

Representative Eric K. Hutchings proposes the following substitute bill:

**PROTECTIVE CUSTODY OF ABUSED,
NEGLECTED, OR DEPENDENT CHILDREN**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill amends the Child and Family Services and Judicial Codes.

Highlighted Provisions:

This bill:

- ▶ prohibits a child from being taken into protective custody for child abuse, neglect, or dependency except by a peace officer;
- ▶ authorizes a child welfare worker from the Division of Child and Family Services to accompany a peace officer taking a child into protective custody;
- ▶ requires a peace officer who takes a child into protective custody to immediately notify the Division of Child and Family Services;
- ▶ prohibits a child from being taken into protective custody prior to completion of an investigation by a peace officer under contract with the Division of Child and Family Services, except in exigent circumstances;
- ▶ provides standards for investigations conducted prior to taking a child into protective custody;
- ▶ authorizes the Division of Child and Family Services to contract with peace officers;
- ▶ authorizes a peace officer under contract with the Division of Child and Family



Services to access the division's Management Information System;

- requires that investigations of reports that a child within the custody of the Division of Child and Family Services has been abused or neglected be conducted by a peace officer;

- references existing law regarding protective custody by a physician, hospital, or similar medical facility for not to exceed 72 hours under certain conditions;

- makes conforming amendments; and

- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

62A-4a-202.1 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003

62A-4a-202.2, as last amended by Chapter 10, Laws of Utah 2001, First Special Session

62A-4a-202.3, as last amended by Chapter 265, Laws of Utah 2002

62A-4a-202.8, as enacted by Chapter 326, Laws of Utah 2003

62A-4a-209, as last amended by Chapters 265 and 306, Laws of Utah 2002

62A-4a-409, as last amended by Chapter 265, Laws of Utah 2002

62A-4a-410, as last amended by Chapter 206, Laws of Utah 2002

78-3a-106, as last amended by Chapter 267, Laws of Utah 2003

78-3a-301 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003

78-3a-306, as last amended by Chapters 131 and 267, Laws of Utah 2003

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

Section 1. Section **62A-4a-202.1 (Effective 07/01/04)** is amended to read:

62A-4a-202.1 (Effective 07/01/04). Peace officer taking a minor into protective custody with or without warrant or court order -- Caseworker may accompany --

Consent or specified circumstances -- Shelter care or emergency kinship.

(1) A ~~[state officer,]~~ peace officer~~[, or child welfare worker]~~ may not, without 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.

(2) A ~~[child welfare worker within the division may take action]~~ peace officer taking a minor into protective custody under Subsection (1) may be accompanied by a ~~[peace officer, or without a peace officer when a peace officer is not reasonably available]~~ child welfare worker from the division.

(3) If possible, consistent with the minor's safety and welfare, and before ~~[taking]~~ a minor is taken into protective custody by a peace officer, the ~~[worker]~~ division shall ~~[also]~~ determine whether there are services reasonably available to the ~~[worker]~~ division 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]~~ division's paramount concern.

(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 Juvenile Justice Services.

(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 **62A-4a-202.2** is amended to read:

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

(1) (a) Any peace officer ~~[or caseworker]~~ who takes a minor into protective custody under exigent circumstances, pursuant to Section 62A-4a-202.1, shall immediately notify the division. The division shall immediately use reasonable efforts to locate and inform, through the most efficient means available, the parents, including a noncustodial parent, the guardian,

or responsible relative:

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

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

(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

(iv) of a telephone number where the parent may access further information.

(b) For purposes of locating and informing the noncustodial parent as required in Subsection (1)(a), the division shall search for the noncustodial parent through the national parent locator database if the division is unable to locate the noncustodial parent through other reasonable efforts.

(2) The attorney general's office shall adopt, print, and distribute a form for the written statement described in Subsection (1) (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]~~ division 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]~~ division 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 78, Chapter 3a, Juvenile ~~[Courts]~~ Court Act of 1996.

Section 3. Section **62A-4a-202.3** is amended to read:

62A-4a-202.3. Investigation prior to custody -- Substantiation of reports -- Child in protective custody.

(1) As used in this section "peace officer" means an individual with practical criminal investigatory experience and training acting as an independent investigator of criminal investigations.

119 ~~[(1) When]~~ (2) Except as provided in Subsection (6), a child [is] may not be taken into
120 protective custody in accordance with ~~[Section]~~ Sections 62A-4a-202.1, 78-3a-106, or
121 78-3a-301, [or when the division takes any other action which would require a shelter hearing
122 under Subsection 78-3a-306(1), the division shall immediately initiate] until a peace officer
123 under contract with the division, in accordance with this section, completes an investigation of
124 the allegations and circumstances [of the minor and the facts surrounding] that could result in
125 the minor's being taken into protective custody.

126 ~~[(2)]~~ (3) (a) The ~~[division's]~~ investigation by the peace officer shall include, among
127 other actions necessary to meet reasonable professional standards:

128 ~~[(a)]~~ (i) a search for and review of any records of past reports of abuse or neglect
129 involving the same child, any sibling or other child residing in that household, and the alleged
130 perpetrator;

131 ~~[(b)]~~ (ii) with regard to a child who is five years of age or older, a personal interview
132 with the child outside of the presence of the alleged perpetrator, conducted in accordance with
133 the requirements of Subsection ~~[(7)]~~ (11);

134 ~~[(c)]~~ (iii) an interview with the child's natural parents or other guardian, unless their
135 whereabouts are unknown;

136 ~~[(d)]~~ (iv) an interview with the person who reported the abuse, unless anonymous;

137 ~~[(e)]~~ (v) where possible and appropriate, interviews with other third parties who have
138 had direct contact with the child, including school personnel and the child's health care
139 provider;

140 ~~[(f)]~~ (vi) an unscheduled visit to the child's home, unless the ~~[division]~~ peace officer
141 has reasonable cause to believe that the reported abuse was committed by a person who does
142 not:

143 ~~[(i)]~~ (A) live in the child's home; or

144 ~~[(ii)]~~ (B) have access to the child; and

145 ~~[(g)]~~ (vii) if appropriate and indicated in any case alleging physical injury, sexual
146 abuse, or failure to meet the child's medical needs, a medical examination by an appropriate
147 medical practitioner. That examination shall be obtained no later than 24 hours after the child
148 was placed in protective custody.

149 (b) For purposes of Subsection (3)(a)(vii), if the child is taken into protective custody

prior to completion of the investigation, the examination shall be obtained no later than 24 hours after the child was taken into protective custody.

~~[(3)]~~ (4) The ~~[division]~~ peace officer may rely on a written report of ~~[a prior]~~ an interview required under Subsection (3) rather than conducting an additional interview, if:

(a) the division, a peace officer, or a law enforcement [has] agency previously conducted the interview as part of a timely and thorough investigation regarding the alleged abuse or neglect and [has] produced a written report; and

~~[(b) that investigation included one or more of the interviews required by Subsection (2); and]~~

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

(b) the law enforcement officer determines that repeating the interview is not necessary due to the quality of the interview and written report.

(5) (a) The division shall contract with, but may not otherwise employ, law enforcement officers to meet the requirements of this section.

(b) A peace officer under contract with the division:

(i) may access the division's Management Information System under Section 62A-4a-116; and

(ii) is subject to the contract provider limited access to information in the Management Information System under Subsection 62A-4a-116(6), except that the peace officer may access any information necessary to complete the investigation required by this section.

(6) (a) Under exigent circumstances, a child may be taken into protective custody prior to completion of the investigation required in Subsection (2).

(b) If a child is taken into protective custody prior to the completion of the investigation, the peace officer shall complete the investigation as soon thereafter as possible.

~~[(4)]~~ (7) (a) The division's determination of whether a report of alleged abuse, neglect, or dependency is substantiated or unsubstantiated may be based on the child's statements alone.

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

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

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

~~[(5)]~~ (8) The division should maintain protective custody of ~~[the]~~ a child taken into protective custody in accordance with this section and Sections 62A-4a-202.1, 78-3a-106, or 78-3a-301 if it finds that one or more of the following conditions exist:

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

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

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

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

~~[(6)]~~ (9) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the division shall convene a child protection team to review the circumstances regarding removal of the child from the child's home or school, and prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78-3a-306.

(b) Members of that team shall include:

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

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

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

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

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

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

(c) At that 24-hour meeting, the division shall have available for review and consideration, the complete child protective services and foster care history of the child and the

child's parents and siblings.

[~~(7)~~] (10) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be audio or video taped, and the child shall be allowed to have a support person of the child's choice present. That support person may not be an alleged perpetrator.

[~~(8)~~] (11) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.

[~~(9)~~] (12) The division may not close [~~an investigation~~] a case solely on the grounds that the division [~~investigator~~], or a peace officer conducting an investigation under this section, is unable to locate the child, until all reasonable efforts have been made to locate the child and family members[~~. Those efforts include~~], including:

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

Section 4. Section **62A-4a-202.8** is amended to read:

62A-4a-202.8. Meeting within 24 hours.

(1) If the division files a petition under Subsection 78-3a-305(1) or (2) but [~~does not take~~] the child is not taken into protective custody, the division shall convene a child protection team meeting within 24 hours of the filing, excluding weekends and holidays, to review the circumstances regarding the filing of the petition and to develop a safety plan to protect the child from further abuse or neglect.

(2) The team shall include as many persons under Subsection 62A-4a-202.3[~~(6)~~] (9)(b) as appropriate.

(3) At its meeting the team shall review the complete child protective services and foster care history of the child and the child's parents and siblings.

Section 5. Section **62A-4a-209** is amended to read:

62A-4a-209. Emergency kinship placement.

(1) The division may use an emergency kinship placement under Subsection 62A-4a-202.1[~~(6)~~] (5) when:

- (a) the caseworker has made the determination that:

(i) the child's home is unsafe;
(ii) removal is necessary under the provisions of Section 62A-4a-202.1; and
(iii) the child's custodial parent or guardian will agree to not remove the child from the relative's home who serves as the kinship placement and not have any contact with the child until after the shelter hearing required by Section 78-3a-306;

(b) a relative, with preference being given to a noncustodial parent in accordance with Section 78-3a-307, can be identified who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:

(i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and

(ii) the relative has the ability to make the child available to division services and the guardian ad litem; and

(c) the relative agrees to care for the child on an emergency basis under the following conditions:

(i) the relative meets the criteria for an emergency kinship placement under Subsection (2);

(ii) the relative agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;

(iii) the relative agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;

(iv) the relative agrees to allow the division and the child's guardian ad litem to have access to the child;

(v) the relative has been informed and understands that the division may continue to search for other possible kinship placements for long-term care, if needed;

(vi) the relative is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and

(vii) the child is comfortable with the relative.

(2) Before the division places a child in an emergency kinship placement, the division must:

(a) request the name of a reference and, when possible, contact the reference ~~[and] to~~ determine [the answer to the following questions] whether:

(i) [~~would~~] the person identified as a reference would place a child in the home of the emergency kinship placement; and

(ii) [~~are~~] there are any other relatives to consider as a possible emergency or long-term placement for the child;

(b) have the custodial parent or guardian sign an emergency kinship placement agreement form during the investigation;

(c) complete a criminal background check described in Sections 62A-4a-202.4 and 78-3a-307.1 on all persons living in the relative's household;

(d) complete a home inspection of the relative's home; and

(e) have the emergency kinship placement approved by a family service specialist.

(3) As soon as possible after the emergency placement and prior to the shelter hearing required by Section 78-3a-306, the division shall convene a family unity meeting.

(4) After an emergency kinship placement, the division caseworker must:

(a) respond to the emergency kinship placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78-3a-306;

(c) contact the attorney general to schedule a shelter hearing;

(d) complete the kinship procedures required in Section 78-3a-307, including, within five days after placement, the criminal history record check described in Subsection (5); and

(e) continue to search for other relatives as a possible long-term placement, if needed.

(5) (a) In order to determine the suitability of the kinship placement and to conduct a background screening and investigation of individuals living in the household in which a child is placed, each individual living in the household in which the child is placed who has not lived in the state substantially year round for the most recent five consecutive years ending on the date the investigation is commenced shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the division to the Federal Bureau of Investigation for a national criminal history record check.

(b) The cost of those investigations shall be borne by whomever received placement of the child, except that the division may pay all or part of the cost of those investigations if the

person with whom the child is placed is unable to pay.

Section 6. Section **62A-4a-409** is amended to read:

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

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

(2) The [~~preremoval~~] investigation required under Subsection (1):

(a) shall [~~include~~] meet the [~~same investigative~~] investigation requirements [~~described in Section~~] of Subsection 62A-4a-202.3[-](3); and

(b) may be satisfied by completion of the investigation required by Section 62A-4a-202.3.

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

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

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

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

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

(6) If a report of neglect is based upon or includes an allegation of educational neglect

the division shall immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103.

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

(8) Division workers ~~[or]~~, other child protection team members, and peace officers have authority to enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged child abuse or neglect; however, except as provided in Section 62A-4a-407, a child may be taken into protective custody only by a peace officer, in accordance with this chapter and Title 78, Chapter 3a, Juvenile Court Act of 1996.

(9) With regard to any interview of a child prior to removal of that child from the child's home:

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

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

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

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

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

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

That support person:

(i) may include~~[- but is not limited to,]~~ a school teacher or administrator, guidance counselor, or child care provider; and

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

(10) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3, a ~~[division worker or child protection team member]~~ peace officer may

take a child into protective custody and ~~[deliver the child to a law enforcement officer, or]~~
place the child in an emergency shelter facility approved by the juvenile court, at the earliest
opportunity subsequent to the child's removal from the child's original environment. Control
and jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile
Court Act of 1996, and as otherwise provided by law.

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

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

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

Section 7. Section **62A-4a-410** is amended to read:

62A-4a-410. Immunity from liability.

(1) Any person, official, or institution participating in good faith in making a report,
taking photographs or X-rays, assisting an ~~[investigator from the division]~~ investigation by a
peace officer or the division of possible child abuse, neglect, or dependency, serving as a
member of a child protection team, or taking a child into protective custody pursuant to this
part, is immune from any liability, civil or criminal, that otherwise might result by reason of
those actions.

(2) This section does not provide immunity with respect to acts or omissions of a
governmental employee except as provided in Title 63, Chapter 30, Utah Governmental
Immunity Act.

Section 8. 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) 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]~~ the child's home or school, or having the effect of depriving a parent or guardian of the care, custody, and control of ~~[their]~~ the parent's or guardian's minor child, may not be issued without notice to the minor's parents or guardian and opportunity to be heard unless the requirements of Subsections (2)(a)(i) and (ii) have been satisfied.

(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) 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 9. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor following petition filing -- Grounds.

(1) (a) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is the subject of the petition is not in the protective custody of the division, a court may order that the minor be removed from the minor's home by a peace officer, or otherwise taken into protective custody by a peace officer, if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

~~[(a)]~~ (i) there is an 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~~[- If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency has occurred involving the same alleged abuser or under similar circumstance as the previous~~

abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the custody of the minor's parent];

~~[(b)]~~ (ii) a parent or guardian engages in or threatens the minor with unreasonable conduct that causes the minor to suffer emotional damage 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 the minor's parent or guardian;

~~[(c)-(i)]~~ (iii) 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 or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian[:];

~~[(ii) For purposes of this Subsection (1)(c), another minor residing in the same household may not be removed from the home unless that minor is considered to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or (iii).]~~

~~[(iii) If a parent or guardian 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 or guardian failed to protect the minor by allowing the minor to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being physically or sexually abused;]~~

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

~~[(e)]~~ (v) the minor has been abandoned or left without any provision for the minor's support;

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

~~[(g)]~~ (vii) a relative or other adult custodian with whom the minor has been left by the parent or guardian 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;

~~[(h)]~~ (viii) the minor is in immediate need of medical care;

~~[(i)-(j)]~~ (ix) (A) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the minor's health or safety; or

460 ~~[(j)]~~ (B) a parent's or guardian's action in leaving a minor unattended would
461 reasonably pose a threat to the minor's health or safety;

462 ~~[(j)]~~ (x) (A) the minor or another minor residing in the same household has been
463 neglected; and

464 ~~[(j)]~~ (B) for purposes of Subsection (1)~~[(j)]~~(a)(x)(A), another minor residing in the
465 same household may not be removed unless that minor is considered to be at substantial risk of
466 being neglected;

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

468 ~~[(l)]~~ (xii) the parent or guardian, or an adult residing in the same household as the
469 parent or guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine
470 Drug Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was
471 located in the residence or on the property where the minor resided; or

472 ~~[(m)]~~ (xiii) the minor's welfare is otherwise endangered.

473 (b) (i) For purposes of Subsection (1)(a)(i), if a minor has previously been adjudicated
474 as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
475 has occurred involving the same alleged abuser or under similar circumstance as the previous
476 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the
477 custody of the minor's parent.

478 (ii) For purposes of Subsection (1)(a)(iii):

479 (A) another minor residing in the same household may not be removed from the home
480 unless that minor is considered to be at substantial risk of being physically or sexually abused
481 as described in Subsection (1)(a)(iii) or Subsection (1)(b)(ii)(B); and

482 (B) if a parent or guardian has received actual notice that physical or sexual abuse by a
483 person known to the parent has occurred, and there is evidence that the parent or guardian
484 failed to protect the minor by allowing the minor to be in the physical presence of the alleged
485 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being
486 physically or sexually abused.

487 (2) A court may not remove a minor from the parent's or guardian's custody on the
488 basis of educational neglect, in the absence of one of the factors described in Subsection (1).

489 (3) A court may not remove a minor from the parent's or guardian's custody on the
490 basis of mental illness or poverty of the parent or guardian, in the absence of one of the factors

described in Subsection (1).

(4) A minor removed from the custody of the minor's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(5) This section does not preclude removal of a minor from the minor's home without a warrant or court order under Section 62A-4a-202.1.

Section 10. 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]~~ a child from ~~[his]~~ the child's home by ~~[the Division of Child and Family Services]~~ a peace officer;

(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 (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]~~ the parent's or guardian's 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]~~ the child's 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) (i) The court may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure.

(ii) The court shall hear relevant evidence presented by the minor, ~~[his]~~ the parent or guardian of the minor, 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]~~ the child's 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] the minor's 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) (a) 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)]~~ (i) 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]~~ the minor from ~~[his parent's]~~ the custody of the minor's parent or guardian. 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]~~ the minor's parent or guardian;

~~[(b)]~~ (ii) 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]~~ the minor's parent or guardian;

~~[(c)]~~ (iii) 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)]~~ (iv) the parent is unwilling to have physical custody of the child;

584 ~~[(e)]~~ (v) the minor has been left without any provision for ~~[his]~~ the minor's support;

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

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

590 ~~[(h)]~~ (viii) the minor is in immediate need of medical care;

591 ~~[(i)]~~ (ix) the physical environment or the fact that the child is left unattended poses a
592 threat to the child's health or safety;

593 ~~[(j)]~~ (x) the minor or another minor residing in the same household has been neglected;

594 ~~[(k)]~~ (xi) the parent, or an adult residing in the same household as the parent, has been
595 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any
596 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence
597 or on the property where the child resided; or

598 ~~[(l)]~~ (xii) the child's welfare is otherwise endangered.

599 (b) For purposes of Subsection (9)(a)(iii), if a parent has received actual notice that
600 physical or sexual abuse by a person known to the parent has occurred, and there is evidence
601 that the parent has allowed the child to be in the physical presence of the alleged abuser, that
602 fact constitutes prima facie evidence that the child is at substantial risk of being physically or
603 sexually abused.

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

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

613 (11) Where the division's first contact with the family occurred during an emergency
614 situation in which the child could not safely remain at home, the court shall make a finding that

615 any lack of preplacement preventive efforts was appropriate.

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

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

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

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

627 (15) If the court finds that continued removal and temporary custody are necessary for
628 the protection of a child because harm may result to the child if [~~he~~] the child were returned
629 home, [~~it~~] the court shall order continued removal regardless of any error in the initial removal
630 of the child, or the failure of a party to comply with notice provisions, or any other procedural
631 requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

632 Section 11. **Effective date.**

633 This bill takes effect on July 1, 2004.