

**WARRANT FOR REMOVAL OF MINOR FROM
HOME**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

This act modifies the Human Services Code and the Judicial Code. The act provides that a minor may not be removed from the minor's home or school or be taken into protective custody with or without a warrant unless the minor's parent or guardian consents, or there is probable cause to believe any one or more of enumerated circumstances exist. The act amends and clarifies the grounds for a court ordering that a minor be removed from the minor's home or otherwise taken into protective custody, after the filing of a petition alleging abuse, neglect, or dependency. The act makes technical changes. The act amends provisions relating to the authority to issue search warrants and subpoenas.

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

AMENDS:

62A-4a-202.1, as last amended by Chapter 265, Laws of Utah 2002

78-3a-106, as last amended by Chapter 265, Laws of Utah 2002

78-3a-306, as last amended by Chapter 265, Laws of Utah 2002

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

Section 1. Section **62A-4a-202.1** is amended to read:

62A-4a-202.1. Taking a minor into protective custody with or without warrant or court order -- Peace officer -- Division of Child and Family Services caseworker -- Consent or specified circumstances -- Shelter care or emergency kinship.

(1) A state officer, peace officer, or child welfare worker may not, without [a] the consent of the minor's parent or guardian, a warrant, or a court order issued under Section 78-3a-106, remove a minor from the minor's home or school, or take a minor into protective custody unless[:] there exist exigent circumstances.

~~[(a) a parent or guardian consents; or]~~

~~[(b) the officer or worker has, at the time, probable cause to believe that one or more of~~

the following circumstances exist:]

~~[(i) there is imminent danger to the physical health or safety of the minor, and the minor's physical health or safety may not be protected without removing the minor from the custody of the minor's parent or guardian;]~~

~~[(ii) there is a substantial risk to the minor of being physically or sexually abused by a parent or guardian, a member of the parent's or guardian's household, or another person known to the parent or guardian;]~~

~~[(iii) the parent or guardian is unwilling to have physical custody of the minor;]~~

~~[(iv) the minor has been abandoned without any provision for the minor's support;]~~

~~[(v) a parent who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the minor;]~~

~~[(vi) a relative or other adult custodian with whom the parent or guardian has left the minor is unwilling or unable to provide care or support for the minor, the whereabouts of the parent or guardian are unknown, and reasonable efforts to locate the parent or guardian have been unsuccessful; or]~~

~~[(vii) an infant has been abandoned, as defined in Section 78-3a-313.5;]~~

~~[(2) A state officer, peace officer, or child welfare worker may not remove a minor from the minor's home or school or take a minor into protective custody under Subsection (1) if motivated solely by an intent to seize or obtain evidence unrelated to the potential abuse or neglect allegation.]~~

~~[(3) In the absence of circumstances that demonstrate a substantial, immediate threat to the health or safety of a minor, a state officer, peace officer, or child welfare worker may not remove a minor from the minor's home or school or take a minor into protective custody under Subsection (1) on the basis of:]~~

~~[(a) mental illness or poverty of the parent or guardian; or]~~

~~[(b) educational neglect.]~~

~~[(4)] (2) A child welfare worker within the division may take action under Subsection (1) accompanied by a peace officer, or without a peace officer when a peace officer is not reasonably~~

available.

~~[(5)]~~ (3) If possible, consistent with the minor's safety and welfare, before taking a minor into protective custody, the worker shall also determine whether there are services reasonably available to the worker which, if provided to the minor's parent or to the minor, would eliminate the need to remove the minor from the custody of the minor's parent or guardian. If those services are reasonably available, they shall be utilized. In determining whether services are reasonably available, and in making reasonable efforts to provide those services, the minor's health, safety, and welfare shall be the worker's paramount concern.

~~[(6)]~~ (4) (a) A minor removed or taken into custody under this section may not be placed or kept in a secure detention facility pending court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Youth Corrections.

(b) A minor removed from the custody of the minor's parent or guardian but who does not require physical restriction shall be given temporary care in:

- (i) a shelter facility; or
- (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

Section 2. Section **78-3a-106** is amended to read:

78-3a-106. Search warrants and subpoenas -- Authority to issue.

(1) The court has authority to issue search warrants, subpoenas, or investigative subpoenas in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial courts in the state.

~~[(2) (a) If it appears to the court upon an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses, if required by the judge, that there is probable cause to believe that a child is being ill-treated by the child's parent, guardian, or custodian, or is being detained, ill-treated, or harbored against the desires of the child's parent, guardian, or custodian, in any place within the jurisdiction of the court, the court may issue a warrant authorizing a child protective services worker or peace officer to search for the child and~~

~~take the child into protective custody.]~~

(2) (a) The court may issue a warrant authorizing a child protective services worker or peace officer to search for a child and take the child into protective custody if it appears to the court upon a verified petition, recorded sworn testimony or an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses, if required by the judge, that there is probable cause to believe that:

(i) there is an immediate threat to the safety of a child; and

(ii) the applicant certifies to the court in writing or by recorded sworn testimony as to the efforts, if any, that have been made to give notice to the minor's parent or guardian and the reasons supporting the claim that notice and an opportunity to be heard should not be required.

(b) A warrant removing a child from his home or school, or having the effect of depriving a parent or guardian of the care, custody, and control of their minor child, may not be issued without notice to the minor's parents and opportunity to be heard unless the requirements of Subsections (2)(a)(i) and (ii) have been satisfied.

~~(c)~~ (c) Pursuant to Section 77-23-210, a peace officer making the search may enter a house or premises by force, if necessary, in order to remove the child.

~~(d)~~ (d) The person executing the warrant shall then take the child to the place of shelter designated by the court.

(3) The parent or guardian to be notified must be the minor's primary caregiver, or the person who has custody of the minor, when the order is sought.

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

78-3a-306. Shelter hearing.

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

(a) removal of the child from his home by the Division of Child and Family Services;

(b) placement of the child in the protective custody of the Division of Child and Family Services;

(c) emergency kinship placement under Subsection 62A-4a-202.1~~(6)~~ (4); or

(d) as an alternative to removal of the child, a parent has entered a domestic violence shelter at the request of the Division of Child and Family Services.

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

- (a) the name and address of the person to whom the notice is directed;
- (b) the date, time, and place of the shelter hearing;
- (c) the name of the minor on whose behalf a petition is being brought;
- (d) a concise statement regarding:
 - (i) the reasons for removal or other action of the division under Subsection (1); and
 - (ii) the allegations and code sections under which the proceeding has been instituted;
- (e) a statement that the parent or guardian to whom notice is given, and the minor, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and

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

(3) That notice shall be personally served as soon as possible, but no later than one business day after removal of a child from his home, on:

- (a) the appropriate guardian ad litem; and
 - (b) both parents and any guardian of the minor, unless they cannot be located.
- (4) The following persons shall be present at the shelter hearing:
- (a) the child, unless it would be detrimental for the child;
 - (b) the child's parents or guardian, unless they cannot be located, or fail to appear in response to the notice;
 - (c) counsel for the parents, if one has been requested;
 - (d) the child's guardian ad litem;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) the parent, or an adult residing in the same household as the parent, has been charged

or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the property where the child resided; or

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

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

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

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

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

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

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

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

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if he were returned home, it shall order continued removal regardless of any error in the initial removal of the child, or the failure

of a party to comply with notice provisions, or any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.