

PARENTAL RIGHTS AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Nora B. Stephens

Margaret Dayton
Martin R. Stephens
Katherine M. Bryson
Becky Lockhart
Matt Throckmorton
Tammy J. Rowan
Kevin S. Garn
Craig W. Buttaris

Bill Wright
Bradley T. Johnson
David Ure
Chad E. Bennion
Thomas V. Hatch
Carl R. Saunders
Joseph G. Murray
DeMar Bud Bowman

Evan L. Olsen
Keele Johnson
David L. Hogue
David L. Gladwell
John E. Swallow
Don E. Bush
Lowell A. Nelson

AN ACT RELATING TO CHILD WELFARE AND EDUCATION; REQUIRING PARENTAL PERMISSION FOR SPECIFIED IN-HOME PRESCHOOL PROGRAMS; REQUIRING DCFS TO ESTABLISH FAMILY IMPACT STATEMENTS WITH REGARD TO EACH OF ITS FUTURE POLICIES OR RULES; DESCRIBING PARENTAL RIGHTS; LIMITING CERTAIN INVESTIGATIONS OF DCFS; REQUIRING SPECIALIZED REVIEW PRIOR TO REMOVAL OF CHILDREN UNDER CERTAIN CIRCUMSTANCES; AMENDING PARENTAL NOTIFICATION REQUIREMENTS; CLARIFYING THAT SPECIFIED INVESTIGATION STANDARDS ARE INTENDED TO BE POST-REMOVAL; AMENDING PROVISIONS REGARDING PARENT AND FOSTER PARENT INPUT IN TREATMENT PLANS; AMENDING SHELTER HEARING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

- 62A-4a-201, as last amended by Chapter 274, Laws of Utah 1998
62A-4a-202.1, as last amended by Chapter 274, Laws of Utah 1998
62A-4a-202.2, as renumbered and amended by Chapter 302, Laws of Utah 1995
62A-4a-202.3, as last amended by Chapters 13 and 274, Laws of Utah 1998
62A-4a-205 (Effective 07/01/00), as last amended by Chapter 121, Laws of Utah 1999
62A-4a-409, as last amended by Chapter 274, Laws of Utah 1998

78-3a-301, as last amended by Chapter 274, Laws of Utah 1998

78-3a-306, as last amended by Chapter 99, Laws of Utah 1999

ENACTS:

53A-1a-105.5, Utah Code Annotated 1953

62A-4a-119, Utah Code Annotated 1953

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

Section 1. Section **53A-1a-105.5** is enacted to read:

53A-1a-105.5. Parental permission required for specified in-home programs --

Exceptions.

(1) The State Board of Education, local school boards, school districts, and public schools are prohibited from requiring infant or preschool in-home literacy or other educational or parenting programs without obtaining parental permission in each individual case.

(2) This section does not prohibit the Division of Child and Family Services, within the Department of Human Services, from providing or arranging for family preservation or other statutorily provided services in accordance with Title 62A, Chapter 4a, or any other in-home services that have been court ordered, pursuant to Title 62A, Chapter 4a, or Title 78, Chapter 3a.

Section 2. Section **62A-4a-119** is enacted to read:

62A-4a-119. Division required to produce "family impact statement" with regard to policies and rules.

Beginning May 1, 2000, whenever the division establishes a rule, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, or the board establishes any policy in accordance with its statutory authority, those processes shall include an assessment of the impact of that rule or policy on families. Those assessments shall determine the impact of the rule or policy on the authority of parents to oversee the care, supervision, upbringing, and education of children in the parents' custody. The division shall publish a family impact statement describing those assessments and determinations, within 90 days of the establishment of each rule or policy.

Section 3. Section **62A-4a-201** is amended to read:

62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of

state.

(1) (a) Courts have recognized a general presumption that it is in the best interest and welfare of a child to be raised under the care and supervision of his natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships will usually best be met by his natural parents. Additionally, the integrity of the family unit, and the right of parents to conceive and raise their children have found protection in the due process clause of the Fourteenth Amendment to the United States Constitution. The right of a fit, competent parent to raise his child has long been protected by the laws and Constitution of this state and of the United States.

(b) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children who are in their custody.

(2) [As] It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78, Chapter 3a. Therefore, as a counterweight to parental rights, the state, as parens patriae, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There are circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the welfare and protection of children is the consideration of paramount importance.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's need for protection from immediate harm. Throughout its involvement, the division shall ~~attempt to~~ utilize the least intrusive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's safety or welfare, the state's interest in the child's welfare is paramount to the rights of a parent. The division may obtain custody of the child for a planned period and place him in a safe environment, in accordance with the

requirements of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section 62A-4a-203 and keeping with the presumptions described in Subsection (1), both the division's and the court's paramount concern shall be the child's health, safety, and welfare.

(6) In cases where actual sexual abuse, abandonment, or serious physical abuse or neglect are involved, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in his home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

(7) (a) It is the division's obligation, under federal law, to achieve permanency for children who are abused, neglected, or dependent. If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(b) If, because of his conduct or condition, a parent is determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of the child is of paramount importance, and shall govern in determining whether that parent's rights should be terminated.

Section 4. Section **62A-4a-202.1** is amended to read:

62A-4a-202.1. Taking a child into protective custody -- Peace officer -- Division of Child and Family Services caseworker.

(1) Any peace officer may, without a warrant, take a minor into protective custody when the officer has substantial cause to believe that any of the factors described in Section 78-3a-301 exist.

(2) (a) A child welfare worker within the Division of Child and Family Services may take and maintain protective custody of a minor, without a warrant, in accordance with the requirements of this section and Section 78-3a-301 when accompanied by a peace officer, or without a peace officer, when a peace officer is not reasonably available.

(b) If possible, consistent with the child's safety and welfare, before taking a child into protective custody, the worker shall also determine whether there are services reasonably available to the worker which, if provided to the minor's parent or to the minor, would eliminate the need to remove the minor from the custody of his parent in accordance with the provisions and limitations of Section 78-3a-301. If those services are reasonably available, they shall be utilized. In determining whether services are reasonably available, and in making reasonable efforts to provide those services, the child's health, safety, and welfare shall be the worker's paramount concern.

(c) (i) Except as provided in Subsection (2)(c)(ii), if a child welfare worker determines that there is substantial cause to believe that one or more of the factors described in Section 78-3a-301 exist and determines, pursuant to Subsection (2)(b), that services are not reasonably available to eliminate the need for removal, the child welfare worker may proceed with removal of the child after the worker has reviewed the reasons for removal and other available options with a family services specialist within the division.

(ii) The provisions of Subsection (2)(c)(i) requiring a family services specialist's review prior to removal of a child do not apply and are not necessary if, in the child welfare worker's opinion, that process would create a delay that may endanger the health, safety, or welfare of the child.

(iii) From its existing staff, the division shall train and appoint family services specialists who are available 24 hours a day, seven days a week, to perform the duties described in Subsection (2)(c)(i).

Section 5. Section **62A-4a-202.2** is amended to read:

62A-4a-202.2. Notice to parent upon removal of child -- Written statement of procedural rights and preliminary proceedings.

(1) Any peace officer or caseworker who takes a minor into protective custody pursuant to Section 62A-4a-202.1 shall immediately inform, through the most efficient means available, the parent, guardian, or responsible relative:

(a) that the minor has been taken into protective custody;

(b) the reasons for removal and placement in protective custody;

~~(b)~~ (c) that a written statement is available that explains the parent's procedural rights and

the preliminary stages of the investigation and shelter hearing; and

~~[(e)]~~ (d) of a telephone number where ~~[he]~~ the parent may access further information.

(2) The attorney general's office shall adopt, print, and distribute a form for the written statement described in Subsection (1)~~[(b)]~~(c). The statement shall be made available to the division and for distribution in schools, health care facilities, local police and sheriff's offices, the division, and any other appropriate office within the Department of Human Services. The notice shall be in simple language and include at least the following information:

(a) the conditions under which ~~[the]~~ a minor may be released, hearings that may be required, and the means by which the parent may access further specific information about ~~[the]~~ a minor's case and conditions of protective and temporary custody; and

(b) the rights of ~~[the]~~ a minor and of the parent or guardian to legal counsel and to appeal.

(3) If a good faith attempt was made by the peace officer or caseworker to notify the parent or guardian in accordance with the requirements of Subsection (1), failure to notify shall be considered to be due to circumstances beyond the control of the peace officer or caseworker and may not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations provided for by this chapter or Title 62A.

Section 6. Section **62A-4a-202.3** is amended to read:

**62A-4a-202.3. Post-removal investigation standards -- Substantiation of reports --
Child in protective custody.**

(1) When a child is taken into protective custody in accordance with Sections 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately ~~[investigate]~~ initiate a post-removal investigation of the circumstances of the minor and the facts surrounding his being taken into protective custody.

(2) The division's post-removal investigation shall include, among other actions necessary to meet reasonable professional standards:

(a) a search for and review of any records of past reports of abuse or neglect involving the same child, any sibling or other child residing in that household, and the alleged perpetrator;

(b) with regard to a child who is five years of age or older, a personal interview with the child

outside of the presence of the alleged perpetrator, conducted in accordance with the requirements of Subsection (6);

- (c) an interview with the child's natural parents or other guardian, unless their whereabouts are unknown;
- (d) an interview with the person who reported the abuse, unless anonymous;
- (e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including school personnel and the child's health care provider;
- (f) an unscheduled visit to the child's home; and
- (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination. That examination shall be obtained no later than 24 hours after the child was placed in protective custody.

(3) (a) ~~[The]~~ With regard to both pre- and post-removal, the division's determination of whether a report is substantiated or unsubstantiated may be based on the child's statements alone.

(b) Inability to identify or locate the perpetrator may not be used by the division as a basis for determining that a report is unsubstantiated, or for closing the case.

(c) The division may not determine a case to be unsubstantiated or identify a case as unsubstantiated solely because the perpetrator was an out-of-home perpetrator.

(d) Decisions regarding whether a report is substantiated, unsubstantiated, or without merit shall be based on the facts of the case at the time the report was made.

(4) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:

(a) the minor has no natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the minor;

(b) shelter of the minor is a matter of necessity for the protection of the minor and there are no reasonable means by which the minor can be protected in his home or the home of a responsible relative;

(c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or

(d) the minor has left a previously court ordered placement.

(5) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the Division of Child and Family Services shall convene a child protection team to review the circumstances regarding removal of the child from his home, and prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78-3a-306.

(b) Members of that team shall include:

(i) the caseworker assigned to the case and the caseworker who made the decision to remove the child;

(ii) a representative of the school or school district in which the child attends school;

(iii) the peace officer who removed the child from the home;

(iv) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(v) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and

(vi) any other individuals as determined to be appropriate and necessary by the team coordinator and chair.

(c) At that 24-hour meeting, the division shall have available for review and consideration, the complete child protective services and foster care history of the child and the child's parents and siblings.

(6) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be audio or video taped, and the child shall be allowed to have a support person of the child's choice present. That support person may not be an alleged perpetrator.

(7) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.

(8) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child, until all reasonable efforts have been made to locate the child

and family members. Those efforts include:

- (a) visiting the home at times other than normal work hours;
- (b) contacting local schools;
- (c) contacting local, county, and state law enforcement agencies; and
- (d) checking public assistance records.

Section 7. Section **62A-4a-205 (Effective 07/01/00)** is amended to read:

62A-4a-205 (Effective 07/01/00). Treatment plans.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's treatment plan shall be finalized.

(2) The division shall use an interdisciplinary team approach in developing each treatment plan. An interdisciplinary team shall include, but is not limited to, representatives from mental health, education, and, where appropriate, a representative of law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's treatment plan:

~~[(a)]~~ (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

~~[(b)]~~ (ii) the child;

~~[(c)]~~ (iii) the child's foster parents; and

~~[(d)]~~ (iv) where appropriate, the child's stepparent.

(b) In relation to all information considered by the division in developing a treatment plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the child's natural parents and foster parents immediately upon completion, or as soon as is reasonably possible thereafter.

(5) Each treatment plan shall specifically provide for the safety of the child, in accordance with federal law, and clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The plan shall set forth, with specificity, at least the following:

- (a) the reason the child entered Division of Child and Family Services custody, and documentation of the reasonable efforts made to prevent placement, or documentation of the emergency situation that existed and that prevented reasonable efforts;
 - (b) the primary permanency goal for the child and the reason for selection of that goal;
 - (c) the concurrent permanency goal for the child and the reason for the selection of that goal;
 - (d) if the plan is for the child to return to his family, specifically what the parents must do in order to enable the child to be returned home, specifically how those requirements may be accomplished, and how those requirements will be measured;
 - (e) the specific services needed to reduce the problems that necessitated placement in the division's custody, and who will provide for and be responsible for case management;
 - (f) a visitation schedule between the natural parent and the child;
 - (g) the health care to be provided to the child, and the mental health care to be provided to address any known or diagnosed mental health needs of the child. If residential treatment, rather than a foster home, is the proposed placement, a specialized assessment of the child's health needs shall be conducted, including an assessment of mental illness and behavior and conduct disorders; and
 - (h) social summaries that include case history information pertinent to case planning.
- (7) (a) [~~The~~] Each treatment plan shall be specific to each child and his family, rather than general. The division shall train its workers to develop treatment plans that comply with federal mandates and the specific needs of the particular child and his family[;].
- (b) [~~all~~] All treatment plans and expectations shall be individualized and contain specific time frames[;].
- (c) [~~treatment~~] Treatment plans shall address problems that keep children in placement and keep them from achieving permanence in their lives[; ~~and~~].
- (d) [~~the~~] The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.
- (8) With regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption unless there are documented

extenuating circumstances that justify long-term foster care or guardianship.

Section 8. Section **62A-4a-409** is amended to read:

62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval interviews of children.

(1) The division shall make a thorough investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency. The primary purpose of that investigation shall be protection of the child.

(2) The investigation may include inquiry into the child's home environment, emotional, or mental health, nature and extent of injuries, and physical safety.

(3) The division shall make a written report of its investigation. The written report shall include a determination regarding whether the alleged abuse or neglect was substantiated or unsubstantiated.

(4) (a) The division shall use an interdisciplinary approach whenever possible in dealing with reports made under this part.

(b) For this purpose, the division shall convene appropriate interdisciplinary "child protection teams" to assist it in its protective, diagnostic, assessment, treatment, and coordination services.

(c) A representative of the division shall serve as the team's coordinator and chair. Members of the team shall serve at the coordinator's invitation, and whenever possible, the team shall include representatives of health, mental health, education, law enforcement agencies, and other appropriate agencies or individuals.

(5) In any case where the division supervises, governs, or directs the affairs of any individual, institution, or facility that has been alleged to be involved in acts or omissions of child abuse or neglect, the investigation of the reported child abuse or neglect shall be conducted by an agency other than the division.

(6) If a report of neglect is based upon or includes an allegation of educational neglect the division shall immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103.

(7) When the division has completed its initial investigation under this part, it shall give notice of that completion to the person who made the initial report.

(8) Division workers or other child protection team members have authority to enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged child abuse or neglect.

(9) With regard to any interview of a child prior to removal of that child from his home:

(a) except as provided in Subsection (9)(b) or (c), the division shall notify a parent of the child prior to the interview;

(b) if a child's parent or stepparent, or a parent's paramour has been identified as the alleged perpetrator, the division need not notify a parent of the child prior to an initial interview with the child;

(c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family is unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the child prior to notification of the child's parent;

(d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be notified as soon as practicable after the child has been interviewed, but in no case later than 24 hours after the interview has taken place;

(e) a child's parents shall be notified of the time and place of all subsequent interviews with the child; and

(f) the child shall be allowed to have a support person of the child's choice present. That support person:

(i) may include, but is not limited to, a school teacher or administrator, guidance counselor, or child care provider; and

(ii) may not be a person who is alleged to be, or potentially may be, the perpetrator.

~~[(9)]~~ (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take a child into protective custody, and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent

to the child's removal from its original environment. Control and jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

Section 9. Section **78-3a-301** is amended to read:

78-3a-301. Removing a child from his home -- Grounds for removal.

(1) The Division of Child and Family Services may not remove a child from the custody of his natural parent unless there is substantial cause to believe that any one of the following exist:

(a) there is a substantial danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing him from his parent's custody. If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of his parent;

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

(c) the minor or another minor residing in the same household has been physically or sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent. If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent has allowed 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 or sexually abused;

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

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

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

(g) a relative or other adult custodian with whom the minor has been left by the parent is unwilling or unable to provide care or support for the minor, the whereabouts of the parent are

unknown, and reasonable efforts to locate him have been unsuccessful;

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

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

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

(k) an infant has been abandoned, as defined in Section 78-3a-313.5;

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

(m) the child's welfare is otherwise endangered, as documented by the caseworker.

(2) The Division of Child and Family Services may not remove a minor from the custody of his natural parent solely on the basis of educational neglect.

(3) The Division of Child and Family Services shall comply with the provisions of Section 62A-4a-202.1 in effecting removal of a child pursuant to this section.

~~[(3)]~~ (4) (a) A minor removed from the custody of his natural parent under this section may not be placed or kept in a secure detention facility pending court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Youth Corrections.

(b) A minor removed from the custody of his natural parent but who does not require physical restriction shall be given temporary care in a shelter facility.

Section 10. Section **78-3a-306** is amended to read:

78-3a-306. Shelter hearing.

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

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

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

- (b) the date, time, and place of the shelter hearing;
 - (c) the name of the minor on whose behalf a petition is being brought;
 - (d) a concise statement regarding the reasons for removal, and of the allegations and code sections under which the proceeding has been instituted;
 - (e) a statement that the parent or guardian to whom notice is given, and the minor, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and
 - (f) a statement that the parent or guardian is liable for the cost of support of the minor in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial ability.
- (3) That notice shall be personally served as soon as possible, but [~~at least 24 hours prior to the time set for the shelter hearing~~] no later than one business day after removal of a child from his home, on:
- (a) the appropriate guardian ad litem; and
 - (b) both parents and any guardian of the minor, unless they cannot be located.
- (4) The following persons shall be present at the shelter hearing:
- (a) the child, unless it would be detrimental for the child;
 - (b) the child's parents or guardian, unless they cannot be located, or fail to appear in response to the notice;
 - (c) counsel for the parents, if one has been requested;
 - (d) the child's guardian ad litem;
 - (e) the caseworker from the Division of Child and Family Services who has been assigned to the case; and
 - (f) the attorney from the attorney general's office who is representing the division.
- (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent or guardian, if present, and any other person having relevant knowledge, to provide relevant testimony. The court may also provide an opportunity for the minor to testify.
- (b) The court may consider all relevant evidence, in accordance with the Utah Rules of

Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or guardian, the requesting party, or their counsel, but may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

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

- (a) the reasons why the minor was removed from the parent's or guardian's custody;
- (b) any services provided to the child and his family in an effort to prevent removal;
- (c) the need, if any, for continued shelter;
- (d) the available services that could facilitate the return of the minor to the custody of his parent or guardian; and
- (e) whether the child has any relatives who may be able and willing to take temporary custody.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

~~[(7)]~~ (8) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one time-limited continuance, not to exceed five judicial days.

~~[(8)]~~ (9) The court shall order that the minor be released from the protective custody of the division unless it finds, by a preponderance of the evidence, that any one of the following exist:

- (a) there is a substantial danger to the physical health or safety of the minor and the minor's physical health or safety may not be protected without removing him from his parent's custody. If a minor has previously been adjudicated as abused, neglected, or dependent and a subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of his parent;
- (b) the minor is suffering emotional damage, as may be indicated by, but is not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others, and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of his parent;

(c) the minor or another minor residing in the same household has been physically or sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by a parent, a member of the parent's household, or other person known to the parent. If a parent has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent has allowed 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 or sexually abused;

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

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

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

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

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

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

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

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

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

~~[(9)]~~ (10) (a) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his home and whether there are available services that would prevent the need for continued removal. If the court finds that the minor can be safely returned to the custody of his parent or guardian through the provision of those services, it shall place the minor with his parent or guardian and order that those

services be provided by the division.

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

~~[(10)]~~ (11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

~~[(11)]~~ (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

~~[(12)]~~ (13) The court may not order continued removal of a minor solely on the basis of educational neglect as described in Subsection 78-3a-103(1)(r)(ii).

~~[(13)]~~ (14) (a) Whenever a court orders continued removal of a minor under this section, it shall state the facts on which that decision is based.

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

~~[(14)]~~ (15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if he were returned home, it shall order continued removal regardless of any error in the initial removal of the child, or the failure of a party to comply with notice provisions, or any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 11. Effective date.

This act takes effect on May 1, 2000, except that Section 62A-4a-205 takes effect on July 1, 2000.