

28 **53A-1a-105.5**, Utah Code Annotated 1953

29 **62A-4a-119**, Utah Code Annotated 1953

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

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

32 **53A-1a-105.5. Parental permission required for specified in-home programs --**

33 **Exceptions.**

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

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

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

42 **62A-4a-119. Division required to produce "family impact statement" with regard to**
43 **all policies, procedures, and rules.**

44 Whenever the division establishes any policy, procedure, or rule, it shall assess its impact
45 on families. Specifically, the division shall determine the impact of any new policy, procedure,
46 or rule on the authority of parents to oversee the care, supervision, upbringing, and education of
47 children in the parents' custody. The division shall publish a family impact statement describing
48 that assessment and determination, within 90 days of the establishment of every policy, procedure,
49 and rule.

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

51 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
52 **state.**

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

59 parent to raise his child has long been protected by the laws and Constitution of this state and of
60 the United States.

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

64 (2) [As] It is also the public policy of this state that children have the right to protection
65 from abuse and neglect, and that the state retains a compelling interest in investigating,
66 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78, Chapter
67 3a. Therefore, as a counterweight to parental rights, the state, as *parens patriae*, has an interest in
68 and responsibility to protect children whose parents abuse them or do not adequately provide for
69 their welfare. There are circumstances where a parent's conduct or condition is a substantial
70 departure from the norm and the parent is unable or unwilling to render safe and proper parental
71 care and protection. Under those circumstances, the welfare and protection of children is the
72 consideration of paramount importance.

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

78 (4) When circumstances within the family pose a threat to the child's safety or welfare, the
79 state's interest in the child's welfare is paramount to the rights of a parent. The division may obtain
80 custody of the child for a planned period and place him in a safe environment, in accordance with
81 the requirements of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

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

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

90 court-ordered services.

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

97 (b) If, because of his conduct or condition, a parent is determined to be unfit or
98 incompetent based on the grounds for termination of parental rights described in Title 78, Chapter
99 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of the child is of
100 paramount importance, and shall govern in determining whether that parent's rights should be
101 terminated.

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

103 **62A-4a-202.1. Taking a child into protective custody -- Peace officer -- Division of**
104 **Child and Family Services caseworker.**

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

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

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

120 (c) (i) Except as provided in Subsection (2)(c)(ii), if a child welfare worker determines that

121 there is substantial cause to believe that one or more of the factors described in Section 78-3a-301
122 exist and determines, pursuant to Subsection (2)(b), that services are not reasonably available to
123 eliminate the need for removal, the child welfare worker may proceed with removal of the child
124 only after the worker has contacted a child protection specialist within the division, reviewed the
125 reasons and need for removal with that specialist, and received the specialist's approval to proceed
126 with removal.

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

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

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

135 **62A-4a-202.2. Notice to parent upon removal of child -- Written statement of**
136 **procedural rights and preliminary proceedings.**

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

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

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

142 ~~[(b)]~~ (c) that a written statement is available that explains the parent's procedural rights and
143 the preliminary stages of the investigation and shelter hearing; and

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

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

150 (a) the conditions under which ~~[the]~~ a minor may be released, hearings that may be
151 required, and the means by which the parent may access further specific information about ~~[the]~~

152 a minor's case and conditions of protective and temporary custody; and

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

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

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

160 **62A-4a-202.3. Post-removal investigation standards -- Substantiation of reports --**
161 **Child in protective custody.**

162 (1) When a child is taken into protective custody in accordance with Sections
163 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately
164 [investigate] initiate a post-removal investigation of the circumstances of the minor and the facts
165 surrounding his being taken into protective custody.

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

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

170 (b) with regard to a child who is five years of age or older, a personal interview with the
171 child outside of the presence of the alleged perpetrator, conducted in accordance with the
172 requirements of Subsection (6);

173 (c) an interview with the child's natural parents or other guardian, unless their whereabouts
174 are unknown;

175 (d) an interview with the person who reported the abuse, unless anonymous;

176 (e) where possible and appropriate, interviews with other third parties who have had direct
177 contact with the child, including school personnel and the child's health care provider;

178 (f) an unscheduled visit to the child's home; and

179 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure
180 to meet the child's medical needs, a medical examination. That examination shall be obtained no
181 later than 24 hours after the child was placed in protective custody.

182 (3) (a) [The] With regard to both pre- and post-removal, the division's determination of

183 whether a report is substantiated or unsubstantiated may be based on the child's statements alone.

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

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

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

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

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

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

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

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

200 (5) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends
201 and holidays, the Division of Child and Family Services shall convene a child protection team to
202 review the circumstances regarding removal of the child from his home, and prepare the testimony
203 and evidence that will be required of the division at the shelter hearing, in accordance with Section
204 78-3a-306.

205 (b) Members of that team shall include:

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

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

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

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

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

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

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

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

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

225 (8) The division may not close an investigation solely on the grounds that the division
226 investigator is unable to locate the child, until all reasonable efforts have been made to locate the
227 child and family members. Those efforts include:

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

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

233 **62A-4a-205 (Effective 07/01/00). Treatment plans.**

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

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

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

- 241 [(a)] (i) both of the child's natural parents, unless the whereabouts of a parent are
242 unknown;
- 243 [(b)] (ii) the child;
- 244 [(c)] (iii) the child's foster parents; and

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

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

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

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

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

256 (a) the reason the child entered Division of Child and Family Services custody, and
257 documentation of the reasonable efforts made to prevent placement, or documentation of the
258 emergency situation that existed and that prevented reasonable efforts;

259 (b) the primary permanency goal for the child and the reason for selection of that goal;

260 (c) the concurrent permanency goal for the child and the reason for the selection of that
261 goal;

262 (d) if the plan is for the child to return to his family, specifically what the parents must do
263 in order to enable the child to be returned home, specifically how those requirements may be
264 accomplished, and how those requirements will be measured;

265 (e) the specific services needed to reduce the problems that necessitated placement in the
266 division's custody, and who will provide for and be responsible for case management;

267 (f) a visitation schedule between the natural parent and the child;

268 (g) the health care to be provided to the child, and the mental health care to be provided
269 to address any known or diagnosed mental health needs of the child. If residential treatment, rather
270 than a foster home, is the proposed placement, a specialized assessment of the child's health needs
271 shall be conducted, including an assessment of mental illness and behavior and conduct disorders;
272 and

273 (h) social summaries that include case history information pertinent to case planning.

274 (7) (a) [~~The~~] Each treatment plan shall be specific to each child and his family, rather than
275 general. The division shall train its workers to develop treatment plans that comply with federal

276 mandates and the specific needs of the particular child and his family[;].

277 (b) [all] All treatment plans and expectations shall be individualized and contain specific
278 time frames[;].

279 (c) [~~treatment~~] Treatment plans shall address problems that keep children in placement and
280 keep them from achieving permanence in their lives[~~and~~].

281 (d) [~~the~~] The child's natural parents, foster parents, and where appropriate, stepparents,
282 shall be kept informed of and supported to participate in important meetings and procedures related
283 to the child's placement.

284 (8) With regard to a child who is three years of age or younger, if the goal is not to return
285 the child home, the permanency plan for that child shall be adoption unless there are documented
286 extenuating circumstances that justify long-term foster care or guardianship.

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

288 **62A-4a-409. Investigation by division -- Temporary protective custody.**

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

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

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

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

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

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

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

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

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

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

319 (b) In cases where a child's welfare will not be endangered, and when the reported or
320 alleged perpetrator is not a parent or stepparent of the child or a person residing in the same
321 household as the child, division workers may not interview or question the child without prior
322 notification and permission of at least one parent of the child.

323 (9) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through
324 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take a child
325 into protective custody, and deliver the child to a law enforcement officer, or place the child in an
326 emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent
327 to the child's removal from its original environment. Control and jurisdiction over the child is
328 determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

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

330 **78-3a-301. Removing a child from his home -- Grounds for removal.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

368 (3) The Division of Child and Family Services shall comply with the provisions of Section

369 62A-4a-202.1 in effecting removal of a child pursuant to this section.

370 [(3)] (4) (a) A minor removed from the custody of his natural parent under this section may
371 not be placed or kept in a secure detention facility pending court proceedings unless the minor is
372 detainable based on guidelines promulgated by the Division of Youth Corrections.

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

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

376 **78-3a-306. Shelter hearing.**

377 (1) With regard to a child who has been removed by the Division of Child and Family
378 Services, or who is in the protective custody of the division, a shelter hearing shall be held within
379 72 hours after removal of the child from his home, excluding weekends and holidays.

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

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

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

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

385 (d) a concise statement regarding the reasons for removal, and of the allegations and code
386 sections under which the proceeding has been instituted;

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

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

395 (3) That notice shall be personally served as soon as possible, but [~~at least 24 hours prior~~
396 ~~to the time set for the shelter hearing~~] no later than 24 hours after removal of a child from his
397 home, on:

398 (a) the appropriate guardian ad litem; and

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

- 400 (4) The following persons shall be present at the shelter hearing:
- 401 (a) the child, unless it would be detrimental for the child;
- 402 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
- 403 response to the notice;
- 404 (c) counsel for the parents, if one has been requested;
- 405 (d) the child's guardian ad litem;
- 406 (e) the caseworker from the Division of Child and Family Services who has been assigned
- 407 to the case; and
- 408 (f) the attorney from the attorney general's office who is representing the division.
- 409 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent
- 410 or guardian, if present, and any other person having relevant knowledge, to provide relevant
- 411 testimony. The court may also provide an opportunity for the minor to testify.
- 412 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
- 413 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or
- 414 guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
- 415 evidence to only that which goes to the issues of removal and the child's need for continued
- 416 protection.
- 417 (6) If the child is in the protective custody of the division, the division shall report to the
- 418 court:
- 419 (a) the reasons why the minor was removed from the parent's or guardian's custody;
- 420 (b) any services provided to the child and his family in an effort to prevent removal;
- 421 (c) the need, if any, for continued shelter;
- 422 (d) the available services that could facilitate the return of the minor to the custody of his
- 423 parent or guardian; and
- 424 (e) whether the child has any relatives who may be able and willing to take temporary
- 425 custody.
- 426 (7) The court may not automatically presume the accuracy of reports or statements made
- 427 by the division, but shall give equal weight to all relevant evidence provided by persons or entities
- 428 authorized to present relevant evidence pursuant to this section.
- 429 [(7)] (8) If necessary to protect the child, preserve the rights of a party, or for other good
- 430 cause shown, the court may grant no more than one time-limited continuance, not to exceed five

431 judicial days.

432 [(8)] (9) The court shall order that the minor be released from the protective custody of the
433 division unless it finds, by a preponderance of the evidence, that any one of the following exist:

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

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

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

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

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

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

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

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

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

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

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

461 (k) the parent, or an adult residing in the same household as the parent, has been charged

462 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
463 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the
464 property where the child resided; or

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

466 ~~[(9)]~~ (10) (a) The court shall also make a determination on the record as to whether
467 reasonable efforts were made to prevent or eliminate the need for removal of the minor from his
468 home and whether there are available services that would prevent the need for continued removal.
469 If the court finds that the minor can be safely returned to the custody of his parent or guardian
470 through the provision of those services, it shall place the minor with his parent or guardian and
471 order that those services be provided by the division.

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

474 ~~[(10)]~~ (11) Where the division's first contact with the family occurred during an emergency
475 situation in which the child could not safely remain at home, the court shall make a finding that
476 any lack of preplacement preventive efforts was appropriate.

477 ~~[(11)]~~ (12) In cases where actual sexual abuse or abandonment, or serious physical abuse
478 or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
479 or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide
480 reunification services, or attempt to rehabilitate the offending parent or parents.

481 ~~[(12)]~~ (13) The court may not order continued removal of a minor solely on the basis of
482 educational neglect as described in Subsection 78-3a-103(1)(r)(ii).

483 ~~[(13)]~~ (14) (a) Whenever a court orders continued removal of a minor under this section,
484 it shall state the facts on which that decision is based.

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

487 ~~[(14)]~~ (15) If the court finds that continued removal and temporary custody are necessary
488 for the protection of a child because harm may result to the child if he were returned home, it shall
489 order continued removal regardless of any error in the initial removal of the child, or the failure
490 of a party to comply with notice provisions, or any other procedural requirement of this chapter
491 or Title 62A, Chapter 4a, Child and Family Services.

492 Section 11. Section **78-3a-308** is amended to read:

493 **78-3a-308. Pretrial and adjudication hearing -- Time deadlines.**

494 (1) Upon the filing of a petition, the clerk of the court shall set the pretrial hearing on the
495 petition within 15 calendar days from the date of the shelter hearing.

496 (2) The pretrial may be continued upon motion of any party, for good cause shown, but
497 the final adjudication hearing shall be held no later than [60] 30 calendar days from the date of the
498 shelter hearing.

499 Section 12. **Effective date.**

500 This act takes effect on May 1, 2000, except that Section 62A-4a-205 takes effect on July
501 1, 2000.

Legislative Review Note
as of 1-14-00 2:30 PM

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

Office of Legislative Research and General Counsel