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1 **PROVISION FOR LEGAL RELINQUISHMENT**
2 **OF A NEWBORN**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Patrice M. Arent**

6 **This act modifies the Utah Human Services Code to provide a process for safe**
7 **relinquishment of newborn children by a parent or a parent's designee. The act provides**
8 **a process for hospitals and fire stations to receive those children. The act provides a process**
9 **for the Division of Child and Family Services to care for those children and petition for**
10 **termination of parental rights and adoption. The act eliminates certain civil abuse and**
11 **neglect requirements and proceedings when newborn children are safely abandoned. The**
12 **act amends the civil definition of neglect, and provides a limited affirmative defense to any**
13 **potential criminal liability based upon neglect or abandonment.**

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

15 AMENDS:

16 **62A-4a-101**, as last amended by Chapter 274, Laws of Utah 1998

17 **78-3a-103**, as last amended by Chapter 99, Laws of Utah 1999

18 **78-3a-407**, as renumbered and amended by Chapter 260, Laws of Utah 1994

19 ENACTS:

20 **62A-4a-801**, Utah Code Annotated 1953

21 **62A-4a-802**, Utah Code Annotated 1953

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

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

24 **62A-4a-101. Definitions.**

25 As used in this chapter:

26 (1) "Abuse" means:

27 (a) actual or threatened nonaccidental physical or mental harm;

- 28 (b) negligent treatment;
- 29 (c) sexual exploitation; or
- 30 (d) any sexual abuse.

31 (2) "Adoption services" means placing children for adoption, subsidizing adoptions under
32 Section 62A-4a-105, supervising adoption placements until the adoption is finalized by the court,
33 conducting adoption studies, preparing adoption reports upon request of the court, and providing
34 postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible
35 disruptive placement.

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

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

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

42 (6) "Day-care services" means care of a child for a portion of the day which is less than
43 24 hours, in his own home by a responsible person, or outside of his home in a day-care center,
44 family group home, or family child care home.

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

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

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

49 (10) (a) "Domestic violence services" means temporary shelter, treatment, and related
50 services to persons who are victims of abuse and their dependent children and treatment services
51 for domestic violence perpetrators.

52 (b) As used in this Subsection (10) "abuse" means the same as that term is defined in
53 Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have
54 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in
55 Subsection 77-36-1(2).

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

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

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

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

65 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
66 Relinquishment of a Newborn Child;

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

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

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

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

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

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

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

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

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

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

88 (c) to a cohabitant who is neglecting or abusing a child, in order to help him develop
89 recognition of his duty of care and of the causes of neglect or abuse, and to strengthen his ability

90 to provide safe and acceptable care; and

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

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

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

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

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

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

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

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

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

108 (22) "Substitute care" means:

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

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

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

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

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

119 (25) "Youth services" means services provided to families in crisis when a minor is
120 ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family

121 conflict, maintain or reunite minors with their families, and to divert minors from the juvenile
122 justice system. Those services may include crisis intervention, short-term shelter, time-out
123 placement, and family counseling.

124 Section 2. Section **62A-4a-801** is enacted to read:

125 **Part 8. Safe Relinquishment of Newborn Child**

126 **62A-4a-801. Definitions.**

127 As used in this part:

128 (1) "Fire Station" means a fire station that is open and operating 24 hours a day, seven days
129 a week, and that is continually staffed with full-time, paid firefighters who have emergency
130 medical services training.

131 (2) "Hospital" means a general acute hospital, as that term is defined in Section 26-21-2,
132 that is:

133 (a) equipped with an emergency room;

134 (b) open 24 hours a day, seven days a week; and

135 (c) employs full-time health care professionals who have emergency medical services
136 training.

137 (3) "Newborn child" means a child who is approximately 72 hours of age or younger, as
138 determined within a reasonable degree of medical certainty.

139 Section 3. Section **62A-4a-802** is enacted to read:

140 **62A-4a-802. Safe relinquishment of a newborn child.**

141 (1) (a) A parent or a parent's designee may safely relinquish a newborn child to personnel
142 at a hospital or fire station in accordance with the provisions of this part and retain complete
143 anonymity, so long as the child has not been subject to actual or suspected abuse or neglect.

144 (b) Safe relinquishment of a newborn child who has not otherwise been subject to actual
145 or suspected abuse or neglect shall not, in and of itself, constitute neglect as defined in Subsection
146 62A-4a-101(14)(a)(i), and the child shall not be considered a neglected child, as defined in Section
147 78-3a-103, so long as the relinquishment is carried out in substantial compliance with the
148 provisions of this part.

149 (2) (a) Personnel employed by a hospital or fire station shall accept a newborn child that
150 is relinquished pursuant to the provisions of this part, and may presume that the person
151 relinquishing is the child's parent or the parent's designee. The person receiving the newborn child

152 may request information regarding the parent and newborn child's medical histories, and
153 identifying information regarding the nonrelinquishing parent of the child, but may not require that
154 any information be given unless there is actual or suspected abuse or neglect of the child, or the
155 person relinquishing expresses an intent to return for the child.

156 (b) Personnel employed by a fire station shall provide any necessary emergency medical
157 care to the newborn child, and relinquish the child to the nearest hospital as soon as possible.

158 (c) Personnel employed by a hospital shall provide any necessary medical care to the child
159 and notify the division as soon as possible, but no later than 24 hours after receipt of the child.

160 (3) The division shall assume care and custody of the child immediately upon notice from
161 the hospital.

162 (4) So long as there is no actual or suspected abuse or neglect of the newborn child, neither
163 the newborn child nor the child's parents are subject to:

164 (a) the provisions of Part 2 of this chapter, Child Welfare Services;

165 (b) the investigation provisions contained in Section 62A-4a-409; or

166 (c) the provisions of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
167 Proceedings.

168 (5) Unless identifying information relating to the nonrelinquishing parent of the newborn
169 child has been provided:

170 (a) the division shall work with local law enforcement and the Bureau of Criminal
171 Identification within the Department of Public Safety in an effort to ensure that the newborn child
172 has not been identified as a missing child;

173 (b) the division shall immediately place or contract for placement of the newborn child in
174 a potential adoptive home and, within ten days after receipt of the child, file a petition for
175 termination of parental rights in accordance with Title 78, Chapter 3a, Part 4, Termination of
176 Parental Rights Act;

177 (c) the division shall conduct a search of the confidential registry for unmarried biological
178 fathers maintained by the Bureau of Vital Statistics within the Department of Health, and notice
179 of termination of parental rights proceedings shall be provided in the same manner as is utilized
180 for any other termination proceeding in which the identity of the child's parents is unknown;

181 (d) if no person has affirmatively identified himself or herself within two weeks after
182 notice is complete and established paternity by scientific testing, a hearing on the petition for

183 termination of parental rights shall be scheduled; and

184 (e) if a nonrelinquishing parent is not identified, relinquishment of a newborn child
185 pursuant to the provisions of this part shall be considered grounds for termination of parental rights
186 of both the relinquishing and nonrelinquishing parents under Subsection 78-3a-407(9).

187 (6) The division shall provide for, or contract with a licensed child-placing agency to
188 provide for expeditious adoption of the newborn child.

189 (7) So long as the person relinquishing a newborn child is the child's parent or designee,
190 and there is no actual or suspected abuse or neglect, safe relinquishment of a newborn child in
191 substantial compliance with the provisions of this part is an affirmative defense to any potential
192 criminal liability for abandonment or neglect relating to that relinquishment.

193 Section 4. Section **78-3a-103** is amended to read:

194 **78-3a-103. Definitions.**

195 (1) As used in this chapter:

196 (a) "Abused child" includes a minor less than 18 years of age who:

197 (i) has suffered or been threatened with nonaccidental physical or mental harm, negligent
198 treatment, or sexual exploitation; or

199 (ii) has been the victim of any sexual abuse.

200 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
201 alleged in the petition have been proved.

202 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or over
203 under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be
204 referred to as minors.

205 (d) "Board" means the Board of Juvenile Court Judges.

206 (e) "Child placement agency" means:

207 (i) a private agency licensed to receive minors for placement or adoption under this code;

208 or

209 (ii) a private agency receiving minors for placement or adoption in another state, which
210 agency is licensed or approved where such license or approval is required by law.

211 (f) "Commit" means to transfer legal custody.

212 (g) "Court" means the juvenile court.

213 (h) "Dependent child" includes a minor who is homeless or without proper care through

214 no fault of his parent, guardian, or custodian.

215 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent or
216 the parents or a previous legal custodian to another person, agency, or institution.

217 (j) "Detention" means home detention and secure detention as defined in Section
218 62A-7-101 for the temporary care of minors who require secure custody in physically restricting
219 facilities:

220 (i) pending court disposition or transfer to another jurisdiction; or

221 (ii) while under the continuing jurisdiction of the court.

222 (k) "Formal referral" means a written report from a peace officer or other person informing
223 the court that a minor is or appears to be within the court's jurisdiction and that a petition may be
224 filed.

225 (l) "Group rehabilitation therapy" means psychological and social counseling of one or
226 more persons in the group, depending upon the recommendation of the therapist.

227 (m) "Guardianship of the person" includes the authority to consent to marriage, to
228 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
229 custody, if legal custody is not vested in another person, agency, or institution.

230 (n) "Habitual truant" is a school-age minor who has received more than two truancy
231 citations within one school year from the school in which the minor is or should be enrolled and
232 eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of
233 school authorities as required under Section 53A-11-103, refuses to regularly attend school or any
234 scheduled period of the school day.

235 (o) "Legal custody" means a relationship embodying the following rights and duties:

236 (i) the right to physical custody of the minor;

237 (ii) the right and duty to protect, train, and discipline the minor;

238 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
239 medical care;

240 (iv) the right to determine where and with whom the minor shall live; and

241 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

242 (p) "Minor" means a person under the age of 18 years. It includes the term "child" as used
243 in other parts of this chapter.

244 (q) "Natural parent" means a minor's biological or adoptive parent, and includes the

245 minor's noncustodial parent.

246 (r) (i) "Neglected child" means a minor:

247 (A) whose parent, guardian, or custodian has abandoned [~~or~~] the minor, except as provided
248 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

249 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or abuse;

250 [~~(B)~~] (C) who lacks proper parental care by reason of the fault or habits of the parent,
251 guardian, or custodian;

252 [~~(C)~~] (D) whose parent, guardian, or custodian fails or refuses to provide proper or
253 necessary subsistence, education, or medical care, including surgery or psychiatric services when
254 required, or any other care necessary for health, safety, morals, or well-being; or

255 [~~(D)~~] (E) who is at risk of being a neglected or abused child as defined in this chapter
256 because another minor in the same home is a neglected or abused child as defined in this chapter.

257 (ii) The aspect of neglect related to education, described in Subsection (1)(r)(i)[~~(C)~~](D),
258 means that, after receiving notice that a minor has been frequently absent from school without
259 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
260 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an
261 appropriate education.

262 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason,
263 does not provide specified medical treatment for a minor, is not guilty of neglect.

264 (s) "Nonjudicial adjustment" means closure of the case by the assigned probation officer
265 without judicial determination upon the consent in writing of the minor, the parent, legal guardian
266 or custodian, and the assigned probation officer.

267 (t) "Probation" means a legal status created by court order following an adjudication on
268 the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to
269 remain in his home under prescribed conditions and under supervision by the probation department
270 or other agency designated by the court, subject to return to the court for violation of any of the
271 conditions prescribed.

272 (u) "Protective supervision" means a legal status created by court order following an
273 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
274 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
275 is provided by the probation department or other agency designated by the court.

276 (v) "Residual parental rights and duties" means those rights and duties remaining with the
277 parent after legal custody or guardianship, or both, have been vested in another person or agency,
278 including the responsibility for support, the right to consent to adoption, the right to determine the
279 child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If
280 no guardian has been appointed, "residual parental rights and duties" also include the right to
281 consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

282 (w) "Secure facility" means any facility operated by or under contract with the Division
283 of Youth Corrections, that provides 24-hour supervision and confinement for youth offenders
284 committed to the division for custody and rehabilitation.

285 (x) "Shelter" means the temporary care of minors in physically unrestricted facilities
286 pending court disposition or transfer to another jurisdiction.

287 (y) "State supervision" means a disposition which provides a more intensive level of
288 intervention than standard probation but is less intensive or restrictive than a community placement
289 with the Division of Youth Corrections.

290 (z) "Termination of parental rights" means the permanent elimination of all parental rights
291 and duties, including residual parental rights and duties, by court order.

292 (aa) "Therapist" means a person employed by a state division or agency for the purpose
293 of conducting psychological treatment and counseling of a minor in its custody, or any other
294 person licensed or approved by the state for the purpose of conducting psychological treatment and
295 counseling.

296 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
297 Division of Child and Family Services:

298 (a) "Custody" means the custody of a minor in the Division of Child and Family Services
299 as of the date of disposition.

300 (b) "Protective custody" means the shelter of a minor by the Division of Child and Family
301 Services from the time the minor is removed from home until the shelter hearing, or the minor's
302 return home, whichever occurs earlier.

303 (c) "Temporary custody" means the custody of a minor in the Division of Child and Family
304 Services from the date of the shelter hearing until disposition.

305 Section 5. Section **78-3a-407** is amended to read:

306 **78-3a-407. Grounds for termination of parental rights.**

307 The court may terminate all parental rights with respect to one or both parents if it finds
308 any one of the following:

- 309 (1) that the parent or parents have abandoned the child;
- 310 (2) that the parent or parents have neglected or abused the child;
- 311 (3) that the parent or parents are unfit or incompetent;
- 312 (4) that the child is being cared for in an out-of-home placement under the supervision of
313 the court or the division, that the division or other responsible agency has made a diligent effort
314 to provide appropriate services and the parent has substantially neglected, wilfully refused, or has
315 been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home
316 placement, and there is a substantial likelihood that the parent will not be capable of exercising
317 proper and effective parental care in the near future;
- 318 (5) failure of parental adjustment, as defined in this chapter;
- 319 (6) that only token efforts have been made by the parent or parents:
 - 320 (a) to support or communicate with the child;
 - 321 (b) to prevent neglect of the child;
 - 322 (c) to eliminate the risk of serious physical, mental, or emotional abuse of the child; or
 - 323 (d) to avoid being an unfit parent;
- 324 (7) the parent or parents have voluntarily relinquished their parental rights to the child, and
325 the court finds that termination is in the child's best interest; [or]
- 326 (8) the parent or parents, after a period of trial during which the child was returned to live
327 in his own home, substantially and continuously or repeatedly refused or failed to give the child
328 proper parental care and protection[-]; or
- 329 (9) the terms and conditions of safe relinquishment of a newborn child have been complied
330 with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of Newborn Child.

Legislative Review Note**as of 1-12-01 4:21 PM**

This legislation raises the following constitutional or statutory concerns:

State and federal due process issues concerning notice to biological parents are raised because this legislation does not, with certain exceptions, require any information identifying a child to be safely relinquished. However, in balancing the rights and interests of all parties affected by an adoption proceeding, and in determining what constitutional protections and processes are necessary and appropriate, the state has a strong interest in saving newborn children from abandonment and possible death, and in assuring immediate and continued physical care and early bonding. Utah Code Ann. § 78-30-4.12(1) (1995); Wells v. Children's Aid Soc'y, 681 P.2d 199, 203 (Utah 1984). This legislation provides protection for biological parents, while also providing the state legal means to speedily identify those persons who will assume the parental role over a newborn abandoned child. To date, our research has not shown any challenges to safe relinquishment legislation in other states. Paternity laws that have been challenged on similar due process grounds have consistently been found to be facially constitutional.

Office of Legislative Research and General Counsel

Committee Note

The Health and Human Services Interim Committee recommended this bill.