

Senator Bill Wright proposes to substitute the following bill:

**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. The act defines without merit to include the reasonable exercise of discipline.

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-116, as last amended by Chapters 304 and 321, Laws of Utah 2000

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.



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

29 (ii) For purposes of this Subsection (1)(b), physical harm may include the actual conduct
30 or substantial threat of conduct which may with a reasonable probability result in any one of the
31 following:

32 (A) a sprain or dislocation;

33 (B) damage to cartilage;

34 (C) sustained soft tissue swelling;

35 (D) bruising;

36 (E) a fracture of a bone or skull;

37 (F) an intracranial hemorrhage or injury to another internal organ;

38 (G) a cut, laceration, burn, puncture, or bite; or

39 (H) permanent or temporary loss or impairment of a part or organ of the body.

40 (iii) For purposes of this Subsection (1)(b), mental harm means:

41 (A) an injury to the intellectual or psychological capacity or the emotional condition of the
42 child as evidenced by an observable and substantial impairment of the child's ability to function
43 within the child's normal range of performance or behavior; or

44 (B) parents engaging in, or threatening the child with unreasonable conduct that causes or
45 can reasonably be expected to cause the child emotional distress.

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

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

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

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

57 (6) "Day-care services" means care of a child for a portion of the day which is less than
58 24 hours, in his own home by a responsible person, or outside of his home in a day-care center,
59 family group home, or family child care home.

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

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

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

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

67 (b) As used in this subsection "abuse" means the same as that term is defined in Section
68 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have committed, has
69 been convicted of, or has pled guilty to an act of domestic violence as defined in Subsection
70 77-36-1(2).

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

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

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

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

80 (i) abandonment of a child;

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

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

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

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

88 neglected or abused.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

122 (22) "Substitute care" means:

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

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

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

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

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

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

138 Section 2. Section **62A-4a-116** is amended to read:

139 **62A-4a-116. Management information system -- Requirements.**

140 (1) The division shall develop and implement a management information system that
141 meets the requirements of this section and the requirements of federal law and regulation.

142 (2) With regard to all child welfare cases, the management information system shall:

143 (a) provide each caseworker with a complete history of each child in his caseload,
144 including:

145 (i) all past action taken by the division with regard to that child and his siblings, the
146 complete case history and all reports and information in the control or keeping of the division
147 regarding that child and his siblings;

148 (ii) the number of times the child has been in foster care;

149 (iii) the cumulative period of time the child has been in foster care;

150 (iv) all reports of abuse or neglect received by the division with regard to that child's parent
151 or parents, including documentation regarding whether each report was substantiated,
152 unsubstantiated, or without merit;

153 (v) the number of times the child's parent or parents have failed any treatment plan; and

154 (vi) the number of different caseworkers who have been assigned to that child in the past;

155 (b) contain all key elements of each family's current treatment plan, including the dates and
156 number of times the plan has been administratively or judicially reviewed, the number of times the
157 parent or parents have failed that treatment plan, and the exact length of time that treatment plan
158 has been in effect;

159 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment
160 plans; ~~and~~

161 (d) unless the executive director determines that there is good cause for keeping the report
162 on the system based on standards established by rule, delete any reference to:

163 (i) a report that is without merit if no subsequent report involving the same alleged
164 perpetrator has occurred within one year; or

165 (ii) a report that is unsubstantiated if no subsequent report involving the same alleged
166 perpetrator has occurred within ten years[-]; and

167 (e) for purposes of Subsection (2)(d)(i), "without merit" shall include a report that is
168 determined to be the reasonable exercise of discipline as defined in Subsection 62A-4a-101(1)(b).

169 (3) With regard to all child protective services cases, the management information system
170 shall, in addition to the information required in Subsection (2), monitor compliance with the policy
171 of the division, the laws of this state, and federal law and regulation.

172 (4) With regard to all child welfare and protective services cases, the age and date of birth
173 of the alleged perpetrator, at the time the abuse or neglect is alleged to have occurred, shall be
174 included in the management information system.

175 (5) (a) The division shall develop and maintain a part of the information management
176 system for licensing purposes, which shall be:

177 (i) limited to:

178 (A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and
179 an opportunity to challenge has been provided under Section 62A-4a-116.5;

180 (B) the name of a person who was not sent a notice of agency action under Section

181 62A-4a-116.5 because his location was not available on the management information system or
182 who was sent a notice of agency action that was returned to the division as undelivered for the sole
183 purpose of alerting the division of the need to afford the person an opportunity to challenge the
184 finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond
185 delaying the person's licensing application to provide an opportunity for challenge, may be taken;

186 (C) an adjudication of child abuse or neglect by a court of competent jurisdiction if
187 Subsection 62A-4a-116.5(5) has been met; and

188 (D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual
189 abuse of any person; and

190 (ii) accessible by:

191 (A) the Office of Licensing for licensing purposes only;

192 (B) the division:

193 (I) to screen a person at the request of the Office of the Guardian Ad Litem Director,
194 created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the
195 Office of the Guardian Ad Litem and each year thereafter that the person remains with the office;
196 and

197 (II) to respond to a request for information from the person who is identified as a
198 perpetrator in the report, after advising the person of the screening prohibition in Subsection
199 (4)(d)(iii);

200 (C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure
201 within the Department of Health only for the purpose of licensing a child care program or provider,
202 or for determining whether a person associated with a covered health care facility, as defined by
203 the Department of Health by rule, who provides direct care to a child has a substantiated finding
204 of child abuse or neglect; and

205 (D) the department as provided in Subsection (6) and Section 62A-1-118.

206 (b) For the purpose of Subsection (5)(a), "substantiated":

207 (i) means a finding that there is a reasonable basis to conclude that:

208 (A) a person 18 years of age or older committed one or more of the following types of
209 child abuse or neglect:

210 (I) physical abuse;

211 (II) sexual abuse;

- 212 (III) sexual exploitation;
- 213 (IV) abandonment;
- 214 (V) medical neglect resulting in death, disability, or serious illness; or
- 215 (VI) chronic or severe neglect; and
- 216 (B) a person under the age of 18:
 - 217 (I) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
 - 218 which indicates a significant risk to other children; or
 - 219 (II) engaged in sexual behavior with or upon another child which indicates a significant
 - 220 risk to other children; and
 - 221 (ii) does not include:
 - 222 (A) the use of reasonable and necessary physical restraint or force by an educator in
 - 223 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
 - 224 (B) a person's conduct that:
 - 225 (I) is justified under Section 76-2-401; or
 - 226 (II) constituted the use of reasonable and necessary physical restraint or force in
 - 227 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
 - 228 other dangerous object in the possession or under the control of a child or to protect the child or
 - 229 another person from physical injury.
 - 230 (iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined in
 - 231 accordance with risk assessment tools and policies established by the division that focus on age,
 - 232 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other
 - 233 related considerations.
 - 234 (B) The division shall train its child protection workers to apply the risk assessment tools
 - 235 and policies established under Subsection (5)(b)(iii)(A).
 - 236 (c) (i) The Department of Health shall:
 - 237 (A) designate two persons within the Department of Health to access the licensing part of
 - 238 the management information system; and
 - 239 (B) adopt measures to:
 - 240 (I) protect the security of the licensing part of the management information system; and
 - 241 (II) strictly limit access to the licensing part of the management information system to
 - 242 those designated under Subsection (5)(c)(i)(A).

243 (ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the
244 department with respect to:

245 (A) accessing the licensing part of the management information system;

246 (B) maintaining strict security; and

247 (C) the criminal provisions in Section 62A-4a-412 for the improper release of information.

248 (iii) Those designated under Subsection (5)(c)(i)(A):

249 (A) are the only ones in the Department of Health with the authority to access the licensing
250 part of the management information system; and

251 (B) may only access the licensing part of the management information system in
252 accordance with the provisions of Subsection (5)(a)(ii).

253 (iv) The Department of Health may obtain information in the possession of the division
254 that relates to a substantiated finding of abuse or neglect of a person screened under this
255 Subsection (5)(c).

256 (d) (i) Information in the licensing part of the management information system is
257 confidential and may only be used or disclosed as specifically provided in this section, Section
258 62A-2-121, and Section 62A-4a-116.5.

259 (ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain
260 or release a report or any other information in the possession of the division obtained as a result
261 of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators
262 of child abuse or neglect.

263 (iii) A person who requests information knowing that it is a violation of Subsection
264 (5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.

265 (6) All information contained in the management information system shall be available
266 to the department upon the approval of the executive director, on a need-to-know basis.

267 (7) (a) The division may allow its contract providers to have limited access to the
268 management information system. The division shall limit that access to information about persons
269 who are currently receiving services from the specific contract provider.

270 (b) Each contract provider shall:

271 (i) take all necessary precautions to safeguard the security of the information contained in
272 the management information system;

273 (ii) train its employees regarding requirements for confidentiality and the criminal

274 penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

275 (iii) monitor its employees to ensure that they comply with the confidentiality requirements
276 related to the management information system.

277 (c) The division shall take reasonable precautions to ensure that its contract providers are
278 complying with Subsection (7)(b).

279 (8) The division shall take all necessary precautions, including password protection and
280 other appropriate technological techniques, to prevent unauthorized access to the information
281 contained in the management information system.

282 (9) (a) The division shall send a certified letter to a person who submitted a report of child
283 abuse or neglect that is put onto any part of the management information system if the division
284 determines, at the conclusion of its investigation, that:

285 (i) the report is false;

286 (ii) it is more likely than not that the person knew that the report was false at the time the
287 person submitted the report; and

288 (iii) the person's address is known or reasonably available.

289 (b) The letter shall inform the person of:

290 (i) the determination made under Subsection (9)(a);

291 (ii) the penalty for submitting false information under Section 76-8-506 and other
292 applicable laws;

293 (iii) the obligation of the division to inform law enforcement and the alleged perpetrator:

294 (A) in the present instance if an immediate referral is justified by the facts; or

295 (B) if the person submits a subsequent false report involving the same alleged perpetrator
296 or victim.

297 (c) (i) The division may inform law enforcement and the alleged perpetrator of a report for
298 which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified by
299 the facts.

300 (ii) The division shall inform law enforcement and the alleged perpetrator of a report for
301 which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the
302 person involving the same alleged perpetrator or victim.

303 (iii) The division shall determine, in consultation with law enforcement:

304 (A) the information to be given to an alleged perpetrator about a false claim; and

305 (B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator
306 about a false claim.

307 (d) Nothing in this Subsection (9) may be construed as requiring the division to conduct
308 an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report
309 is false.

310 Section 3. Section **62A-4a-409** is amended to read:

311 **62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval**
312 **interviews of children.**

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

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

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

322 (b) If an investigation by the division shows that the incident reported was not abuse but
323 was the result of the reasonable exercise of discipline by a parent or guardian as defined in
324 Subsection 62A-4a-101(1)(b), the investigation will proceed no further and the report shall be
325 classified as without merit.

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

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

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

335 (5) In any case where the division supervises, governs, or directs the affairs of any

336 individual, institution, or facility that has been alleged to be involved in acts or omissions of child
337 abuse or neglect, the investigation of the reported child abuse or neglect shall be conducted by an
338 agency other than the division.

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

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

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

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

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

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

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

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

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

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

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

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

366 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1

367 through 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take
368 a child into protective custody, and deliver the child to a law enforcement officer, or place the child
369 in an emergency shelter facility approved by the juvenile court, at the earliest opportunity
370 subsequent to the child's removal from its original environment. Control and jurisdiction over the
371 child is determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

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

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

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