

Representative Neal B. Hendrickson proposes the following substitute bill:

**FALSE ALLEGATIONS IN DIVORCE
PROCEEDINGS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Neal B. Hendrickson

This act modifies provisions relating to divorce and child custody proceedings. It provides for sanctions and remedies for a party against whom a false allegation of child abuse or sexual abuse is made.

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

AMENDS:

30-3-5.2, as last amended by Chapter 255, Laws of Utah 2001

30-3-34, as last amended by Chapter 255, Laws of Utah 2001

62A-4a-116.3, as enacted by Chapter 283, Laws of Utah 2002

62A-4a-412, as last amended by Chapter 283, Laws of Utah 2002

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

Section 1. Section **30-3-5.2** is amended to read:

30-3-5.2. Allegations of child abuse or child sexual abuse -- Investigation.

(1) When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court, after making an inquiry, may order that an investigation be conducted by the Division of Child and Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4a.

(2) A final award of custody or parent-time may not be rendered until a report on that investigation, consistent with Section 62A-4a-412, is received by the court. That investigation shall be conducted by the Division of Child and Family Services within 30 days of the court's



26 notice and request for an investigation. In reviewing this report, the court shall comply with
 27 Section 78-7-9.

28 (3) If allegations of child abuse, neglect, or spouse abuse are found to be without merit ~~h~~ **BY**
 28a **THE DIVISION OF CHILD AND FAMILY SERVICES OR THE COURT,** ~~h~~
 29 or a tactic employed by one party to circumvent the other party's custody or parent-time rights
 30 during or after divorce, the court ~~h~~ **[may] SHALL** ~~h~~ grant to the ~~h~~ **[nonalleging] PREVAILING** ~~h~~ party
 30a ~~h~~ **[:] COURT COSTS AND ATTORNEYS FEES INCURRED IN DEFENDING THE ALLEGATIONS.** ~~h~~

31 ~~h~~ [(a) sole physical and legal custody of the child; and
 32 ~~h~~ (b) the appropriate change in child support based upon the change in custody.] ~~h~~

33 (4) The offending party may be prosecuted under Section 76-8-506.

33a ~~h~~ **(5) INTERFERENCE WITH VISITATION MAY BE A SUBSTANTIAL AND MATERIAL CHANGE**
 33b **OF CIRCUMSTANCES WARRANTING A PETITION TO MODIFY THE CUSTODY AND CHILD SUPPORT**
 33c **PROVISIONS OF THE EXISTING ORDER.** ~~h~~

34 Section 2. Section **30-3-34** is amended to read:

35 **30-3-34. Best interests -- Rebuttable presumption.**

36 (1) If the parties are unable to agree on a parent-time schedule, the court may establish
 37 a parent-time schedule consistent with the best interests of the child.

38 (2) The advisory guidelines as provided in Section 30-3-33 and the parent-time
 39 schedule as provided in Sections 30-3-35 and 30-3-35.5 ~~shall~~ ~~h~~ **[may not be presumed to be in**
 40 **the best interests of the child, but]** ~~h~~ shall be considered an absolute minimum. [The] A
 41 parent-time schedule ~~h~~ **[that is equal or nearly as equal] AGREED TO BY THE PARTIES** ~~h~~ shall be
 41a considered the preferred ~~h~~ **[minimum]** ~~h~~
 42 parent-time to which the noncustodial parent and the child shall be entitled ~~h~~ **[unless a parent can]** ~~h~~
 43 ~~h~~ **[establish otherwise by a preponderance of the evidence that more or less parent-time should be**

44 **awarded] IF THE PARTIES CANNOT AGREE, THE COURTS SHOULD AWARD A PARENT-TIME**
 44a **SCHEDULE** ~~h~~ based upon ~~h~~ **[any] CONSIDERATION** ~~h~~ of the following criteria:

45 (a) parent-time would endanger the child's physical health or significantly impair the
 46 child's emotional development;

47 (b) the distance between the residency of the child and the noncustodial parent;

48 (c) a substantiated or ~~[unfounded]~~ proven allegation of child abuse has been ~~[made]~~
 49 determined;

50 (d) the lack of demonstrated parenting skills without safeguards to ensure the child's
 51 well-being during parent-time;

(e) the financial inability of the noncustodial parent to provide adequate food and



- 53 shelter for the child during periods of parent-time;
- 54 (f) the preference of the child if the court determines the child to be of sufficient
- 55 maturity;
- 56 (g) the incarceration of the noncustodial parent in a county jail, secure youth

- 57 corrections facility, or an adult corrections facility;
- 58 (h) shared interests between the child and the noncustodial parent;
- 59 (i) the involvement of the noncustodial parent in the school, community, religious, or
- 60 other related activities of the child;
- 61 (j) the availability of the noncustodial parent to care for the child when the custodial
- 62 parent is unavailable to do so because of work or other circumstances;
- 63 (k) a substantial and chronic pattern of missing, canceling, or denying regularly
- 64 scheduled parent-time;
- 65 (l) the minimal duration of and lack of significant bonding in the parents' relationship
- 66 prior to the conception of the child;
- 67 (m) the parent-time schedule of siblings;
- 68 (n) the lack of reasonable alternatives to the needs of a nursing child; and
- 69 (o) any other criteria the court determines relevant to the best interests of the child.
- 70 (3) The court shall enter the reasons underlying its order for parent-time that:
- 71 (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or
- 72 (b) provides more or less parent-time than a parent-time schedule provided in Section
- 73 30-3-35 or 30-3-35.5.
- 74 (4) Once the parent-time schedule has been established, the parties may not alter the
- 75 schedule except by mutual consent of the parties or a court order.

76 Section 3. Section **62A-4a-116.3** is amended to read:

77 **62A-4a-116.3. Reports of child abuse.**

- 78 (1) The division shall send a certified letter to any person who submits a report of child
- 79 abuse or neglect that is placed into or included in any part of the Management Information
- 80 System, if the division determines, at the conclusion of its investigation, that:
- 81 (a) the report is false;
- 82 (b) it is more likely than not that the person knew the report was false at the time that
- 83 person submitted the report; and
- 84 (c) the reporting person's address is known or reasonably available.
- 85 (2) The letter shall inform the reporting person of:
- 86 (a) the division's determination made under Subsection (1);
- 87 (b) the penalty for submitting false information under this section, Section 76-8-506,

88 and other applicable laws; and

89 (c) the obligation of the division to inform law enforcement and the person alleged to
90 have committed abuse or neglect:

91 (i) in the present instance if law enforcement considers an immediate referral of the
92 reporting person to law enforcement to be justified by the facts; or

93 (ii) if the reporting person submits a subsequent false report involving the same alleged
94 perpetrator or victim.

95 (3) The division ~~may~~ shall inform law enforcement and the alleged perpetrator of a
96 report for which a letter is required to be sent under Subsection (1), if an immediate referral is
97 justified by the facts.

98 (4) The division shall inform law enforcement and the alleged perpetrator of a report
99 for which a letter is required to be sent under Subsection (1) if a second letter is sent to the
100 reporting person involving the same alleged perpetrator or victim.

101 (5) The division shall determine, in consultation with law enforcement:

102 (a) what information should be given to an alleged perpetrator relating to a false report;
103 and

104 (b) whether good cause exists, as defined by the division by rule, for not informing an
105 alleged perpetrator about a false report.

106 ~~[(6) Nothing in this section may be construed as requiring the division to conduct an
107 investigation beyond what is described in Subsection (1), to determine whether or not a report
108 is false.]~~

109 Section 4. Section ~~62A-4a-412~~ is amended to read:

110 **62A-4a-412. Reports and information confidential.**

111 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as
112 well as any other information in the possession of the division obtained as the result of a report
113 are private, protected, or controlled records under Title 63, Chapter 2, Government Records
114 Access and Management Act, and may only be made available to:

115 (a) a police or law enforcement agency investigating a report of known or suspected
116 child abuse or neglect;

117 (b) a physician who reasonably believes that a child may be the subject of abuse or
118 neglect;

119 (c) an agency that has responsibility or authority to care for, treat, or supervise a child
120 who is the subject of a report;

121 (d) a contract provider that has a written contract with the division to render services to
122 a child who is the subject of a report;

123 (e) any subject of the report, the natural parents of the minor, and the guardian ad
124 litem;

125 (f) a court, upon a finding that access to the records may be necessary for the
126 determination of an issue before it ~~[, provided that in a divorce, custody, or related proceeding~~
127 ~~between private parties, the record alone is:];~~

128 ~~[(i) limited to objective or undisputed facts that were verified at the time of the~~
129 ~~investigation; and]~~

130 ~~[(ii) devoid of conclusions drawn by the division or any of its workers on the ultimate~~
131 ~~issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of~~
132 ~~another person;]~~

133 (g) an office of the public prosecutor or its deputies in performing an official duty;

134 (h) a person authorized by a Children's Justice Center, for the purposes described in
135 Section 67-5b-102;

136 (i) a person engaged in bona fide research, when approved by the director of the
137 division, if the information does not include names and addresses;

138 (j) the State Office of Education, acting on behalf of itself or on behalf of a school
139 district, for the purpose of evaluating whether an individual should be permitted to obtain or
140 retain a license as an educator or serve as an employee or volunteer in a school, limited to
141 information with substantiated findings involving an alleged sexual offense, an alleged felony
142 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
143 Chapter 5, Offenses Against the Person, and with the understanding that the office must
144 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond
145 to the report before making a decision concerning licensure or employment; and

146 (k) any person identified in the report as a perpetrator or possible perpetrator of child
147 abuse or neglect, after being advised of the screening prohibition in Subsection (2).

148 (2) (a) No person, unless listed in Subsection (1), may request another person to obtain
149 or release a report or any other information in the possession of the division obtained as a result

150 of the report that is available under Subsection (1)(k) to screen for potential perpetrators of
151 child abuse or neglect.

152 (b) A person who requests information knowing that it is a violation of Subsection
153 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

154 (3) Except as provided in Section 62A-4a-116.3, the division and law enforcement
155 officials shall ensure the anonymity of the person or persons making the initial report and any
156 others involved in its subsequent investigation.

157 (4) Any person who wilfully permits, or aides and abets the release of data or
158 information obtained as a result of this part, in the possession of the division or contained on
159 any part of the Management Information System, in violation of this part or Sections
160 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

161 (5) The physician-patient privilege is not a ground for excluding evidence regarding a
162 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in
163 good faith pursuant to this part.