

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

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

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

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

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

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

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

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

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

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

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

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

(c) The person executing the warrant shall then take the child to the place of shelter designated by the court or the division.

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

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

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

(iii) notice of the hearing described in this Subsection (4)(a) is served consistent with the requirements for notice of a shelter hearing under Section **78-3a-306**.

(b) The hearing described in Subsection (4)(a):

(i) shall be held within 72 hours, excluding weekends and holidays, of the filing of the motion described in Subsection (4)(a)(ii); and

(ii) shall be considered a shelter hearing under Section **78-3a-306** and Utah Rules of Juvenile Procedure, Rule 13.

(5) (a) The hearing and notice described in Subsection (4) are subject to:

(i) Section **78-3a-306**;

(ii) Section **78-3a-307**; and

(iii) the Utah Rules of Juvenile Procedure.

(b) After the hearing described in Subsection (4), a court may order a child placed in the temporary custody of the division.

(6) When notice to a parent or guardian is required by this section:

(a) the parent or guardian to be notified must be:

(i) the child's primary caregiver; or

- (ii) the parent or guardian who has custody of the child, when the order is sought; and
- (b) the person required to provide notice shall make a good faith effort to provide notice to a parent or guardian who:
 - (i) is not required to be notified under Subsection (6)(a); and
 - (ii) has the right to parent-time with the child.

Amended by Chapter 281, 2006 General Session

Amended by Chapter 13, 2006 General Session

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Last revised: Monday, December 18, 2006

Rule 7. Warrants for immediate custody of minors; grounds; execution of warrants; search warrants.

(a) The issuance and execution of a warrant in delinquency cases is governed by Title 77, Chapter 7, Arrest, and by Section 78-3a-112 and Section 78-3a-113.

(b) After a petition is filed, a warrant for immediate custody of a minor may be issued if the court finds from the facts set forth in an affidavit filed with the court or in the petition that there is probable cause to believe that:

(b)(1) the minor has committed an act which would be a felony if committed by an adult;

(b)(2) the minor has failed to appear after the minor or the parent, guardian or custodian has been legally served with a summons;

(b)(3) there is a substantial likelihood the minor will not respond to a summons;

(b)(4) the summons cannot be served and the minor's present whereabouts are unknown;

(b)(5) the minor seriously endangers others and immediate removal appears to be necessary for the protection of others or the public; or

(b)(6) there are reasonable grounds to believe that the minor has run away or escaped from the minor's parent, guardian or custodian.

(c) A warrant for immediate custody of a minor may be issued if the court finds from the affidavit that the minor is under the continuing jurisdiction of the court and probable cause to believe that the minor:

(c)(1) has left the custody of the person or agency vested by the court with legal custody and guardianship without permission; or

(c)(2) has violated a court order.

(d) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(d)(1) an order that the minor be taken to the detention or shelter facility designated by the court at the address specified pending a hearing or further order of the court;

(d)(2) the name, date of birth and last known address of the minor;

(d)(3) the reasons why the minor is being taken into custody;

(d)(4) a time limitation on the execution of the warrant;

(d)(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(d)(6) the date, county and court location where the warrant is being issued.

(d)(7) On verbal request from a probation officer or other authorized individual a warrant for custody may be issued telephonically during non-business hours or under exigent circumstances when it appears necessary for the protection of the community or the juvenile and shall be supported by an affidavit from the requesting authority the next court business day.

(e) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

(f) A peace officer who brings a minor to a detention facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate

admission. A minor so admitted may not be released without court order.

(g) This rule shall not limit the statutory authority of a probation officer to take a minor who has violated a condition of probation into custody.

(h) The issuance and execution of a warrant in dependency, neglect and abuse cases is governed by Section 78-3a-106 and Section 78-3a-113.

(i) A warrant for immediate custody shall be signed by a court and shall contain or be supported by the following:

(i)(1) an order that the minor be taken to the detention or shelter facility or other location designated by the court at the address specified pending a hearing or further order of the court;

(i)(2) the name, date of birth and last known address of the minor;

(i)(3) the reasons why the minor is being taken into custody;

(i)(4) a time limitation on the execution of the warrant;

(i)(5) the name and title of the person requesting the warrant unless ordered by the court on its own initiative pursuant to these rules; and

(i)(6) the date, county and court location where the warrant is being issued.

(i)(7) On verbal request from a state officer, peace officer, or child welfare worker or other authorized individual a warrant for custody may be issued telephonically when it appears necessary for the protection of the juvenile. Telephonic warrants shall be supported by an affidavit from the requesting authority the next court business day.

(j) Search warrants, with an order of immediate custody, may be issued in the manner provided by law.

(k) A peace officer who brings a minor to a detention or shelter facility pursuant to a court order for immediate custody shall so inform the person in charge of the facility and the existence of such order shall require the minor's immediate admission. A minor so admitted may not be released without court order.

(l) Return of service on a warrant shall be executed within 72 hours unless otherwise ordered by the Court.

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(e)(1) an order that the minor be taken to juvenile detention or shelter facility or an adult detention facility, if appropriate, designated by the court at the address specified pending a hearing or further order of the court;

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