

CHILD WELFARE INTERVIEW REQUIREMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes concerning support of a child who is interviewed during a child welfare investigation.

Highlighted Provisions:

This bill:

- ▶ under certain circumstances, requires the Division of Child and Family Services to inform a child who is being interviewed during a child welfare investigation that the child may have a support person present during the interview; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-202.3, as last amended by Laws of Utah 2021, Chapters 29 and 262

62A-4a-409, as last amended by Laws of Utah 2021, Chapters 29, 262, and 365

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

Section 1. Section **62A-4a-202.3** is amended to read:



28 **62A-4a-202.3. Investigation -- Supported or unsupported reports -- Child in**
29 **protective custody.**

30 (1) When a child is taken into protective custody in accordance with Section
31 [62A-4a-202.1](#) or [80-3-204](#) or when the division takes any other action that would require a
32 shelter hearing under Subsection [80-3-301\(1\)](#), the division shall immediately initiate an
33 investigation of the:

34 (a) circumstances of the child; and
35 (b) grounds upon which the decision to place the child into protective custody was
36 made.

37 (2) The division's investigation under Subsection (1) shall conform to reasonable
38 professional standards, and shall include:

39 (a) a search for and review of any records of past reports of abuse or neglect involving:

40 (i) the same child;
41 (ii) any sibling or other child residing in the same household as the child; and
42 (iii) the alleged perpetrator;

43 (b) ~~[with regard to a child who is five years old or older,]~~ if the child is five years old
44 or older, a personal interview with the child:

45 (i) outside of the presence of the alleged perpetrator; and
46 (ii) conducted in accordance with ~~[the requirements of]~~ Subsection (7);
47 (c) if a parent or guardian can be located, an interview with at least one of the child's
48 parents or guardian;

49 (d) an interview with the person who reported the abuse, unless the report was made
50 anonymously;

51 (e) ~~[where]~~ if possible and appropriate, interviews with other third parties who have
52 had direct contact with the child, including:

53 (i) school personnel; and
54 (ii) the child's health care provider;
55 (f) an unscheduled visit to the child's home, unless:

56 (i) there is a reasonable basis to believe that the reported abuse was committed by a
57 person who:

58 (A) is not the child's parent; and

- 59 (B) does not:
- 60 (I) live in the child's home; or
- 61 (II) otherwise have access to the child in the child's home; or
- 62 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
- 63 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
- 64 failure to meet the child's medical needs, a medical examination, obtained no later than 24
- 65 hours after the child is placed in protective custody.
- 66 (3) The division may rely on a written report of a prior interview rather than
- 67 conducting an additional interview, if:
- 68 (a) law enforcement:
- 69 (i) previously conducted a timely and thorough investigation regarding the alleged
- 70 abuse, neglect, or dependency; and
- 71 (ii) produced a written report;
- 72 (b) the investigation described in Subsection (3)(a)(i) included one or more of the
- 73 interviews ~~required by~~ under Subsection (2); and
- 74 (c) the division finds that an additional interview is not in the best interest of the child.
- 75 (4) (a) The division's determination of whether a report is supported or unsupported
- 76 may be based on the child's statements alone.
- 77 (b) Inability to identify or locate the perpetrator may not be used by the division as a
- 78 basis for:
- 79 (i) determining that a report is unsupported; or
- 80 (ii) closing the case.
- 81 (c) The division may not determine a case to be unsupported or identify a case as
- 82 unsupported solely because the perpetrator ~~was~~ is an out-of-home perpetrator.
- 83 (d) ~~Decisions~~ The division shall base the division's decision regarding whether a
- 84 report is supported, unsupported, or without merit ~~shall be based~~ on the facts of the case at
- 85 the time the report ~~was~~ is made.
- 86 (5) The division ~~should~~ shall maintain protective custody of the child if ~~it~~ the
- 87 division finds that one or more of the following conditions exist:
- 88 (a) the child does not have a natural parent, guardian, or responsible relative who is
- 89 able and willing to provide safe and appropriate care for the child;

90 (b) (i) shelter of the child is a matter of necessity for the protection of the child; and

91 (ii) there are no reasonable means by which the child can be protected in:

92 (A) the child's home; or

93 (B) the home of a responsible relative;

94 (c) there is substantial evidence that the parent or guardian is likely to flee the

95 jurisdiction of the court; or

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

97 (6) (a) Within 24 hours after receipt of a child into protective custody, excluding

98 weekends and holidays, the division shall:

99 (i) convene a child protection team to review the circumstances regarding removal of
100 the child from the child's home or school; and

101 (ii) prepare the testimony and evidence that ~~[will be]~~ is required of the division at the
102 shelter hearing, in accordance with Section 80-3-301.

103 (b) At the 24-hour meeting, the division shall have available for review and
104 consideration the complete child protective services and foster care history of the child and the
105 child's parents and siblings.

106 (7) (a) After receipt of a child into protective custody and ~~[prior to]~~ before the
107 adjudication hearing, all investigative interviews with the child that are initiated by the division
108 shall be:

109 (i) except as provided in Subsection (7)(b), audio or video taped; and

110 (ii) except as provided in Subsection (7)(c), conducted with a support person of the
111 child's choice present.

112 (b) (i) Subject to Subsection (7)(b)(ii), an interview described in Subsection (7)(a) may
113 be conducted without being taped if the child:

114 (A) is at least nine years old;

115 (B) refuses to have the interview audio taped; and

116 (C) refuses to have the interview video taped.

117 (ii) If, ~~[pursuant to]~~ under Subsection (7)(b)(i), an interview is conducted without being
118 taped, the child's refusal shall be documented, as follows:

119 (A) the interviewer shall attempt to get the child's refusal on tape, including the reasons
120 for the refusal; or

121 (B) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the
122 interviewer shall:

123 (I) state on the tape that the child is present, but has refused to have the interview,
124 refusal, or the reasons for the refusal taped; or

125 (II) if complying with Subsection (7)(b)(ii)(B)(I) will result in the child, who would
126 otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall
127 document, in writing, that the child refused to allow the interview to be taped and the reasons
128 for that refusal.

129 (iii) The division shall track the number of interviews under this Subsection (7) that are
130 not taped, and the number of refusals that are not taped, for each interviewer, in order to
131 determine whether a particular interviewer has a higher incidence of refusals, or taped refusals,
132 than other interviewers.

133 (c) (i) Unless the interview is conducted at a Children's Justice Center, before
134 conducting an interview under Subsection (7)(a), the division shall inform the child that the
135 child is allowed to have a support person of the child's choice present.

136 (ii) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an
137 interview of a child may not be an alleged perpetrator.

138 [(ii)] (iii) Subsection (7)(a)(ii) does not apply if the child refuses to have a support
139 person present during the interview.

140 [(iii)] (iv) If [a] the child described in Subsection [(7)(c)(ii)] (7)(c)(iii) refuses to have a
141 support person present in the interview, the interviewer shall document, in writing, the refusal
142 and the reasons for the refusal.

143 [(iv)] (v) The division shall track the number of interviews under this Subsection (7)
144 where a child refuses to have a support person present for each interviewer, in order to
145 determine whether a particular interviewer has a higher incidence of refusals than other
146 interviewers.

147 (8) The division shall cooperate with law enforcement investigations and with the
148 members of a child protection team, if applicable, regarding the alleged perpetrator.

149 (9) The division may not close an investigation solely on the grounds that the division
150 investigator is unable to locate the child until all reasonable efforts have been made to locate
151 the child and family members including:

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

156 Section 2. Section 62A-4a-409 is amended to read:

157 **62A-4a-409. Investigation by division -- Temporary protective custody --**
 158 **Preremoval interview of a child.**

159 (1) (a) The division shall conduct a thorough preremoval investigation upon receiving
 160 either an oral or written report of alleged abuse or neglect, or an oral or written report under
 161 Subsection 62A-4a-404(2), when there is reasonable cause to suspect that a situation of abuse,
 162 neglect, or the circumstances described under Subsection 62A-4a-404(2) exist.

163 (b) The primary purpose of the preremoval investigation described in Subsection (1)(a)
 164 shall be protection of the child.

165 (2) The preremoval investigation described in Subsection (1)(a) shall include the same
 166 investigative requirements described in Section 62A-4a-202.3.

167 (3) The division shall make a written report of [~~its~~] the division's investigation that
 168 [~~shall include~~] includes a determination regarding whether the alleged abuse or neglect is
 169 supported, unsupported, or without merit.

170 (4) (a) The division shall use an interdisciplinary approach [~~when~~] if appropriate in
 171 dealing with [~~reports~~] a report made under this part.

172 (b) The division shall convene a child protection team to assist the division in the
 173 division's protective, diagnostic, assessment, treatment, and coordination services.

174 (c) The division may include [~~members~~] a member of a child protection team in the
 175 division's protective, diagnostic, assessment, treatment, and coordination services.

176 (d) (i) A representative of the division shall serve as the child protection team's
 177 coordinator and chair. [~~Members~~]

178 (ii) A member of the child protection team shall serve at the coordinator's invitation.
 179 [~~Whenever~~]

180 (iii) If possible, the child protection team shall include [~~representatives~~] a
 181 representative of:

- 182 [~~(†)~~] (A) health, mental health, education, and law enforcement agencies;

183 ~~[(ii)]~~ (B) the child;

184 ~~[(iii)]~~ (C) parent and family support groups unless the parent is alleged to be the
185 perpetrator; and

186 ~~[(iv)]~~ (D) other appropriate agencies or individuals.

187 (5) If a report of neglect is based upon or includes an allegation of educational neglect,
188 the division shall immediately consult with school authorities to verify the child's status in
189 accordance with Sections 53G-6-201 through 53G-6-206.

190 (6) When the division completes the division's initial investigation under this part, the
191 division shall give notice of that completion to the person who made the initial report.

192 (7) ~~[Division workers or other child protection team members have]~~ A division worker
193 or child protection team member has authority to enter upon public or private premises, using
194 appropriate legal processes, to investigate reports of alleged abuse or neglect, upon notice to
195 parents of ~~[their]~~ the parents' rights under the Child Abuse Prevention and Treatment Act, 42
196 U.S.C. Sec. 5106, or any successor thereof.

197 (8) ~~[With regard to any interview of a child prior to removal of that child from the~~
198 ~~child's home]~~ If a child is interviewed before removal of the child from the child's home:

199 (a) except as provided in Subsection (8)(b) or (c), the division shall inform a parent of
200 the child ~~[prior to]~~ before the interview of:

201 (i) the specific allegations concerning the child; and

202 (ii) the time and place of the interview;

203 (b) if a child's parent or stepparent, or a parent's paramour ~~[has been]~~ is identified as
204 the alleged perpetrator, the division is not required to comply with Subsection (8)(a);

205 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
206 is unknown, the division may conduct a minimal interview or conversation, not to exceed 15
207 minutes, with the child ~~[prior to]~~ before complying with Subsection (8)(a);

208 (d) in ~~[all cases]~~ a case described in Subsection (8)(b) or (c), the division shall notify a
209 parent of the child ~~[shall be notified]~~ as soon as practicable after the child ~~[has been]~~ is
210 interviewed, but in no case later than 24 hours after the interview ~~[has taken]~~ takes place;

211 (e) ~~[a child's parents shall be notified]~~ the division shall notify the child's parent of the
212 time and place of all subsequent interviews with the child; ~~[and]~~

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

214 who:

215 (i) may include:

216 (A) a school teacher;

217 (B) an administrator;

218 (C) a guidance counselor;

219 (D) a child care provider;

220 (E) a family member;

221 (F) a family advocate; or

222 (G) a member of the clergy; and

223 (ii) may not be an individual who is alleged to be, or potentially may be, the

224 perpetrator[-]; and

225 (g) unless the interview is conducted at a Children's Justice Center, before conducting
226 the interview, the division shall inform the child that the child is allowed to have a support
227 person of the child's choice present.

228 (9) (a) In accordance with the procedures and requirements of Sections 62A-4a-202.1
229 through 62A-4a-202.3, a division worker or child protection team member may take a child
230 into protective custody and deliver the child to a law enforcement officer, or place the child in
231 an emergency shelter facility approved by the juvenile court, at the earliest opportunity
232 ~~[subsequent to]~~ after the child's removal from the child's original environment.

233 (b) Control and jurisdiction over the child is determined by ~~[the provisions of]~~ Title
234 78A, Chapter 6, Juvenile Court, and Title 80, Utah Juvenile Code, and as otherwise provided
235 by law.

236 (10) ~~[With regard to cases]~~ In a case in which law enforcement has or is conducting an
237 investigation of alleged abuse or neglect of a child:

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

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

242 (11) ~~[With regard to]~~ In a mutual case in which a child protection team ~~[was]~~ is
243 involved in the investigation of alleged abuse or neglect of a child, the division shall consult
244 with the child protection team before closing the case.