

**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  
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 may grant to the nonalleging party:

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

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

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

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~~] may not be presumed to be in  
40 the best interests of the child, but shall be considered an absolute minimum. [~~The~~] A  
41 parent-time schedule that is equal or nearly as equal shall be considered the preferred minimum  
42 parent-time to which the noncustodial parent and the child shall be entitled unless a parent can  
43 establish otherwise by a preponderance of the evidence that more or less parent-time should be  
44 awarded based upon any 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;

52 (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.