

**AMENDING THE GROUNDS FOR TAKING A
CHILD INTO PROTECTIVE CUSTODY**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

This act modifies the requirements for taking a child into protective custody when child abuse is suspected. This act requires a court-ordered warrant to take a child into protective custody except in limited circumstances. This act requires the standard of reasonable basis approaching probable cause for action without a warrant.

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

AMENDS:

62A-4a-202.1, as last amended by Chapter 274, Laws of Utah 2000

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

Section 1. 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.~~] A state officer, peace officer, or child welfare worker may not remove a child from the child's home or school, or take a child into protective custody without a warrant or court order issued under Section 78-3a-106 unless:

(a) the state officer, peace officer, or child welfare worker has reasonable grounds to believe that the exigent circumstances described in Section 78-3a-301 exist and pose a substantial danger to the physical health or safety of the child; and

(b) the removal of the child or placement of the child into protective custody is not motivated purely by an intent to seize or obtain evidence unrelated to the potential abuse or neglect allegation.

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

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

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

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

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

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

Office of Legislative Research and General Counsel