

CHILD AND FAMILY PROTECTION

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends portions of the Utah Criminal Code relating to child abuse and the Pattern of Unlawful Activity Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ includes child abandonment as a type of child abuse;
- ▶ provides that a person who commits child abandonment, or encourages or causes another to commit child abandonment, is:
 - guilty of a class A misdemeanor;
 - if the child abandonment results in physical injury to the child, guilty of a felony of the third degree; or
 - if the child abandonment results in serious physical injury to the child, guilty of a felony of the second degree;
- ▶ includes child abuse as an offense that constitutes an "unlawful activity" under the Pattern of Unlawful Activity Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **62A-4a-1002**, as enacted by Chapter 77, Laws of Utah 2006

32 **76-5-109**, as last amended by Chapter 75, Laws of Utah 2006

33 **76-10-1602**, as last amended by Chapters 104, 140 and 319, Laws of Utah 2004



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

36 Section 1. Section **62A-4a-1002** is amended to read:

37 **62A-4a-1002. Definitions.**

38 As used in this part:

39 (1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect"

40 means:

41 (i) if committed by a person 18 years of age or older:

42 (A) severe or chronic physical abuse;

43 (B) sexual abuse;

44 (C) sexual exploitation;

45 (D) abandonment;

46 (E) medical neglect resulting in death, disability, or serious illness;

47 (F) chronic neglect;

48 (G) severe neglect;

49 (H) chronic emotional abuse; or

50 (I) severe emotional abuse; or

51 (ii) if committed by a person under the age of 18:

52 (A) serious physical injury, as defined in Subsection 76-5-109(1)~~(d)~~, to another child

53 which indicates a significant risk to other children; or

54 (B) sexual behavior with or upon another child which indicates a significant risk to

55 other children.

56 (b) "Severe type of child abuse or neglect" does not include:

57 (i) the use of reasonable and necessary physical restraint or force by an educator in

58 accordance with Subsection 53A-11-802(2) or Section 76-2-401;

59 (ii) a person's conduct that:
60 (A) is justified under Section 76-2-401; or
61 (B) constitutes the use of reasonable and necessary physical restraint or force in
62 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
63 other dangerous object in the possession or under the control of a child or to protect the child or
64 another person from physical injury; or

65 (iii) a health care decision made for a child by the child's parent or guardian, unless,
66 subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by
67 clear and convincing evidence, that the health care decision is not reasonable and informed.

68 (2) "Significant risk" means a risk of harm that is determined to be significant in
69 accordance with risk assessment tools and rules established by the division that focus on:

- 70 (a) age;
- 71 (b) social factors;
- 72 (c) emotional factors;
- 73 (d) sexual factors;
- 74 (e) intellectual factors;
- 75 (f) family risk factors; and
- 76 (g) other related considerations.

77 Section 2. Section **76-5-109** is amended to read:

78 **76-5-109. Child abuse.**

79 (1) As used in this section:

80 (a) "Child" means a human being who is under 18 years of age.

81 (b) (i) "Child abandonment" means that a parent or legal guardian of a child:

82 (A) intentionally ceases to maintain physical custody of the child;

83 (B) intentionally fails to make reasonable arrangements for the safety, care, and
84 physical custody of the child; and

85 (C) (I) intentionally fails to provide the child with food, shelter, or clothing;

86 (II) manifests an intent to permanently not resume physical custody of the child; or

87 (III) for a period of at least 30 days:

88 (Aa) intentionally fails to resume physical custody of the child; and

89 (Bb) fails to manifest a genuine intent to resume physical custody of the child.

90 (ii) "Child abandonment" does not include:
 91 (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or
 92 (B) giving legal consent to a court order for termination of parental rights:
 93 (I) in a legal adoption proceeding; or
 94 (II) in a case where a petition for the termination of parental rights, or the termination
 95 of a guardianship, has been filed.

96 ~~(b)~~ (c) "Child abuse" means any offense described in Subsection (2) [or], (3), or (4)
 97 or in Section 76-5-109.1.

98 ~~(c)~~ (d) "Physical injury" means an injury to or condition of a child which impairs the
 99 physical condition of the child, including:

- 100 (i) a bruise or other contusion of the skin;
- 101 (ii) a minor laceration or abrasion;
- 102 (iii) failure to thrive or malnutrition; or
- 103 (iv) any other condition which imperils the child's health or welfare and which is not a
- 104 serious physical injury as defined in Subsection (1)~~(d)~~(e).

105 ~~(d)~~ (e) (i) "Serious physical injury" means any physical injury or set of injuries that:

- 106 (A) seriously impairs the child's health;
- 107 (B) involves physical torture;
- 108 (C) causes serious emotional harm to the child; or
- 109 (D) involves a substantial risk of death to the child.

110 (ii) "Serious physical injury" includes:

- 111 (A) fracture of any bone or bones;
- 112 (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
- 113 shaking, or causing the child's head to impact with an object or surface;
- 114 (C) any burn, including burns inflicted by hot water, or those caused by placing a hot
- 115 object upon the skin or body of the child;

116 (D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

117 (E) any combination of two or more physical injuries inflicted by the same person,

118 either at the same time or on different occasions;

119 (F) any damage to internal organs of the body;

120 (G) any conduct toward a child that results in severe emotional harm, severe

121 developmental delay or retardation, or severe impairment of the child's ability to function;

122 (H) any injury that creates a permanent disfigurement or protracted loss or impairment
123 of the function of a bodily member, limb, or organ;

124 (I) any conduct that causes a child to cease breathing, even if resuscitation is successful
125 following the conduct; or

126 (J) any conduct that results in starvation or failure to thrive or malnutrition that
127 jeopardizes the child's life.

128 (2) Any person who inflicts upon a child serious physical injury or, having the care or
129 custody of such child, causes or permits another to inflict serious physical injury upon a child is
130 guilty of an offense as follows:

131 (a) if done intentionally or knowingly, the offense is a felony of the second degree;

132 (b) if done recklessly, the offense is a felony of the third degree; or

133 (c) if done with criminal negligence, the offense is a class A misdemeanor.

134 (3) Any person who inflicts upon a child physical injury or, having the care or custody
135 of such child, causes or permits another to inflict physical injury upon a child is guilty of an
136 offense as follows:

137 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

138 (b) if done recklessly, the offense is a class B misdemeanor; or

139 (c) if done with criminal negligence, the offense is a class C misdemeanor.

140 (4) A person who commits child abandonment, or encourages or causes another to
141 commit child abandonment, is:

142 (a) except as provided in Subsection (4)(b) or (c), guilty of a class A misdemeanor;

143 (b) except as provided in Subsection (4)(c), guilty of a felony of the third degree if, as a
144 result of the child abandonment, the child suffers a physical injury; or

145 (c) guilty of a felony of the second degree if, as a result of the child abandonment, the
146 child suffers a serious physical injury.

147 [~~4~~] (5) A parent or legal guardian who provides a child with treatment by spiritual
148 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
149 practices of an established church or religious denomination of which the parent or legal
150 guardian is a member or adherent shall not, for that reason alone, be considered to have
151 committed an offense under this section.

152 ~~[(5)]~~ (6) A parent or guardian of a child does not violate this section by selecting a
153 treatment option for the medical condition of the child, if the treatment option is one that a
154 reasonable parent or guardian would believe to be in the best interest of the child.

155 ~~[(6)]~~ (7) A person is not guilty of an offense under this section for conduct that
156 constitutes:

157 (a) reasonable discipline or management of a child, including withholding privileges;

158 (b) conduct described in Section 76-2-401; or

159 (c) the use of reasonable and necessary physical restraint or force on a child:

160 (i) in self-defense;

161 (ii) in defense of others;

162 (iii) to protect the child; or

163 (iv) to remove a weapon in the possession of a child for any of the reasons described in

164 Subsections ~~[(6)]~~ (7)(c)(i) through (iii).

165 Section 3. Section **76-10-1602** is amended to read:

166 **76-10-1602. Definitions.**

167 As used in this part:

168 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
169 business trust, association, or other legal entity, and any union or group of individuals
170 associated in fact although not a legal entity, and includes illicit as well as licit entities.

171 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
172 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
173 have the same or similar purposes, results, participants, victims, or methods of commission, or
174 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
175 demonstrate continuing unlawful conduct and be related either to each other or to the
176 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
177 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
178 activity as defined by this part shall have occurred within five years of the commission of the
179 next preceding act alleged as part of the pattern.

180 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
181 interest in property, including state, county, and local governmental entities.

182 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,

183 command, encourage, or intentionally aid another person to engage in conduct which would
184 constitute any offense described by the following crimes or categories of crimes, or to attempt
185 or conspire to engage in an act which would constitute any of those offenses, regardless of
186 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
187 or a felony:

188 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
189 Recording Practices Act;

190 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
191 Code, Sections 19-1-101 through 19-7-109;

192 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
193 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, Wildlife
194 Resources Code of Utah, or Section 23-20-4;

195 (d) false claims for medical benefits, kickbacks, and any other act prohibited by False
196 Claims Act, Sections 26-20-1 through 26-20-12;

197 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
198 Offenses;

199 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
200 Land Sales Practices Act;

201 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
202 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
203 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
204 Clandestine Drug Lab Act;

205 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
206 Securities Act;

207 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
208 Procurement Code;

209 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

210 (k) a terroristic threat, Section 76-5-107;

211 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

212 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

213 (n) sexual exploitation of a minor, Section 76-5a-3;

- 214 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 215 (p) causing a catastrophe, Section 76-6-105;
- 216 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 217 (r) burglary of a vehicle, Section 76-6-204;
- 218 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 219 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 220 (u) theft, Section 76-6-404;
- 221 (v) theft by deception, Section 76-6-405;
- 222 (w) theft by extortion, Section 76-6-406;
- 223 (x) receiving stolen property, Section 76-6-408;
- 224 (y) theft of services, Section 76-6-409;
- 225 (z) forgery, Section 76-6-501;
- 226 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 227 (bb) deceptive business practices, Section 76-6-507;
- 228 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
- 229 criticism of goods, Section 76-6-508;
- 230 (dd) bribery of a labor official, Section 76-6-509;
- 231 (ee) defrauding creditors, Section 76-6-511;
- 232 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 233 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 234 (hh) bribery or threat to influence contest, Section 76-6-514;
- 235 (ii) making a false credit report, Section 76-6-517;
- 236 (jj) criminal simulation, Section 76-6-518;
- 237 (kk) criminal usury, Section 76-6-520;
- 238 (ll) fraudulent insurance act, Section 76-6-521;
- 239 (mm) computer crimes, Section 76-6-703;
- 240 (nn) identity fraud, Section 76-6-1102;
- 241 (oo) sale of a child, Section 76-7-203;
- 242 (pp) bribery to influence official or political actions, Section 76-8-103;
- 243 (qq) threats to influence official or political action, Section 76-8-104;
- 244 (rr) receiving bribe or bribery by public servant, Section 76-8-105;

245 (ss) receiving bribe or bribery for endorsement of person as public servant, Section
246 76-8-106;

247 (tt) official misconduct, Sections 76-8-201 and 76-8-202;

248 (uu) obstruction of justice, Section 76-8-306;

249 (vv) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;

250 (ww) false or inconsistent material statements, Section 76-8-502;

251 (xx) false or inconsistent statements, Section 76-8-503;

252 (yy) written false statements, Section 76-8-504;

253 (zz) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;

254 (aaa) retaliation against a witness, victim, or informant, Section 76-8-508.3;

255 (bbb) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

256 (ccc) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
257 76-8-1205;

258 (ddd) unemployment insurance fraud, Section 76-8-1301;

259 (eee) intentionally or knowingly causing one animal to fight with another, Subsection
260 76-9-301(1)(f);

261 (fff) possession, use, or removal of explosives, chemical, or incendiary devices or
262 parts, Section 76-10-306;

263 (ggg) delivery to common carrier, mailing, or placement on premises of an incendiary
264 device, Section 76-10-307;

265 (hhh) possession of a deadly weapon with intent to assault, Section 76-10-507;

266 (iii) unlawful marking of pistol or revolver, Section 76-10-521;

267 (jjj) alteration of number or mark on pistol or revolver, Section 76-10-522;

268 (kkk) forging or counterfeiting trademarks, trade name, or trade device, Section
269 76-10-1002;

270 (lll) selling goods under counterfeited trademark, trade name, or trade devices, Section
271 76-10-1003;

272 (mmm) sales in containers bearing registered trademark of substituted articles, Section
273 76-10-1004;

274 (nnn) selling or dealing with article bearing registered trademark or service mark with
275 intent to defraud, Section 76-10-1006;

- 276 (ooo) gambling, Section 76-10-1102;
- 277 (ppp) gambling fraud, Section 76-10-1103;
- 278 (qqq) gambling promotion, Section 76-10-1104;
- 279 (rrr) possessing a gambling device or record, Section 76-10-1105;
- 280 (sss) confidence game, Section 76-10-1109;
- 281 (ttt) distributing pornographic material, Section 76-10-1204;
- 282 (uuu) inducing acceptance of pornographic material, Section 76-10-1205;
- 283 (vvv) dealing in harmful material to a minor, Section 76-10-1206;
- 284 (www) distribution of pornographic films, Section 76-10-1222;
- 285 (xxx) indecent public displays, Section 76-10-1228;
- 286 (yyy) prostitution, Section 76-10-1302;
- 287 (zzz) aiding prostitution, Section 76-10-1304;
- 288 (aaaa) exploiting prostitution, Section 76-10-1305;
- 289 (bbbb) aggravated exploitation of prostitution, Section 76-10-1306;
- 290 (cccc) communications fraud, Section 76-10-1801;
- 291 (dddd) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19,
- 292 Money Laundering and Currency Transaction Reporting Act;
- 293 (eeee) any act prohibited by the criminal provisions of the laws governing taxation in
- 294 this state; [~~and~~]
- 295 (ffff) any act illegal under the laws of the United States and enumerated in Title 18,
- 296 Section 1961 (1)(B), (C), and (D) of the United States Code[-]; or
- 297 (gggg) child abuse, Section 76-5-109.

Legislative Review Note
as of 2-12-07 4:34 PM

Office of Legislative Research and General Counsel

H.B. 460 - Child and Family Protection

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
