

Rule 37. Child protective orders.

Rules Text

(a) Child protective order proceedings are governed by Section 78-3h-101 et seq. Protective order proceedings may be commenced as an independent action by filing a petition. Any interested person may file a petition for a protective order on behalf of a child as provided by statute ~~who has been abused, sexually abused, neglected, or abandoned or is in imminent danger of being abused, sexually abused, neglected, or abandoned.~~ The petitioner shall first make a referral to the division. If an immediate ex parte protective order is requested pending a hearing, the petition or an accompanying affidavit shall set forth the facts constituting good cause for issuance of the ex parte order.

(b) If the petitioner is the agent of a public or private agency, including a law enforcement agency, the petition shall set forth the agent's title and the name of the agency that the petitioner represents.

(c) Petitions for protective orders by a public agency shall not be accepted by the clerk unless reviewed and approved by the attorney for the public agency, whose office shall represent the petitioner in such cases.

(d) The petitioner, if a private person or agency, and the respondent may be represented by retained counsel. Counsel may be appointed by the court for an indigent respondent who is a parent, guardian or custodian of the child alleged to be abused or threatened with abuse. If the court finds in the hearing that the allegations of the petition have been established, the court may assess petitioner's costs and attorney fees against the respondent. If the court finds that the petition is without merit, the respondent's costs and attorneys fees may be assessed against petitioner.

(e) If an ex parte order has been issued, the hearing must be held within 20 days excluding Saturdays, Sundays and legal holidays.

Rules History

History: Amended effective April 1, 1999; November 1, 2003.

Rules Annotations

Amendment Notes. - The 2003 amendment added the first and fourth sentences and rewrote the third sentence in Subdivision (a) and deleted "unless the respondent stipulates to a longer period of time" at the end of Subdivision (e).

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RECIPE FOR A SEARCH WARRANT

1. There must be probable cause to believe that a child is being ill-treated in violation of Utah law and that there is no less intrusive way to assure the safety of the child. These facts need to be articulated in the affidavit or sworn testimony.
2. The request for the warrant must be accompanied by sworn testimony or affidavit particularly describing the person or place to be searched, the person or evidence to be seized. (An address is insufficient, the affidavit and warrant must contain a physical description of both the location to be searched and the person or property to be seized).
3. The warrant is to be executed in the day time unless the affidavit establishes a reason to perform the search at night. If a night time search is needed (for example to locate a mistreated child while the child and custodian are asleep) the warrant needs to state that it can be executed at night.
4. The warrant must be executed within ten days of issuance.
5. Complete the affidavit, motion, warrant and return.
6. Present the documents to the judge for issuance.
7. Deliver the documents to law enforcement. Law enforcement needs the original warrant and one copy. The copy is left at the location which is searched.
8. When the search is completed, law enforcement must note on the return any evidence seized (most likely a description of a child placed in shelter), then file the sworn return with the court.
9. The original warrant is also returned to the court. If the warrant is not executed within the ten day limit, the original must be returned to the court as "not executed."
10. The code sections which deal with issuance of search warrants are §§77-12-201 et.seq. and §78-38-106.