

Representative Nora B. Stephens proposes to substitute the following bill:

PARENTAL RIGHTS AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Nora B. Stephens

AN ACT RELATING TO CHILD WELFARE AND EDUCATION; REQUIRING PARENTAL PERMISSION FOR SPECIFIED IN-HOME PRESCHOOL PROGRAMS; REQUIRING DCFS TO ESTABLISH FAMILY IMPACT STATEMENTS WITH REGARD TO EACH OF ITS POLICIES OR RULES; DESCRIBING PARENTAL RIGHTS; LIMITING CERTAIN INVESTIGATIONS OF DCFS; REQUIRING SPECIALIZED REVIEW PRIOR TO REMOVAL OF CHILDREN UNDER CERTAIN CIRCUMSTANCES; AMENDING PARENTAL NOTIFICATION REQUIREMENTS; CLARIFYING THAT SPECIFIED INVESTIGATION STANDARDS ARE INTENDED TO BE POST-REMOVAL; AMENDING PROVISIONS REGARDING PARENT AND FOSTER PARENT INPUT IN TREATMENT PLANS; AMENDING SHELTER HEARING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

62A-4a-201, as last amended by Chapter 274, Laws of Utah 1998

62A-4a-202.1, as last amended by Chapter 274, Laws of Utah 1998

62A-4a-202.2, as renumbered and amended by Chapter 302, Laws of Utah 1995

62A-4a-202.3, as last amended by Chapters 13 and 274, Laws of Utah 1998

62A-4a-205 (Effective 07/01/00), as last amended by Chapter 121, Laws of Utah 1999

62A-4a-409, as last amended by Chapter 274, Laws of Utah 1998

78-3a-301, as last amended by Chapter 274, Laws of Utah 1998

78-3a-306, as last amended by Chapter 99, Laws of Utah 1999

ENACTS:

26 **53A-1a-105.5**, Utah Code Annotated 1953

27 **62A-4a-119**, Utah Code Annotated 1953

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

29 Section 1. Section **53A-1a-105.5** is enacted to read:

30 **53A-1a-105.5. Parental permission required for specified in-home programs --**

31 **Exceptions.**

32 (1) The State Board of Education, local school boards, school districts, and public schools
33 are prohibited from requiring infant or preschool in-home literacy or other educational or parenting
34 programs without obtaining parental permission in each individual case.

35 (2) This section does not prohibit the Division of Child and Family Services, within the
36 Department of Human Services, from providing or arranging for family preservation or other
37 statutorily provided services in accordance with Title 62A, Chapter 4a, or any other in-home
38 services that have been court ordered, pursuant to Title 62A, Chapter 4a, or Title 78, Chapter 3a.

39 Section 2. Section **62A-4a-119** is enacted to read:

40 **62A-4a-119. Division required to produce "family impact statement" with regard to**
41 **all policies, procedures, and rules.**

42 Beginning May 1, 2000, whenever the division establishes a rule, in accordance with Title
43 63, Chapter 46a, Utah Administrative Rulemaking Act, or the board establishes any policy in
44 accordance with its statutory authority, those processes shall include an assessment of the impact
45 of that rule or policy on families. Those assessments shall determine the impact the rule or policy
46 on the authority of parents to oversee the care, supervision, upbringing, and education of children
47 in the parents' custody. The division shall publish a family impact statement describing those
48 assessments and determinations, within 90 days of the establishment of each rule or policy.

49 Section 3. Section **62A-4a-201** is amended to read:

50 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
51 **state.**

52 (1) (a) Courts have recognized a general presumption that it is in the best interest and
53 welfare of a child to be raised under the care and supervision of his natural parents. A child's need
54 for a normal family life in a permanent home, and for positive, nurturing family relationships will
55 usually best be met by his natural parents. Additionally, the integrity of the family unit, and the
56 right of parents to conceive and raise their children have found protection in the due process clause

57 of the Fourteenth Amendment to the United States Constitution. The right of a fit, competent
58 parent to raise his child has long been protected by the laws and Constitution of this state and of
59 the United States.

60 (b) It is the public policy of this state that parents retain the fundamental right and duty to
61 exercise primary control over the care, supervision, upbringing, and education of their children
62 who are in their custody.

63 (2) [As] It is also the public policy of this state that children have the right to protection
64 from abuse and neglect, and that the state retains a compelling interest in investigating,
65 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78, Chapter
66 3a. Therefore, as a counterweight to parental rights, the state, as parens patriae, has an interest in
67 and responsibility to protect children whose parents abuse them or do not adequately provide for
68 their welfare. There are circumstances where a parent's conduct or condition is a substantial
69 departure from the norm and the parent is unable or unwilling to render safe and proper parental
70 care and protection. Under those circumstances, the welfare and protection of children is the
71 consideration of paramount importance.

72 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
73 it shall take into account the child's need for protection from immediate harm. Throughout its
74 involvement, the division shall [attempt to] utilize the least intrusive means available to protect
75 a child, in an effort to ensure that children are brought up in stable, permanent families, rather than
76 in temporary foster placements under the supervision of the state.

77 (4) When circumstances within the family pose a threat to the child's safety or welfare, the
78 state's interest in the child's welfare is paramount to the rights of a parent. The division may obtain
79 custody of the child for a planned period and place him in a safe environment, in accordance with
80 the requirements of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

81 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to the
82 provisions of Section 62A-4a-203 and keeping with the presumptions described in Subsection (1),
83 both the division's and the court's paramount concern shall be the child's health, safety, and
84 welfare.

85 (6) In cases where actual sexual abuse, abandonment, or serious physical abuse or neglect
86 are involved, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to
87 maintain a child in his home, provide reunification services, or to attempt to rehabilitate the

88 offending parent or parents. This Subsection (6) does not exempt the division from providing
89 court-ordered services.

90 (7) (a) It is the division's obligation, under federal law, to achieve permanency for children
91 who are abused, neglected, or dependent. If the use or continuation of "reasonable efforts," as
92 described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan
93 for a child, then measures shall be taken, in a timely manner, to place the child in accordance with
94 the permanency plan, and to complete whatever steps are necessary to finalize the permanent
95 placement of the child.

96 (b) If, because of his conduct or condition, a parent is determined to be unfit or
97 incompetent based on the grounds for termination of parental rights described in Title 78, Chapter
98 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of the child is of
99 paramount importance, and shall govern in determining whether that parent's rights should be
100 terminated.

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

102 **62A-4a-202.1. Taking a child into protective custody -- Peace officer -- Division of**
103 **Child and Family Services caseworker.**

104 (1) Any peace officer may, without a warrant, take a minor into protective custody when
105 the officer has substantial cause to believe that any of the factors described in Section 78-3a-301
106 exist.

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

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

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

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

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

132 Section 5. Section **62A-4a-202.2** is amended to read:

133 **62A-4a-202.2. Notice to parent upon removal of child -- Written statement of**
134 **procedural rights and preliminary proceedings.**

135 (1) Any peace officer or caseworker who takes a minor into protective custody pursuant
136 to Section 62A-4a-202.1 shall immediately inform, through the most efficient means available, the
137 parent, guardian, or responsible relative:

138 (a) that the minor has been taken into protective custody;

139 (b) the reasons for removal and placement in protective custody;

140 ~~[(b)]~~ (c) that a written statement is available that explains the parent's procedural rights and
141 the preliminary stages of the investigation and shelter hearing; and

142 ~~[(e)]~~ (d) of a telephone number where ~~[he]~~ the parent may access further information.

143 (2) The attorney general's office shall adopt, print, and distribute a form for the written
144 statement described in Subsection (1)~~[(b)]~~(c). The statement shall be made available to the
145 division and for distribution in schools, health care facilities, local police and sheriff's offices, the
146 division, and any other appropriate office within the Department of Human Services. The notice
147 shall be in simple language and include at least the following information:

148 (a) the conditions under which ~~[the]~~ a minor may be released, hearings that may be
149 required, and the means by which the parent may access further specific information about ~~[the]~~

150 a minor's case and conditions of protective and temporary custody; and

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

152 (3) If a good faith attempt was made by the peace officer or caseworker to notify the parent
153 or guardian in accordance with the requirements of Subsection (1), failure to notify shall be
154 considered to be due to circumstances beyond the control of the peace officer or caseworker and
155 may not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere
156 with any rights, procedures, or investigations provided for by this chapter or Title 62A.

157 Section 6. Section **62A-4a-202.3** is amended to read:

158 **62A-4a-202.3. Post-removal investigation standards -- Substantiation of reports --**
159 **Child in protective custody.**

160 (1) When a child is taken into protective custody in accordance with Sections
161 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately
162 [investigate] initiate a post-removal investigation of the circumstances of the minor and the facts
163 surrounding his being taken into protective custody.

164 (2) The division's post-removal investigation shall include, among other actions necessary
165 to meet reasonable professional standards:

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

168 (b) with regard to a child who is five years of age or older, a personal interview with the
169 child outside of the presence of the alleged perpetrator, conducted in accordance with the
170 requirements of Subsection (6);

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

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

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

176 (f) an unscheduled visit to the child's home; and

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

180 (3) (a) [The] With regard to both pre- and post-removal, the division's determination of

181 whether a report is substantiated or unsubstantiated may be based on the child's statements alone.

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

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

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

188 (4) The division should maintain protective custody of the child if it finds that one or more
189 of the following conditions exist:

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

192 (b) shelter of the minor is a matter of necessity for the protection of the minor and there
193 are no reasonable means by which the minor can be protected in his home or the home of a
194 responsible relative;

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

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

198 (5) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends
199 and holidays, the Division of Child and Family Services shall convene a child protection team to
200 review the circumstances regarding removal of the child from his home, and prepare the testimony
201 and evidence that will be required of the division at the shelter hearing, in accordance with Section
202 78-3a-306.

203 (b) Members of that team shall include:

204 (i) the caseworker assigned to the case and the caseworker who made the decision to
205 remove the child;

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

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

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

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

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

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

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

221 (7) The division shall cooperate with law enforcement investigations regarding the alleged
222 perpetrator.

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

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

227 (b) contacting local schools;

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

229 (d) checking public assistance records.

230 Section 7. Section **62A-4a-205 (Effective 07/01/00)** is amended to read:

231 **62A-4a-205 (Effective 07/01/00). Treatment plans.**

232 (1) No more than 45 days after a child enters the temporary custody of the division, the
233 child's treatment plan shall be finalized.

234 (2) The division shall use an interdisciplinary team approach in developing each treatment
235 plan. An interdisciplinary team shall include, but is not limited to, representatives from mental
236 health, education, and, where appropriate, a representative of law enforcement.

237 (3) (a) The division shall involve all of the following in the development of a child's
238 treatment plan:

239 [(a)] (i) both of the child's natural parents, unless the whereabouts of a parent are
240 unknown;

241 [(b)] (ii) the child;

242 [(c)] (iii) the child's foster parents; and

243 [~~(d)~~] (iv) where appropriate, the child's stepparent.

244 (b) In relation to all information considered by the division in developing a treatment plan,
245 additional weight and attention shall be given to the input of the child's natural and foster parents
246 upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

247 (4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the
248 child's natural parents and foster parents immediately upon completion, or as soon as is reasonably
249 possible thereafter.

250 (5) Each treatment plan shall specifically provide for the safety of the child, in accordance
251 with federal law, and clearly define what actions or precautions will, or may be, necessary to
252 provide for the health, safety, protection, and welfare of the child.

253 (6) The plan shall set forth, with specificity, at least the following:

254 (a) the reason the child entered Division of Child and Family Services custody, and
255 documentation of the reasonable efforts made to prevent placement, or documentation of the
256 emergency situation that existed and that prevented reasonable efforts;

257 (b) the primary permanency goal for the child and the reason for selection of that goal;

258 (c) the concurrent permanency goal for the child and the reason for the selection of that
259 goal;

260 (d) if the plan is for the child to return to his family, specifically what the parents must do
261 in order to enable the child to be returned home, specifically how those requirements may be
262 accomplished, and how those requirements will be measured;

263 (e) the specific services needed to reduce the problems that necessitated placement in the
264 division's custody, and who will provide for and be responsible for case management;

265 (f) a visitation schedule between the natural parent and the child;

266 (g) the health care to be provided to the child, and the mental health care to be provided
267 to address any known or diagnosed mental health needs of the child. If residential treatment, rather
268 than a foster home, is the proposed placement, a specialized assessment of the child's health needs
269 shall be conducted, including an assessment of mental illness and behavior and conduct disorders;
270 and

271 (h) social summaries that include case history information pertinent to case planning.

272 (7) (a) [~~The~~] Each treatment plan shall be specific to each child and his family, rather than
273 general. The division shall train its workers to develop treatment plans that comply with federal

274 mandates and the specific needs of the particular child and his family[;].

275 (b) [all] All treatment plans and expectations shall be individualized and contain specific
276 time frames[;].

277 (c) [~~treatment~~] Treatment plans shall address problems that keep children in placement and
278 keep them from achieving permanence in their lives[~~and~~].

279 (d) [~~the~~] The child's natural parents, foster parents, and where appropriate, stepparents,
280 shall be kept informed of and supported to participate in important meetings and procedures related
281 to the child's placement.

282 (8) With regard to a child who is three years of age or younger, if the goal is not to return
283 the child home, the permanency plan for that child shall be adoption unless there are documented
284 extenuating circumstances that justify long-term foster care or guardianship.

285 Section 8. Section **62A-4a-409** is amended to read:

286 **62A-4a-409. Investigation by division -- Temporary protective custody.**

287 (1) The division shall make a thorough investigation upon receiving either an oral or
288 written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when
289 there is reasonable cause to suspect a situation of abuse, neglect, fetal alcohol syndrome, or fetal
290 drug dependency. The primary purpose of that investigation shall be protection of the child.

291 (2) The investigation may include inquiry into the child's home environment, emotional,
292 or mental health, nature and extent of injuries, and physical safety.

293 (3) The division shall make a written report of its investigation. The written report shall
294 include a determination regarding whether the alleged abuse or neglect was substantiated or
295 unsubstantiated.

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

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

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

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

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

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

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

317 (b) Before conducting any interview of a child prior to removal of that child from his home
318 pursuant to Sections 62A-4a-202.1 and 78-3a-301, the division shall obtain the permission of at
319 least one parent of the child before the interview may be conducted in any setting, unless:

320 (i) the child's welfare would thereby be endangered; or

321 (ii) the alleged perpetrator is:

322 (A) a parent or stepparent of the child;

323 (B) a person residing in the same household as the child;

324 (C) a person related to or closely associated with a parent of the child; or

325 (D) a person who has direct access to the child.

326 (9) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through
327 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take a child
328 into protective custody, and deliver the child to a law enforcement officer, or place the child in an
329 emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent
330 to the child's removal from its original environment. Control and jurisdiction over the child is
331 determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

332 Section 9. Section **78-3a-301** is amended to read:

333 **78-3a-301. Removing a child from his home -- Grounds for removal.**

334 (1) The Division of Child and Family Services may not remove a child from the custody
335 of his natural parent unless there is substantial cause to believe that any one of the following exist:

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

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

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

345 (c) the minor or another minor residing in the same household has been physically or
346 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
347 a parent, a member of the parent's household, or other person known to the parent. If a parent has
348 received actual notice that physical or sexual abuse by a person known to the parent has occurred,
349 and there is evidence that the parent has allowed the child to be in the physical presence of the
350 alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of
351 being physically or sexually abused;

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

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

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

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

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

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

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

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

364 (l) the parent, or an adult residing in the same household as the parent, has been charged
365 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
366 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the

367 property where the child resided; or

368 (m) the child's welfare is otherwise endangered, as documented by the caseworker.

369 (2) The Division of Child and Family Services may not remove a minor from the custody
370 of his natural parent solely on the basis of educational neglect.

371 (3) The Division of Child and Family Services shall comply with the provisions of Section
372 62A-4a-202.1 in effecting removal of a child pursuant to this section.

373 [(3)] (4) (a) A minor removed from the custody of his natural parent under this section may
374 not be placed or kept in a secure detention facility pending court proceedings unless the minor is
375 detainable based on guidelines promulgated by the Division of Youth Corrections.

376 (b) A minor removed from the custody of his natural parent but who does not require
377 physical restriction shall be given temporary care in a shelter facility.

378 Section 10. Section **78-3a-306** is amended to read:

379 **78-3a-306. Shelter hearing.**

380 (1) With regard to a child who has been removed by the Division of Child and Family
381 Services, or who is in the protective custody of the division, a shelter hearing shall be held within
382 72 hours after removal of the child from his home, excluding weekends and holidays.

383 (2) Upon removal of a child from his home and receipt of that child into protective
384 custody, the division shall issue a notice that contains all of the following:

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

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

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

388 (d) a concise statement regarding the reasons for removal, and of the allegations and code
389 sections under which the proceeding has been instituted;

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

394 (f) a statement that the parent or guardian is liable for the cost of support of the minor in
395 the protective custody, temporary custody, and custody of the division, and the cost for legal
396 counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial
397 ability.

398 (3) That notice shall be personally served as soon as possible, but [at least 24 hours prior
399 to the time set for the shelter hearing] no later than one business day after removal of a child from
400 his home, on:

401 (a) the appropriate guardian ad litem; and

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

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

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

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

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

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

409 (e) the caseworker from the Division of Child and Family Services who has been assigned
410 to the case; and

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

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

415 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
416 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or
417 guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
418 evidence to only that which goes to the issues of removal and the child's need for continued
419 protection.

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

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

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

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

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

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

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

431 [(7)] (8) If necessary to protect the child, preserve the rights of a party, or for other good
432 cause shown, the court may grant no more than one time-limited continuance, not to exceed five
433 judicial days.

434 [(8)] (9) The court shall order that the minor be released from the protective custody of the
435 division unless it finds, by a preponderance of the evidence, that any one of the following exist:

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

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

445 (c) the minor or another minor residing in the same household has been physically or
446 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
447 a parent, a member of the parent's household, or other person known to the parent. If a parent has
448 received actual notice that physical or sexual abuse by a person known to the parent has occurred,
449 and there is evidence that the parent has allowed the child to be in the physical presence of the
450 alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of
451 being physically or sexually abused;

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

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

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

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

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

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

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

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

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

468 ~~[(9)]~~ (10) (a) The court shall also make a determination on the record as to whether
469 reasonable efforts were made to prevent or eliminate the need for removal of the minor from his
470 home and whether there are available services that would prevent the need for continued removal.
471 If the court finds that the minor can be safely returned to the custody of his parent or guardian
472 through the provision of those services, it shall place the minor with his parent or guardian and
473 order that those services be provided by the division.

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

476 ~~[(10)]~~ (11) Where the division's first contact with the family occurred during an emergency
477 situation in which the child could not safely remain at home, the court shall make a finding that
478 any lack of preplacement preventive efforts was appropriate.

479 ~~[(11)]~~ (12) In cases where actual sexual abuse or abandonment, or serious physical abuse
480 or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
481 or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide
482 reunification services, or attempt to rehabilitate the offending parent or parents.

483 ~~[(12)]~~ (13) The court may not order continued removal of a minor solely on the basis of
484 educational neglect as described in Subsection 78-3a-103(1)(r)(ii).

485 ~~[(13)]~~ (14) (a) Whenever a court orders continued removal of a minor under this section,
486 it shall state the facts on which that decision is based.

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

489 ~~[(14)]~~ (15) If the court finds that continued removal and temporary custody are necessary
490 for the protection of a child because harm may result to the child if he were returned home, it shall

491 order continued removal regardless of any error in the initial removal of the child, or the failure
492 of a party to comply with notice provisions, or any other procedural requirement of this chapter
493 or Title 62A, Chapter 4a, Child and Family Services.

494 Section 11. **Effective date.**

495 This act takes effect on May 1, 2000, except that Section 62A-4a-205 takes effect on July
496 1, 2000.