

**CHILD PROTECTION AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gregory S. Bell**

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**LONG TITLE**

**General Description:**

This bill amends the child protection and custody provisions of the Child and Family Services chapter of the Human Services Code and the Juvenile Courts chapter of the Judicial Code.

**Highlighted Provisions:**

This bill:

- ▶ defines terms, including the terms "immediate danger" and "imminent threat";
- ▶ describes the circumstances and procedures under which a minor may be taken into custody;
- ▶ provides that a minor may not be taken into temporary custody without a court order or a warrant unless the minor is in immediate danger;
- ▶ provides that a warrant to take a minor into protective custody may be issued without providing the parent or guardian with notice and an opportunity to be heard, if there is probable cause to establish that there is an imminent threat to the minor;
- ▶ specifies when a shelter hearing is required;
- ▶ establishes the circumstances and procedures under which a court may hold an expedited hearing to determine whether a minor should be placed in temporary custody;
- ▶ provides that an expedited hearing to determine whether a minor should be placed in temporary custody constitutes a shelter hearing;
- ▶ consolidates existing code provisions;



- 28           ▶ provides that an endorsement by a court on a summons directing that a minor be
- 29 taken into custody is subject to the same restrictions that are placed upon a court for
- 30 the issuance of a warrant to take a minor into custody; and
- 31           ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33           None

34 **Other Special Clauses:**

35           None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38           **62A-4a-202.1**, as last amended by Chapter 180, Laws of Utah 2004
- 39           **62A-4a-202.8**, as enacted by Chapter 326, Laws of Utah 2003
- 40           **78-3a-106**, as last amended by Chapter 267, Laws of Utah 2003
- 41           **78-3a-110**, as enacted by Chapter 365, Laws of Utah 1997
- 42           **78-3a-113**, as last amended by Chapters 102 and 267, Laws of Utah 2004
- 43           **78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004
- 44           **78-3a-305**, as last amended by Chapters 68 and 326, Laws of Utah 2003
- 45           **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003
- 46           **78-3a-308**, as last amended by Chapter 326, Laws of Utah 2003

47 ENACTS:

- 48           **78-3a-106.5**, Utah Code Annotated 1953



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

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

52           **62A-4a-202.1. Entering home of a minor -- Taking a minor into protective**  
53 **custody -- Caseworker accompanied by peace officer -- Preventive services -- Shelter care**  
54 **or emergency kinship.**

55           ~~[(1) A state officer, peace officer, or child welfare worker may not enter the home of a~~  
56 ~~minor who is not under the jurisdiction of the court, remove a minor from the minor's home or~~  
57 ~~school, or take a minor into protective custody unless:]~~

58           ~~[(a) the state officer, peace officer, or child welfare worker has obtained:]~~

59 ~~[(i) the consent of the minor's parent or guardian; or]~~  
 60 ~~[(ii) a court order issued under Section 78-3a-106; or]~~  
 61 ~~[(b) there exist exigent circumstances.]~~

62 (1) A parent or guardian may not be deprived of the custody of the parent's or  
 63 guardian's minor, except as provided in Subsection 78-3a-106 (3), (4), or (8) or Section  
 64 78-3a-301.

65 (2) A child welfare worker within the division may take action under ~~[Subsection (1)]~~  
 66 Subsection 78-3a-106(3) or (4):

67 (a) when accompanied by a peace officer[;]; or

68 (b) without a peace officer when a peace officer is not reasonably available.

69 (3) (a) If possible, consistent with the minor's safety and welfare, before taking a minor  
 70 into protective custody, the child welfare worker shall ~~[also]~~ determine whether there are  
 71 services reasonably available to the child welfare worker which, if provided to the minor's  
 72 parent, or guardian, or to the minor, would eliminate the need to remove the minor from the  
 73 custody of the minor's parent or guardian.

74 (b) If ~~[those]~~ the services described in Subsection (3)(a) are reasonably available,  
 75 ~~[they]~~ the services shall be utilized.

76 (c) In determining whether the services described in Subsection (3)(a) are reasonably  
 77 available, and in making reasonable efforts to provide those services, the minor's health, safety,  
 78 and welfare shall be the child welfare worker's paramount concern.

79 (4) (a) A minor removed or taken into custody under this section may not be placed or  
 80 kept in a secure detention facility pending court proceedings unless the minor is detainable  
 81 based on guidelines promulgated by the Division of Juvenile Justice Services.

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

84 (i) a shelter facility; or

85 (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

86 Section 2. Section **62A-4a-202.8** is amended to read:

87 **62A-4a-202.8. Meeting within 24 hours.**

88 (1) If the division files a petition under ~~[Subsection]~~ Section 78-3a-305~~[(1) or (2)]~~ but  
 89 does not take the child into protective custody, the division shall convene a child protection

90 team meeting within 24 hours of the filing, excluding weekends and holidays, to review;

91 (a) the circumstances regarding the filing of the petition; and

92 (b) to develop a safety plan to protect the child from further abuse or neglect.

93 (2) The team shall include as many persons under Subsection 62A-4a-202.3(6)(b) as  
94 appropriate.

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

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

98 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

99 (1) For purposes of this section:

100 (a) "Custody" means custody, care, and control.

101 (b) "Immediate danger" means:

102 (i) there is a threat of harm to a minor's health or safety;

103 (ii) there is a need to take custody of the minor to avoid the harm; and

104 (iii) there is not sufficient time to obtain a warrant before the harm occurs.

105 (c) "Imminent threat" means:

106 (i) there is a threat of harm to a minor's health or safety;

107 (ii) there is a need to take custody of the minor to avoid the harm;

108 (iii) there is sufficient time to obtain a warrant before the harm occurs; and

109 (iv) under the circumstances, it is necessary to place the minor in protective custody  
110 without first giving the minor's parent or guardian notice and an opportunity to be heard  
111 regarding whether the minor should be removed from the custody of the parent or guardian.

112 (d) "Officer" means a:

113 (i) child welfare worker;

114 (ii) peace officer; or

115 (iii) state officer.

116 [~~1~~] (2) The court has authority to issue search warrants, subpoenas, or investigative  
117 subpoenas in:

118 (a) (i) a criminal [~~cases;~~] case;

119 (ii) a delinquency[~~, and~~] proceeding; and

120 (iii) an abuse, neglect, and dependency [~~proceedings~~] proceeding; and

121           **(b)** for the same purposes, in the same manner, and pursuant to the same procedures set  
122 forth in the code of criminal procedure for the issuance of [~~search warrants, subpoenas, or~~  
123 ~~investigative subpoenas~~] a search warrant or a subpoena in other trial courts in the state.

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

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

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

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

137           **(3) A parent or guardian may not be deprived of the custody of the parent's or**  
138 **guardian's minor:**

139           **(a) except upon court order, after a hearing is held where the parent or guardian has**  
140 **notice and an opportunity to be heard regarding whether the minor should be removed from the**  
141 **custody of the parent or guardian;**

142           **(b) unless removal of the minor from the parent's or guardian's custody is permitted by**  
143 **Subsection (4); or**

144           **(c) unless taking the minor into custody is otherwise expressly permitted by law.**

145           **(4) (a) Unless one of the conditions described in Subsection (3) or (4)(b) exist, an**  
146 **officer may not:**

147           **(i) enter the home of a minor who is not under the jurisdiction of the court;**

148           **(ii) remove a minor from the minor's home or school; or**

149           **(iii) take a minor into protective custody.**

150           **(b) An officer may take an action described in Subsection (4)(a) if:**

151           **(i) the officer obtains consent from the minor's parent or guardian;**

152 (ii) the officer obtains a warrant;  
153 (iii) the minor is in immediate danger; or  
154 (iv) the officer is expressly permitted by law to act in a manner described in Subsection  
155 (4)(a).

156 (5) If a minor is taken into protective custody under Subsections (4)(b)(i) through (iii),  
157 a shelter hearing shall be held pursuant to Section 78-3a-306.

158 (6) (a) The court may issue a warrant authorizing an officer to search for a minor and  
159 take the minor into protective custody if there is probable cause to believe that there is an  
160 imminent threat to the minor.

161 (b) The court's decision on whether to issue a warrant under this Subsection (6) may be  
162 made on the basis of:

- 163 (i) (A) a verified petition;
- 164 (B) recorded sworn testimony; or
- 165 (C) a sworn affidavit; and
- 166 (ii) if required by the judge, the examination of other witnesses.

167 ~~[(e)]~~ (7) (a) Pursuant to Section 77-23-210, a peace officer making the search described  
168 in Subsection (6)(b)(i) may enter a house or premises by force, if necessary, in order to remove  
169 the ~~[child]~~ minor.

170 ~~[(d)]~~ (b) The person executing the warrant described in Subsection (6)(b)(i) or (ii) shall  
171 ~~[then]~~ take the ~~[child]~~ minor to the place of shelter designated by:

- 172 (i) the court[-]; or
- 173 (ii) the Division of Child and Family Services.

174 (8) (a) A court may hold an expedited hearing to determine whether a minor should be  
175 placed in temporary custody if:

- 176 (i) a person files a petition under Section 78-3a-305;
- 177 (ii) a motion for the expedited hearing described in this Subsection (8)(a) entitled  
178 "Motion for Expedited Placement in Temporary Custody" is filed; and

179 (iii) subject to Subsections (8)(c) and (9), notice of the hearing described in this  
180 Subsection (8)(a) is personally served on a parent or guardian of the minor.

181 (b) The hearing described in Subsection (8)(a):

- 182 (i) shall be held within 72 hours, excluding weekends and holidays, of the filing of the

183 motion described in Subsection (8)(a)(ii); and

184 (ii) shall be considered a shelter hearing under Section 78-3a-306 and Utah Rules of  
 185 Juvenile Procedure, Rule 13.

186 (c) The hearing and notice described in Subsection (8)(a) are subject to:

187 (i) Section 78-3a-306;

188 (ii) Section 78-3a-307; and

189 (iii) the Utah Rules of Juvenile Procedure.

190 (d) After the hearing described in this Subsection (8), a court may order a minor placed  
 191 in protective custody pursuant to Section 78-3a-301.

192 ~~[(3)]~~ (9) The parent or guardian to be notified under Subsection (8)(a)(iii) must be the  
 193 minor's primary caregiver, or the person who has custody of the minor, when the order is  
 194 sought.

195 Section 4. Section **78-3a-106.5** is enacted to read:

196 **78-3a-106.5. Expedited filing of petition -- Expedited hearings.**

197 (1) For purposes of this section, "petition" means a petition to commence proceedings  
 198 in the juvenile court alleging that a minor is:

199 (a) abused;

200 (b) neglected; or

201 (c) dependent.

202 (2) If a petition is requested by the division, the attorney general shall file the petition  
 203 within 72 hours of the completion of the division's investigation and request, excluding  
 204 weekends and holidays, if:

205 (a) the minor who is the subject of the requested petition is not removed from the  
 206 minor's home by the division; and

207 (b) without an expedited hearing and services ordered under the protective supervision  
 208 of the court, the minor will likely be taken into protective custody.

209 (3) The court shall give scheduling priority to the pretrial and adjudication hearings on  
 210 a petition if:

211 (a) the minor who is the subject of the petition is not in:

212 (i) protective custody; or

213 (ii) temporary custody; and

214 (b) the division indicates in the petition that, without expedited hearings and services  
215 ordered under the protective supervision of the court, the minor will likely be taken into  
216 protective custody.

217 Section 5. Section **78-3a-110** is amended to read:

218 **78-3a-110. Summons -- Service and process -- Issuance and contents -- Notice to**  
219 **absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory**  
220 **process for attendance of witnesses when authorized.**

221 (1) (a) After a petition is filed, the court shall promptly issue a summons, unless the  
222 judge directs that a further investigation is needed. [~~No~~]

223 (b) A summons is not required as to any person who appears voluntarily or who files a  
224 written waiver of service with the clerk of the court at or prior to the hearing.

225 (2) The summons described in this section shall contain:

226 (a) the name of the court;

227 (b) the title of the proceedings; and

228 (c) except for a published summons, a brief statement of the substance of the  
229 allegations in the petition.

230 (3) A published summons shall state that:

231 (a) [~~that~~] a proceeding concerning the minor is pending in the court; and

232 (b) an adjudication will be made.

233 (4) (a) The summons described in this section shall require the person or persons who  
234 have physical custody of the minor to:

235 (i) appear personally; and

236 (ii) bring the minor before the court at a time and place stated.

237 (b) If the person or persons summoned are not the parent, parents, or guardian of the  
238 minor, the summons shall also be issued to the parent, parents, or guardian, as the case may be,  
239 notifying them of the pendency of the case and of the time and place set for the hearing.

240 (5) [~~Summons~~] A summons may be issued requiring the appearance of any other  
241 person whose presence the court finds necessary.

242 (6) [~~H~~] (a) Subject to Subsection (6)(b), if it appears to the court that the welfare of the  
243 minor or of the public requires that the minor be taken into custody, the court may by  
244 endorsement upon the summons direct that the person serving the summons take the minor into



245 custody at once.

246 (b) The endorsement described in Subsection (6)(a) is subject to the same restrictions  
247 as a warrant under Section 78-3a-106.

248 (7) Upon the sworn testimony of one or more reputable physicians, the court may order  
249 emergency medical or surgical treatment that is immediately necessary for a minor concerning  
250 whom a petition [~~has been~~] is filed pending the service of a summons upon [~~his~~] the minor's  
251 parents, guardian, or custodian.

252 (8) (a) A parent or guardian is entitled to the issuance of compulsory process for the  
253 attendance of witnesses on [~~his~~] the parent's or guardian's own behalf or on behalf of the minor.

254 (b) A guardian ad litem or a probation officer is entitled to compulsory process for the  
255 attendance of witnesses on behalf of the minor.

256 (9) Service of summons and process and proof of service shall be made in the manner  
257 provided in the Utah Rules of Civil Procedure.

258 (10) Service of summons or process shall be made:

259 (a) by the sheriff of the county where the service is to be made [~~, or by his deputy, but~~];

260 (b) by the deputy of the sheriff described in Subsection (10)(a); or

261 (c) upon request of the court [~~service shall be made~~], by any [~~other~~];

262 (i) peace officer [~~, or by another~~] selected by the court; or

263 (ii) suitable person selected by the court.

264 (11) Service of summons in the state shall be made personally, by delivering a copy to  
265 the person summoned; provided, however, that parents of a minor living together at their usual  
266 place of abode may both be served by personal delivery to either parent of copies of the  
267 summons, one copy for each parent.

268 (12) (a) If the judge makes a written finding that [~~he has~~] there is reason to believe that  
269 personal service of the summons will be unsuccessful, or will not accomplish notification  
270 within a reasonable time after issuance of the summons, [~~he~~] the judge may order service by  
271 registered mail, with a return receipt to be signed by the addressee only, to be addressed to the  
272 last-known address of the person to be served in the state.

273 (b) Service of a summons shall be complete upon return to the court of the signed  
274 receipt.

275 (13) (a) If [~~the parents,~~] a minor's parent [~~;~~] or guardian who is required to be

276 summoned under Subsection (4) cannot be found within the state, the fact of ~~[their]~~ the minor's  
277 presence within the state shall confer jurisdiction on the court in ~~[proceedings in minor's cases]~~  
278 a proceeding in a minor's case under this chapter as to any absent parent or guardian, provided  
279 that due notice ~~[has been]~~ is given ~~[in the following manner]:~~

280 ~~[(a) If]~~ (i) if the address of the parent or guardian is known, ~~[due notice is given by~~  
281 ~~sending him]~~ by:

282 (A) subject to Subsection (13)(b)(i), sending the parent or guardian a copy of the  
283 summons by registered mail with a return receipt to be signed by the addressee only~~[-or by];~~ or

284 (B) personal service outside the state, as provided in the Utah Rules of Civil  
285 Procedure[- Service by registered mail shall be complete upon return to the court of the signed  
286 receipt.]; or

287 ~~[(b) If]~~ (ii) subject to Subsection (13)(b)(ii), if the address or whereabouts of the parent  
288 or guardian outside the state cannot after diligent inquiry be ascertained, [due notice is given]  
289 by publishing a summons in a newspaper having general circulation in the county in which the  
290 proceeding is pending. [The summons shall be published once a week for four successive  
291 weeks. Service shall be complete on the day of the last publication.]

292 (b) (i) For purposes of Subsection (13)(a)(i)(A), service by registered mail shall be  
293 complete upon return to the court of the signed receipt.

294 (ii) (A) The summons described in Subsection (13)(a)(ii) shall be published once a  
295 week for four successive weeks.

296 (B) Service of the summons described in Subsection (13)(a)(ii) shall be complete on  
297 the day of the last publication.

298 ~~[(c)]~~ (iii) Service of the summons as provided in this Subsection (13) shall vest the  
299 court with jurisdiction over the parent or guardian served in the same manner and to the same  
300 extent as if the person served was served personally within the state.

301 (14) (a) In the case of service in the state, service completed not less than 48 hours  
302 before the time set in the summons for the appearance of the person served, shall be sufficient  
303 to confer jurisdiction.

304 (b) In the case of service outside the state, service completed not less than five days  
305 before the time set in the summons for appearance of the person served, shall be sufficient to  
306 confer jurisdiction.

307 (15) Computation of periods of time under this chapter shall be made in accordance  
 308 with the Utah Rules of Civil Procedure.

309 Section 6. Section **78-3a-113** is amended to read:

310 **78-3a-113. Minor taken into custody by peace officer, private citizen, or**  
 311 **probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds**  
 312 **for peace officer to take adult into custody.**

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

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

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

318 [~~(c) the minor is seriously endangered in his surroundings or if]~~

319 (c) custody is permitted under Subsection 78-3a-106(4);

320 (d) the minor seriously endangers others, and immediate removal appears to be  
 321 necessary for [~~his protection or~~] the protection of others;

322 [~~(d)~~] (e) there are reasonable grounds to believe the minor has run away or escaped  
 323 from [~~his~~] the minor's parents, guardian, or custodian; or

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

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

330 (b) [~~A~~] (i) Subject to Subsection (2)(b)(ii), a probation officer may [~~also~~] take a minor  
 331 into custody;

332 (A) for any reason that a peace officer is permitted to take a minor into custody under  
 333 Subsection (1); or

334 (B) if the minor [~~has violated~~] violates the conditions of probation[~~, if~~].

335 (ii) A probation officer may not take a minor into protective custody under Subsection  
 336 (2)(b)(i) unless:

337 (A) the minor is under the continuing jurisdiction of the juvenile court; or [~~in~~

338 emergency situations in which]

339 (B) (I) an emergency situation exists; and

340 (II) a peace officer is not immediately available.

341 (3) (a) [(†)] If an officer or other person takes a minor into temporary custody[~~-, he~~]:

342 (i) the officer or person shall without unnecessary delay notify the parents, guardian, or  
343 custodian[-] of the minor; and

344 (ii) [The] the minor shall [then] be released to the care of [his] the minor's parent or  
345 other responsible adult, unless [his] the minor's immediate welfare or the protection of the  
346 community requires [his] the minor's detention.

347 (b) If the minor is taken into custody or detention for a violent felony, as defined in  
348 Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the  
349 officer or other law enforcement agent taking the minor into custody shall, as soon as  
350 practicable or as established under Subsection 53A-11-1001(2), notify the school  
351 superintendent of the district in which the minor resides or attends school for the purposes of  
352 the minor's supervision and student safety.

353 [(†)] (c) The notice described in Subsection (3)(b) shall:

354 (i) disclose only:

355 (A) the name of the minor;

356 (B) the offense for which the minor was taken into custody or detention; and

357 (C) if available, the name of the victim, if the victim:

358 (I) resides in the same school district as the minor; or

359 (II) attends the same school as the minor[-]; and

360 (ii) [The notice shall] be classified as a protected record under Section 63-2-304.

361 ~~[(iii) All other records disclosures are]~~

362 (d) Disclosure of a record, other than the notice described in Subsections (3)(b) and (c),  
363 is governed by:

364 (i) Title 63, Chapter 2, Government Records Access and Management Act; and

365 (ii) the Federal Family Educational Rights and Privacy Act.

366 ~~[(e)]~~ (e) Employees of a governmental agency are immune from any criminal liability  
367 for providing or failing to provide the information required by this section unless the person  
368 acts or fails to act due to:

369 (i) malice[;];

370 (ii) gross negligence[;]; or

371 (iii) deliberate indifference to the consequences.

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

375 (4) (a) A minor may not be held in temporary custody by law enforcement any longer  
376 than is reasonably necessary:

377 (i) to obtain ~~his~~:

378 (A) the minor's name[;];

379 (B) the minor's age[;];

380 (C) the minor's residence[;]; and

381 (D) other necessary information; and

382 (ii) to contact ~~his~~ the minor's parents, guardian, or custodian.

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

385 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly  
386 file with the detention or shelter facility a written report on a form provided by the division  
387 stating the:

388 (i) details of the presently alleged offense~~, the~~;

389 (ii) facts which bring the minor within the jurisdiction of the juvenile court[;]; and ~~the~~

390 (iii) reason the minor was not released by law enforcement.

391 (b) (i) The designated youth corrections facility staff person shall:

392 (A) immediately review the form described in Subsection (5)(a); and

393 (B) determine, based on the guidelines for detention admissions established by the  
394 Division of Juvenile Justice Services under Sections 62A-7-104 and 62A-7-205, whether to:

395 (I) admit the minor to secure detention[;];

396 (II) admit the minor to home detention[;];

397 (III) place the minor in a placement other than detention~~, or~~;

398 (IV) return the minor home upon written promise to bring the minor to the court at a  
399 time set[;]; or

400 (V) return the minor home without restriction.

401 (ii) If the designated youth corrections facility staff person determines, pursuant to  
402 Subsection (5)(b)(i)(B), to admit ~~[the]~~ a minor to home detention~~[-that]~~;

403 (A) the designated youth corrections facility staff person shall notify the juvenile court  
404 of ~~[that]~~ the determination~~[-The]~~; and

405 (B) the court shall order that notice of the home detention be provided to the  
406 designated persons in the local law enforcement agency and the school or transferee school, if  
407 applicable, ~~[which]~~ that the minor attends ~~[of the home detention]~~.

408 (iii) The designated persons may receive the information described in Subsection  
409 (5)(b)(ii)(B) for purposes of the minor's supervision and student safety.

410 ~~[(iii)]~~ (iv) Any employee of the local law enforcement agency and the school ~~[which]~~  
411 that the minor attends who discloses the notification of home detention is not:

412 (A) civilly liable except when disclosure constitutes fraud or willful misconduct as  
413 provided in Section 63-30d-202; and

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

416 (c) A minor may not be admitted to detention unless the minor:

417 (i) is detainable based on the guidelines described in Subsection (5)(b)(i)(B); or ~~[the~~  
418 ~~minor has been]~~

419 (ii) is brought to detention pursuant to a judicial order or division warrant pursuant to  
420 Subsection 62A-7-112(8).

421 (d) If a minor taken to detention does not qualify for admission under the guidelines  
422 ~~[established by the division under Sections 62A-7-104 and 62A-7-205]~~ described in Subsection  
423 (5)(b)(i)(B), detention staff shall arrange appropriate placement.

424 (e) If a minor is taken into custody and admitted to a secure detention or shelter  
425 facility, facility staff shall:

426 (i) immediately notify the minor's parents, guardian, or custodian of the placement; and  
427 ~~[shall]~~

428 (ii) promptly notify the court of the placement.

429 (f) If ~~[the]~~ a minor is admitted to a secure detention or shelter facility outside the  
430 county of ~~[his]~~ the minor's residence and it is determined in the hearing held under Subsection

431 78-3a-114(3) that detention shall continue, the judge or commissioner shall direct the sheriff of  
432 the county of the minor's residence to transport the minor to a detention or shelter facility as  
433 provided in this section.

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

437 Section 7. Section **78-3a-301** is amended to read:

438 **78-3a-301. Court-ordered protective custody of a minor following petition filing**  
439 **-- Grounds.**

440 (1) After a petition [~~has been~~] is filed under Section 78-3a-106.5 or Subsection  
441 78-3a-305[~~(+)~~](2), if the minor who is the subject of the petition is not in the protective custody  
442 of the division, a court may order that the minor be removed from the minor's home or  
443 otherwise taken into protective custody if the court finds, by a preponderance of the evidence,  
444 that any one or more of the following circumstances exist:

445 (a) (i) there is an imminent danger to the physical health or safety of the minor; and

446 (ii) the minor's physical health or safety may not be protected without removing the  
447 minor from the custody of the minor's parent or guardian;

448 (b) (i) a parent or guardian engages in or threatens the minor with unreasonable  
449 conduct that causes the minor to suffer emotional damage; and

450 (ii) there are no reasonable means available by which the minor's emotional health may  
451 be protected without removing the minor from the custody of the minor's parent or guardian;

452 (c) the minor or another minor residing in the same household has been physically or  
453 sexually abused, or is considered to be at substantial risk of being physically or sexually  
454 abused, by a;

455 (i) parent or guardian[~~;~~];

456 (ii) member of the parent's or guardian's household[~~;~~]; or [~~other~~]

457 (iii) a person known to the parent or guardian;

458 (d) the parent or guardian is unwilling to have physical custody of the minor;

459 (e) the minor has been abandoned or left without any provision for the minor's support;

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

462 (g) (i) a relative or other adult custodian with whom the minor ~~[has been]~~ is left by the  
463 parent or guardian is unwilling or unable to provide care or support for the minor~~[-];~~  
464 (ii) the whereabouts of the parent or guardian are unknown~~[-];~~ and  
465 (iii) reasonable efforts to locate the parent or guardian ~~[have been]~~ are unsuccessful;  
466 (h) the minor is in immediate need of medical care;  
467 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an  
468 environment that poses a threat to the minor's health or safety; or  
469 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose  
470 a threat to the minor's health or safety;  
471 (j) the minor or another minor residing in the same household has been neglected;  
472 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;  
473 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or  
474 guardian, ~~[has been]~~ is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug  
475 Lab Act~~[-];~~ and  
476 (ii) any clandestine laboratory operation, as defined in Section 58-37d-3, was located in  
477 the residence or on the property where the minor resided; or  
478 (m) the minor's welfare is otherwise endangered.  
479 (2) (a) For purposes of Subsection (1)(a), prima facie evidence that the minor  
480 cannot safely remain in the custody of the minor's parent is established if [a]:  
481 (i) the minor [has] was previously [been] adjudicated as abused, neglected, or  
482 dependent[-]; and  
483 (ii) a subsequent incident of abuse, neglect, or dependency [has occurred] occurs  
484 involving the same substantiated abuser or under similar circumstance as the previous abuse[-;  
485 that fact constitutes prima facie evidence that the minor cannot safely remain in the custody of  
486 the minor's parent].  
487 (b) For purposes of Subsection (1)(c):  
488 (i) another minor residing in the same household may not be removed from the home  
489 unless that minor is considered to be at substantial risk of being physically or sexually abused  
490 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and  
491 (ii) prima facie evidence that the minor is at substantial risk of being physically or  
492 sexually abused is established if:



493 (A) a parent or guardian [~~has~~] received actual notice that physical or sexual abuse by a  
 494 person known to the parent [~~has~~] occurred[;]; and

495 (B) there is evidence that the parent or guardian failed to protect the minor, after  
 496 [~~having received~~] receiving the notice described in Subsection (2)(b)(ii)(A), by allowing the  
 497 minor to be in the physical presence of the alleged abuser[; ~~that fact constitutes prima facie~~  
 498 ~~evidence that the minor is at substantial risk of being physically or sexually abused~~].

499 (3) In the absence of one of the factors described in Subsection (1), a court may not  
 500 remove a minor from the parent's or guardian's custody on the basis of:

501 (a) educational neglect;

502 (b) mental illness or poverty of the parent or guardian; or

503 (c) disability of the parent or guardian, as defined in [~~Subsection 57-21-3(9)~~] Section  
 504 57-21-2.

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

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

511 Section 8. Section **78-3a-305** is amended to read:

512 **78-3a-305. Petition filed -- Protective orders.**

513 (1) [~~Any~~] For purposes of this section, "petition" is as defined in Section 78-3a-106.5.

514 (2) (a) Subject to Subsection (2)(b), any interested person may file a petition [to  
 515 commence proceedings in the juvenile court alleging that a minor is abused, neglected, or  
 516 dependent. The].

517 (b) A person described in Subsection (2)(a) shall [~~first~~] make a referral with the  
 518 division before the person files a petition.

519 [~~(2) (a) If the child~~] (3) If a minor who is the subject of a petition [~~was~~] is removed  
 520 from [~~his~~] the minor's home by the [~~Division of Child and Family Services that~~] division, the  
 521 petition shall be filed on or before the date of the initial shelter hearing described in Section  
 522 78-3a-306.

523 [~~(b) If a petition is requested by the division, the attorney general shall file the petition~~]

524 ~~within 72 hours of the completion of the investigation and request, excluding weekends and~~  
 525 ~~holidays, if:]~~

526 ~~[(i) the child who is the subject of the requested petition has not been removed from his~~  
 527 ~~home by the division; and]~~

528 ~~[(ii) without an expedited hearing and services ordered under the protective supervision~~  
 529 ~~of the court, the child will likely be taken into protective custody.]~~

530 ~~[(3) The]~~ (4) A petition shall be verified, and contain all of the following:

531 (a) the name, age, and address, if any, of the minor upon whose behalf the petition is  
 532 brought;

533 (b) the names and addresses, if known to the petitioner, of both parents and any  
 534 guardian of the minor;

535 (c) a concise statement of facts, separately stated, to support the conclusion that the  
 536 minor upon whose behalf the petition is being brought is abused, neglected, or dependent; and

537 (d) a statement regarding whether the minor is in protective custody, and if so, the date  
 538 and precise time the minor was taken into protective custody.

539 Section 9. Section **78-3a-306** is amended to read:

540 **78-3a-306. Shelter hearing.**

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

543 (a) removal of the ~~[child]~~ minor from ~~[his]~~ the minor's home by the ~~[Division of Child~~  
 544 ~~and Family Services]~~ division;

545 (b) placement of the ~~[child]~~ minor in the protective custody of the ~~[Division of Child~~  
 546 ~~and Family Services]~~ division;

547 (c) a minor is taken into custody under Subsections 78-3a-106(4)(b)(i) through (iii);

548 (d) (i) a motion, as described in Subsection 78-3a-106(8)(a), for an expedited hearing is  
 549 filed; and

550 (ii) notice is served as described in Subsection 78-3a-106 (8)(a)(iii);

551 ~~[(e)]~~ (e) emergency kinship placement under Subsection 62A-4a-202.1(4); or

552 ~~[(d)]~~ (f) as an alternative to removal of the ~~[child]~~ minor, a parent ~~[has entered]~~ enters a  
 553 domestic violence shelter at the request of the ~~[Division of Child and Family Services]~~  
 554 division.

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

557 (a) the name and address of the person to whom the notice is directed;

558 (b) the date, time, and place of the shelter hearing;

559 (c) the name of the minor on whose behalf a petition is being brought;

560 (d) a concise statement regarding:

561 (i) the reasons for removal or other action of the division under Subsection (1); and

562 (ii) the allegations and code sections under which the proceeding ~~[has been]~~ is

563 instituted;

564 (e) a statement that:

565 (i) the parent or guardian to whom notice is given, and the minor, are entitled to have  
566 an attorney present at the shelter hearing~~[-and that]~~; and

567 (ii) an attorney will be provided if the parent or guardian:

568 (A) is indigent ~~[and]~~;

569 (B) cannot afford an attorney~~[-]~~; and

570 (C) desires to be represented by an attorney~~[-one will be provided]~~; and

571 (f) a statement that the parent or guardian is liable for:

572 (i) the cost of support of the minor in the protective custody, temporary custody, and  
573 custody of the division~~[-]~~; and

574 (ii) the cost for legal counsel appointed for the parent or guardian under Subsection

575 (2)(e), according to ~~[his]~~ the financial ability of the parent or guardian.

576 (3) ~~[That]~~ The notice described in Subsection (2) shall be personally served as soon as  
577 possible, but no later than one business day after removal of a ~~[child]~~ minor from ~~[his]~~ the  
578 minor's home, on:

579 (a) the appropriate guardian ad litem; and

580 (b) both parents and any guardian of the minor, unless ~~[they]~~ the parents or guardian  
581 cannot be located.

582 (4) The following persons shall be present at the shelter hearing:

583 (a) the ~~[child]~~ minor, unless it would be detrimental for the ~~[child]~~ minor;

584 (b) the ~~[child's]~~ minor's parents or guardian, unless ~~[they]~~ the parents or guardian;

585 (i) cannot be located~~[-]~~; or

- 586           (ii) fail to appear in response to the notice;
- 587           (c) counsel for the parents, if [~~one has been~~] counsel is requested;
- 588           (d) the [~~child's~~] minor's guardian ad litem;
- 589           (e) the caseworker from the [~~Division of Child and Family Services~~] division who [~~has~~  
590 ~~been~~] is assigned to the case; and
- 591           (f) the attorney from the attorney general's office who is representing the division.
- 592           (5) (a) At the shelter hearing, the court:
- 593               (i) shall provide an opportunity for the minor's parent or guardian, if present, and any  
594 other person having relevant knowledge, to provide relevant testimony[~~-. The court~~]; and
- 595               (ii) may [~~also~~] provide an opportunity for the minor to testify.
- 596           (b) The court:
- 597               (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile  
598 Procedure[~~-. The court~~]; and
- 599               (ii) shall hear relevant evidence presented by the minor, [~~his~~] the minor's parent or  
600 guardian, the requesting party, or their counsel[~~-, but~~].
- 601           (c) Notwithstanding Subsection (5)(b)(ii), the court may in its discretion limit  
602 testimony and evidence to only that which [~~goes~~] relates to the issues of removal and the  
603 [~~child's~~] minor's need for continued protection.
- 604           (6) If the [~~child~~] minor is in the protective custody of the division, the division shall  
605 report to the court:
- 606               (a) the reasons why the minor was removed from the parent's or guardian's custody;
- 607               (b) any services provided to the [~~child~~] minor and [~~his~~] the minor's family in an effort  
608 to prevent removal;
- 609               (c) the need, if any, for continued shelter;
- 610               (d) the available services that could facilitate the return of the minor to the custody of  
611 [~~his~~] the minor's parent or guardian; and
- 612               (e) whether the [~~child~~] minor has any relatives who may be able and willing to take  
613 temporary custody.
- 614           (7) The court shall consider all relevant evidence provided by persons or entities  
615 authorized to present relevant evidence pursuant to this section.
- 616           (8) If necessary to protect the [~~child~~] minor, preserve the rights of a party, or for other

617 good cause shown, the court may grant no more than one time-limited continuance, not to  
618 exceed five judicial days.

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

622 (a) (i) there is a substantial danger to the physical health or safety of the ~~[minor and the~~  
623 ~~minor's]~~ minor; and

624 (ii) subject to Subsection (10)(a), the minor's physical health or safety may not be  
625 protected without removing ~~[him]~~ the minor from ~~[his parent's]~~ the custody~~[- If a minor has~~  
626 ~~previously been adjudicated as abused, neglected, or dependent and a subsequent incident of~~  
627 ~~abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child~~  
628 ~~cannot safely remain in the custody of his parent]~~ of the minor's parent;

629 (b) (i) the minor is suffering emotional damage, as may be indicated by, but is not  
630 limited to~~[-];~~:

631 (A) extreme anxiety~~[-];~~

632 (B) depression~~[-];~~

633 (C) withdrawal~~[-];~~ or

634 (D) negative aggressive behavior toward self or others~~[-];~~ and

635 (ii) there are no reasonable means available by which the minor's emotional health may  
636 be protected without removing the minor from the custody of ~~[his]~~ the minor's parent;

637 (c) subject to Subsection (10)(b), the minor or another minor residing in the same  
638 household has been physically or sexually abused, or is considered to be at substantial risk of  
639 being physically or sexually abused, by a parent, a member of the parent's household, or other  
640 person known to the parent~~[- If a parent has received actual notice that physical or sexual~~  
641 ~~abuse by a person known to the parent has occurred, and there is evidence that the parent has~~  
642 ~~allowed the child to be in the physical presence of the alleged abuser, that fact constitutes~~  
643 ~~prima facie evidence that the child is at substantial risk of being physically or sexually abused];~~

644 (d) the parent is unwilling to have physical custody of the ~~[child]~~ minor;

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

647 (f) a parent who ~~[has been]~~ is incarcerated or institutionalized has not or cannot arrange

648 for safe and appropriate care for the minor;

649 (g) (i) a relative or other adult custodian with whom the minor ~~[has been]~~ is left by the  
650 parent is unwilling or unable to provide care or support for the minor[;];

651 (ii) the whereabouts of the parent are unknown[;]; and

652 (iii) reasonable efforts to locate ~~[him have been]~~ the parent are unsuccessful;

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

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

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

657 (k) (i) the parent, or an adult residing in the same household as the parent, ~~[has been]~~ is  
658 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act[;]; and

659 (ii) any clandestine laboratory operation, as defined in Section 58-37d-3, was located in  
660 the residence or on the property where the ~~[child]~~ minor resided; or

661 (l) the ~~[child's]~~ minor's welfare is otherwise endangered.

662 (10) (a) For purposes of Subsection (9)(a)(ii), prima facie evidence that a minor cannot  
663 safely remain in the custody of the minor's parent is established if:

664 (i) the minor was previously adjudicated as abused, neglected, or dependent; and

665 (ii) a subsequent incident of abuse, neglect, or dependency occurs.

666 (b) For purposes of Subsection (9)(c), prima facie evidence that a minor is at  
667 substantial risk of being physically or sexually abused is established if:

668 (i) a parent received actual notice that physical or sexual abuse by a person known to  
669 the parent occurred; and

670 (ii) there is evidence that the parent allowed the minor to be in the physical presence of  
671 the alleged abuser.

672 ~~[(10)]~~ (11) (a) The court shall ~~[also]~~ make a determination on the record as to whether:

673 (i) reasonable efforts were made to prevent or eliminate the need for removal of the  
674 minor from ~~[his]~~ the minor's home; and

675 (ii) whether there are available services that would prevent the need for continued  
676 removal.

677 (b) If the court finds that the minor can be safely returned to the custody of ~~[his]~~ the  
678 minor's parent or guardian through the provision of ~~[those services, it]~~ the services described in

679 Subsection (11)(a)(ii), the court shall place the minor with ~~[his]~~ the minor's parent or guardian  
680 and order that those services be provided by the division.

681 ~~[(b)]~~ (c) In making ~~[that]~~ the determination described in Subsection (11)(a), and in  
682 ordering and providing services, the ~~[child's]~~ minor's health, safety, and welfare shall be the  
683 paramount concern, in accordance with federal law.

684 ~~[(11)]~~ (12) Where the division's first contact with the family occurred during an  
685 emergency situation in which the ~~[child]~~ minor could not safely remain at home, the court shall  
686 make a finding that any lack of preplacement preventive efforts was appropriate.

687 ~~[(12)]~~ (13) In cases where actual sexual abuse or abandonment, or serious physical  
688 abuse or neglect are involved, neither the division nor the court has any duty to make  
689 "reasonable efforts" or to, in any other way, attempt to:

690 (a) maintain a ~~[child]~~ minor in ~~[his]~~ the minor's home[;];

691 (b) return a ~~[child]~~ minor to ~~[his]~~ the minor's home[;];

692 (c) provide reunification services[;]; or

693 (d) attempt to rehabilitate the offending parent or parents.

694 ~~[(13)]~~ (14) The court may not order continued removal of a minor solely on the basis of  
695 educational neglect as described in Subsection 78-3a-103(1)(s)(ii).

696 ~~[(14)]~~ (15) (a) Whenever a court orders continued removal of a minor under this  
697 section, it shall state the facts on which that decision is based.

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

700 ~~[(15)]~~ (16) If the court finds that continued removal and temporary custody are  
701 necessary for the protection of a ~~[child]~~ minor because harm may result to the ~~[child]~~ minor if  
702 ~~[he]~~ the minor were returned home, it shall order continued removal regardless of:

703 (a) any error in the initial removal of the ~~[child, or]~~ minor;

704 (b) the failure of a party to comply with notice provisions[;]; or

705 (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child  
706 and Family Services.

707 Section 10. Section **78-3a-308** is amended to read:

708 **78-3a-308. Pretrial and adjudication hearing -- Time deadlines.**

709 (1) Upon the filing of a petition, the clerk of the court shall set the pretrial hearing on

710 the petition within 15 calendar days from the later of:

711       (a) the date of the shelter hearing; or

712       (b) the filing of the petition[, ~~whichever is later~~].

713       (2) The pretrial may be continued upon motion of any party, for good cause shown, but

714 the final adjudication hearing shall be held no later than 60 calendar days from the later of:

715       (a) the date of the shelter hearing; or

716       (b) the filing of the petition[, ~~whichever is later~~].

717       ~~[(3) In the case where a petition has been filed but the child is not in protective custody~~

718 ~~or temporary custody, the court shall give scheduling priority to the pretrial and adjudication~~

719 ~~hearings on the petition if the division indicates in the petition that without expedited hearings~~

720 ~~and services ordered under the protective supervision of the court the child will likely be taken~~

721 ~~into protective custody.]~~

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**Legislative Review Note**

**as of 12-28-04 10:11 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**



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**Fiscal Note**  
**Bill Number SB0112**

**Child Protection Amendments**

*21-Jan-05*

*1:34 PM*

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**State Impact**

Provisions of this legislation can be handled within existing resources.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**