

Senator Parley Hellewell proposes to substitute the following bill:

1 NOTIFICATION BY FAMILY SERVICES OF
2 NONCUSTODIAL PARENT OF CHILD'S REMOVAL

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 Sponsor: Parley Hellewell

6 This act amends the Human Services Code, the Judicial Code and the State System of Public
7 Education. This act requires a peace officer, case worker or school to inform a custodial and
8 noncustodial parent when a minor is taken into custody or suspended or expelled from
9 school.

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

11 AMENDS:

12 53A-11-903, as last amended by Chapter 97, Laws of Utah 1995

13 62A-4a-202.2, as last amended by Chapter 274, Laws of Utah 2000

14 78-3a-113, as renumbered and amended by Chapter 365, Laws of Utah 1997

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

16 Section 1. Section 53A-11-903 is amended to read:

17 53A-11-903. Suspension and expulsion procedures -- Distribution of policies.

18 (1) (a) Policies required under this part shall include written procedures for the suspension
19 and expulsion of, or denial of admission to, a student, consistent with due process and other
20 provisions of law.

21 (b) (i) The policies required in Subsection (1)(a) shall include a procedure for the
22 notification of custodial and § ,UNLESS OTHERWISE ORDERED BY A COURT, THE § noncustodial
22a parents of the suspension and expulsion of, or denial of
23 admission to a student.

24 (ii) For purposes of notice to a noncustodial parent, if a good faith attempt was made by
25 the school to notify the noncustodial parent, failure to notify shall be considered to be due to



26 circumstances beyond the control of the school and may not be construed to permit a new defense
 27 to any action under this chapter, or to interfere with any rights, procedures, or investigations
 28 provided for in this chapter.

29 (2) (a) Each local school board shall provide for the distribution of a copy of a school's
 30 discipline and conduct policy to each student upon enrollment in the school.

31 (b) A copy of the policy shall be posted in a prominent location in each school.

32 (c) Any significant change in a school's conduct and discipline policy shall be distributed
 33 to students in the school and posted in the school in a prominent location.

34 Section 2. Section **62A-4a-202.2** is amended to read:

35 **62A-4a-202.2. Notice to parent upon removal of child -- Written statement of**
 36 **procedural rights and preliminary proceedings.**

37 (1) (a) Any peace officer or caseworker who takes a minor into protective custody pursuant
 38 to Section 62A-4a-202.1 shall immediately inform, through the most efficient means available, the
 39 [parent;] parents, including a noncustodial parent, the guardian, or responsible relative:

40 [~~(a)~~] (i) that the minor has been taken into protective custody;

41 [~~(b)~~] (ii) the reasons for removal and placement in protective custody;

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

44 [~~(d)~~] (iv) of a telephone number where the parent may access further information.

45 (b) For purposes of informing the noncustodial parent as required in Subsection (1), the
 46 division shall immediately search for the noncustodial parent through the national parent locator
 47 database and provide the noncustodial parent notice through information obtained from the
 48 database. If the noncustodial parent cannot be located in the national database, the division shall
 48a **§ MAKE REASONABLE EFFORT TO §**

49 provide notice to the noncustodial parent within five days after the shelter hearing.

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

55 (a) the conditions under which a minor may be released, hearings that may be required,
 56 and the means by which the parent may access further specific information about a minor's case

57 and conditions of protective and temporary custody; and

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

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

64 Section 3. Section **78-3a-113** is amended to read:

65 **78-3a-113. Minor taken into custody by peace officer, private citizen, or probation**
66 **officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer**
67 **to take adult into custody.**

68 (1) A minor may be taken into custody by a peace officer without order of the court if:

69 (a) in the presence of the officer the minor has violated a state law, federal law, local law,
70 or municipal ordinance;

71 (b) there are reasonable grounds to believe the minor has committed an act which if
72 committed by an adult would be a felony;

73 (c) the minor is seriously endangered in his surroundings or if the minor seriously
74 endangers others, and immediate removal appears to be necessary for his protection or the
75 protection of others;

76 (d) there are reasonable grounds to believe the minor has run away or escaped from his
77 parents, guardian, or custodian; or

78 (e) there is reason to believe the minor is subject to the state's compulsory education law
79 and that the minor is absent from school without legitimate or valid excuse, subject to Section
80 53A-11-105.

81 (2) (a) A private citizen or a probation officer may take a minor into custody if under the
82 circumstances he could make a citizen's arrest if the minor was an adult.

83 (b) A probation officer may also take a minor into custody under Subsection (1) or if the
84 minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of
85 the juvenile court or in emergency situations in which a peace officer is not immediately available.

86 (3) (a) If an officer or other person takes a minor into temporary custody, he shall without
87 unnecessary delay notify the parents, including a noncustodial parent, guardian, or custodian. The

88 minor shall then be released to the care of his parent or other responsible adult, unless his
89 immediate welfare or the protection of the community requires his detention.

90 (b) Before the minor is released, the parent or other person to whom the minor is released
91 shall be required to sign a written promise on forms supplied by the court to bring the minor to the
92 court at a time set or to be set by the court.

93 (4) (a) A minor may not be held in temporary custody by law enforcement any longer than
94 is reasonably necessary to obtain his name, age, residence, and other necessary information and
95 to contact his parents, guardian, or custodian.

96 (b) If the minor is not released under Subsection (3), he shall be taken to a place of
97 detention or shelter without unnecessary delay.

98 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly file
99 with the detention or shelter facility a written report on a form provided by the division stating the
100 details of the presently alleged offense, the facts which bring the minor within the jurisdiction of
101 the juvenile court, and the reason the minor was not released by law enforcement.

102 (b) (i) The designated youth corrections facility staff person shall immediately review the
103 form and determine, based on the guidelines for detention admissions established by the Division
104 of Youth Corrections under Sections 62A-7-104 and 62A-7-205, whether to admit the minor to
105 secure detention, admit the minor to home detention, place the minor in a placement other than
106 detention, or return the minor home upon written promise to bring the minor to the court at a time
107 set, or without restriction.

108 (ii) If the designated youth corrections facility staff person determines to admit the minor
109 to home detention, that staff person shall notify the juvenile court of that determination. The court
110 shall order that notice be provided to the designated persons in the local law enforcement agency
111 and the school or transferee school, if applicable, which the minor attends of the home detention.
112 The designated persons may receive the information for purposes of the minor's supervision and
113 student safety.

114 (iii) Any employee of the local law enforcement agency and the school which the minor
115 attends who discloses the notification of home detention is not:

116 (A) civilly liable except when disclosure constitutes fraud or malice as provided in Section
117 63-30-4; and

118 (B) civilly or criminally liable except when disclosure constitutes a knowing violation of

119 Section 63-2-801.

120 (c) A minor may not be admitted to detention unless the minor is detainable based on the
121 guidelines or the minor has been brought to detention pursuant to a judicial order or division
122 warrant pursuant to Subsection 62A-7-112(8).

123 (d) If a minor taken to detention does not qualify for admission under the guidelines
124 established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall arrange
125 appropriate placement.

126 (e) If a minor is taken into custody and admitted to a secure detention or shelter facility,
127 facility staff shall immediately notify the minor's parents, including a noncustodial parent,
128 guardian, or custodian and shall promptly notify the court of the placement.

129 (f) If the minor is admitted to a secure detention or shelter facility outside the county of
130 his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that detention
131 shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's
132 residence to transport the minor to a detention or shelter facility as provided in this section.

133 (6) A person may be taken into custody by a peace officer without a court order if the
134 person is in apparent violation of a protective order or if there is reason to believe that a minor is
135 being abused by the person and any of the situations outlined in Section 77-7-2 exist.

136 (7) If a good faith attempt was made by the peace officer to notify the noncustodial parent
137 in accordance with the requirements of Subsections (3)(a) and (5)(e), failure to notify shall be
138 considered due to circumstances beyond the control of the peace officer and may not be construed
139 to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights,
140 procedures, or investigations provided for by this chapter or Title 62A.