

**CHILD ABUSE OFFENSE AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gary F. Cox**

AN ACT RELATING TO THE CRIMINAL CODE; AMENDING THE PROVISIONS RELATING TO THE CRIME OF CHILD ABUSE AND THE CRIME OF COMMISSION OF DOMESTIC VIOLENCE IN THE PRESENCE OF A CHILD; AND CLARIFYING CRIMINAL PENALTIES.

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

AMENDS:

**76-5-109**, as last amended by Chapters 289 and 303, Laws of Utah 1997

**76-5-109.1**, as enacted by Chapter 303, Laws of Utah 1997

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

Section 1. Section **76-5-109** is amended to read:

**76-5-109. Child abuse.**

(1) As used in this section:

(a) "Child" means a human being who is 17 years of age or less.

(b) "Child abuse" means any offense described in Subsection (2) or (3), or in Section

76-5-109.1.

(c) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(d).

(d) "Serious physical injury" means any physical injury or set of injuries which seriously impairs the child's health, or which involves physical torture or causes serious emotional harm to the child, or which involves a substantial risk of death to the child, including:

- (i) fracture of any bone or bones;
- (ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;
- (iii) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;
- (iv) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
- (v) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;
- (vi) any damage to internal organs of the body;
- (vii) any conduct toward a child which results in severe emotional harm, severe developmental delay or retardation, or severe impairment of the child's ability to function;
- (viii) any injury which creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;
- (ix) any conduct which causes a child to cease breathing, even if resuscitation is successful following the conduct; or
- (x) any conduct which results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

- (a) if done intentionally or knowingly, the offense is a felony of the second degree;
- (b) if done recklessly, the offense is a felony of the third degree; or
- (c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

- (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- (b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) Criminal actions under this section may be prosecuted in the county or district where the offense is alleged to have been committed, where the existence of the offense is discovered, where the victim resides, or where the defendant resides.

(5) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be deemed to have committed an offense under this section.

Section 2. Section **76-5-109.1** is amended to read:

**76-5-109.1. Commission of domestic violence in the presence of a child.**

(1) As used in this section:

(a) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(b) "In the presence of a child" means:

(i) in the physical presence of a child; or

(ii) having knowledge that a child is present and may see or hear an act of domestic violence.

(2) ~~[(a)]~~ A person is guilty of ~~[a third degree felony]~~ child abuse if he:

~~[(i)]~~ (a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or

~~[(ii)]~~ (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child~~[(b) A person is guilty of a class A misdemeanor if he]; or~~

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child ~~[not amounting to a violation of Subsection (a), on two or more]~~ after having committed:

(i) a violation of Subsection (2)(a) or (b) on one or more prior occasions; or

(ii) an act of domestic violence in the presence of a child, not amounting to a violation of Subsection (2)(a) or (b), on one or more prior occasions.

(3) (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree felony.

(b) A person who violates Subsection (2)(c) is guilty of a class A misdemeanor.