

**CHILD PROTECTION AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory S. Bell**

House Sponsor: Lorie D. Fowlke

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**LONG TITLE**

**General Description:**

This bill amends child protection and protective 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:

- ▶ describes the circumstances and procedures under which a child may be taken into protective custody;
- ▶ describes the circumstances under which a warrant to take a child into protective custody may be issued without first giving the child's parent or guardian notice and an opportunity to be heard;
- ▶ provides an expedited shelter hearing process to determine whether a child should be taken into protective custody;
- ▶ describes the notice requirements relating to an expedited shelter hearing;
- ▶ defines the term "petition";
- ▶ consolidates existing code provisions relating to the expedited filing of a petition and expedited pretrial and adjudication hearings;
- ▶ provides notice requirements for shelter hearings; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **62A-4a-202.1**, as last amended by Chapter 180, Laws of Utah 2004

34 **78-3a-106**, as last amended by Chapter 267, Laws of Utah 2003

35 **78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004

36 **78-3a-305**, as last amended by Chapters 68 and 326, Laws of Utah 2003

37 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003

38 **78-3a-308**, as last amended by Chapter 326, Laws of Utah 2003

39 ENACTS:

40 **78-3a-106.5**, Utah Code Annotated 1953



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

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

44 **62A-4a-202.1. Entering home of a child -- Taking a child into protective custody**  
45 **-- Caseworker accompanied by peace officer -- Preventive services -- Shelter care or**  
46 **emergency kinship.**

47 (1) A ~~[state officer,]~~ peace officer~~;~~ or child welfare worker may not enter the home  
48 of a ~~[minor]~~ child who is not under the jurisdiction of the court, remove a ~~[minor]~~ child from  
49 the ~~[minor's]~~ child's home or school, or take a ~~[minor]~~ child into protective custody unless~~;~~  
50 authorized under Subsection 78-3a-106(2).

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

52 ~~[(i) the consent of the minor's parent or guardian; or]~~

53 ~~[(ii) a court order issued under Section 78-3a-106; or]~~

54 ~~[(b) there exist exigent circumstances.]~~

55 (2) A child welfare worker within the division may take action under Subsection (1)  
56 accompanied by a peace officer, or without a peace officer when a peace officer is not  
57 reasonably available.

58 (3) (a) If possible, consistent with the ~~[minor's]~~ child's safety and welfare, before taking

59 a [minor] child into protective custody, the child welfare worker shall also determine whether  
60 there are services reasonably available ~~[to the worker which]~~ that, if provided to ~~[the minor's]~~ a  
61 parent or ~~[to the minor]~~ guardian of the child, would eliminate the need to remove the [minor]  
62 child from the custody of the [minor's] child's parent or guardian.

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

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

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

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

73 (i) a shelter facility; or

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

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

76 **78-3a-106. Search warrants and subpoenas -- Authority to issue -- Protective**  
77 **custody -- Expedited hearing.**

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

83 (2) A peace officer or child welfare worker may not enter the home of a child who is  
84 not under the jurisdiction of the court, remove a child from the child's home or school, or take a  
85 child into protective custody unless:

86 (a) there exist exigent circumstances sufficient to relieve the peace officer or child  
87 welfare worker of the requirement to obtain a warrant;

88 (b) the peace officer or child welfare worker obtains a search warrant under Subsection  
89 (3);

90 (c) the peace officer or child welfare worker obtains a court order after the parent or  
91 guardian of the child is given notice and an opportunity to be heard; or

92 (d) the peace officer or child welfare worker obtains the consent of the child's parent or  
93 guardian.

94 ~~[(2)]~~ (3) (a) The court may issue a warrant authorizing a child protective services  
95 worker or peace officer to search for a child and take the child into protective custody if it  
96 appears to the court upon a verified petition, recorded sworn testimony or an affidavit sworn to  
97 by a peace officer or any other person, and upon the examination of other witnesses, if required  
98 by the judge, that there is probable cause to believe that:

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

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

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

107 (i) there is a threat of substantial harm to the child's health or safety;

108 (ii) it is necessary to take the child into protective custody to avoid the harm described  
109 in Subsection (3)(a)(i); and

110 (iii) it is likely that the child will suffer substantial harm if the parent or guardian of the  
111 child is given notice and an opportunity to be heard before the child is taken into protective  
112 custody.

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

115 ~~[(d)]~~ (c) The person executing the warrant shall then take the child to the place of  
116 shelter designated by the court or the division.

117 (4) (a) Consistent with Subsection (5), the court shall hold an expedited hearing to  
118 determine whether a child should be placed in protective custody if:

119 (i) a person files a petition under Section 78-3a-305;

120 (ii) a party to the proceeding files a "Motion for Expedited Placement in Temporary

121 Custody"; and  
122 (iii) notice of the hearing described in this Subsection (4)(a) is served consistent with  
123 the requirements for notice of a shelter hearing under Section 78-3a-306.  
124 (b) The hearing described in Subsection (4)(a):  
125 (i) shall be held within 72 hours, excluding weekends and holidays, of the filing of the  
126 motion described in Subsection (4)(a)(ii); and  
127 (ii) shall be considered a shelter hearing under Section 78-3a-306 and Utah Rules of  
128 Juvenile Procedure, Rule 13.  
129 (5) (a) The hearing and notice described in Subsection (4) are subject to:  
130 (i) Section 78-3a-306;  
131 (ii) Section 78-3a-307; and  
132 (iii) the Utah Rules of Juvenile Procedure.  
133 (b) After the hearing described in Subsection (4), a court may order a child placed in  
134 the temporary custody of the division.  
135 [~~(3) The~~] (6) When notice to a parent or guardian is required by this section:  
136 (a) the parent or guardian to be notified must be:  
137 (i) the [minor's] child's primary caregiver[;]; or  
138 (ii) the [person] parent or guardian who has custody of the [minor] child, when the  
139 order is sought[;]; and  
140 (b) the person required to provide notice shall make a good faith effort to provide  
141 notice to a parent or guardian who:  
142 (i) is not required to be notified under Subsection (6)(a); and  
143 (ii) has the right to parent-time with the child.  
144 Section 3. Section **78-3a-106.5** is enacted to read:  
145 **78-3a-106.5. Expedited filing of petition -- Expedited hearings.**  
146 (1) For purposes of this section, "petition" means a petition, under Section 78-3a-305,  
147 to commence proceedings in a juvenile court alleging that a child is:  
148 (a) abused;  
149 (b) neglected; or  
150 (c) dependent.  
151 (2) If a petition is requested by the division, the attorney general shall file the petition

152 within 72 hours of the completion of the division's investigation and request, excluding  
 153 weekends and holidays, if:

154 (a) the child who is the subject of the requested petition is not removed from the child's  
 155 home by the division; and

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

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

160 (a) the child who is the subject of the petition is not in:

161 (i) protective custody; or

162 (ii) temporary custody; and

163 (b) the division indicates in the petition that, without expedited hearings and services  
 164 ordered under the protective supervision of the court, the child will likely be taken into  
 165 protective custody.

166 Section 4. Section **78-3a-301** is amended to read:

167 **78-3a-301. Court-ordered protective custody of a child following petition filing --**

168 **Grounds.**

169 (1) After a petition has been filed under [~~Subsection~~] Section 78-3a-305[~~(4)~~], if the  
 170 [~~minor~~] child who is the subject of the petition is not in the protective custody of the division, a  
 171 court may order that the [~~minor~~] child be removed from the [~~minor's~~] child's home or otherwise  
 172 taken into protective custody if the court finds, by a preponderance of the evidence, that any  
 173 one or more of the following circumstances exist:

174 (a) there is an imminent danger to the physical health or safety of the [~~minor~~] child and  
 175 the [~~minor's~~] child's physical health or safety may not be protected without removing the  
 176 [~~minor~~] child from the custody of the [~~minor's~~] child's parent or guardian;

177 (b) a parent or guardian engages in or threatens the [~~minor~~] child with unreasonable  
 178 conduct that causes the [~~minor~~] child to suffer emotional damage and there are no reasonable  
 179 means available by which the [~~minor's~~] child's emotional health may be protected without  
 180 removing the [~~minor~~] child from the custody of the [~~minor's~~] child's parent or guardian;

181 (c) the [~~minor~~] child or another [~~minor~~] child residing in the same household has been  
 182 physically or sexually abused, or is considered to be at substantial risk of being physically or

183 sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or  
184 other person known to the parent or guardian;

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

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

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

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

194 (h) the [minor] child is in immediate need of medical care;

195 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an  
196 environment that poses a threat to the [minor's] child's health or safety; or

197 (ii) a parent's or guardian's action in leaving a [minor] child unattended would  
198 reasonably pose a threat to the [minor's] child's health or safety;

199 (j) the [minor] child or another [minor] child residing in the same household has been  
200 neglected;

201 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

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

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

207 (m) the [minor's] child's welfare is otherwise endangered.

208 (2) (a) For purposes of Subsection (1)(a), if a [minor] child has previously been  
209 adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or  
210 dependency has occurred involving the same substantiated abuser or under similar  
211 circumstance as the previous abuse, that fact constitutes prima facie evidence that the [minor]  
212 child cannot safely remain in the custody of the [minor's] child's parent.

213 (b) For purposes of Subsection (1)(c):

214 (i) another [minor] child residing in the same household may not be removed from the  
 215 home unless that [minor] child is considered to be at substantial risk of being physically or  
 216 sexually abused as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

217 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a  
 218 person known to the parent has occurred, and there is evidence that the parent or guardian  
 219 failed to protect the [minor] child, after having received the notice, by allowing the [minor]  
 220 child to be in the physical presence of the alleged abuser, that fact constitutes prima facie  
 221 evidence that the [minor] child is at substantial risk of being physically or sexually abused.

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

224 (a) educational neglect;

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

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

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

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

233 Section 5. Section **78-3a-305** is amended to read:

234 **78-3a-305. Petition filed.**

235 (1) For purposes of this section, "petition" means a petition to commence proceedings  
 236 in a juvenile court alleging that a child is:

237 (a) abused;

238 (b) neglected; or

239 (c) dependent.

240 [~~(1)~~] (2) (a) [~~Any~~] Subject to Subsection (2)(b), any interested person may file a  
 241 petition [~~to commence proceedings in the juvenile court alleging that a minor is abused,~~  
 242 ~~neglected, or dependent. The~~].

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



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

248           ~~[(b) If a petition is requested by the division, the attorney general shall file the petition~~  
249 ~~within 72 hours of the completion of the investigation and request, excluding weekends and~~  
250 ~~holidays, if:]~~

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

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

255           ~~[(3)]~~ (4) The petition shall be verified, and contain all of the following:

256           (a) the name, age, and address, if any, of the ~~[minor]~~ child upon whose behalf the  
257 petition is brought;

258           (b) the names and addresses, if known to the petitioner, of both parents and any  
259 guardian of the ~~[minor]~~ child;

260           (c) a concise statement of facts, separately stated, to support the conclusion that the  
261 ~~[minor]~~ child upon whose behalf the petition is being brought is abused, neglected, or  
262 dependent; and

263           (d) a statement regarding whether the ~~[minor]~~ child is in protective custody, and if so,  
264 the date and precise time the ~~[minor]~~ child was taken into protective custody.

265           Section 6. Section **78-3a-306** is amended to read:

266           **78-3a-306. Shelter hearing.**

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

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

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

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

274           (d) as an alternative to removal of the child, a parent has entered a domestic violence  
275 shelter at the request of the ~~[Division of Child and Family Services:]~~ division; or

276 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under  
277 Subsection 78-3a-106(4).

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

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

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

282 (c) the name of the ~~[minor]~~ child on whose behalf a petition is being brought;

283 (d) a concise statement regarding:

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

285 (ii) the allegations and code sections under which the proceeding has been instituted;

286 (e) a statement that the parent or guardian to whom notice is given, and the ~~[minor]~~  
287 child, are entitled to have an attorney present at the shelter hearing, and that if the parent or  
288 guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney,  
289 one will be provided; and

290 (f) a statement that the parent or guardian is liable for the cost of support of the ~~[minor]~~  
291 child in the protective custody, temporary custody, and custody of the division, and the cost for  
292 legal counsel appointed for the parent or guardian under Subsection (2)(e), according to ~~[his]~~  
293 the parent's or guardian's financial ability.

294 (3) ~~[That]~~ The notice described in Subsection (2) shall be personally served as soon as  
295 possible, but no later than one business day after removal of ~~[a]~~ the child from ~~[his]~~ the child's  
296 home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under  
297 Subsection 78-3a-106(4), on:

298 (a) the appropriate guardian ad litem; and

299 (b) both parents and any guardian of the ~~[minor]~~ child, unless ~~[they]~~ the parent or  
300 guardian cannot be located.

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

302 (a) the child, unless it would be detrimental for the child;

303 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in  
304 response to the notice;

305 (c) counsel for the parents, if one has been requested;

306 (d) the child's guardian ad litem;

307 (e) the caseworker from the [~~Division of Child and Family Services~~] division who has  
308 been assigned to the case; and

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

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

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

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

321 (a) the reasons why the [minor] child was removed from the parent's or guardian's  
322 custody;

323 (b) any services provided to the child and [his] the child's family in an effort to prevent  
324 removal;

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

326 (d) the available services that could facilitate the return of the [minor] child to the  
327 custody of [his] the child's parent or guardian; and

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

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

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

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

338 (a) consistent with Subsection (10)(a), there is a substantial danger to the physical  
339 health or safety of the [minor] child and the [minor's] child's physical health or safety may not  
340 be protected without removing [him] the child from [his parent's] the custody[~~-. If a minor has~~  
341 ~~previously been adjudicated as abused, neglected, or dependent and a subsequent incident of~~  
342 ~~abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child~~  
343 ~~cannot safely remain in the custody of his parent] of the child's parent;~~

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

349 (c) consistent with Subsection (10)(b), the [minor] child or another [minor] child  
350 residing in the same household has been physically or sexually abused, or is considered to be at  
351 substantial risk of being physically or sexually abused, by a parent, a member of the parent's  
352 household, or other person known to the parent[~~-. If a parent has received actual notice that~~  
353 ~~physical or sexual abuse by a person known to the parent has occurred, and there is evidence~~  
354 ~~that the parent has allowed the child to be in the physical presence of the alleged abuser, that~~  
355 ~~fact constitutes prima facie evidence that the child is at substantial risk of being physically or~~  
356 ~~sexually abused];~~

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

358 (e) the [minor] child has been left without any provision for [his] the child's support;

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

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

365 (h) the [minor] child is in immediate need of medical care;

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

368 (j) the [minor] child or another [minor] child residing in the same household has been

369 neglected;

370 (k) the parent, or an adult residing in the same household as the parent, has been  
371 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any  
372 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence  
373 or on the property where the child resided; or

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

375 (10) (a) For purposes of Subsection (9)(a), if a child has previously been adjudicated as  
376 abused, neglected, or dependent and a subsequent incident of abuse, neglect, or dependency  
377 occurs, that fact constitutes prima facie evidence that the child cannot safely remain in the  
378 custody of the child's parent.

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

384 [~~(10)~~] (11) (a) The court shall also make a determination on the record as to whether  
385 reasonable efforts were made to prevent or eliminate the need for removal of the [~~minor~~] child  
386 from [~~his~~] the child's home and whether there are available services that would prevent the  
387 need for continued removal. If the court finds that the [~~minor~~] child can be safely returned to  
388 the custody of [~~his~~] the child's parent or guardian through the provision of those services, it  
389 shall place the [~~minor~~] child with [~~his~~] the child's parent or guardian and order that those  
390 services be provided by the division.

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

394 [~~(11)~~] (12) Where the division's first contact with the family occurred during an  
395 emergency situation in which the child could not safely remain at home, the court shall make a  
396 finding that any lack of preplacement preventive efforts was appropriate.

397 [~~(12)~~] (13) In cases where actual sexual abuse or abandonment, or serious physical  
398 abuse or neglect are involved, neither the division nor the court has any duty to make  
399 "reasonable efforts" or to, in any other way, attempt to maintain a child in [~~his~~] the child's

400 home, return a child to ~~[his]~~ the child's home, provide reunification services, or attempt to  
401 rehabilitate the offending parent or parents.

402 ~~[(13)]~~ (14) The court may not order continued removal of a ~~[minor]~~ child solely on the  
403 basis of educational neglect as described in Subsection 78-3a-103(1)(s)(ii).

404 ~~[(14)]~~ (15) (a) Whenever a court orders continued removal of a ~~[minor]~~ child under this  
405 section, it shall state the facts on which that decision is based.

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

408 ~~[(15)]~~ (16) If the court finds that continued removal and temporary custody are  
409 necessary for the protection of a child because harm may result to the child if ~~[he]~~ the child  
410 were returned home, it shall order continued removal regardless of any error in the initial  
411 removal of the child, or the failure of a party to comply with notice provisions, or any other  
412 procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

413 Section 7. Section **78-3a-308** is amended to read:

414 **78-3a-308. Pretrial and adjudication hearing -- Time deadlines.**

415 (1) Upon the filing of a petition, the clerk of the court shall set the pretrial hearing on  
416 the petition within 15 calendar days from the later of:

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

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

419 (2) The pretrial may be continued upon motion of any party, for good cause shown, but  
420 the final adjudication hearing shall be held no later than 60 calendar days from the later of:

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

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

423 ~~[(3) In the case where a petition has been filed but the child is not in protective custody  
424 or temporary custody, the court shall give scheduling priority to the pretrial and adjudication  
425 hearings on the petition if the division indicates in the petition that without expedited hearings  
426 and services ordered under the protective supervision of the court the child will likely be taken  
427 into protective custody.]~~

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**Legislative Review Note**

as of 9-19-05 7:22 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**

**Interim Committee Note**

as of 12-15-05 10:32 AM

The Judiciary Interim Committee recommended this bill.

**Legislative Committee Note**

as of 12-15-05 10:32 AM

The Child Welfare Legislative Oversight Panel recommended this bill.