts to
 91 resolve a [~~student's~~] minor's school attendance problems. Those efforts shall include, as
 92 reasonably feasible:

93 (a) counseling of the [~~student~~] minor by school authorities;

94 (b) [~~enlisting~~] a written request for parental support [~~for~~] in securing regular attendance
 95 by the [~~student~~] minor h DELIVERED BY CERTIFIED MAIL, CONTAINING NOTICE OF THE
 95a REQUIREMENTS OF THIS SECTION AND STATING THAT REFUSAL TO RESPOND TO THE NOTICE IS
 95b A CLASS B MISDEMEANOR h ;

96 (c) at least one meeting with the [~~student~~] minor and the parents [~~or guardian~~];

97 (d) [~~adjusting~~] any necessary adjustment to the curriculum and schedule [~~if necessary~~] to
 98 meet special needs of the [~~student~~] minor; and

99 (e) monitoring [~~of~~] school attendance [~~by parents and school authorities, and~~] of the minor
 100 for a period not to exceed 30 days.

101 [~~(f) enlisting the assistance of community and law enforcement agencies as appropriate.~~]

102 (2) In addition to the efforts listed in Subsection (1), the local school board or school
 103 district may enlist the assistance of community and law enforcement agencies as appropriate and
 104 reasonably feasible.

105 (3) In the event that the minor's school attendance problem cannot be resolved by the
 106 efforts of the local school board or school district, the local school board or school district shall
 107 refer the school-age minor to the appropriate h DISTRICT OR COUNTY ATTORNEY OR h juvenile
 107a court as a habitual truant.

108 [(2)(a)] (4) [~~The parents, guardian, or person having control of a truant student~~] Any
 109 parent of a school-age minor shall, upon written request from a local school board or school
 110 district, cooperate with school authorities in resolving the minor's school attendance problem. [If
 111 the behavior is not corrected after earnest and persistent efforts are made by those parties or, if the
 112 parents, guardian, or person having control refuses to cooperate, after earnest and persistent efforts
 113 are made by school authorities, the school board may refer the matter to the juvenile court or
 114 release the student from school as provided in Section 53A-11-102.]

115 [(b)] At least 14 days prior to referring a person to juvenile court based upon educational
 116 neglect, as defined in Section 78-3a-103, the school district shall provide written notice to the
 117 parent or guardian by first class mail or other reasonable means, setting forth the district's intention
 118 to refer the person to juvenile court, and the corrective action that may be taken to avoid that
 119 referral.]

120 [(3)] (5) A local school board may authorize the issuance of truancy citations by school

121 administrators and appointed truancy specialists. Recipients of truancy citations may be subjected
 122 to administrative penalties, and to a fee assessed in accordance with a uniform fee schedule
 123 adopted by the State Board of Education.

124 ~~[(4)]~~ (6) A local school board that authorizes the issuance of truancy citations shall
 125 establish a procedure for students to contest citations ~~[which the affected students believe to be~~
 126 ~~unwarranted]~~. Any minor having received three prior truancy citations within a single school year
 127 h [shall be issued a habitual truancy citation and referred by the local school board or school district,
 128 and for whom reasonable and persistent efforts to resolve the attendance problem have failed, shall
 129 be referred by the local school board or school district to the appropriate county or district attorney
 130 for referral of the minor to juvenile court] AND FOR WHOM REASONABLE EFFORTS TO RESOLVE
 130a THE ATTENDANCE PROBLEM HAVE FAILED, SHALL BE ISSUED A HABITUAL TRUANCY CITATION
 130b AND REFERRED BY THE LOCAL SCHOOL BOARD OR SCHOOL DISTRICT TO THE APPROPRIATE
 130c COUNTY OR DISTRICT ATTORNEY OR JUVENILE COURT h as a habitual truant. Proceedings for
 130d habitual truancy
 131 shall be expedited by the court.

132 ~~[(5)]~~ (7) This section shall not impose any civil liability on boards of education or their
 133 employees. Proceedings initiated under this part do not obligate or preclude action by the Division
 134 of Child and Family Services under Section 78-3a-316.

135 Section 4. Section **53A-11-105** is amended to read:

136 **53A-11-105. Taking custody of person believed to be truant child -- Disposition --**
 137 **Receiving centers -- Reports -- Immunity from liability.**

138 (1) A peace officer, truant officer, or public school administrator may take a [person]
 139 minor into temporary custody or issue a truancy citation, or both, if there is reason to believe the
 140 [person] minor is a ~~[child subject to the state's compulsory education law and that the child is~~
 141 ~~absent from school without a legitimate or valid excuse]~~ truant minor. h **A TRUANCY CITATION**
 141a **ISSUED BY A TRUANT OFFICER SHALL BE APPROVED BY THE SCHOOL ADMINISTRATOR.** h

142 (2) An individual taking a ~~[child]~~ school-age minor into custody under Subsection (1)
 143 shall, without unnecessary delay, release the ~~[child]~~ minor to:

- 144 (a) the principal of the ~~[child's]~~ minor's school;
 145 (b) a person who has been designated by the local school board to receive ~~[the child]~~ and
 146 return ~~[him]~~ the minor to school; or
 147 (c) a receiving center established under Subsection (5).

148 (3) If the ~~[child]~~ minor refuses to return to school or go to the receiving center, the officer
 149 or administrator shall, without unnecessary delay, notify the ~~[child's]~~ minor's parents~~[, guardian,~~
 150 ~~or custodian]~~ and release the ~~[child]~~ minor to their custody.

151 (4) If the parents~~[, guardian, or custodian]~~ cannot be reached or are unable or unwilling

152 to accept custody, the [~~child~~] minor shall be referred to the Division of Child and Family Services.

153 (5) (a) A local school board, singly or jointly with another school board, may establish or
154 designate receiving centers within existing school buildings and staff the centers with existing
155 teachers or staff to provide educational guidance and counseling for truant [~~children~~] minors.
156 Upon receipt of a truant [~~child~~] minor, the center shall, without unnecessary delay, notify and
157 direct the [~~child's~~] minor's parents[~~, guardian, or custodian~~] to come to the center, pick up the
158 [~~child~~] minor, and return the [~~child~~] minor to the school in which he is enrolled.

159 (b) If the parents[~~, guardian, or custodian~~] cannot be reached or are unable or unwilling
160 to comply with the request within a reasonable time, the center shall take such steps as are
161 reasonably necessary to insure the safety and well being of the [~~child~~] minor, including, when
162 appropriate, returning the [~~child~~] minor to school or referring the [~~child~~] minor to the Division of
163 Child and Family Services. A [~~child~~] minor taken into custody under this section may not be
164 placed in a detention center or other secure confinement facility.

165 (6) Action taken under this section shall be reported to the appropriate school district. The
166 district shall promptly notify the [~~child's~~] minor's parents [~~or legal guardian~~] of the action taken.

167 (7) The Utah Governmental Immunity Act applies to all actions taken under this section.

168 (8) Nothing in this section may be construed to grant authority to a public school
169 administrator or truant officer to place a [~~child~~] minor in the custody of the Division of Child and
170 Family Services, without complying with the provisions of Title 62A, Chapter 4a, Parts 2 and 2A,
171 and of Title 78, Chapter 3a, Parts 3 and 3A.

172 Section 5. Section **78-3a-103** is amended to read:

173 **78-3a-103. Definitions.**

174 (1) As used in this chapter:

175 (a) "Abused child" includes a minor less than 18 years of age who:

176 (i) has suffered or been threatened with nonaccidental physical or mental harm, negligent
177 treatment, or sexual exploitation; or

178 (ii) has been the victim of any sexual abuse.

179 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
180 alleged in the petition have been proved.

181 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or over
182 under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be

183 referred to as minors.

184 (d) "Board" means the Board of Juvenile Court Judges.

185 (e) "Child placement agency" means:

186 (i) a private agency licensed to receive minors for placement or adoption under this code;

187 or

188 (ii) a private agency receiving minors for placement or adoption in another state, which
189 agency is licensed or approved where such license or approval is required by law.

190 (f) "Commit" means to transfer legal custody.

191 (g) "Court" means the juvenile court.

192 (h) "Dependent child" includes a minor who is homeless or without proper care through
193 no fault of his parent, guardian, or custodian.

194 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent or
195 the parents or a previous legal custodian to another person, agency, or institution.

196 (j) "Detention" means home detention and secure detention as defined in Section
197 62A-7-101 for the temporary care of minors who require secure custody in physically restricting
198 facilities:

199 (i) pending court disposition or transfer to another jurisdiction; or

200 (ii) while under the continuing jurisdiction of the court.

201 (k) "Formal referral" means a written report from a peace officer or other person informing
202 the court that a minor is or appears to be within the court's jurisdiction and that a petition may be
203 filed.

204 (l) "Group rehabilitation therapy" means psychological and social counseling of one or
205 more persons in the group, depending upon the recommendation of the therapist.

206 (m) "Guardianship of the person" includes the authority to consent to marriage, to
207 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
208 custody, if legal custody is not vested in another person, agency, or institution.

209 (n) "Habitual truant" is a school-age minor who has received more than three truancy
210 citations within one school year from the school in which the minor is or should be enrolled or
211 who, in defiance of his ~~earnest and persistent~~ efforts on the part of school authorities as required
211a under
212 Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

213 ~~(n)~~ (o) "Legal custody" means a relationship embodying the following rights and duties:

- 214 (i) the right to physical custody of the minor;
- 215 (ii) the right and duty to protect, train, and discipline the minor;
- 216 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
217 medical care;
- 218 (iv) the right to determine where and with whom the minor shall live; and
- 219 (v) the right, in an emergency, to authorize surgery or other extraordinary care.
- 220 ~~[(p)]~~ (p) "Minor" means a person under the age of 18 years. It includes the term "child"
221 as used in other parts of this chapter.
- 222 ~~[(q)]~~ (q) "Natural parent" means a minor's biological or adoptive parent, and includes the
223 minor's noncustodial parent.
- 224 ~~[(r)]~~ (r) (i) "Neglected child" means a minor:
225 (A) whose parent, guardian, or custodian has abandoned or subjected the minor to
226 mistreatment or abuse;
- 227 (B) who lacks proper parental care by reason of the fault or habits of the parent, guardian,
228 or custodian;
- 229 (C) whose parent, guardian, or custodian fails or refuses to provide proper or necessary
230 subsistence, education, or medical care, including surgery or psychiatric services when required,
231 or any other care necessary for health, safety, morals, or well-being; or
- 232 (D) who is at risk of being a neglected or abused child as defined in this chapter because
233 another minor in the same home is a neglected or abused child as defined in this chapter.
- 234 (ii) The aspect of neglect related to education, described in Subsection (1)~~[(r)]~~(r)(i)(C),
235 means that, after receiving notice that a minor has been frequently absent from school without
236 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
237 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an
238 appropriate education.
- 239 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason,
240 does not provide specified medical treatment for a minor, is not guilty of neglect.
- 241 ~~[(s)]~~ (s) "Nonjudicial adjustment" means closure of the case by the assigned probation
242 officer without judicial determination upon the consent in writing of the minor, the parent, legal
243 guardian or custodian, and the assigned probation officer.
- 244 ~~[(t)]~~ (t) "Probation" means a legal status created by court order following an adjudication

245 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
246 to remain in his home under prescribed conditions and under supervision by the probation
247 department or other agency designated by the court, subject to return to the court for violation of
248 any of the conditions prescribed.

249 ~~(t)~~ (u) "Protective supervision" means a legal status created by court order following an
250 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
251 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
252 is provided by the probation department or other agency designated by the court.

253 ~~(u)~~ (v) "Residual parental rights and duties" means those rights and duties remaining with
254 the parent after legal custody or guardianship, or both, have been vested in another person or
255 agency, including the responsibility for support, the right to consent to adoption, the right to
256 determine the child's religious affiliation, and the right to reasonable visitation unless restricted by
257 the court. If no guardian has been appointed, "residual parental rights and duties" also include the
258 right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

259 ~~(v)~~ (w) "Secure facility" means any facility operated by or under contract with the
260 Division of Youth Corrections, that provides 24-hour supervision and confinement for youth
261 offenders committed to the division for custody and rehabilitation.

262 ~~(w)~~ (x) "Shelter" means the temporary care of minors in physically unrestricted facilities
263 pending court disposition or transfer to another jurisdiction.

264 ~~(x)~~ (y) "State supervision" means a disposition which provides a more intensive level of
265 intervention than standard probation but is less intensive or restrictive than a community placement
266 with the Division of Youth Corrections.

267 ~~(y)~~ (z) "Termination of parental rights" means the permanent elimination of all parental
268 rights and duties, including residual parental rights and duties, by court order.

269 ~~(z)~~ (aa) "Therapist" means a person employed by a state division or agency for the
270 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
271 other person licensed or approved by the state for the purpose of conducting psychological
272 treatment and counseling.

273 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
274 Division of Child and Family Services:

275 (a) "Custody" means the custody of a minor in the Division of Child and Family Services

276 as of the date of disposition.

277 (b) "Protective custody" means the shelter of a minor by the Division of Child and Family
278 Services from the time the minor is removed from home until the shelter hearing, or the minor's
279 return home, whichever occurs earlier.

280 (c) "Temporary custody" means the custody of a minor in the Division of Child and Family
281 Services from the date of the shelter hearing until disposition.

282 Section 6. Section **78-3a-104** is amended to read:

283 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

284 (1) Except as otherwise provided by law, the juvenile court has exclusive original
285 jurisdiction in proceedings concerning:

286 (a) a minor who has violated any federal, state, or local law or municipal ordinance or a
287 person younger than 21 years of age who has violated any law or ordinance before becoming 18
288 years of age, regardless of where the violation occurred, excluding traffic laws and ordinances;

289 (b) a person 21 years of age or older who has failed or refused to comply with an order of
290 the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st
291 birthday; however, the continuing jurisdiction is limited to causing compliance with existing
292 orders;

293 (c) a minor who is an abused child, neglected child, or dependent child, as those terms are
294 defined in Section 78-3a-103;

295 (d) a protective order for a minor who is alleged to be an abused child or neglected child,
296 except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent of the
297 minor against a natural parent of the minor;

298 (e) the determination of the custody of a minor or to appoint a guardian of the person or
299 other guardian of a minor who comes within the court's jurisdiction under other provisions of this
300 section;

301 (f) the termination of the legal parent-child relationship in accordance with Part 4,
302 Termination of Parental Rights Act, including termination of residual parental rights and duties;

303 (g) the treatment or commitment of a mentally retarded minor;

304 (h) a minor who ~~[, in defiance of earnest and persistent efforts on the part of his parents and~~
305 ~~school authorities as required under Section 53A-11-103,]~~ is a habitual truant from school;

306 (i) the judicial consent to the marriage of a minor under age 16 upon a determination of

307 voluntariness or where otherwise required by law, employment, or enlistment of a minor when
308 consent is required by law;

309 (j) any parent or parents of a minor committed to a secure youth corrections facility, to
310 order, at the discretion of the court and on the recommendation of a secure youth corrections
311 facility, the parent or parents of a minor committed to a secure youth corrections facility for a
312 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth
313 corrections facility therapist, who has supervision of that parent's or parents' minor, or any other
314 therapist the court may direct, for a period directed by the court as recommended by a secure youth
315 corrections facility;

316 (k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

317 (l) the treatment or commitment of a mentally ill child. The court may commit a child to
318 the physical custody of a local mental health authority or to the legal custody of the Division of
319 Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part
320 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not
321 commit a child directly to the Utah State Hospital; and

322 (m) the commitment of a minor in accordance with Section 62A-8-501.

323 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive
324 jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent
325 jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except
326 that the court shall have exclusive jurisdiction over the following traffic offenses committed by
327 a minor under 18 years of age:

328 (a) Section 76-5-207, automobile homicide;

329 (b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

330 (c) Section 41-6-45, reckless driving;

331 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer
332 for an extended period of time; and

333 (e) Section 41-6-13.5, fleeing a peace officer.

334 (3) The court also has jurisdiction over traffic offenses that are part of a single criminal
335 episode filed in a petition that contains an offense over which the court has jurisdiction.

336 (4) The juvenile court has jurisdiction over questions of custody, support, and visitation
337 certified to it by the district court pursuant to Section 78-3a-105.

338 (5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is
339 referred to it by the Division of Child and Family Services or by public or private agencies that
340 contract with the division to provide services to that minor where, despite earnest and persistent
341 efforts by the division or agency, the minor has demonstrated that he:

342 (a) is beyond the control of his parent, guardian, lawful custodian, or school authorities
343 to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

344 (b) has run away from home.

345 (6) This section does not restrict the right of access to the juvenile court by private
346 agencies or other persons.

347 (7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising
348 under Section 78-3a-602.

349 Section 7. Section **78-3a-306** is amended to read:

350 **78-3a-306. Shelter hearing.**

351 (1) With regard to a child who has been removed by the Division of Child and Family
352 Services, or who is in the protective custody of the division, a shelter hearing shall be held within
353 72 hours after removal of the child from his home, excluding weekends and holidays.

354 (2) Upon removal of a child from his home and receipt of that child into protective
355 custody, the division shall issue a notice that contains all of the following:

356 (a) the name and address of the person to whom the notice is directed;

357 (b) the date, time, and place of the shelter hearing;

358 (c) the name of the minor on whose behalf a petition is being brought;

359 (d) a concise statement regarding the allegations and code sections under which the
360 proceeding has been instituted;

361 (e) a statement that the parent or guardian to whom notice is given, and the minor, are
362 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
363 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
364 provided; and

365 (f) a statement that the parent or guardian is liable for the cost of support of the minor in
366 the protective custody, temporary custody, and custody of the division, and the cost for legal
367 counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial
368 ability.

369 (3) That notice shall be personally served as soon as possible, but at least 24 hours prior
370 to the time set for the shelter hearing, on:

371 (a) the appropriate guardian ad litem; and

372 (b) both parents and any guardian of the minor, unless they cannot be located.

373 (4) The following persons shall be present at the shelter hearing:

374 (a) the child, unless it would be detrimental for the child;

375 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
376 response to the notice;

377 (c) counsel for the parents, if one has been requested;

378 (d) the child's guardian ad litem;

379 (e) the caseworker from the Division of Child and Family Services who has been assigned
380 to the case; and

381 (f) the attorney from the attorney general's office who is representing the division.

382 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent
383 or guardian, if present, and any other person having relevant knowledge, to provide relevant
384 testimony. The court may also provide an opportunity for the minor to testify.

385 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
386 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or
387 guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
388 evidence to only that which goes to the issues of removal and the child's need for continued
389 protection.

390 (6) If the child is in the protective custody of the division, the division shall report to the
391 court:

392 (a) the reasons why the minor was removed from the parent's or guardian's custody;

393 (b) any services provided to the child and his family in an effort to prevent removal;

394 (c) the need, if any, for continued shelter;

395 (d) the available services that could facilitate the return of the minor to the custody of his
396 parent or guardian; and

397 (e) whether the child has any relatives who may be able and willing to take temporary
398 custody.

399 (7) If necessary to protect the child, preserve the rights of a party, or for other good cause

400 shown, the court may grant no more than one time-limited continuance, not to exceed five judicial
401 days.

402 (8) The court shall order that the minor be released from the protective custody of the
403 division unless it finds, by a preponderance of the evidence, that any one of the following exist:

404 (a) there is a substantial danger to the physical health or safety of the minor and the minor's
405 physical health or safety may not be protected without removing him from his parent's custody.

406 If a minor has previously been adjudicated as abused, neglected, or dependent and a subsequent
407 incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the
408 child cannot safely remain in the custody of his parent;

409 (b) the minor is suffering emotional damage, as may be indicated by, but is not limited to,
410 extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,
411 and there are no reasonable means available by which the minor's emotional health may be
412 protected without removing the minor from the custody of his parent;

413 (c) the minor or another minor residing in the same household has been physically or
414 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
415 a parent, a member of the parent's household, or other person known to the parent. If a parent has
416 received actual notice that physical or sexual abuse by a person known to the parent has occurred,
417 and there is evidence that the parent has allowed the child to be in the physical presence of the
418 alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of
419 being physically or sexually abused;

420 (d) the parent is unwilling to have physical custody of the child;

421 (e) the minor has been left without any provision for his support;

422 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange for
423 safe and appropriate care for the minor;

424 (g) a relative or other adult custodian with whom the minor has been left by the parent is
425 unwilling or unable to provide care or support for the minor, the whereabouts of the parent are
426 unknown, and reasonable efforts to locate him have been unsuccessful;

427 (h) the minor is in immediate need of medical care;

428 (i) the physical environment or the fact that the child is left unattended poses a threat to
429 the child's health or safety;

430 (j) the minor or another minor residing in the same household has been neglected;

431 (k) the parent, or an adult residing in the same household as the parent, has been charged
432 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
433 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the
434 property where the child resided; or

435 (l) the child's welfare is otherwise endangered.

436 (9) (a) The court shall also make a determination on the record as to whether reasonable
437 efforts were made to prevent or eliminate the need for removal of the minor from his home and
438 whether there are available services that would prevent the need for continued removal. If the
439 court finds that the minor can be safely returned to the custody of his parent or guardian through
440 the provision of those services, it shall place the minor with his parent or guardian and order that
441 those services be provided by the division.

442 (b) In making that determination, and in ordering and providing services, the child's health,
443 safety, and welfare shall be the paramount concern, in accordance with federal law.

444 (10) Where the division's first contact with the family occurred during an emergency
445 situation in which the child could not safely remain at home, the court shall make a finding that
446 any lack of preplacement preventive efforts was appropriate.

447 (11) In cases where actual sexual abuse or abandonment, or serious physical abuse or
448 neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
449 or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide
450 reunification services, or attempt to rehabilitate the offending parent or parents.

451 (12) The court may not order continued removal of a minor solely on the basis of
452 educational neglect as described in Subsection 78-3a-103(1)(~~tt~~)(r)(ii).

453 (13) (a) Whenever a court orders continued removal of a minor under this section, it shall
454 state the facts on which that decision is based.

455 (b) If no continued removal is ordered and the minor is returned home, the court shall state
456 the facts on which that decision is based.

457 (14) If the court finds that continued removal and temporary custody is necessary for the
458 protection of a child because harm may result to the child if he were returned home, it shall order
459 continued removal regardless of any error in the initial removal of the child, or the failure of a
460 party to comply with notice provisions, or any other procedural requirement of this chapter or Title
461 62A, Chapter 4a, Child and Family Services.

Legislative Review Note
as of 1-19-99 11:07 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel