

**NARROWING GROUNDS FOR REMOVAL OF A  
CHILD FROM THE HOME**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Matt Throckmorton**

**This act modifies the Human Services Code by amending the definition of abuse of a child to exclude the reasonable exercise of discipline by a parent or guardian. The act defines reasonable exercise of discipline. The act requires the Division of Child and Family Services to classify a report of abuse as without merit when the division finds the reasonable exercise of discipline by a parent or guardian.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**62A-4a-101**, as last amended by Chapter 274, Laws of Utah 1998

**62A-4a-409**, as last amended by Chapters 274 and 321, Laws of Utah 2000

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

Section 1. Section **62A-4a-101** is amended to read:

**62A-4a-101. Definitions.**

As used in this chapter:

(1) (a) "Abuse" means:

~~(a)~~ (i) actual or threatened nonaccidental physical or mental harm;

~~(b)~~ (ii) negligent treatment;

~~(c)~~ (iii) sexual exploitation; or

~~(d)~~ (iv) any sexual abuse.

(b) (i) "Abuse" does not mean the reasonable exercise of discipline by a parent or guardian of the child involving the use of spanking or paddling, and the spanking or paddling was not so excessive as to cause physical or mental harm to the child.

(ii) For purposes of this Subsection (1)(b), physical harm may include **h THE ACTUAL CONDUCT OR SUBSTANTIAL THREAT OF CONDUCT WHICH MAY WITH A REASONABLE PROBABILITY RESULT IN ANY ONE OF THE FOLLOWING h :**



- 28            (A) a sprain or dislocation;
- 29            (B) damage to cartilage;
- 30            (C) sustained soft tissue swelling;
- 31            (D) bruising;
- 32            (E) a fracture of a bone or skull;
- 33            (F) an intracranial hemorrhage or injury to another internal organ;
- 34            (G) a cut, laceration, burn, puncture, or bite; or
- 35            (H) permanent or temporary loss or impairment of a part or organ of the body.

36            (iii) For purposes of this Subsection (1)(b), mental **h [injury] HARM h** means **h** :

36a           **(a) h** an injury to the  
37 intellectual or psychological capacity or the emotional condition of the child as evidenced by an  
38 observable and substantial impairment of the child's ability to function within the child's normal  
39 range of performance or behavior **h OR**

39a           **(b) PARENTS ENGAGING IN, OR THREATENING THE CHILD WITH UNREASONABLE**  
39b **CONDUCT THAT CAUSES OR CAN REASONABLY BE EXPECTED TO CAUSE THE CHILD EMOTIONAL**  
39c **DISTRESS** **h** .

40            (2) "Adoption services" means placing children for adoption, subsidizing adoptions under  
41 Section 62A-4a-105, supervising adoption placements until the adoption is finalized by the court,  
42 conducting adoption studies, preparing adoption reports upon request of the court, and providing  
43 post-adoptive placement services, upon request of a family, for the purpose of stabilizing a  
44 possible disruptive placement.

45            (3) "Board" means the Board of Child and Family Services established in accordance with  
46 Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

47            (4) "Consumer" means a person who receives services offered by the division in  
48 accordance with this chapter.

49            (5) "Custody," with regard to the division, means the custody of a child in the division as  
50 of the date of disposition.

51            (6) "Day-care services" means care of a child for a portion of the day which is less than  
52 24 hours, in his own home by a responsible person, or outside of his home in a day-care center,  
53 family group home, or family child care home.

54            (7) "Dependent child" means a child who is homeless or without proper care through no  
55 fault of his parent, guardian, or custodian.

56            (8) "Director" means the director of the Division of Child and Family Services.

57            (9) "Division" means the Division of Child and Family Services.

58            (10) (a) "Domestic violence services" means temporary shelter, treatment, and related

59 services to persons who are victims of abuse and their dependent children and treatment services  
60 for domestic violence perpetrators.

61 (b) As used in this subsection "abuse" means the same as that term is defined in Section  
62 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have committed, has  
63 been convicted of, or has pled guilty to an act of domestic violence as defined in Subsection  
64 77-36-1(2).

65 (11) "Homemaking service" means the care of individuals in their domiciles, and help  
66 given to individual caretaker relatives to achieve improved household and family management  
67 through the services of a trained homemaker.

68 (12) "Minor" means a person under 18 years of age. "Minor" may also include a person  
69 under 21 years of age for whom the division has been specifically ordered by the juvenile court to  
70 provide services.

71 (13) "Natural parent" means a child's biological or adoptive parent, and includes a child's  
72 noncustodial parent.

73 (14) (a) "Neglect" means:

74 (i) abandonment of a child;

75 (ii) subjecting a child to mistreatment or abuse;

76 (iii) lack of proper parental care by reason of the fault or habits of the parent, guardian, or  
77 custodian;

78 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary  
79 subsistence, education, or medical care, including surgery or psychiatric services when required,  
80 or any other care necessary for his health, safety, morals, or well-being; or

81 (v) a child at risk of being neglected or abused because another child in the same home is  
82 neglected or abused.

83 (b) The aspect of neglect relating to education, described in Subsection (14)(a)(iv), means  
84 that, after receiving notice that a child has been frequently absent from school without good cause,  
85 or that the child has failed to cooperate with school authorities in a reasonable manner, a parent  
86 or guardian fails to make a good faith effort to ensure that the child receives an appropriate  
87 education.

88 (c) A parent or guardian legitimately practicing religious beliefs and who, for that reason,  
89 does not provide specified medical treatment for a child, is not guilty of neglect.

90 (15) "Protective custody," with regard to the division, means the shelter of a child by the  
91 division from the time he is removed from his home until the shelter hearing, or his return home,  
92 whichever occurs earlier.

93 (16) "Protective services" means expedited services that are provided:

94 (a) in response to evidence of neglect, abuse, or exploitation of a minor;

95 (b) in an effort to substantiate evidence of neglect, abuse, or exploitation;

96 (c) to a cohabitant who is neglecting or abusing a child, in order to help him develop  
97 recognition of his duty of care and of the causes of neglect or abuse, and to strengthen his ability  
98 to provide safe and acceptable care; and

99 (d) in cases where the child's welfare is endangered:

100 (i) to bring the situation to the attention of the appropriate juvenile court and law  
101 enforcement agency;

102 (ii) to cause a protective order to be issued for the protection of the child, when  
103 appropriate; and

104 (iii) to protect the child from the circumstances that endanger his welfare including, when  
105 appropriate, removal from his home, placement in substitute care, and petitioning the court for  
106 termination of parental rights.

107 (17) "Services to unwed parents" means social, educational, and medical services arranged  
108 for or provided to unwed parents to help them plan for themselves and the unborn child.

109 (18) "Shelter care" means the temporary care of minors in nonsecure facilities.

110 (19) "State" means a state of the United States, the District of Columbia, the  
111 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern  
112 Mariana Islands, or a territory or possession administered by the United States.

113 (20) "State plan" means the written description of the programs for children, youth, and  
114 family services administered by the division in accordance with federal law.

115 (21) "Status offender" means a minor who has been declared a runaway or ungovernable.

116 (22) "Substitute care" means:

117 (a) the placement of a minor in a family home, group care facility, or other placement  
118 outside the minor's own home, either at the request of a parent or other responsible relative, or  
119 upon court order, when it is determined that continuation of care in the child's own home would  
120 be contrary to the child's welfare;

121 (b) services provided for a child awaiting placement; and

122 (c) the licensing and supervision of a substitute care facility.

123 (23) "Temporary custody," with regard to the division, means the custody of a child in the  
124 division from the date of the shelter hearing until disposition.

125 (24) "Transportation services" means travel assistance given to an individual with escort  
126 service, if necessary, to and from community facilities and resources as part of a service plan.

127 (25) "Youth services" means services provided to families in crisis when a minor is  
128 ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family  
129 conflict, maintain or reunite minors with their families, and to divert minors from the juvenile  
130 justice system. Those services may include crisis intervention, short-term shelter, time-out  
131 placement, and family counseling.

132 Section 2. Section **62A-4a-409** is amended to read:

133 **62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval**  
134 **interviews of children.**

135 (1) The division shall make a thorough preremoval investigation upon receiving either an  
136 oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency,  
137 when there is reasonable cause to suspect a situation of abuse, neglect, fetal alcohol syndrome, or  
138 fetal drug dependency. The primary purpose of that investigation shall be protection of the child.

139 (2) The preremoval investigation may include inquiry into the child's home environment,  
140 emotional, or mental health, nature and extent of injuries, and physical safety.

141 (3) (a) The division shall make a written report of its investigation. The written report shall  
142 include a determination regarding whether the alleged abuse or neglect was substantiated,  
143 unsubstantiated, or without merit.

144 (b) If an investigation by the division shows that the incident reported was not abuse but  
145 was the result of the reasonable exercise of discipline by a parent or guardian as defined in  
146 Subsection 62A-4a-101(1)(b), the investigation will proceed no further and the report shall be  
147 classified as without merit **h** OR UNSUBSTANTIATED, WHICHEVER IS MOST APPROPRIATE **h** .

148 (4) (a) The division shall use an interdisciplinary approach whenever possible in dealing  
149 with reports made under this part.

150 (b) For this purpose, the division shall convene appropriate interdisciplinary "child  
151 protection teams" to assist it in its protective, diagnostic, assessment, treatment, and coordination

152 services.

153 (c) A representative of the division shall serve as the team's coordinator and chair.  
154 Members of the team shall serve at the coordinator's invitation, and whenever possible, the team  
155 shall include representatives of health, mental health, education, law enforcement agencies, and  
156 other appropriate agencies or individuals.

157 (5) In any case where the division supervises, governs, or directs the affairs of any  
158 individual, institution, or facility that has been alleged to be involved in acts or omissions of child  
159 abuse or neglect, the investigation of the reported child abuse or neglect shall be conducted by an  
160 agency other than the division.

161 (6) If a report of neglect is based upon or includes an allegation of educational neglect the  
162 division shall immediately consult with school authorities to verify the child's status in accordance  
163 with Sections 53A-11-101 through 53A-11-103.

164 (7) When the division has completed its initial investigation under this part, it shall give  
165 notice of that completion to the person who made the initial report.

166 (8) Division workers or other child protection team members have authority to enter upon  
167 public or private premises, using appropriate legal processes, to investigate reports of alleged child  
168 abuse or neglect.

169 (9) With regard to any interview of a child prior to removal of that child from his home:

170 (a) except as provided in Subsection (9)(b) or (c), the division shall notify a parent of the  
171 child prior to the interview;

172 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the  
173 alleged perpetrator, the division need not notify a parent of the child prior to an initial interview  
174 with the child;

175 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family  
176 is unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the  
177 child prior to notification of the child's parent;

178 (d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be notified  
179 as soon as practicable after the child has been interviewed, but in no case later than 24 hours after  
180 the interview has taken place;

181 (e) a child's parents shall be notified of the time and place of all subsequent interviews  
182 with the child; and

183 (f) the child shall be allowed to have a support person of the child's choice present. That  
184 support person:

185 (i) may include, but is not limited to, a school teacher or administrator, guidance  
186 counselor, or child care provider; and

187 (ii) may not be a person who is alleged to be, or potentially may be, the perpetrator.

188 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1  
189 through 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take  
190 a child into protective custody, and deliver the child to a law enforcement officer, or place the child  
191 in an emergency shelter facility approved by the juvenile court, at the earliest opportunity  
192 subsequent to the child's removal from its original environment. Control and jurisdiction over the  
193 child is determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

194 (11) With regard to cases in which law enforcement has or is conducting an investigation  
195 of alleged abuse or neglect of a child:

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

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

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**Legislative Review Note**  
**as of 1-30-01 9:12 AM**

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

**Office of Legislative Research and General Counsel**