

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 affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

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

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:



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

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

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

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

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

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

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

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

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

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

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

(11) "Homemaking service" means the care of individuals in their domiciles, and help 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

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

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

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

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

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

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

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

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

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

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

(22) "Substitute care" means:

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

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

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

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

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

(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

parent of the child.

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

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

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

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

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

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

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

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

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

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

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

(c) the division shall conduct a search of the confidential registry for unmarried biological fathers maintained by the Bureau of Vital Statistics within the Department of Health and provide notice to each potential father identified on the registry. Notice of termination of parental rights proceedings shall be provided in the same manner as is utilized for any other termination

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

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

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

(6) If at any time prior to the adoption, a court finds it is in the best interest of the child, the petition for termination of parental rights may be withdrawn.

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

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

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

78-3a-103. Definitions.

(1) As used in this chapter:

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

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

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

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

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

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

(e) "Child placement agency" means:

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

or

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

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

(g) "Court" means the juvenile court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

conditions prescribed.

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

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

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

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

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

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

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

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

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

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

return home, whichever occurs earlier.

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

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

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

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

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

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

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

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

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

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

(a) to support or communicate with the child;

(b) to prevent neglect of the child;

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

(d) to avoid being an unfit parent;

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

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

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