

**SHELTER HEARING TECHNICAL
AMENDMENTS**

2006 THIRD SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill amends the portion of the Juvenile Court Act of 1996 that relates to shelter hearings.

Highlighted Provisions:

This bill:

- ▶ amends protective custody provisions to conform to the definitions of "child" and "minor";
- ▶ deletes conflicting language relating to establishing prima facie evidence at a shelter hearing that a child is at risk of suffering abuse or neglect if the child is released from protective custody; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

78-3a-306, as last amended by Chapters 13, 75, 97 and 281, Laws of Utah 2006

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

Section 1. Section **78-3a-306** is amended to read:

30 **78-3a-306. Shelter hearing.**

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

- 33 (a) removal of the child from the child's home by the division;
- 34 (b) placement of the child in the protective custody of the division;
- 35 (c) emergency kinship placement under Subsection 62A-4a-202.1(4);
- 36 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
37 at the request of the division; or

38 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
39 Subsection 78-3a-106(4).

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

- 42 (a) the name and address of the person to whom the notice is directed;
- 43 (b) the date, time, and place of the shelter hearing;
- 44 (c) the name of the child on whose behalf a petition is being brought;
- 45 (d) a concise statement regarding:
 - 46 (i) the reasons for removal or other action of the division under Subsection (1); and
 - 47 (ii) the allegations and code sections under which the proceeding has been instituted;

48 (e) a statement that the parent or guardian to whom notice is given, and the child, are
49 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
50 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
51 provided; and

52 (f) a statement that the parent or guardian is liable for the cost of support of the child in
53 the protective custody, temporary custody, and custody of the division, and the cost for legal
54 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
55 ability of the parent or guardian.

56 (3) The notice described in Subsection (2) shall be personally served as soon as
57 possible, but no later than one business day after removal of the child from the child's home, or

58 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection
59 78-3a-106(4), on:

- 60 (a) the appropriate guardian ad litem; and
- 61 (b) both parents and any guardian of the child, unless the parents or guardians cannot
62 be located.

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

- 64 (a) the child, unless it would be detrimental for the child;
- 65 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
66 fail to appear in response to the notice;
- 67 (c) counsel for the parents, if one is requested;
- 68 (d) the child's guardian ad litem;
- 69 (e) the caseworker from the division who is assigned to the case; and
- 70 (f) the attorney from the attorney general's office who is representing the division.

71 (5) (a) At the shelter hearing, the court:

72 (i) shall provide an opportunity to provide relevant testimony to:

- 73 (A) the child's parent or guardian, if present; and
- 74 (B) any other person having relevant knowledge; and
- 75 (ii) may also provide an opportunity for the child to testify.

76 (b) The court:

77 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
78 Procedure;

79 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
80 the requesting party, or their counsel; and

81 (iii) may in its discretion limit testimony and evidence to only that which goes to the
82 issues of removal and the child's need for continued protection.

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

- 85 (a) the reason why the child was removed from the parent's or guardian's custody;

86 (b) any services provided to the child and the child's family in an effort to prevent
87 removal;

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

89 (d) the available services that could facilitate the return of the child to the custody of
90 the child's parent or guardian; and

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

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

95 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
96 cause shown, the court may grant no more than one continuance, not to exceed five judicial
97 days.

98 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
99 a continuance under Subsection (8)(a).

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

103 (i) subject to Subsection (9)(b)(i), [~~consistent with Subsection (10)(a);~~] there is a
104 substantial danger to the physical health or safety of the child and the child's physical health or
105 safety may not be protected without removing the child from the custody of the child's parent;

106 (ii) (A) the child is suffering emotional damage; and

107 (B) there are no reasonable means available by which the child's emotional health may
108 be protected without removing the child from the custody of the child's parent;

109 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
110 not removed from the custody of the child's parents;

111 (iv) subject to Subsection (9)(b)(ii), [~~consistent with Subsection (10)(b);~~] the child or
112 [~~another child~~] a minor residing in the same household has been physically or sexually abused,
113 or is considered to be at substantial risk of being physically or sexually abused, by a:

- 114 (A) parent;
- 115 (B) member of the parent's household; or
- 116 (C) person known to the parent;
- 117 (v) the parent is unwilling to have physical custody of the child;
- 118 (vi) the child is without any provision for the child's support;
- 119 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
- 120 and appropriate care for the child;
- 121 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is
- 122 unwilling or unable to provide care or support for the child;
- 123 (B) the whereabouts of the parent are unknown; and
- 124 (C) reasonable efforts to locate the parent are unsuccessful;
- 125 (ix) the child is in urgent need of medical care;
- 126 (x) the physical environment or the fact that the child is left unattended beyond a
- 127 reasonable period of time poses a threat to the child's health or safety;
- 128 (xi) the child or a [~~child~~] minor residing in the same household has been neglected;
- 129 (xii) the parent, or an adult residing in the same household as the parent, is charged or
- 130 arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
- 131 laboratory operation was located in the residence or on the property where the child resided; or
- 132 (xiii) the child's welfare is substantially endangered.
- 133 (b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is
- 134 established if:
 - 135 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
 - 136 involving the parent; and
 - 137 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.
- 138 (ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly
- 139 allowed the child to be in the physical care of a person after the parent received actual notice
- 140 that the person physically or sexually abused the child, that fact constitutes prima facie
- 141 evidence that there is a substantial risk that the child will be physically or sexually abused.

142 ~~[(10) (a) For purposes of Subsection (9)(a)(i), if a child has previously been~~
143 ~~adjudicated as abused, neglected, or dependent and a subsequent incident of abuse, neglect, or~~
144 ~~dependency occurs, that fact constitutes prima facie evidence that the child cannot safely~~
145 ~~remain in the custody of the child's parent.]~~

146 ~~[(b) For purposes of Subsection (9)(a)(iv), if a parent has received actual notice that~~
147 ~~physical or sexual abuse by a person known to the parent has occurred, and there is evidence~~
148 ~~that the parent has allowed the child to be in the physical presence of the alleged abuser, that~~
149 ~~fact constitutes prima facie evidence that the child is at substantial risk of being physically or~~
150 ~~sexually abused.]~~

151 ~~[(11)]~~ (10) (a) (i) The court shall also make a determination on the record as to whether
152 reasonable efforts were made to prevent or eliminate the need for removal of the child from the
153 child's home and whether there are available services that would prevent the need for continued
154 removal.

155 (ii) If the court finds that the child can be safely returned to the custody of the child's
156 parent or guardian through the provision of those services, the court shall place the child with
157 the child's parent or guardian and order that those services be provided by the division.

158 (b) In making the determination described in Subsection ~~[(11)]~~ (10)(a), and in ordering
159 and providing services, the child's health, safety, and welfare shall be the paramount concern,
160 in accordance with federal law.

161 ~~[(12)]~~ (11) Where the division's first contact with the family occurred during an
162 emergency situation in which the child could not safely remain at home, the court shall make a
163 finding that any lack of preplacement preventive efforts was appropriate.

164 ~~[(13)]~~ (12) In cases where actual sexual abuse or abandonment, or serious physical
165 abuse or neglect are involved, neither the division nor the court has any duty to make
166 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
167 return a child to the child's home, provide reunification services, or attempt to rehabilitate the
168 offending parent or parents.

169 ~~[(14)]~~ (13) The court may not order continued removal of a child solely on the basis of

170 educational neglect as described in Subsection 78-3a-103(1)(u)(ii).

171 ~~[(15)]~~ (14) (a) Whenever a court orders continued removal of a child under this section,
172 the court shall state the facts on which that decision is based.

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

175 ~~[(16)]~~ (15) If the court finds that continued removal and temporary custody are
176 necessary for the protection of a child because harm may result to the child if the child were
177 returned home, the court shall order continued removal regardless of:

178 (a) any error in the initial removal of the child;

179 (b) the failure of a party to comply with notice provisions; or

180 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
181 and Family Services.

182 Section 2. **Effective date.**

183 If approved by two-thirds of all the members elected to each house, this bill takes effect
184 upon approval by the governor, or the day following the constitutional time limit of Utah
185 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
186 the date of veto override.