

1 **FALSE ALLEGATIONS IN DIVORCE**
2 **PROCEEDINGS**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Neal B. Hendrickson**

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

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

10 AMENDS:

11 **30-3-5.2**, as last amended by Chapter 255, Laws of Utah 2001

12 **30-3-34**, as last amended by Chapter 255, Laws of Utah 2001

13 **62A-4a-116.3**, as enacted by Chapter 283, Laws of Utah 2002

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

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

16 **30-3-5.2. Allegations of child abuse or child sexual abuse -- Investigation.**

17 (1) When, in any divorce proceeding or upon a request for modification of a divorce
18 decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the
19 court, after making an inquiry, may order that an investigation be conducted by the Division of
20 Child and Family Services within the Department of Human Services in accordance with Title
21 62A, Chapter 4a. A final award of custody or parent-time may not be rendered until a report on
22 that investigation, consistent with Section 62A-4a-412, is received by the court. That
23 investigation shall be conducted by the Division of Child and Family Services within 30 days
24 of the court's notice and request for an investigation. In reviewing this report, the court shall
25 comply with Section 78-7-9.

26 (2) If allegations of child abuse, neglect, or spouse abuse are found to be unfounded,
27 unsubstantiated, or a tactic employed by one party to circumvent the other party's custody or



28 parent-time rights during or after divorce, the court shall grant to the nonalleging party:

29 (a) sole physical and legal custody of the child; and

30 (b) the appropriate change in child support based upon the change in custody.

31 (3) The offending party may be prosecuted under Section 76-8-506.

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

33 **30-3-34. Best interests -- Rebuttable presumption.**

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

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

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

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

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

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

50 (e) the financial inability of the noncustodial parent to provide adequate food and
51 shelter for the child during periods of parent-time;

52 (f) the preference of the child if the court determines the child to be of sufficient
53 maturity;

54 (g) the incarceration of the noncustodial parent in a county jail, secure youth
55 corrections facility, or an adult corrections facility;

56 (h) shared interests between the child and the noncustodial parent;

57 (i) the involvement of the noncustodial parent in the school, community, religious, or
58 other related activities of the child;

- 59 (j) the availability of the noncustodial parent to care for the child when the custodial
60 parent is unavailable to do so because of work or other circumstances;
- 61 (k) a substantial and chronic pattern of missing, canceling, or denying regularly
62 scheduled parent-time;
- 63 (l) the minimal duration of and lack of significant bonding in the parents' relationship
64 prior to the conception of the child;
- 65 (m) the parent-time schedule of siblings;
- 66 (n) the lack of reasonable alternatives to the needs of a nursing child; and
- 67 (o) any other criteria the court determines relevant to the best interests of the child.
- 68 (3) The court shall enter the reasons underlying its order for parent-time that:
- 69 (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or
70 (b) provides more or less parent-time than a parent-time schedule provided in Section
71 30-3-35 or 30-3-35.5.
- 72 (4) Once the parent-time schedule has been established, the parties may not alter the
73 schedule except by mutual consent of the parties or a court order.
- 74 Section 3. Section **62A-4a-116.3** is amended to read:
- 75 **62A-4a-116.3. False reports -- Penalties.**
- 76 (1) The division shall send a certified letter to any person who submits a report of child
77 abuse or neglect that is placed into or included in any part of the Management Information
78 System, if the division determines, at the conclusion of its investigation, that:
- 79 (a) the report is false;
- 80 (b) it is more likely than not that the person knew the report was false at the time that
81 person submitted the report; and
- 82 (c) the reporting person's address is known or reasonably available.
- 83 (2) The letter shall inform the reporting person of:
- 84 (a) the division's determination made under Subsection (1);
- 85 (b) the penalty for submitting false information under this section, Section 76-8-506,
86 and other applicable laws; and
- 87 (c) the obligation of the division to inform law enforcement and the person alleged to
88 have committed abuse or neglect:
- 89 (i) in the present instance if law enforcement considers an immediate referral of the

90 reporting person to law enforcement to be justified by the facts; or

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

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

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

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

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

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

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

107 (6) Evidence of a false report of child abuse is admissible in a proceeding between the
108 parties to determine custody of a child.

109 (7) For the purposes of this Subsection (7), "person" includes a witness, a party, or a
110 party's attorney.

111 (a) If a court determines, based on the investigation or other evidence presented to it,
112 that an accusation of child abuse or neglect made during a child custody proceeding is false and
113 the person making the accusation knew it to be false at the time the accusation was made, the
114 court may impose reasonable money sanctions, not to exceed all costs incurred by the party
115 accused as a direct result of defending the accusation, and reasonable attorney's fees incurred in
116 recovering the sanctions, against the person making the accusation.

117 (b) On motion by any person requesting sanctions under this section, the court shall
118 issue an order to show cause why the requested sanctions should not be imposed. The order to
119 show cause shall be served on the person against whom the sanctions are sought and a hearing
120 shall be scheduled by the court to be conducted at least 15 days after the order is served.

121 (c) Any person, official, or institution negligently or willfully failing to make
122 notification when required by this Subsection (7) shall be guilty of a class C misdemeanor.

123 (d) Any person, official, or institution willfully making false notification pursuant to
124 this Subsection (7), knowing the allegations to be false, shall be guilty of a class A
125 misdemeanor.

126 (e) Any person, official, or institution willfully making false notification pursuant to
127 this Subsection (7), knowing the allegations to be false, or who has been previously convicted
128 of making willful false allegations shall be guilty of a third degree felony.

129 (f) The remedies provided by this section are in addition to any other remedies
130 provided by law.

131 (8) A parent may not be placed on supervised visitation, denied custody of or visitation
132 with his or her child, and custody or visitation rights may not be limited, solely because the
133 parent:

134 (a) lawfully reported suspected sexual abuse of the child;

135 (b) otherwise acted lawfully, based on a reasonable belief, to determine if his or her
136 child was a victim of sexual abuse; or

137 (c) sought treatment for the child from a licensed mental health professional for
138 suspected sexual abuse.

139 (9) The court may order supervised visitation or limit a party's custody or visitation if
140 the court finds substantial evidence that the parent, with the intent to interfere with the other
141 parent's lawful contact with the child, made a report of child sexual abuse that he or she knew
142 as false at the time it was made. Any limitations of custody or visitation, including an order for
143 supervised visitation, pursuant to this Subsection (9), may be imposed only after the court has
144 determined that the limitation is necessary to protect the health, safety, and welfare of the child.

Legislative Review Note
as of 2-10-03 7:03 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

Noncompliant individuals may be subject to monetary penalties in addition to loss of custody and criminal penalties.

Office of the Legislative Fiscal Analyst