

CHILD REMOVAL AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley G. Hellewell

LONG TITLE

General Description:

This bill modifies provisions regarding child removal.

Highlighted Provisions:

This bill:

- ▶ creates a balancing test between the welfare and protection of a child against the rights of the parent or guardian and the integrity of the family;
- ▶ requires a showing of serious danger to a child's safety or welfare before the state may obtain custody of a child;
- ▶ changes the standard of concern for a child's health, safety, and welfare; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-201, as last amended by Chapter 274, Laws of Utah 2000

62A-4a-203, as last amended by Chapter 274, Laws of Utah 1998

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

Section 1. Section **62A-4a-201** is amended to read:



28 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
 29 **state.**

30 (1) (a) Courts have recognized a general presumption that it is in the best interest and
 31 welfare of a child to be raised under the care and supervision of his natural parents. A child's
 32 need for a normal family life in a permanent home, and for positive, nurturing family
 33 relationships will usually best be met by his natural parents. Additionally, the integrity of the
 34 family unit, and the right of parents to conceive and raise their children have found protection
 35 in the due process clause of the Fourteenth Amendment to the United States Constitution. The
 36 right of a fit, competent parent to raise his child has long been protected by the laws and
 37 Constitution of this state and of the United States.

38 (b) It is the public policy of this state that parents retain the fundamental right and duty
 39 to exercise primary control over the care, supervision, upbringing, and education of their
 40 children who are in their custody.

41 (2) It is also the public policy of this state that children have the right to protection
 42 from abuse and neglect, and that the state retains a compelling interest in investigating,
 43 prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78,
 44 Chapter 3a. Therefore, as a counterweight to parental rights, the state, as *parens patriae*, has an
 45 interest in and responsibility to protect children whose parents abuse them or do not adequately
 46 provide for their welfare. There are circumstances where a parent's conduct or condition is a
 47 substantial departure from the norm and the parent is unable or unwilling to render safe and
 48 proper parental care and protection. Under those circumstances, the welfare and protection of
 49 children is **§ [f] § the consideration of paramount importance § [~~balanced against the rights of the~~**
 50 **parent or guardian of the children and the integrity of the family § .**

51 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
 52 it shall take into account the child's need for protection from immediate harm. Throughout its
 53 involvement, the division shall utilize the least intrusive means available to protect a child, in
 54 an effort to ensure that children are brought up in stable, permanent families, rather than in
 55 temporary foster placements under the supervision of the state.

56 (4) When circumstances within the family pose a [~~threat~~] **§ [serious] SUBSTANTIAL § danger**
 56a to the child's
 57 safety or welfare, the state's interest in the child's welfare is paramount to the rights of a parent.
 58 The division may obtain custody of the child for a planned period and place him in a safe

59 environment, in accordance with the requirements of Title 78, Chapter 3a, Part 3, Abuse,
60 Neglect, and Dependency Proceedings.

61 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to
62 the provisions of Section 62A-4a-203 and keeping with the presumptions described in
63 Subsection (1), both the division's and the court's paramount concern shall be the child's health,
64 safety, and welfare.

65 (6) In cases where actual sexual abuse, abandonment, or serious physical abuse or
66 neglect are involved, the state has no duty to make "reasonable efforts" or to, in any other way,
67 attempt to maintain a child in his home, provide reunification services, or to attempt to
68 rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division
69 from providing court-ordered services.

70 (7) (a) It is the division's obligation, under federal law, to achieve permanency for
71 children who are abused, neglected, or dependent. If the use or continuation of "reasonable
72 efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the
73 permanency plan for a child, then measures shall be taken, in a timely manner, to place the
74 child in accordance with the permanency plan, and to complete whatever steps are necessary to
75 finalize the permanent placement of the child.

76 (b) If, because of his conduct or condition, a parent is determined to be unfit or
77 incompetent based on the grounds for termination of parental rights described in Title 78,
78 Chapter 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of the
79 child is of paramount importance, and shall govern in determining whether that parent's rights
80 should be terminated.

81 Section 2. Section **62A-4a-203** is amended to read:

82 **62A-4a-203. Removal of a child from his home -- Reasonable efforts to maintain**
83 **child in home -- Exception -- Reasonable efforts for reunification.**

84 (1) Because removal of a child from his home may affect protected, constitutional
85 rights of the parent, the division shall:

86 (a) when possible and appropriate, without danger to the child's welfare, make
87 reasonable efforts to prevent or eliminate the need for removal of a child from his home prior
88 to placement in substitute care;

89 (b) determine whether there is substantial cause to believe that a child has been or is in

90 danger of abuse or neglect, in accordance with the guidelines described in Title 78, Chapter 3a,
91 Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from his
92 home; and

93 (c) when it is possible and appropriate, and in accordance with the limitations and
94 requirements of Sections 78-3a-311 and 78-3a-312, make reasonable efforts to make it possible
95 for a child in substitute care to return to his home.

96 (2) In determining the reasonableness of efforts needed to maintain a child in his home
97 or to return a child to his home, in accordance with Subsection (1)(a) or (c), the child's health,
98 safety, and welfare shall be [~~the paramount~~] a primary concern. Additionally, the division shall
99 consider whether those services would be effective within a six-month period, and whether
100 they would be likely to prevent reabuse or continued neglect of the child.

101 (3) When removal and placement in substitute care is necessary to protect a child, the
102 "efforts" described in Subsections (1) and (2) would not be reasonable or appropriate and,
103 therefore, should not be utilized.

104 (4) In cases where obvious sexual abuse, abandonment, or serious physical abuse or
105 neglect are involved, the state has no duty to make "reasonable efforts" or to, in any other way,
106 attempt to maintain a child in his home, provide reunification services, or to attempt to
107 rehabilitate the offending parent or parents. This subsection does not exempt the division from
108 providing court ordered services.

Legislative Review Note
as of 1-8-04 10:18 AM

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

Office of Legislative Research and General Counsel

State Impact

Additional litigation costs to the Courts and the Attorney General's Office is estimated at \$79,100 and \$44,500 respectively. A one-time equipment acquisition of \$3,000 would be needed in FY 2005 for one additional staff.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$126,600	\$123,600	\$0	\$0
TOTAL	\$126,600	\$123,600	\$0	\$0

Individual and Business Impact

Individuals deciding to appeal court's actions could see additional legal costs.
