

**NOTIFICATION BY FAMILY SERVICES OF
NONCUSTODIAL PARENT OF CHILD'S REMOVAL**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley Hellewell

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

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

AMENDS:

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

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

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

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

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

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

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

(b) (i) The policies required in Subsection (1)(a) shall include a procedure for the notification of custodial and, unless otherwise ordered by a court, the noncustodial parents of the suspension and expulsion of, or denial of admission to a student.

(ii) For purposes of notice to a noncustodial parent, if a good faith attempt was made by the school to notify the noncustodial parent, failure to notify shall be considered to be due to circumstances beyond the control of the school and may not be construed to permit a new defense to any action under this chapter, or to interfere with any rights, procedures, or investigations provided for in this chapter.

(2) (a) Each local school board shall provide for the distribution of a copy of a school's

discipline and conduct policy to each student upon enrollment in the school.

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

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

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

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

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

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

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

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

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

(b) For purposes of informing the noncustodial parent as required in Subsection (1), the division shall immediately search for the noncustodial parent through the national parent locator database and provide the noncustodial parent notice through information obtained from the database. If the noncustodial parent cannot be located in the national database, the division shall make reasonable effort to provide notice to the noncustodial parent within five days after the shelter hearing.

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

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

conditions of protective and temporary custody; and

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

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

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

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

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

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

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

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

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

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

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

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

(3) (a) If an officer or other person takes a minor into temporary custody, he shall without unnecessary delay notify the parents, including a noncustodial parent, guardian, or custodian. The minor shall then be released to the care of his parent or other responsible adult, unless his immediate welfare or the protection of the community requires his detention.

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

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

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

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

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

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

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

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

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63-2-801.

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

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

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

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

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

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