

1 **MANDATORY CHILD PROTECTIVE SERVICE**

2 **REQUIREMENTS**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Matt Throckmorton**

6 **This act requires the Division of Child and Family Services to follow the same investigative**
7 **requirements for both preremoval and postremoval investigations of child abuse or neglect.**

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

9 AMENDS:

10 **62A-4a-202.3**, as last amended by Chapters 274 and 321, Laws of Utah 2000

11 **62A-4a-409**, as last amended by Chapters 274 and 321, Laws of Utah 2000

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

13 Section 1. Section **62A-4a-202.3** is amended to read:

14 **62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective**
15 **custody.**

16 (1) When a child is taken into protective custody in accordance with Sections
17 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately initiate
18 ~~[a post-removal]~~ an investigation of the circumstances of the minor and the facts surrounding his
19 being taken into protective custody.

20 (2) The division's ~~[post-removal]~~ investigation shall include, among other actions
21 necessary to meet reasonable professional standards:

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

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

27 (c) an interview with the child's natural parents or other guardian, unless their whereabouts

28 are unknown;

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

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

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

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

35 (ii) have access to the child; and

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

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

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

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

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

46 (4) (a) [~~With regard to both pre- and post-removal, the~~] The division's determination of
47 whether a report is substantiated or unsubstantiated may be based on the child's statements alone.

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

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

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

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

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

58 (b) shelter of the minor is a matter of necessity for the protection of the minor and there

59 are no reasonable means by which the minor can be protected in his home or the home of a
60 responsible relative;

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

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

64 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends
65 and holidays, the Division of Child and Family Services shall convene a child protection team to
66 review the circumstances regarding removal of the child from his home, and prepare the testimony
67 and evidence that will be required of the division at the shelter hearing, in accordance with Section
68 78-3a-306.

69 (b) Members of that team shall include:

70 (i) the caseworker assigned to the case and the caseworker who made the decision to
71 remove the child;

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

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

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

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

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

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

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

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

89 (9) The division may not close an investigation solely on the grounds that the division

90 investigator is unable to locate the child, until all reasonable efforts have been made to locate the
91 child and family members. Those efforts include:

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

96 Section 2. Section **62A-4a-409** is amended to read:

97 **62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval**
98 **interviews of children.**

99 (1) The division shall make a thorough pre-removal investigation upon receiving either
100 an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
101 dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal alcohol
102 syndrome, or fetal drug dependency. The primary purpose of that investigation shall be protection
103 of the child.

104 (2) The preremoval investigation [~~may include inquiry into the child's home environment,~~
105 ~~emotional, or mental health, nature and extent of injuries, and physical safety]~~ shall include the
106 same investigative requirements described in Section 62A-4a-202.3.

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

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

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

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

119 (5) In any case where the division supervises, governs, or directs the affairs of any
120 individual, institution, or facility that has been alleged to be involved in acts or omissions of child

121 abuse or neglect, the investigation of the reported child abuse or neglect shall be conducted by an
122 agency other than the division.

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

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

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

131 (9) With regard to any interview of a child prior to removal of that child from his home:

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

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

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

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

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

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

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

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

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

151 through 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take

152 a child into protective custody, and deliver the child to a law enforcement officer, or place the child
153 in an emergency shelter facility approved by the juvenile court, at the earliest opportunity
154 subsequent to the child's removal from its original environment. Control and jurisdiction over the
155 child is determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

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

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

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

Legislative Review Note
as of 1-18-01 10:27 AM

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

Office of Legislative Research and General Counsel