

1 **TAKING MINOR INTO PROTECTIVE**
2 **CUSTODY WITHOUT WARRANT**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Thomas V. Hatch**

6 **This act amends the Human Services Code and the Judicial Code. The act provides that a**
7 **state officer, peace officer, or child welfare worker may not remove a minor from the minor's**
8 **home or school or take the minor into protective custody without a warrant or court order**
9 **unless a parent or guardian consents, or there is probable cause to believe that any one or**
10 **more of enumerated circumstances exist and the circumstances present a substantial,**
11 **immediate threat to the health or safety of the minor. The act allows a juvenile court judge**
12 **to authorize a child protective services worker to execute a warrant. The act amends and**
13 **clarifies the grounds for a court ordering that a minor be removed from the minor's home**
14 **or otherwise taken into protective custody, after the filing of a petition alleging abuse,**
15 **neglect, or dependency. The act makes technical changes. The act provides an effective date.**

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

17 AMENDS:

18 **62A-4a-202.1**, as last amended by Chapter 167, Laws of Utah 2001

19 **62A-4a-202.3**, as last amended by Chapters 208 and 250, Laws of Utah 2001

20 **62A-4a-209**, as enacted by Chapter 250, Laws of Utah 2001

21 **62A-4a-409**, as last amended by Chapter 208, Laws of Utah 2001

22 **78-3a-106**, as last amended by Chapter 153, Laws of Utah 2001

23 **78-3a-301** [~~Subsection (1)(m) Repealed 07/01/02~~], as last amended by Chapters 153
24 and 250, Laws of Utah 2001

25 **78-3a-306**, as last amended by Chapter 250, Laws of Utah 2001

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

27 Section 1. Section **62A-4a-202.1** is amended to read:



28 **62A-4a-202.1. Taking a minor into protective custody without warrant -- Peace**
29 **officer -- Division of Child and Family Services caseworker -- Immediate threat -- Shelter**
30 **care or emergency kinship.**

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

35 ~~[(a) the state officer, peace officer, or child welfare worker has reasonable grounds to~~
36 ~~believe that the exigent circumstances described in Section 78-3a-301, which defines substantial~~
37 ~~danger to a child's health or safety, exist; and]~~

38 (a) a parent or guardian consents; or

39 (b) (i) there is probable cause to believe that one or more of the circumstances identified
40 in Subsection 78-3a-301(1) exist;

41 (ii) the circumstance or circumstances referred to in Subsection (1)(b)(i) present a
42 substantial, immediate threat to the health or safety of the minor; and

43 (iii) there are no services reasonably available that would eliminate the need for removal.

44 ~~[(b)]~~ (2) [the removal of the child or placement of the child] A state officer, peace officer,
45 or child welfare worker may not remove a minor from the minor's home or school or take a minor
46 into protective custody [is not] under Subsection (1) if motivated [purely] solely by an intent to
47 seize or obtain evidence unrelated to the potential abuse or neglect allegation.

48 (3) In the absence of circumstances that demonstrate a substantial, immediate threat to the
49 health or safety of a minor, a state officer, peace officer, or child welfare worker may not remove
50 a minor from the minor's home or school or take a minor into protective custody under Subsection
51 (1) on the basis of:

52 (a) mental illness or poverty of the parent or guardian; or

53 (b) educational neglect.

54 ~~[(2)]~~ (4) [(a)] A child welfare worker within the division [of Child and Family Services]
55 may take [and maintain protective custody of a minor, without a warrant, in accordance with the
56 requirements of this section and Section 78-3a-301 when] action under Subsection (1)
57 accompanied by a peace officer, or without a peace officer[;] when a peace officer is not
58 reasonably available.

59 ~~[(b)]~~ (5) If possible, consistent with the ~~[child's]~~ minor's safety and welfare, before taking
60 a ~~[child]~~ minor into protective custody, the worker shall also determine whether there are services
61 reasonably available to the worker which, if provided to the minor's parent or to the minor, would
62 eliminate the need to remove the minor from the custody of ~~[his]~~ the minor's parent ~~[-in accordance~~
63 ~~with the provisions and limitations of Section 78-3a-301]~~ or guardian. If those services are
64 reasonably available, they shall be utilized. In determining whether services are reasonably
65 available, and in making reasonable efforts to provide those services, the ~~[child's]~~ minor's health,
66 safety, and welfare shall be the worker's paramount concern.

67 ~~[(c)(i) Except as provided in Subsection (2)(c)(ii), if a child welfare worker determines~~
68 ~~that there is substantial cause to believe that one or more of the factors described in Section~~
69 ~~78-3a-301 exist and determines, pursuant to Subsection (2)(b), that services are not reasonably~~
70 ~~available to eliminate the need for removal, the child welfare worker may proceed with removal~~
71 ~~of the child after the worker has reviewed the reasons for removal and other available options with~~
72 ~~a family services specialist within the division.]~~

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

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

80 (6) (a) A minor removed or taken into custody under this section may not be placed or kept
81 in a secure detention facility pending court proceedings unless the minor is detainable based on
82 guidelines promulgated by the Division of Youth Corrections.

83 (b) A minor removed from the custody of the minor's parent or guardian but who does not
84 require physical restriction shall be given temporary care in:

85 (i) a shelter facility; or

86 (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

87 Section 2. Section **62A-4a-202.3** is amended to read:

88 **62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective**
89 **custody.**

90 (1) When a child is taken into protective custody in accordance with [~~Sections~~] Section
91 62A-4a-202.1 [~~and~~], 78-3a-106, or 78-3a-301, or when the division takes any other action which
92 would require a shelter hearing under Subsection 78-3a-306(1), the [~~Division of Child and Family~~
93 ~~Services~~] division shall immediately initiate an investigation of the circumstances of the minor and
94 the facts surrounding [~~his~~] the minor's being taken into protective custody.

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

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

99 (b) with regard to a child who is five years of age or older, a personal interview with the
100 child outside of the presence of the alleged perpetrator, conducted in accordance with the
101 requirements of Subsection (7);

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

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

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

107 (f) an unscheduled visit to the child's home, unless the division has reasonable cause to
108 believe that the reported abuse was committed by a person who does not:

109 (i) live in the child's home; or

110 (ii) have access to the child; and

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

114 (3) The division may rely on a written report of a prior interview rather than conducting
115 an additional interview, if:

116 (a) law enforcement has previously conducted a timely and thorough investigation
117 regarding the alleged abuse or neglect and has produced a written report;

118 (b) that investigation included one or more of the interviews required by Subsection (2);
119 and

120 (c) the division finds that an additional interview is not in the best interest of the child.

121 (4) (a) The division's determination of whether a report is substantiated or unsubstantiated
122 may be based on the child's statements alone.

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

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

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

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

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

133 (b) shelter of the minor is a matter of necessity for the protection of the minor and there
134 are no reasonable means by which the minor can be protected in [~~his~~] the minor's home or the
135 home of a responsible relative;

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

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

139 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends
140 and holidays, the [~~Division of Child and Family Services~~] division shall convene a child protection
141 team to review the circumstances regarding removal of the child from [~~his~~] the child's home or
142 school, and prepare the testimony and evidence that will be required of the division at the shelter
143 hearing, in accordance with Section 78-3a-306.

144 (b) Members of that team shall include:

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

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

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

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

151 (v) if appropriate, and known to the division, a therapist or counselor who is familiar with

152 the child's circumstances; and

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

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

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

162 (8) The division shall cooperate with law enforcement investigations regarding the alleged
163 perpetrator.

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

167 (a) visiting the home at times other than normal work hours;

168 (b) contacting local schools;

169 (c) contacting local, county, and state law enforcement agencies; and

170 (d) checking public assistance records.

171 Section 3. Section **62A-4a-209** is amended to read:

172 **62A-4a-209. Emergency kinship placement.**

173 (1) The division may use an emergency kinship placement under Subsection
174 [~~78-3a-301(4)~~] 62A-4a-202.1(6) when:

175 (a) the case worker has made the determination that:

176 (i) the child's home is unsafe;

177 (ii) removal is necessary under the provisions of Section [~~78-3a-301~~] 62A-4a-202.1; and

178 (iii) the child's custodial parent or guardian will agree to not remove the child from the
179 relative's home who serves as the kinship placement and not have any contact with the child until
180 after the shelter hearing required by Section 78-3a-306;

181 (b) a relative, with preference being given to a noncustodial parent in accordance with
182 Section 78-3a-307, can be identified who has the ability and is willing to provide care for the child

183 who would otherwise be placed in shelter care, including:

184 (i) taking the child to medical, mental health, dental, and educational appointments at the
185 request of the division; and

186 (ii) the relative has the ability to make the child available to division services and the
187 guardian ad litem; and

188 (c) the relative agrees to care for the child on an emergency basis under the following
189 conditions:

190 (i) the relative meets the criteria for an emergency kinship placement under Subsection (2);

191 (ii) the relative agrees to not allow the custodial parent or guardian to have any contact
192 with the child until after the shelter hearing unless authorized by the division in writing;

193 (iii) the relative agrees to contact law enforcement and the division if the custodial parent
194 or guardian attempts to make unauthorized contact with the child;

195 (iv) the relative agrees to allow the division and the child's guardian ad litem to have
196 access to the child;

197 (v) the relative has been informed and understands that the division may continue to search
198 for other possible kinship placements for long-term care, if needed;

199 (vi) the relative is willing to assist the custodial parent or guardian in reunification efforts
200 at the request of the division, and to follow all court orders; and

201 (vii) the child is comfortable with the relative.

202 (2) Before the division places a child in an emergency kinship placement, the division
203 must:

204 (a) request the name of a reference and when possible, contact the reference and determine
205 the answer to the following questions:

206 (i) would the person identified as a reference place a child in the home of the emergency
207 kinship placement; and

208 (ii) are there any other relatives to consider as a possible emergency or long-term
209 placement for the child;

210 (b) have the custodial parent or guardian sign an emergency kinship placement agreement
211 form during the investigation;

212 (c) complete a criminal background check described in Sections 62A-4a-202.4 and
213 78-3a-307.1 on all persons living in the relative's household;

- 214 (d) complete a home inspection of the relative's home; and
- 215 (e) have the emergency kinship placement approved by a family service specialist.
- 216 (3) As soon as possible after the emergency placement and prior to the shelter hearing
- 217 required by Section 78-3a-306, the division shall convene a family unity meeting.
- 218 (4) After an emergency kinship placement, the division caseworker must:
- 219 (a) respond to the emergency kinship placement's calls within one hour if the custodial
- 220 parents or guardians attempt to make unauthorized contact with the child or attempt to remove the
- 221 child;
- 222 (b) complete all removal paperwork, including the notice provided to the custodial parents
- 223 and guardians under Section 78-3a-306;
- 224 (c) contact the attorney general to schedule a shelter hearing;
- 225 (d) complete the kinship procedures required in Section 78-3a-307, including, within five
- 226 days after placement, the criminal history record check described in Subsection (5); and
- 227 (e) continue to search for other relatives as a possible long-term placement, if needed.
- 228 (5) (a) In order to determine the suitability of the kinship placement and to conduct a
- 229 background screening and investigation of individuals living in the household in which a child is
- 230 placed, each individual living in the household in which the child is placed shall be fingerprinted.
- 231 If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the
- 232 division to the Federal Bureau of Investigation for a national criminal history record check.
- 233 (b) The cost of those investigations shall be borne by whomever received placement of
- 234 the child, except that the division may pay all or part of the cost of those investigations if the
- 235 person with whom the child is placed is unable to pay.
- 236 Section 4. Section **62A-4a-409** is amended to read:
- 237 **62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval**
- 238 **interviews of children.**
- 239 (1) The division shall make a thorough pre-removal investigation upon receiving either
- 240 an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
- 241 dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal alcohol
- 242 syndrome, or fetal drug dependency. The primary purpose of that investigation shall be protection
- 243 of the child.
- 244 (2) The preremoval investigation shall include the same investigative requirements

245 described in Section 62A-4a-202.3.

246 (3) The division shall make a written report of its investigation. The written report shall
247 include a determination regarding whether the alleged abuse or neglect was substantiated,
248 unsubstantiated, or without merit.

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

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

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

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

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

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

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

270 (9) With regard to any interview of a child prior to removal of that child from ~~his~~ the
271 child's home:

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

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

276 with the child;

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

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

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

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

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

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

290 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1
291 through 62A-4a-202.3 [~~and 78-3a-301~~], a division worker or child protection team member may
292 take a child into protective custody[;] and deliver the child to a law enforcement officer, or place
293 the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity
294 subsequent to the child's removal from [its] the child's original environment. Control and
295 jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile Court
296 Act of 1996, and as otherwise provided by law.

297 (11) With regard to cases in which law enforcement has or is conducting an investigation
298 of alleged abuse or neglect of a child:

299 (a) the division shall coordinate with law enforcement to ensure that there is an adequate
300 safety plan to protect the child from further abuse or neglect; and

301 (b) the division is not required to duplicate an aspect of the investigation that, in the
302 division's determination, has been satisfactorily completed by law enforcement.

303 Section 5. Section **78-3a-106** is amended to read:

304 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

305 (1) The court has authority to issue search warrants, subpoenas, or investigative subpoenas
306 in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same

307 purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal
 308 procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial
 309 courts in the state.

310 (2) (a) If it appears to the court upon an affidavit sworn to by a peace officer or any other
 311 person, and upon the examination of other witnesses, if required by the judge, that there is probable
 312 cause to believe that a child is being ill-treated by ~~his~~ the child's parent, guardian, or custodian,
 313 or is being detained, ill-treated, or harbored against the desires of ~~his~~ the child's parent, guardian,
 314 or custodian, in any place within the jurisdiction of the court, the court may issue a warrant
 315 authorizing a child protective services worker or peace officer to search for the child and take the
 316 child into protective custody.

317 (b) Pursuant to Section 77-23-210, ~~the~~ a peace officer making the search may enter a
 318 house or premises by force, if necessary, in order to remove the child.

319 (c) The ~~officer~~ person executing the warrant shall then take the child to the place of
 320 shelter designated by the court.

321 Section 6. Section **78-3a-301** [~~Subsection (1)(m) Repealed 07/01/02~~] is amended to
 322 read:

323 **78-3a-301** [~~Subsection (1)(m) is repealed 07/01/02~~]. **Court-ordered removal of a**
 324 **minor from the child's home or school following petition filing -- Grounds for removal.**

325 (1) [~~The Division of Child and Family Services may not remove a child from the custody~~
 326 ~~of his natural parent unless the division complies with the provisions of Title 62A, Chapter 4a,~~
 327 ~~Child and Family Services, including Subsections 62A-4a-103(2)(b) and 62A-4a-201(3), and~~
 328 ~~unless there is substantial cause to believe]~~ After a petition has been filed under Subsection
 329 78-3a-305(1), if the minor who is the subject of the petition is not in the protective custody of the
 330 division, a court may order that the minor be removed from the minor's home or otherwise taken
 331 into protective custody if the court finds, by a preponderance of the evidence, that any one or more
 332 of the following circumstances 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~~ the minor from ~~his~~
 335 parent's the custody of the minor's parent or guardian. If a minor has previously been adjudicated
 336 as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency has
 337 occurred involving the same alleged abuser or under similar circumstance as the previous abuse,

338 that fact constitutes prima facie evidence that the [child] minor cannot safely remain in the custody
339 of [his] the minor's parent;

340 (b) a parent or guardian engages in or threatens the [child] minor with unreasonable
341 conduct that causes the minor to suffer emotional damage and there are no reasonable means
342 available by which the minor's emotional health may be protected without removing the minor
343 from the custody of [his] the minor's parent or guardian;

344 (c) (i) the minor or another minor residing in the same household has been physically or
345 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
346 a parent or guardian, a member of the parent's or guardian's household, or other person known to
347 the parent or guardian.

348 (ii) For purposes of this Subsection (1)(c), another minor residing in the same household
349 may not be removed from the home unless that minor is [~~deemed~~] considered to be at substantial
350 risk of being physically or sexually abused as described in Subsection (1)(c)(i) or (iii).

351 (iii) If a parent or guardian has received actual notice that physical or sexual abuse by a
352 person known to the parent has occurred, and there is evidence that the parent or guardian failed
353 to protect the [child] minor by allowing the [child] minor to be in the physical presence of the
354 alleged abuser, that fact constitutes prima facie evidence that the [child] minor is at substantial risk
355 of being physically or sexually abused;

356 (d) the parent or guardian is unwilling to have physical custody of the [child] minor;

357 (e) the minor has been abandoned or left without any provision for [his] the minor's
358 support;

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

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

365 (h) the minor is in immediate need of [~~urgent~~] medical care;

366 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment
367 that poses a threat to the [child's] minor's health or safety; or

368 (ii) a parent's or guardian's action in leaving a [child] minor unattended would reasonably

369 pose a threat to the [child's] minor's health or safety;

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

371 (ii) for purposes of Subsection (j)(i), another minor residing in the same household may
372 not be removed unless that minor is deemed to be at substantial risk of being neglected;

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

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

378 (m) the [child's] minor's welfare is otherwise endangered~~[-as documented by the~~
379 ~~caseworker. This Subsection (1)(m) is repealed on July 1, 2002 unless further authorized by the~~
380 ~~Legislature].~~

381 (2) ~~[The Division of Child and Family Services]~~ A court may not remove a minor from
382 the parent's or guardian's custody ~~[of his parent solely]~~ on the basis of educational neglect, in the
383 absence of one of the factors described in Subsection (1).

384 (3) ~~[The Division of Child and Family Services]~~ A court may not remove a minor from
385 the parent's or guardian's custody ~~[of his parent solely]~~ on the basis of mental illness or poverty of
386 the parent or guardian, in the absence of one of the factors described in Subsection (1).

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

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

393 ~~[(b) A minor removed from the custody of his natural parent but who does not require~~
394 ~~physical restriction shall be given temporary care in:]~~

395 ~~[(i) a shelter facility; or]~~

396 ~~[(ii) an emergency kinship placement in accordance with Section 62A-4a-209.]~~

397 (5) This section does not preclude removal of a minor from the minor's home without a
398 warrant or court order under Section 62A-4a-202.1.

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

400 **78-3a-306. Shelter hearing.**

401 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after
402 any one or all of the following occur:

403 (a) removal of the child from his home by the Division of Child and Family Services;

404 (b) placement of the child in the protective custody of the Division of Child and Family
405 Services;

406 (c) emergency kinship placement under Subsection [~~78-3a-301(4)(b)(ii)~~] 62A-4a-202.1(6);

407 or

408 (d) as an alternative to removal of the child, a parent has entered a domestic violence
409 shelter at the request of the Division of Child and Family Services.

410 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
411 through (1)(d), the division shall issue a notice that contains all of the following:

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

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

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

415 (d) a concise statement regarding:

416 (i) the reasons for removal or other action of the division under Subsection (1); and

417 (ii) the allegations and code sections under which the proceeding has been instituted;

418 (e) a statement that the parent or guardian to whom notice is given, and the minor, are

419 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is

420 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be

421 provided; and

422 (f) a statement that the parent or guardian is liable for the cost of support of the minor in

423 the protective custody, temporary custody, and custody of the division, and the cost for legal

424 counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial

425 ability.

426 (3) That notice shall be personally served as soon as possible, but no later than one
427 business day after removal of a child from his home, on:

428 (a) the appropriate guardian ad litem; and

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

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

- 431 (a) the child, unless it would be detrimental for the child;
- 432 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
433 response to the notice;
- 434 (c) counsel for the parents, if one has been requested;
- 435 (d) the child's guardian ad litem;
- 436 (e) the caseworker from the Division of Child and Family Services who has been assigned
437 to the case; and
- 438 (f) the attorney from the attorney general's office who is representing the division.
- 439 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent
440 or guardian, if present, and any other person having relevant knowledge, to provide relevant
441 testimony. The court may also provide an opportunity for the minor to testify.
- 442 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
443 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or
444 guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
445 evidence to only that which goes to the issues of removal and the child's need for continued
446 protection.
- 447 (6) If the child is in the protective custody of the division, the division shall report to the
448 court:
 - 449 (a) the reasons why the minor was removed from the parent's or guardian's custody;
 - 450 (b) any services provided to the child and his family in an effort to prevent removal;
 - 451 (c) the need, if any, for continued shelter;
 - 452 (d) the available services that could facilitate the return of the minor to the custody of his
453 parent or guardian; and
 - 454 (e) whether the child has any relatives who may be able and willing to take temporary
455 custody.
- 456 (7) The court shall consider all relevant evidence provided by persons or entities
457 authorized to present relevant evidence pursuant to this section.
- 458 (8) If necessary to protect the child, preserve the rights of a party, or for other good cause
459 shown, the court may grant no more than one time-limited continuance, not to exceed five judicial
460 days.
- 461 (9) If the child is in the protective custody of the division, the court shall order that the

462 minor be released from the protective custody of the division unless it finds, by a preponderance
463 of the evidence, that any one of the following exist:

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

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

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

473 (c) the minor or another minor residing in the same household has been physically or
474 sexually abused, or is [~~deemed~~] considered to be at substantial risk of being physically or sexually
475 abused, by a parent, a member of the parent's household, or other person known to the parent. If
476 a parent has received actual notice that physical or sexual abuse by a person known to the parent
477 has occurred, and there is evidence that the parent has allowed the child to be in the physical
478 presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at
479 substantial risk of being physically or sexually abused;

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

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

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

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

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

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

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

491 (k) the parent, or an adult residing in the same household as the parent, has been charged
492 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine

493 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the
494 property where the child resided; or

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

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

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

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

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

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

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

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

517 (15) If the court finds that continued removal and temporary custody are necessary for the
518 protection of a child because harm may result to the child if he were returned home, it shall order
519 continued removal regardless of any error in the initial removal of the child, or the failure of a
520 party to comply with notice provisions, or any other procedural requirement of this chapter or Title
521 62A, Chapter 4a, Child and Family Services.

522 Section 8. **Effective date.**

523 This act takes effect on July 1, 2002.

Legislative Review Note
as of 1-31-02 1:47 PM

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

Office of Legislative Research and General Counsel