

Senator Bill Wright proposes the following substitute bill:

**WARRANT FOR REMOVAL OF MINOR FROM
HOME**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

This act modifies the Human Services Code and the Judicial Code. The act provides that a minor may not be removed from the minor's home or school or be taken into protective custody with or without a criminal warrant unless the minor's parent or guardian consents, or there is probable cause to believe any one or more of enumerated circumstances exist. The act amends and clarifies the grounds for a court ordering that a minor be removed from the minor's home or otherwise taken into protective custody, after the filing of a petition alleging abuse, neglect, or dependency. The act makes technical changes. The act amends provisions relating to the authority to issue search warrants and subpoenas.

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

AMENDS:

62A-4a-202.1, as last amended by Chapter 265, Laws of Utah 2002

78-3a-106, as last amended by Chapter 265, Laws of Utah 2002

78-3a-306, as last amended by Chapter 265, Laws of Utah 2002

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 minor into protective custody with or without warrant or court order -- Peace officer -- Division of Child and Family Services caseworker -- Consent or specified circumstances -- Shelter care or emergency kinship.

(1) A state officer, peace officer, or child welfare worker may not, without [a] the



26 ~~consent of the minor's parent or guardian, a criminal~~ warrant, or ~~a~~ court order issued under
27 Section 78-3a-106, remove a minor from the minor's home or school, or take a minor into
28 protective custody unless~~[:]~~ there exist exigent circumstances.

29 ~~[(a) a parent or guardian consents; or]~~

30 ~~[(b) the officer or worker has, at the time, probable cause to believe that one or more of~~
31 ~~the following circumstances exist:]~~

32 ~~[(i) there is imminent danger to the physical health or safety of the minor, and the~~
33 ~~minor's physical health or safety may not be protected without removing the minor from the~~
34 ~~custody of the minor's parent or guardian;]~~

35 ~~[(ii) there is a substantial risk to the minor of being physically or sexually abused by a~~
36 ~~parent or guardian, a member of the parent's or guardian's household, or another person known~~
37 ~~to the parent or guardian;]~~

38 ~~[(iii) the parent or guardian is unwilling to have physical custody of the minor;]~~

39 ~~[(iv) the minor has been abandoned without any provision for the minor's support;]~~

40 ~~[(v) a parent who has been incarcerated or institutionalized has not arranged or cannot~~
41 ~~arrange for safe and appropriate care for the minor;]~~

42 ~~[(vi) a relative or other adult custodian with whom the parent or guardian has left the~~
43 ~~minor is unwilling or unable to provide care or support for the minor, the whereabouts of the~~
44 ~~parent or guardian are unknown, and reasonable efforts to locate the parent or guardian have~~
45 ~~been unsuccessful; or]~~

46 ~~[(vii) an infant has been abandoned, as defined in Section 78-3a-313.5.]~~

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

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

55 ~~[(a) mental illness or poverty of the parent or guardian; or]~~

56 ~~[(b) educational neglect.]~~

57 ~~[(4)]~~ (2) A child welfare worker within the division may take action under Subsection
58 (1) accompanied by a peace officer, or without a peace officer when a peace officer is not
59 reasonably available.

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

67 ~~[(6)]~~ (4) (a) A minor removed or taken into custody under this section may not be
68 placed or kept in a secure detention facility pending court proceedings unless the minor is
69 detainable based on guidelines promulgated by the Division of Youth Corrections.

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

72 (i) a shelter facility; or

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

74 Section 2. Section **78-3a-106** is amended to read:

75 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

76 (1) The court has authority to issue search warrants, subpoenas, or investigative
77 subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for
78 the same purposes, in the same manner and pursuant to the same procedures set forth in the
79 code of criminal procedure for the issuance of search warrants, subpoenas, or investigative
80 subpoenas in other trial courts in the state.

81 ~~[(2) (a) If it appears to the court upon an affidavit sworn to by a peace officer or any
82 other person, and upon the examination of other witnesses, if required by the judge, that there
83 is probable cause to believe that a child is being ill-treated by the child's parent, guardian, or
84 custodian, or is being detained, ill-treated, or harbored against the desires of the child's parent,
85 guardian, or custodian, in any place within the jurisdiction of the court, the court may issue a
86 warrant authorizing a child protective services worker or peace officer to search for the child
87 and take the child into protective custody.]~~

88 (2) (a) The court may issue a warrant authorizing a child protective services worker or
89 peace officer to search for a child and take the child into protective custody if it appears to the
90 court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace
91 officer or any other person, and upon the examination of other witnesses, if required by the
92 judge, that there is probable cause to believe that:

- 93 (i) there is an immediate threat to the safety of a child; and
- 94 (ii) the applicant certifies to the court in writing or by recorded sworn testimony as to
95 the efforts, if any, that have been made to give notice to the minor's parent or guardian and the
96 reasons supporting the claim that notice and an opportunity to be heard should not be required.

97 (b) A warrant removing a child from his home or school, or having the effect of
98 depriving a parent or guardian of the care, custody, and control of their minor child, may not be
99 issued without notice to the minor's parents and opportunity to be heard unless the
100 requirements of Subsection 78-3a-106(a)(i)and(ii) have been satisfied.

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

103 ~~[(c)]~~ (d) The person executing the warrant shall then take the child to the place of
104 shelter designated by the court.

105 (3) The parent or guardian to be notified must be the minor's primary care giver, or the
106 person who has custody of the minor, when the order is sought.

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

108 **78-3a-306. Shelter hearing.**

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

- 111 (a) removal of the child from his home by the Division of Child and Family Services;
- 112 (b) placement of the child in the protective custody of the Division of Child and Family
113 Services;

114 (c) emergency kinship placement under Subsection 62A-4a-202.1~~[(6)]~~ (4); or

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

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

- 119 (a) the name and address of the person to whom the notice is directed;
- 120 (b) the date, time, and place of the shelter hearing;
- 121 (c) the name of the minor on whose behalf a petition is being brought;
- 122 (d) a concise statement regarding:
- 123 (i) the reasons for removal or other action of the division under Subsection (1); and
- 124 (ii) the allegations and code sections under which the proceeding has been instituted;
- 125 (e) a statement that the parent or guardian to whom notice is given, and the minor, are
- 126 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
- 127 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
- 128 provided; and
- 129 (f) a statement that the parent or guardian is liable for the cost of support of the minor
- 130 in the protective custody, temporary custody, and custody of the division, and the cost for legal
- 131 counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial
- 132 ability.
- 133 (3) That notice shall be personally served as soon as possible, but no later than one
- 134 business day after removal of a child from his home, on:
- 135 (a) the appropriate guardian ad litem; and
- 136 (b) both parents and any guardian of the minor, unless they cannot be located.
- 137 (4) The following persons shall be present at the shelter hearing:
- 138 (a) the child, unless it would be detrimental for the child;
- 139 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
- 140 response to the notice;
- 141 (c) counsel for the parents, if one has been requested;
- 142 (d) the child's guardian ad litem;
- 143 (e) the caseworker from the Division of Child and Family Services who has been
- 144 assigned to the case; and
- 145 (f) the attorney from the attorney general's office who is representing the division.
- 146 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's
- 147 parent or guardian, if present, and any other person having relevant knowledge, to provide
- 148 relevant testimony. The court may also provide an opportunity for the minor to testify.
- 149 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of

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

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

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

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

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

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

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

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

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

168 (9) If the child is in the protective custody of the division, the court shall order that the
169 minor be released from the protective custody of the division unless it finds, by a
170 preponderance of the evidence, that any one of the following exist:

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

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

180 (c) the minor or another minor residing in the same household has been physically or

181 sexually abused, or is considered to be at substantial risk of being physically or sexually
182 abused, by a parent, a member of the parent's household, or other person known to the parent.
183 If a parent has received actual notice that physical or sexual abuse by a person known to the
184 parent has occurred, and there is evidence that the parent has allowed the child to be in the
185 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child
186 is at substantial risk of being physically or sexually abused;

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

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

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

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

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

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

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

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

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

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

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

211 (11) Where the division's first contact with the family occurred during an emergency

212 situation in which the child could not safely remain at home, the court shall make a finding that
213 any lack of preplacement preventive efforts was appropriate.

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

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

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

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

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