

**Representative Patrice M. Arent** proposes to substitute the following bill:

**PROVISION FOR LEGAL RELINQUISHMENT OF  
A NEWBORN**

2001 GENERAL SESSION

STATE OF UTAH

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

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

**§ 63-55-262, AS LAST AMENDED BY CHAPTERS 15 AND 134, LAWS OF UTAH 1997 §**

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

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

ENACTS:

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

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

*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) "Abuse" means:



- 26 (a) actual or threatened nonaccidental physical or mental harm;
- 27 (b) negligent treatment;
- 28 (c) sexual exploitation; or
- 29 (d) any sexual abuse.

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

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

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

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

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

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

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

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

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

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

55 (11) "Homemaking service" means the care of individuals in their domiciles, and help  
56 given to individual caretaker relatives to achieve improved household and family management

57 through the services of a trained homemaker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (c) to a cohabitant who is neglecting or abusing a child, in order to help him develop

88 recognition of his duty of care and of the causes of neglect or abuse, and to strengthen his ability  
89 to provide safe and acceptable care; and

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

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

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

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

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

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

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

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

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

107 (22) "Substitute care" means:

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

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

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

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

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

118 (25) "Youth services" means services provided to families in crisis when a minor is

119 ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family  
120 conflict, maintain or reunite minors with their families, and to divert minors from the juvenile  
121 justice system. Those services may include crisis intervention, short-term shelter, time-out  
122 placement, and family counseling.

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

124 **Part 8. Safe Relinquishment of a Newborn Child**

125 **62A-4a-801. Definitions.**

126 As used in this part:

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

128 that is:

129 (a) equipped with an emergency room;

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

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

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

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

136 **62A-4a-802. Safe Relinquishment of A Newborn Child.**

137 (1) (a) A parent or a parent's designee may safely relinquish a newborn child at a hospital  
138 in accordance with the provisions of this part and retain complete anonymity, so long as the child  
139 has not been subject to § ~~actual or suspected~~ § abuse or neglect.

140 (b) Safe relinquishment of a newborn child who has not otherwise been subject to § ~~actual~~  
141 ~~or suspected~~ § abuse or neglect shall not, in and of itself, constitute neglect as defined in Subsection  
142 62A-4a-101(14)(a)(i), and the child shall not be considered a neglected child, as defined in Section  
143 78-3a-103, so long as the relinquishment is carried out in substantial compliance with the  
144 provisions of this part.

145 (2) (a) Personnel employed by a hospital shall accept a newborn child that is relinquished  
146 pursuant to the provisions of this part, and may presume that the person relinquishing is the child's  
147 parent or the parent's designee.

148 (b) The person receiving the newborn child may request information regarding the parent  
149 and newborn child's medical histories, and identifying information regarding the nonrelinquishing

150 parent of the child.

151 (c) The division shall provide hospitals with medical history forms and stamped envelopes  
 152 addressed to the division that a hospital may provide to a person relinquishing a child pursuant to  
 153 the provisions of this part.

154 (d) Personnel employed by a hospital shall § :

154a (i) § provide any necessary medical care to the child

155 and notify the division as soon as possible, but no later than 24 hours after receipt of the child § ; AND

155a **(ii) PREPARE A BIRTH CERTIFICATE OR FOUNDLING BIRTH CERTIFICATE IF PARENTAGE IS**  
 155b **UNKNOWN AND FILE WITH THE OFFICE OF VITAL RECORDS AND STATISTICS § .**

156 (e) A hospital and personnel employed by a hospital are immune from any civil or criminal  
 157 liability arising from accepting a newborn child if the personnel employed by the hospital  
 158 substantially comply with the provisions of this part and medical treatment is administered  
 159 according to standard medical practice.

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

162 (4) So long as the division determines there is no § [actual-or-suspected] § abuse or neglect  
 162a of  
 163 the newborn child, neither 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 § **DIRECT THE OFFICE OF VITAL RECORDS AND STATISTICS TO §**  
 177a conduct a search § **[of the confidential registry] FOR A BIRTH CERTIFICATE FOR THE CHILD AND AN**  
 177b **INITIATION OF PROCEEDINGS TO ESTABLISH PATERNITY REGISTRY §** for unmarried biological

178 fathers maintained by the § ~~Bureau of Vital~~ OFFICE OF VITAL RECORDS AND § Statistics within  
178a the Department of Health and provide  
179 notice to each potential father identified on the registry. Notice of termination of parental rights  
180 proceedings shall be provided in the same manner as is utilized for any other termination

181 proceeding in which the identity of the child's parents is unknown;

182 (d) if no person has affirmatively identified himself or herself within two weeks after  
 183 notice is complete and established paternity by scientific testing within as expeditious a time frame  
 184 as practicable, a hearing on the petition for termination of parental rights shall be scheduled; and

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

188 (6) If at any time prior to the adoption, a court finds it is in the best interest of the child,  
 189 **§ THE COURT SHALL DENY §** the petition for termination of parental rights § [may be withdrawn] § .

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

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

**§ SECTION 4. SECTION 63-55-262 IS AMENDED TO READ:**

**63-55-262. REPEAL DATES, TITLE 62A.**

**(1) SECTION 62A-4A-202.7, PILOT PROGRAM FOR DIFFERENTIATED RESPONSES TO CHILD ABUSE AND NEGLECT REPORTS, IS REPEALED JULY 1, 2005.**

**(2) TITLE 62A, CHAPTER 4A, PART 8, SAFE RELINQUISHMENT OF A NEWBORN CHILD, IS REPEALED JULY 1, 2006. §**

196 Section ~~§ [4]~~ **§ 5** . Section **78-3a-103** is amended to read:

197 **78-3a-103. Definitions.**

198 (1) As used in this chapter:

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

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

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

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

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

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

209 (e) "Child placement agency" means:

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

211 or



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

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

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

216 (h) "Dependent child" includes a minor who is homeless or without proper care through  
217 no fault of his parent, guardian, or custodian.

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

220 (j) "Detention" means home detention and secure detention as defined in Section  
221 62A-7-101 for the temporary care of minors who require secure custody in physically restricting  
222 facilities:

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

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

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

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

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

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

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

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

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

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

243 (iv) the right to determine where and with whom the minor shall live; and  
244 (v) the right, in an emergency, to authorize surgery or other extraordinary care.  
245 (p) "Minor" means a person under the age of 18 years. It includes the term "child" as used  
246 in other parts of this chapter.  
247 (q) "Natural parent" means a minor's biological or adoptive parent, and includes the  
248 minor's noncustodial parent.  
249 (r) (i) "Neglected child" means a minor:  
250 (A) whose parent, guardian, or custodian has abandoned ~~[or]~~ the minor, except as provided  
251 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;  
252 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or abuse;  
253 ~~[(B)]~~ (C) who lacks proper parental care by reason of the fault or habits of the parent,  
254 guardian, or custodian;  
255 ~~[(C)]~~ (D) whose parent, guardian, or custodian fails or refuses to provide proper or  
256 necessary subsistence, education, or medical care, including surgery or psychiatric services when  
257 required, or any other care necessary for health, safety, morals, or well-being; or  
258 ~~[(D)]~~ (E) who is at risk of being a neglected or abused child as defined in this chapter  
259 because another minor in the same home is a neglected or abused child as defined in this chapter.  
260 (ii) The aspect of neglect related to education, described in Subsection (1)(r)(i)~~[(C)]~~(D),  
261 means that, after receiving notice that a minor has been frequently absent from school without  
262 good cause, or that the minor has failed to cooperate with school authorities in a reasonable  
263 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an  
264 appropriate education.  
265 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason,  
266 does not provide specified medical treatment for a minor, is not guilty of neglect.  
267 (s) "Nonjudicial adjustment" means closure of the case by the assigned probation officer  
268 without judicial determination upon the consent in writing of the minor, the parent, legal guardian  
269 or custodian, and the assigned probation officer.  
270 (t) "Probation" means a legal status created by court order following an adjudication on  
271 the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to  
272 remain in his home under prescribed conditions and under supervision by the probation department  
273 or other agency designated by the court, subject to return to the court for violation of any of the

274 conditions prescribed.

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

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

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

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

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

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

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

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

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

303 (b) "Protective custody" means the shelter of a minor by the Division of Child and Family  
304 Services from the time the minor is removed from home until the shelter hearing, or the minor's

305 return home, whichever occurs earlier.

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

308 Section § [-5.] 6 § Section 78-3a-407 is amended to read:

309 **78-3a-407. Grounds for termination of parental rights.**

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

312 (1) that the parent or parents have abandoned the child;

313 (2) that the parent or parents have neglected or abused the child;

314 (3) that the parent or parents are unfit or incompetent;

315 (4) that the child is being cared for in an out-of-home placement under the supervision of  
316 the court or the division, that the division or other responsible agency has made a diligent effort  
317 to provide appropriate services and the parent has substantially neglected, wilfully refused, or has  
318 been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home  
319 placement, and there is a substantial likelihood that the parent will not be capable of exercising  
320 proper and effective parental care in the near future;

321 (5) failure of parental adjustment, as defined in this chapter;

322 (6) that only token efforts have been made by the parent or parents:

323 (a) to support or communicate with the child;

324 (b) to prevent neglect of the child;

325 (c) to eliminate the risk of serious physical, mental, or emotional abuse of the child; or

326 (d) to avoid being an unfit parent;

327 (7) the parent or parents have voluntarily relinquished their parental rights to the child, and  
328 the court finds that termination is in the child's best interest; ~~or~~

329 (8) the parent or parents, after a period of trial during which the child was returned to live  
330 in his own home, substantially and continuously or repeatedly refused or failed to give the child  
331 proper parental care and protection[-]; or

332 (9) the terms and conditions of safe relinquishment of a newborn child have been complied  
333 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**

State and federal due process issues concerning notice to biological parents are raised because this legislation does not 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**