

CHILD WELFARE INVESTIGATIONS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions regarding child welfare procedures.

Highlighted Provisions:

This bill:

- ▶ requires a child welfare caseworker to obtain a warrant before entering a private premises under certain circumstances; and
- ▶ requires that when a child is removed from the child's home, that the removal is recorded.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-2-701, as last amended by Laws of Utah 2022, Chapter 308 and renumbered and amended by Laws of Utah 2022, Chapter 334 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 334

80-2-702, as last amended by Laws of Utah 2022, Chapter 308 and renumbered and amended by Laws of Utah 2022, Chapter 334 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 334



28 **80-2a-202**, as renumbered and amended by Laws of Utah 2022, Chapter 334



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

31 Section 1. Section **80-2-701** is amended to read:

32 **80-2-701. Division preremoval investigation -- Supported or unsupported reports**
33 **-- Convening of child protection team -- Coordination with law enforcement --**
34 **Consultation with child protection team before close of investigation.**

35 (1) (a) The division shall conduct a thorough preremoval investigation upon receiving a
36 report under Section **80-2-602** or **80-2-603** if there is reasonable cause to suspect that a
37 situation of abuse, neglect, or the circumstances described in Subsection **80-2-603(2)** exist.

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

40 (2) The preremoval investigation described in Subsection (1)(a) shall meet the
41 reasonable professional standards described in Section **80-2-702**.

42 (3) The division shall make a written report of the division's preremoval investigation
43 under Subsection (1)(a) that includes a determination regarding whether the alleged abuse or
44 neglect in the report described in Subsection (1)(a) is supported, unsupported, or without merit.

45 (4) The division:

46 (a) shall use an interdisciplinary approach if appropriate in dealing with a report made
47 under Section **80-2-602**, **80-2-603**, or **80-2-604**;

48 (b) in accordance with Section **80-2-706**, shall convene a child protection team to assist
49 the division in the division's protective, diagnostic, assessment, treatment, and coordination
50 services; and

51 (c) may include a member of the child protection team in the division's protective,
52 diagnostic, assessment, treatment, or coordination services.

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

56 (6) Upon completion of the initial preremoval investigation under this section, the
57 division shall give notice of the completion to the person who made the initial report described
58 in Subsection (1)(a).

59 (7) (a) A division child welfare caseworker:
 60 [~~(a)~~] (i) has authority to:
 61 [~~(i)~~] (A) except as provided in Subsection (7)(b), enter upon public or private premises,
 62 using appropriate legal processes; and
 63 [~~(i)~~] (B) to investigate a report of alleged child abuse or neglect, upon notice to a
 64 parent of the parent's rights under the Child Abuse Prevention and Treatment Act, 42 U.S.C.
 65 Sec. 5106, or any successor thereof; and

66 [~~(b)~~] (ii) may take a child into protective custody in accordance with Chapter 2a,
 67 Removal and Protective Custody of a Child.

68 (b) A child welfare caseworker shall obtain a warrant before entering a private
 69 premises if:

70 (i) the purpose for entering the private premises is to obtain evidence for a preremoval
 71 investigation; and

72 (ii) the private premises is the home of an individual who is suspected to have created
 73 the situation described in Subsection (1)(a).

74 (8) In a case, if law enforcement has investigated or is conducting an investigation of
 75 alleged abuse or neglect of a child, the division:

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

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

80 (9) In a mutual case in which a child protection team is involved in the investigation of
 81 alleged abuse or neglect of a child, the division shall consult with the child protection team
 82 before closing the case.

83 Section 2. Section **80-2-702** is amended to read:

84 **80-2-702. Division post-removal investigation -- Supported or unsupported**
 85 **reports -- Convening of child protection team -- Cooperation with law enforcement --**
 86 **Close of investigation.**

87 (1) If a child is taken into protective custody in accordance with Section **80-2a-202** or
 88 **80-3-204** or the division takes any other action that requires a shelter hearing under Subsection
 89 **80-3-301(1)**, the division shall immediately initiate an investigation of:

- 90 (a) the circumstances of the child; and
- 91 (b) the grounds upon which the decision to place the child into protective custody was
- 92 made.
- 93 (2) The division's investigation under Subsection (1) shall conform to reasonable
- 94 professional standards and include:
 - 95 (a) a search for and review of any records of past reports of abuse or neglect involving:
 - 96 (i) the same child;
 - 97 (ii) any sibling or other child residing in the same household as the child; and
 - 98 (iii) the alleged perpetrator;
 - 99 (b) with regard to a child who is five years old or older, a personal interview with the
 - 100 child:
 - 101 (i) outside of the presence of the alleged perpetrator; and
 - 102 (ii) conducted in accordance with the requirements of Section [80-2-704](#);
 - 103 (c) if a parent or guardian is located, an interview with at least one of the child's parents
 - 104 or guardian;
 - 105 (d) an interview with the person who reported the abuse, unless the report was made
 - 106 anonymously;
 - 107 (e) if possible and appropriate, interviews with other third parties who have had direct
 - 108 contact with the child, including:
 - 109 (i) school personnel; and
 - 110 (ii) the child's health care provider;
 - 111 (f) an unscheduled visit to the child's home, unless:
 - 112 (i) there is a reasonable basis to believe that the reported abuse was committed by a
 - 113 person who:
 - 114 (A) is not the child's parent; and
 - 115 (B) does not live in the child's home or otherwise have access to the child in the child's
 - 116 home; or
 - 117 (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
 - 118 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
 - 119 failure to meet the child's medical needs, a medical examination, obtained no later than 24
 - 120 hours after the child is placed in protective custody.

121 (3) The division may rely on a written report of a prior interview rather than
122 conducting an additional interview under Subsection (2), if:
123 (a) law enforcement:
124 (i) previously conducted a timely and thorough investigation regarding the alleged
125 abuse, neglect, or dependency; and
126 (ii) produced a written report;
127 (b) the investigation described in Subsection (3)(a)(i) included one or more of the
128 interviews described in Subsection (2); and
129 (c) the division finds that an additional interview is not in the best interest of the child.
130 (4) (a) (i) The division shall:
131 (A) make a determination after the division's investigation under Subsection (1)
132 regarding whether the report is supported, unsupported, or without merit; and
133 (B) base the determination on the facts of the case at the time the report is made.
134 (ii) The division's determination of whether a report is supported or unsupported may
135 be based on the child's statements alone.
136 (b) The division may not:
137 (i) use the inability to identify or locate the perpetrator as a basis for:
138 (A) determining that a report is unsupported; or
139 (B) closing the case; or
140 (ii) determine a case is unsupported or identify a case as unsupported solely because
141 the perpetrator is an out-of-home perpetrator.
142 (5) The division shall maintain protective custody of the child if the division finds that
143 one or more of the following conditions exist:
144 (a) the child does not have a natural parent, guardian, or responsible relative who is
145 able and willing to provide safe and appropriate care for the child;
146 (b) (i) shelter of the child is a matter of necessity for the protection of the child; and
147 (ii) there are no reasonable means by which the child can be protected in:
148 (A) the child's home; or
149 (B) the home of a responsible relative;
150 (c) there is substantial evidence that the parent or guardian is likely to flee the
151 jurisdiction of the juvenile court; or

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

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

155 (a) convene a child protection team in accordance with Section 80-2-706; and

156 (b) prepare the testimony and evidence that will be required of the division at the
157 shelter hearing, in accordance with Section 80-3-301.

158 (7) The division shall cooperate with a law enforcement investigation and with the
159 members of a child protection team, if applicable, regarding the alleged perpetrator.

160 (8) The division may not close an investigation solely on the grounds that the division
161 is unable to locate the child until all reasonable efforts have been made to locate the child and
162 family members including:

163 (a) visiting the home at times other than normal work hours;

164 (b) contacting local schools;

165 (c) contacting local, county, and state law enforcement agencies; and

166 (d) checking public assistance records.

167 (9) A child welfare caseworker shall obtain a warrant before entering a private
168 premises if:

169 (a) the purpose for entering the private premises is to obtain evidence for a
170 post-removal investigation; and

171 (b) the private premises is the home of an individual who is suspected to have created
172 the situation that led to the child's removal into temporary custody.

173 Section 3. Section 80-2a-202 is amended to read:

174 **80-2a-202. Removal of a child by a peace officer or child welfare caseworker --**
175 **Search warrants -- Protective custody and temporary care of a child.**

176 (1) A peace officer or child welfare caseworker may remove a child or take a child into
177 protective custody, temporary custody, or custody in accordance with this section.

178 (2) (a) Except as provided in Subsection (2)(b), a peace officer or a child welfare
179 caseworker may not enter the home of a child whose case is not under the jurisdiction of the
180 juvenile court, remove a child from the child's home or school, or take a child into protective
181 custody unless:

182 (i) there exist exigent circumstances sufficient to relieve the peace officer or the child

183 welfare caseworker of the requirement to obtain a search warrant under Subsection (3);

184 (ii) the peace officer or child welfare caseworker obtains a search warrant under
185 Subsection (3);

186 (iii) the peace officer or child welfare caseworker obtains a court order after the child's
187 parent or guardian is given notice and an opportunity to be heard; or

188 (iv) the peace officer or child welfare caseworker obtains the consent of the child's
189 parent or guardian.

190 (b) A peace officer or a child welfare caseworker may not take action under Subsection
191 (2)(a) solely on the basis of:

192 (i) educational neglect, truancy, or failure to comply with a court order to attend
193 school; or

194 (ii) the possession or use, in accordance with Title 26, Chapter 61a, Utah Medical
195 Cannabis Act, of cannabis in a medicinal dosage form, a cannabis product in a medicinal
196 dosage form, or a medical cannabis device, as those terms are defined in Section [26-61a-102](#).

197 (c) A peace officer or a child welfare caseworker when removing a child under this
198 section shall ensure the removal is recorded through the use of a body camera or another
199 recording device.

200 (3) (a) The juvenile court may issue a warrant authorizing a peace officer or a child
201 welfare caseworker to search for a child and take the child into protective custody if it appears
202 to the juvenile court upon a verified petition, recorded sworn testimony or an affidavit sworn to
203 by a peace officer or another individual, and upon the examination of other witnesses if
204 required by the juvenile court, that there is probable cause to believe that:

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

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

208 (iii) it is likely that the child will suffer substantial harm if the child's parent or
209 guardian is given notice and an opportunity to be heard before the child is taken into protective
210 custody.

211 (b) In accordance with Section [77-23-210](#), a peace officer making the search under
212 Subsection (3)(a) may enter a house or premises by force, if necessary, in order to remove the
213 child.

214 (4) (a) A child welfare caseworker may take action under Subsection (2) accompanied
215 by a peace officer or without a peace officer if a peace officer is not reasonably available.

216 (b) (i) Before taking a child into protective custody, and if possible and consistent with
217 the child's safety and welfare, a child welfare caseworker shall determine whether there are
218 services available that, if provided to a parent or guardian of the child, would eliminate the
219 need to remove the child from the custody of the child's parent or guardian.

220 (ii) In determining whether the services described in Subsection (4)(b)(i) are
221 reasonably available, the child welfare caseworker shall consider the child's health, safety, and
222 welfare as the paramount concern.

223 (iii) If the child welfare caseworker determines the services described in Subsection
224 (4)(b)(i) are reasonably available, the services shall be utilized.

225 (5) (a) If a peace officer or a child welfare caseworker takes a child into protective
226 custody under Subsection (2), the peace officer or child welfare caseworker shall:

227 (i) notify the child's parent or guardian in accordance with Section 80-2a-203; and

228 (ii) release the child to the care of the child's parent or guardian or another responsible
229 adult, unless:

230 (A) the child's immediate welfare requires the child remain in protective custody; or

231 (B) the protection of the community requires the child's detention in accordance with
232 Chapter 6, Part 2, Custody and Detention.

233 (b) (i) If a peace officer or child welfare caseworker is executing a warrant under
234 Subsection (3), the peace officer or child welfare caseworker shall take the child to:

235 (A) a shelter facility; or

236 (B) if the division makes an emergency placement under Section 80-2a-301, the
237 emergency placement.

238 (ii) If a peace officer or a child welfare caseworker takes a child to a shelter facility
239 under Subsection (5)(b)(i), the peace officer or the child welfare caseworker shall promptly file
240 a written report that includes the child's information, on a form provided by the division, with
241 the shelter facility.

242 (c) A child removed or taken into protective custody under this section may not be
243 placed or kept in detention pending court proceedings, unless the child may be held in
244 detention under Chapter 6, Part 2, Custody and Detention.

245 (6) (a) The juvenile court shall issue a warrant authorizing a peace officer or a child
246 welfare worker to search for a child who is missing, has been abducted, or has run away, and
247 take the child into physical custody if the juvenile court determines that the child is missing,
248 has been abducted, or has run away from the protective custody, temporary custody, or custody
249 of the division.

250 (b) If the juvenile court issues a warrant under Subsection (6)(a):

251 (i) the division shall notify the child's parent or guardian who has a right to parent-time
252 with the child in accordance with Subsection 80-2a-203(5)(a);

253 (ii) the court shall order:

254 (A) the law enforcement agency that has jurisdiction over the location from which the
255 child ran away to enter a record of the warrant into the National Crime Information Center
256 database within 24 hours after the time in which the law enforcement agency receives a copy of
257 the warrant; and

258 (B) the division to notify the law enforcement agency described in Subsection
259 (6)(b)(ii)(A) of the order described in Subsection (6)(b)(ii)(A); and

260 (c) the court shall specify the location to which the peace officer or the child welfare
261 caseworker shall transport the child.