

AMENDMENTS TO WARRANTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley G. Hellewell

LONG TITLE

General Description:

This bill amends Child and Family Services provisions and the Judicial Code regarding removing a minor from the minor's home or school or taking the minor into protective custody.

Highlighted Provisions:

This bill:

- ▶ eliminates the juvenile court's authority to issue a warrant authorizing a child welfare worker, state officer, or peace officer to remove a minor from the minor's home or take a minor into protective custody;
- ▶ requires the juvenile court to make findings by clear and convincing evidence before a child can be removed from their home;
- ▶ eliminates the consideration that a parent or guardian engages in or threatens the child with unreasonable conduct that causes emotional damage to the child as grounds for removal; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:



28 **62A-4a-202.1 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah

29 2003

30 **78-3a-106**, as last amended by Chapter 267, Laws of Utah 2003

31 **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003



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

34 Section 1. Section **62A-4a-202.1 (Effective 07/01/04)** is amended to read:

35 **62A-4a-202.1 (Effective 07/01/04). Taking a minor into protective custody with a**
36 **court order -- Peace officer -- Division of Child and Family Services caseworker --**
37 **Consent or specified circumstances -- Shelter care or emergency kinship.**

38 (1) A state officer, peace officer, or child welfare worker may not, without the consent
39 of the minor's parent or guardian[~~, a warrant,~~] or a court order issued [~~under Section 78-3a-106~~]
40 pursuant to Rule 65A of the Rules of Civil Procedure, remove a minor from the minor's home
41 or school, or take a minor into protective custody unless there exist exigent circumstances.

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

45 (3) If possible, consistent with the minor's safety and welfare, before taking a minor
46 into protective custody, the worker shall also determine whether there are services reasonably
47 available to the worker which, if provided to the minor's parent or to the minor, would
48 eliminate the need to remove the minor from the custody of the minor's parent or guardian. If
49 those services are reasonably available, they shall be utilized. In determining whether services
50 are reasonably available, and in making reasonable efforts to provide those services, the
51 minor's health, safety, and welfare shall be [~~the worker's paramount~~] a primary concern.

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

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

57 (i) a shelter facility; or

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

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

60 **78-3a-106. Search warrants and subpoenas -- Authority to issue -- Hearing**
61 **requirements.**

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

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

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

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

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

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

82 [~~(d) The person executing the warrant shall then take the child to the place of shelter~~
83 ~~designated by the court.]~~

84 [~~(3) The parent or guardian to be notified must be the minor's primary caregiver, or the~~
85 ~~person who has custody of the minor, when the order is sought.]~~

86 (2) Before a court may enter an order removing a minor from the minor's home or
87 taking the minor into protective custody, the court must:

88 (a) have a hearing;

89 (b) give the parent or guardian of the minor notice of the hearing;

90 (c) give the parent or guardian of the minor an opportunity to present evidence to the
91 court;

92 (d) determine by clear and convincing evidence that the minor has been abused or
93 neglected by one or both parents or the guardian; and

94 (e) take into consideration a parent or guardian's fundamental right to the custody of
95 the minor.

96 (3) Notwithstanding Subsection (2), if there is imminent danger to a minor's physical
97 safety, the court may issue an order authorizing the removal of the minor without a hearing.

98 Section 3. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

99 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor**
100 **following petition filing -- Grounds.**

101 (1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is
102 the subject of the petition is not in the protective custody of the division, a court may order that
103 the minor be removed from the minor's home or otherwise taken into protective custody if the
104 court finds, by ~~[a preponderance of the evidence;]~~ clear and convincing evidence that any one
105 or more of the following circumstances exist:

106 (a) there is an imminent danger to the physical health or safety of the minor and the
107 minor's physical health or safety may not be protected without removing the minor from the
108 custody of the minor's parent or guardian~~[- If a minor has previously been adjudicated as~~
109 ~~abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency~~
110 ~~has occurred involving the same alleged abuser or under similar circumstance as the previous~~
111 ~~abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the~~
112 ~~custody of the minor's parent];~~

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

117 ~~[(c)-(i)]~~ (b) the minor or another minor residing in the same household has been
118 physically or sexually abused, or is considered to be at substantial risk of being physically or
119 sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or
120 other person known to the parent or guardian[-];

121 ~~[(ii) For purposes of this Subsection (1)(c), another minor residing in the same~~
 122 ~~household may not be removed from the home unless that minor is considered to be at~~
 123 ~~substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or~~
 124 ~~(iii).]~~

125 ~~[(iii) If a parent or guardian has received actual notice that physical or sexual abuse by~~
 126 ~~a person known to the parent has occurred, and there is evidence that the parent or guardian~~
 127 ~~failed to protect the minor by allowing the minor to be in the physical presence of the alleged~~
 128 ~~abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being~~
 129 ~~physically or sexually abused;]~~

130 ~~[(d)] (c) the parent or guardian is unwilling to have physical custody of the minor;~~

131 ~~[(e)] (d) the minor has been abandoned or left without any provision for the minor's~~
 132 ~~support;~~

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

135 ~~[(g)] (f) a relative or other adult custodian with whom the minor has been left by the~~
 136 ~~parent or guardian is unwilling or unable to provide care or support for the minor, the~~
 137 ~~whereabouts of the parent or guardian are unknown, and reasonable efforts to locate the parent~~
 138 ~~or guardian have been unsuccessful;~~

139 ~~[(h)] (g) the minor is in immediate need of medical care;~~

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

142 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
 143 a threat to the minor's health or safety;

144 ~~[(j)] (i) the minor or another minor residing in the same household has been neglected;~~
 145 ~~[and]~~

146 ~~[(ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household~~
 147 ~~may not be removed unless that minor is considered to be at substantial risk of being~~
 148 ~~neglected;]~~

149 ~~[(k)] (j) an infant has been abandoned, as defined in Section 78-3a-313.5;~~

150 ~~[(l)] (k) the parent or guardian, or an adult residing in the same household as the parent~~
 151 ~~or guardian, has been charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug~~

152 Lab Act, and any clandestine laboratory operation, as defined in Section 58-37d-3, was located
153 in the residence or on the property where the minor resided; or

154 ~~[(m)]~~ (1) the minor's welfare is otherwise endangered.

155 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as
156 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
157 has occurred involving the same alleged abuser or under similar circumstance as the previous
158 abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the
159 custody of the minor's parent.

160 (b) For purposes of ~~§ [this] §~~ Subsection ~~§ [(2)] (1) §~~ (b):

161 (i) another minor residing in the same household may not be removed from the home
162 unless that minor is considered to be at substantial risk of being physically or sexually abused
163 as described in Subsection (1)(b) or this Subsection (2)(b) § (ii) § ; and

164 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
165 person known to the parent has occurred, and there is evidence that the parent or guardian
166 failed to protect the minor by allowing the minor to be in the physical presence of the alleged
167 abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being
168 physically or sexually abused.

169 ~~[(2)]~~ (3) A court may not remove a minor from the parent's or guardian's custody on the
170 basis of educational neglect, in the absence of one of the factors described in Subsection (1).

171 ~~[(3)]~~ (4) A court may not remove a minor from the parent's or guardian's custody on the
172 basis of mental illness or poverty of the parent or guardian, in the absence of one of the factors
173 described in Subsection (1).

174 ~~[(4)]~~ (5) A minor removed from the custody of the minor's parent or guardian under
175 this section may not be placed or kept in a secure detention facility pending further court
176 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
177 Juvenile Justice Services.

178 ~~[(5)]~~ (6) This section does not preclude removal of a minor from the minor's home
179 without a ~~[warrant or]~~ court order under Section 62A-4a-202.1.

180 Section 4. **Effective date.**

181 This bill takes effect on July 1, 2004.

Legislative Review Note

as of 1-9-04 12:58 PM

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

Office of Legislative Research and General Counsel

State Impact

It is estimated that additional hearings and court appeals would impact the Courts with about 551 hours of additional court time, at a cost of \$145,300, including an additional one-half FTE Guardian Ad Litem. Impact to the Attorney General's Office is estimated at \$90,400, including \$2,400 of one-time equipment costs, for one additional AG attorney. Impact to resources of the Division of Child and Family Services would be relatively minor (less than one FTE) and can be absorbed.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$235,700	\$233,300	\$0	\$0
TOTAL	\$235,700	\$233,300	\$0	\$0

Individual and Business Impact

No fiscal impact.