

Representative Calvin R. Musselman proposes the following substitute bill:

CHILD WELFARE INTERVIEW REQUIREMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

Senate Sponsor: Chris H. Wilson

LONG TITLE

General Description:

This bill makes changes concerning child interviews during a child welfare investigation.

Highlighted Provisions:

This bill:

- requires the Division of Child and Family Services (division) to take certain steps to ensure a child who is interviewed during a child welfare investigation is supported and comfortable during the interview;
- requires a support person who is present at a child's interview during a child welfare investigation to meet certain requirements;
- deletes provisions requiring the division to document and track child interviews conducted during a child welfare proceeding when a support person is present; 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:

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

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

(a) circumstances of the child; and

(b) grounds upon which the decision to place the child into protective custody was made.

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

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

(i) the same child;

(ii) any sibling or other child residing in the same household as the child; and

(iii) the alleged perpetrator;

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

(i) outside of the presence of the alleged perpetrator; and

(ii) conducted in accordance with ~~[the requirements of]~~ Subsection (7);

(c) if a parent or guardian can be located, an interview with at least one of the child's parents or guardian;

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

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

57 (i) school personnel; and
58 (ii) the child's health care provider;
59 (f) an unscheduled visit to the child's home, unless:
60 (i) there is a reasonable basis to believe that the reported abuse was committed by a
61 person who:
62 (A) is not the child's parent; and
63 (B) does not:
64 (I) live in the child's home; or
65 (II) otherwise have access to the child in the child's home; or
66 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
67 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
68 failure to meet the child's medical needs, a medical examination, obtained no later than 24
69 hours after the child is placed in protective custody.
70 (3) The division may rely on a written report of a prior interview rather than
71 conducting an additional interview, if:
72 (a) law enforcement:
73 (i) previously conducted a timely and thorough investigation regarding the alleged
74 abuse, neglect, or dependency; and
75 (ii) produced a written report;
76 (b) the investigation described in Subsection (3)(a)(i) included one or more of the
77 interviews ~~[required by]~~ under Subsection (2); and
78 (c) the division finds that an additional interview is not in the best interest of the child.
79 (4) (a) The division's determination of whether a report is supported or unsupported
80 may be based on the child's statements alone.
81 (b) Inability to identify or locate the perpetrator may not be used by the division as a
82 basis for:
83 (i) determining that a report is unsupported; or
84 (ii) closing the case.
85 (c) The division may not determine a case to be unsupported or identify a case as
86 unsupported solely because the perpetrator ~~[was]~~ is an out-of-home perpetrator.
87 (d) ~~[Decisions]~~ The division shall base the division's decision regarding whether a

report is supported, unsupported, or without merit ~~[shall be based]~~ on the facts of the case at the time the report ~~[was]~~ is made.

(5) The division ~~[should]~~ shall maintain protective custody of the child if ~~[it]~~ the division finds that one or more of the following conditions exist:

(a) the child does not have a natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the child;

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

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

(A) the child's home; or

(B) the home of a responsible relative;

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

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

(6) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the division shall:

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

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

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

(7) (a) ~~[After]~~ Except as provided in Subsection (7)(b), after receipt of a child into protective custody and ~~[prior to]~~ before the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be~~[-]~~ audio or video taped.

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

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

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

(A) is at least nine years old;

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

(C) refuses to have the interview video taped.

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

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

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

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

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

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

~~[(c) (i) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an interview of a child may not be an alleged perpetrator.]~~

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

(8) (a) Before conducting an investigative interview described in Subsection (7)(a), the interviewer shall:

(i) assess the child's level of comfort with the interview and make reasonable efforts to ensure the child is comfortable during the interview; and

(ii) unless the interview is conducted at a Children's Justice Center, ask the child whether the child is comfortable being alone in the interview with the interviewer.

(b) If the child is not comfortable being alone in the interview with the interviewer, the interviewer shall conduct the interview with a support person of the child's choice present.

(c) The support person who is present during the interview of the child shall meet the

requirements described in Subsections 62A-4a-409(8)(g)(i) and (iii) and may be an individual described in Subsection 62A-4a-409(8)(g)(ii).

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

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

~~[(8)]~~ (9) The division shall cooperate with law enforcement investigations and with the members of a child protection team, if applicable, regarding the alleged perpetrator.

~~[(9)]~~ (10) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child until all reasonable efforts have been made to locate the child and family members including:

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

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

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

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

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

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

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

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

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

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

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

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

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

193 [(i)] (A) health, mental health, education, and law enforcement agencies;

194 [(ii)] (B) the child;

195 [(iii)] (C) parent and family support groups unless the parent is alleged to be the
196 perpetrator; and

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

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

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

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

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

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

212 (i) the specific allegations concerning the child; and
213 (ii) the time and place of the interview;

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

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

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

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

224 (f) before conducting the interview, the interviewer shall:

225 (i) assess the child's level of comfort with the interview and make reasonable efforts to
226 ensure the child is comfortable during the interview; and

227 (ii) unless the interview is conducted at a Children's Justice Center, ask the child
228 whether the child is comfortable being alone in the interview with the interviewer; and

229 ~~[(f)]~~ (g) if the child is not comfortable being alone in the interview with the
230 interviewer, the child ~~[shall be]~~ is allowed to have a support person of the child's choice
231 present, who:

232 (i) is:

233 (A) 18 years old or older;

234 (B) readily available; and

235 (C) willing and able to be present in the interview without influencing the child
236 through statements or reactions;

237 ~~[(i)]~~ (ii) may ~~[include]~~ be:

238 (A) a school teacher;

239 (B) an administrator;

240 (C) a guidance counselor;

241 (D) a child care provider;

242 (E) a family member;

(F) a family advocate; or

(G) a member of the clergy; and

~~[(ii)]~~ (iii) may not be an individual who:

(A) is alleged to be, or potentially may be, the perpetrator~~[-]; or~~

(B) is protective of the perpetrator or unsupportive of the child.

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

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

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

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

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

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