

**INTERVIEW OF A CHILD NOT IN PROTECTIVE OR
LEGAL STATE CUSTODY**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions within Title 53A, State System of Public Education, and the Juvenile Court Act of 1996, relating to the interviewing of children who are not in the protective custody or court-ordered legal custody of the Division of Child and Family Services.

Highlighted Provisions:

This bill:

- ▶ prohibits an educator, school district, or public school from making a child who is not in the protective custody or court-ordered legal custody of the Division of Child and Family Services available for an interview by a law enforcement officer or an agent or employee of the division, unless the person seeking to conduct the interview provides the written statement described in this bill;

- ▶ prohibits a law enforcement officer or an employee or agent of the division from interviewing a child who is not in the protective or court-ordered legal custody of the division, unless:

- before conducting the interview, the person who interviews the child obtains permission to conduct the interview from a parent of the child and gives the parent an opportunity to be present for the interview or to designate another person to be present for the interview;



28 • the interview is for the purpose of investigating a crime for which the parent is a
29 suspect; or

30 • the interview is for the purpose of investigating a crime and the person
31 conducting the interview has knowledge of facts that would lead a reasonable
32 person to believe that the child's parent would take action to protect the suspect
33 from prosecution;

34 ▶ requires an interviewer to provide a signed, written statement stating the grounds for
35 the interview; and

36 ▶ provides that a law enforcement officer or state employee who violates the
37 provisions of this bill is subject to disciplinary action by the law enforcement
38 officer's or state employee's employer.

39 **Money Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 ENACTS:

45 **53A-11-505**, Utah Code Annotated 1953

46 **78A-6-325**, Utah Code Annotated 1953



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

49 Section 1. Section **53A-11-505** is enacted to read:

50 **53A-11-505. Making a child available for interview.**

51 (1) An educator, school district, or public school may not release or otherwise make a
52 child, who is not in the protective custody or court-ordered legal custody of the Division of
53 Child and Family Services, available for an interview by a law enforcement officer or an agent
54 or employee of the Division of Child and Family Services, unless the person seeking to conduct
55 the interview provides the educator, school district, or public school with the signed, written
56 statement described in Subsection 78A-6-325(3).

57 (2) An educator or an employee of a public school who violates this section is subject
58 to disciplinary action by the educator's or employee's employer.

59 Section 2. Section **78A-6-325** is enacted to read:

60 **78A-6-325. Interview of a child not in protective or legal custody.**

61 (1) A law enforcement officer or an employee or agent of the division may not
62 interview a child who is not in the protective custody or court-ordered legal custody of the
63 division, unless:

64 (a) before conducting the interview, the person who interviews the child:

65 (i) obtains permission to conduct the interview from a parent of the child; and

66 (ii) gives the parent an opportunity to be present for the interview or to designate

67 another person, including an attorney, to be present for the interview;

68 (b) the interview is for the purpose of investigating a crime for which the parent is a
69 suspect; or

70 (c) (i) the interview is for the purpose of investigating a crime; and

71 (ii) subject to Subsection (2), the person conducting the interview has knowledge of
72 facts that would lead a reasonable person to believe that the child's parent would take action to
73 protect the suspect from prosecution.

74 (2) The fact that the child's parent is related to the suspect is not, by itself, sufficient to
75 justify interviewing a child under the exception described in Subsection (1)(c). The person
76 desiring to conduct the interview without parental consent, under Subsection (1)(c), must have
77 knowledge of specific facts, other than the existence of a relationship, that would lead a
78 reasonable person to believe that the particular parent would take action to protect the
79 particular suspect.

80 (3) Before a person who is a law enforcement officer or a person who is an employee
81 or agent of the division requests an employee of a school district or a public school to make a
82 child available for an interview, the person shall provide a signed, written statement to the
83 employee:

84 (a) stating that the person is authorized to conduct the interview under this section; and

85 (b) specifying the grounds, described in Subsection (1)(a), (b), or (c), upon which the
86 interview is being conducted.

87 (4) A law enforcement officer or state employee who violates this section is subject to
88 disciplinary action by the law enforcement officer's or employee's employer.

Legislative Review Note
as of 2-1-11 6:26 AM

Office of Legislative Research and General Counsel