

1 **PROTECTIVE CUSTODY OF ABUSED,**
2 **NEGLECTED, OR DEPENDENT CHILDREN**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Eric K. Hutchings**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Child and Family Services and Judicial Codes.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ prohibits a child from being taken into protective custody for child abuse, neglect,
13 or dependency except by a peace officer;
- 14 ▶ authorizes a child welfare worker from the Division of Child and Family Services to
15 accompany a peace officer taking a child into protective custody;
- 16 ▶ requires a peace officer who takes a child into protective custody to immediately
17 notify the Division of Child and Family Services;
- 18 ▶ prohibits a child from being taken into protective custody prior to completion of an
19 investigation by a peace officer under contract with the Division of Child and
20 Family Services, except in exigent circumstances;
- 21 ▶ provides standards for investigations conducted prior to taking a child into
22 protective custody;
- 23 ▶ authorizes the Division of Child and Family Services to contract with peace
24 officers;
- 25 ▶ authorizes a peace officer under contract with the Division of Child and Family
26 Services to access the division's Management Information System;
- 27 ▶ requires that investigations of reports that a child within the custody of the Division



28 of Child and Family Services has been abused or neglected be conducted by a peace
29 officer;

30 ▶ references existing law regarding protective custody by a physician, hospital, or
31 similar medical facility for not to exceed 72 hours under certain conditions;

32 ▶ makes conforming amendments; and

33 ▶ makes technical corrections.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 This bill takes effect on July 1, 2004.

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **62A-4a-202.1 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah
41 2003

42 **62A-4a-202.2**, as last amended by Chapter 10, Laws of Utah 2001, First Special
43 Session

44 **62A-4a-202.3**, as last amended by Chapter 265, Laws of Utah 2002

45 **62A-4a-202.6**, as last amended by Chapter 58, Laws of Utah 2001

46 **62A-4a-202.8**, as enacted by Chapter 326, Laws of Utah 2003

47 **62A-4a-209**, as last amended by Chapters 265 and 306, Laws of Utah 2002

48 **62A-4a-409**, as last amended by Chapter 265, Laws of Utah 2002

49 **62A-4a-410**, as last amended by Chapter 206, Laws of Utah 2002

50 **78-3a-106**, as last amended by Chapter 267, Laws of Utah 2003

51 **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003

52 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003

53

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

55 Section 1. Section **62A-4a-202.1 (Effective 07/01/04)** is amended to read:

56 **62A-4a-202.1 (Effective 07/01/04). Peace officer taking a minor into protective**
57 **custody with or without warrant or court order -- Caseworker may accompany --**
58 **Consent or specified circumstances -- Shelter care or emergency kinship.**

59 (1) A ~~[state officer,]~~ peace officer~~[, or child welfare worker]~~ may not, without the
60 consent of the minor's parent or guardian, a warrant, or a court order issued under Section
61 78-3a-106, remove a minor from the minor's home or school, or take a minor into protective
62 custody unless there exist exigent circumstances.

63 (2) A ~~[child welfare worker within the division may take action]~~ peace officer taking a
64 minor into protective custody under Subsection (1) may be accompanied by a ~~[peace officer, or~~
65 ~~without a peace officer when a peace officer is not reasonably available]~~ child welfare worker
66 from the division.

67 (3) If possible, consistent with the minor's safety and welfare, and before ~~[taking]~~ a
68 minor is taken into protective custody by a peace officer, the ~~[worker]~~ division shall ~~[also]~~
69 determine whether there are services reasonably available to the ~~[worker]~~ division which, if
70 provided to the minor's parent or to the minor, would eliminate the need to remove the minor
71 from the custody of the minor's parent or guardian. If those services are reasonably available,
72 they shall be utilized. In determining whether services are reasonably available, and in making
73 reasonable efforts to provide those services, the minor's health, safety, and welfare shall be the
74 ~~[worker's]~~ division's paramount concern.

75 (4) (a) A minor removed or taken into custody under this section may not be placed or
76 kept in a secure detention facility pending court proceedings unless the minor is detainable
77 based on guidelines promulgated by the Division of Juvenile Justice Services.

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

80 (i) a shelter facility; or

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

82 Section 2. Section ~~62A-4a-202.2~~ is amended to read:

83 **62A-4a-202.2. Notice to parents upon removal of child -- Locating noncustodial**
84 **parent -- Written statement of procedural rights and preliminary proceedings.**

85 (1) (a) Any peace officer ~~[or caseworker]~~ who takes a minor into protective custody
86 under exigent circumstances, pursuant to Section 62A-4a-202.1, shall immediately notify the
87 division. The division shall immediately use reasonable efforts to locate and inform, through
88 the most efficient means available, the parents, including a noncustodial parent, the guardian,
89 or responsible relative:

- 90 (i) that the minor has been taken into protective custody;
- 91 (ii) the reasons for removal and placement in protective custody;
- 92 (iii) that a written statement is available that explains the parent's procedural rights and
- 93 the preliminary stages of the investigation and shelter hearing; and
- 94 (iv) of a telephone number where the parent may access further information.

95 (b) For purposes of locating and informing the noncustodial parent as required in
 96 Subsection (1)(a), the division shall search for the noncustodial parent through the national
 97 parent locator database if the division is unable to locate the noncustodial parent through other
 98 reasonable efforts.

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

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

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

108 (3) If a good faith attempt was made by the [~~peace officer or caseworker~~] division to
 109 notify the parent or guardian in accordance with the requirements of Subsection (1), failure to
 110 notify shall be considered to be due to circumstances beyond the control of the [~~peace officer or~~
 111 ~~caseworker~~] division and may not be construed to permit a new defense to any juvenile or
 112 judicial proceeding or to interfere with any rights, procedures, or investigations provided for by
 113 this chapter or Title 78, Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996.

114 Section 3. Section **62A-4a-202.3** is amended to read:

115 **62A-4a-202.3. Investigation prior to custody -- Substantiation of reports -- Child**
 116 **in protective custody.**

117 (1) [~~When~~] Except as provided in Subsection (5), a child [is] may not be taken into
 118 protective custody in accordance with [Section] Sections 62A-4a-202.1, 78-3a-106, or
 119 78-3a-301, [or when the division takes any other action which would require a shelter hearing
 120 under Subsection 78-3a-306(1), the division shall immediately initiate] until a peace officer

121 under contract with the division, in accordance with this section, completes an investigation of
122 the allegations and circumstances [~~of the minor and the facts surrounding~~] that could result in
123 the minor's being taken into protective custody.

124 (2) (a) The [~~division's~~] investigation by the peace officer shall include, among other
125 actions necessary to meet reasonable professional standards:

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

129 [(b)] (ii) with regard to a child who is five years of age or older, a personal interview
130 with the child outside of the presence of the alleged perpetrator, conducted in accordance with
131 the requirements of Subsection [(7)] (10);

132 [(c)] (iii) an interview with the child's natural parents or other guardian, unless their
133 whereabouts are unknown;

134 [(d)] (iv) an interview with the person who reported the abuse, unless anonymous;

135 [(e)] (v) where possible and appropriate, interviews with other third parties who have
136 had direct contact with the child, including school personnel and the child's health care
137 provider;

138 [(f)] (vi) an unscheduled visit to the child's home, unless the [~~division~~] peace officer
139 has reasonable cause to believe that the reported abuse was committed by a person who does
140 not:

141 [(i)] (A) live in the child's home; or

142 [(ii)] (B) have access to the child; and

143 [(g)] (vii) if appropriate and indicated in any case alleging physical injury, sexual
144 abuse, or failure to meet the child's medical needs, a medical examination by an appropriate
145 medical practitioner. [~~That examination shall be obtained no later than 24 hours after the child~~
146 ~~was placed in protective custody.~~]

147 (b) For purposes of Subsection (2)(a)(vii), if the child is taken into protective custody
148 prior to completion of the investigation, the examination shall be obtained no later than 24
149 hours after the child was taken into protective custody.

150 (3) The [~~division~~] peace officer may rely on a written report of [~~a prior~~] an interview
151 required under Subsection (2) rather than conducting an additional interview, if:

152 (a) the division, a peace officer, or a law enforcement [has] agency previously
153 conducted the interview as part of a timely and thorough investigation regarding the alleged
154 abuse or neglect and [has] produced a written report; and

155 ~~[(b) that investigation included one or more of the interviews required by Subsection~~
156 ~~(2); and]~~

157 ~~[(c) the division finds that an additional interview is not in the best interest of the~~
158 ~~child.]~~

159 (b) the law enforcement officer determines that repeating the interview is not necessary
160 due to the quality of the interview and written report.

161 (4) (a) The division may contract with, but may not otherwise employ, law
162 enforcement officers to meet the requirements of this section.

163 (b) A peace officer under contract with the division:

164 (i) may access the division's Management Information System under Section
165 62A-4a-116; and

166 (ii) is subject to the contract provider limited access to information in the Management
167 Information System under Subsection 62A-4a-116(6), except that the peace officer may access
168 any information necessary to complete the investigation required by this section.

169 (5) (a) Under exigent circumstances, a child may be taken into protective custody prior
170 to completion of the investigation required in Subsection (1).

171 (b) If a child is taken into protective custody prior to the completion of the
172 investigation, the peace officer shall complete the investigation as soon thereafter as possible.

173 ~~[(4)]~~ (6) (a) The division's determination of whether a report of alleged abuse, neglect,
174 or dependency is substantiated or unsubstantiated may be based on the child's statements alone.

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

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

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

181 ~~[(5)]~~ (7) The division should maintain protective custody of [the] a child taken into
182 protective custody in accordance with this section and Sections 62A-4a-202.1, 78-3a-106, or

183 78-3a-301 if it finds that one or more of the following conditions exist:

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

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

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

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

192 [~~(6)~~] (8) (a) Within 24 hours after receipt of a child into protective custody, excluding
193 weekends and holidays, the division shall convene a child protection team to review the
194 circumstances regarding removal of the child from the child's home or school, and prepare the
195 testimony and evidence that will be required of the division at the shelter hearing, in
196 accordance with Section 78-3a-306.

197 (b) Members of that team shall include:

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

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

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

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

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

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

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

211 [~~(7)~~] (9) After receipt of a child into protective custody and prior to the adjudication
212 hearing, all investigative interviews with the child that are initiated by the division shall be
213 audio or video taped, and the child shall be allowed to have a support person of the child's

214 choice present. That support person may not be an alleged perpetrator.

215 ~~[(8)]~~ (10) The division shall cooperate with law enforcement investigations regarding
216 the alleged perpetrator.

217 ~~[(9)]~~ (11) The division may not close ~~[an investigation]~~ a case solely on the grounds
218 that the division ~~[investigator]~~, or a peace officer conducting an investigation under this
219 section, is unable to locate the child, until all reasonable efforts have been made to locate the
220 child and family members~~[- Those efforts include]~~, including:

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

225 Section 4. Section ~~62A-4a-202.6~~ is amended to read:

226 **62A-4a-202.6. Child protective services investigators within attorney general's**
227 **office -- Authority.**

228 (1) (a) Pursuant to Section 67-5-16 the attorney general may employ, with the consent
229 of the division, child protective services investigators to investigate reports of abuse or neglect
230 of a child that occur while the child is in the custody of the division.

231 (b) (i) Under the direction of the Board of Child and Family Services, the division shall,
232 in accordance with Subsection 62A-4a-409(5), contract with an independent child protective
233 service investigator to investigate reports of abuse or neglect of a child that occur while the
234 child is in the custody of the division.

235 (ii) The executive director of the department shall designate an entity within the
236 department, other than the division, to monitor the contract for the investigators described in
237 Subsection (1)(b)(i).

238 (2) The investigators described in Subsection (1) may also investigate allegations of
239 abuse or neglect of a child by a department employee or a licensed substitute care provider.

240 (3) The investigators described in Subsection (1)~~[- if not peace officers;]~~ shall be peace
241 officers and have the same rights, duties, and authority of a child protective services
242 investigator employed by the division to:

- 243 (a) make a thorough investigation upon receiving either an oral or written report of
- 244 alleged abuse or neglect of a child, with the primary purpose of that investigation being the

245 protection of the child;

246 (b) make an inquiry into the child's home environment, emotional, or mental health, the
247 nature and extent of the child's injuries, and the child's physical safety;

248 (c) make a written report of their investigation, including determination regarding
249 whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and
250 forward a copy of that report to the division within the time mandates for investigations
251 established by the division;

252 (d) immediately consult with school authorities to verify the child's status in
253 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or
254 includes an allegation of educational neglect;

255 (e) enter upon public or private premises, using appropriate legal processes, to
256 investigate reports of alleged child abuse or neglect; and

257 (f) take a child into protective custody, and deliver the child [~~to a law enforcement~~
258 ~~officer, or~~] to the division. Control and jurisdiction over the child shall be determined by the
259 provisions of Title 62A, Chapter 4a, Part 2, Child Welfare Services, Title 78, Chapter 3a,
260 Juvenile [~~Courts~~] Court Act of 1996, and as otherwise provided by law.

261 Section 5. Section **62A-4a-202.8** is amended to read:

262 **62A-4a-202.8. Meeting within 24 hours.**

263 (1) If the division files a petition under Subsection 78-3a-305(1) or (2) but [~~does not~~
264 ~~take~~] the child is not taken into protective custody, the division shall convene a child protection
265 team meeting within 24 hours of the filing, excluding weekends and holidays, to review the
266 circumstances regarding the filing of the petition and to develop a safety plan to protect the
267 child from further abuse or neglect.

268 (2) The team shall include as many persons under Subsection 62A-4a-202.3[~~(6)~~] (8)(b)
269 as appropriate.

270 (3) At its meeting the team shall review the complete child protective services and
271 foster care history of the child and the child's parents and siblings.

272 Section 6. Section **62A-4a-209** is amended to read:

273 **62A-4a-209. Emergency kinship placement.**

274 (1) The division may use an emergency kinship placement under Subsection
275 62A-4a-202.1[~~(6)~~] (4) when:

276 (a) the caseworker has made the determination that:
277 (i) the child's home is unsafe;
278 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and
279 (iii) the child's custodial parent or guardian will agree to not remove the child from the
280 relative's home who serves as the kinship placement and not have any contact with the child
281 until after the shelter hearing required by Section 78-3a-306;

282 (b) a relative, with preference being given to a noncustodial parent in accordance with
283 Section 78-3a-307, can be identified who has the ability and is willing to provide care for the
284 child who would otherwise be placed in shelter care, including:

285 (i) taking the child to medical, mental health, dental, and educational appointments at
286 the request of the division; and
287 (ii) the relative has the ability to make the child available to division services and the
288 guardian ad litem; and
289 (c) the relative agrees to care for the child on an emergency basis under the following
290 conditions:

291 (i) the relative meets the criteria for an emergency kinship placement under Subsection
292 (2);
293 (ii) the relative agrees to not allow the custodial parent or guardian to have any contact
294 with the child until after the shelter hearing unless authorized by the division in writing;
295 (iii) the relative agrees to contact law enforcement and the division if the custodial
296 parent or guardian attempts to make unauthorized contact with the child;
297 (iv) the relative agrees to allow the division and the child's guardian ad litem to have
298 access to the child;
299 (v) the relative has been informed and understands that the division may continue to
300 search for other possible kinship placements for long-term care, if needed;
301 (vi) the relative is willing to assist the custodial parent or guardian in reunification
302 efforts at the request of the division, and to follow all court orders; and
303 (vii) the child is comfortable with the relative.

304 (2) Before the division places a child in an emergency kinship placement, the division
305 must:
306 (a) request the name of a reference and, when possible, contact the reference ~~and~~ to

307 determine ~~[the answer to the following questions]~~ whether:

308 (i) ~~[would]~~ the person identified as a reference would place a child in the home of the
309 emergency kinship placement; and

310 (ii) ~~[are]~~ there are any other relatives to consider as a possible emergency or long-term
311 placement for the child;

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

314 (c) complete a criminal background check described in Sections 62A-4a-202.4 and
315 78-3a-307.1 on all persons living in the relative's household;

316 (d) complete a home inspection of the relative's home; and

317 (e) have the emergency kinship placement approved by a family service specialist.

318 (3) As soon as possible after the emergency placement and prior to the shelter hearing
319 required by Section 78-3a-306, the division shall convene a family unity meeting.

320 (4) After an emergency kinship placement, the division caseworker must:

321 (a) respond to the emergency kinship placement's calls within one hour if the custodial
322 parents or guardians attempt to make unauthorized contact with the child or attempt to remove
323 the child;

324 (b) complete all removal paperwork, including the notice provided to the custodial
325 parents and guardians under Section 78-3a-306;

326 (c) contact the attorney general to schedule a shelter hearing;

327 (d) complete the kinship procedures required in Section 78-3a-307, including, within
328 five days after placement, the criminal history record check described in Subsection (5); and

329 (e) continue to search for other relatives as a possible long-term placement, if needed.

330 (5) (a) In order to determine the suitability of the kinship placement and to conduct a
331 background screening and investigation of individuals living in the household in which a child
332 is placed, each individual living in the household in which the child is placed who has not lived
333 in the state substantially year round for the most recent five consecutive years ending on the
334 date the investigation is commenced shall be fingerprinted. If no disqualifying record is
335 identified at the state level, the fingerprints shall be forwarded by the division to the Federal
336 Bureau of Investigation for a national criminal history record check.

337 (b) The cost of those investigations shall be borne by whomever received placement of

338 the child, except that the division may pay all or part of the cost of those investigations if the
339 person with whom the child is placed is unable to pay.

340 Section 7. Section **62A-4a-409** is amended to read:

341 **62A-4a-409. Investigation by division -- Temporary protective custody --**

342 **Preremoval interviews of children.**

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

348 (2) The [~~preremoval~~] investigation required under Subsection (1):

349 (a) shall [~~include~~] meet the [~~same investigative~~] investigation requirements [~~described~~
350 in Section] of Subsection 62A-4a-202.3[-](2); and

351 (b) may be satisfied by completion of the investigation required by Section
352 62A-4a-202.3.

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

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

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

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

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

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

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

374 (8) Division workers ~~[or]~~, other child protection team members, and peace officers
375 have authority to enter upon public or private premises, using appropriate legal processes, to
376 investigate reports of alleged child abuse or neglect; however, except as provided in Section
377 62A-4a-407, a child may be taken into protective custody only by a peace officer, in
378 accordance with this chapter and Title 78, Chapter 3a, Juvenile Court Act of 1996.

379 (9) With regard to any interview of a child prior to removal of that child from the
380 child's home:

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

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

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

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

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

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

395 That support person:

396 (i) may include~~[- but is not limited to,]~~ a school teacher or administrator, guidance
397 counselor, or child care provider; and

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

399 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1

400 through 62A-4a-202.3, a [~~division worker or child protection team member~~] peace officer may
401 take a child into protective custody and [~~deliver the child to a law enforcement officer, or~~]
402 place the child in an emergency shelter facility approved by the juvenile court, at the earliest
403 opportunity subsequent to the child's removal from the child's original environment. Control
404 and jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile
405 Court Act of 1996, and as otherwise provided by law.

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

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

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

412 Section 8. Section **62A-4a-410** is amended to read:

413 **62A-4a-410. Immunity from liability.**

414 (1) Any person, official, or institution participating in good faith in making a report,
415 taking photographs or X-rays, assisting an [~~investigator from the division~~] investigation by a
416 peace officer or the division of possible child abuse, neglect, or dependency, serving as a
417 member of a child protection team, or taking a child into protective custody pursuant to this
418 part, is immune from any liability, civil or criminal, that otherwise might result by reason of
419 those actions.

420 (2) This section does not provide immunity with respect to acts or omissions of a
421 governmental employee except as provided in Title 63, Chapter 30, Utah Governmental
422 Immunity Act.

423 Section 9. Section **78-3a-106** is amended to read:

424 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

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

430 (2) (a) The court may issue a warrant authorizing a [~~child protective services worker~~

431 or] peace officer to search for a child and take the child into protective custody if it appears to
 432 the court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace
 433 officer or any other person, and upon the examination of other witnesses, if required by the
 434 judge, that there is probable cause to believe that:

435 (i) there is an immediate threat to the safety of a child; and

436 (ii) the applicant certifies to the court in writing or by recorded sworn testimony as to
 437 the efforts, if any, that have been made to give notice to the minor's parent or guardian and the
 438 reasons supporting the claim that notice and an opportunity to be heard should not be required.

439 (b) A warrant removing a child from [his] the child's home or school, or having the
 440 effect of depriving a parent or guardian of the care, custody, and control of [their] the parent's
 441 or guardian's minor child, may not be issued without notice to the minor's parents or guardian
 442 and opportunity to be heard unless the requirements of Subsections (2)(a)(i) and (ii) have been
 443 satisfied.

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

446 (d) The person executing the warrant shall then take the child to the place of shelter
 447 designated by the court.

448 (3) The parent or guardian to be notified must be the minor's primary caregiver, or the
 449 person who has custody of the minor, when the order is sought.

450 Section 10. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

451 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor**
 452 **following petition filing -- Grounds.**

453 (1) (a) After a petition has been filed under Subsection 78-3a-305(1), if the minor who
 454 is the subject of the petition is not in the protective custody of the division, a court may order
 455 that the minor be removed from the minor's home by a peace officer, or otherwise taken into
 456 protective custody by a peace officer, if the court finds, by a preponderance of the evidence,
 457 that any one or more of the following circumstances exist:

458 ~~[(a)]~~ (i) there is an imminent danger to the physical health or safety of the minor and
 459 the minor's physical health or safety may not be protected without removing the minor from the
 460 custody of the minor's parent or guardian~~[- If a minor has previously been adjudicated as~~
 461 ~~abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency~~

462 ~~has occurred involving the same alleged abuser or under similar circumstance as the previous~~
463 ~~abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the~~
464 ~~custody of the minor's parent];~~

465 ~~[(b)]~~ (ii) a parent or guardian engages in or threatens the minor with unreasonable
466 conduct that causes the minor to suffer emotional damage and there are no reasonable means
467 available by which the minor's emotional health may be protected without removing the minor
468 from the custody of the minor's parent or guardian;

469 ~~[(c)-(i)]~~ (iii) the minor or another minor residing in the same household has been
470 physically or sexually abused, or is considered to be at substantial risk of being physically or
471 sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or
472 other person known to the parent or guardian[-];

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

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

482 ~~[(d)]~~ (iv) the parent or guardian is unwilling to have physical custody of the minor;

483 ~~[(e)]~~ (v) the minor has been abandoned or left without any provision for the minor's
484 support;

485 ~~[(f)]~~ (vi) a parent or guardian who has been incarcerated or institutionalized has not
486 arranged or cannot arrange for safe and appropriate care for the minor;

487 ~~[(g)]~~ (vii) a relative or other adult custodian with whom the minor has been left by the
488 parent or guardian is unwilling or unable to provide care or support for the minor, the
489 whereabouts of the parent or guardian are unknown, and reasonable efforts to locate the parent
490 or guardian have been unsuccessful;

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

492 ~~[(i)-(j)]~~ (ix) (A) a parent's or guardian's actions, omissions, or habitual action create an

493 environment that poses a threat to the minor's health or safety; or

494 ~~[(ii)]~~ (B) a parent's or guardian's action in leaving a minor unattended would
495 reasonably pose a threat to the minor's health or safety;

496 ~~[(j)(i)]~~ (x) (A) the minor or another minor residing in the same household has been
497 neglected; and

498 ~~[(ii)]~~ (B) for purposes of Subsection (1)~~[(j)(i)](a)(x)(A)~~, another minor residing in the
499 same household may not be removed unless that minor is considered to be at substantial risk of
500 being neglected;

501 ~~[(k)]~~ (xi) an infant has been abandoned, as defined in Section 78-3a-313.5;

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

506 ~~[(m)]~~ (xiii) the minor's welfare is otherwise endangered.

507 (b) (i) For purposes of Subsection (1)(a)(i), if a minor has previously been adjudicated
508 as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
509 has occurred involving the same alleged abuser or under similar circumstance as the previous
510 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the
511 custody of the minor's parent.

512 (ii) For purposes of Subsection (1)(a)(iii):

513 (A) another minor residing in the same household may not be removed from the home
514 unless that minor is considered to be at substantial risk of being physically or sexually abused
515 as described in Subsection (1)(a)(iii) or Subsection (1)(b)(ii)(B); and

516 (B) if a parent or guardian has received actual notice that physical or sexual abuse by a
517 person known to the parent has occurred, and there is evidence that the parent or guardian
518 failed to protect the minor by allowing the minor to be in the physical presence of the alleged
519 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being
520 physically or sexually abused.

521 (2) A court may not remove a minor from the parent's or guardian's custody on the
522 basis of educational neglect, in the absence of one of the factors described in Subsection (1).

523 (3) A court may not remove a minor from the parent's or guardian's custody on the

524 basis of mental illness or poverty of the parent or guardian, in the absence of one of the factors
525 described in Subsection (1).

526 (4) A minor removed from the custody of the minor's parent or guardian under this
527 section may not be placed or kept in a secure detention facility pending further court
528 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
529 Juvenile Justice Services.

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

532 Section 11. Section ~~78-3a-306~~ is amended to read:

533 **78-3a-306. Shelter hearing.**

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

536 (a) removal of ~~[the]~~ a child from ~~[his]~~ the child's home by ~~[the Division of Child and~~
537 ~~Family Services]~~ a peace officer;

538 (b) placement of the child in the protective custody of the division ~~[of Child and~~
539 ~~Family Services]~~;

540 (c) emergency kinship placement under Subsection 62A-4a-202.1 (4); or

541 (d) as an alternative to removal of the child, a parent has entered a domestic violence
542 shelter at the request of the division ~~[of Child and Family Services]~~.

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

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

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

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

548 (d) a concise statement regarding:

549 (i) the reasons for removal or ~~[other]~~ action of the division under Subsection (1); and

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

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

555 (f) a statement that the parent or guardian is liable for the cost of support of the minor
556 in the protective custody, temporary custody, and custody of the division, and the cost for legal
557 counsel appointed for the parent or guardian under Subsection (2)(e), according to ~~his~~ the
558 parent's or guardian's financial ability.

559 (3) That notice shall be personally served as soon as possible, but no later than one
560 business day after removal of a child from ~~his~~ the child's home, on:

561 (a) the appropriate guardian ad litem; and

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

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

564 (a) the child, unless it would be detrimental for the child;

565 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
566 response to the notice;

567 (c) counsel for the parents, if one has been requested;

568 (d) the child's guardian ad litem;

569 (e) the caseworker from the division [~~of Child and Family Services~~] who has been
570 assigned to the case; and

571 (f) the attorney from the attorney general's office who is representing the division.

572 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's
573 parent or guardian, if present, and any other person having relevant knowledge, to provide
574 relevant testimony. The court may also provide an opportunity for the minor to testify.

575 (b) (i) The court may consider all relevant evidence, in accordance with the Utah Rules
576 of Juvenile Procedure.

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

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

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

584 (b) any services provided to the child and ~~his~~ the child's family in an effort to prevent
585 removal;

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

587 (d) the available services that could facilitate the return of the minor to the custody of
588 ~~[his]~~ the minor's parent or guardian; and

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

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

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

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

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

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

610 ~~[(c)]~~ (iii) the minor or another minor residing in the same household has been
611 physically or sexually abused, or is considered to be at substantial risk of being physically or
612 sexually abused, by a parent, a member of the parent's household, or other person known to the
613 parent~~[-If a parent has received actual notice that physical or sexual abuse by a person known~~
614 ~~to the parent has occurred, and there is evidence that the parent has allowed the child to be in~~
615 ~~the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the~~
616 ~~child is at substantial risk of being physically or sexually abused];~~

- 617 ~~(d)~~ (iv) the parent is unwilling to have physical custody of the child;
- 618 ~~(e)~~ (v) the minor has been left without any provision for ~~his~~ the minor's support;
- 619 ~~(f)~~ (vi) a parent who has been incarcerated or institutionalized has not or cannot
- 620 arrange for safe and appropriate care for the minor;
- 621 ~~(g)~~ (vii) a relative or other adult custodian with whom the minor has been left by the
- 622 parent is unwilling or unable to provide care or support for the minor, the whereabouts of the
- 623 parent are unknown, and reasonable efforts to locate him have been unsuccessful;
- 624 ~~(h)~~ (viii) the minor is in immediate need of medical care;
- 625 ~~(i)~~ (ix) the physical environment or the fact that the child is left unattended poses a
- 626 threat to the child's health or safety;
- 627 ~~(j)~~ (x) the minor or another minor residing in the same household has been neglected;
- 628 ~~(k)~~ (xi) the parent, or an adult residing in the same household as the parent, has been
- 629 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any
- 630 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence
- 631 or on the property where the child resided; or
- 632 ~~(l)~~ (xii) the child's welfare is otherwise endangered.
- 633 **(b) For purposes of Subsection (9)(a)(iii), if a parent has received actual notice that**
- 634 **physical or sexual abuse by a person known to the parent has occurred, and there is evidence**
- 635 **that the parent has allowed the child to be in the physical presence of the alleged abuser, that**
- 636 **fact constitutes prima facie evidence that the child is at substantial risk of being physically or**
- 637 **sexually abused.**
- 638 (10) (a) The court shall also make a determination on the record as to whether
- 639 reasonable efforts were made to prevent or eliminate the need for removal of the minor from
- 640 ~~his~~ the minor's home and whether there are available services that would prevent the need for
- 641 continued removal. If the court finds that the minor can be safely returned to the custody of
- 642 ~~his~~ the minor's parent or guardian through the provision of those services, it shall place the
- 643 minor with ~~his~~ the minor's parent or guardian and order that those services be provided by the
- 644 division.
- 645 (b) In making that determination, and in ordering and providing services, the child's
- 646 health, safety, and welfare shall be the paramount concern, in accordance with federal law.
- 647 (11) Where the division's first contact with the family occurred during an emergency

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

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

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

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

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

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

666 Section 12. **Effective date.**

667 This bill takes effect on July 1, 2004.

Legislative Review Note
as of 2-19-04 6:48 AM

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

Office of Legislative Research and General Counsel

State Impact

The cost of DCFS contracts with peace officers to perform these investigations and handle cases involving removal of children from their homes is estimated at \$886,000. It is doubtful that federal Title IV-E funds would be available for investigations made by individuals not under direct supervision of DCFS.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$886,000	\$886,000	\$0	\$0
TOTAL	\$886,000	\$886,000	\$0	\$0

Individual and Business Impact

No fiscal impact.
